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Office of the Assistant Secretary

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536

JUN 3 0 2010

U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: All ICE Employees

FROM: John Morton
Assistant Secretary

SUBJECT: Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens

Purpose

This memorandum outlines the civil immigration enforcement priorities of U.S. Immigration and Customs Enforcement (ICE) as they relate to the apprehension, detention, and removal of aliens. These priorities shall apply across all ICE programs and shall inform enforcement activity, detention decisions, budget requests and execution, and strategic planning.

A. Priorities for the apprehension, detention, and removal of aliens

In addition to our important criminal investigative responsibilities, ICE is charged with enforcing the nation's civil immigration laws. This is a critical mission and one with direct significance for our national security, public safety, and the integrity of our border and immigration controls. ICE, however, only has resources to remove approximately 400,000 aliens per year, less than 4 percent of the estimated illegal alien population in the United States. In light of the large number of administrative violations the agency is charged with addressing and the limited enforcement resources the agency has available, ICE must prioritize the use of its enforcement personnel, detention space, and removal resources to ensure that the removals the agency does conduct promote the agency's highest enforcement priorities, namely national security, public safety, and border security.

To that end, the following shall constitute ICE's civil enforcement priorities, with the first being the highest priority and the second and third constituting equal, but lower, priorities.

Priority 1. Aliens who pose a danger to national security or a risk to public safety

The removal of aliens who pose a danger to national security or a risk to public safety shall be ICE's highest immigration enforcement priority. These aliens include, but are not limited to:

- aliens engaged in or suspected of terrorism or espionage, or who otherwise pose a danger to national security;
- aliens convicted of crimes, with a particular emphasis on violent criminals, felons, and repeat offenders;
- aliens not younger than 16 years of age who participated in organized criminal gangs;
- aliens subject to outstanding criminal warrants; and
- aliens who otherwise pose a serious risk to public safety.[1]

For purposes of prioritizing the removal of aliens convicted of crimes, ICE personnel should refer to the following new offense levels defined by the Secure Communities Program, with Level 1 and Level 2 offenders receiving principal attention. These new Secure Communities levels are given in rank order and shall replace the existing Secure Communities levels of offenses.[2]

- Level 1 offenders: aliens convicted of "aggravated felonies," as defined in § 101(a)(43) of the Immigration and Nationality Act,[3] or two or more crimes each punishable by more than one year, commonly referred to as "felonies";
- Level 2 offenders: aliens convicted of any felony or three or more crimes each punishable by less than one year, commonly referred to as "misdemeanors"; and
- Level 3 offenders: aliens convicted of crimes punishable by less than one year.[4]

Priority 2. Recent illegal entrants

In order to maintain control at the border and at ports of entry, and to avoid a return to the prior practice commonly and historically referred to as "catch and release," the removal of aliens who have recently violated immigration controls at the border, at ports of entry, or through the knowing abuse of the visa and visa waiver programs shall be a priority.

Priority 3. Aliens who are fugitives or otherwise obstruct immigration controls

In order to ensure the integrity of the removal and immigration adjudication processes, the removal of aliens who are subject to a final order of removal and abscond, fail to depart, or intentionally obstruct immigration controls, shall be a priority. These aliens include:

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[1] This provision is not intended to be read broadly, and officers, agents, and attorneys should rely on this provision only when serious and articulable public safety issues exist.

[2] The new levels should be used immediately for purposes of enforcement operations. DRO will work with Secure Communities and the Office of the Chief Information Officer to revise the related computer coding by October 1, 2010.

[3] As the definition of "aggravated felony" includes serious, violent offenses and less serious, non-violent offenses, agents, officers, and attorneys should focus particular attention on the most serious of the aggravated felonies when prioritizing among level one offenses.

[4] Some misdemeanors are relatively minor and do not warrant the same degree of focus as others. ICE agents and officers should exercise particular discretion when dealing with minor traffic offenses such as driving without a license.

- fugitive aliens, in descending priority as follows:[5]
  - fugitive aliens who pose a danger to national security;
  - fugitives aliens convicted of violent crimes or who otherwise pose a threat to the community;
  - fugitive aliens with criminal convictions other than a violent crime;
  - fugitive aliens who have not been convicted of a crime;
- aliens who reenter the country illegally after removal, in descending priority as follows:
  - previously removed aliens who pose a danger to national security;
  - previously removed aliens convicted of violent crimes or who otherwise pose a threat to the community;
  - previously removed aliens with criminal convictions other than a violent crime;
  - previously removed aliens who have not been convicted of a crime; and
- aliens who obtain admission or status by visa, identification, or immigration benefit fraud.[6]

The guidance to the National Fugitive Operations Program: Priorities, Goals and Expectations, issued on December 8, 2009, remains in effect and shall continue to apply for all purposes, including how Fugitive Operation Teams allocate resources among fugitive aliens, previously removed aliens, and criminal aliens.

B. Apprehension, detention, and removal of other aliens unlawfully in the United States

Nothing in this memorandum should be construed to prohibit or discourage the apprehension, detention, or removal of other aliens unlawfully in the United States. ICE special agents, officers, and attorneys may pursue the removal of any alien unlawfully in the United States, although attention to these aliens should not displace or disrupt the resources needed to remove aliens who are a higher priority. Resources should be committed primarily to advancing the priorities set forth above in order to best protect national security and public safety and to secure the border.

C. Detention

As a general rule, ICE detention resources should be used to support the enforcement priorities noted above or for aliens subject to mandatory detention by law. Absent extraordinary circumstances or the requirements of mandatory detention, field office directors should not expend detention resources on aliens who are known to be suffering from serious physical or mental illness, or who are disabled, elderly, pregnant, or nursing, or demonstrate that they are

[5] Some fugitives may fall into both this priority and priority 1.

[6] ICE officers and special agents should proceed cautiously when encountering aliens who may have engaged in fraud in an attempt to enter but present themselves without delay to the authorities and indicate a fear of persecution or torture. *See* Convention relating to the Status of Refugees, art. 31, *opened for signature* July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137. In such instances, officers and agents should contact their local Office of the Chief Counsel.

primary caretakers of children or an infirm person, or whose detention is otherwise not in the public interest. To detain aliens in those categories who are not subject to mandatory detention, ICE officers or special agents must obtain approval from the field office director. If an alien falls within the above categories and is subject to mandatory detention, field office directors are encouraged to contact their local Office of Chief Counsel for guidance.

D. Prosecutorial discretion

The rapidly increasing number of criminal aliens who may come to ICE's attention heightens the need for ICE employees to exercise sound judgment and discretion consistent with these priorities when conducting enforcement operations, making detention decisions, making decisions about release on supervision pursuant to the Alternatives to Detention Program, and litigating cases. Particular care should be given when dealing with lawful permanent residents, juveniles, and the immediate family members of U.S. citizens. Additional guidance on prosecutorial discretion is forthcoming. In the meantime, ICE officers and attorneys should continue to be guided by the November 17, 2000 prosecutorial discretion memorandum from then-INS Commissioner Doris Meissner; the October 24, 2005 Memorandum from Principal Legal Advisor William Howard; and the November 7, 2007 Memorandum from then-Assistant Secretary Julie Myers.

E. Implementation

ICE personnel shall follow the priorities set forth in this memorandum immediately. Further, ICE programs shall develop appropriate measures and methods for recording and evaluating their effectiveness in implementing the priorities. As this may require updates to data tracking systems and methods, ICE will ensure that reporting capabilities for these priorities allow for such reporting as soon as practicable, but not later than October 1, 2010.

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Office of the Assistant Secretary

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536

AUG 20 2010

U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: Peter S. Vincent
Principal Legal Advisor

James Chaparro
Executive Associate Director,
Enforcement and Removal Operations

FROM: John Morton
Assistant Secretary

SUBJECT: Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions

Purpose

This memorandum establishes U.S. Immigration and Customs Enforcement (ICE) policy for the handling of removal proceedings before the Executive Office for Immigration Review (EOIR) involving applications or petitions filed by, or on behalf of, aliens in removal proceedings. This policy outlines a framework for ICE to request expedited adjudication of an application or petition for an alien in removal proceedings that is pending before U.S. Citizenship and Immigration Services (USCIS) if the approval of such an application or petition would provide an immediate basis for relief for the alien.[1] This policy will allow ICE and EOIR to address a major inefficiency in present practice and thereby avoid unnecessary delay and expenditure of resources.

Background

Historically, where a *Petition for Alien Relative* (hereinafter Form I-130 or petition) was pending before USCIS, this fact tended to promote delays in removal proceedings. Indeed, in July of 2009, EOIR identified approximately 17,000 removal cases that have been continued pending the outcome of USCIS decisions on petitions. Recognizing that many of these cases may ultimately result in relief for the alien, ICE has been working with USCIS and EOIR to identify more effective procedures to resolve these pending petitions along with other applications to promote increased docket efficiency.

[1] This memo applies only to applications or petitions that USCIS legally has jurisdiction to adjudicate during removal proceedings.

To this end, USCIS will issue guidance to complement this memorandum and will endeavor to complete the adjudication of all applications and petitions referred by ICE within 30 days for detained aliens and 45 days for non-detained aliens. Close coordination and communication between the ICE Offices of Chief Counsel (OCC) and USCIS will ensure that all applications and petitions are adjudicated quickly to realize our shared goal of efficiently resolving cases in removal proceedings.

New ICE Policy

As a matter of prosecutorial discretion and to promote the efficient use of government resources, I hereby issue new ICE policy to govern the handling of removal proceedings involving aliens with applications or petitions pending with USCIS. This policy extends both to the prosecution of removal proceedings by OCCs and to any associated detention decisions by Enforcement and Removal Operations (ERO).

1. Expedited Adjudication

A. In any case involving a detained alien whose application or petition is pending with USCIS, OCC shall affirmatively request that USCIS expedite the adjudication of the application or petition. ICE should promptly transfer the applicant's A-file to USCIS. USCIS will endeavor to adjudicate all the detained cases referred to it by ICE within 30 days of receiving the A-files. ICE will ensure that, if needed, USCIS has access to the detained individual to conduct an interview.

B. In any case involving a non-detained alien whose application or petition is pending with USCIS, OCC shall affirmatively request that USCIS expedite the adjudication of the application or petition. ICE should promptly transfer the applicant's A-file to USCIS. USCIS will endeavor to adjudicate all non-detained cases referred to it by ICE within 45 days of receiving the A-files.

2. *Dismissal without Prejudice of Certain Cases in Removal Proceedings*

Detained Cases

Where there is an underlying application or petition filed with USCIS by or on behalf of a detained alien and ICE determines as a matter of law and in the exercise of discretion that such alien appears eligible for relief from removal, OCC shall promptly consult with the Field Office Director (FOD) and Special Agent in Charge (SAC) to determine if there are any investigations or serious, adverse factors weighing against dismissal of proceedings.[2] Adverse factors include, but are not limited to, criminal convictions, evidence of fraud or other criminal misconduct, and national security and public safety considerations. If no investigations or serious adverse factors

[2] ICE offices in the Fifth and Ninth Circuits must be sensitive to the issue of *res judicata* that may arise in dismissing proceedings without prejudice. *See, e.g., Bravo-Pedroza v. Gonzales*, 475 F.3d 1358 (9th Cir. 2007); *Medina v. INS*, 993 F.2d 499, 503 (5th Cir. 1993). To protect the government's interests, motions to dismiss without prejudice in the 5th and 9th Circuits should be made in writing, i.e., not orally. The Office of the Principal Legal Advisor (OPLA) has developed a template for motions to dismiss without prejudice for use in these two circuits.

exist, the OCC should promptly move to dismiss proceedings without prejudice before EOIR, and notify the FOD of the motion. Once the FOD is notified, the FOD must release the alien pursuant to the dismissal of proceedings.

Non-Detained Cases

Where there is an underlying application or petition and ICE determines in the exercise of discretion that a non-detained individual appears eligible for relief from removal, OCC should promptly move to dismiss proceedings without prejudice before EOIR.[3]

Standard for Dismissal

Only removal cases that meet the following criteria will be considered for dismissal:

- The alien must be the subject of an application or petition filed with USCIS to include a current priority date, if required, for adjustment of status;[4]
- The alien appears eligible for relief as a matter of law and in the exercise of discretion;
- The alien must present a completed *Application to Register Permanent Residence or Adjust* Status (Form I-485), if required; and
- The alien beneficiary must be statutorily eligible for adjustment of status (a waiver must be available for any ground of inadmissibility).

An alien in removal proceedings may appear eligible for relief but for a variety of reasons, ICE may oppose relief on the basis of discretion. In those cases, ICE should continue prosecution of the case before EOIR regardless of whether USCIS has approved the underlying application or petition.

Standard Operating Procedures

In coordination with the local USCIS field office, each OCC must develop a standard operating procedure (SOP) to identify removal cases that involve an application or petition pending before USCIS. This SOP should address the categories of cases discussed above: (1) those identified for expedited adjudication, and (2) those for which dismissal of proceedings may be appropriate. The request to expedite shall be made to by OCC to USCIS. No obligation for such requests shall be placed on the alien's attorney, accredited representative, or the immigration judge. The SOP regarding requests to expedite must establish the following:

- A mechanism whereby the ICE attorney who handles the master calendar hearing in a case determines whether a request to expedite the pending petition or application is appropriate;
- A structure to communicate the ICE request to expedite to USCIS;

[3] As more fully stated in footnote 2, ICE offices in the Fifth and Ninth Circuits must be sensitive to the issue of *res judicata* that may arise in dismissing proceedings without prejudice. OPLA has developed a template for motions to dismiss without prejudice for use in these two circuits.

[4] At the OCC's discretion, other cases not meeting this criterion may be appropriate for dismissal.

- A system to ensure that decisions about the application or petition are received from USCIS, uploaded into GEMS, and received by the ICE attorney scheduled to handle the subsequent hearing; and
- A method by which A-files will be routed as appropriate so as to avoid delays in either the adjudication or the immigration court proceedings.

Any questions regarding this memorandum should be directed to OPLA Field Legal Operations or ERO Field Operations through appropriate channels.[5]

cc: Alejandro Mayorkas
Director, U.S. Citizenship and Immigration Services

[5] This document provides only internal ICE guidance. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil, or criminal. Likewise, no limitations are placed on otherwise lawful enforcement or litigative prerogatives of DHS or ICE.

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Field Operations Directorate (MS 2110)
Washington, DC 20529-2110

U.S. Citizenship and Immigration Services

Memorandum

TO: Alejandro N. Mayorkas, Director

FROM: Denise A. Vanison, Policy and Strategy
Roxana Bacon, Office of the Chief Counsel
Debra A. Rogers, Field Operations
Donald Neufeld, Service Center Operations

SUBJECT: Administrative Alternatives to Comprehensive Immigration Reform

I. Purpose

This memorandum offers administrative relief options to promote family unity, foster economic growth, achieve significant process improvements and reduce the threat of removal for certain individuals present in the United States without authorization. It includes recommendations regarding implementation timeframes and required resources.

II. Summary

In the absence of Comprehensive Immigration Reform, USCIS can extend benefits and/or protections to many individuals and groups by issuing new guidance and regulations, exercising discretion with regard to parole-in-place, deferred action and the issuance of Notices to Appear (NTA), and adopting significant process improvements.

To promote family unity, USCIS could reinterpret two 1990 General Counsel Opinions regarding the ability of Temporary Protected Status (TPS) applicants who entered the United States (U.S.) without inspection to adjust or change status. This would enable thousands of individuals in TPS status to become lawful permanent residents. Similarly, where non-TPS applicants have been deemed inadmissible under section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("the Act") for having entered without inspection, USCIS could grant "parole-in-place" (PIP) in the exercise of discretion to create a basis for adjustment in the U.S.

To foster economic growth, USCIS could work more aggressively with the Department of Commerce (DOC) to complement important economic initiatives such as *Invest in America*. By establishing a working group with the DOC, USCIS should consider creative ways to make the EB-5 program more accessible to foreign investors and to administer it.

For workers in the U.S. whose occupations require frequent travel, or who are seeking permanent residence, USCIS could also build on a regulation issued by the former INS that, among other things, relieved H and L non-immigrants with pending adjustment applications from having to secure advance parole before departing the U.S. Expanding this "dual intent" concept to cover other long-term non-immigrants, including F, O, TN, P, and E visa holders would enable these workers to maintain valid nonimmigrant status and travel overseas without advance parole while their adjustment applications are pending. They would also be allowed to maintain their nonimmigrant status if USCIS denies their adjustment applications. The agency could also consider extending employment authorization to the dependent spouses of certain skilled workers. For example, USCIS could allow employment authorization for H-4 dependent spouses of H-1B principals where the principals are also applicants for lawful permanent residence and have extended their nonimmigrant status under the provisions of AC21. Finally, the agency should afford workers admitted to the U.S. in nonimmigrant status a reasonable period of time to conclude their affairs and depart after expiration of their authorized period of employment, performance, training, or vocational activity. The current 10-day "grace period" is insufficient. USCIS could amend its regulations to permit longer periods ranging from 45 to 90 days depending on employment category and overall time spent working in the U.S.

Where no relief appears available based on an applicant's employment and/or family circumstances, but removal is not in the public interest, USCIS could grant deferred action. This would permit individuals for whom relief may become available in the future to live and work in the U.S. without fear of removal. A corollary to this exercise of agency discretion is for USCIS to issue Notices to Appear (NTAs) strategically, rather than across the board. If relief is potentially available in removal, USCIS should consider issuing an NTA. On the other hand, where no relief exists in removal for an applicant without any significant negative immigration or criminal history, USCIS could avoid using its limited resources to issue an NTA.

Finally, for applicants who have requested relief from USCIS, whether in-country or abroad, and whose applications require a waiver of inadmissibility, USCIS could issue guidance or a regulation lessening the "extreme hardship" standard. This would encourage many more spouses, sons and daughters of U.S. citizens and lawful permanent residents to seek relief without fear of removal. It would also increase the likelihood that such relief would be granted.

II. Options

The following options - used alone or in combination - have the potential to result in meaningful immigration reform absent legislative action. Each requires the development of specific written guidance and/or regulatory language, implementation protocols, outreach and training within USCIS and coordination among Department of Homeland Security (DHS) immigration components.

A. To Promote Family Unity

1. Allow TPS Applicants Who Entered without Inspection to Adjust or Change Status

Individuals in TPS continue to be deemed ineligible to adjust or change status in the U.S. based on legal opinions rendered in the early 1990s by a General Counsel of the former Immigration and Naturalization Service (INS). Given the current definition of "admission" in section 101(a)(13)(A) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(13)(A), the USCIS Chief Counsel has expressed her view that these legal opinions no longer reflect a correct interpretation of the statute. *See **January 14, 2010 Memorandum from Roxana Bacon, Chief Counsel, to David Martin, Principal Deputy Counsel (attached).***

Thus, USCIS should no longer adhere to the 1990 General Counsel opinions, and instead permit individuals in TPS to adjust or change status. Opening this pathway will help thousands of applicants obtain lawful permanent residence without having to leave the U.S.

The SPC is poised to review this issue in May. Depending on its final decision, implementation of this option could begin immediately following the development of written field guidance and an external communication plan. Rather than imposing any additional financial cost, allowing TPS applicants to adjust or change status will increase USCIS revenue in the form of fee receipts. While initial outreach related to the implementation of field guidance may require dedicating staff/resources, this would likely be a short-term need. Actual adjudication of new applications and petitions could be handled by field offices already experiencing lower than normal receipts.

2. Expand the Use of Parole-in-Place

USCIS has the discretionary authority under section 212(d)(5)(A) of the Act to parole into the U.S. on a case-by-case basis for "urgent humanitarian reasons" or "significant public benefit" any applicant for admission. Section 235(a)(1) of the Act provides that an alien present in the U.S. who has not been admitted shall be deemed an applicant for admission. Granting parole to aliens in the U.S. who have not been admitted or paroled is commonly referred to as "parole-in-place" (PIP).[1]

By granting PIP, USCIS can eliminate the need for qualified recipients to return to their home country for consular processing, particularly when doing so might trigger a bar to returning. For years, USCIS has used PIP on a very limited basis. Last month, however, the SPC approved the broader use of PIP for qualified military dependents to:

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[1] Individuals who were lawfully admitted to the United States but whose authorized period of admission is about to expire or has expired are not eligible for parole-in-place.

- Preserve family unity and address Department of Defense concerns regarding soldier safety and readiness for duty,
- Avoid the need for spouses and children of active duty military service members to depart the U.S. and wait in foreign, often very dangerous jurisdictions for consulate processing, and
- Enable these same individuals to remain on military installations in the U.S. where they can receive housing, medical and dental, and other support services based on the active duty service member's status.

Other individuals/groups amenable to PIP include applicants for admission who entered the U.S. as minors without inspection, and whose return to their home country for consular processing would impose an extreme hardship on qualified family members. By statute, such family members include a U.S. citizen or lawful permanent resident parent, spouse, son or daughter. For example, where the applicant is the spouse of a U.S. citizen and also the primary caretaker of a disabled child or children, PIP could be used to enable adjustment in the U.S. Other applicants, including those who are elderly or who have lived for many years in the U.S., and for whom consular processing would impose a formidable financial burden, could likewise be granted PIP.

In terms of implementation costs and required resources, although PIP has been granted by USCIS without requiring the filing of any form or fee, the agency should alter this approach for wider use. The Form I-131, Application for Travel Document, presents the most logical application and presently involves a mandatory filing fee of $305.00.

3. Amend the Unlawful Presence Policy for Adjustment Applicants

Under current USCIS interpretation, an adjustment applicant who departs the United States and returns on advance parole authorization triggers the 3-year or 10-year bar unlawful presence ground of inadmissibility. Because USCIS generally issues advance parole for adjustment applicants liberally and the fee for the advance parole document is now included with the fee for adjustment of status, the public perceives that: 1) USCIS authorizes the departure of such alien and 2) USCIS deceives individuals into triggering their own inadmissibility.

To address these issues, OP&S is currently examining the feasibility of policy options so that individuals would not be deemed to have triggered the bar upon departure with prior authorization from DHS. The options include possibilities reexamining past interpretations of terms such as "departure" and "seeking admission again" within the context of unlawful presence and adjustment of status.

Implementation Method: Interim Policy Guidance; Rulemaking
Resources/Considerations: Coordination with DHS.
Target Date: September/October 2010 (Policy Guidance); June/July 2011 (Rulemaking)]

4. Lessen the Standard for Demonstrating "Extreme Hardship"

The Act at 212(a)(9)(B)(i)(I) and (II) renders inadmissible for 3 or 10 years individuals who have been unlawfully present in the U.S. for 180 days or one year respectively, and then depart. By statute, DHS has discretion to waive these grounds of inadmissibility for spouses, sons and daughters of U.S. citizens or lawful permanent residents if the refusal to admit such individuals would result in extreme hardship to their qualifying relatives. Generally, the "extreme hardship" standard has been narrowly construed by USCIS.

To increase the number of individuals applying for waivers, and improve their chances for receiving them, CIS could issue guidance or a regulation specifying a lower evidentiary standard for "extreme hardship." This would promote family unity, and avoid the significant human and financial costs associated with waiver denial decisions born of an overly rigid standard. This revised standard would also complement expanded use of PIP as set forth in B.

5. Publish final regulations related to relief for unaccompanied minors, and for victims of human trafficking, domestic violence, and other criminal activities

These rules would help regularize the immigration status of minors in foster care or in the process of being adopted. They would further clarify the derivative family members for whom a victim of human trafficking can petition, implement provisions allowing such individuals to enter the U.S. based on the danger of retaliation, and establish procedures for victims of elder abuse to seek relief.

Implementation method: Proposed and interim final regulations.
Resources/considerations: Coordination necessary with various federal agencies, including DOJ and DOS.
Target delivery date: FY10-FY11

B. To Foster Economic Growth

1. Partner with Department of Commerce (DOC) to administer the EB-5 Immigrant Investor Program

The EB-5 program allows certain aliens who have made investments in US businesses and who created at least ten jobs to obtain LPR status. Due to a number of factors the EB-5 program has been under utilized and, as a result, job creation under this program has been limited. USCIS views the EB-5 program as an important tool in assisting the U.S. economy as our country continues to recover from the recent recession. Currently, an opportunity exists for USCIS and the DOC to work together in promoting the EB-5 Immigrant Investor Pilot Program (Pilot Program). The goals of the Pilot Program and the goals of certain DOC components, such as *Invest in America*, seem to provide a natural starting point for agency collaboration. OPS proposes setting up a working group with the DOC to determine how DOC might assist USCIS

in making the EB-5 program more accessible to foreign investors thorough administrative efficiencies and promotion.

Implementation Method: Working group sessions between DOC and USCIS. Probable rulemaking to codify joint administration of the EB-5 Program once parameters are agreed upon between the two agencies.
Resources/Considerations: DHS and USCIS leadership agree that the partnership with DOC would be beneficial to USCIS as well as the EB-5 stakeholder community. Need to coordinate with DOC.
Target Date: To be determined. [We can begin cooperating with Invest in America immediately.] Allow 3-9 months so that the low hanging fruit can be harvested first.

2. Expand the Dual Intent Doctrine

Most non-immigrants who apply for adjustment of status are presumed to be intending immigrants and are no longer eligible to maintain nonimmigrant status. Section 214(h) of the Act permits H-1 temporary workers in specialty occupations, L-1 intra-company managerial or executive transferees, and their spouses and children to maintain their nonimmigrant status while their adjustment applications are pending.

USCIS should consider expanding the dual intent concept to cover other long-term non-immigrants, including F, O, TN, P, and E visa holders. These long-term non-immigrants often need to make short overseas travels during their authorized stay. Under the "dual intent" doctrine, these non-immigrants would be able to maintain valid nonimmigrant status and travel overseas without advance parole while their adjustment applications are pending. They would also be allowed to maintain their nonimmigrant status if USCIS denies their adjustment applications.

Implementation Method: NPRM.
Resources/Considerations: Coordinate with other DHS components and DHS Headquarters as well as the Department of State.
Target Date: Minimum of 12 months to issue final rule.

3. Extend employment authorization to H-4 dependent spouses of H-1B principals where the principals are also applicants for lawful permanent residence under AC 21.

USCIS Senior Leaders have already approved this course of action; it is therefore recommended in the context of identifying administrative relief options that their decision be communicated to the Department of Homeland Security and to the White House.

Implementation Method: Notice of Proposed Rulemaking (NPRM).

Resources/Considerations: Coordinate with DHS Policy and White House prior to rule drafting. USCIS systems (CLAIMS, etc.) will need to be modified to accommodate EADs for this group of H-4s.
Target Date: Minimum of 12 months to issue final rule.

4. Expand existing "grace periods" to depart the U.S. for E-1, E-2, E-3, H-1B, H-1B1, H-2B, H-3, L-1, O-1, O-2, P-1, P-2, P-3, Q, R, and TN workers and their dependents.

Non-immigrant workers whose period of employment authorization has expired should be afforded a reasonable period of time to conclude their affairs and leave the U.S. The current 10-day "grace period" for departure is insufficient and should be expanded by regulation to permit between 30-90 days for departure depending on employment category and length time the individual has been authorized to work in the U.S. Proposed H-2A regulations recognize this problem and include a 30-day period of authorized stay after the H-2A employment period expires.

Implementation Method: NPRM
Resources/Considerations: Coordinate within other DHS components.
Target Date: Minimum of 12 months to issue final rule.

C. To Achieve Process Improvements

1. Expand the Availability of Premium Processing Service

Expand availability of premium processing service to additional employment-based classifications (specify which ones need to be added, to include applications to change or extend nonimmigrant status, applications for employment authorization and advance parole, and all employment-based immigrant petitions. We), We have no backlogs now, and we can do it operationally.

Implementation Method: Federal Register Notice (for classifications not previously designated as eligible for Premium Processing Service), and website posting and update to "turn on" Premium Processing Service availability for classifications previously designated by Federal Register Notice as eligible for Premium Processing Service.
Resources/Considerations:
Target Date: Immediate for classifications previously designated as eligible for Premium Processing Service. For classifications which have not been previously designated, a Federal Register Notice will need to be published, which could take 60-90 days.

2. Implementation of the Validation Instrument for Business Enterprises (VIBE) Program

VIBE is a web-based tool for adjudicators that will enable USCIS to independently validate the viability and current level of business operations of companies and organizations filing employment-based immigrant and nonimmigrant petitions.

By providing information about a petitioning company/organization's level of business operations, VIBE will enhance USCIS' ability to more easily distinguish eligible petitioners from those that are ineligible and/or fraudulent.

VIBE is expected to eventually lessen the need for petitioners to repeatedly submit voluminous paper documentation to establish petitioner viability. This, in turn, will likely reduce the number of RFEs issued to otherwise eligible petitioners.

Additionally, by providing the same petitioner information to all four Service Centers, VIBE will promote consistency in the adjudication of employment-based immigrant and nonimmigrant petitions. Overall, the additional information provided by VIBE will improve the integrity of employment-based immigrant and nonimmigrant programs which will ultimately provide eligible petitioners greater access to legal foreign workers.

Implementation Method: USCIS Update and pre-implementation stakeholder meeting.
Resources/Considerations: Coordinate with OIT and other USCIS Offices.
Target Date: Spring/Summer 2010.

2. H-2B Cap Allocation Options

An options paper has been prepared by USCIS which discusses alternative ways to distribute the limited number of H-2B cap numbers available per fiscal year.

Currently, the statute requires that H-2B cap numbers be allocated semi-annually, with 33,000 visa numbers allocated during the first six months of the fiscal year, and 33,000 allocated during the last six months of the fiscal year. Options include a quarterly distribution, a monthly distribution, or a "peak period" distribution. Options are currently under review within USCIS and DHS. USCIS will likely seek to hold public engagement events to solicit ideas from stakeholders.
Implementation Method: No regulation required. Consultation with H-2B stakeholders recommended prior to any decision being made.
Resources/Considerations: Coordinate with other DHS components and the Department of State.
Target Date: Implementation in six months.

3. Automatic Extension of Employment Authorization Documents (EADs)
Permit an automatic extension of EADs for up to 240 days when an application to extend the EAD has been filed prior to its expiration. We currently permit this for nonimmigrant worker visa petitions. (SCOPS)
Implementation Method: No rulemaking required. Operational changes will be necessary to implement.
Resources/Considerations: Coordinate with DHS and conduct outreach with stakeholders.

Target Date: 60 to 90 days.

4. 2-year EADs - Issue Employment Authorization Cards valid for 2 years in wider circumstances. (SCOPS)
Implementation Method: No rulemaking required.
Resources/Considerations: Coordinate with DHS.
Target Date: 60 to 90 days. SCOPS should weigh in here.

5. Reengineering of Civil Surgeon Process

USCIS proposes to implement a new process to govern the designation and revocation of civil surgeons, who are physicians authorized to conduct legally required medical examinations of aliens applying for certain immigration benefits. The new process would:

- Create uniform standards and procedures for civil surgeon designation and revocation.
- Designate an application form, a fee for civil surgeon designation, and a centralized civil surgeon processing center.
- Require civil surgeons to be board certified in their medical specialty.
- Authorize blanket designations for health departments and Armed Forces physicians in certain circumstances.
- Grant the USCIS Director authority to designate civil surgeons in emergent or unforeseen circumstances.

The new process would enhance the caliber of civil surgeons, improve the quality of immigrant medical examinations, and strengthen DHS' commitment to safeguarding public health.

Implementation Method: Rulemaking
Date: June 2011
Resources/Considerations: Coordinate with DHS and Health and Human Services.
Target

6. Internal Policy Review & Enhancement

U.S. Citizenship and Immigration Services (USCIS) currently provides policy guidance as memoranda, standard operating procedures (SOP), manuals, and training materials. Inconsistent interpretation and application of guidance and the lack of a central reference point for internal and external stakeholders often results in disconnected information and lack of transparency. Local and national policy guidance within USCIS is distributed across multiple sources; such as the USCIS intranet, an internal version of the Adjudicator's Field Manual, training materials, and the i-link reference disk. This creates a tremendous burden for USCIS employees and the public in trying to access relevant information.

To address these issues, USCIS has prioritized a comprehensive review of all policy documents to ensure that guidance is consistent throughout the Agency. The review will examine all existing policy within the Agency and provide access to the most up-to-date guidance to both internal and external stakeholders. Once the policy guidance is reviewed and revised, it will be posted on a central and searchable web-based repository.

Implementation Method: Rulemaking
Resources/Considerations: USCIS Working Groups, USCIS Senior Policy Council
Target Date: Incremental Implementation; All USCIS policies reviewed and enhanced by June 2012.

D. To Protect Certain Individuals or Groups from the Threat of Removal

1. Increase the Use of Deferred Action

For individuals already admitted to the U.S. (and therefore ineligible for PIP), USCIS can increase the use of deferred action. Deferred action is an exercise of prosecutorial discretion not to pursue removal from the U.S. of a particular individual for a specific period of time.[2] A grant of deferred action does not confer any immigration status, nor does it convey or imply any waivers of inadmissibility that may exist. Likewise, deferred action cannot be used to establish eligibility for any immigration benefit that requires maintenance of lawful status. Periods of time in deferred action do, however, qualify as periods of stay authorized by the Secretary of DHS for purposes of sections 212(a)(9)(B) and (C) of the Act, and may be extended indefinitely. Individuals who have been granted deferred action may apply for employment authorization. Within DHS, USCIS, Immigration and Customs Enforcement, and Customs and Border Protection all possess authority to grant deferred action.

USCIS has previously allowed the use of deferred action to provide relief to non-immigrants whose periods of admission had expired, or otherwise had failed to maintain lawful immigrant status. In the aftermath of Hurricane Katrina, USCIS instituted a policy of deferred action for non-immigrants impacted by this natural disaster. USCIS has also granted deferred action for particular groups including applicants for interim relief related to the U visa program. Most recently, the SPC approved the use of deferred action for certain military dependents for whom a visa number is not currently available and who are ineligible for PIP.

While it is theoretically possible to grant deferred action to an unrestricted number of unlawfully present individuals, doing so would likely be controversial, not to mention expensive. Presently no specific application form or fee is required to request or receive deferred action. Were USCIS to increase significantly the use of deferred action, the agency would either require a separate

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[2] *See*, US Citizenship and Immigration Services, *Adjudicator's Field Manual*, at section 40.9.2(b)(3)(J), added May 6, 2009. Factors to be considered in evaluating a request for deferred action are also discussed in the November 17, 2000 memorandum entitled "Exercising Prosecutorial Discretion" by former Immigration and Naturalization Services Commissioner, Doris Meissner at footnote 1.

appropriation or independent funding stream.[3] Alternatively, USCIS could design and seek expedited approval of a dedicated deferred action form and require a filing fee.

Rather than making deferred action widely available to hundreds of thousands and as a non-legislative version of "amnesty", USCIS could tailor the use of this discretionary option for particular groups such as individuals who would be eligible for relief under the DREAM Act (an estimated 50,000), or under section 249 of the Act (Registry), who have resided in the U.S. since 1996 (or as of a different date designed to move forward the Registry provision now limited to entries before January 1, 1972).

2. Issue NTAs Strategically to Promote DHS Priorities

Under Policy Memorandum 110 (attached) USCIS issues NTAs for denied cases where such issuance is prescribed by regulation. This includes, but is not limited to, denials of the Form I-751 Petition to Remove Conditions on Residence; Form I-829, Petition by Entrepreneur to Removal Conditions; and Form I-817, Application for Family Unity Benefits and Form I-821 Application for Temporary Protected Status. See 8 CFR 216.3(a), 8 CFR 236.14(c) and 8 CFR 244.5(a). USCIS also issues an NTA after termination of an alien's refugee status by the District Director. See 8 CFR 207.9.

Aside from these situations, USCIS has discretion regarding whether or not to issue NTAs. In practice, and in accordance with the spirit of Policy Memorandum 110, the agency typically issues NTAs for any/all denial decisions without weighing the likely impact on the applicant or the Executive Office for Immigration Review.

To promote the expressed priorities of ICE's Secure Communities Initiative (attached) regarding increased docket efficiency and a focus on individuals who pose a danger to the community, USCIS should issue NTAs strategically, rather than across the board. If relief is potentially available in removal, USCIS should consider issuing an NTA. On the other hand, where no relief exists in removal for an applicant without any significant negative immigration or criminal history, USCIS should avoid using its limited resources to issue an NTA. Denied cases should, however, be referred to ICE given that agency's enforcement responsibilities.

[3] Under Sections 262, 263, and 264 of the Act, USCIS may develop and implement a registration program for individuals who are unlawfully present in the U.S. The goal of such a program could be to offer potential discretionary relief options including deferred action while simultaneously gathering basic biometric data and conducting comprehensive security checks.

LEXSEE 525 U.S. 471

JANET RENO, ATTORNEY GENERAL, ET AL., PETITIONERS v. AMERICAN-ARAB ANTI-DISCRIMINATION COMMITTEE, ET AL.

No. 97-1252

SUPREME COURT OF THE UNITED STATES

525 U.S. 471*; *119 S. Ct. 936*; *142 L. Ed. 2d 940*; *1999 U.S. LEXIS 1514*; *67 U.S.L.W. 4133*; *99 Cal. Daily Op. Service 1388*; *99 Daily Journal DAR 1749*; *1999 Colo. J. C.A.R. 886*; *12 Fla. L. Weekly Fed. S 101

November 4, 1998, Argued
February 24, 1999, Decided

SUBSEQUENT HISTORY: As Amended November 9, 1999.

PRIOR HISTORY: ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

DISPOSITION: *119 F.3d 1367*, vacated and remanded.

SYLLABUS

Respondent resident aliens filed this suit, claiming that petitioners, the Attorney General and other federal parties, targeted them for deportation because of their affiliation with a politically unpopular group, in violation of their *First* and *Fifth Amendment* rights. After the District Court preliminarily enjoined the proceedings against respondents, but while an appeal by the Attorney General was pending, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which, *inter alia,* repealed the old judicial-review scheme in the Immigration and Nationality Act, *8 U.S.C. ß 1105a*, and instituted a new provision, *8 U.S.C. ß 1252(g)*, which restricts judicial review of the Attorney General's "decision or action" to "commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act" "except as provided in this section." The Attorney General filed motions in both the District Court and the Ninth Circuit, arguing that *ß 1252(g)* deprived them of jurisdiction over respondents' selective-enforcement claim. The District Court denied the motion. The Ninth Circuit, consolidating an appeal from that denial with the pending appeal, upheld jurisdiction and affirmed the District Court's decision on the merits.

Held: Section 1252(g) deprives the federal courts of jurisdiction over respondents' suit. Pp. 5-21.

(a) Although IIRIRA ß 309(c)(1)'s general rule is that the revised procedures for removing aliens, including *ß 1252*'s judicial-review procedures, do not apply in exclusion or deportation proceedings pending on IIRIRA's effective date, IIRIRA ß 306(c)(1) directs that a single provision, *ß 1252(g)*, shall apply "without limitation to claims arising from all past, pending, or future exclusion, deportation, or removal proceedings." *Section 1252(g)* applies to three discrete actions that the Attorney General may take: her "decision or action" to "*commence* proceedings, *adjudicate* cases, or *execute* removal orders." (Emphasis added.) The provision seems designed to give some measure of protection to such discretionary determinations, providing that if they are reviewable at all, they at least will not be made the bases for separate rounds of judicial intervention outside the streamlined process designed by Congress. Respondents' challenge to the Attorney General's decision to "commence proceedings" against them falls squarely within *ß 1252(g)*, and *ß 1252* does not otherwise provide jurisdiction. Pp. 5-17.

(b) The doctrine of constitutional doubt does not require that *ß 1252(g)* be interpreted in such fashion as to permit immediate review of respondents' selective-enforcement claims. An alien unlawfully in this country has no constitutional right to assert such a claim as a defense against his deportation. Pp. 17-21.

119 F.3d 1367, vacated and remanded.

COUNSEL: Malcolm L. Stewart argued the cause for petitioners.

David Cole argued the cause for respondents.

JUDGES: SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, and THOMAS, JJ., joined, as to Parts I and II which GINSBURG and BREYER, JJ., joined. GINSBURG, J., filed an opinion concurring in part and concurring in the judgment, in which BREYER, J., joined as to Part I, post,. STEVENS, J., filed an opinion concurring in the judgment, post,. SOUTER, J., filed a dissenting opinion, post,.

OPINION BY: SCALIA

OPINION

[*472] [***947] [**938] JUSTICE SCALIA delivered the opinion of the Court. *

* JUSTICE BREYER joins Parts I and II of this opinion.

[***LEdHR1A] [1A]Respondents sued petitioners for allegedly targeting them for deportation because of their affiliation with a politically unpopular group. While their suit was pending, Congress [*473] passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 110 Stat. 3009-546 (IIRIRA), which contains a provision restricting judicial review of the Attorney General's "decision or action" to "commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act." *8 U.S.C. ß 1252(g) (1994 ed., Supp. III)*. The issue before us is whether, as petitioners contend, this provision deprives the federal courts of jurisdiction over respondents' suit.

I

The Immigration and Naturalization Service (INS), a division of the Department of Justice, instituted deportation proceedings in 1987 against Bashar Amer, Aiad Barakat, Julie Mungai, Amjad Obeid, Ayman Obeid, Naim Sharif, Khader Hamide, and Michel Shehadeh, all of whom belong to the Popular Front for the Liberation of Palestine (PFLP), a group that the Government characterizes as an international terrorist and communist organization. The INS charged all eight under the McCarran-Walter Act, which, though now repealed, provided at the time for the deportation of aliens who "advocate . . . world communism." See *8 U.S.C. ßß 1251(a)(6)(D), (G)(v)*, and *(H) (1982 ed.)*. [**939] In addition, the INS charged the first six, who were only temporary residents, with routine status violations such as overstaying a visa and failure to maintain student status. Respondents Barakat and Sharif were subsequently granted legalization and are no longer deportable based on the original status violations. Brief for Petitioners 11, n. 5. [1]

1 See *8 U.S.C. ßß 1251(a)(2)* and *(a)(9) (1988 ed.)*.

Almost immediately, the aliens filed suit in District Court, challenging the constitutionality of the anticommunism provisions of the McCarran-Walter Act and seeking declaratory and injunctive relief against the Attorney General, the INS, and various immigration officials in their personal and official capacities. The INS responded by dropping the advocacy-of-communism [*474] charges, but it retained the technical violation charges against the six temporary residents and charged Hamide and Shehadeh, who were permanent residents, under a different section of the McCarran-Walter Act, which authorized the deportation of aliens who were members of an organization advocating "the duty, necessity, or propriety of the unlawful assaulting or killing of any [government] officer or officers" and "the unlawful damage, injury, or destruction of property." See *8 U.S.C. ßß 1251(a)(6)(F)(ii)-(iii) (1982 ed.)*. [2] INS regional counsel William Odencrantz said at a press conference that the charges had been changed for tactical reasons but the INS was still [***948] seeking respondents' deportation because of their affiliation with the PFLP. See *American-Arab Anti-Discrimination Committee v. Reno, 70 F.3d 1045, 1053 (CA9 1995)* (AADC I). Respondents amended their complaint to include an allegation that the INS was selectively enforcing immigration laws against them in violation of their *First* and *Fifth Amendment* rights. [3]

2 When the McCarran-Walter Act was repealed, a new "terrorist activity" provision was added by the Immigration Act of 1990. See *8 U.S.C. ß 1227(a)(4)(B) (1994 ed., Supp. III)*. The INS charged Hamide and Shehadeh under this, but it is unclear whether that was in addition to, or in substitution for, the old McCarran-Walter charges.

3 The amended complaint was styled as an action for "damages and for declaratory and injunctive relief," but the only monetary relief specifically requested was "costs of suit and attorneys fees." App. 20, 51.

Since this suit seeking to prevent the initiation of deportation proceedings was filed -- in 1987, during the administration of Attorney General Edwin Meese -- it has made four trips through the District Court for the Central District of California and the United States Court of Appeals for the Ninth Circuit. The first two concerned

jurisdictional issues not now before us. See *Hamide* v. *United States District Court*, No. 87-7249 (CA9, Feb. 24, 1988); *American-Arab Anti-Discrimination Committee v. Thornburgh, 970 F.2d 501* [*475] *(CA9 1991)*. Then, in 1994, the District Court preliminarily enjoined deportation proceedings against the six temporary residents, holding that they were likely to prove that the INS did not enforce routine status requirements against immigrants who were not members of disfavored terrorist groups and that the possibility of deportation, combined with the chill to their *First Amendment* rights while the proceedings were pending, constituted irreparable injury. With regard to Hamide and Shehadeh's claims, however, the District Court granted summary judgment to the federal parties for reasons not pertinent here.

AADC I, supra, was the Ninth Circuit's first merits determination in this case, upholding the injunction as to the six and reversing the District Court with regard to Hamide and Shehadeh. The opinion rejected the Attorney General's argument that selective-enforcement claims are inappropriate in the immigration context, and her alternative argument that the special statutory-review provision of the Immigration and Nationality Act (INA), *8 U.S.C. ß 1105a*, precluded review of such a claim until a deportation order issued. See *70 F.3d at 1056-1057*. The Ninth Circuit remanded the case to the District Court, which entered an injunction in favor of Hamide and Shehadeh and denied the Attorney General's request that the existing injunction be dissolved in light of new [**940] evidence that all respondents participated in fundraising activities of the PFLP.

While the Attorney General's appeal of this last decision was pending, Congress passed IIRIRA which, *inter alia*, repealed the old judicial-review scheme set forth in *ß 1105a* and instituted a new (and significantly more restrictive) one in *8 U.S.C. ß 1252*. The Attorney General filed motions in both the District Court and Court of Appeals, arguing that *ß 1252(g)* deprived them of jurisdiction over respondents' selective-enforcement claim. The District Court denied the motion, and the Attorney General's appeal from that denial [*476] was consolidated [***949] with the appeal already pending in the Ninth Circuit.

It is the judgment and opinion in that appeal which is before us here: *American-Arab Anti-Discrimination Committee v. Reno, 119 F.3d 1367 (CA9 1997)*. It affirmed the existence of jurisdiction under *ß 1252*, see *119 F.3d at 1374*, and reaching the merits of the injunctions, again affirmed the District Court, *119 F.3d at 1374-1376*. The Attorney General's petition for rehearing en banc was denied over the dissent of three judges, *132 F.3d 531 (CA9 1997)*. The Attorney General sought our review, and we granted certiorari, *524 U.S. 903 (1998)*.

II

Before enactment of IIRIRA, judicial review of most administrative action under the INA was governed by *8 U.S.C. ß 1105a*, a special statutory-review provision directing that "the sole and exclusive procedure for . . . the judicial review of all final orders of deportation" shall be that set forth in the Hobbs Act, *28 U.S.C. ß 2341 et seq.*, which gives exclusive jurisdiction to the courts of appeals, see ß 2342. Much of the Court of Appeals' analysis in *AADC I* was devoted to the question whether this pre-IIRIRA provision applied to selective-enforcement claims. Since neither the Immigration Judge nor the Board of Immigration Appeals has authority to hear such claims (a point conceded by the Attorney General in *AADC I*, see *70 F.3d at 1055*), a challenge to a final order of deportation based upon such a claim would arrive in the court of appeals without the factual development necessary for decision. The Attorney General argued unsuccessfully below that the Hobbs Act permits a court of appeals to remand the case to the agency, see *28 U.S.C. ß 2347(c)*, or transfer it to a district court, see *ß 2347(b)(3)*, for further factfinding. The Ninth Circuit, believing these options unavailable, concluded that an original district-court action was respondents' only means of obtaining factual development and thus judicial review of their selective-enforcement [*477] claims. Relying on our decision in *Cheng Fan Kwok v. INS, 392 U.S. 206, 20 L. Ed. 2d 1037, 88 S. Ct. 1970 (1968)*, it held that the District Court could entertain the suit under either its general federal-question jurisdiction, see *28 U.S.C. ß 1331*, or the general jurisdictional provision of the INA, see *8 U.S.C. ß 1329*. [4]

4 This latter provision was subsequently amended by IIRIRA to make clear that it applies only to actions brought by the United States. See *8 U.S.C. ß 1329 (1994 ed., Supp. III)*.

Whether we must delve further into the details of this issue depends upon whether, after the enactment of IIRIRA, *ß 1105a* continues to apply to this case. On the surface of things, at least, it does not. Although the general rule set forth in ß 309(c)(1) of IIRIRA is that the revised procedures for removing aliens, including the judicial-review procedures of *ß 1252*, do not apply to aliens who were already in either exclusion or deportation proceedings on IIRIRA's effective date, see note following *8 U.S.C. ß 1101 (1994 ed., Supp. III)*, [5] ß 306(c)(1) of IIRIRA directs that a single provision, *ß 1252(g)*, [**941] [***950] shall apply "without limitation to claims arising from all past, pending, or future exclusion, deportation, or removal proceedings." See note following *8 U.S.C. ß 1252 (1994 ed., Supp. III)*. *Section 1252(g)* reads as follows:

"(g) EXCLUSIVE JURISDICTION

"Except as provided in this section and notwithstanding any other provision of law, no court shall have jurisdiction [*478] to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act."

5 Section 309(c)(1) provides:

"(c) TRANSITION for ALIENS in PROCEEDINGS.--

"(1) GENERAL RULE THAT NEW RULES DO NOT APPLY. -- Subject to the succeeding provisions of this subsection [ß 309(a) carves out ß 306(c) as an exception], in the case of an alien who is in exclusion or deportation proceedings as of the title III-A effective date --

"(A) the amendments made by this subtitle shall not apply, and

"(B) the proceedings (including judicial review thereof) shall continue to be conducted without regard to such amendments." 110 Stat. 3009-625.

This provision seemingly governs here, depriving the federal courts of jurisdiction "[e]xcept as provided in this section." But whether it is as straightforward as that depends upon the scope of the quoted text. Here, and in the courts below, both petitioners and respondents have treated *ß 1252(g)* as covering all or nearly all deportation claims. The Attorney General has characterized it as "a channeling provision, requiring aliens to bring all deportation-related claims in the context of a petition for review of a final order of deportation filed in the court of appeals." Supplemental Brief for Appellants in No. 96-55929 (CA9), p. 2. Respondents have described it as applying to "most of what INS does." Corrected Supplemental Brief for Appellees in No. 96-55929 (CA9), p. 7. This broad understanding of *ß 1252(g)*, combined with IIRIRA's effective-date provisions, creates an interpretive anomaly. If the jurisdiction-excluding provision of *ß 1252(g)* eliminates other sources of jurisdiction in *all* deportation-related cases, and if the phrase in *ß 1252(g)* "except as provided in this section" incorporates (as one would suppose) all the other jurisdiction-related provisions of *ß 1252*, then ß 309(c)(1) would be rendered a virtual nullity. To say that there is no jurisdiction in pending INS cases "except as" *ß 1252* provides jurisdiction is simply to say that *ß 1252*'s jurisdictional limitations apply to pending cases as well as future cases -- which seems hardly what ß 309(c)(1) is about. If, on the other hand, the phrase "except as provided in this section" were (somehow) interpreted *not* to incorporate the other jurisdictional provisions of *ß 1252* -- if *ß 1252(g)* stood alone, so to speak -- judicial review would be foreclosed for all deportation claims in all pending deportation cases, even after entry of a final order.

[*479] [***LEdHR2] [2]The Attorney General would have us avoid the horns of this dilemma by interpreting *ß 1252(g)*'s phrase "except as provided in this section" to mean "except as provided in *ß 1105a*." Because *ß 1105a* authorizes review of only final orders, respondents must, she says, wait until their administrative proceedings come to a close and then seek review in a court of appeals. (For reasons mentioned above, the Attorney General of course rejects the Ninth Circuit's position in *AADC I* that application of *ß 1105a* would leave respondents without a judicial [***951] forum because evidence of selective prosecution cannot be introduced into the administrative record.) The obvious difficulty with the Attorney General's interpretation is that it is impossible to understand how the qualifier in *ß 1252(g)*, "except as provided in *this* section" (emphasis added), can possibly mean "except as provided in *ß 1105a*." And indeed the Attorney General makes no attempt to explain how this can be, except to observe that what she calls a "literal application" of the statute "would create an anomalous result." Brief for Petitioners 30, n. 15.

[***LEdHR3] [3]Respondents note this deficiency, but offer an equally implausible means of avoiding the dilemma. Section 309(c)(3) allows the Attorney General to terminate pending deportation proceedings and reinitiate them under *ß 1252*. [6] They argue that *ß 1252(g)* applies only to those pending cases in which the Attorney General has made that election. That way, they claim, the phrase "except as provided in this section" can, without producing an anomalous result, be allowed to refer (as it says) to all the rest of *ß 1252*. But this approach collides head-on with ß 306(c)'s prescription that *ß 1252(g)* shall apply "*without limitation* to claims arising from *all* past, [**942] pending, or future exclusion, deportation, or removal proceedings." See note following *8 U.S.C. ß 1252 (1994 ed., Supp. III)* (emphasis added). (Respondents argue [*480] in the alternative, of course, that if the Attorney General is right and *ß 1105a* does apply, *AADC I* is correct that their claims will be effectively unreviewable upon entry of a final order. For this reason, and because they say that habeas review, if still available after IIRIRA, [7] will come too late to remedy this *First Amendment* injury, respondents contend that we must construe *ß 1252(g)* not to bar *constitutional* claims.)

6 It is unclear why the Attorney General has not exercised this option in this case. Respondents have taken the position that the District Court's injunction prevents her from doing so. Brief for Respondents 41, n. 38.

7 There is disagreement on this point in the Courts of Appeals. Compare *Hose v. INS, 141 F.3d 932, 935* (CA9) (habeas not available), withdrawn and reh'g en banc granted, *161 F.3d 1225 (1998)*, *Richardson v. Reno, 162 F.3d 1338 (CA11 1998)* (same), and *Yang v. INS, 109 F.3d 1185, 1195 (CA7 1997)* (same), with *Goncalves v. Reno, 144 F.3d 110, 122 (CA1 1998)* (habeas available), and *Henderson v. INS, 157 F.3d 106, 117-122 (CA2 1998)* (same). See also *Magana-Pizano v. INS, 152 F.3d 1213, 1220 (CA9 1998)* (elimination of habeas unconstitutional); *Ramallo v. Reno, 325 U.S. App. D.C. 2, 114 F.3d 1210, 1214 (CADC 1997)* (*ß 1252(g)* removes statutory habeas but leaves "constitutional" habeas intact).

[***LEdHR4A] [4A]The Ninth Circuit, for its part, accepted the parties' broad reading of *ß 1252(g)* and concluded, reasonably enough, that on that reading Congress could not have meant *ß 1252(g)* to stand alone:

"Divorced from all other jurisdictional provisions of IIRIRA, subsection (g) would have a more sweeping impact on cases filed before the statute's enactment than after that date. Without incorporating any exceptions, the provision appears to cut off federal jurisdiction over all deportation decisions. We do not think that Congress intended such an absurd result." *119 F.3d at 1372*.

It recognized, however, the existence of the other horn of the dilemma ("that retroactive application of the entire amended version of *8 U.S.C. ß 1252* would threaten to render meaningless section 306(c) of IIRIRA," *ibid.*), and [***952] resolved the difficulty to its satisfaction by concluding that "at least *some* of the other provisions of *section 1252*" must be included in [*481] subsection (g) "when it applies to pending cases." *Ibid.* (emphasis added). One of those provisions, it thought, must be subsection (f), entitled "Limit on Injunctive Relief," which reads as follows:

"Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of chapter 4 of title II, as amended by [IIRIRA], other than with respect to the application of such provisions to an individual alien against whom proceedings under such chapter have been initiated."

The Ninth Circuit found in this an affirmative grant of jurisdiction that covered the present case. The Attorney General argued that any such grant of jurisdiction would be limited (and rendered inapplicable to this case) by *ß 1252(b)(9)*, which provides:

"Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this chapter shall be available only in judicial review of a final order under this section."

The Ninth Circuit replied that, even if *ß 1252(b)(9)* were one of those provisions incorporated into the transitional application of *ß 1252(g)*, it could not preclude this suit for the same reason *AADC I* had held that *ß 1105a* could not do so -- namely, the Court of Appeals' lack of access to factual findings regarding selective enforcement.

Even respondents scarcely try to defend the Ninth Circuit's reading of *ß 1252(f)* as a jurisdictional grant. By its plain terms, and even by its title, that provision is nothing more or less than a limit on injunctive relief. It prohibits federal courts from granting classwide injunctive relief against the operation of ßß 1221-1231, but specifies that this ban [*482] does not extend to individual cases. To find in this an affirmative grant of jurisdiction is to go beyond what the language will bear.

[**943] [***LEdHR5A] [5A]We think the seeming anomaly that prompted the parties' strained readings of *ß 1252(g)* -- and that at least accompanied the Court of Appeals' strained reading -- is a mirage. The parties' interpretive acrobatics flow from the belief that ß 306(c)(1) cannot be read to envision a straightforward application of the "except as provided in this section" portion of *ß 1252(g)*, since that would produce in *all* pending INS cases jurisdictional restrictions identical to those that were contained in IIRIRA anyway. That belief, however, rests on the unexamined assumption that *ß 1252(g)* covers the universe of deportation claims -- that it is a sort of "zipper" clause that says "no judicial review in deportation cases unless this section provides judicial review." In fact, what *ß 1252(g)* says is much narrower. The provision applies only to three discrete actions that the Attorney General may take: her "decision or action" to "*commence* proceedings, *adjudicate* cases, or *execute* removal orders." (Emphasis added.) There are of course many other decisions or actions that may be part of the deportation process -- such as the [***953] decisions to open an investigation, to surveil the suspected violator, to reschedule the deportation hearing, to include various provisions in the final order that is the product of the adjudication, and to refuse reconsideration of that order.

It is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings. Not because Congress is too unpoetic to use synecdoche, but because that literary device is incompatible with the need for precision in legislative drafting. We are aware of no other instance in the United States Code in which language such as this has been used to

impose a general jurisdictional limitation; and that those who enacted IIRIRA were familiar with the normal manner of imposing such a limitation is demonstrated [*483] by the text of *ß 1252(b)(9)*, which stands in stark contrast to *ß 1252(g)*.

It could be argued, perhaps, that *ß 1252(g)* is redundant if it channels judicial review of only *some* decisions and actions, since *ß 1252(b)(9)* channels judicial review of *all* of them anyway. But that is not so, since only *ß 1252(g)*, and *not ß 1252(b)(9)* (except to the extent it is incorporated within *ß 1252(g)*), applies to what ß 309(c)(1) calls "transitional cases," that is, cases pending on the effective date of IIRIRA. That alone justifies its existence. It performs the function of categorically excluding from non-final-order judicial review -- even as to transitional cases otherwise governed by *ß 1105a* rather than the unmistakable "zipper" clause of *ß 1252(b)(9)* -- certain specified decisions and actions of the INS. In addition, even after all the transitional cases have passed through the system, *ß 1252(g)* as we interpret it serves the continuing function of making it clear that those specified decisions and actions, which (as we shall discuss in detail below) some courts had held *not* to be included within the non-final-order review prohibition of *ß 1105a*, *are* covered by the "zipper" clause of *ß 1252(b)(9)*. It is rather the Court of Appeals' and the parties' interpretation which renders *ß 1252(g)* entirely redundant, adding to one "zipper" clause that does not apply to transitional cases, another one of equal scope that *does* apply to transitional cases. That makes it entirely inexplicable why the transitional provisions of ß 306(c) refer to *ß 1252(g)* instead of *ß 1252(b)(9)* -- and why *ß 1252(g)* exists at all.

There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of "commenc[ing] proceedings, adjudicating cases, [and] execut[ing] removal orders" -- which represent the initiation or prosecution of various stages in the deportation process. At each stage the Executive has discretion to abandon the endeavor, and at the time IIRIRA was enacted the INS had been engaging in a [*484] regular practice (which had come to be known as "deferred action") of exercising that discretion for humanitarian reasons or simply for its own convenience. [8] As one treatise describes it:

[**944] "To ameliorate a harsh and unjust outcome, the INS may decline [***954] to institute proceedings, terminate proceedings, or decline to execute a final order of deportation. This commendable exercise in administrative discretion, developed without express statutory authorization, originally was known as nonpriority and is now designated as deferred action. A case may be selected for deferred action treatment at any stage of the administrative process. Approval of deferred action status means that, for the humanitarian reasons described below, no action will thereafter be taken to proceed against an apparently deportable alien, even on grounds normally regarded as aggravated." 6 C. Gordon, S. Mailman, & S. Yale-Loehr, *Immigration Law and Procedure ß 72.03[2][h]* (1998).

See also *Johns v. Department of Justice, 653 F.2d 884, 890-892 (CA5 1981)*. Since no generous act goes unpunished, however, the INS's exercise of this discretion opened the door to litigation in instances where the INS chose *not* to exercise it.

> 8 Prior to 1997, deferred-action decisions were governed by internal INS guidelines which considered, *inter alia*, such factors as the likelihood of ultimately removing the alien, the presence of sympathetic factors that could adversely affect future cases or generate bad publicity for the INS, and whether the alien had violated a provision that had been given high enforcement priority. See 16 C. Gordon, S. Mailman, & S. Yale-Loehr, Immigration Law and Procedure ß 242.1 (1998). These were apparently rescinded on June 27, 1997, but there is no indication that the INS has ceased making this sort of determination on a case-by-case basis. See *ibid.*

"In each such instance, the determination to withhold or terminate deportation is confined to administrative [*485] discretion. . . . Efforts to challenge the refusal to exercise such discretion on behalf of specific aliens sometimes have been favorably considered by the courts, upon contentions that there was selective prosecution in violation of equal protection or due process, such as improper reliance on political considerations, on racial, religious, or nationality discriminations, on arbitrary or unconstitutional criteria, or on other grounds constituting abuse of discretion." Gordon, Mailman, & Yale-Loehr, *supra*, ß 72.03[2][a] (footnotes omitted).

Such litigation was possible because courts read *ß 1105a*'s prescription that the Hobbs Act shall be "the sole and exclusive procedure for the judicial review of all final orders of deportation" to be inapplicable to various decisions and actions leading up to or consequent upon final orders of deportation, and relied on other jurisdictional statutes to permit review. See, *e.g., Cheng Fan Kwok v. INS, 392 U.S. 206, 20 L. Ed. 2d 1037, 88 S. Ct. 1970 (1968)* (review of refusal to stay deportation); *Ramallo* v. *Reno*, Civ. No. 95-01851 (D.D.C., July 23, 1996) (review of execution of removal order), described in and rev'd on other grounds, *114 F.3d 1210 (CADC 1997)*; *AADC I, 70 F.3d 1045 (CA9 1995)* (review of commencement of deportation proceedings); *Lennon v. INS, 527 F.2d 187, 195 (CA2 1975)* (same, dicta). *Section 1252(g)* seems clearly designed to give some meas-

ure of protection to "no deferred action" decisions and similar discretionary determinations, providing that if they are reviewable at all, they at least will not be made the bases for separate rounds of judicial intervention outside the streamlined process that Congress has designed. [9]

9 This history explains why JUSTICE SOUTER ought not find it "hard to imagine that Congress meant to bar aliens already in proceedings . . . from challenging the commencement of proceedings against them, but to permit the same aliens to challenge, say, the decision of the Attorney General to open an investigation of them or to issue a show-cause order." *Post*, at (dissenting opinion). It was the acts covered by *ß 1252(g)* that had prompted challenges to the Attorney General's exercise of prosecutorial discretion. We know of no case involving a challenge to "the decision . . . to open an investigation" -- perhaps because such decisions are rarely made public. And we know of no case challenging "the decision . . . to issue a show cause order" (though that might well be considered a mere specification of the decision to "commence proceedings" which some cases do challenge and which *ß 1252(g)* covers). *Section 1252(g)* was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion. It does not tax the imagination to understand why it focuses upon the stages of administration where those attempts have occurred.

But in any event, any challenge to imagination posed by reading *ß 1252(g)* as written would be small price to pay for escaping the overwhelming difficulties of JUSTICE SOUTER's theory. He makes no effort to explain why his broad, catchall reading of *ß 1252(g)* does not render it redundant of *ß 1252(b)(9)*. And his throw-in-the-towel approach to ß 306(c)(1), which reads it out of the statute because he finds it difficult to explain, see *post*, at 9, not only strains the imagination but ruptures the faculty of reason. We do not think our interpretation "parses *[ß 1252(g)]* too finely," *post,* at 5; but if it did, we would think that modest fault preferable to the exercise of such a novel power of nullification.

JUSTICE STEVENS, like JUSTICE SOUTER, rejects *ß 1252(g)*'s explicit limitation to specific steps in the deportation process. He then invokes the conflict with ß 306(c)(1) that this expansive interpretation creates as justification for concluding that, when *ß 1252(g)* uses the word "section," it "can't mean what it says," *Green v. Bock Laundry Machine Co., 490 U.S. 504, 511, 104 L. Ed. 2d 557, 109 S. Ct. 1981 (1989)* (internal quotation marks omitted) -- empowering him to declare a "scrivener's error," post, at 1 (opinion concurring in judgment), and to change the word "section" to "Act." JUSTICE STEVENS' approach, like JUSTICE SOUTER's, renders *ß 1252(g)* redundant of *ß 1252(b)(9)*. That problem *is* solved by our more conventional solution: reading *both* "commence proceedings, adjudicate cases, or execute removal orders" *and* "section" to mean precisely what they say.

[*486] [**945] Of course *many* provisions of [***955] IIRIRA are aimed at protecting the Executive's discretion from the courts -- indeed, that can fairly be said to be the theme of the legislation. See, *e.g., 8 U.S.C. ß 1252(a)(2)(A)* (limiting review of any claim arising from the inspection of aliens arriving in the United States); *ß 1252(a)(2)(B)* (barring review of denials of discretionary relief authorized by various statutory provisions); *ß 1252(a)(2)(C)* (barring review of final removal orders [*487] against criminal aliens); *ß 1252(b)(4)(D)* (limiting review of asylum determinations for resident aliens). It is entirely understandable, however, why Congress would want only the discretion-protecting provision of *ß 1252(g)* applied even to pending cases: because that provision is specifically directed at the deconstruction, fragmentation, and hence prolongation of removal proceedings.

[***LEdHR5B] [5B] [***LEdHR6] [6]Our narrow reading of *ß 1252(g)* makes sense of the statutory scheme as a whole, for it resolves the supposed tension between ß 306(c)(1) and ß 309(c)(1). In cases to which *ß 1252(g)* applies, the rest of *ß 1252* is incorporated through the "except as provided in this section" clause. This incorporation does not swallow ß 309(c)(1)'s general rule that *ßß 1252(a)*-(f) do not apply to pending cases, for *ß 1252(g)* applies to only a limited subset of deportation claims. Yet it is also faithful to ß 306(c)(1)'s command that *ß 1252(g)* be applied "without limitation" (*i.e.*, including the "except as provided" clause) to "claims arising from all past, pending, or future exclusion, deportation, or removal proceedings."

[***LEdHR1B] [1B] [***LEdHR4B] [4B]Respondents' challenge to the Attorney General's decision to "commence proceedings" against them falls squarely within *ß 1252(g)* -- indeed, as we have discussed, the language seems to have been crafted with such a challenge precisely in mind -- and nothing elsewhere in *ß 1252* provides for jurisdiction. Cf. *ß 1252(a)(1)* (review of final orders); *ß 1252(e)(2)* (limited habeas review for excluded aliens); [***956] *ß 1252 (e)(3)(A)* (limited review of statutes and regulations pertaining to the exclusion of aliens). As we concluded ear-

lier, *ß 1252(f)* plainly serves as a limit on injunctive relief rather than a jurisdictional grant.

III

[***LEdHR7] [7] [***LEdHR8A] [8A] [***LEdHR9A] [9A] [***LEdHR10A] [10A]Finally, we must address respondents' contention that, since the lack of prior factual development for their claim will render the *ß 1252(a)(1)* exception to *ß 1252(g)* unavailing; since habeas relief will also be unavailable; and since even if [*488] one or both were available they would come too late to prevent the "chilling effect" upon their *First Amendment* rights; the doctrine of constitutional doubt requires us to interpret *ß 1252(g)* in such fashion as to permit immediate review of their selective-enforcement claims. We do not believe that the doctrine of constitutional doubt has any application here. As a general matter -- and assuredly in the context of claims such as those put forward in the present case -- an alien unlawfully in this country has no constitutional right to assert selective enforcement as a defense against his deportation. [10]

10 [***LEdHR9B] [9B]

Instead of resolving this constitutional question, JUSTICE GINSBURG chooses to resolve the constitutional question whether Congress can exclude the courts from remedying an alleged *First Amendment* violation with immediate effects, pending the completion of administrative proceedings. It is not clear to us that this is easier to answer than the question we address -- as is evident from the fact that in resolving it JUSTICE GINSBURG relies almost exclusively on cases dealing with the quite different question of federal-court intervention in state proceedings. (Even in that area, most of the cases she cites where we did not intervene involved no claim of present injury from the state action -- and none involved what we have here: an admission by the Government that the alleged *First Amendment* activity was the basis for selecting the individuals for adverse action. Cf. *Dombrowski v. Pfister, 380 U.S. 479, 487-488, n. 4, 14 L. Ed. 2d 22, 85 S. Ct. 1116 (1965).*) The one case not involving federal-state relations in fact *overrode* a congressional requirement for completion of administrative proceedings -- even though, unlike here, no immediate harm was apparent. See *Oestereich v. Selective Serv. System Local Bd. No. 11, 393 U.S. 233, 21 L. Ed. 2d 402, 89 S. Ct. 414 (1968).* JUSTICE GINSBURG counts the case as one for *her* side on the basis of nothing more substantial than the Court's characterization of the agency action at issue as "blatantly lawless," *id. at 238.* See *post*, at (opinion concurring in part and concurring in judgment).

Nor is it clear that the constitutional question JUSTICE GINSBURG addresses has narrower application and effect than the one we resolve. Our holding generally deprives deportable aliens of the defense of selective prosecution. Hers allows all citizens and resident aliens to be deprived of constitutional rights (at least where the deprivation is not "blatantly lawless") pending the completion of agency proceedings.

[***LEdHR9C] [9C] [***LEdHR10B] [10B]

Finally, JUSTICE GINSBURG acknowledges that her constitutional conclusion might be different if "a court of appeals reviewing final orders of removal against respondents could not consider their selective enforcement claims." *Post*, at 4. But she never establishes that a court of appeals *can* consider their selective enforcement claims, though she expresses "confidence" (despite the Ninth Circuit's holding to the contrary) that that would be the outcome. *Post*, at 5, n. 2. How well-founded that confidence is may be assessed by considering the first and most substantial option upon which it is based, namely, "the Attorney General's position that the reviewing court of appeals may transfer a case to a district court . . . and counsel's assurance at oral argument that petitioners will adhere to that position . . . ." *Post,* at 5. What petitioners primarily rely upon for this concession is the provision of the Hobbs Act that authorizes remand to the agency or transfer to a district court "when the agency has not held a hearing." *28 U.S.C. ß 2347(b)*. It is not at all clear that this should be interpreted to mean "when the agency's hearing has not addressed the particular point at issue" -- especially since that situation is specifically covered by *ß 2347(c)* (providing for remand in such circumstances), which the new amendments explicitly render inapplicable to deportation cases, see *8 U.S.C. ß 1252(a)(1) (1994 ed., Supp. III)*. Petitioners' position is cast further in doubt by the fact that the Hobbs Act remedy for failure to hold a hearing "required by law" is not the transfer which petitioners assert, but *remand*, see *28 U.S.C. ß 2347(b)(1)*. Of course petitioners' promise not to quibble over this transfer point is of no value, since the point goes to jurisdiction and must be raised by the District Court *sua sponte*. It is quite possible, therefore, that what JUSTICE GINSBURG's approach would ultimately accomplish in this litigation is requiring us to address *both* the constitutional issue she

now addresses *and* (upon termination of the administrative proceedings) the constitutional issue we now resolve. We think it preferable to resolve only the one (and we think narrower) issue at once.

[*489] [**946] Even in the criminal-law field, a selective prosecution claim is a *rara avis*. Because such claims invade a special province of the Executive -- its [***957] prosecutorial discretion -- we have emphasized that the standard for proving them is particularly demanding, requiring a criminal defendant to introduce "clear evidence" displacing the presumption that a prosecutor has acted lawfully. *United States v. Armstrong, 517 U.S. 456, 463-465, 134 L. Ed. 2d 687, 116 S. Ct. 1480 (1996)*. We have said:

"This broad discretion [afforded the Executive] rests largely on the recognition that the decision to prosecute [*490] is particularly ill-suited to judicial review. Such factors as the strength of the case, the prosecution's general deterrence value, the Government's enforcement priorities, and the case's relationship to the Government's overall enforcement plan are not readily susceptible to the kind of analysis the courts are competent to undertake. Judicial supervision in this area, moreover, entails systemic costs of particular concern. Examining the basis of a prosecution delays the criminal proceeding, threatens to chill law enforcement by subjecting the prosecutor's motives and decisionmaking to outside inquiry, and may undermine prosecutorial effectiveness by revealing the Government's enforcement policy. All of these are substantial concerns that make the courts properly hesitant to examine the decision whether to prosecute." *Wayte v. United States, 470 U.S. 598, 607-608, 84 L. Ed. 2d 547, 105 S. Ct. 1524 (1985)*.

[***LEdHR8B] [8B] [***LEdHR11] [11]These concerns are greatly magnified in the deportation context. Regarding, for example, the potential for delay: Whereas in criminal proceedings the consequence of delay is merely to postpone the criminal's receipt of his just deserts, in deportation proceedings [**947] the consequence is to permit and prolong a continuing violation of United States law. Postponing justifiable deportation (in the hope that the alien's status will change -- by, for example, marriage to an American citizen -- or simply with the object of extending the alien's unlawful stay) is often the principal object of resistance to a deportation proceeding, and the additional obstacle of selective-enforcement suits could leave the INS hard pressed to enforce routine status requirements. And as for "chilling law enforcement by subjecting the prosecutor's motives and decisionmaking to outside inquiry": What will be involved in deportation cases is not merely the disclosure of normal domestic law-enforcement priorities and techniques, [*491] but often the disclosure of foreign-policy objectives and (as in this case) foreign-intelligence products and techniques. The Executive should not have to disclose its "real" reasons for deeming nationals of a particular country a special threat -- or indeed for simply wishing to antagonize a particular foreign country by focusing on that country's nationals -- and even if it did disclose them a court would be ill equipped to determine their authenticity and utterly [***958] unable to assess their adequacy. Moreover, the consideration on the other side of the ledger in deportation cases -- the interest of the target in avoiding "selective" treatment -- is less compelling than in criminal prosecutions. While the consequences of deportation may assuredly be grave, they are not imposed as a punishment, see *Carlson v. Landon, 342 U.S. 524, 537, 96 L. Ed. 547, 72 S. Ct. 525 (1952)*. In many cases (for six of the eight aliens here) deportation is sought simply because the time of permitted residence in this country has expired, or the activity for which residence was permitted has been completed. Even when deportation is sought because of some act the alien has committed, in principle the alien is not being punished for that act (criminal charges may be available for that separate purpose) but is merely being held to the terms under which he was admitted. And in all cases, deportation is necessary in order to bring to an end *an ongoing violation* of United States law. The contention that a violation must be allowed to continue because it has been improperly selected is not powerfully appealing.

[***LEdHR12] [12] [***LEdHR13] [13]To resolve the present controversy, we need not rule out the possibility of a rare case in which the alleged basis of discrimination is so outrageous that the foregoing considerations can be overcome. Whether or not there be such exceptions, the general rule certainly applies here. When an alien's continuing presence in this country is in violation of the immigration laws, the Government does not offend the [*492] Constitution by deporting him for the additional reason that it believes him to be a member of an organization that supports terrorist activity.

* * *

[***LEdHR1C] [1C] Because *8 U.S.C. ß 1252(g)* deprives the federal courts of jurisdiction over respondents' claims, we vacate the judgment of the Ninth Circuit and remand with instructions for it to vacate the judgment of the District Court.

It is so ordered.

CONCUR BY: GINSBURG; STEVENS

CONCUR

JUSTICE GINSBURG, with whom JUSTICE BREYER joins as to Part I, concurring in part and concurring in the judgment.

I agree with JUSTICE SCALIA that *8 U.S.C. ß 1252(g) (1994 ed., Supp. III)* applies to this case and deprives the federal courts of jurisdiction over respondents' pre-final-order suit. Under *ß 1252*, respondents may obtain circuit court review of final orders of removal pursuant to the Hobbs Act, *28 U.S.C. ß 2341 et seq. (1994 ed. and Supp. II)*. See *8 U.S.C. ß 1252(a)(1) (1994 ed., Supp. III)*. I would not prejudge the question whether respondents may assert a selective enforcement objection when and if they pursue such review. It suffices to inquire whether the *First Amendment* necessitates *immediate* judicial consideration of their selective enforcement plea. I conclude that it does not.

I

Respondents argue that they are suffering irreparable injury to their *First Amendment* rights and therefore require instant review of their selective enforcement claims. We have not previously determined the [***959] circumstances [**948] under which the Constitution requires immediate judicial intervention in federal administrative proceedings of this order. Respondents point to our cases addressing federal injunctions [*493] that stop state proceedings, in order to secure constitutional rights. They feature in this regard *Dombrowski v. Pfister, 380 U.S. 479, 14 L. Ed. 2d 22, 85 S. Ct. 1116 (1965)*, as interpreted in *Younger v. Harris, 401 U.S. 37, 47-53, 27 L. Ed. 2d 669, 91 S. Ct. 746 (1971)*. Respondents also refer to *Oestereich v. Selective Serv. System Local Bd. No. 11, 393 U.S. 233, 21 L. Ed. 2d 402, 89 S. Ct. 414 (1968)*. Those cases provide a helpful framework.

In *Younger*, this Court declared that federal restraint of state prosecutions is permissible only if the state defendant establishes "great and immediate" irreparable injury, beyond "that incidental to every criminal proceeding brought lawfully and in good faith." *401 U.S. at 46, 47* (internal quotation marks omitted). A chilling effect, the Court cautioned, does not "by itself justify federal intervention." *401 U.S. at 50*. *Younger* recognized, however, the prospect of extraordinary circumstances in which immediate federal injunctive relief might be obtained. The Court referred, initially, to bad faith, harassing police and prosecutorial actions pursued without "any expectation of securing valid convictions." *401 U.S. at 48* (internal quotation marks omitted). [1] Further, the Court observed that there may be other "extraordinary circumstances in which the necessary irreparable injury can be shown even in the absence of the usual prerequisites of bad faith and harassment," for example, where a statute is "flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it." *401 U.S. at 53-54* (internal quotation marks omitted).

1 Specifically, the *Younger* Court noted that Dombrowski's complaint made substantial allegations that "'threats to enforce the statutes . . . [were] not made with any expectation of securing valid convictions, but rather [were] part of a plan to employ arrests, seizures, and threats of prosecution under color of the statutes to harass appellants and discourage them and their supporters from asserting and attempting to vindicate the constitutional rights of Negro citizens of Louisiana.'" *401 U.S. at 48* (quoting *Dombrowski v. Pfister, 380 U.S. 479, 482, 14 L. Ed. 2d 22, 85 S. Ct. 1116 (1965))*.

[*494] In *Oestereich*, the Selective Service Board had withdrawn a ministry student's statutory exemption from the draft after he engaged in an act of protest. See *393 U.S. at 234*. The student brought suit to restrain his induction, and this Court allowed the suit to go forward, notwithstanding a statutory bar of preinduction judicial review. Finding the Board's action "blatantly lawless," the Court concluded that to require the student to raise his claim through habeas corpus or as a defense to a criminal prosecution would be "to construe the Act with unnecessary harshness." *393 U.S. at 238*.

The precedent in point suggests that interlocutory intervention in Immigration and Naturalization Service (INS) proceedings would be in order, notwithstanding a statutory bar, if the INS acts in bad faith, lawlessly, or in patent violation of constitutional rights. Resembling, but more stringent than, the evaluation made [***960] when a preliminary injunction is sought, see, *e.g.*, *Doran v. Salem Inn, Inc., 422 U.S. 922, 931, 45 L. Ed. 2d 648, 95 S. Ct. 2561 (1975)* ("The traditional standard for granting a preliminary injunction requires the plaintiff to show that in the absence of its issuance he will suffer irreparable injury and also that he is likely to prevail on the merits."), this test would demand, as an essential element, demonstration of a strong likelihood of success on the merits. The merits of respondents' objection are too uncertain to establish that likelihood. The Attorney General argued in the court below and in the petition for certiorari that the INS may select for deportation aliens who it has reason to believe have carried out fundraising for a foreign terrorist organization. See App. to Pet. for Cert. 20a; Pet. for Cert. 21-25. Whether the INS may do so presents a complex question in an uncharted area of the law, which we should not rush to resolve here.

[**949] Relying on *Middlesex County Ethics Comm. v. Garden State Bar Assn., 457 U.S. 423, 73 L. Ed. 2d 116, 102 S. Ct. 2515 (1982)*, respondents argue

that their inability to raise their selective enforcement claims [*495] during the administrative proceedings, see *ante*, at 5, makes immediate judicial intervention necessary. As we explained in *Middlesex County*, *Younger* abstention is appropriate only when there is "an adequate opportunity in the state proceedings to raise constitutional challenges." *457 U.S. at 432*; see *Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc., 477 U.S. 619, 629, 91 L. Ed. 2d 512, 106 S. Ct. 2718 (1986)* (even if complainants could not raise their *First Amendment* objections in the administrative hearing, it sufficed that objections could be aired in state court judicial review of any administrative decision). Here, Congress has established an integrated scheme for deportation proceedings, channeling judicial review to the final order, and deferring issues outside the agency's authority until that point. Given Congress' strong interest in avoiding delay of deportation proceedings, see *ante*, at 19-20, I find the opportunity to raise a claim during the judicial review phase sufficient.

If a court of appeals reviewing final orders of removal against respondents could not consider their selective enforcement claims], the equation would be different. See *Webster v. Doe, 486 U.S. 592, 603, 100 L. Ed. 2d 632, 108 S. Ct. 2047 (1988)* (a "serious constitutional question . . . would arise if a federal statute were construed to deny any judicial forum for a colorable constitutional claim" (internal quotation marks omitted)). Respondents argue that that is the case, because their claims require factfinding beyond the administrative record.

Section 1252(a)(1) authorizes judicial review of "final orders of removal." We have previously construed such "final order" language to authorize judicial review of "all matters on which the validity of the final order is contingent, rather than only those determinations actually made at the hearing." *INS v. Chadha, 462 U.S. 919, 938, 77 L. Ed. 2d 317, 103 S. Ct. 2764 (1983)* (internal quotation marks omitted). Whether there is here a need for factfinding beyond the administrative record is a matter properly postponed. I note, however, the Attorney General's [*496] position that the reviewing court of appeals may transfer [***961] a case to a district court for resolution of pertinent issues of material fact, see Brief for Petitioners 44, 48-49, and n. 23, [2] and counsel's assurance at oral argument that petitioners will adhere to that position, see Tr. of Oral Arg. 5-6. [3]

2 The Hobbs Act authorizes a reviewing court of appeals to transfer the proceedings to a district court for the resolution of material facts when "the agency has not held a hearing before taking the action of which review is sought," *28 U.S.C. ß 2347(b)*, and "a hearing is not required by law," *ß 2347(b)(3)*. Sensitive to the constitutional concerns that would be presented by complete preclusion of judicial review, the Attorney General argues that "*section 2347(b)(3)* on its face permits transfer to a district court, in an appropriate case, for resolution of a substantial selective enforcement challenge to a final order of deportation," because the INS is not required to hold a hearing before filing deportation charges. Reply Brief 12, 14. The Attorney General also suggests that other provisions, in particular *Federal Rule of Appellate Procedure 48*'s authorization of special masters, might be available. See Reply Brief 12-13. Finally, the Attorney General argues that, upon a finding of constitutional necessity, a court of appeals could "fashion an appropriate mechanism -- most likely a procedure similar to a *Section 2347(b)(3)* transfer." *Id. at 13*. While it is best left to the courts of appeals in the first instance to determine the appropriate mechanism for factfinding necessary to the resolution of a constitutional claim, I am confident that provision for such factfinding is not beyond the courts of appeals' authority.

3 The following exchange at oral argument so confirms:

Counsel for petitioners: " . . . If there were ultimately final orders of deportation entered, and the respondents raised a constitutional challenge based on selective enforcement, and if the court of appeals then concluded that fact-finding was necessary in order to resolve the constitutional issue, it would then be required to determine whether a mechanism existed under the applicable statute.

"Now, we believe *28 U.S.C. 2347(b)(3)* would provide that mechanism, but--

Court: "It might provide the mechanism if the issue is properly raised, but can the issue be properly raised when it would not be based on anything in the record of the proceedings at the administrative level?"

Counsel for petitioners: " . . . If the respondents claimed that execution of the deportation order would violate their constitutional rights because the charges were initiated on the basis of unconstitutional considerations, I think that is a claim that would properly be before the court of appeals."

Court: "So is that the Government's position, that we may rely on that representation that you have just made about the legal position that the Government would take in those circumstances?

Counsel for petitioners: "That is correct." Tr. of Oral Arg. 5-6.

[*497] [**950] II

The petition for certiorari asked this Court to review the merits of respondents' selective enforcement objection, but we declined to do so, granting certiorari on the jurisdictional question only. See Pet. for Cert. I, 20-30; *524 U.S. 903 (1998)*. We thus lack full briefing on respondents' selective enforcement plea and on the viability of such objections generally. I would therefore leave the question an open one. I note, however, that there is more to "the other side of the ledger," *ante*, at 20, than the Court allows.

It is well settled that "freedom of speech and of press is accorded aliens residing in this country." *Bridges v. Wixon, 326 U.S. 135, 148, 89 L. Ed. 2103, 65 S. Ct. 1443 (1945)*. Under our selective prosecution doctrine, "the decision to prosecute may not be deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification, including the exercise of protected statutory and constitutional rights." *Wayte v. United States, 470 U.S. 598, 608, 84 L. Ed. 2d 547, 105 S. Ct. 1524* [***962] *(1985)* (internal citations and quotation marks omitted). I am not persuaded that selective enforcement of deportation laws should be exempt from that prescription. If the Government decides to deport an alien "for reasons forbidden by the Constitution," *United States v. Armstrong, 517 U.S. 456, 463, 134 L. Ed. 2d 687, 116 S. Ct. 1480 (1996)*, it does not seem to me that redress for the constitutional violation should turn on the gravity of the governmental sanction. Deportation, in any event, is a grave sanction. As this Court has long recognized, "that deportation is a penalty -- at times a most serious one -- cannot be doubted." *Bridges, 326 U.S. at 154*; see also *ibid.* (Deportation places "the liberty [*498] of an individual . . . at stake . . . . Though deportation is not technically a criminal proceeding, it visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom."); G. Neuman, Strangers to the Constitution: Immigrants, Borders, and Fundamental Law 162 (1996) ("Deportation has a far harsher impact on most resident aliens than many conceded 'punishments' . . . . Uprooting the alien from home, friends, family, and work would be severe regardless of the country to which the alien was being returned; breaking these attachments inflicts more pain than preventing them from being made.").

* * *

In sum, were respondents to demonstrate strong likelihood of ultimate success on the merits and a chilling effect on current speech, and were we to find the agency's action flagrantly improper, precedent and sense would counsel immediate judicial intervention. But respondents have made no such demonstration. Further, were respondents to assert a colorable *First Amendment* claim as a now or never matter -- were that claim not cognizable upon judicial review of a final order -- again precedent and sense would counsel immediate resort to a judicial forum. In common with the Attorney General, however, I conclude that in the final judicial episode, factfinding, to the extent necessary to fairly address respondents' claims, is not beyond the federal judiciary's ken.

For the reasons stated, I join in Parts I and II of the Court's opinion and concur in the judgment.

JUSTICE STEVENS, concurring in the judgment.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA or Act) is a part of an omnibus enactment that occupies 750 pages in the Statutes at Large. Pub. L. 104-208, 110 Stat. 3009-546. It is not surprising that it contains a scrivener's error. See *Green v. Bock* [*499] *Laundry Machine Co., 490 U.S. 504, 511, 104 L. Ed. 2d 557, 109 S. Ct. 1981 (1989)*. Despite that [**951] error, Congress' intended disposition of cases like this is plain. It must be dismissed.

The textual difficulty that is debated by my colleagues concerns the impact of IIRIRA on proceedings that were pending on the effective date of the Act. Putting those cases to one side for the moment, the meaning of *8 U.S.C. ßß 1252(b)(9)* and *(g) (1994 ed., Supp. III)* is perfectly clear. The former postpones judicial review of removal proceedings until the entry of a final [***963] order [1] and the latter deprives federal courts of jurisdiction over collateral challenges to ongoing administrative proceedings. [2] Thus, if *ß 1252* applies to these respondents, the deportation proceedings pending before the Immigration and Naturalization Service (INS) are not yet ripe for review, and this collateral attack on those proceedings must be dismissed.

1 *Section 1252(b)(9)* provides:

"CONSOLIDATION OF QUESTIONS FOR JUDICIAL REVIEW. -- Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this title shall be available only in judicial review of a final order under this section." 110 Stat. 3009-610.

2 *Section 1252(g)* provides:

"EXCLUSIVE JURISDICTION. -- Except as provided in this section and notwithstanding any other provision of law, no court shall have jurisdiction to hear any cause or claim by or on be-

half of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act." Ibid. at 3009-612.

If we substitute the word "Act" for the word "section" in the introductory clause of *ß 1252(g)*, the impact of this provision on pending proceedings is equally clear. That substitution would remove any obstacle to giving effect to the plain meaning of IIRIRA ßß 306(c)(1) and 309(c)(1). The former defines the effective date of the Act and makes *ß 1252(g)*'s [*500] prohibition against collateral attacks effective immediately; [3] the latter makes the new rules inapplicable to aliens in exclusion or deportation proceedings pending before the INS on the effective date of the Act. [4] Judicial review of those administrative proceedings remains available in the courts of appeal under the old statutory regime. See *8 U.S.C. ß 1105a.*

3 Section 306(c)(1) provides:

"EFFECTIVE DATE. --

"(1) IN GENERAL. -- Subject to paragraph (2), the amendments made by subsections (a) and (b) shall apply [as provided under section 309, except that] subsection (g) of section 242 of the Immigration and Nationality Act (as added by subsection (a)), shall apply without limitation to claims arising from all past, pending, or future exclusion, deportation, or removal proceedings under such Act." Id. at 3009-612.

4 Section 309(c)(1) provides:

"(c) TRANSITION FOR ALIENS IN PROCEEDINGS. --

"(1) General rule that new rules do not apply. -- Subject to the succeeding provisions of this subsection, in the case of an alien who is in exclusion or deportation proceedings before the title III-A effective date --

"(A) the amendments made by this subtitle shall not apply, and

"(B) the proceedings (including judicial review thereof) shall continue to be conducted without regard to such amendments." Id. at 3009-625.

Admittedly, there is a slight ambiguity in the text of ß 309 because it refers to the "case of an alien who is in exclusion or deportation proceedings" before the effective date of the new Act. Respondents are such aliens, and therefore the word "case" arguably could be read to include their present collateral attack on the INS proceedings as well as to an eventual challenge to the final order of deportation. Because that reading would be inconsistent with ß 306, however, it is clear that Congress intended ß 309 to apply only to the INS "exclusion or deportation" proceedings that it expressly mentions.

To summarize, I think a fair reading of all relevant provisions in the statute makes it clear that Congress intended its prohibition of collateral [***964] attacks on ongoing INS proceedings [*501] to become effective immediately while providing that pending administrative proceedings should be completed under the scheme of judicial review in effect when they were commenced.

I should add that I agree with JUSTICE SOUTER's explanation of why *ß 1252(g)* applies broadly to removal proceedings rather than to only three discrete parts of such proceedings. See *post*, at (dissenting opinion). I do not, however, share his [**952] constitutional doubt concerning the prohibition of collateral proceedings such as this one. Of course, Congress could not authorize punishment of innocent persons because they happen to be members of an organization that engaged in terrorism. For the reasons stated in Part III of the Court's opinion, however, I have no doubt that the Attorney General may give priority to the removal of deportable aliens who are members of such an organization. See *ante*, at 16-18. Accordingly, I agree that the judgment of the District Court must be vacated.

DISSENT BY: SOUTER

DISSENT

JUSTICE SOUTER, dissenting.

The unhappy history of the provisions at issue in this case reveals that Congress, apparently unintentionally, enacted legislation that simultaneously grants and denies the right of judicial review to certain aliens who were in deportation proceedings before April 1, 1997. Finding no trump in the two mutually exclusive statutory provisions, I would invoke the principle of constitutional doubt and apply the provision that avoids a potential constitutional difficulty. Because the Court today instead purports to resolve the contradiction with a reading that strains the meaning of the text beyond what I think it can bear, I respectfully dissent.

I

The first of the contradictory provisions is put in play by ß 306(c)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), 110 Stat. 3009-612, as [*502] amended by ß 2 of the Act of Oct. 11, 1996, 110 Stat. 3657, which makes new *8 U.S.C. ß 1252(g) (1994 ed., Supp. III)* immediately applicable as of the date of its enactment (*i.e.*, October 11,

1996) to "claims arising from all past, pending, or future" removal proceedings. Subsection (g), for its part, bars review in any court of "the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien," except as provided in *ß 1252*. The exception, however, is cold comfort to applicants for review of proceedings pending when IIRIRA took effect, because the rest of *ß 1252* is inapplicable to "an alien who is in exclusion or deportation proceedings" on the effective date of IIRIRA, April 1, 1997. Section 309(c)(1)(A) of IIRIRA, 110 Stat. 3009-625, as amended by ß 2 of the Act of Oct. 11, 1996, 110 Stat. 3657. Hence, by operation of ß 306(c)(1), it would appear that aliens who did not obtain judicial review as of the enactment date of October 11, 1996, and who were in proceedings as of IIRIRA's effective date of April 1, 1997, can never obtain judicial review of "the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien" in any forum. In short, ß 306(c)(1) appears to bar [***965] members of this class of aliens from any review of any aspect of their claims.

Yet ß 306(c)(1) is not the only statutory provision applicable to aliens in proceedings before April 1, 1997. Section 309(c)(1)(B) provides that, in the case of aliens in proceedings before the effective date, "the proceedings (including judicial review thereof) shall continue to be conducted without regard to [new *ß 1252*]." The parenthetical expression in this section specifically provides that the judicial review available to aliens before the April 1, 1997, effective date of *ß 1252* continues to be available even after the effective date to aliens who were already in proceedings before the effective date. In other words, the terms of ß 309(c)(1)(B) preserve [*503] preexisting judicial review for the self-same class of aliens to whom ß 306(c)(1) bars review.

We do not have to dwell on how this contradiction arose. [1] What matters for our [**953] purposes is that ßß 306(c)(1) [*504] and 309(c)(1) cannot be reconciled. Either aliens in proceedings on April 1, 1997, have no access to judicial review or else they have [***966] the access available under the law that applied before *ß 1252* came into effect. [2]

1 Section 306(c)(1) was originally enacted on September 30, 1996. As it then read, it first provided that new *8 U.S.C. ß 1252 (1994 ed., Supp. III)* would apply "to all final orders of deportation or removal and motions to reopen filed on or after the date of the enactment of this Act," 110 Stat. 3009-612, and then provided that subsection (g) would apply without limitation. Under this transitional arrangement, no review was available to an alien in proceedings after September 30, 1996, until such time as a final order was issued against the alien. When a final order issued, the alien would be entitled to any judicial review available under new *ß 1252*. The intent of this provision was thus presumably to preclude judicial review of nonfinal steps in the removal procedure in the interim before IIRIRA's effective date of April 1, 1997. This arrangement, however, conflicted with the different transitional provision set out in ß 309(c)(4). This section, entitled "Transitional Changes in Judicial Review," provides that where a final order was "entered more than 30 days after the date of enactment of this Act," subsection (b) of the old *8 U.S.C. ß 1105a* does not apply. This subsection provides for habeas corpus proceedings for "any alien against whom a final order of exclusion has been made." In other words, ß 309(c)(4) expressly contemplates that old *ß 1105a*, less its habeas provision, applies to cases where a final order is issued more than 30 days after September 30, 1996, whereas the original ß 306(c)(1) as enacted contemplated that when a final order was issued on or after September 30, 1996, the new *ß 1252* would apply.

It appears that Congress noticed this discrepancy. On October 4, 1996, Representative Lamar Smith of Texas explained on the floor of the House that he had "become aware of an apparent technical error in two provisions" of IIRIRA. 142 Cong. Rec. H12293. He explained that "it was the clear intent of the conferees that, as a general matter, the full package of changes made by [new *8 U.S.C. ß 1252*] effect *[sic]* those cases filed in court after the enactment of the new law, leaving cases already pending before the courts to continue under existing law." *Ibid.* By "before the courts," Representative Smith seems to have meant the immigration courts. He went on to explain ß 309(c)(4): "The conferees also intended, however, to accelerate the implementation of certain of the reforms [in new *ß 1252*]. This intent is clearly spelled out in section 309 of the act. Specifically, section 309(c)(4) calls for accelerated implementation of some of the reforms made in section 306 regarding judicial review, but does not call for immediate implementation of all of these reforms." *Ibid.* Representative Smith then proposed the first technical change, which does not concern us. He then added that "there is a need to clarify the scope of section 306(c) to ensure that it does not conflict with section 309(c)(4)," and introduced an amendment to ß 306(c)(1). *Ibid.* That amendment, enacted October 11, 1996, eliminated the part of the original ß 306(c)(1) that applied new *ß 1252* to final orders

filed on or after the date of enactment, but left untouched the immediate application of subsection (g). 110 Stat. 3657. The result of this amendment was that ß 306(c)(1) no longer qualified its preclusion of judicial review for aliens from the date of enactment with the application of the new judicial review provisions of *ß 1252* to those aliens once final orders were issued against them. Instead, the amended language of ß 306(c)(1) now simply barred judicial review altogether. Thus the anomaly appears to have resulted from incomplete technical amendment.

2 Although the parties have not so argued, it might at first blush be thought that because *ß 1252(g)* includes the language "notwithstanding any other provision of law," it carves an exception out of the general rule of ß 309(c)(1). The two problems with this notion are, first, that such an exception would swallow the rule, and, second, that ß 309(c)(1)(A) makes "the amendments made by this subtitle," including *ß 1252(g)* itself, inapplicable to aliens in proceedings as of April 1, 1997. If *ß 1252(g)* is not applicable to such aliens, then the words "notwithstanding any other provision of law" cannot have any special force regarding such aliens.

It might also be thought that, because ß 309(a) announces that IIRIRA shall take effect on April 1, 1997, except as provided in various sections, including ß 306(c), and ß 309(c)(1) is enacted "subject to the succeeding provisions of this subsection," somehow ß 309(c)(1) does not apply to ß 306(c). *Ante*, at 6, n. 5. This cannot be so, of course, because the "subsection" in question is ß 309(c), not ß 309(a). The exception in ß 309(a) means only to acknowledge that ß 306(c) is effective immediately upon enactment, not on April 1, 1997.

Finally, neither ß 306(c) nor ß 309(c) may be said to be enacted later than the other for purposes of implicit repeal. Both were enacted on September 30, 1996, and both were amended by the removal or alteration of some language on October 11, 1996. Because of this simultaneous enactment, to give primary influence to the "notwithstanding" clause would simply beg the question of legislative intent.

[*505] The Court acknowledges the existence of an "interpretive anomaly," *ante*, at 7, and attempts to avoid the contradiction by a creative interpretation of *ß 1252(g)*. It reads the *ß 1252(g)* bar to review of "the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien" to "apply only to three discrete actions that the Attorney General may take." *Ante*, at 11. The Court claims that a bar to review of commencement of proceedings, adjudication of cases, and execution of removal orders does not bar review of every sort of claim, because "many other decisions or actions that may be part of the deportation process," *ibid.* remain unaffected by the limitation of *ß 1252(g)*. On this reading, the Court says, review of some aspects of the Attorney General's possible actions regarding aliens in [**954] proceedings before April 1, 1997, is preserved, even though the rest of *ß 1252* does not apply. The actions that still may be reviewed when challenged by aliens already in proceedings before the effective date of IIRIRA include, the Court tells us, "decisions to open an investigation, to surveil the suspected violator, to reschedule the deportation hearing, to include various provisions in the final order that is the product of the adjudication, and to refuse reconsideration of that order." *Ibid.*

The Court's interpretation, it seems to me, parses the language of subsection (g) too finely for the business at hand. The chronological march from commencing proceedings, through adjudicating cases, to executing removal orders, surely gives a reasonable first impression of speaking exhaustively. While it is grammatically possible to read the series without total inclusion, *ibid.* the implausibility of doing this appears the moment one asks why Congress would have wanted to preserve interim review of the particular set of decisions by the Attorney General to which the Court [*506] adverts. It is hard to imagine that Congress meant to bar aliens already in proceedings before the effective date from challenging the commencement of proceedings against them, but to permit the same aliens to challenge, say, the decision of the Attorney General to open an investigation of them or to issue a show-cause order. Nor is [***967] there a plausible explanation of why the exclusivity provisions of subsection (g) should not apply after the effective date to review of decisions to open investigations or invite cause to be shown.

The Court offers two arguments in support of its ingenious reading, neither of which suffices to convince me of its plausibility. First, the Court suggests that Congress could not have intended the words "commence proceedings, adjudicate cases, and execute removal orders" to refer to all deportation-related claims, because this would require these parts of deportation proceedings to stand for the whole of the process, and such a use of language "is incompatible with the need for precision in legislative drafting." *Ibid.* But without delving into the wisdom of using rhetorical figures in statutory drafting, one can still conclude naturally that Congress employed three subject headings to bar review of all those stages in the deportation process to which challenges might conceivably be brought. Indeed, each one of the Court's ex-

amples of reviewable actions of the Attorney General falls comfortably into one or another of the three phases of the deportation process captured under the headings of commencement, adjudication, and removal. The decisions to open an investigation or subject an alien to surveillance belong to the commencement of proceedings (which presumably differs from adjudication, separately mentioned); issuing an order to show cause, composing the final order, and refusing reconsideration all easily belong to an adjudication. Far from employing synecdoche, Congress used familiar, general terms to refer to the familiar stages of the exclusion process, and the acceptability of interpreting the three [*507] items to exclude others requires considerable determination to indulge in such a reading.

Second, the Court explains that Congress had "good reason," *ante*, at 12, to focus on commencement, adjudication, and execution, because these are distinct stages of the deportation process at which the Executive was in the habit of exercising its discretion to defer action. To show the existence of this practice, the Court quotes a passage from a treatise on immigration law, which says descriptively that "'the INS may decline to institute proceedings, terminate proceedings, or decline to execute a final order of deportation,'" *ante*, at 13 (quoting 6 C. Gordon, S. Mailman, & S. Yale-Loehr, *Immigration Law and Procedure ß 72.03[2][h]* (1998)). The treatise also says that the courts have sometimes entertained efforts to challenge the refusal to exercise discretion, *ante*, at 14. The Court notes, perfectly plausibly, that the purpose of *ß 1252(g)* may well have been to bar such challenges. But this is hardly a smoking gun. The passage in question uses the notions of instituting and terminating proceedings, and declining to execute final removal orders, in the very same inclusive sense that *ß 1252(g)* does. The treatise says that "'[a] case may be selected for deferred [**955] action treatment at any stage of the administrative process,'" *ante*, at 13, by which its authors evidently meant to say simply that from time to time the Executive exercises discretion at various points in the process, and that some courts have considered challenges to the failure to exercise discretion. This is no support for the Court's argument that Congress meant to bar review only of the "discrete" [***968] actions of commencement, adjudication, or execution.

Because I cannot subscribe to the Court's attempt to render the inclusive series incomplete, I have to confront the irreconcilable contradiction between ß 306(c)(1) and ß 309(c)(1). Both context and principle point me to the conclusion that the latter provision must prevail over the former. First, it seems highly improbable that Congress actually [*508] intended to raise a permanent barrier to judicial review for aliens in proceedings ongoing on April 1, 1997. Judicial review was available under old *8 U.S.C. ß 1105a* to those aliens whose proceedings concluded before the enactment of the amended ß 306(c)(1) on October 11, 1996, and judicial review of a different scope is also available under new *8 U.S.C. ß 1252 (1994 ed., Supp. III)* to those whose proceedings commenced after the effective date of IIRIRA, April 1, 1997. There is no reason whatever to believe that Congress intentionally singled out for especially harsh treatment the hapless aliens who were in proceedings during the interim. This point is underscored by transitional ß 309(c)(4)(A), which expressly applies subsections (a) and (c) of old *8 U.S.C. ß 1105a* (but not subsection (b) thereof) to judicial review of final orders of deportation or exclusion filed more than 30 days after the date of enactment. Section 309(c)(4)(A), in other words, contemplates judicial review of final orders of exclusion against aliens who were in proceedings as of the date of enactment.

Second, complete preclusion of judicial review of any kind for claims brought by aliens subject to proceedings for removal would raise the serious constitutional question whether Congress may block every remedy for enforcing a constitutional right. See *Bowen v. Michigan Academy of Family Physicians, 476 U.S. 667, 681, n. 12, 90 L. Ed. 2d 623, 106 S. Ct. 2133 (1986)*. The principle of constitutional doubt counsels against adopting the interpretation that raises this question. "Where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter." *United States ex rel. Attorney General v. Delaware & Hudson Co., 213 U.S. 366, 408, 53 L. Ed. 836, 29 S. Ct. 527 (1909)*; see also *United States v. Jin Fuey Moy, 241 U.S. 394, 401, 60 L. Ed. 1061, 36 S. Ct. 658 (1916)*. Here, constitutional doubt lends considerable weight to the view that ß 309(c)(1) ought to prevail over ß 306(c)(1) and preserve judicial review under the law as it was before the enactment [*509] of IIRIRA for aliens in proceedings before April 1, 1997. While I do not lightly reach the conclusion that ß 306(c)(1) is essentially without force, my respect for Congress's intent in enacting ß 309(c)(1) is necessarily balanced by respect for Congress's intent in enacting ß 306(c)(1). No canon of statutory construction familiar to me specifically addresses the situation in which two simultaneously enacted provisions of the same statute flatly contradict one another. [3] We are, of course, bound to avoid such a dilemma if we can, by glimpsing some uncontradicted meaning for each provision. [***969] But the attempt to salvage an application for each must have some stopping place, and the Court's attempt here seems to me to go beyond that point. In this anomalous situation where the two statutory provisions are fundamentally at odds, constitutional doubt will have to serve as the best guide to breaking the tie.

3 In such a situation, one court held some 70 years ago that "it being conceded that the two acts are contradictory and irreconcilable, and being unable to determine that either became effective, in point of time, before the other, it results that both are invalid." *Maddux v. Nashville, 158 Tenn. 307, 312, 13 S.W.2d 319, 321 (1929)*. In our case, invalidating ßß306(c)(1) and 309(c)(1) would enable us to apply the law in place before the enactment of IIRIRA, as we ought to do on the other grounds here.

Because I think that ß 309(c)(1) applies to aliens in proceedings before April 1, 1997, I [**956] think it applies to respondents in this case. The law governing their proceedings and subsequent judicial review should therefore be the law prevailing before IIRIRA. That law, in my view, afforded respondents an opportunity to litigate their claims before the District Court. Former *8 U.S.C. ß 1105a(a)* governed "judicial review of all final orders of deportation." For actions that fell outside the scope of this provision, an "alien's remedies would, of course, ordinarily lie first in an action brought in an appropriate district court." *Cheng Fan Kwok v. INS, 392 U.S. 206, 210, 20 L. Ed. 2d 1037, 88 S. Ct. 1970 (1968)*. In *McNary v. Haitian Refugee Center, Inc., 498 U.S. 479, 112 L. Ed. 2d 1005, 111 S. Ct. 888 (1991)*, we applied this principle in [*510] finding a right of action before the district court in a constitutional challenge to procedures of the Immigration and Naturalization Service. Respondents' challenge to the constitutionality of their prosecution was filed prior to the entry of a final order of deportation, and so district court jurisdiction was appropriate here. [4]

4 Respondents' challenge fell outside the scope of *ß 1105a*, and was not subject to the requirement of exhaustion contained therein in the former *ß 1105a(c)*. As in *McNary*, the waiver of sovereign immunity is to be found in *5 U.S.C. ß 702*, which waives the immunity of the United States in actions for relief other than money damages. This waiver of immunity is not restricted by the requirement of final agency action that applies to suits under the Administrative Procedure Act. See *The Presbyterian Church (U.S.A.) v. United States, 870 F.2d 518, 523-526 (CA9 1989)*.

II

The approach I would take in this case avoids a troubling problem that the Court chooses to address despite the fact that it was not briefed before the Court: whether selective prosecution claims have vitality in the immigration context. Of course, in principle, the Court's approach itself obviates the need to address that issue: if respondents' suit is barred by *ß 1252(g)*, the Court need not address the merits of their claims. Yet the Court goes on, in what I take as dictum, [5] to argue that the alien's interest in avoiding selective treatment in the deportation context "is less compelling than in criminal prosecutions," *ante*, at 18, either because the alien [***970] is not [*511] being punished for an act he has committed, or because the presence of an alien in the United States is, unlike a past crime, "an ongoing violation of United States law," *ibid.* (emphasis deleted). While the distinctions are clear, the difference is not. The interest in avoiding selective enforcement of the criminal law, shared by the government and the accused, is that prosecutorial discretion not be exercised to violate constitutionally prescribed guaranties of equality or liberty. See *United States v. Armstrong, 517 U.S. 456, 464-465, 134 L. Ed. 2d 687, 116 S. Ct. 1480 (1996)*; *Wayte v. United States, 470 U.S. 598, 608, 84 L. Ed. 2d 547, 105 S. Ct. 1524 (1985)*. This interest applies to the like degree in immigration litigation, and is not attenuated because the deportation is not a penalty for a criminal act or because the violation is ongoing. If authorities prosecute only those tax evaders against whom they bear some prejudice or whose protected liberties they wish to curtail, the ongoing nature of the nonpayers' violation does not obviate the interest against selective prosecution.

5 The Court says it "must address" respondents' various contentions, *ante*, at 16, and on that basis it takes up the selective prosecution issue. Notwithstanding the usefulness of addressing the parties' arguments, a line of argument unnecessary to the decision of the case remains dictum. See *United States v. Dixon, 509 U.S. 688, 706, 125 L. Ed. 2d 556, 113 S. Ct. 2849 (1993)* (quoting with approval *United States Nat. Bank of Ore. v. Independent Ins. Agents of America, Inc., 508 U.S. 439, 463, n. 11, 124 L. Ed. 2d 402, 113 S. Ct. 2173 (1993)*, on "'the need to distinguish an opinion's holding from its dicta'"). Respondents' contention that their speech has been impermissibly chilled cannot require the Court to say that no action for selective prosecution may lie in this case; a claim of chilled speech cannot place the selective prosecution claim within the statutory jurisdiction that *ß 1252(g)* forecloses on the Court's view.

No doubt more could be said with regard to the theory of selective prosecution in the immigration context, and I do not assume that the Government would lose the argument. That this is so underscores the danger of addressing an unbriefed issue that does not call for resolution even on the Court's own logic. Because I am unconvinced [**957] by the Court's statutory interpreta-

tion, and because I do not think the Court should reach the selective prosecution issue, I respectfully dissent.

REFERENCES

3B Am Jur 2d, Aliens and Citizens 1871, 2032

8 USCS 1252(g)

L Ed Digest, Aliens 36

L Ed Index, Deportation or Exclusion of Aliens; Selective Enforcement or Prosecution

Annotation References:

What constitutes "final deportation order" appealable to United States Court of Appeals under 106 of Immigration and Nationality Act (*8 USCS 1105a*). *65 ALR Fed 742*.

OMB No. 1615-0023; Expires 12/31/2010

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-485, Application to Register Permanent Residence or Adjust Status

START HERE - Type or Print (Use black ink)

For USCIS Use Only

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
Applicant Interviewed	

Part 1. Information About You

Family Name *(Last Name)* | Given Name *(First Name)* | Middle Name

Address - Street Number and Name | Apt. #

C/O (*in care of*)

City | State | Zip Code

Date of Birth *(mm/dd/yyyy)* | Country of Birth

Country of Citizenship/Nationality | U.S. Social Security # *(if any)* | A # *(if any)*

Date of Last Arrival *(mm/dd/yyyy)* | I-94 #

Current USCIS Status | Expires on *(mm/dd/yyyy)*

Section of Law
- ☐ Sec. 209(a), INA
- ☐ Sec. 209(b), INA
- ☐ Sec. 13, Act of 9/11/57
- ☐ Sec. 245, INA
- ☐ Sec. 249, INA
- ☐ Sec. 1 Act of 11/2/66
- ☐ Sec. 2 Act of 11/2/66
- ☐ Other _____

Country Chargeable

Eligibility Under Sec. 245
- ☐ Approved Visa Petition
- ☐ Dependent of Principal Alien
- ☐ Special Immigrant
- ☐ Other _____

Preference

Action Block

Part 2. Application Type *(Check one)*

I am applying for an adjustment to permanent resident status because:

a. ☐ An immigrant petition giving me an immediately available immigrant visa number that has been approved. (Attach a copy of the approval notice, or a relative, special immigrant juvenile, or special immigrant military visa petition filed with this application that will give you an immediately available visa number, if approved.)

b. ☐ My spouse or parent applied for adjustment of status or was granted lawful permanent residence in an immigrant visa category that allows derivative status for spouses and children.

c. ☐ I entered as a K-1 fiancé(e) of a U.S. citizen whom I married within 90 days of entry, or I am the K-2 child of such a fiancé(e). (Attach a copy of the fiancé(e) petition approval notice and the marriage certificate.)

d. ☐ I was granted asylum or derivative asylum status as the spouse or child of a person granted asylum and am eligible for adjustment.

e. ☐ I am a native or citizen of Cuba admitted or paroled into the United States after January 1, 1959, and thereafter have been physically present in the United States for at least 1 year.

f. ☐ I am the husband, wife, or minor unmarried child of a Cuban described above in **(e),** and I am residing with that person, and was admitted or paroled into the United States after January 1, 1959, and thereafter have been physically present in the United States for at least 1 year.

g. ☐ I have continuously resided in the United States since before January 1, 1972.

h. ☐ Other basis of eligibility. Explain (for example, I was admitted as a refugee, my status has not been terminated, and I have been physically present in the United States for 1 year after admission). If additional space is needed, see **Page 2** of the instructions. _____

I am already a permanent resident and am applying to have the date I was granted permanent residence adjusted to the date I originally arrived in the United States as a nonimmigrant or parolee, or as of May 2, 1964, whichever date is later, and: *(Check one)*

i. ☐ I am a native or citizen of Cuba and meet the description in **(e)** above.

j. ☐ I am the husband, wife, or minor unmarried child of a Cuban and meet the description in **(f)** above.

To be Completed by
***Attorney or Representative,* if any**

☐ Fill in box if Form G-28 is attached to represent the applicant.

VOLAG #

ATTY State License #

Part 3. Processing Information

A. City/Town/Village of Birth

Current Occupation

Your Mother's First Name

Your Father's First Name

Give your name exactly as it appears on your Form I-94, Arrival-Departure Record

Place of Last Entry Into the United States *(City/State)*

In what status did you last enter? *(Visitor, student, exchange visitor, crewman, temporary worker, without inspection, etc.)*

Were you inspected by a U.S. Immigration Officer? Yes ☐ No ☐

Nonimmigrant Visa Number

Consulate Where Visa Was Issued

Date Visa Issued *(mm/dd/yyyy)*

Gender ☐ Male ☐ Female

Marital Status ☐ Married ☐ Single ☐ Divorced ☐ Widowed

Have you ever applied for permanent resident status in the U.S.? ☐ Yes *(If "Yes" give date and place of filing and final disposition.)* ☐ No

B. List your present spouse and all of your children (include adult sons and daughters). (If you have none, write "None." If additional space is needed, see **Page 2** of the instructions.)

Family Name *(Last Name)*	Given Name *(First Name)*	Middle Initial	Date of Birth *(mm/dd/yyyy)*
Country of Birth	Relationship	A # *(if any)*	Applying with you?
			Yes ☐ No ☐
Family Name *(Last Name)*	Given Name *(First Name)*	Middle Initial	Date of Birth *(mm/dd/yyyy)*
Country of Birth	Relationship	A # *(if any)*	Applying with you?
			Yes ☐ No ☐
Family Name *(Last Name)*	Given Name *(First Name)*	Middle Initial	Date of Birth *(mm/dd/yyyy)*
Country of Birth	Relationship	A # *(if any)*	Applying with you?
			Yes ☐ No ☐
Family Name *(Last Name)*	Given Name *(First Name)*	Middle Initial	Date of Birth *(mm/dd/yyyy)*
Country of Birth	Relationship	A # *(if any)*	Applying with you?
			Yes ☐ No ☐
Family Name *(Last Name)*	Given Name *(First Name)*	Middle Initial	Date of Birth *(mm/dd/yyyy)*
Country of Birth	Relationship	A # *(if any)*	Applying with you?
			Yes ☐ No ☐

Part 3. Processing Information *(Continued)*

C. List your present and past membership in or affiliation with every organization, association, fund, foundation, party, club, society, or similar group in the United States or in other places since your 16th birthday. Include **any military service** in this part. If none, write "None." Include the name of each organization, location, nature, and dates of membership. If additional space is needed, attach a separate sheet of paper. Continuation pages must be submitted according to the guidelines provided on **Page 2** of the instructions under "What Are the General Filing Instructions?"

Name of Organization	Location and Nature	Date of Membership From	Date of Membership To

Answer the following questions. (If your answer is **"Yes"** to any question, explain on a separate piece of paper. Continuation pages must be submitted according to the guidelines provided on **Page 2** of the instructions under "What Are the General Filing Instructions?" Information about documentation that must be include with your application is also provide in this section.) Answering **"Yes"** does not necessarily mean that you are not entitled to adjust status or register for permanent residence.

1. Have you **EVER**, in or outside the United States:

a. Knowingly committed any crime of moral turpitude or a drug-related offense for which you have not been arrested? Yes ☐ No ☐

b. Been arrested, cited, charged, indicted, convicted, fined, or imprisoned for breaking or violating any law or ordinance, excluding traffic violations? Yes ☐ No ☐

c. Been the beneficiary of a pardon, amnesty, rehabilitation decree, other act of clemency, or similar action? Yes ☐ No ☐

d. Exercised diplomatic immunity to avoid prosecution for a criminal offense in the United States? Yes ☐ No ☐

2. Have you received public assistance in the United States from any source, including the U.S. Government or any State, county, city, or municipality (other than emergency medical treatment), or are you likely to receive public assistance in the future? Yes ☐ No ☐

3. Have you **EVER**:

a. Within the past 10 years been a prostitute or procured anyone for prostitution, or intend to engage in such activities in the future? Yes ☐ No ☐

b. Engaged in any unlawful commercialized vice, including, but not limited to, illegal gambling? Yes ☐ No ☐

c. Knowingly encouraged, induced, assisted, abetted, or aided any alien to try to enter the United States illegally? Yes ☐ No ☐

d. Illicitly trafficked in any controlled substance, or knowingly assisted, abetted, or colluded in the illicit trafficking of any controlled substance? Yes ☐ No ☐

4. Have you **EVER** engaged in, conspired to engage in, or do you intend to engage in, or have you ever solicited membership or funds for, or have you through any means ever assisted or provided any type of material support to any person or organization that has ever engaged or conspired to engage in sabotage, kidnapping, political assassination, hijacking, or any other form of terrorist activity? Yes ☐ No ☐

Part 3. Processing Information *(Continued)*

5. Do you intend to engage in the United States in:

   a. Espionage? Yes ☐ No ☐

   b. Any activity a purpose of which is opposition to, or the control or overthrow of, the Government of the United States, by force, violence, or other unlawful means? Yes ☐ No ☐

   c. Any activity to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information? Yes ☐ No ☐

6. Have you **EVER** been a member of, or in any way affiliated with, the Communist Party or any other totalitarian party? Yes ☐ No ☐

7. Did you, during the period from March 23, 1933, to May 8, 1945, in association with either the Nazi Government of Germany or any organization or government associated or allied with the Nazi Government of Germany, ever order, incite, assist, or otherwise participate in the persecution of any person because of race, religion, national origin, or political opinion? Yes ☐ No ☐

8. Have you **EVER** been deported from the United States, or removed from the United States at government expense, excluded within the past year, or are you now in exclusion, deportation, removal, or rescission proceedings? Yes ☐ No ☐

9. Are you under a final order of civil penalty for violating section 274C of the Immigration and Nationality Act for use of fraudulent documents or have you, by fraud or willful misrepresentation of a material fact, ever sought to procure, or procured, a visa, other documentation, entry into the United States, or any immigration benefit? Yes ☐ No ☐

10. Have you **EVER** left the United States to avoid being drafted into the U.S. Armed Forces? Yes ☐ No ☐

11. Have you **EVER** been a J nonimmigrant exchange visitor who was subject to the 2-year foreign residence requirement and have not yet complied with that requirement or obtained a waiver? Yes ☐ No ☐

12. Are you now withholding custody of a U.S. citizen child outside the United States from a person granted custody of the child? Yes ☐ No ☐

13. Do you plan to practice polygamy in the United States? Yes ☐ No ☐

14. Have you **EVER** ordered, incited, called for, committed, assisted, helped with, or otherwise participated in any of the following:

   a. Acts involving torture or genocide? Yes ☐ No ☐

   b. Killing any person? Yes ☐ No ☐

   c. Intentionally and severely injuring any person? Yes ☐ No ☐

   d. Engaging in any kind of sexual contact or relations with any person who was being forced or threatened? Yes ☐ No ☐

   e. Limiting or denying any person's ability to exercise religious beliefs? Yes ☐ No ☐

15. Have you **EVER**:

   a. Served in, been a member of, assisted in, or participated in any military unit, paramilitary unit, police unit, self-defense unit, vigilante unit, rebel group, guerrilla group, militia, or insurgent organization? Yes ☐ No ☐

   b. Served in any prison, jail, prison camp, detention facility, labor camp, or any other situation that involved detaining persons? Yes ☐ No ☐

16. Have you **EVER** been a member of, assisted in, or participated in any group, unit, or organization of any kind in which you or other persons used any type of weapon against any person or threatened to do so? Yes ☐ No ☐

Part 3. Processing Information *(Continued)*

17. Have you **EVER** assisted or participated in selling or providing weapons to any person who to your knowledge used them against another person, or in transporting weapons to any person who to your knowledge used them against another person? Yes ☐ No ☐

18. Have you **EVER** received any type of military, paramilitary, or weapons training? Yes ☐ No ☐

Part 4. Accommodations for Individuals With Disabilities and/or Impairments *(See **Page 10** of the instructions before completing this section.)*

Are you requesting an accommodation because of your disability(ies) and/or impairment(s)? Yes ☐ No ☐

If you answered "Yes," check any applicable box:

☐ **a.** I am deaf or hard of hearing and request the following accommodation(s) (if requesting a sign-language interpreter, indicate which language (e.g., American Sign Language)):

☐ **b.** I am blind or sight-impaired and request the following accommodation(s):

☐ **c.** I have another type of disability and/or impairment (describe the nature of your disability(ies) and/or impairment(s) and accommodation(s) you are requesting):

Part 5. Signature *(Read the information on penalties on **Page 10** of the instructions before completing this section. You must file this application while in the United States.)*

Your Registration With U.S. Citizenship and Immigration Services

"I understand and acknowledge that, under section 262 of the Immigration and Nationality Act (INA), as an alien who has been or will be in the United States for more than 30 days, I am required to register with U.S. Citizenship and Immigration Services (USCIS). I understand and acknowledge that, under section 265 of the INA, I am required to provide USCIS with my current address and written notice of any change of address within **10** days of the change. I understand and acknowledge that USCIS will use the most recent address that I provide to USCIS, on any form containing these acknowledgements, for all purposes, including the service of a Notice to Appear should it be necessary for USCIS to initiate removal proceedings against me. I understand and acknowledge that if I change my address without providing written notice to USCIS, I will be held responsible for any communications sent to me at the most recent address that I provided to USCIS. I further understand and acknowledge that, if removal proceedings are initiated against me and I fail to attend any hearing, including an initial hearing based on service of the Notice to Appear at the most recent address that I provided to USCIS or as otherwise provided by law, I may be ordered removed in my absence, arrested, and removed from the United States."

Selective Service Registration

The following applies to you if you are a male at least 18 years of age, but not yet 26 years of age, who is required to register with the Selective Service System: "I understand that my filing Form I-485 with U.S. Citizenship and Immigration Services (USCIS) authorizes USCIS to provide certain registration information to the Selective Service System in accordance with the Military Selective Service Act. Upon USCIS acceptance of my application, I authorize USCIS to transmit to the Selective Service System my name, current address, Social Security Number, date of birth, and the date I filed the application for the purpose of recording my Selective Service registration as of the filing date. If, however, USCIS does not accept my application, I further understand that, if so required, I am responsible for registering with the Selective Service by other means, provided I have not yet reached 26 years of age."

Part 5. Signature *(Continued)*

Applicant's Statement *(Check one)*

☐ I can read and understand English, and I have read and understand each and every question and instruction on this form, as well as my answer to each question.

☐ Each and every question and instruction on this form, as well as my answer to each question, has been read to me in the _____ language, a language in which I am fluent, by the person named in **Interpreter's Statement and Signature**. I understand each and every question and instruction on this form, as well as my answer to each question.

I certify, under penalty of perjury under the laws of the United States of America, that the information provided with this application is all true and correct. I certify also that I have not withheld any information that would affect the outcome of this application.

I authorize the release of any information from my records that U.S. Citizenship and Immigration Services (USCIS) needs to determine eligibility for the benefit I am seeking.

Signature *(Applicant)*	Print Your Full Name	Date *(mm/dd/yyyy)*	Daytime Phone Number *(include area code)*

NOTE: *If you do not completely fill out this form or fail to submit required documents listed in the instructions, you may not be found eligible for the requested benefit, and this application may be denied.*

Interpreter's Statement and Signature

I certify that I am fluent in English and the below-mentioned language.

Language Used *(language in which applicant is fluent)*

I further certify that I have read each and every question and instruction on this form, as well as the answer to each question, to this applicant in the above-mentioned language, and the applicant has understood each and every instruction and question on the form, as well as the answer to each question.

Signature *(Interpreter)*	Print Your Full Name	Date *(mm/dd/yyyy)*	Phone Number *(include area code)*

Part 6. Signature of Person Preparing Form, If Other Than Above

I declare that I prepared this application at the request of the above applicant, and it is based on all information of which I have knowledge.

Signature	Print Your Full Name	Date *(mm/dd/yyyy)*	Phone Number *(include area code)*

Firm Name and Address	E-Mail Address *(if any)*

OMB No. 1615-0023; Expires 12/31/2010

Department of Homeland Security
U. S. Citizenship and Immigration Services

Instructions for I-485, Application to Register Permanent Residence or Adjust Status

NOTE: The filing fee for Form I-485 is **$930** plus biometrics fee, if applicable. Refer to **"What is the Filing Fee?"** on Page 8.

What Is the Purpose of Form I-485?

This form is used by a person who is in the United States to apply to U.S. Citizenship and Immigration Services (USCIS) to adjust to permanent resident status or register for permanent residence.

This form may also be used by certain Cuban nationals to request a change in the date that their permanent residence began.

Who May File Form I-485?

1. **Based on an immigrant petition**

   You may apply to adjust your status if:

   A. An immigrant visa number is immediately available to you based on an approved immigrant petition; or

   B. You are filing this application with a completed relative petition, special immigrant juvenile petition, or special immigrant military petition which, if approved, would make an immigrant visa number immediately available to you.

2. **Based on being the spouse or child (derivative) - at the time another adjustment applicant (principal) files to adjust status or at the time a person is granted permanent resident status in an immigrant category that allows derivative status for spouses and children.**

   A. **If the spouse or child is in the United States,** the individual derivatives may file their Form I-485 with Form I-485 for the principal applicant, or file Form I-485 at anytime after the principal is approved, if a visa number is available.

   B. **If the spouse or child is residing abroad,** the person adjusting status in the United States should file **Form I-824, Application for Action on an Approved Application or Petition, together with** the principal's Form I-485, to allow the derivatives to immigrate to the United States without delay if the principal's Form I-485 is approved.

   The fee submitted with Form I-824 will not be refunded if the principal's adjustment is not granted.

3. **Based on admission as the fiancé(e) of a U.S. citizen and subsequent marriage to that citizen**

   A. You may apply to adjust status if you were admitted to the United States as the K-1 fiancé(e) of a U.S. citizen, and you married that citizen within 90 days of your entry.

   B. If you were admitted as the K-2 child of such a fiancé(e), you may apply to adjust status based on your parent's Form I-485.

4. **Based on asylum status**

   You may apply to adjust status after you have been granted asylum in the United States if you have been physically present in the United States for 1 year after the grant of asylum, provided you still qualify as an asylee or as the spouse or child of a refugee.

5. **Based on refugee status**

   You may apply to adjust status after you have been admitted as a refugee and have been physically present in the United States for 1 year following your admission, provided that your status has not been terminated.

6. **Based on Cuban citizenship or nationality**

   You may apply to adjust status if:

   A. You are a native or citizen of Cuba, were admitted or paroled into the United States after January 1, 1959, and thereafter have been physically present in the United States for at least 1 year; or

   B. You are the spouse or unmarried child of a Cuban described above and regardless of your nationality, you were admitted or paroled after January 1, 1959, and thereafter have been physically present in the United States for at least 1 year.

7. **Applying to change the date on which your permanent residence began**

   If you were granted permanent residence in the United States prior to November 6, 1966, and are a native or citizen of Cuba, or you are the spouse or unmarried child of such an individual, you may ask to change the date your lawful permanent residence began to your date of arrival in the United States or May 2, 1964, whichever is later.

8. Based on continuous residence since before January 1, 1972

You may apply for permanent residence if you have continuously resided in the United States since before January 1, 1972. This is known as "Registry."

9. Other basis of eligibility

If you are not included in the above categories, but believe you may be eligible for adjustment or creation of record of permanent residence, contact our National Customer Service Center at **1-800-375-5283** for information on how to use the Internet to make an appointment at your local USCIS office.

10. Who Is Not Eligible to Adjust Status?

Unless you are applying for creation of record based on continuous residence since before January 1, 1972, or adjustment of status under a category in which special rules apply (such as 245(i) adjustment, asylum adjustment, Cuban adjustment, special immigrant juvenile adjustment, or special immigrant military personnel adjustment), **you are not eligible for adjustment of status if any of the following apply to you:**

A. You entered the United States in transit without a visa;

B. You entered the United States as a nonimmigrant crewman;

C. You were not admitted or paroled following inspection by an immigration officer;

D. Your authorized stay expired before you filed this application;

E. You were employed in the United States without USCIS authorization prior to filing this application;

F. You failed to maintain your nonimmigrant status, unless your failure to maintain status was through no fault of your own or for technical reasons; unless you are applying because you are:

1. An immediate relative of a U.S. citizen (parent, spouse, widow, widower, or unmarried child under 21 years old);
2. A K-1 fiancé(e) or a K-2 fiancé(e) dependent who married the U.S. petitioner within 90 days of admission; or
3. An H or I nonimmigrant or special immigrant (foreign medical graduates, international organization employees, or their derivative family members);

G. You were admitted as a K-1 fiancé(e), but did not marry the U.S. citizen who filed the petition for you, or you were admitted as the K-2 child of a fiancé(e) and your parent did not marry the U.S. citizen who filed the petition;

H. You are or were a J-1 or J-2 exchange visitor and are subject to the 2-year foreign residence requirement and you have not complied with or been granted a waiver of the requirement;

I. You have A, E, or G nonimmigrant status or have an occupation that would allow you to have this status, unless you complete Form I-508 (Form I-508F for French nationals) to waive diplomatic rights, privileges, and immunities and, if you are an A or G nonimmigrant, unless you submit a completed Form I-566;

J. You were admitted to Guam as a visitor under the Guam visa waiver program;

K. You were admitted to the United States as a visitor under the Visa Waiver Program, unless you are applying because you are an immediate relative of a U.S. citizen (parent, spouse, widow, widower, or unmarried child under 21 years of age); or

L. You are already a conditional permanent resident.

General Instructions

Fill Out Form I-485

1. Type or print legibly in black ink.
2. If extra space is needed to complete any item, attach a continuation sheet, indicate the item number, and date and sign each sheet.
3. Answer all questions fully and accurately. State that an item is not applicable with "N/A." If the answer is none, write "None."
4. You must file your application with the required **Initial Evidence** described below. Your application must be properly signed and filed with the correct fee. If you are under 14 years of age, your parent or guardian may sign your application.

Translations. Any document containing a foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Copies. Unless specifically required that an original document be filed with an application or petition, an ordinary legible photocopy may be submitted. Original documents submitted when not required will remain a part of the record, even if the submission was not required.

Initial Evidence

You must file your application with the following evidence:

1. Criminal history

A. If you have ever been arrested or detained by any law enforcement officer for any reason, and no charges were filed, submit:

An original official statement by the arresting agency or applicable court order confirming that no charges were filed.

B. If you have ever been arrested or detained by any law enforcement officer for any reason, and charges were filed, or if charges were filed against you without an arrest, submit:

An original or court-certified copy of the complete arrest record and/or disposition for each incident (e.g., dismissal order, conviction record, **or** acquittal order).

C. If you have ever been convicted or placed in an alternative sentencing program or rehabilitative program (such as a drug treatment or community service program), submit:

1. An original or court-certified copy of the sentencing record for each incident; **and**

2. Evidence that you completed your sentence, specifically:

   a. An original or certified copy of your probation or parole record; or

   b. Evidence that you completed an alternative sentencing program or rehabilitative program.

D. If you have ever had any arrest or conviction vacated, set aside, sealed, expunged, or otherwise removed from your record, submit:

1. An original or court-certified copy of the court order vacating, setting aside, sealing, expunging, or otherwise removing the arrest or conviction; **or**

2. An original statement from the court that no record exists of your arrest or conviction.

NOTE: Unless a traffic incident was alcohol or drug-related, you do not need to submit documentation for traffic fines and incidents that did not involve an actual arrest if the only penalty was a fine of less than $500 and/or points on your driver's license.

2. Birth certificate

Submit a copy of your foreign birth certificate or other record of your birth that meets the provisions of secondary evidence found in Title 8, Code of Federal Regulations (CFR), 103.2(b)(2).

3. Copy of passport page with nonimmigrant visa

If you have obtained a nonimmigrant visa(s) from a U.S. Embassy or consulate abroad within the last year, submit a photocopy(ies) of the page(s) of your passport containing the visa(s).

4. Photos

You **must** submit two identical color photographs of yourself taken within 30 days of the filing of this application. The photos must have a white to off-white background, be printed on thin paper with a glossy finish, and be unmounted and unretouched.

Passport-style photos must be 2" x 2." The photos must be in color with full face, frontal view on a white to off-white background. Head height should measure 1" to 1 3/8" from top of hair to bottom of chin, and eye height is between 1 1/8" to 1 3/8" from bottom of photo. Your head must be bare unless you are wearing a headdress as required by a religious order of which you are a member. Using pencil or felt pen, lightly print your name and Alien Registration Number (A-Number) on the back of the photo.

5. Biometrics services

If you are between the ages of 14 and 79, you must be fingerprinted as part of the USCIS biometrics services requirement. After you have filed this application, USCIS will notify you in writing of the time and location where you must go to be fingerprinted. If necessary, USCIS may also take your photograph and signature. Failure to appear to be fingerprinted or for other biometrics services may result in a denial of your application.

6. Police clearances

If you are filing for adjustment of status as a member of a special class described in an I-485 supplement form, please read the instructions on the supplement form to see if you need to obtain and submit police clearances, in addition to the required fingerprints, with your application.

7. Medical examination

When required, submit a medical examination report on Form I-693, Report of Medical Examination and Vaccination Record.

Individuals applying for adjustment of status:

A. General: When filing your Form I-485, include your medical examination report with the application, unless you are a refugee.

B. Refugees: If you are applying for adjustment of status 1 year after you were admitted as a refugee, you only need to submit the vaccination portion of Form I-693 (pages 1,4, and 6) with your Form I-485, not the entire medical report, **unless** you had a Class A condition noted on your overseas medical exam.

8. Fiancé(e)s

If you are a K-1 fiancé(e) or K-2 dependent who had a medical examination within the past year as required for the nonimmigrant fiancé(e) visa, you only need to submit a vaccination supplement, not the entire medical report. You may include the vaccination supplement with your Form I-485.

9. Persons not required to have a medical examination

The medical report is not required if you are applying for creation of a record for admission as a lawful permanent resident under section 249 of the INA as someone who has continuously resided in the United States since January 1, 1972 (registry applicant).

10. Form G-325A, Biographic Information Sheet

You must submit a completed Form G-325A if you are between 14 and 79 years of age.

11. Affidavit of Support/Employment Letter

A. Affidavit of Support

Submit an Affidavit of Support (Form I-864) if your Form I-485 is based on your entry as a fiancé(e), a relative visa petition (Form I-130) filed by your relative, or an employment-based visa petition (Form I-140) related to a business that is five percent or more owned by your family.

B. Employment Letter

If your Form I-485 is related to an employment-based visa petition (Form I-140), you must submit a letter on the letterhead of the petitioning employer which confirms that the job on which the visa petition is based is still available to you. The letter must also state the salary that will be paid.

NOTE: The affidavit of support and/or employment letter are not required if you are applying for creation of a record based on continuous residence since before January 1, 1972, asylum or refugee adjustment, or a Cuban citizen or a spouse or unmarried child of a Cuban citizen who was admitted after January 1, 1959.

12. Evidence of eligibility

A. Based on an immigrant petition

Attach a copy of the approval notice for an immigrant petition that makes a visa number immediately available to you, or submit a complete relative, special immigrant juvenile, or special immigrant military petition that, if approved, will make a visa number immediately available to you.

B. Based on admission as the K-1 fiancé(e) of a U. S. citizen and subsequent marriage to that citizen

Attach a copy of the fiancé(e) petition approval notice, a copy of your marriage certificate, and your Form 1-94, Arrival/Departure Document.

C. Based on asylum status

Attach a copy of the letter or Form 1-94 that shows the date you were granted asylum.

D. Based on continuous residence in the United States since before January 1, 1972

Attach copies of evidence that shows continuous residence since before January 1, 1972.

13. Based on Cuban citizenship or nationality

Attach evidence of your citizenship or nationality, such as a copy of your passport, birth certificate, or travel document.

14. Based on derivative status as the spouse or child of another adjustment applicant or person granted permanent residence based on issuance of an immigrant visa

File your application with the application of the other applicant, or with evidence that the application is pending with USCIS or was approved, or with evidence that your spouse or parent was granted permanent residence based on an immigrant visa, and:

If you are applying as the spouse of that person, also attach a copy of your marriage certificate and copies of documents showing the legal termination of all other marriages by you and your spouse;

If you are applying as the child of that person, attach also a copy of your birth certificate and, if the other person is not your parent, submit copies of evidence (such as a marriage certificate and documents showing the legal termination of all other marriages and an adoption decree) to demonstrate that you qualify as his or her child.

15. Other basis for eligibility

Attach copies of documents proving that you are eligible for the classification.

Where Should You File Form I-485?

Updated Filing Address Information

The filing addresses provided on this form reflect the most current information as of the date this form was last revised. If you are filing Form I-485 more than 30 days after the latest edition date shown in the lower right corner, please visit our Web site at **www.uscis.gov** before you file, and check the Forms page to confirm the correct filing address and version currently in use. Check the edition date located at the lower right corner of the form. If the edition date on your Form I-485 matches the edition date listed for Form I-485 on the online Forms page, your version is current. If the edition date on the online version is more recent, download a copy and use it. If you do not have Internet access, call the National Customer Service Center at **1-800-375-5283** to verify the current filing address and edition date. **Improperly filed forms will be rejected, and the fee returned with instructions to resubmit the entire filing using the current form instructions.**

Please read the following instructions carefully to ensure you file your application at the correct location.

If you are filing because:

1. **You are applying for adjustment of status under one of the eligibility categories listed below,** file your Form I-485 with the **USCIS Chicago Lockbox** facility. See "USCIS Chicago Lockbox Addresses" on **Page 6** of these instructions.

   You **must** include a copy of the Form I-797C, Notice of Action, of an approved Form I-130, Petition for Alien Relative, or Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, or other official document reflecting a current priority date and family preference, or file your application together with a Form I-130 or Form I-360 as appropriate.

   NOTE: Read the Visa Bulletin "Family-Sponsored Preferences" at **www.travel.state.gov** to ensure your priority date is current before you file your application.

   A. Spouse, parent, unmarried son/daughter under age 21 of a U.S. citizen with an approved Form I-130 or Form I-130 filed together with this Form I-485 (Part 2, Box "a" on the form);

   B. Beneficiary of an approved Form I-130 filed by a qualifying relative (Part 2, Box "a" on the form);

   C. Spouse or child of an immigrant who has applied for adjustment of status or has been granted Lawful Permanent Residence through a Family-Sponsored Visa category that allows derivative status for spouses and children (Part 2, Box "b" on the form)

   D. K-1 Fiancé(e) (and K-2 dependents) whose Form I-485 is based on an approved Form I-129F, Petition for Alien Fiance(e), (Part 2, Box "c" on the form);

   E. Beneficiaries of a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, classified as an "Amerasian," "Widow(er) of a U.S. Citizen who died within the past 2 years," "Special Immigrant Juvenile," or "Special Immigrant Armed Forces Member." (Part 2, Box "h" write "Amerasian," "Widow(er)," "Self Petitioning Juvenile," or "Armed Forces Member," as applicable).

   F. Applicants eligible under the Cuban Adjustment Act of November 2, 1965 (Part 2, Box "e," "f," "i" or "j" on the form);

   G. Registry applicant filing Form I-485 based on continuous residence in the U.S. since before January 1, 1972 (Part 2, Box "g" on the form);

   H. Diversity lottery winner eligible to file Form I-485 (Part 2, Box "h" on the form. Write "Diversity Visa Lottery Winner. Copy of lottery letter attached" on the line below the box);

   I. Public Interest Parolees from certain former Soviet and Southeast Asian countries filing Form I-485 under Public Law 101-167 (the "Lautenberg Amendment") (Part 2, Box "h" on the form. Write "Lautenberg Parolee" or "Polish Hungarian Parolee" on the line beneath the box);

J. Registry applicant filing Form I-485 based on birth in the United States to a foreign diplomatic officer (Part 2, Box "h" on the form; Write "Child of Diplomat" on the line beneath the box.);

K. Former diplomat filing Form I-485 under Section 13 of the Immigration and Nationality Act (Part 2 Box "h" on the form. Write "Section 13" on the line beneath the box); or

L. Applicants who are beneficiaries of Private Bills (Part 2, Box "h" on the form. Write "Private Bill Beneficiary" on the line beneath the box.)

USCIS Chicago Lockbox Addresses

For U.S. Postal Service (USPS) deliveries:

USCIS
P.O. Box 805887
Chicago, IL 60680-4120

For Express mail and courier deliveries:

USCIS
Attn: FBAS
131 South Dearborn - 3rd Floor
Chicago, IL 60603-5517

2. **You are**:

A. **The beneficiary of an approved Form I-360 based on the eligibility category "Battered Spouse/ Children" and you are filing for adjustment of status.** If you are filing as a battered or abused spouse or child and you are filing Form I-485 (Part 2, Box "h" on the form), file it and any associated forms with the **USCIS Vermont Service Center**.

B. **A T or U-based nonimmigrant filing Form I-485,** file your application at the **USCIS Vermont Service Center.** Please read Form I-485 Supplement E, for additional guidance on filing.

If you are a T or U-based nonimmigrant, you must include a copy of your Form I-797C, Notice of Action, for approval of your T or U nonimmigrant status, in addition to a copy of your Form I-94, Arrival-Departure Record, and a copy of all pages of your passport with a T or U nonimmigrant visa (or explanation why you do not have a passport).

USCIS - Vermont Service Center
Attn: CRU
75 Lower Welden Street
St. Albans, VT. 05479-0001

3. **You are filing Form I-485 based on one of the eligibility categories (A - F) below**, then file your application at the **USCIS Phoenix or Dallas Lockbox** facility based on where you are located. See mailing address on **Page 7** of these instructions.

NOTE: If you have an **approved or pending** Form I-360, you **must** include a copy of the Form I-797C which shows that your Form I-360 was accepted.

A. **You are filing Form I-485 based on an underlying Form I-360 and you are filing under one of the following classifications.**

1. **International Organization Employee or Family Member:** Form I-485 filed with Form I-360, or Form I-485 based on a pending or approved Form I-360 for an International Organization Employee or eligible family member. (Part 2, Box "h" on the form. Write "International Organization Employee" on the line beneath the box.)

2. **Other Form I-360 Categories:** Form I-485 filed based on an **approved** Form I-360 for the following classifications (**NOTE:** You **cannot** file Form I-360 together with Form I-485 for the five classifications below.):

a. Special Immigrant Religious Worker;

b. Panama Canal Company Employment;

c. U.S. Government in Canal Zone Employment;

d. Special Immigrant Physician; or

e. International Broadcasters.

(Part 2, Box "h" on the form. Write "Approved Form I-360, Copy of Approval Notice Attached," on the line beneath the box.)

B. **You are filing your Form I-485 based on Asylum status.** (Part 2, Box "d" on the form).

C. **You are filing your Form I-485 based Refugee status.** (Part 2, Box "h" on the form. Write "Refugee" on the line beneath the box.)

D. **You are filing your Form I-485 as a HRIFA Dependent.** Only the spouse and children of the principal granted legal status under HRIFA are eligible to apply for benefits under HRIFA. The filing period for principal HRIFA applicants has closed (Part 2, Box "h" on the form. Write "HRIFA" on the line beneath the box.)

E. You are filing your Form I-485 based on an approved Form I-526, Immigrant Petition by Alien Entrepreneur (Part 2, Box "a" on the form). You **must** include a copy of the Form I-797C which shows that your Form I-526 was approved.

NOTE: You **cannot** file Form I-526 and Form I-485 together.

USCIS Phoenix or Dallas Lockbox Addresses	
If you live in:	**Mail your application to:**
Alaska, Arizona, California, Colorado, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, Wisconsin, Wyoming, Guam, or the Commonwealth of Northern Mariana Islands	**USCIS Phoenix Lockbox** For U.S. Postal Service (USPS) deliveries: **USCIS** **PO Box 21281** **Phoenix, AZ 85036** For Express mail and courier deliveries: **USCIS** **Attn: AOS** **1820 E. Skyharbor Circle S** **Suite 100** **Phoenix, AZ 85034**

USCIS Phoenix or Dallas Lockbox Addresses	
If you live in:	**Mail your application to:**
Alabama, Arkansas, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, U.S. Virgin Islands, or West Virginia	**USCIS Dallas Lockbox**. For U.S. Postal Service (USPS) deliveries: **USCIS** **PO Box 660867** **Dallas, TX 75266** For Express mail and courier deliveries: **USCIS** **Attn: AOS** **2501 S State Hwy. 121 Business** **Suite 400** **Lewisville, TX 75067**

4. You are filing your Form I-485 together with Form I-140 or based on a pending or approved Form I-140.

Petitioners filing Form I-485 together with Form I-140 for "skilled workers" (Part 2, box "f" on Form I-140), must continue to file their petitions/applications at the USCIS Nebraska or Texas Service Centers, depending on the location of the beneficiary's permanent employment. See Form I-140 for addresses.

Petitioners filing Form I-485 alone, based on a previously filed form I-140 for a "skilled worker" (and which petition is pending or approved), should file their stand-alone form I-485 application at the USCIS NSC or TSC, depending on the location of the beneficiary's permanent employment, **provided a visa is available per the current Department of State Visa Bulletin.** Use the same form I-140 addresses for those petitions filed with Form I-485."

If you are filing Form I-485 based on a pending or approved Form I-140 (Part 2, Box "a" or "b" on the form), you must include a copy of the Form I-797C, Notice of Action, showing that your Form I-140 was accepted.

NOTE: Read the Visa Bulletin "Employment - Based Preferences" at **www.travel.state.gov** to ensure your priority date is current before you file your application.

5. If you are filing your Form I-485 as an Afghan or Iraqi Translator. If you are filing Form I-485 based on an approved Form I-360 for Afghan or Iraqi Translators, you must file your Form I-485 with the **USCIS Nebraska Service Center.**

USCIS - Nebraska Service Center
P.O. Box 87485
Lincoln, NE 68501-7485

You **must** include a copy of the Form I-797C, Notice of Action, showing that your Form I-360 was approved.

NOTE: You cannot file Form I-360 together with Form I-485 for this classification.

E-NOTIFICATION:

If you are filing your Form I-485 at one of the USCIS Lockbox facilities, you may elect to receive an email and/or text messages notifying you that your application has been accepted. You must complete Form G-1145, E-Notification of Application/Petition Acceptance, and clip it to the first page of your application. To download a copy of Form G-1145, including the instructions, refer to **www.uscis.gov "FORMS."**

Questions Regarding Form I-485

For additional information about Form I-485, including how to file your application or filing locations not mentioned, call the USCIS National Customer Service Center at **1-800-375-5283** or visit our Internet Web site at **www.uscis.gov**.

What Is the Filing Fee?

The filing fee for Form I-485 is **$930.**

An additional biometrics fee of **$80** is required when filing your Form I-485. After you submit Form I-485, USCIS will notify you about when and where to go for biometrics services.

The fee is **$930** only (no biometrics fee required) for applicants under 14 years of age who submit Form I-485 independent from other family members.

The Fee for a child under 14 years of age will be **$600** when submitted with the application of a parent under section 201(b)(A)(i), 203(a)(2)(A), and 203(d) of the INA.

There is no fee if an applicant is filing as a refugee under section 209(a) of the INA.

You may submit one check or money order for both the application and biometrics fees.

Use the following guidelines when you prepare your check or money order for the Form I-485 and the biometrics services fee:

1. The check or money order must be drawn on a bank or other financial institution located in the United States and must be payable in U.S. currency; and
2. Make the check or money order payable to **U.S. Department of Homeland Security**, unless:
   - **A.** If you live in Guam, make it payable to **Treasurer of Guam**.
   - **B.** If you live in the U.S. Virgin Islands, make it payable to **Commissioner of Finance of the Virgin Islands**.

NOTE: Effective July 30, 2007, if you file Form I-485, no additional fee is required to also file an application for employment authorization on Form I-765, Application for Employment Document, and/or advance parole on Form I-131, Application for Travel Document. You may file these forms together. If you choose to file Form I-765 and/or Form I-131 separately after the effective date, you must also submit a copy of your Form I-797C, Notice of Action, receipt as evidence of the filing of Form I-485.

NOTE: Please spell out U.S. Department of Homeland Security; do not use the initials "USDHS" or "DHS."

Notice to Those Making Payment by Check.

If you send us a check, it will be converted into an electronic funds transfer (EFT). This means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually take 24 hours and will be shown on your regular account statement.

You will not receive your original check back. We will destroy your original check, but we will keep a copy of it. If the EFT cannot be processed for technical reasons, you authorize us to process the copy in place of your original check. If the EFT cannot be completed because of insufficient funds, we may try to make the transfer up to two times.

How to Check If the Fees Are Correct

The form and biometric fees on this form are current as of the edition date appearing in the lower right corner of this page. However, because USCIS fees change periodically, you can verify if the fees are correct by following one of the steps below:

1. Visit our Internet Web site at **www.uscis.gov**, select "FORMS," and check the appropriate fee;
2. Review the Fee Schedule included in your form package, if you called us to request the form; or
3. Telephone our National Customer Service Center at **1-800-375-5283** and ask for the fee information.

NOTE: If your Form I-485 requires payment of a biometrics services fee for USCIS to take your fingerprints, photograph, or signature, you can use the same procedure to obtain the correct biometrics fee.

Address Changes

If you change your address and you have an application or petition pending with USCIS, you may change your address on line at **www.uscis.gov**, click on "Online Change of Address," and follow the prompts, or you may complete and mail Form AR-11, Alien's Change of Address Card, to:

U.S. Citizenship and Immigration Services
Change of Address
P.O. Box 7134
London, KY 40742-7134

For commercial overnight or fast freight services only, mail to:

U.S. Citizenship and Immigration Services
Change of Address
1084-I South Laurel Road
London, KY 40744

Do not send a Change of Address Request to a USCIS Lockbox facility.

Processing Information

You must have a U.S. address to file this form.

Any application that is not signed or is not accompanied by the correct application fee will be rejected with a notice that the application is deficient. You may correct the deficiency and resubmit the application. An application is not considered properly filed until accepted by USCIS.

Initial processing

Once an application has been accepted, it will be checked for completeness, including submission of the required initial evidence. If you do not completely fill out the form or file it without required initial evidence, you will not establish a basis for eligibility, and we may deny your application.

Requests for more information or interview

We may request more information or evidence, or we may request that you appear at a USCIS office for an interview. We may also request that you submit the originals of any copy. We will return these originals when they are no longer required.

National Interest Waiver (NIW) Physicians

An NIW Physician applicant must fulfill the medical service requirement to which he or she is subject based upon a Form I-140 petition which was approved under section 203(b) (2) (B) (ii) (I) of the Immigration and Nationality Act (INA), as amended by the Nursing Relief for Disadvantaged Areas Act (Nursing Relief Act) of 1999.

Specifically, an NIW Physician applicant must submit evidence to establish that he or she has met the qualifying medical service requirement within 120 days after completing the required service. An NIW Physician applicant's application for adjustment of status will be considered ready for processing after evidence of the completion of the required medical service is submitted. (If an NIW Physician must also complete medical service based on a waiver of the foreign residence requirement of section 212(e) of the INA, then evidence of the completion of this required service should also be submitted at this time.)

Interview

After you file your application, you may be notified to appear at a USCIS office to answer questions about the application. You will be required to answer these questions under oath or affirmation. You must bring your Arrival-Departure Record (Form I-94) and any passport or official travel document you have to the interview.

Decision

You will be notified in writing of the decision on your application.

Selective Service Registration

If you are a male at least 18 years of age, but not yet 26 years, and required according to the Military Selective Service Act to register with the Selective Service System, USCIS will help you register.

When your signed application is filed and accepted by USCIS, we will transmit to the Selective Service System your name, current address, Social Security number, date of birth, and the date you filed the application. This action will enable the Selective Service System to record your registration as of the filing date of your application.

If USCIS does not accept your application and, if still so required, you are responsible to register with the Selective Service System by using other means, provided you are under 26 years of age. If you have already registered, the Selective Service System will check its records to avoid any duplication.

(NOTE: Men 18 through 25 years of age who are applying for student financial aid, government employment, or job training benefits should register directly with the Selective Service System or such benefits may be denied. Men can register at a local post office or on the Internet at http://www.sss.gov).

Effect of departure from the United States while your application is pending

1. Applying for adjustment of status under section 245 of the Act

   If you apply for adjustment of status under section 245 of the Act, traveling anywhere outside the United States (including brief visits to Canada or Mexico) will lead to the denial of your Form I-485 as abandoned unless:

   A. You are an H, L, V or K3/K4 nonimmigrant who is maintaining lawful nonimmigrant status and you return with a valid H, L, V or K3/K4 nonimmigrant visa; OR

B. You obtain, *before* you leave the United States, a grant of advance parole by filing Form I-131, Application for Travel Document, as specified in the Form I-131 instructions, and you are paroled into the United States when you return.

2. Applying for adjustment of status under section 209 of the Act

   If you apply for adjustment of status under section 209 of the Act because you were admitted as a refugee or granted asylum, you may travel abroad and return to the United States with a refugee travel document. You may obtain a refugee travel document by filing Form I-131, Application for Travel Document, as specified in the Form I-131 instructions.

3. Applying for registry of permanent residence under section 249 of the Act

   Under the DHS regulations at 8 CFR Part 249, you do not "abandon" your registry application by traveling abroad while it is pending. If you do not obtain a grant of advance parole, however, you may not be able to return lawfully to the United States. You may obtain advance parole by filing Form I-131, Application for Travel Document, as specified in the Form I-131 instructions.

Warning:

Travel outside of the United States may trigger the three and ten year bar to admission under section 212(a)(9)(B)(i) of the Act for adjustment applicants, but not registry applicants. This ground of inadmissibility is triggered if you were unlawfully present in the United States (i.e., you remained in the United States beyond the period of authorized stay) for more than 180 days before you applied for adjustment of status and you travel outside of the United States while your Form I-485 is pending.

NOTE: Only unlawful presence that was accrued on or after April 1, 1997, counts towards the three and ten year bar under section 212(a)(9)(B)(i) of the Act.

If you become inadmissible under section 212(a)(9)(B)(i) of the Act while your Form I-485 is pending, you will need a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act before your Form I-485 can be approved. This waiver, however, is granted on a case-by-case basis and in the exercise of discretion. It requires a showing of extreme hardship to your U.S. citizen or lawful permanent resident spouse or parent, unless you are a refugee or asylee. For refugees and asylees, the waiver may be granted for humanitarian reasons to assure family unity or if it is otherwise in the public interest.

Accommodations for Individuals With Disabilities and/or Impairments

USCIS is committed to providing reasonable accommodations for individuals with disabilities and/or impairments.

Accommodations vary with the disability(ies) and/or impairment(s) and involve modifications to practices or procedures. For example, if you are:

1. Unable to use your hands, you may be permitted to take a test orally rather than in writing;
2. Hard of hearing, you may be provided with a sign-language interpreter for a USCIS-sponsored training session; or
3. Unable to travel to a designated USCIS location for an interview, you may be visited at your home or a hospital.

If you believe that you need us to accommodate your disability(ies) and/or impairment(s), check the "Yes" box and then check any applicable box that describe(s) the nature of your disability(ies) and/or impairment(s). Also, write the type(s) of accommodation(s) you are requesting on the line(s) provided. If you are requesting a sign-language interpreter, indicate which language. If you need more space, use a separate sheet of paper.

NOTE: All domestic USCIS facilities meet the Accessibility Guidelines of the Americans with Disabilities Act, so you do not need to contact us to request an accommodation for physical access to a domestic USCIS office.

USCIS considers requests for accommodations on a case-by-case basis. Asking for an accommodation will not affect your eligibility for the immigration benefit.

Penalties

If you knowingly and willfully falsify or conceal a material fact or submit a false document with your Form I-485, we will deny your Form I-485 and may deny any other immigration benefit.

In addition, you will face severe penalties provided by law and may be subject to criminal prosecution.

Privacy Act Notice

We ask for the information on this form, and associated evidence, to determine if you have established eligibility for the immigration benefit for which you are filing. Our legal

right to ask for this information can be found in the Immigration and Nationality Act, as amended. We may provide this information to other government agencies. Failure to provide this information, and any requested evidence, may delay a final decision or result in denial of your Form I-485.

USCIS Compliance Review and Monitoring

By signing this form, you have stated under penalty of perjury (28 U.S.C. 1746) that all information and documentation submitted with this form is true and correct. You also have authorized the release of any information from your records that USCIS may need to determine eligibility for the benefit you are seeking and consented to USCIS verification of such information.

The Department of Homeland Security has the right to verify any information you submit to establish eligibility for the immigration benefit you are seeking at any time. Our legal right to verify this information is in 8 U.S.C. 1103, 1155, 1184, and 8 CFR parts 103, 204, 205, and 214. To ensure compliance with applicable laws and authorities, USCIS may verify information before or after your case has been decided. Agency verification methods may include, but are not limited to: review of public records and information; contact via written correspondence, the Internet, facsimile, or other electronic transmission, or telephone; unannounced physical site inspections of residences and places of employment; and interviews. Information obtained through verification will be used to assess your compliance with the laws and to determine your eligibility for the benefit sought.

Subject to the restrictions under 8 CFR part 103.2(b)(16), you will be provided an opportunity to address any adverse or derogatory information that may result from a USCIS compliance review, verification, or site visit after a formal decision is made on your case or after the agency has initiated an adverse action which may result in revocation or termination of an approval.

Paperwork Reduction Act

An agency may not conduct or sponsor an information collection and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated at 5 hours and 15 minutes per response, including the time for reviewing instructions, and completing and submitting the form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, N.W., Washington, DC 20529-2020. OMB No. 1615-0023. **Do not mail your application to this address.**

OMB No. 1615-0040; Expires 09/30/11

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-765, Application For Employment Authorization

Do not write in this block.

Remarks	Action Block	Fee Stamp
A#		
Applicant is filing under §274a.12 _____		

☐ Application Approved. Employment Authorized / Extended *(Circle One)* until _____ (Date).
_____ (Date).
Subject to the following conditions: _____
Application Denied.
☐ Failed to establish eligibility under 8 CFR 274a.12 (a) or (c).
☐ Failed to establish economic necessity as required in 8 CFR 274a.12(c)(14), (18) and 8 CFR 214.2(f)

I am applying for:
☐ Permission to accept employment.
☐ Replacement *(of lost employment authorization document).*
☐ Renewal of my permission to accept employment *(attach previous employment authorization document).*

1. Name (Family Name in CAPS) (First) (Middle)

2. Other Names Used (include Maiden Name)

3. Address in the United States (Number and Street) (Apt. Number)

(Town or City) (State/Country) (ZIP Code)

4. Country of Citizenship/Nationality

5. Place of Birth (Town or City) (State/Province) (Country)

6. Date of Birth (mm/dd/yyyy)

7. Gender ☐ Male ☐ Female

8. Marital Status ☐ Married ☐ Single ☐ Widowed ☐ Divorced

9. Social Security Number (include all numbers you have ever used) (if any)

10. Alien Registration Number (A-Number) or I-94 Number (if any)

11. Have you ever before applied for employment authorization from USCIS?
☐ Yes (If "Yes," complete below) ☐ No

Which USCIS Office? Date(s)

Results (Granted or Denied - attach all documentation)

12. Date of Last Entry into the U.S. (mm/dd/yyyy)

13. Place of Last Entry into the U.S.

14. Manner of Last Entry (Visitor, Student, etc.)

15. Current Immigration Status (Visitor, Student, etc.)

16. Go to **Part 2** of the Instructions, Eligibility Categories. In the space below, place the letter and number of the category you selected from the instructions (For example, (a)(8), (c)(17)(iii), etc.).

Eligibility under 8 CFR 274a.12 ( ) ( ) ( )

17. If you entered the Eligibility Category, (c)(3)(C), in item 16 above, list your degree, your employer's name as listed in E-Verfy, and your employer's E-Verify Company Identification Number or a valid E-Verify Client Company Identification Number in the space below.

Degree: _____
Employer's Name as listed in E-Verify: _____
Employer's E-Verify Company Identification Number or a valid E-Verify Client Company Identification Number _____

Certification

Your Certification: I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Furthermore, I authorize the release of any information that U.S. Citizenship and Immigration Services needs to determine eligibility for the benefit I am seeking. I have read the Instructions in **Part 2** and have identified the appropriate eligibility category in **Block 16.**

Signature Telephone Number Date

Signature of Person Preparing Form, If Other Than Above: I declare that this document was prepared by me at the request of the applicant and is based on all information of which I have any knowledge.

Print Name Address *Signature* Date

Remarks	Initial Receipt	Resubmitted	Relocated		Completed		
			Rec'd	Sent	Approved	Denied	Returned

OMB No. 1615-0040; Expires 09/30/11

Department of Homeland Security
U.S. Citizenship and Immigration Services

Instructions for I-765, Application for Employment Authorization

Instructions

Read these instructions carefully to properly complete this form. If you need more space to complete an answer, use a separate sheet of paper. Write your name and Alien Registration Number (A-Number), if any, at the top of each sheet of paper and indicate the part and number of the item to which the answer refers.

The filing addresses provided on this form reflect the most current information as of the date this form was last printed. If you are filing Form I-765 more than 30 days after the latest edition date shown in the lower right-hand corner, visit our Web site at www.uscis.gov **before you file**, and check the "FORMS" page to confirm the correct filing address and version currently in use. Check the edition date located in the lower right-hand corner of the form. If the edition date on your Form I-765 matches the edition date listed for Form I-765 on the online Forms page, your version is current and will be accepted by USCIS. If the edition date on the online version is later, download a copy and use the online version. If you do not have Internet access, call the National Customer Service Center at 1-800-375-5283 to verify the current filing address and edition date. **Improperly filed forms will be rejected and the fee returned, with instructions to resubmit the entire filing using the current form instructions.**

Index

What Is the Purpose of This Form?

Certain aliens who are temporarily in the United States may file Form I-765, Application for Employment Authorization, to request an Employment Authorization Document (EAD). Other aliens who are authorized to work in the United States without restrictions must also use this form to apply to USCIS for a document that shows such authorization. Review **Eligibility Categories** to determine whether you should use this form.

If you are a lawful permanent resident, a conditional resident, or a nonimmigrant authorized to be employed with a specific employer under 8 CFR 274a.12(b), do **not** use this form.

Definitions

Employment Authorization Document (EAD): Form I-688, Form I-688A, Form I-688B, Form I-766, or any successor document issued by USCIS as evidence that the holder is authorized to work in the United States.

Renewal EAD: An EAD issued to an eligible applicant upon the expiration of a previous EAD issued under the same category.

Replacement EAD: An EAD issued to an eligible applicant when the previously issued EAD has been lost, stolen, mutilated, or contains erroneous information, such as a misspelled name.

Interim EAD: An EAD issued to an eligible applicant when USCIS has failed to adjudicate an application within 90 days of of a properly filed EAD application, or within 30 days of a properly filed initial EAD application based on an asylum application filed on or after January 4, 1995. The interim EAD will be granted for a period not to exceed 240 days and is subject to the conditions noted on the document.

Who May File This Form I-765?

USCIS adjudicates a request for employment authorization by determining whether an applicant has submitted the required information and documentation, and whether the applicant is eligible. In order to determine your eligibility, you must identify the category in which you are eligible and fill in that category in **Question 16** on Form I-765. Enter only **one** of the following category numbers on the application form. For example, if you are a refugee applying for an EAD, write **"(a)(3)"** at **Question 16.**

For easier reference, the categories are subdivided as follows:

1. Asylee/Refugee Categories

A. Refugee--(a)(3). File Form I-765 with either a copy of your Form I-590, Registration for Classification as Refugee, approval letter, or a copy of a Form I-730, Refugee/Asylee Relative Petition, approval notice.

B. Paroled as a Refugee--(a)(4). File Form I-765 with a copy of your Form I-94, Arrival-Departure Record.

C. Asylee (Granted Asylum)--(a)(5). File Form I-765 with a copy of the USCIS letter, or judge's decision, granting you asylum. It is not necessary to apply for an EAD as an asylee until 90 days before the expiration of your current EAD.

D. Asylum Applicant (With a Pending Asylum Application) Who Filed for Asylum on or After January 4, 1995--(c)(8). For specific instructions for applicants with pending asylum claims, see Page 6.

2. Nationality Categories

A. Citizen of Micronesia, the Marshall Islands, or Palau--(a)(8). File Form I-765 if you were admitted to the United States as a citizen of the Federated States of Micronesia (CFA/FSM), the Marshall Islands (CFA/MIS), or Palau under agreements between the United States and the former trust territories.

B. Deferred Enforced Departure (DED) / Extended Voluntary Departure--(a)(11). File Form I-765 with evidence of your identity and nationality.

C. Temporary Protected Status (TPS)--(a)(12). You **must** file a Form I-765 with Form I-821, **Application for Temporary Protected Status,** for each applicant, regardless of age, even if you are not requesting employment authorization. (Only those applicants requesting employment authorization must pay the fee for Form I-765.) If you are filing for an initial EAD based on your TPS status, include evidence of identity and nationality as required by the Form I-821 instructions. Read the Form I-821 instructions for additional guidance and filing location.

If you have been granted TPS by an immigration judge (IJ) or the Board of Immigration Appeals (BIA) and are requesting your first EAD, you must submit evidence of your IJ or BIA grant of TPS with your application for an EAD along with a copy of your I-821 application that the IJ or BIA approved. You must also follow the instructions for filing your application as described in the most recent TPS *Federal Register* notice regarding a TPS designation or extension for your country. As further instructed in those notices, once you receive your I-797 application receipt notice, you must also send an e-mail to tpsijgrant.vsc@dhs.gov with the following information: Your name; your A number; your date of birth; the receipt number for your application; and the date you were granted TPS.

D. Temporary Treatment Benefits--(c)(19). For an EAD based on 8 CFR 244.5, include evidence of nationality and identity as required by the Form I-821 instructions.

1. Extension of TPS status: Include a copy (front and back) of your last available TPS document: EAD, Form I-94, or approval notice.
2. Registration for TPS only without employment authorization: File Form I-765, Form I-821, and a letter indicating that this form is for registration purposes only. No fee is required for Form I-765 filed as part of TPS registration. (Form I-821 has separate fee requirements.)

E. NACARA Section 203 Applicants Who Are Eligible to Apply for NACARA Relief With USCIS--(c)(10). See the instructions to Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal, to determine if you are eligible to apply to USCIS for NACARA 203 relief.

If you are eligible, you may file a Form I-765 with the Form I-881. See Instructions to Form I-881 for filing location. If you file the Form I-765 separately from the Form I-881 see "Where to File?" instructions. Your response to Question 16 on the Form I-765 must be "(c)(10)."

You may be eligible for a fee waiver under 8 CFR 103.7(c), or 8 CFR 244.20 if you are filing for an EAD related to your application or grant of TPS.

F. Dependent of TECRO E-1 Nonimmigrant--(c)(2). File Form I-765 with the required certification from the American Institute in Taiwan if you are the spouse or unmarried dependent son or daughter of an E-1 employee of the Taipei Economic and Cultural Representative Office.

3. Foreign Students

A. F-1 Student Seeking Optional Practical Training in an Occupation Directly Related to Studies: (c)(3)(A) - Pre-completion Optional Practical Training; (c)(3)(B) - Post-completion Optional Practical Training; (c)(3)(C) - 17-month extension for STEM Students (Students With a degree in Science, Technology, Engineering, or Mathematics). File Form I-765 with a Certificate of Eligibility of Nonimmigrant (F-1) Student Status (Form I-20 A-B/I-20 ID) endorsed by a Designated School Official within the past 30 days. If you are a STEM student requesting a 17-month extension under the eligibility code (c)(3)(C), you must also submit a copy of your degree and the employer name as listed in E-Verify, along with the E-Verify Company Identification Number, or a valid E-Verify Client Company Identification Number for the employer with whom you are seeking the 17-month OPT extension. This information must be provided in Item 17 of the form.

B. F-1 Student Offered Off-Campus Employment Under the Sponsorship of a Qualifying International Organization--(c)(3)(ii). File Form I-765 with the international organization's letter of certification that the proposed employment is within the scope of its sponsorship, and a Certificate of Eligibility of Nonimmigrant (F-1) Student Status -- For Academic and Language Students (Form I-20 A-B/ -20 ID) endorsed by the Designated School Official within the past 30 days.

C. F-1 Student Seeking Off-Campus Employment Due to Severe Economic Hardship--(c)(3)(iii). File Form I-765 with Form I-20 A-B/I-20 ID, Certificate of Eligibility of Nonimmigrant (F-1) Student Status -- For Academic and Language Students, and any evidence you wish to submit, such as affidavits, that detail the unforeseen economic circumstances that cause your request, and evidence that you have tried to find off-campus employment with an employer who has filed a labor and wage attestation.

D. J-2 Spouse or Minor Child of an Exchange Visitor--(c)(5). File Form I-765 with a copy of your J-1 (principal alien's) Certificate of Eligibility for Exchange Visitor (J-1) Status (Form IAP-66). You must submit a written statement with any supporting evidence showing that your employment is not necessary to support the J-1 but is for other purposes.

E. M-1 Student Seeking Practical Training After Completing Studies--(c)(6). File Form I-765 with a completed Form I-539, Application to Change/ Extend Nonimmigrant Status, according to the filing instructions for Form I-539. You must also include Form I-20 M-N, Certificate of Eligibility for Nonimmigrant (M-1) Student Status -- For Vocational Students endorsed by the Designated School Official within the past 30 days, with your application.

4. Eligible Dependents of Employees of Diplomatic Missions, International Organizations, or NATO

A. Dependent of A-1 or A-2 Foreign Government Officials--(c)(1). Submit Form I-765 with Form I-566, Interagency Record of Request-A, G, or NATO Dependent Employment Authorization or Change/ Adjustment to/from A, G, or NATO Status, Dependent Employment Authorization, through your diplomatic mission to the Department of State (DOS). The DOS will forward all favorably endorsed applications directly to the Nebraska Service Center for adjudication.

B. Dependent of G-1, G-3 or G-4 Nonimmigrant--(c)(4). Submit Form I-765 with Form I-566, Interagency Record of Request-A, G, or NATO Dependent Employment Authorization or Change/ Adjustment to/from A, G, or NATO Status, Dependent Employment Authorization, through your international organization to the Department of State (DOS). (In New York City, the United Nations (UN) and UN missions should submit such applications to the United States Mission to the UN (USUN).) The DOS or USUN will forward all favorably endorsed applications directly to the Nebraska Service Center for adjudication.

C. Dependent of NATO-1 Through NATO-6--(c)(7). Submit Form I-765 with Form I-566, Interagency Record of Request-A, G, or NATO Dependent Employment Authorization or Change/Adjustment to/ from A, G, or NATO Status, Dependent Employment Authorization, to NATO SACLANT, 7857 Blandy Road, C-027, Suite 100, Norfolk, VA 23551-2490. NATO/SACLANT will forward all favorably endorsed applications directly to the Nebraska Service Center for adjudication.

5. Employment-Based Nonimmigrant Categories

A. B-1 Nonimmigrant Who Is the Personal or Domestic Servant of a Nonimmigrant Employer--(c)(17)(i). File Form I-765 with:

1. Evidence from your employer that he or she is a B, E, F, H, I, J, L, M, O, P, R, or TN nonimmigrant and you were employed for at least one year by the employer before the employer entered the United States, or your employer regularly employs personal and domestic servants and has done so for a period of years before coming to the United States; and

2. Evidence that you have either worked for this employer as a personal or domestic servant for at least one year, or evidence that you have at least one year's experience as a personal or domestic servant; and
3. Evidence establishing that you have a residence abroad that you have no intention of abandoning.

B. B-1 Nonimmigrant Domestic Servant of a U.S. Citizen--(c)(17)(ii). File Form I-765 with:

1. Evidence from your employer that he or she is a U.S. citizen; and
2. Evidence that your employer has a permanent home abroad or is stationed outside the United States and is temporarily visiting the United States or the citizen's current assignment in the United States will not be longer than four years; and
3. Evidence that he or she has employed you as a domestic servant abroad for at least six months prior to your admission to the United States.

C. B-1 Nonimmigrant Employed by a Foreign Airline--(c)(17)(iii). File Form I-765 with a letter from the airline fully describing your duties and stating that your position would entitle you to E nonimmigrant status except for the fact that you are not a national of the same country as the airline or because there is no treaty of commerce and navigation in effect between the United States and that country.

D. Spouse of an E-1/E-2 Treaty Trader or Investor--(a)(17). File Form I-765 with evidence of your lawful status and evidence you are a **spouse** of a principal E-1/E-2, such as your Form I-94. (Other relatives or dependents of E-1/E-2 aliens who are in E status are not eligible for employment authorization and may not file under this category.)

E. Spouse of an L-1 Intracompany Transferee--(a)(18). File Form I-765 with evidence of your lawful status and evidence you are a **spouse** of a principal L-1, such as your Form I-94. (Other relatives or dependents of L-1 aliens who are in L status are not eligible for employment authorization and may not file under this category.)

6. Family-Based Nonimmigrant Categories

A. K-1 Nonimmigrant Fiance(e) of U.S. Citizen or K-2 Dependent--(a)(6). File Form I-765 if you are filing within 90 days from the date of entry. This EAD cannot be renewed. Any EAD application other than for a replacement must be based on your pending application for adjustment under (c)(9).

B. K-3 Nonimmigrant Spouse of U.S. Citizen or K-4 Dependent--(a)(9). File Form I-765 along with evidence of your admission such as copies of your Form I-94, passport, and K visa.

C. Family Unity Program--(a)(13). If you are filing for initial or extension Family Unity benefits, complete and submit Form I-817, Application for Voluntary Departure Under the Family Unity Program according to the filing instructions on Form I-817. An EAD will be issued if your Form I-817 is approved; you do not need to submit Form I-765.

If your non-expired Family Unity EAD is lost or stolen, file Form I-765 with proper fee(s), along with a copy of your approval notice for Family Unity benefits, to request a replacement.

D. LIFE Family Unity--(a)(14). If you are applying for initial employment authorization under Family Unity provisions of section 1504 of the LIFE Act Amendments, or an extension of such authorization, you should not use this form. Obtain and complete Form I-817, Application for Family Unity Benefits. If you are applying for a replacement EAD that was issued under LIFE Act Amendments Family Unity provisions, file Form I-765 with the required evidence listed in the "Required Document" section of these instructions.

E. V-1, V-2, or V-3 Nonimmigrant--(a)(15). If you have been inspected and admitted to the United States with a valid V visa, file this application along with evidence of your admission, such as copies of your Form I-94, passport, and K visa. If you have been granted V status while in the United States, file this application along with evidence of your V status, such as an approval notice. If you are in the United States but you have not yet filed an application for V status, you may file this application at the same time as you file your application for V status. USCIS will adjudicate this application after adjudicating your application for V status.

7. EAD Applicants Who Have Filed for Adjustment of Status

A. Adjustment Applicant--(c)(9). File Form I-765 with a copy of the receipt notice or other evidence that your Form I-485, Application for Permanent Residence or Adjust Status, is pending. You may file Form I-765 together with your Form I-485.

B. Adjustment Applicant Based on Continuous Residence Since January 1, 1972--(c)(16). File Form I-765 with your Form I-485, Application for Permanent Residence; a copy of your receipt notice; or other evidence that the Form I-485 is pending.

C. **Renewal EAD for National Interest Waiver Physicians:** If you are filing for a renewal EAD based on your pending adjustment status and an approved National Interest Waiver Physician petition, you must also include evidence of your meaningful progress toward completing the national interest waiver obligation. Such evidence includes documentation of employment in any period during the previous 12 months (e.g., copies of W-2 forms). If you did not work as a national interest waiver physician during any period of the previous 12 months, you must explain and provide a statement of future intent to work in the national interest waiver employment.

8. Other Categories

A. **N-8 or N-9 Nonimmigrant--(a)(7).** File Form I-765 with the required evidence listed in the "Required Document" section of these instructions.

B. **Granted Withholding of Deportation or Removal (a)(10).** File Form I-765 with a copy of the Immigration Judge's order. It is not necessary to apply for a new EAD until 90 days before the expiration of your current EAD.

C. **Applicant for Suspension of Deportation--(c)(10).** File Form I-765 with evidence that your Form I-881, Application for Suspension of Deportation, or EOIR-40, is pending.

D. **Paroled in the Public Interest--(c)(11).** File Form I-765 if you were paroled into the United States for emergent reasons or reasons strictly in the public interest.

E. **Deferred Action--(c)(14).** File Form I-765 with a copy of the order, notice, or document placing you in deferred action and evidence establishing economic necessity for an EAD.

F. **Final Order of Deportation--(c)(18).** File Form I-765 with a copy of the order of supervision and a request for employment authorization that may be based on but not limited to the following:

1. Existence of a dependent spouse and/or children in the United States who rely on you for support;
2. Existence of economic necessity to be employed; and
3. Anticipated length of time before you can be removed from the United States.

G. **LIFE Legalization Applicant--(c)(24).** We encourage you to file File Form I-765 together with your Form I-485, Application to Register Permanent Residence or Adjust Status, to facilitate processing. However, you may file Form I-765 at a later date with evidence that you were a CSS, LULAC, or Zambrano class member applicant before October 1, 2000, and with a copy of the receipt notice or other evidence that your Form I-485 is pending.

H. **T-1 Nonimmigrant--(a)(16).** If you are applying for initial employment authorization as a T-1 nonimmigrant, file Form I-765 only if you did not request an employment authorization document when you applied for T nonimmigrant status. If you have been granted T nonimmigrant status and this is a request for a renewal or replacement of an employment authorization document, file Form I-765 along with evidence of your T nonimmigrant status, such as an approval notice.

I. **T-2, T-3, or T-4 Nonimmigrant--(c)(25).** File Form I-765 with a copy of your T-1 (principal alien's) approval notice and proof of your relationship to the T-1 principal.

J. **U-1 Nonimmigrant--(a)(19).** If you are applying for initial employment authorization as a U-1 nonimmigrant, file Form I-765 only if you did not request an employment authorization document when you applied for U nonimmigrant status. If you have been granted U nonimmigrant status and this is a request for a renewal or replacement of an employment authorization document, file Form I-765 along with evidence of your U nonimmigrant status, such as an approval notice.

K. **U-2, U-3, U-4, or U-5--(a)(20).** If you obtained U nonimmigrant status while in the United States, you must submit a copy of the approval notice for your U nonimmigrant status. If you were admitted to the United States as a U nonimmigrant, you must submit a copy of your passport with your U nonimmigrant visa.

Required Documentation

All applications must be filed with the documents required below in addition to the particular evidence required for the category listed in "Who May File This Form I-765?" with fee, if required.

If you are required to show economic necessity for your category, submit a list of your assets, income, and expenses.

Assemble the documents in the following order:

1. Your application with the filing fee. See **"What Is the Filing Fee?"** for details.

2. If you are mailing your application to USCIS, you must also submit:

   A. A copy of Form I-94, Arrival-Departure Record (front and back), if available. If you are filing Form I-765 under the(c) (9) category, Form I-94 is not required.

   B. A copy of your last EAD (front and back). If no prior EAD has been issued, you must submit a copy of a Federal Government-issued identity document, such as a passport showing your picture, name, and date of birth; a birth certificate with photo ID; a visa issued by a foreign consulate; or a national ID document with photo and/or fingerprint. The identity document photocopy must clearly show the facial features of the applicant and the biographical information.

   C. You **must** submit two identical color photographs of yourself taken within 30 days of filing your application. The photos must have a white to off-white background, be printed on thin paper with a glossy finish, and be unmounted and unretouched.

   The passport-style photos must be 2" by 2". The photos must be in color with full face, frontal view on a white to off-white background. Head height should measure 1" to 1 3/8" from top to bottom of chin, and eye height is between 1 1/8" to 1 3/8" from bottom of photo. Your head must be bare unless you are wearing a headdress as required by a religious order of which you are a member. Using pencil or felt pen, lightly print your name and Alien Receipt Number on the back of the photo.

Special Filing Instructions for Those With Pending Asylum Applications ((c)(8))

Asylum Applicant (with a pending asylum application) who filed for asylum on or after January 4, 1995. You must wait at least 150 days following the filling of your asylum claim before you are eligible to apply for an EAD.

Any delay in processing the asylum application that is caused by you, including unexcused failure to appear for fingerprinting and other biometric capture, will not be counted as part of that 150 days. If you fail to appear for your asylum interview or for a hearing before an immigration judge, you will be ineligible for an EAD. If you have received a recommended approval for a grant of asylum, you do not need to wait the 150 days and may apply for an EAD immediately upon receipt of your recommended approval. If you file Form I-765 early, it will be denied. File Form I-765 with:

1. A copy of the USCIS acknowledgement mailer which was mailed to you; or
2. Other evidence that your Form I-589 was filed with USCIS; or
3. Evidence that your Form I-589 was filed with an Immigration Judge at the Executive Office for Immigration Review (EOIR); or
4. Evidence that your asylum application remains under administrative or judicial review.

Asylum applicant (with a pending asylum application) who filed for asylum and for withholding of deportation prior to January 4, 1995, and is *NOT* in exclusion or deportation proceedings.

You may file Form I-765 at any time; however, it will only be granted if USCIS finds that your asylum application is not frivolous. File Form I-765 with:

1. A complete copy of your previously filed Form I-589;
2. A copy of your USCIS receipt notice; or
3. A copy of the USCIS acknowledgement mailer; or
4. Evidence that your Form I-589 was filed with EOIR; or
5. Evidence that your asylum application remains under administrative or judicial review; or
6. A copy of the USCIS acknowledgement mailer.

Asylum applicant (with a pending asylum application) who filed an initial request for asylum prior to January 4, 1995, and is IN exclusion or deportation proceedings. If you filed your Request for Asylum and Withholding of Deportation (Form I-589) prior to January 4, 1995, and you are IN exclusion or deportation proceedings, file your EAD application with:

1. A date-stamped copy of your previously filed Form I-589; or

2. A copy of Form I-221, Order to Show Cause and Notice of Hearing, or Form I-122, Notice to Applicant for Admission Detained for Hearing Before Immigration Judge; or
3. A copy of EOIR-26, Notice of Appeal, date stamped by the Office of the Immigration Judge; or
4. A date-stamped copy of a petition for judicial review or for *habeas corpus* issued to the asylum applicant; or
5. Other evidence that you filed an asylum application with EOIR.

Asylum application under the ABC Settlement Agreement--(c)(8). If you are a Salvadoran or Guatemalan national eligible for benefits under the ABC settlement agreement, American Baptist Churches v. Thornburgh , 760 F. Supp. 976 (N.D. Cal. 1991), follow the instructions contained in this section when filing your Form I-765.

You must have an asylum application (Form I-589) on file either with USCIS or with an Immigration Judge in order to receive work authorization. Therefore, submit evidence that you have previously filed an asylum application when you submit Form I-765. You are not required to submit this evidence when you apply, but it will help USCIS process your request efficiently.

If you are renewing or replacing your EAD, you must pay the filing fee.

Mark your application as follows:

1. Write "ABC" in the top right corner of your EAD application. You must identify yourself as an ABC class member if you are applying for an EAD under the ABC settlement agreement.
2. Write "(c)(8)" in **Section 16** of the application.

You are entitled to an EAD without regard to the merits of your asylum claim. Your application for an EAD will be decided within 60 days if: (1) you pay the filing fee, (2) you have a complete pending asylum application on file, and (3) write "ABC" in the top right corner of your EAD application. If you do not pay the filing fee for an initial EAD request, your request may be denied if USCIS finds that your asylum application is frivolous. However, if you cannot pay the filing fee for an EAD, you may qualify for a fee waiver under 8 CFR 103.7(c).

What Is the Filing Fee?

The filing fee for Form I-765 is $340.

Exceptions:

Initial EAD: If this is your initial application and you are applying under one of the following categories, a filing fee is **not** required:

1. (a)(3) Refugee;
2. (a)(4) Paroled as Refugee;
3. (a)(5) Asylee;
4. (a)(7) N-8 or N-9 nonimmigrant;
5. (a)(8) Citizen of Micronesia, Marshall Islands, or Palau;
6. (a)(10) Granted Withholding of Deportation;
7. (a)(11) Deferred Enforced Departure;
8. (a)(16) Victim of Severe Form of Trafficking (T-1);
9. (a)(19) U-1 Nonimmigrant;
10. (c)(1), (c)(4), or (c)(7) Dependent of certain foreign government, international organization, or NATO personnel; or
11. (c)(8) Applicant for asylum. (An applicant filing under the special ABC procedures must pay the fee.)

Renewal EAD: If this is a renewal application and you are applying under one of the following categories, a filing fee is **not** required:

1. (a)(8) Citizen of Micronesia, Marshall Islands, or Palau;
2. (a)(10) Granted Withholding of Deportation;
3. (a)(11) Deferred Enforced Departure; or
4. (c)(l), (c)(4), or (c)(7) Dependent of certain foreign government, international organization, or NATO personnel;
5. (c)(9) or (c)(16) Adjustment applicant who filed for adjustment under the fee structure implemented July 30, 2007.

Replacement EAD: If this is your replacement application, and you are applying under one of the following categories, a filing fee is **not** required:

1. (c)(l), (c)(4), or (c)(7) Dependent of certain foreign government, international organization, or NATO personnel.

NOTE: If you are requesting a replacement EAD under the (c)(9) or (c)(16) (adjustment applicant filed under the fee structure implemented July 30, 2007), then the full filing fee will be required; however, no biometrics fee is required.

Incorrect Card: No fee is required if you are filing only because the card issued to you was incorrect due to a USCIS administrative error. However, if the error was not caused by USCIS, both application and biometrics fees are required.

You may be eligible for a fee waiver under 8 CFR 103.7(c).

USCIS will use the Poverty Guidelines published annually by the U.S. Department of Health and Human Services as the basic criteria in determining the applicant's eligibility when economic necessity is identified as a factor.

The Poverty Guidelines will be used as a guide, but not as a conclusive standard, in adjudicating fee waiver requests for employment authorization applications requiring a fee.

Use the following guidelines when you prepare your check or money order for the Form I-765 fee:

1. The check or money order must be drawn on a bank or other financial institution located in the United States and must be payable in U.S. currency; and
2. Make the check or money order payable to **U.S. Department of Homeland Security**, unless:
   - **A.** If you live in Guam, make it payable to **Treasurer, Guam**.
   - **B.** If you live in the U.S. Virgin Islands, make it payable to **Commissioner of Finance of the Virgin Islands**.

NOTE: If you filed Form I-485, Application to Register Permanent Residence or Adjust Status, as of July 30, 2007, no fee is required to also file a request for employment authorization on Form I-765. You may file the I-765 concurrently with your I-485, or you may submit the I-765 at a later date. If you file Form I-765 separately, you must also submit a copy of your Form I-797C, Notice of Action, receipt as evidence of the filing of Form I-485 as of July 30, 2007.

NOTE: Spell out U.S. Department of Homeland Security; do not use the initials "USDHS" or "DHS."

Notice to Those Making Payment by Check. If you send us a check, it will be converted into an electronic funds transfer (EFT). This means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually take 24 hours and will be shown on your regular account statement.

You will not receive your original check back. We will destroy your original check, but we will keep a copy of it. If the EFT cannot be processed for technical reasons, you authorize us to process the copy in place of your original check. If the EFT cannot be completed because of insufficient funds, we may try to make the transfer up to two times.

How to Check If the Fees Are Correct

The form fee on this form is current as of the edition date appearing in the lower right corner of this page. However, because USCIS fees change periodically, you can verify if the fees are correct by following one of the steps below:

1. Visit our Web site at **www.uscis.gov**, select "Check Filing Fee," and check the appropriate fee;
2. Review the Fee Schedule included in your form package, if you called us to request the form; or
3. Telephone our National Customer Service Center at **1-800-375-5283** and ask for the fee information.

Where to File?

E-Filing Form I-765: Certain Form I-765 filings may be electronically filed (e-filed) with USCIS. View our Web site at **www.uscis.gov** for a list of who is eligible to e-file this form and instructions.

Paper Filing of Form I-765:

Please note that the filing locations for the paper version of this form are subject to change. Read the instructions carefully to determine where you must send your paper application.

If your response to Question 16 is (a)(11), Deferred Enforced Departure (DED), mail your application according to the most recent Federal Register notice for your particular country's DED order. Please also check the most recent Federal Register notice regarding DED for your country for additional EAD filing instructions that may apply in your case.

File at the USCIS Vermont Service Center if your response to Question 16 is:

(a)(16), T-1 nonimmigrant victim of trafficking, or

(a)(19) U-1 nonimmigrant, or

(a)(20), U-2, U-3, U-4, or U-5 nonimmigrant immediate family member of a U-1 victim of criminal activity, or

(c)(14), an alien who has been granted deferred action as a surviving spouse or qualified child, or based on an approved Form I-360 filed for a battered or abused spouse or child, or

(c)(25), T-2, T-3, T-4, or T-5 nonimmigrant, immediate family member of a T-1 victim of severe form of trafficking in persons.

USCIS Vermont Service Center

USCIS
Vermont Service Center
Attn: I-765
75 Lower Welden St.
St. Albans, VT 05479-0001

If your response to **Question 16** is:

(a)(12) or (c)(19) and you have already filed Form I-821, Application for Temporary Protected Status (TPS), you **must** include a copy of Form I-797C Notice of Action,

showing that your initial Form I-821 was accepted or approved. File your Form I-765 according to the instructions in the Federal Register Notice for your particular country's TPS designation.

(a)(12) or (c)(19) and you are initially filing or reregistering for TPS you **must** file Form I-765 with Form I-821 according to the instructions in the Federal Register Notice for your particular country's TPS designation. This includes an application for a lost, stolen, or mutilated EAD.

File at the USCIS Chicago Lockbox facility if your response to **Question 16 is**:

(a)(10), an alien granted withholding of deportation or removal; or

(c)(9) AND you filed your Form I-485 with the USCIS Chicago Lockbox facility, and your Receipt Number begins with "**MSC.**" You must include a copy of the I-797C, Notice of Action, which shows your Form I-485 was accepted; or

(c)(10) AND you are **not** eligible to apply for NACARA 203 relief with USCIS, but you are eligible for other deportation or removal relief; or

(c)(11), an alien paroled into the United States temporarily for emergency reasons, or reasons deemed strictly in the public interest; or

(c)(14), an alien who has been granted deferred action, with the exception of those categories filed at the USCIS Vermont Service Center; or

(c)(16), an alien who has filed an application for creation of record of lawful admission for permanent residence; or
(c)(18), an alien against whom a final order of deportation or removal exists and who is released on an order of supervision.

Mail to the address below:

USCIS Chicago Lockbox

For U.S. Postal Service:

USCIS
P.O. Box 805887
Chicago, IL 60680-4120

For Express mail and courier deliveries:

USCIS
Attn: FBAS
131 South Dearborn-3rd Floor
Chicago, IL 60603-5517

If your response to **Question 16** is:

(a)(14), an alien granted family unity benefits under Section 1504 of the LIFE Act, or

(a)(15), any alien in V nonimmigrant status, or

(c) (22), if you have a pending I-687 (Legalization application) or if you filed a completed Legalization application pursuant to Section 245A of the Act (and Section 245(a) 8 Code of Federal Regulations), or

(c)(24), an alien who has filed for adjustment of status under Section 1104 of the LIFE Act.

Mail to the address below:

USCIS Chicago Lockbox

For U.S. Postal Service:

USCIS
P.O. Box 7219
Chicago, IL 60680-7219

For Express Mail and courier service:

USCIS
Attn: VKL
131 South Dearborn- 3rd Floor
Chicago, IL 60603-7219

If your response to **Question 16** is:

(c)(1), alien spouse or unmarried dependent child, son, or daughter of a foreign government official,

(c)(4), eligible dependent of a G-1, G-3, or G-4 non-immigrant, or

(c)(7), dependent of a NATO 1 through NATO 7, **submit your application through your principal's sponsoring organization** and your application will be reviewed and forwarded by DOS, USUN, or NATO/SACLANT to the Nebraska Service Center following certification of your eligibility for an employment authorization document.

File at the USCIS Phoenix or Dallas Lockbox facilities based on where you live, for all other Form I-765s.

If you are filing Form I-765 **concurrently** with Form I-485, mail your applications to the address you will use to file the Form I-485.

If you have a **pending** Form I-485, and you are filing Form I-765, you **must** include a copy of the I-797C Notice of Action showing that your application was accepted.

USCIS Phoenix or Dallas Lockbox

If you live in :	File your application at:
Alaska, Arizona, California, Colorado, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, Wisconsin, Wyoming, or Commonwealth of the Northern Mariana Islands	**USCIS Phoenix Lockbox** For U.S. Postal Service (USPS) deliveries: USCIS PO Box 21281 Phoenix, AZ 85036 For Express mail and courier service deliveries: USCIS Attn: AOS 1820 E. Skyharbor Circle S Suite 100 Phoenix, AZ 85034
Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Oklahoma, Tennessee, Texas, Vermont, Virginia, U.S. Virgin Islands, or West Virginia	**USCIS Dallas Lockbox** For U.S. Postal Service (USPS) Deliveries: USCIS PO Box 660867 Dallas, TX 75266 For Express mail and courier service deliveries: USCIS Attn: AOS 2501 S. State Hwy. 121, Business Suite 400 Lewisville, TX 75067

E-Notification

If you are filing your Form I-765 at one of the USCIS Lockbox facilities, you may elect to receive an email and/ or text message notifying you that your application has been accepted. You must complete Form G-1145, E-Notification of Application/Petition Acceptance, and clip it to the first page of your application. To download a copy of Form G-1145, including the instructions, click on the link www.uscis.gov "FORMS."

If your response to **Question 16** is **(c)(8)** under the special ABC filing instructions, and you are filing your Form I-589, Application for Asylum, and this application together, mail your applications to the filing location identified in the Form I-589 instructions.

Otherwise, all other **(c)(8)** related applications will be filed at the USCIS Phoenix or Dallas Lockbox facility based on where you live. See filing chart.

Questions Regarding Form I-765

For additional information about Form I-765, including how to file your application or filing locations not mentioned, call the USCIS National Customer Service Center at 1-800-375-5283 or visit our Web site at www.uscis.gov

Processing Information

Any Form I-765 that is not signed or accompanied by the correct fee will be rejected with a notice that Form I-765 is deficient. You may correct the deficiency and resubmit Form I-765. An application or petition is not considered properly filed until accepted by USCIS.

Initial processing

Once Form I-765 has been accepted, it will be checked for completeness, including submission of the required initial evidence. If you do not completely fill out the form, or file it without required initial evidence, you will not establish a basis for eligibility, and we may deny your Form I-765.

Requests for more information or interview

We may request more information or evidence, or we may request that you appear at a USCIS office for an interview. We may also request that you submit the originals of any copy. We will return these originals when they are no longer required.

Interim EAD

If you have not received a decision within 90 days of receipt by USCIS of a properly filed EAD application or within 30 days of a properly filed initial EAD application based on an asylum application filed on or after January 4, 1995, you may obtain interim work authorization by appearing in person at your local USCIS District Office. You must bring proof of identity and any notices that you have received from USCIS in connection with your application for employment authorization.

Approval

If approved, your EAD will either be mailed to you or you may be required to visit your local USCIS office to pick it up.

Denial

If your application cannot be granted, you will receive a written notice explaining the basis of your denial.

Penalties

If you knowingly and willfully falsify or conceal a material fact or submit a false document with your Form I-765, we will deny your Form I-765 and may deny any other immigration benefit.

In addition, you will face severe penalties provided by law and may be subject to criminal prosecution.

USCIS Forms and Information

To order USCIS forms, call our toll-free number at **1-800-870-3676.** You can also get USCIS forms and information on immigration laws, regulations, and procedures by telephoning our National Customer Service Center at **1-800-375-5283** or visiting our Internet Web site at **www.uscis.gov.**

As an alternative to waiting in line for assistance at your local USCIS office, you can now schedule an appointment through our Internet-based system, **InfoPass.** To access the system, visit our Web site. Use the **InfoPass** appointment scheduler and follow the screen prompts to set up your appointment. **InfoPass** generates an electronic appointment notice that appears on the screen.

Privacy Act Notice

We ask for the information on this form, and associated evidence, to determine if you have established eligibility for the immigration benefit for which you are filing. Our legal right to ask for this information can be found in the Immigration and Nationality Act, as amended. We may provide this information to other government agencies. Failure to provide this information, and any requested evidence, may delay a final decision or result in denial of your Form.

Paperwork Reduction Act

An agency may not conduct or sponsor an information collection and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated at 3 hours and 25 minutes per response, including the time for reviewing instructions and completing and submitting the form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Products Division, 111 Massachusetts Avenue, N.W., 3rd Floor, Suite 3008, Washington, DC 20529-2210. OMB No. 1615-0040. **Do not mail your application to this address.**

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal

(To be filed in duplicate)

Fee Stamp

Date (mm/dd/yyyy) _____

I request permission to reapply for admission into the United States.

1. Name *(Last)* *(First)* *(Middle)*	**2.** File numbers on correspondence from U.S. Citizenship and Immigration Services (USCIS) or former Immigration and Naturalization Service (INS) *(if known)*
3. Name used when last deported or removed from the U.S.	**4.** Date of Birth (mm/dd/yyyy)
5. Other names used or known by	**6a.** Place of Birth *(city or town; state or province; and country)*
7. Circumstances under which deported or removed from the United States *(Check applicable blocks)* ☐ Excluded and deported or removed. *(less than one year ago)* ☐ Arrested and deported or removed. *(less than five years ago)* ☐ Removed after having fallen into distress. *(less than five years ago)* ☐ Removed as alien enemy. *(less than five years ago)* ☐ Removed at U.S. Government expense in lieu of deportation. *(less than five years ago)*	**6b.** Country of Citizenship/Nationality **8.** Length of residence in the United States *(years)* **9.** Place of residence at time of deportation or removal from United States *(city and state)* **10.** Place deportation hearing held or application for removal made *(city)*
11. Country to which deported or removed	**12.** Detention facility or jail where detained *(city and state) (If not detained, write "None")*
13. Date of deportation or removal from United States (mm/dd/yyyy)	**14.** Port of departure from United States
15. Status desired if permitted to re-enter United States ☐ Permanent Resident ☐ Visitor ☐ Student ☐ Other *(specify)*	**16.** Reasons for desiring to re-enter the United States
17. Location of American Embassy/Consulate where application for visa will be made *(city and country)*	**18.** Name and relationship of U.S. citizen or lawful permanent resident alien spouse, parent or children, if any
19. Signature of Applicant	**20.** Street and number; city or town; state or province; and country of present residence

Signature of person preparing form, if other than applicant.

21. I declare that this document was prepared by me at the request of the applicant and is based on all information of which I have any knowledge.

(Signature)	*(Address)*	*(Date)*

This space for use by DHS officer

File A -	Date of Action
Decision	DD or OIC Office

Complete and Submit Both Forms.

RECEIVED	TRANS. IN	RET'D-TRANS.-OUT	COMPLETED

OMB No. 1615-0018; Exp. 06/30/2010

Department of Homeland Security
U.S. Citizenship and Immigration Services

Instructions for I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal

Instructions

Submit application in duplicate.

Persons Permitted to Reapply for Admission Without Filing This Application.

1. Persons who were excluded from admission and removed or deported ***more than one year ago.***
2. Persons who voluntarily departed from the United States without expense to the U.S. Government and without an order of removal or deportation having been entered.
3. Persons who have been outside the United States for five successive years following their last removal or deportation.

Where to Submit Your Application?

1. If you are abroad and intend to apply for an immigrant visa, submit the application to the District Director or Field Office Director of U.S. Immigration and Citizenship Services (USCIS) of the district where your removal or deportation proceedings were held, unless you are concurrently applying for a waiver of inadmissibility under section 212 (g), (h) or (i) of the Immigration and Nationality Act (INA), as amended.
2. In the latter event, this application should be filed with the American Consul with whom you are filing your application for a waiver of the grounds of inadmissibility. If you are abroad and intend to apply to an American Consul for a nonimmigrant visa or a border crossing card, this application should be filed with the American Consul with whom you are also filing your application for a nonimmigrant visa or border crossing card, if requested to do so by the Consul.
3. If you are at a port of entry applying for admission into the United States, submit the application to the Department of Homeland Security (DHS) field office having jurisdiction over that port.

If you are in the United States and will file an application for waiver under section 212 (g), (h) or(i) of the INA with an American Consul, you should file this application and the application for the waiver simultaneously with the American Consul.

If you are in the United States and are applying for adjustment of your status under section 245 of the INA, or are seeking to be granted advance permission to reapply prior to your departure from the United States, submit the application to the USCIS District Director having jurisdiction over the place where you are residing.

What Must Accompany Your Application?

1. Attach all correspondence that you have in your possession relating to your deportation or removal.
2. If you have listed any relative under **Item 18** on the form, you must submit documentary evidence of your relationship to that person. In addition, if such person is a U.S. citizen, you must submit proof of his or her citizenship. If he or she is not a U S. citizen, you must furnish such person's full name, date and place of birth and place of admission to the United States, and his or her Alien Registration Number (A#), if known.

What Is the Filing Fee?

The filing fee for a Form I-212 is **$545.00.**

The fee cannot be refunded, regardless of the action taken on the application. **Do not mail cash**. All fees must be submitted in the exact amount.

Use the following guidelines when you prepare your check or money order for the Form I-212 fee:

1. The check or money order must be drawn on a bank or other financial institution located in the United States and must be payable in U.S. currency; and
2. Make the check or money order payable to **U.S. Department of Homeland Security**, unless:
   - **A.** If you live in Guam and are filing your petition there, make it payable to **Treasurer, Guam**.
   - **B.** If you live in the U.S. Virgin Islands and are filing your petition there, make it payable to **Commissioner of Finance of the Virgin Islands.**
   - **C.** If you live outside the United States, Guam, or the U.S. Virgin Islands, contact the nearest U.S. consulate or embassy for instructions on the method of payment.

NOTE: Please spell out U.S. Department of Homeland Security; do not use the initials "USDHS" or "DHS."

Notice to Those Making Payment by Check. If you send us a check, it will be converted into an electronic funds transfer (EFT). This means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually take 24 hours, and will be shown on your regular account statement.

You will not receive your original check back. We will destroy your original check, but we will keep a copy of it. If the EFT cannot be processed for technical reasons, you authorize us to process the copy in place of your original check. If the EFT cannot be completed because of insufficient funds, we may try to make the transfer up to two times.

How to Check If the Fees Are Correct.

The form fee on this form is current as of the edition date appearing in the lower right corner of this page. However, because USCIS fees change periodically, you can verify if the fees are correct by following one of the steps below:

1. Visit our website at **www.uscis.gov**, select "Immigration Forms" and check the appropriate fee;
2. Review the Fee Schedule included in your form package, if you called us to request the form; or
3. Telephone our National Customer Service Center at **1-800-375-5283** and ask for the fee information.

Address Changes.

If you change your address and you have an application or petition pending with USCIS, you may change your address on-line at **www.uscis.gov**, click on "Change your address with USCIS" and follow the prompts or by completing and mailing Form AR-11, Alien's Change of Address Card, to:

U.S. Citizenship and Immigration Services
Change of Address
P.O. Box 7134
London, KY 40742-7134

For commercial overnight or fast freight services only, mail to:

U.S. Citizenship and Immigration Services
Change of Address
1084-I South Laurel Road
London, KY 40744

Processing Information.

Acceptance. Any application that is not signed or accompanied by the correct fee will be rejected with a notice that the application is deficient. You may correct the deficiency and resubmit the application. However, an application is not considered properly filed until accepted by USCIS.

Initial Processing. Once the application has been accepted, it will be checked for completeness, including submission of the required initial evidence. If you do not completely fill out the form or file it without the required initial evidence, you will not establish a basis for eligibility and we may deny your application.

Requests for More Information. We may request more information or evidence, or we may request that you appear at a USCIS office for an interview. We may also request that you submit the originals of any copy. We will return these originals when they are no longer needed.

Decision. The decision on the Form I-212 involves a determination of whether you have established eligibility for the requested benefit. You will be notified of the decision in writing.

USCIS Forms and Information.

To order USCIS forms, call our toll-free number at **1-800-870-3676**. You can also get USCIS forms and information on immigration laws, regulations and procedures by telephoning our National Customer Service Center at **1-800-375-5283** or visiting our internet website at **www.uscis.gov**.

As an altenative to waiting in line for assistance at your local USCIS office, you can now schedule an appointment through our internet-based system, **InfoPass**. To access the system, visit our website. Use the **InfoPass** appointment scheduler and follow the screen prompts to set up your appointment. **InfoPass** generates an electronic appointment notice that appears on the screen.

Penalties.

If you knowingly and willfully falsify or conceal a material fact or submit a false document with this Form I-212, we will deny the Form I-212 and may deny any other immigration benefit.

In addition, you will face severe penalties provided by law and may be subject to criminal prosecution.

Privacy Act Notice.

We ask for the information on this form, and associated evidence, to determine if you have established eligibility for the immigration benefit for which you are filing. Our legal right to ask for this information can be found in the Immigration and Nationality Act, as amended. We may provide this information to other government agencies. Failure to provide this information, and any requested evidence, may delay a final decision or result in denial of your Form I-212.

Paperwork Reduction Act.

An agency may not conduct or sponsor an information collection and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated at two hours per response, including the time for reviewing instructions, completing and submitting the form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, N.W., 3rd Floor, Suite 3008, Washington, DC 20529. OMB No. 1615-0018. **Do not mail your application to this address.**