

(112-90)

-EXPCITE-

TITLE 8 - ALIENS AND NATIONALITY
CHAPTER 12 - IMMIGRATION AND NATIONALITY
SUBCHAPTER I - GENERAL PROVISIONS

-HEAD-

Sec. 1103. Powers and duties of the Secretary, the Under Secretary,
and the Attorney General

-STATUTE-

(a) Secretary of Homeland Security

(1) The Secretary of Homeland Security shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens, except insofar as this chapter or such laws relate to the powers, functions, and duties conferred upon the President, Attorney General, the Secretary of State, the officers of the Department of State, or diplomatic or consular officers: Provided, however, That determination and ruling by the Attorney General with respect to all questions of law shall be controlling.

(2) He shall have control, direction, and supervision of all employees and of all the files and records of the Service.

(3) He shall establish such regulations; prescribe such forms of bond, reports, entries, and other papers; issue such instructions; and perform such other acts as he deems necessary for carrying out his authority under the provisions of this chapter.

(4) He may require or authorize any employee of the Service or the Department of Justice to perform or exercise any of the powers, privileges, or duties conferred or imposed by this chapter or regulations issued thereunder upon any other employee of the Service.

(5) He shall have the power and duty to control and guard the boundaries and borders of the United States against the illegal entry of aliens and shall, in his discretion, appoint for that purpose such number of employees of the Service as to him shall appear necessary and proper.

(6) He is authorized to confer or impose upon any employee of the United States, with the consent of the head of the Department or other independent establishment under whose jurisdiction the employee is serving, any of the powers, privileges, or duties conferred or imposed by this chapter or regulations issued thereunder upon officers or employees of the Service.

(7) He may, with the concurrence of the Secretary of State, establish offices of the Service in foreign countries; and, after consultation with the Secretary of State, he may, whenever in his judgment such action may be necessary to accomplish the purposes of this chapter, detail employees of the Service for duty in foreign countries.

(8) After consultation with the Secretary of State, the Attorney General may authorize officers of a foreign country to be stationed at preclearance facilities in the United States for the purpose of ensuring that persons traveling from or through the United States to that foreign country comply with that country's immigration and

related laws.

(9) Those officers may exercise such authority and perform such duties as United States immigration officers are authorized to exercise and perform in that foreign country under reciprocal agreement, and they shall enjoy such reasonable privileges and immunities necessary for the performance of their duties as the government of their country extends to United States immigration officers.

(10) In the event the Attorney General determines that an actual or imminent mass influx of aliens arriving off the coast of the United States, or near a land border, presents urgent circumstances requiring an immediate Federal response, the Attorney General may authorize any State or local law enforcement officer, with the consent of the head of the department, agency, or establishment under whose jurisdiction the individual is serving, to perform or exercise any of the powers, privileges, or duties conferred or imposed by this chapter or regulations issued thereunder upon officers or employees of the Service.

(11) The Attorney General, in support of persons in administrative detention in non-Federal institutions, is authorized

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(A) to make payments from funds appropriated for the administration and enforcement of the laws relating to immigration, naturalization, and alien registration for necessary clothing, medical care, necessary guard hire, and the housing, care, and security of persons detained by the Service pursuant to Federal law under an agreement with a State or political subdivision of a State; and

(B) to enter into a cooperative agreement with any State, territory, or political subdivision thereof, for the necessary construction, physical renovation, acquisition of equipment, supplies or materials required to establish acceptable conditions of confinement and detention services in any State or unit of local government which agrees to provide guaranteed bed space for persons detained by the Service.

(b) Land acquisition authority

(1) The Attorney General may contract for or buy any interest in land, including temporary use rights, adjacent to or in the vicinity of an international land border when the Attorney General deems the land essential to control and guard the boundaries and borders of the United States against any violation of this chapter.

(2) The Attorney General may contract for or buy any interest in land identified pursuant to paragraph (1) as soon as the lawful owner of that interest fixes a price for it and the Attorney General considers that price to be reasonable.

(3) When the Attorney General and the lawful owner of an interest identified pursuant to paragraph (1) are unable to agree upon a reasonable price, the Attorney General may commence condemnation proceedings pursuant to section 3113 of title 40.

(4) The Attorney General may accept for the United States a gift of any interest in land identified pursuant to paragraph (1).

(c) Commissioner; appointment

The Commissioner shall be a citizen of the United States and shall be appointed by the President, by and with the advice and consent of the Senate. He shall be charged with any and all responsibilities and authority in the administration of the Service and of this chapter which are conferred upon the Attorney General

as may be delegated to him by the Attorney General or which may be prescribed by the Attorney General. The Commissioner may enter into cooperative agreements with State and local law enforcement agencies for the purpose of assisting in the enforcement of the immigration laws.

(d) Statistical information system

(1) The Commissioner, in consultation with interested academicians, government agencies, and other parties, shall provide for a system for collection and dissemination, to Congress and the public, of information (not in individually identifiable form) useful in evaluating the social, economic, environmental, and demographic impact of immigration laws.

(2) Such information shall include information on the alien population in the United States, on the rates of naturalization and emigration of resident aliens, on aliens who have been admitted, paroled, or granted asylum, on nonimmigrants in the United States (by occupation, basis for admission, and duration of stay), on aliens who have not been admitted or have been removed from the United States, on the number of applications filed and granted for cancellation of removal, and on the number of aliens estimated to be present unlawfully in the United States in each fiscal year.

(3) Such system shall provide for the collection and dissemination of such information not less often than annually.

(e) Annual report

(1) The Commissioner shall submit to Congress annually a report which contains a summary of the information collected under subsection (d) of this section and an analysis of trends in immigration and naturalization.

(2) Each annual report shall include information on the number, and rate of denial administratively, of applications for naturalization, for each district office of the Service and by national origin group.

(f) Minimum number of agents in States

The Attorney General shall allocate to each State not fewer than 10 full-time active duty agents of the Immigration and Naturalization Service to carry out the functions of the Service, in order to ensure the effective enforcement of this chapter.

(g) Attorney General

(1) In general

The Attorney General shall have such authorities and functions under this chapter and all other laws relating to the immigration and naturalization of aliens as were exercised by the Executive Office for Immigration Review, or by the Attorney General with respect to the Executive Office for Immigration Review, on the day before the effective date of the Immigration Reform, Accountability and Security Enhancement Act of 2002.

(2) Powers

The Attorney General shall establish such regulations, prescribe such forms of bond, reports, entries, and other papers, issue such instructions, review such administrative determinations in immigration proceedings, delegate such authority, and perform such other acts as the Attorney General determines to be necessary for carrying out this section.

-SOURCE-

(June 27, 1952, ch. 477, title I, Sec. 103, 66 Stat. 173; Pub. L. 100-525, Sec. 9(c), Oct. 24, 1988, 102 Stat. 2619; Pub. L. 101-649,

title I, Sec. 142, Nov. 29, 1990, 104 Stat. 5004; Pub. L. 104-208, div. C, title I, Secs. 102(d), 125, 134(a), title III, Secs. 308(d)(4)(C), (e)(4), 372, 373, Sept. 30, 1996, 110 Stat. 3009-555, 3009-562, 3009-564, 3009-618, 3009-620, 3009-646, 3009-647; Pub. L. 107-296, title XI, Sec. 1102, Nov. 25, 2002, 116 Stat. 2273; Pub. L. 108-7, div. L, Sec. 105(a)(1), (2), Feb. 20, 2003, 117 Stat. 531; Pub. L. 108-458, title V, Sec. 5505(a), Dec. 17, 2004, 118 Stat. 3741; Pub. L. 111-122, Sec. 2(a), Dec. 22, 2009, 123 Stat. 3480.)

-REFTEXT-

REFERENCES IN TEXT

This chapter, referred to in text, was in the original, "this Act", meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

The Immigration Reform, Accountability and Security Enhancement Act of 2002, referred to in subsec. (g)(1), was S. 2444 of the 107th Congress, as introduced on May 2, 2002, which was not enacted into law. Provisions relating to the Executive Office for Immigration Review are contained in section 521 of Title 6, Domestic Security.

-COD-

CODIFICATION

"Section 3113 of title 40" substituted in subsec. (b)(3) for "the Act of August 1, 1888 (Chapter 728; 25 Stat. 357)" on authority of Pub. L. 107-217, Sec. 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

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AMENDMENTS

2009 - Subsec. (h). Pub. L. 111-122 struck out subsec. (h), which directed the Attorney General to establish within the Criminal Division of the Department of Justice an Office of Special Investigations and to consult with the Secretary of Homeland Security concerning the prosecution or extradition of certain aliens.

2004 - Subsec. (h). Pub. L. 108-458 added subsec. (h).

2003 - Subsec. (a). Pub. L. 108-7, Sec. 105(a)(1), amended Pub. L. 107-296, Sec. 1102(2). See 2002 Amendment notes below.

Pub. L. 108-7, Sec. 105(a)(2), which directed the amendment of Pub. L. 107-296, was executed to section 1102(2) of Pub. L. 107-296, to reflect the probable intent of Congress. See 2002 Amendment notes below.

2002 - Pub. L. 107-296, Sec. 1102(1), amended section catchline generally.

Subsec. (a). Pub. L. 107-296, Sec. 1102(2)(A), as added by Pub. L. 108-7, Sec. 105(a)(1), which directed the substitution of "Secretary of Homeland Security" for "Attorney General" in heading, was executed by inserting "Secretary of Homeland Security" as heading, to reflect the probable intent of Congress.

Subsec. (a)(1). Pub. L. 107-296, Sec. 1102(2)(B), as added by

Pub. L. 108-7, Sec. 105(a)(1), substituted "The Secretary of Homeland Security" for "The Attorney General".

Pub. L. 107-296, Sec. 1102(2)(C), formerly Sec. 1102(2)(A), as redesignated by Pub. L. 108-7, Sec. 105(a)(2), inserted "Attorney General," after "President,". See 2003 Amendment note above.

Subsec. (a)(8) to (11). Pub. L. 107-296, Sec. 1102(2)(D), formerly Sec. 1102(2)(B), as redesignated by Pub. L. 108-7, Sec. 105(a)(2), redesignated par. (8), relating to Attorney General authorization of State and local law enforcement officers in event of mass influx of aliens arriving, and par. (9), relating to Attorney General authority to support administrative detention of persons in non-Federal institutions, as pars. (10) and (11), respectively. See 2003 Amendment note above.

Subsec. (g). Pub. L. 107-296, Sec. 1102(3), added subsec. (g).

1996 - Subsec. (a). Pub. L. 104-208, Sec. 372(1), (2), inserted "(1)" before first sentence and designated each sentence after the first sentence, which included second through ninth sentences, as a separate par. with appropriate consecutive numbering and initial indentation.

Pub. L. 104-208, Sec. 125, inserted at end "After consultation with the Secretary of State, the Attorney General may authorize officers of a foreign country to be stationed at preclearance facilities in the United States for the purpose of ensuring that persons traveling from or through the United States to that foreign country comply with that country's immigration and related laws. Those officers may exercise such authority and perform such duties as United States immigration officers are authorized to exercise and perform in that foreign country under reciprocal agreement, and they shall enjoy such reasonable privileges and immunities necessary for the performance of their duties as the government of their country extends to United States immigration officers."

Subsec. (a)(8). Pub. L. 104-208, Sec. 372(3), added at end par. (8) relating to Attorney General authorization of State and local law enforcement officers in event of mass influx of aliens arriving.

Subsec. (a)(9). Pub. L. 104-208, Sec. 373(1), added at end par. (9) relating to Attorney General authority to support administrative detention of persons in non-Federal institutions.

Subsec. (b). Pub. L. 104-208, Sec. 102(d)(1)(B), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 104-208, Sec. 373(2), inserted at end "The Commissioner may enter into cooperative agreements with State and local law enforcement agencies for the purpose of assisting in the enforcement of the immigration laws."

Pub. L. 104-208, Sec. 102(d)(1)(A), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 104-208, Sec. 102(d)(1)(A), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(2). Pub. L. 104-208, Sec. 308(e)(4), which directed amendment of subsec. (c)(2) by substituting "cancellation of removal" for "suspension of deportation", was executed by making the substitution in subsec. (d)(2) to reflect the probable intent of Congress and the redesignation of subsec. (c) as (d) by Pub. L. 104-208, Sec. 102(d)(1)(A). See above.

Pub. L. 104-208, Sec. 308(d)(4)(C), which directed amendment of subsec. (c)(2) by substituting "not been admitted or have been removed" for "been excluded or deported", was executed by making

the substitution in subsec. (d)(2) to reflect the probable intent of Congress and the redesignation of subsec. (c) as (d) by Pub. L. 104-208, Sec. 102(d)(1)(A). See above.

Subsec. (e). Pub. L. 104-208, Sec. 102(d)(2), substituted "subsection (d)" for "subsection (c)" in par. (1).

Pub. L. 104-208, Sec. 102(d)(1)(A), redesignated subsec. (d) as (e).

Subsec. (f). Pub. L. 104-208, Sec. 134(a), added subsec. (f).

1990 - Subsecs. (c), (d). Pub. L. 101-649 added subsecs. (c) and (d).

1988 - Subsec. (a). Pub. L. 100-525, Sec. 9(c)(1), substituted "instructions" for "intructions" and amended fourth sentence generally. Prior to amendment, fourth sentence read as follows: "He is authorized, in accordance with the civil-service laws and regulations and the Classification Act of 1949, to appoint such employees of the Service as he deems necessary, and to delegate to them or to any officer or employee of the Department of Justice in his discretion any of the duties and powers imposed upon him in this chapter; he may require or authorize any employee of the Service or the Department of Justice to perform or exercise any of the powers, privileges, or duties conferred or imposed by this chapter or regulations issued thereunder upon any other employee of the Service."

Subsec. (b). Pub. L. 100-525, Sec. 9(c)(2), struck out provision that Commissioner was to receive compensation at rate of \$17,500 per annum.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of the transfer of functions from the Commissioner of Immigration and Naturalization to officials of the Department of Homeland Security (Mar. 1, 2003), see section 1104 of Pub. L. 107-296, as added by Pub. L. 108-7, set out as an Effective Date note under section 521 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 134(b) of div. C of Pub. L. 104-208 provided that: "The amendment made by subsection (a) [amending this section] shall take effect 90 days after the date of the enactment of this Act [Sept. 30, 1996]."

Amendment by section 308(d)(4)(C), (e)(4) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.