

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by 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.

EX. ORD. NO. 12789. DELEGATION OF REPORTING FUNCTIONS UNDER THE IMMIGRATION REFORM AND CONTROL ACT OF 1986

Ex. Ord. No. 12789, Feb. 10, 1992, 57 F.R. 5225, as amended by Ex. Ord. No. 13286, §32, Feb. 28, 2003, 68 F.R. 10625, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 301 of title 3, United States Code, and title IV of the Immigration Reform and Control Act of 1986, Public Law 99-603 ("Reform Act") [title IV of Pub. L. 99-603, Nov. 6, 1986, 100 Stat. 3440, which enacted section 1364 of this title and provisions set out as notes under sections 1101, 1187, 1188, 1255a, and 1324a of this title], it is hereby ordered as follows:

SECTION 1. The Secretary of Homeland Security shall: (a) perform, in coordination with the Secretary of Labor, the functions vested in the President by section 401 of the Reform Act (8 U.S.C. 1364);

(b) perform, except for the functions in section 402(3)(A), the functions vested in the President by section 402 of the Reform Act (8 U.S.C. 1324a note); and

(c) perform, insofar as they relate to the initial report described in section 404(b), the functions vested in the President by section 404 of the Reform Act (8 U.S.C. 1255a note).

SEC. 2. The Secretary of Labor shall: (a) perform the functions vested in the President by section 402(3)(A) of the Reform Act (8 U.S.C. 1324a note);

(b) perform the functions vested in the President by section 403 of the Reform Act (8 U.S.C. 1188 note); and

(c) perform, insofar as they relate to the second report described in section 404(c), the functions vested in the President by section 404 of the Reform Act (8 U.S.C. 1255a note).

SEC. 3. The functions delegated by sections 1 and 2 of this order shall be performed in accordance with the procedures set forth in OMB Circular A-19.

SEC. 4. This order shall be effective immediately.

GEORGE BUSH.

§ 1365. Reimbursement of States for costs of incarcerating illegal aliens and certain Cuban nationals

(a) Reimbursement of States

Subject to the amounts provided in advance in appropriation Acts, the Attorney General shall reimburse a State for the costs incurred by the State for the imprisonment of any illegal alien or Cuban national who is convicted of a felony by such State.

(b) Illegal aliens convicted of a felony

An illegal alien referred to in subsection (a) of this section is any alien who is any alien convicted of a felony who is in the United States unlawfully and—

(1) whose most recent entry into the United States was without inspection, or

(2) whose most recent admission to the United States was as a nonimmigrant and—

(A) whose period of authorized stay as a nonimmigrant expired, or

(B) whose unlawful status was known to the Government,

before the date of the commission of the crime for which the alien is convicted.

(c) Marielito Cubans convicted of a felony

A Marielito Cuban convicted of a felony referred to in subsection (a) of this section is a national of Cuba who—

(1) was allowed by the Attorney General to come to the United States in 1980,

(2) after such arrival committed any violation of State or local law for which a term of imprisonment was imposed, and

(3) at the time of such arrival and at the time of such violation was not an alien lawfully admitted to the United States—

(A) for permanent or temporary residence, or

(B) under the terms of an immigrant visa or a nonimmigrant visa issued,

under the laws of the United States.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

(e) "State" defined

The term "State" has the meaning given such term in section 1101(a)(36) of this title.

(Pub. L. 99-603, title V, §501, Nov. 6, 1986, 100 Stat. 3443.)

CODIFICATION

Section was enacted as part of the Immigration Reform and Control Act of 1986, and not as part of the Immigration and Nationality Act which comprises this chapter.

REGULATIONS

Pub. L. 103-317, title VIII, Aug. 26, 1994, 108 Stat. 1778, provided in part: "That the Attorney General shall promulgate regulations to (a) prescribe requirements for program participation eligibility for States, (b) require verification by States of the eligible incarcerated population data with the Immigration and Naturalization Service, (c) prescribe a formula for distributing assistance to eligible States, and (d) award assistance to eligible States".

[For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.]

§ 1365a. Integrated entry and exit data system

(a) Requirement

The Attorney General shall implement an integrated entry and exit data system.

(b) Integrated entry and exit data system defined

For purposes of this section, the term "integrated entry and exit data system" means an electronic system that—

(1) provides access to, and integrates, alien arrival and departure data that are—

(A) authorized or required to be created or collected under law;

(B) in an electronic format; and

(C) in a data base of the Department of Justice or the Department of State, including those created or used at ports of entry and at consular offices;

(2) uses available data described in paragraph (1) to produce a report of arriving and departing aliens by country of nationality, classification as an immigrant or non-

immigrant, and date of arrival in, and departure from, the United States;

(3) matches an alien's available arrival data with the alien's available departure data;

(4) assists the Attorney General (and the Secretary of State, to the extent necessary to carry out such Secretary's obligations under immigration law) to identify, through on-line searching procedures, lawfully admitted non-immigrants who may have remained in the United States beyond the period authorized by the Attorney General; and

(5) otherwise uses available alien arrival and departure data described in paragraph (1) to permit the Attorney General to make the reports required under subsection (e) of this section.

(c) Construction

(1) No additional authority to impose documentary or data collection requirements

Nothing in this section shall be construed to permit the Attorney General or the Secretary of State to impose any new documentary or data collection requirements on any person in order to satisfy the requirements of this section, including—

(A) requirements on any alien for whom the documentary requirements in section 1182(a)(7)(B) of this title have been waived by the Attorney General and the Secretary of State under section 1182(d)(4)(B) of this title; or

(B) requirements that are inconsistent with the North American Free Trade Agreement.

(2) No reduction of authority

Nothing in this section shall be construed to reduce or curtail any authority of the Attorney General or the Secretary of State under any other provision of law.

(d) Deadlines

(1) Airports and seaports

Not later than December 31, 2003, the Attorney General shall implement the integrated entry and exit data system using available alien arrival and departure data described in subsection (b)(1) of this section pertaining to aliens arriving in, or departing from, the United States at an airport or seaport. Such implementation shall include ensuring that such data, when collected or created by an immigration officer at an airport or seaport, are entered into the system and can be accessed by immigration officers at other airports and seaports.

(2) High-traffic land border ports of entry

Not later than December 31, 2004, the Attorney General shall implement the integrated entry and exit data system using the data described in paragraph (1) and available alien arrival and departure data described in subsection (b)(1) of this section pertaining to aliens arriving in, or departing from, the United States at the 50 land border ports of entry determined by the Attorney General to serve the highest numbers of arriving and departing aliens. Such implementation shall include ensuring that such data, when collected

or created by an immigration officer at such a port of entry, are entered into the system and can be accessed by immigration officers at airports, seaports, and other such land border ports of entry.

(3) Remaining data

Not later than December 31, 2005, the Attorney General shall fully implement the integrated entry and exit data system using all data described in subsection (b)(1) of this section. Such implementation shall include ensuring that all such data are available to immigration officers at all ports of entry into the United States.

(e) Reports

(1) In general

Not later than December 31 of each year following the commencement of implementation of the integrated entry and exit data system, the Attorney General shall use the system to prepare an annual report to the Committees on the Judiciary of the House of Representatives and of the Senate.

(2) Information

Each report shall include the following information with respect to the preceding fiscal year, and an analysis of that information:

(A) The number of aliens for whom departure data was collected during the reporting period, with an accounting by country of nationality of the departing alien.

(B) The number of departing aliens whose departure data was successfully matched to the alien's arrival data, with an accounting by the alien's country of nationality and by the alien's classification as an immigrant or nonimmigrant.

(C) The number of aliens who arrived pursuant to a nonimmigrant visa, or as a visitor under the visa waiver program under section 1187 of this title, for whom no matching departure data have been obtained through the system or through other means as of the end of the alien's authorized period of stay, with an accounting by the alien's country of nationality and date of arrival in the United States.

(D) The number of lawfully admitted non-immigrants identified as having remained in the United States beyond the period authorized by the Attorney General, with an accounting by the alien's country of nationality.

(f) Authority to provide access to system

(1) In general

Subject to subsection (d) of this section, the Attorney General, in consultation with the Secretary of State, shall determine which officers and employees of the Departments of Justice and State may enter data into, and have access to the data contained in, the integrated entry and exit data system.

(2) Other law enforcement officials

The Attorney General, in the discretion of the Attorney General, may permit other Federal, State, and local law enforcement officials to have access to the data contained in the in-

tegrated entry and exit data system for law enforcement purposes.

(g) Use of task force recommendations

The Attorney General shall continuously update and improve the integrated entry and exit data system as technology improves and using the recommendations of the task force established under section 3 of the Immigration and Naturalization Service Data Management Improvement Act of 2000.

(h) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal years 2001 through 2008.

(Pub. L. 104-208, div. C, title I, §110, Sept. 30, 1996, 110 Stat. 3009-558; Pub. L. 105-259, §1, Oct. 15, 1998, 112 Stat. 1918; Pub. L. 105-277, div. A, §101(b) [title I, §116], Oct. 21, 1998, 112 Stat. 2681-50, 2681-68; Pub. L. 106-215, §2(a), June 15, 2000, 114 Stat. 337.)

REFERENCES IN TEXT

Section 3 of the Immigration and Naturalization Service Data Management Improvement Act of 2000, referred to in subsec. (g), is section 3 of Pub. L. 106-215, set out as a note below.

CODIFICATION

Section was formerly set out as a note under section 1221 of this title.

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

AMENDMENTS

2000—Pub. L. 106-215 amended section catchline and text generally. Prior to amendment, text read as follows:

“(a) SYSTEM.—Not later than October 15, 1998 (and not later than March 30, 2001, in the case of land border ports of entry and sea ports), the Attorney General shall develop an automated entry and exit control system that will—

“(1) collect a record of departure for every alien departing the United States and match the records of departure with the record of the alien’s arrival in the United States;

“(2) enable the Attorney General to identify, through on-line searching procedures, lawfully admitted nonimmigrants who remain in the United States beyond the period authorized by the Attorney General; and

“(3) not significantly disrupt trade, tourism, or other legitimate cross-border traffic at land border ports of entry.

“(b) REPORT.—

“(1) DEADLINE.—Not later than December 31 of each year following the development of the system under subsection (a) of this section, the Attorney General shall submit an annual report to the Committees on the Judiciary of the House of Representatives and of the Senate on such system.

“(2) INFORMATION.—The report shall include the following information:

“(A) The number of departure records collected, with an accounting by country of nationality of the departing alien.

“(B) The number of departure records that were successfully matched to records of the alien’s prior arrival in the United States, with an accounting by the alien’s country of nationality and by the alien’s classification as an immigrant or nonimmigrant.

“(C) The number of aliens who arrived as nonimmigrants, or as a visitor under the visa waiver

program under section 1187 of this title, for whom no matching departure record has been obtained through the system or through other means as of the end of the alien’s authorized period of stay, with an accounting by the alien’s country of nationality and date of arrival in the United States.

“(c) USE OF INFORMATION ON OVERSTAYS.—Information regarding aliens who have remained in the United States beyond their authorized period of stay identified through the system shall be integrated into appropriate data bases of the Immigration and Naturalization Service and the Department of State, including those used at ports of entry and at consular offices.”

1998—Subsec. (a). Pub. L. 105-277, §116(1), in introductory provisions, substituted “later than October 15, 1998 (and not later than March 30, 2001, in the case of land border ports of entry and sea ports), the Attorney” for “later than October 15, 1998, the Attorney”.

Pub. L. 105-259 in introductory provisions, substituted “October 15, 1998” for “2 years after September 30, 1996”.

Subsec. (a)(3). Pub. L. 105-277, §116(2)–(4), added par. (3).

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

VISA INTEGRITY AND SECURITY

Pub. L. 107-56, title IV, §414, Oct. 26, 2001, 115 Stat. 353, as amended by Pub. L. 107-173, title II, §201(b)(2), May 14, 2002, 116 Stat. 547, provided that:

“(a) SENSE OF CONGRESS REGARDING THE NEED TO EXPEDITE IMPLEMENTATION OF INTEGRATED ENTRY AND EXIT DATA SYSTEM.—

“(1) SENSE OF CONGRESS.—In light of the terrorist attacks perpetrated against the United States on September 11, 2001, it is the sense of the Congress that—

“(A) the Attorney General, in consultation with the Secretary of State, should fully implement the integrated entry and exit data system for airports, seaports, and land border ports of entry, as specified in section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a), with all deliberate speed and as expeditiously as practicable; and

“(B) the Attorney General, in consultation with the Secretary of State, the Secretary of Commerce, the Secretary of the Treasury, and the Office of Homeland Security, should immediately begin establishing the Integrated Entry and Exit Data System Task Force, as described in section 3 of the Immigration and Naturalization Service Data Management Improvement Act of 2000 (Public Law 106-215) [set out as a note below].

“(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to fully implement the system described in paragraph (1)(A).

“(b) DEVELOPMENT OF THE SYSTEM.—In the development of the integrated entry and exit data system under section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a), the Attorney General and the Secretary of State shall particularly focus on—

“(1) the utilization of biometric technology; and

“(2) the development of tamper-resistant documents readable at ports of entry.

“(c) INTERFACE WITH LAW ENFORCEMENT DATABASES.—The entry and exit data system described in this section shall be able to interface with law enforcement databases for use by Federal law enforcement to identify and detain individuals who pose a threat to the national security of the United States.”

TASK FORCE

Pub. L. 106-215, §3, June 15, 2000, 114 Stat. 339, as amended by Pub. L. 107-56, title IV, §415, Oct. 26, 2001, 115 Stat. 354, provided that:

“(a) ESTABLISHMENT.—Not later than 6 months after the date of the enactment of this Act [June 15, 2000], the Attorney General, in consultation with the Secretary of State, the Secretary of Commerce, the Secretary of the Treasury, and the Office of Homeland Security[,] shall establish a task force to carry out the duties described in subsection (c) (in this section referred to as the ‘Task Force’).

“(b) MEMBERSHIP.—

“(1) CHAIRPERSON; APPOINTMENT OF MEMBERS.—The Task Force shall be composed of the Attorney General and 16 other members appointed in accordance with paragraph (2). The Attorney General shall be the chairperson and shall appoint the other members.

“(2) APPOINTMENT REQUIREMENTS.—In appointing the other members of the Task Force, the Attorney General shall include—

“(A) representatives of Federal, State, and local agencies with an interest in the duties of the Task Force, including representatives of agencies with an interest in—

“(i) immigration and naturalization;

“(ii) travel and tourism;

“(iii) transportation;

“(iv) trade;

“(v) law enforcement;

“(vi) national security; or

“(vii) the environment; and

“(B) private sector representatives of affected industries and groups.

“(3) TERMS.—Each member shall be appointed for the life of the Task Force. Any vacancy shall be filled by the Attorney General.

“(4) COMPENSATION.—

“(A) IN GENERAL.—Each member of the Task Force shall serve without compensation, and members who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

“(B) TRAVEL EXPENSES.—The members of the Task Force shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of service for the Task Force.

“(c) DUTIES.—The Task Force shall evaluate the following:

“(1) How the Attorney General can efficiently and effectively carry out section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1221 note [8 U.S.C. 1365a]), as amended by section 2 of this Act.

“(2) How the United States can improve the flow of traffic at airports, seaports, and land border ports of entry through—

“(A) enhancing systems for data collection and data sharing, including the integrated entry and exit data system described in section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1221 note [8 U.S.C. 1365a]), as amended by section 2 of this Act, by better use of technology, resources, and personnel;

“(B) increasing cooperation between the public and private sectors;

“(C) increasing cooperation among Federal agencies and among Federal and State agencies; and

“(D) modifying information technology systems while taking into account the different data systems, infrastructure, and processing procedures of airports, seaports, and land border ports of entry.

“(3) The cost of implementing each of its recommendations.

“(d) STAFF AND SUPPORT SERVICES.—

“(1) IN GENERAL.—The Attorney General may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Task Force to perform its duties. The employment and termination of an executive director shall be subject to confirmation by a majority of the members of the Task Force.

“(2) COMPENSATION.—The executive director shall be compensated at a rate not to exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code. The Attorney General may fix the compensation of other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for such personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

“(3) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee, with the approval of the head of the appropriate Federal agency, may be detailed to the Task Force without reimbursement, and such detail shall be without interruption or loss of civil service status, benefits, or privilege.

“(4) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Attorney General may procure temporary and intermittent services for the Task Force under section 3109(b) of title 5, United States Code, at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

“(5) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Attorney General, the Administrator of General Services shall provide to the Task Force, on a reimbursable basis, the administrative support services necessary for the Task Force to carry out its responsibilities under this section.

“(e) HEARINGS AND SESSIONS.—The Task Force may, for the purpose of carrying out this section, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Task Force considers appropriate.

“(f) OBTAINING OFFICIAL DATA.—The Task Force may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Attorney General, the head of that department or agency shall furnish that information to the Task Force.

“(g) REPORTS.—

“(1) DEADLINE.—Not later than December 31, 2002, and not later than December 31 of each year thereafter in which the Task Force is in existence, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate containing the findings, conclusions, and recommendations of the Task Force. Each report shall also measure and evaluate how much progress the Task Force has made, how much work remains, how long the remaining work will take to complete, and the cost of completing the remaining work.

“(2) DELEGATION.—The Attorney General may delegate to the Commissioner, Immigration and Naturalization Service, the responsibility for preparing and transmitting any such report.

“(h) LEGISLATIVE RECOMMENDATIONS.—

“(1) IN GENERAL.—The Attorney General shall make such legislative recommendations as the Attorney General deems appropriate—

“(A) to implement the recommendations of the Task Force; and

“(B) to obtain authorization for the appropriation of funds, the expenditure of receipts, or the reprogramming of existing funds to implement such recommendations.

“(2) DELEGATION.—The Attorney General may delegate to the Commissioner, Immigration and Natu-

ralization Service, the responsibility for preparing and transmitting any such legislative recommendations.

“(i) **TERMINATION.**—The Task Force shall terminate on a date designated by the Attorney General as the date on which the work of the Task Force has been completed.

“(j) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal years 2001 through 2003.”

§ 1365b. Biometric entry and exit data system

(a) Finding

Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress finds that completing a biometric entry and exit data system as expeditiously as possible is an essential investment in efforts to protect the United States by preventing the entry of terrorists.

(b) Definition

In this section, the term “entry and exit data system” means the entry and exit system required by applicable sections of—

- (1) the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208);
- (2) the Immigration and Naturalization Service Data Management Improvement Act of 2000 (Public Law 106–205)¹;
- (3) the Visa Waiver Permanent Program Act (Public Law 106–396);
- (4) the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107–173) [8 U.S.C. 1701 et seq]; and
- (5) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56).

(c) Plan and report

(1) Development of plan

The Secretary of Homeland Security shall develop a plan to accelerate the full implementation of an automated biometric entry and exit data system.

(2) Report

Not later than 180 days after December 17, 2004, the Secretary shall submit a report to Congress on the plan developed under paragraph (1), which shall contain—

- (A) a description of the current functionality of the entry and exit data system, including—
 - (i) a listing of ports of entry and other Department of Homeland Security and Department of State locations with biometric entry data systems in use and whether such screening systems are located at primary or secondary inspection areas;
 - (ii) a listing of ports of entry and other Department of Homeland Security and Department of State locations with biometric exit data systems in use;
 - (iii) a listing of databases and data systems with which the entry and exit data system are interoperable;

(iv) a description of—

(I) identified deficiencies concerning the accuracy or integrity of the information contained in the entry and exit data system;

(II) identified deficiencies concerning technology associated with processing individuals through the system; and

(III) programs or policies planned or implemented to correct problems identified in subclause (I) or (II); and

(v) an assessment of the effectiveness of the entry and exit data system in fulfilling its intended purposes, including preventing terrorists from entering the United States;

(B) a description of factors relevant to the accelerated implementation of the biometric entry and exit data system, including—

(i) the earliest date on which the Secretary estimates that full implementation of the biometric entry and exit data system can be completed;

(ii) the actions the Secretary will take to accelerate the full implementation of the biometric entry and exit data system at all ports of entry through which all aliens must pass that are legally required to do so; and

(iii) the resources and authorities required to enable the Secretary to meet the implementation date described in clause (i);

(C) a description of any improvements needed in the information technology employed for the biometric entry and exit data system;

(D) a description of plans for improved or added interoperability with any other databases or data systems; and

(E) a description of the manner in which the Department of Homeland Security’s US-VISIT program—

- (i) meets the goals of a comprehensive entry and exit screening system, including both entry and exit biometric; and
- (ii) fulfills the statutory obligations under subsection (b) of this section.

(d) Collection of biometric exit data

The entry and exit data system shall include a requirement for the collection of biometric exit data for all categories of individuals who are required to provide biometric entry data, regardless of the port of entry where such categories of individuals entered the United States.

(e) Integration and interoperability

(1) Integration of data system

Not later than 2 years after December 17, 2004, the Secretary shall fully integrate all databases and data systems that process or contain information on aliens, which are maintained by—

- (A) the Department of Homeland Security, at—
- (i) the United States Immigration and Customs Enforcement;
 - (ii) the United States Customs and Border Protection; and

¹ So in original. Probably should be “(Public Law 106–215)”.