

**(d) Guidance**

The Attorney General, Secretary of State, and the Secretary of Homeland Security shall provide guidance to officers and employees of the Department of Justice, Department of State, or the Department of Homeland Security who have access to information covered by this section regarding the provisions of this section, including the provisions to protect victims of domestic violence and severe forms of trafficking in persons or criminal activity listed in section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(u)) from harm that could result from the inappropriate disclosure of covered information.

(Pub. L. 104–208, div. C, title III, §§ 308(g)(8)(D), 384, Sept. 30, 1996, 110 Stat. 3009–624, 3009–652; Pub. L. 105–33, title V, § 5572(b), Aug. 5, 1997, 111 Stat. 641; Pub. L. 106–386, div. B, title V, § 1513(d), Oct. 28, 2000, 114 Stat. 1536; Pub. L. 109–162, title VIII, § 817, Jan. 5, 2006, 119 Stat. 3060; Pub. L. 109–271, § 6(h), Aug. 12, 2006, 120 Stat. 763; Pub. L. 113–4, title VIII, § 810(a), (b), (d), Mar. 7, 2013, 127 Stat. 117, 118.)

## REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (a)(1), is act June 27, 1952, ch. 477, 66 Stat. 163, 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.

## CODIFICATION

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.

Section is comprised of section 384 of div. C of Pub. L. 104–208. Another subsec. (d) of section 384 of div. C of Pub. L. 104–208 amended sections 1160 and 1255a of this title and enacted provisions set out as a note under section 1160 of this title.

## AMENDMENTS

2013—Subsec. (a)(1). Pub. L. 113–4, § 810(d), which directed the substitution of “237(a)(2)” for “241(a)(2)” in concluding provisions of section 384(a)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, was executed to this section, which is section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, to reflect the probable intent of Congress.

Subsec. (b)(1). Pub. L. 113–4, § 810(a)(1), inserted “Secretary of Homeland Security or the” before “Attorney General may” and “Secretary’s or the” before “Attorney General’s discretion”.

Subsec. (b)(2). Pub. L. 113–4, § 810(a)(2), inserted “Secretary of Homeland Security or the” before “Attorney General may”, “Secretary or the” before “Attorney General for”, and “in a manner that protects the confidentiality of such information” before period at end.

Subsec. (b)(5). Pub. L. 113–4, § 810(a)(3), substituted “Secretary of Homeland Security and the Attorney General are” for “Attorney General is”.

Subsec. (b)(8). Pub. L. 113–4, § 810(a)(4), added par. (8).

Subsec. (d). Pub. L. 113–4, § 810(b), inserted “, Secretary of State,” after “The Attorney General”, “, Department of State,” after “Department of Justice”, and “and severe forms of trafficking in persons or criminal activity listed in section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(u))” after “domestic violence”.

2006—Subsec. (a). Pub. L. 109–162, § 817(1)(A), substituted “, the Secretary of Homeland Security, the

Secretary of State, or any other official or employee of the Department of Homeland Security or Department of State (including any bureau or agency of either of such Departments)” for “(including any bureau or agency of such Department)” in introductory provisions.

Subsec. (a)(1)(F). Pub. L. 109–162, § 817(1)(B), added subpar. (F).

Subsec. (a)(2). Pub. L. 109–271 substituted “paragraph (15)(T), (15)(U), or (51) of section 101(a) of the Immigration and Nationality Act or section 240A(b)(2) of such Act” for “clause (iii) or (iv) of section 204(a)(1)(A), clause (ii) or (iii) of section 204(a)(1)(B), section 216(c)(4)(C), section 101(a)(15)(U), or section 240A(a)(3) of such Act as an alien (or the parent of a child) who has been battered or subjected to extreme cruelty”.

Subsec. (b)(6), (7). Pub. L. 109–162, § 817(2), added pars. (6) and (7).

Subsec. (c). Pub. L. 109–162, § 817(3), inserted “or who knowingly makes a false certification under section 239(e) of the Immigration and Nationality Act” after “in violation of this section”.

Subsec. (d). Pub. L. 109–162, § 817(4), added subsec. (d). 2000—Subsec. (a)(1)(E). Pub. L. 106–386, § 1513(d)(1)–(3), added subpar. (E).

Subsec. (a)(2). Pub. L. 106–386, § 1513(d)(4), inserted “section 101(a)(15)(U),” after “section 216(c)(4)(C),”.

1997—Subsec. (b)(5). Pub. L. 105–33 added par. (5).

1996—Subsec. (a)(2). Pub. L. 104–208, § 308(g)(8)(D), which directed amendment of section 364(a)(2) of div. C of Pub. L. 104–208 by substituting “240A(a)(3)” for “244(a)(3)”, was executed by making the substitution in subsec. (a)(2) of this section to reflect the probable intent of Congress. Div. C of Pub. L. 104–208 does not contain a section 364.

## EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–33, title V, § 5582, Aug. 5, 1997, 111 Stat. 643, provided that: “Except as otherwise provided, the amendments made by this chapter [chapter 4 (§§ 5561–5582) of subtitle F of title V of Pub. L. 105–33, amending this section, sections 1611 to 1613, 1621, 1622, 1631, 1632, 1641 to 1643, and 1645 of this title, and sections 608, 1383, and 1437y of Title 42, The Public Health and Welfare] shall be effective as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193].”

## EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(g)(8)(D) 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.

## 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.

## IMPLEMENTATION

Pub. L. 113–4, title VIII, § 810(c), Mar. 7, 2013, 127 Stat. 118, provided that: “Not later than 180 days after the date of the enactment of this Act [Mar. 7, 2013], the Attorney General, the Secretary of State, and Secretary of Homeland Security shall provide the guidance required by section 384(d) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367(d)), consistent with the amendments made by subsections (a) and (b) [amending this section].”

**§ 1368. Increase in INS detention facilities; report on detention space****(a) Increase in detention facilities**

Subject to the availability of appropriations, the Attorney General shall provide for an in-

crease in the detention facilities of the Immigration and Naturalization Service to at least 9,000 beds before the end of fiscal year 1997.

**(b) Report on detention space**

**(1) In general**

Not later than 6 months after September 30, 1996, and every 6 months thereafter, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate estimating the amount of detention space that will be required, during the fiscal year in which the report is submitted and the succeeding fiscal year, to detain—

(A) all aliens subject to detention under section 1226(c) of this title and section 1231(a) of this title;

(B) all inadmissible or deportable aliens subject to proceedings under section 1228 of this title or section 1225(b)(2)(A) or 1229a of this title; and

(C) other inadmissible or deportable aliens in accordance with the priorities established by the Attorney General.

**(2) Estimate of number of aliens released into the community**

**(A) Criminal aliens**

**(i) In general**

The first report submitted under paragraph (1) shall include an estimate of the number of criminal aliens who, in each of the 3 fiscal years concluded prior to the date of the report—

(I) were released from detention facilities of the Immigration and Naturalization Service (whether operated directly by the Service or through contract with other persons or agencies); or

(II) were not taken into custody or detention by the Service upon completion of their incarceration.

**(ii) Aliens convicted of aggravated felonies**

The estimate under clause (i) shall estimate separately, with respect to each year described in such clause, the number of criminal aliens described in such clause who were convicted of an aggravated felony.

**(B) All inadmissible or deportable aliens**

The first report submitted under paragraph (1) shall also estimate the number of inadmissible or deportable aliens who were released into the community due to a lack of detention facilities in each of the 3 fiscal years concluded prior to the date of the report notwithstanding circumstances that the Attorney General believed justified detention (for example, a significant probability that the released alien would not appear, as agreed, at subsequent exclusion or deportation proceedings).

**(C) Subsequent reports**

Each report under paragraph (1) following the first such report shall include the estimates under subparagraphs (A) and (B), made with respect to the 6-month period immediately preceding the date of the submission of the report.

(Pub. L. 104-208, div. C, title III, §§308(g)(10)(G), 386, Sept. 30, 1996, 110 Stat. 3009-625, 3009-653.)

CODIFICATION

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

1996—Subsec. (b). Pub. L. 104-208, §308(g)(10)(G), substituted “inadmissible” for “excludable” in pars. (1)(B), (C) and (2)(B).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(g)(10)(G) 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.

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.

**§ 1369. Treatment of expenses subject to emergency medical services exception**

**(a) In general**

Subject to such amounts as are provided in advance in appropriation Acts, each State or political subdivision of a State that provides medical assistance for care and treatment of an emergency medical condition (as defined in subsection (d) of this section) through a public hospital or other public facility (including a non-profit hospital that is eligible for an additional payment adjustment under section 1395ww of title 42) or through contract with another hospital or facility to an individual who is an alien not lawfully present in the United States is eligible for payment from the Federal Government of its costs of providing such services, but only to the extent that such costs are not otherwise reimbursed through any other Federal program and cannot be recovered from the alien or another person.

**(b) Confirmation of immigration status required**

No payment shall be made under this section with respect to services furnished to an individual unless the immigration status of the individual has been verified through appropriate procedures established by the Secretary of Health and Human Services and the Attorney General.

**(c) Administration**

This section shall be administered by the Attorney General, in consultation with the Secretary of Health and Human Services.

**(d) “Emergency medical condition” defined**

For purposes of this section, the term “emergency medical condition” means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

(1) placing the patient’s health in serious jeopardy,