

The Truth Behind
245 (i) AMNESTY

How Illegal Immigrants are
Taking Over Our Legal
Immigration System

A Federation for American Immigration Reform Analysis

FAR

A B O U T F A I R

The Federation for American Immigration Reform (FAIR) is a national, nonprofit, public interest membership organization of citizens united by their belief in the need for immigration reform. Founded in 1979, FAIR believes that the U.S. can and must have an immigration policy that is non-discriminatory and designed to serve the environmental, economic, and social needs of our country. FAIR advocates immigration rates consistent with U.S. population stabilization: annual levels of 300,000 or less.

With more than 70,000 members nationwide, FAIR is a non-partisan group whose membership runs the gamut from liberal to conservative. Our grassroots networks help concerned citizens use their voices to speak up for effective, sensible immigration policies that work for America's best interests.

FAIR's publications and research are used by academics and government officials in preparing new legislation. National and international media regularly turn to us to understand the latest immigration developments and to shed light on this complex and subject. FAIR has been called to testify on immigration bills before Congress more than any organization in America.

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S u m m a r y

The controversial Section 245(i) provision of immigration law is accounting for a far larger share of annual admissions than previously realized. This is because 245(i) encourages people to violate the law, overstay visas, and obtain an unfair advantage by gaining entry into the U.S.

Section 245(i) functions as a mini-amnesty, allowing hundreds of thousands of illegal aliens to pay a \$1000 surcharge and remain in the country, subject only to a cursory U.S. and foreign police record check before receiving permanent legal status.

- Thanks to Section 245(i), the number of aliens adjusting to legal status (most of whom were illegally in the country) was eight times higher in 2000 than it was in 1994, before 245(i) was passed.
- These adjustments of illegal aliens through Section 245(i) account for much of the high admissions levels since 1995.
- Not only are Section 245(i) adjustments accounting for a larger share of legal admissions, but they are also the primary cause of the increase in total legal admissions to the United States.
- So many illegal aliens have used Section 245(i) to gain legal status that, for the last three years for which records are available, more than a quarter of all legal admissions were actually adjustments of status by illegal aliens.
- If the not-yet-released numbers of adjustments of status for 2001 and 2002 are similar to those of 2000, Section 245(i) will have given 1.4 million illegal aliens an amnesty and permanent residence in just eight years.
- The INS may have collected \$1.4 billion in 245(i) fees, yet—in spite of repeated requests from Congress—has failed to provide a report detailing the amount of money taken in from 245(i) applicants or what that money has been used for.
- These findings recommend elimination of Section 245(i) once and for all.

Background

When most people think of the admission of legal immigrants, they imagine foreign citizens who have been waiting patiently in their home countries finally getting the opportunity to realize their dream by coming to the United States as legal immigrants.

A substantial portion of “legal admissions” in recent years are actually illegal aliens adjusting their status to legal immigrant through a loophole in the Immigration and Nationality Act (INA) labeled Section 245(i).

Indeed, much immigration happens in just that way. But the public is less aware that a substantial portion of “legal admissions” in recent years are actually illegal aliens adjusting their status to legal immigrant through a loophole in the Immigration and Nationality Act (INA) labeled **Section 245(i)**.

Every year, hundreds of thousands of aliens who are already in the United States in some temporary status, such as tourist, student, or temporary worker, find the opportunity to become permanent immigrants.

Acquiring a sponsor, such as an American spouse or employer, they *adjust* their temporary legal status to permanent legal residence. The Immigration and Naturalization Service’s annual release of statistics break down how many admissions in any year and category are new arrivals and how many are adjustments from some previous status.

But there are also ways that **illegal aliens**, having acquired a sponsor, can gain legal permanent residence through adjustment of status.

Section 249

Before 1994, the principal mechanism illegal aliens used to gain legal status was Section 249 of the Immigration and Nationality Act (INA). Since its inception in 1952, Section 249 has, in essence, functioned as a mini-amnesty: It has allowed illegal aliens who have been in the United States since before a set date (usually between 10 and 30 years in the past), and who meet certain other eligibility requirements, to “adjust” to permanent legal status. (The eligibility date has periodically been moved forward.)

However, historically, the number of Section 249 adjustments has always been small. Between 1964 and 1998, only an average of one half of one percent of legal admissions have been adjustments of illegal aliens through Section 249. In short, very few legal admissions (green cards) were given to illegal aliens.

Section 245(i)

But Section 249 is no longer the only way for illegal aliens to gain legal status. In 1994, Congress added Section 245(i) to the INA, allowing most illegal aliens, regardless of how long they have been in the U.S., to adjust their status to legal residence if they qualify in some legal category, such as family- or employer-sponsored immigration.

Significantly, 245(i) applicants can remain in the country while adjusting and pay the Immigration and Naturalization Service a surcharge of \$1000. This means they do not first return to their home country and undergo a more thorough background check there; rather, they typically receive only a cursory check of any police record they may have established in the U.S. or abroad.

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Normally, consular officers abroad carefully establish the identity of visa applicants and screen out prospective immigrants who have serious criminal records, membership in a terrorist organization, or communicable diseases. Conducting this screening in the applicants' home countries by officials with expertise in local documents, language, fraudulent documents operations, political extremist groups, and police records means that adverse information is more likely to be known and the American public is better protected.

With today's heightened concerns about national security, it is particularly worrisome that 245(i) circumvents the normal screening process and provides an easier process for aliens to gain legal residence.

In addition, the adjustment of status provision runs counter to the intent of Congress to tighten laws against illegal aliens. A provision adopted in the 1996 immigration reform bill—INA Section 212(a)(6)—established new disincentives to entering the country illegally. Aliens who have violated our immigration law are faced with waiting periods outside the U.S., as a form of penalty that must be paid before they are eligible to return here. Section 245(i) effectively nullifies that deterrence to illegal immigration.

A Brief History of 245(i)

Subsection (i) was added to INA Section 245 by a bill passed in 1994.¹ The provision was slipped into an appropriations act. Because appropriations bills must pass or the government will shut down, they are common vehicles for pushing through changes to the law that would not be adopted on their own and would not be popular with the public.

The measure was controversial from the beginning, as it rewards immigration law breakers with the very thing they sought to gain by breaking the law, i.e., permanent residence.

In 1997, Congress extended the measure with a deadline; illegal immigrants whose applications for permanent visas were received by January 14, 1998, could continue to receive status adjustments under 245(i).

¹Specifically, Sec. 506(b) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, Act of August 26, 1994, Pub. L. No. 103-317, 108 Stat. 1724.

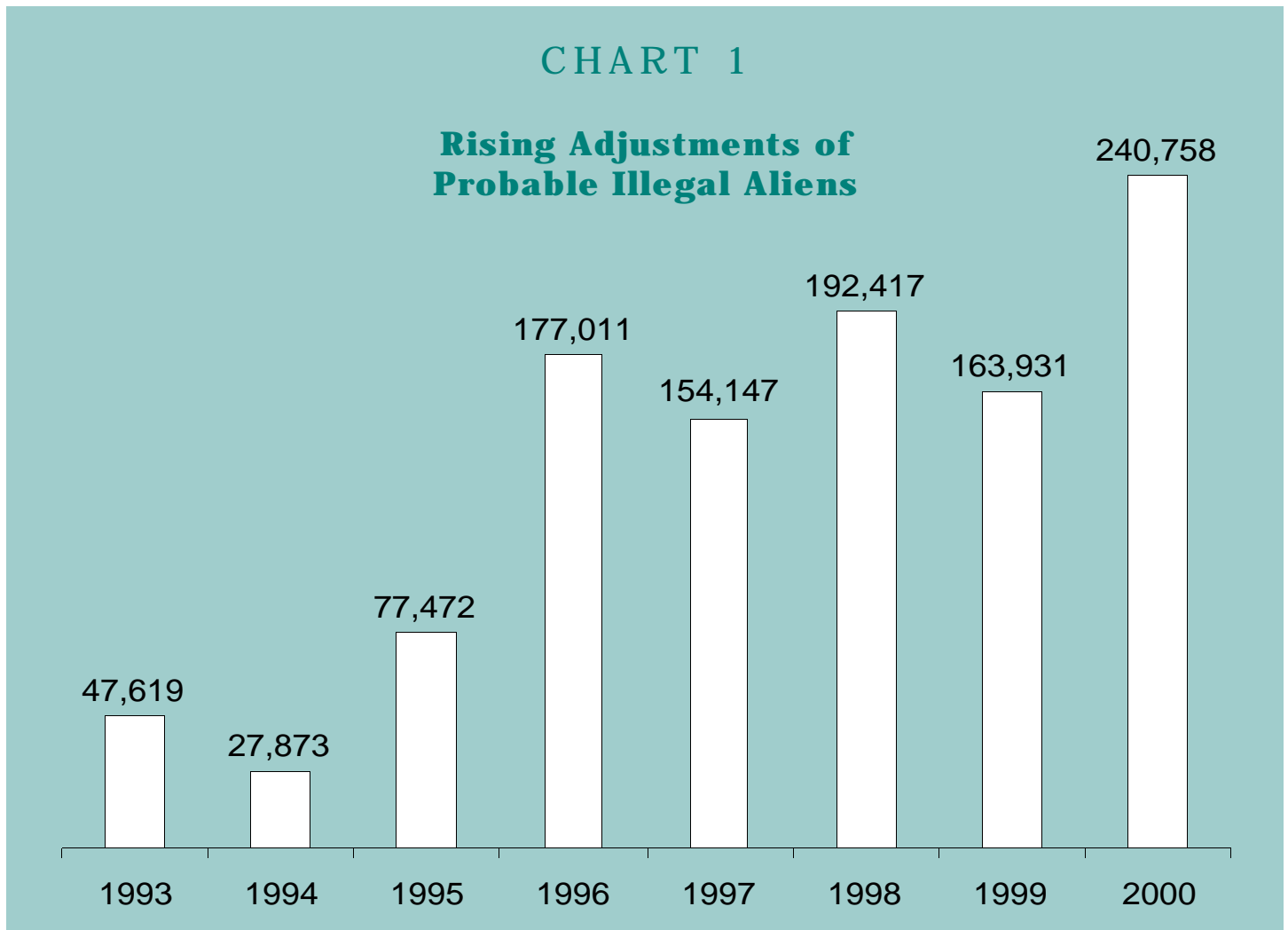
In 2000, Congress revived Section 245(i) for a limited period; illegal immigrants whose applications were received by April 30, 2001, could continue to benefit from 245(i). It was pushed through in an appropriations bill as part of the budget compromise and afforded little public debate.

The Bush Administration and the Congressional Democrat leadership are pushing to extend the 245(i) filing deadline once again, with the strongest opposition coming from members of the President's own party.

Analysis of the Impact of Section 245(i)

- **Because of 245(i), the number of probable illegal aliens adjusting to legal status was eight times higher in 2000 than it was in 1994, before 245(i) was passed.**

Annual statistics from the Immigration and Naturalization Service (INS) show in detail just how many legal admissions are adjustments and what status aliens are adjusting from.



Almost every possible legitimate temporary legal category from which to adjust is listed in those statistics (visitors for business, visitors for pleasure, students, temporary workers, exchange visitors, fiancés, intracompany transferees, refugees, and parolees). But two final columns account for those who Entered Without Inspection (that is, sneaked into the country illegally) and Other Or Unknown. Since virtually all temporary legal statuses (except for foreign government officials and international media journalists, who are not likely to adjust) are accounted for already in the statistics, it is reasonable to assume that Other or Unknown serves as a catch-all for illegal aliens not willing to identify themselves as such.

So, by adding up adjustments from Entered Without Inspection (EWI) and Unknown or Other (UOO), we get a reckoning of how many aliens each year are adjusting from illegal status. And since only a vanishingly small number of those could be adjusting under Section 249, because the date of eligibility for it is so far in the past (1972), those probable illegal aliens adjustments will have all been made possible by Section 245(i).

If these assumptions are correct, one would expect to see a rise in the adjustments from EWI/UOO (the probable illegal alien categories) after the passage of 245(i) in 1994, and then again after its renewal in late 1997, as well as after INS's effort to catch up with backlogged applications for admissions in 2000.

In 2000, the number of adjustments of illegal aliens jumped to over eight times the pre-245(i) level of 1994.

Sure enough, as Chart 1 shows, the figures bear fruit.

The number of adjustments of probable illegal aliens drops from 1993 to 1994, as the effects of the 1986 amnesty of illegal aliens taper off.

Then in 1995 and 1996, adjustments of illegal aliens skyrocket because 245(i) has made it possible.

The number slacks off in 1997 as 245(i)'s registration deadline expires, but jumps again after the deadline is extended to 1998.

Finally, in 2000, as the INS, spurred by accusations of incompetence, throws all its resources at eliminating the enormous backlog of applications, the number of adjustments of illegal aliens jumps to over eight times the pre-245(i) level of 1994.

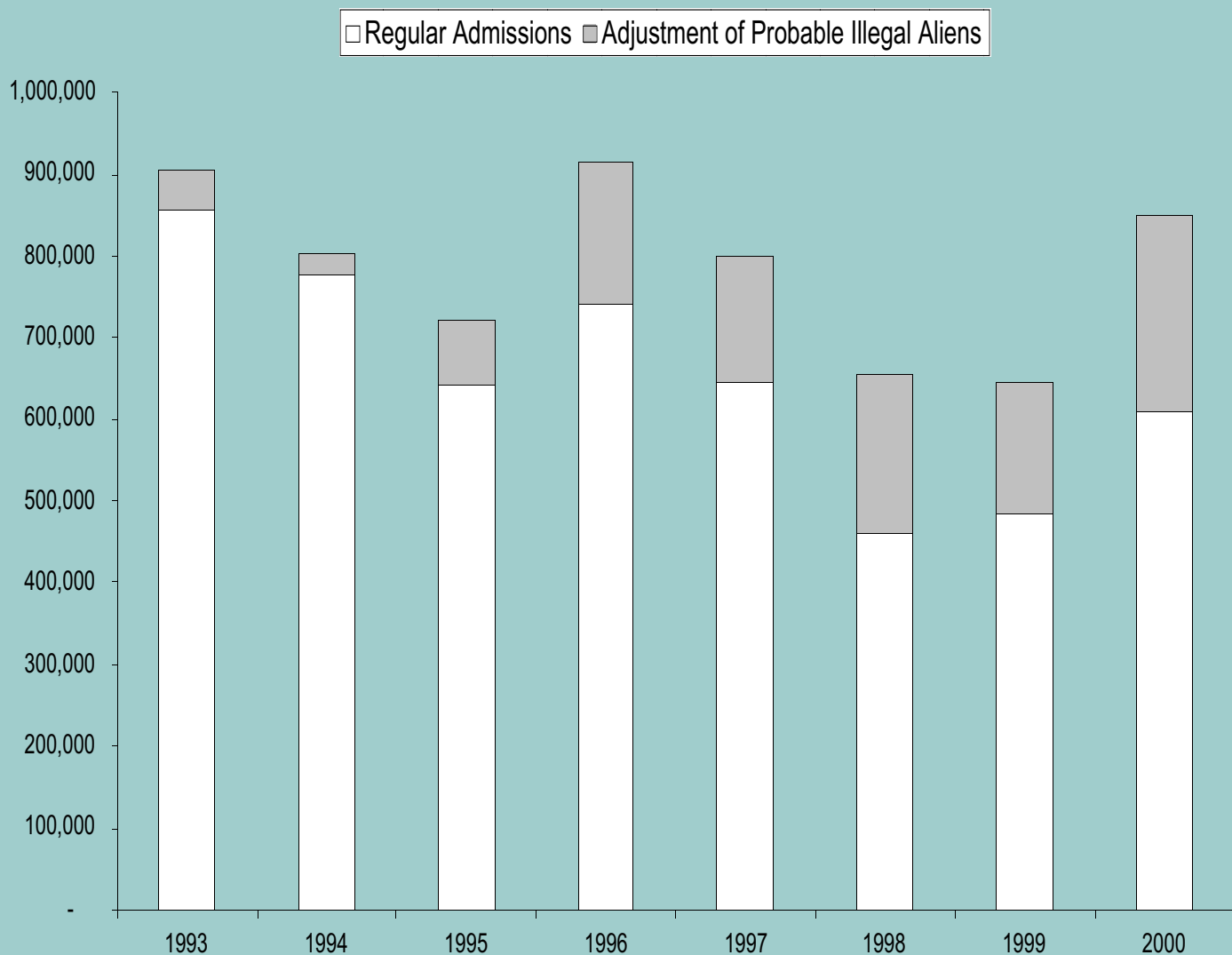
Clearly, 245(i) has been the cause of a fantastic leap in the number of illegal aliens circumventing the immigration reform and national security provisions of 1996 that would require them otherwise to return to their homelands to wait their turn in line with other applicants after an appropriate punitive delay and investigation of their backgrounds with international authorities.

- **These adjustments of illegal aliens through 245(i) account for much of the high admissions levels since 1995.**

As Chart 2 shows, adjustments of illegal aliens have added 100,000 to 200,000 admissions to the annual legal immigration levels since Section 245(i) was begun.

CHART 2

Adjustments of Illegal Aliens Add To Regular Admissions

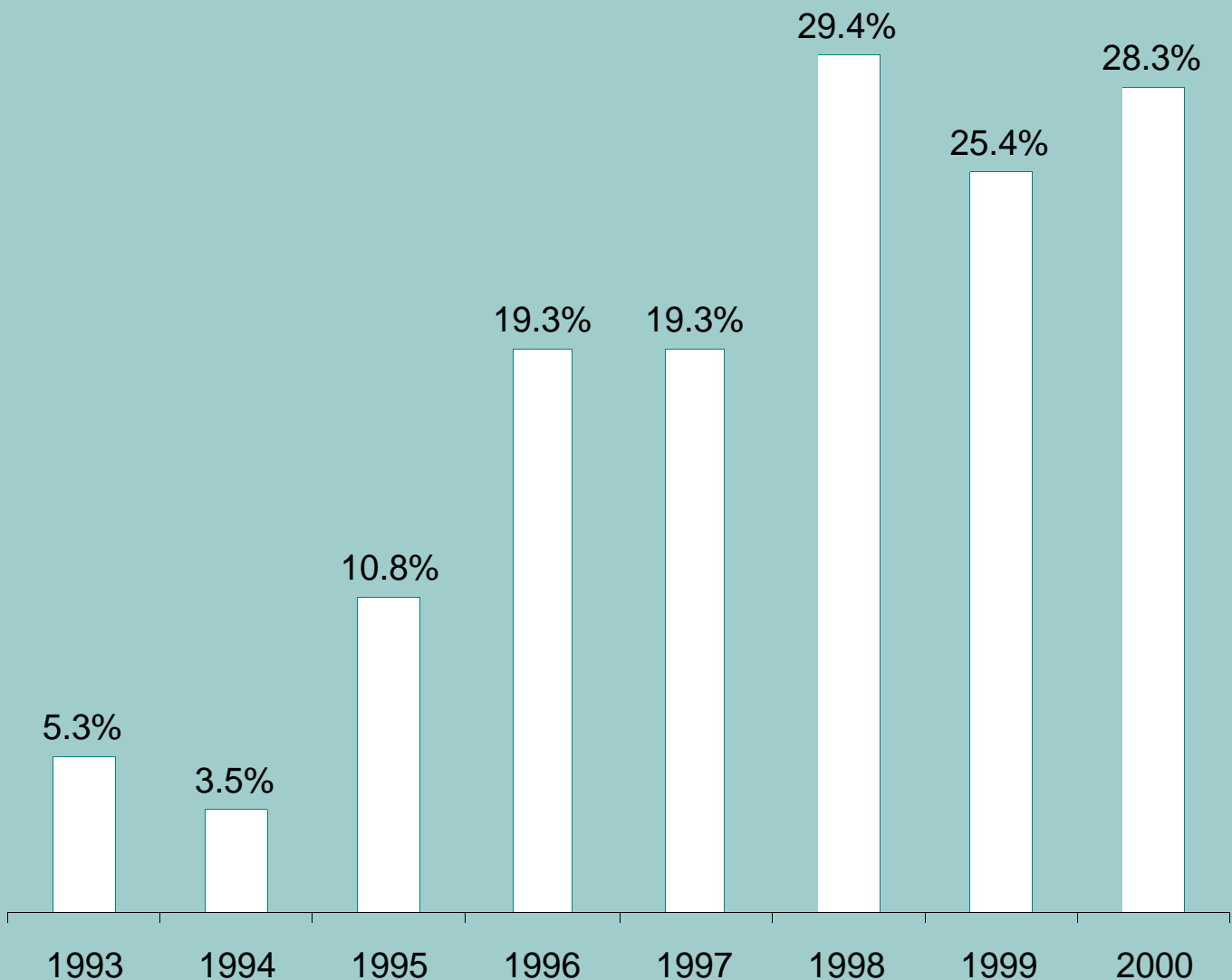


- **So many illegal aliens have used Section 245(i) to gain legal status that—for the last three years for which records are available—more than a quarter of all legal admissions were actually adjustments of illegal aliens.**

During the first three years of Section 245(i) (1995-1997), an average of 16.5 percent of legal admissions were actually adjustments of probable illegal aliens. Then, after Section 245(i)'s revival by Congress in 1997, adjustments of illegal aliens became an average of 27.7 percent of legal admissions during 1998-2000.

CHART 3

Probable Adjustments of Illegal Aliens as Share of Overall Admissions



- If the not-yet-released numbers of adjustments of status for 2001 and 2002 are similar to those of 2000, Section 245(i) will have given 1.4 million illegal aliens an amnesty and permanent residence in just eight years.

**Adjustments of Illegal Aliens,
Actual (1995-2000) and
Projected (2001-2002)**

1995	77,472
1996	177,011
1997	154,147
1998	192,417
1999	163,931
2000	240,758
2001	240,000
2002	240,000
Total	1,485,736

Because each 245(i) applicant pays a fee of \$1000, this indicates that the INS may have collected *\$1.4 billion* in 245(i) fees—money that has not been accounted for by the agency. In spite of repeated requests from Congress, the agency has failed to provide a report detailing the amount of money taken in from 245(i) applicants or what that money has been used for.

Recommendation: Section 245(i) should be allowed to expire once and for all. The provision undermines the legal immigration process, undermines deterrence measures that discourage illegal entry and visa abuse, invites fraud, and allows manipulation of the system. It runs counter to the government’s expressed concern about eliminating immigration fraud as a threat to public safety and national security.

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*1666 Connecticut Avenue, NW • Suite 400 • Washington, DC 20009
202-328-7004 • 202-387-3447 (fax) • fair@fairus.org • www.fairus.org*