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101st Congress (1989 - 1990)

S.358

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S.358

Title: Immigration Act of 1990

Sponsor: [Sen Kennedy, Edward M.](#) [MA] (introduced 2/7/1989) [Cosponsors](#) (4)

Related Bills: [H.RES.531](#), [H.RES.538](#), [H.R.1630](#), [H.R.4300](#), [H.R.4506](#)

Latest Major Action: 11/29/1990 Became Public Law No: 101-649.

SUMMARY AS OF:

10/26/1990--Conference report filed in House. (There are 3 [other summaries](#))

Immigration Act of 1990 - **Title I: Immigrants - Subtitle A: Worldwide and Per Country Levels** - Amends the Immigration and Nationality Act (the Act) to set a permanent annual worldwide level of immigration, to begin in FY 1995, with a transition level for FY 1992 through 1994. Sets forth formulas to divide such worldwide level into worldwide levels for the following categories: (1) family-related immigrants; (2) employment-based immigrants; and (3) diversity immigrants. Excludes from such direct numerical limitations specified categories of special immigrants or aliens, including refugees.

Sets forth per country levels for the maximum portion (ceiling) of a country's total number of immigrant visas which may be for family-sponsored and employment-based immigrants. Makes exceptions to such ceiling if additional visas are available, under specified conditions. Sets forth special rules for: (1) spouses and children of lawful permanent resident aliens; and (2) countries at such ceiling.

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Sets forth special rules for treatment of Hong Kong as a separate foreign state, with specified limitations, under such per country levels.

Revises provisions for asylee adjustments. Increases the maximum numerical limitation on adjustment of asylees. Requires annual asylee enumeration. Waives the numerical limitation for certain current asylees. Provides for adjustment of certain former asylees, subject to specified per country limitations.

Subtitle B: Preference System - Part 1: Family-Sponsored Immigrants - Allocates annually by preference specified numbers of visas for family-sponsored immigrants, according to certain formulas, among the following groups of aliens: (1) unmarried sons and daughters of U.S. citizens; (2) spouses and unmarried sons and daughters of permanent resident aliens; (3) married sons and daughters of U.S. citizens; and (4) brothers and sisters of U.S. citizens, if such citizens are at least 21 years of age.

Sets forth transition provisions for spouses and minor children of certain eligible legalized aliens. Provides for additional visa numbers for such spouses and children in each of FY 1992 through 1994, according to a specified formula.

Part 2: Employment-Based Immigrants - Allocates annually by preference specified numbers of visas for employment-based immigrants,

according to certain formulas, among the following groups of aliens: (1) priority workers, i.e. those aliens with extraordinary ability, outstanding professors and researchers, or certain multinational executives and managers; (2) members of professions holding advanced degrees, or those aliens with exceptional ability (in each case, requiring labor certification); (3) skilled workers with at least two years' training or experience, professionals with baccalaureate degrees, or a limited number of unskilled shortage workers (in each case requiring labor certification); (4) certain special immigrants (of which allotted number not more than half may be religious workers); and (5) employment creation investors who invest specified minimum amounts (with adjustments for rural areas, high unemployment areas, and high employment areas) which will create at least a specified minimum number of new jobs (with such entrepreneurs and their spouses and children to be admitted on a two-year conditional basis, with procedures to deter immigration-related entrepreneurship fraud).

Provides for certain changes in the labor certification process under the Act.

Directs the Secretary of Labor to establish a labor market information pilot program for employment-based immigrants, effective for applications for certifications during FY 1992 through 1994. Requires the Secretary of Labor, under such pilot program, to determine labor shortages or surpluses in up to ten defined occupational classifications. Deems a labor certificate to have been issued if there is a labor shortage in an occupation. Permits such a certification even in an occupation with a labor surplus if the employer submits evidence of shortage for a specific job opportunity, based on extensive recruitment efforts. Requires a report to specified congressional committees.

Directs the Secretary of Labor, in the labor certification process under the Act, to: (1) require employers, upon application for such certification, to notify the appropriate employee bargaining representative, or, if there is no such representative, to post such notice conspicuously at the worksite; and (2) allow any person to submit documentary evidence bearing on such application.

Sets forth transition provisions for employees of certain U.S. businesses operating in Hong Kong. Provides for specified additional numbers of visas during each of FY 1991 through 1993 for such employees (with derivative rules for their family members).

Part 3: Diversity Immigrants - Allocates annually (on a permanent basis beginning in FY 1995) specified numbers of visas for diversity immigrants, i.e. natives of foreign states from which immigration was lower than 50,000 over the preceding five years (weighting distribution of such visas in favor of countries in defined regions that are underrepresented in terms of relative regional populations). Limits the percentage of diversity visas for any single foreign state (treating Northern Ireland as a separate foreign state for such purposes). Requires, as a condition of eligibility for a diversity visa, that an alien have at least: (1) a high school education or its equivalent; or (2) two years of work experience in an occupation requiring at least two years of training or experience (within five years of the visa application date). Directs the Secretary of State to maintain information on the age, occupation, education level, and other relevant characteristics of immigrants issued such diversity visas.

Sets forth diversity transition provisions for immigrant visas for certain groups, as follows. Provides specified numbers of immigrant visas, in FY 1992 through 1994, for aliens who: (1) are natives of foreign states that are not contiguous to the United States and that are identified as adversely affected by the 1986 repeal of the national origins quota system; and (2) have a firm commitment of U.S. employment for at least one year (earmarking a portion of such visas for that foreign state which received the greatest number of visas under certain provisions for adversely affected states). Provides for immigrant visas in FY 1991 for aliens who have been notified of availability of NP-5 visas (i.e. are notified before a certain date of their selection for a visa as a native of an adversely affected state and are qualified but for certain numerical and fiscal year limitations). Provides for a specified number of immigrant visas, in FY 1991 through 1993, for displaced Tibetans and their relatives. (Requires such Tibetans to have been continuously residing in India or Nepal since before enactment of this Act, but gives preference to those who are not firmly resettled in India or Nepal or who are most likely to be resettled successfully in the United States.)

Subtitle C: Commission and Information - Establishes a Commission on Legal Immigration Reform to evaluate the impact of this Act and to analyze and assess the diversity program.

Directs the Commissioner of the Immigration and Naturalization Service (INS Commissioner) to provide for a system for collection and dissemination, at least annually to the Congress and the public, of specified types of statistics and information useful in evaluating the social, economic, environmental, and demographic impact of immigration laws. Requires an annual report to the Congress analyzing trends in immigration and naturalization.

Subtitle D: Miscellaneous - Revises special immigrant provisions relating to religious workers.

Provides for special immigrant status for: (1) certain aliens employed at the U.S. mission in Hong Kong; and (2) certain aliens declared dependent on a juvenile court.

Permits extension of the period of validity of migrant visas for certain residents of Hong Kong.

Provides for expedited issuance of Lebanese second and fifth preference visas.

Subtitle E: Effective Dates; Conforming Amendments - Sets forth effective dates and conforming amendments.

Title II: Nonimmigrants - Subtitle A: General and Permanent Provisions - Revises and extends the visa waiver pilot program for foreign tourists (B nonimmigrants).

Denies crewmember status in the case of certain labor disputes. Restricts the use of nonimmigrant alien crewmembers (D nonimmigrants) during a strike or lockout.

Sets forth limitations on performances of longshore work by alien crewmembers (D nonimmigrants).

Expands availability of the E nonimmigrant visa to include trade in services or technology. Makes certain foreign states eligible for E nonimmigrant visa status on the basis of reciprocity (treaty traders).

Revises provisions for temporary workers and trainees (H nonimmigrants). Sets forth annual limitations on numbers in the following categories of H nonimmigrants: (1) temporary (redefined as specialty occupation) workers admitted on the basis of professional education, skills, and/or equivalent experience (H-1B category); and (2) temporary nonagricultural workers (H-2B category). Sets forth, also, an annual limitation on numbers in the following categories under the new P nonimmigrant visa established later in this Act: (1) athletes or entertainers for a specific performance (P-1); and (2) artists or entertainers for a culturally unique program (P-3). Limits the stay of H-1B temporary workers to six years. Removes the foreign residence requirement for H-1B temporary workers. Establishes a system which requires employers to file labor condition applications regarding recruitment, wages, and other conditions, for H-1B temporary workers. Limits H-3B category trainees to training programs that are not designed primarily to provide productive employment.

Revises provisions for intra-company transferees (L nonimmigrants). Revises the treatment of certain international accounting firms. Revises procedures for processing intra-company transferees including: (1) requiring a procedure for allowing use of blanket petitions; (2) setting deadlines for processing; and (3) revising the periods of authorized stay and of prior employment with the company.

Establishes a new O nonimmigrant classification for aliens with extraordinary ability in the sciences, arts, education, business, or athletics, and for accompanying alien assistants and spouses and children.

Establishes a new P nonimmigrant classification for: (1) athletes or entertainers for a specific performance (P-1); (2) artists or entertainers as part of a reciprocal exchange program (P-2); (3) artists or entertainers for a culturally unique program (P-3); and (4) accompanying spouses or children of such aliens (P-4).

Establishes a new Q nonimmigrant classification for international cultural exchange programs.

Establishes a new R nonimmigrant classification for aliens in religious occupations.

Subtitle B: Temporary or Limited Provisions - Directs the Attorney General, during FY 1992 through 1994, to grant off-campus work authorization for students who are F nonimmigrants, under specified conditions, including employer attestation to the educational institution and the Secretary of Labor. Directs the INS Commissioner to report to the Congress by April 1, 1994, on the impact of such work authorization program on prevailing wages of workers and whether such program should be extended.

Directs the Attorney General to provide for admission of nonimmigrants for certain cooperative research and development or coproduction projects under a government-to-government agreement administered by the Secretary of Defense. Limits the number of such nonimmigrants and family members admitted to not more than 100 at any one time and the admission period to not more than ten years.

Establishes a special education exchange visitor program. Directs the Attorney General to provide for the admission of nonimmigrants as participants in such training program, providing for practical training experience in education of children with physical, mental, or emotional disabilities. Limits the number of such nonimmigrants to not more than 50 in any fiscal year, and the admission period to not more than 18 months.

Subtitle C: Effective Dates - Sets forth effective dates.

Title III: Family Unity and Temporary Protected Status - Directs the Attorney General to provide for a temporary stay of deportation and work authorization for certain eligible immigrants who are spouses or unmarried children of a legalized alien who was provided temporary or permanent residence status under the Act or permanent residence status under the Immigration Reform and Control Act of 1986 (IRCA). Disqualifies, temporarily, such immigrants, who are granted such temporary stay, from certain public welfare assistance, on the same basis as their legalized alien relative. Makes exceptions to such temporary stay for convicted criminals and other specified aliens.

Establishes a program for granting temporary protected status and work authorization to aliens in the United States who are nationals of countries

designated by the Attorney General to be subject to armed conflict, natural disaster, or other extraordinary temporary conditions. Authorizes the Attorney General to grant such temporary protected status. Prohibits deportation during the period in which such status is in effect. Directs the Attorney General to: (1) authorize such alien to engage in employment in the United States; and (2) provide such alien with an employment authorized endorsement or other appropriate permit. Sets forth provisions relating to benefits and status during such period of temporary protected status. Provides that such alien shall not be considered to be permanently residing in the United States under color or law. Allows a State or local government to deem such alien ineligible for public assistance. Limits consideration in the Senate of legislation adjusting the status of such aliens, by requiring an affirmative vote of three-fifths of the Senate. Requires an annual report on and congressional review of such temporary protected status program. Provides that such program shall not supercede or affect Executive Order 12711 (of April 11, 1990, relating to policy implementation with respect to nationals of the People's Republic of China).

Provides for special temporary protected status for Salvadorans. Designates El Salvador as a country whose nationals are eligible for temporary protected status under the new program, subject to specified restrictions. Makes such designation effective as of enactment of this Act, until the end of an 18-month period beginning January 1, 1991. Requires a Salvadoran, to be eligible for such status, to have been in the United States continuously since September 19, 1990, and to register between January 1 and June 30, 1991. Requires renewal of such registration and work authorization every six months. Sets forth special rules for enforcement of the requirement to depart following termination of such designation.

Title IV: Naturalization - Sets forth a new system of administrative naturalization. Confers authority to naturalize persons as U.S. citizens upon the Attorney General (transferring such jurisdiction from Federal and State courts). Provides for: (1) a formal determination to grant or deny the application by the initial INS examiner; (2) denied applicants to request an additional hearing before an immigration officer; (3) U.S. district court review of applications that are denied administratively and of applications for which no determination has been made within 120 days of examination; and (4) an option to take the oath of allegiance either before an administrative officer or before a court.

Requires three months' residence either in a particular State or in a particular INS district. (Current law requires six months' residence in a particular State.)

Adds, as a ground for waiver of the English language requirement for naturalization, being over 55 years of age and living in the United States for at least 15 years as a permanent resident.

Provides that an alien shall not be ineligible for citizenship because of an exemption from U.S. military training or service pursuant to treaty rights, if such alien served in the military of his or her native foreign country prior to exercise of such rights.

Provides for special naturalization of natives of the Philippines who performed specified military service during World War II. Includes among such special naturalization benefits the waiver of certain requirements regarding lawful admission for permanent residence, physical presence, and past and continued residency within the United States.

Provides for a program of educating the public about naturalization benefits. Directs the Attorney General to: (1) distribute information on such benefits and their eligibility requirements; and (2) seek the assistance of appropriate community groups, private voluntary agencies, and other relevant organizations in distributing such information. Authorizes appropriations for such program for FY 1991 and subsequent fiscal years.

Title V: Enforcement - Subtitle A: Criminal Aliens - Revises the definition of aggravated felony to include: (1) any illicit trafficking in any controlled substance; (2) money laundering for which at least five years' imprisonment has been imposed; (3) any crime of violence (not including a purely political offense) for which at least five years' imprisonment has been imposed; (4) violations committed outside the United States; and (5) violations of foreign law for which the term of imprisonment was completed within the previous 15 years.

Shortens from 60 days to 30 days the period for requesting judicial review of final deportation orders.

Revises the enforcement authority of INS officers. Authorizes such officers to: (1) make certain warrantless arrests for crimes unrelated to immigration; (2) carry firearms; and (3) execute and serve any order, warrant, summons, or other process issued under Federal authority.

Requires fingerprinting and photographing of certain aliens against whom certain proceedings are commenced.

Sets forth provisions relating to custody pending determination of deportability and excludability.

Eliminates certain provisions for judicial recommendations against deportation in cases of conviction for a crime involving moral turpitude.

Revises provisions relating to discretionary authority in certain deportation proceedings.

Amends the Omnibus Crime Control and Safe Streets Act of 1968 to require a coordination plan with the INS as a condition for receipt of drug control and system improvement grants.

Adds to the list of deportable acts conviction for an attempt to commit a drug offense.

Revises the definition of good moral character to include references to noncommission of an aggravated felony.

Directs the Attorney General to report to the appropriate congressional committees by December 1, 1991, on INS efforts to identify, apprehend, detain, and deport aliens convicted of crimes in the United States. Requires such report to include: (1) a criminal alien census with specified information; and (2) a criminal alien removal plan, including a method for identifying and preventing unlawful reentry.

Limits the waiver of exclusion for returning permanent residents who have been convicted of an aggravated felony and who have served five or more years' imprisonment.

Authorize appropriations for FY 1991 through 1995 for 20 additional immigration judges for deportation proceedings involving criminal aliens.

Prohibits the INS from staying, pending judicial review, the deportation of an alien convicted of an aggravated felony, unless the court directs otherwise.

Extends from ten years to 20 years the bar against reentry of aliens convicted of aggravated felonies.

Prohibits an alien convicted of an aggravated felony from applying for or being granted asylum.

Subtitle B: Provisions Relating to Employer Sanctions - Eliminates a paperwork requirement for recruiters and referrers, except for those which are agricultural associations, agricultural employers, or farm labor contractors.

Subtitle C: Provisions Relating to Anti-Discrimination - Provides for dissemination of information concerning certain anti-discrimination protections under IRCA and title VII (Equal Employment Opportunity) of the Civil Rights Act of 1964.

Directs the Special Counsel for Unfair Immigration-Related Employment Practices, in cooperation with the Chair of the Equal Employment Opportunity Commission, the Secretary of Labor, and the Administrator of the Small Business Administration, to conduct a campaign to disseminate information about unfair immigration-related employment practices. Authorizes appropriations for such dissemination for FY 1991 and succeeding fiscal years.

Includes certain seasonal agricultural workers (special agricultural workers and replenishment agricultural workers) within the scope of such anti-discrimination protections.

Eliminates the requirements that an alien file a declaration of intending to become a citizen in order to file an anti-discrimination complaint.

Adds prohibitions against intimidation or retaliation against an individual for exercising rights or privileges or filing a complaint under such anti-discrimination provisions.

Treats as unfair immigration-related employment discrimination practices: (1) requiring more or different documentary evidence of identity and work eligibility than that required by law; and (2) refusing to honor identity or work eligibility documents that reasonably appear genuine on their face.

Increases civil monetary penalties for anti-discrimination violations to conform to those for employer sanctions.

Imposes a 90-day deadline by which a private individual must file a discrimination complaint before an administrative law judge.

Includes the Special Counsel for Immigration-Related Unfair Employment Practices among those who have access to the completed employment eligibility verification forms that are required to be retained by each employer.

Sets forth additional forms of relief that may be prescribed in anti-discrimination orders.

Subtitle D: General Enforcement - Authorizes appropriations for FY 1991 to provide for an increase of 1,000 in the authorized personnel level of the INS border patrol.

Credits the amount of certain increases in civil penalties under immigration law made by this Act to the appropriation for: (1) INS enforcement activities; and (2) the Executive Office for Immigration Review to remove the backlogs in the preparation of transcripts of deportation proceedings.

Increases the levels of fines and penalties for various violations under the Act. Increases the civil fines for the following: (1) failure to deliver manifest; (2) failure to provide for deportation; (3) improper aircraft entry; (4) failure to control crew; (5) employment of certain crew; (6) improper discharge of crew; (7) assisting unlawful entry of crew; (8) failing in duty to prevent unauthorized entries; (9) bringing in certain aliens; and (10) unlawful bringing of aliens. Authorizes the INS Commissioner to collect certain fines. Increases the criminal fines (and, in some cases, the maximum imprisonment) for the following: (1) crew member overstaying; (2) concealment of aliens; (3) unlawful reentry; (4) aiding in entry of subversives; and (5) importing of prostitutes. Makes an attempt to enter the United States illegally a criminal offense.

Sets forth provisions prohibiting and penalizing specified forms of document fraud under the Act. Authorizes issuance of cease and desist orders and imposition of civil fines for document fraud violations. Makes such violations deportable acts.

Sets forth deportation procedures, including requirements relating to: (1) notices; (2) securing of counsel; (3) consequences of failure to appear; (4) treatment of frivolous behavior; and (5) limitations on discretionary relief for failure to appear. Reduces from six months to 90 days the deadline for filing for judicial review after final deportation order issuance. Requires that any review sought with respect to a motion to reopen or reconsider such an order be consolidated with the review of the order. Directs the Attorney General, within six months after enactment of this Act, to: (1) report to the Congress on abuses associated with the failure of aliens to consolidate requests for discretionary relief before immigration judges at the first hearing on the merits, with appropriate exceptions and recommendations; and (2) issue regulations on motions to reopen and to reconsider, and on administrative appeals.

Title VI: Exclusion and Deportation - Revises the grounds for exclusion, repealing or revising some of the current bases. Sets forth classes of excludable aliens under the following nine categories: (1) health-related grounds; (2) criminal and related grounds; (3) security and related grounds; (4) public charge; (5) labor certification and qualifications for certain immigrants; (6) illegal entrants and immigration violators; (7) documentation requirements; (8) ineligible for citizenship; and (9) miscellaneous.

Provides for the exclusion, on health-related grounds, of aliens determined, in accordance with regulations prescribed by the Secretary of Health and Human Services, to: (1) have a communicable disease of public health significance (with possible discretionary waivers for certain relatives of U.S. citizens or permanent resident aliens); (2) have, or have had, a physical or mental disorder and associated behavior, or a history of such behavior, which poses a threat (with possible discretionary waiver under specified conditions); or (3) be a drug abuser or addict.

Provides for exclusion of aliens on criminal and related grounds (similar to current law) under the following headings: (1) conviction of certain crimes involving moral turpitude (other than a purely political offense), or drug violations; (2) multiple criminal convictions; (3) controlled substance traffickers; (4) prostitution and commercialized vice (but adds a ten-year statute of limitations with respect to these); and (5) certain aliens involved in serious criminal activity who have asserted immunity from prosecution. Makes exceptions and authorizes waivers under specified conditions.

Provides for exclusion on security and related grounds of: (1) any alien who will enter the United States to perpetrate espionage, sabotage, or prohibited exporting of goods, technology, or sensitive information, or any other unlawful activity, to oppose, control, or overthrow the U.S. Government by force, violence, or other unlawful means; (2) any alien who has engaged in defined terrorist activities, or is likely to engage in such activities; (3) an alien whose entry or proposed activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States (with specified exceptions); (4) an immigrant with membership or affiliation with a totalitarian party (with specified exceptions for involuntary membership, certain past membership, and close family members); and (5) participants in Nazi persecutions or in genocide.

Provides for exclusion of aliens (in terms similar to current law) in the following categories: (1) an alien who is likely to become a public charge; (2) those who do not meet special rules for labor certification of teachers, scientists, and artists or qualifications for foreign medical school graduates; (3) illegal entrants and immigration violators (with revised provisions for aliens previously deported, certain aliens previously removed, aliens seeking benefit from misrepresentation, stowaways, and smugglers of undocumented aliens, as well as aliens subject to specified civil penalties); (4) those who do not meet certain documentation requirements for immigrant or nonimmigrant visas; and (5) those who are ineligible for citizenship. Makes ineligible for citizenship those who are permanently ineligible, and certain draft evaders.

Sets forth under the miscellaneous category of excludables: (1) practicing polygamists; (2) guardians required to accompany excluded aliens; and (3) aliens who engage in international child abduction.

Requires, in cases of denial based on any of the grounds for exclusion, that the immigration or consular officer provide the alien with timely written notice that states such determination and lists the specific provisions under which the alien is excludable or ineligible for entry or adjustment of status.

Provides for review of exclusion lists. Directs the Attorney General and the Secretary of State to: (1) develop protocols and guidelines for updating lookout books and the automated visa lookout system and similar mechanisms for screening aliens applying for visas or admission; and (2) ensure removal from such books and system of names of aliens who are no longer excludable because of an amendment made by this Act.

Revises the grounds for deportation, repealing or revising some of the current bases. Sets forth classes of deportable aliens (including alien crewmembers) under the following five categories (most of which are similar to current law): (1) excludable at time of entry or of adjustment of status or violates status; (2) criminal offenses; (3) failure to register and falsification of documents; (4) security and related grounds; and (5) public charge (similar to current law).

Title VII: Miscellaneous Provisions - Allows waiver of the conditional residence requirement if the alien is a battered spouse or child (under provisions for permanent resident status based on marriage). Requires the Attorney General to establish measures to protect the confidentiality of information concerning any abused alien spouse or child, including their whereabouts.

Provides for a bona fide marriage exception to the foreign residence requirement for marriages entered into during certain immigration proceedings.

Extends by one year (from a one-year period to a two-year period) the deadline for filing applications for adjustment from temporary to permanent residence for legalized aliens. Directs the Attorney General to provide for an additional fee for filing such applications after the end of the first year of such two-year period.

Extends by one year the Commission on Agricultural Workers.

Revises provisions relating to the Immigration Emergency Fund. Provides for a permanent continuing authorization sufficient to provide for a specified balance in such fund. Provides that up to a specified maximum amount from such fund shall be available by application to States and localities whenever: (1) an INS district director certifies to the INS Commissioner that the number of asylum applications exceeds that for the preceding quarter by at least 1,000; (2) residents' lives, property, safety, or welfare are endangered; or (3) the Attorney General determines any other appropriate circumstances.

Title VIII: Education and Training - Directs the Secretary of Labor to provide for grants to States to provide educational assistance and training for U.S. workers. Allocates such grant funds among the States according to a formula, jointly established by the Secretaries of Labor and of Education, that considers the locations of: (1) foreign workers admitted to the United States; (2) individuals in the United States requiring and desiring such assistance; and (3) unemployed and underemployed U.S. workers. Provides for disbursement of, and applications for, such funds to the States. Limits State administrative expenses and Federal overhead. Directs the Secretary of Labor to report annually to the Congress on such grants.

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