H. R. 1912

To suspend certain nonessential visas, in order to provide temporary workload relief critical to the successful reorganization of the immigration and naturalization functions of the Department of Homeland Security, to ensure that the screening and monitoring of arriving immigrants and nonimmigrants, and the deterrence of entry and settlement by illegal or unauthorized aliens, is sufficient to maintain the integrity of the sovereign borders of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2005

Mr. Graves introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To suspend certain nonessential visas, in order to provide temporary workload relief critical to the successful reorganization of the immigration and naturalization functions of the Department of Homeland Security, to ensure that the screening and monitoring of arriving immigrants and nonimmigrants, and the deterrence of entry and settlement by illegal or unauthorized aliens, is sufficient to maintain the integrity of the sovereign borders of the United States, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the “Emergency Immigration Workload Reduction and Homeland Security Enhancement Act of 2005”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Severability.
Sec. 3. Findings.
Sec. 4. Temporary suspension of visa waiver program.
Sec. 5. Temporary suspension of adjustment of status.
Sec. 6. Temporary suspension of renewals of temporary protected status.
Sec. 7. Temporary suspension of certain immigrant visa programs.
Sec. 8. Restriction of nonimmigrant visas for nationals of countries denying or delaying acceptance of aliens.
Sec. 9. Waivers of temporary suspensions.
Sec. 10. Termination of temporary suspensions.
Sec. 11. Suspension of nonimmigrant visas.
Sec. 12. Temporary funding for detention and removal assistance provided by State and local law enforcement agencies.
Sec. 13. Effective date.

SEC. 2. SEVERABILITY.

If any provision of this Act, or the application of such a provision to any person or circumstance, is held to be unconstitutional, the remainder of the Act, and the application of this Act to any other person or circumstance, shall not be affected by such holding.

SEC. 3. FINDINGS.

The Congress finds as follows:

(1) The effective establishment and organization of the Directorate of Border and Transportation Security of the Department of Homeland Security is imperative if the Directorate is to carry out
the immigration enforcement responsibilities delegated to it by the Congress in the manner expected by the American people.

(2) The effective implementation of these duties will not be achieved without an unacceptable compromise to the security interests of the United States unless certain immigration programs are temporarily suspended, and other material assistance is provided to law enforcement agencies and other entities that support the immigration enforcement functions of the Directorate, until such time as the Secretary of Homeland Security can make the certifications to Congress required in section 10.

(3) Such certifications, taken together, will establish the effective operational transfer of immigration enforcement functions to the new Directorate.

SEC. 4. TEMPORARY SUSPENSION OF VISA WAIVER PROGRAM.

The admission of aliens to the United States under section 217 of the Immigration and Nationality Act (8 U.S.C. 1187) is suspended.

SEC. 5. TEMPORARY SUSPENSION OF ADJUSTMENT OF STATUS.

(a) IN GENERAL.—The authority of the Secretary of Homeland Security to adjust the status of any alien to
that of an alien lawfully admitted for permanent residence under section 240A of the Immigration and Nationality Act (8 U.S.C. 1229b) or section 245 of such Act (8 U.S.C. 1187), is suspended.

(b) EFFECT ON APPLICATIONS.—The suspension described in subsection (a) shall include the suspension of acceptance for filing of applications for the adjustments of status described in such subsection.

SEC. 6. TEMPORARY SUSPENSION OF RENEWALS OF TEMPORARY PROTECTED STATUS.

The authority of the Secretary of Homeland Security to extend any designation made under subparagraph (B) or (C) of section 244(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1254(b)(1)) is suspended.

SEC. 7. TEMPORARY SUSPENSION OF CERTAIN IMMIGRANT VISA PROGRAMS.

(a) BROTHERS AND SISTERS OF CITIZENS.—The allocation of family-sponsored immigrant visas to alien brothers and sisters of citizens under section 203(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(4)), and the admission of such aliens to the United States as immigrants, is suspended.

(b) SONS AND DAUGHTERS OF CITIZENS.—The allocation of family-sponsored immigrant visas to alien sons and daughters of citizens under paragraph (1) or (3) of
section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)), and the admission of such aliens to the United States as immigrants, is suspended.

(c) UNMARRIED SONS AND DAUGHTERS OF PERMANENT RESIDENT ALIENS.—

(1) IN GENERAL.—The allocation of family-sponsored immigrant visas to aliens who are the unmarried sons and daughters (but are not the children) of an alien lawfully admitted for permanent residence under section 203(a)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(2)(B)), and the admission of such aliens to the United States as immigrants, is suspended.

(2) CHILDREN.—The allocation of family-sponsored immigrant visas to aliens who are the children of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(2)(A)), and the admission of such aliens to the United States as immigrants, is suspended, except that this paragraph shall not apply to dependent children who are under 18 years of age at the time an immigrant visa becomes available to the child.

(d) DIVERSITY IMMIGRANTS.—The allocation of immigrant visas to aliens under section 203(e) of the Immig-
gration and Nationality Act (8 U.S.C. 1153(c)), and the admission of such aliens to the United States as immigrants, is suspended.

(e) Effect on Classification Petitions.—The suspensions of immigrant visa allocations described in this section shall include the suspension of acceptance for filing of petitions for classification under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) with respect to the affected immigrant visa categories.

SEC. 8. RESTRICTION OF NONIMMIGRANT VISAS FOR NATIONALS OF COUNTRIES DENYING OR DELAYING ACCEPTANCE OF ALIENS.

(a) Public Listing of Aliens With No Significant Likelihood of Removal.—

(1) In general.—The Secretary of Homeland Security shall establish and maintain a public listing of every alien who is subject to a final order of removal and with respect to whom the Secretary or any Federal court has determined that there is no significant likelihood of removal in the reasonably foreseeable future due to the refusal, or unreasonable delay, of all countries designated by the alien or under this section to receive the alien.

(2) Discontinuation of Visas.—In the case of any foreign state for which 24 or more of the citi-
zens, subjects, or nationals of such state appear on
the public listing described in paragraph (1), such
foreign state shall be deemed to have denied or un-
reasonably delayed the acceptance of such aliens,
and the Secretary of Homeland Security shall make
the notification to the Secretary of State prescribed
in section 243(d) of the Immigration and Nation-
ality Act (8 U.S.C. 1253(d)). Consular officers in
such foreign state shall accordingly discontinue the
issuance of nonimmigrant visas to citizens, subjects,
or nationals of the state.

(b) SUNSET.—Subsection (a) shall sunset in accord-
ance with section 10.

SEC. 9. WAIVERS OF TEMPORARY SUSPENSIONS.

(a) IN GENERAL.—The Secretary of Homeland Secu-
rit y may, in the Secretary’s discretion—

(1) waive on an individual case-by-case basis
sections 5, 7, and 8; or

(2) waive, with the concurrence for the Sec-
retary of State, section 4 for designated classes of
applicants, if such applicants are not inadmissible
under section 212(a) of the Immigration and Na-
tionality Act (8 U.S.C. 1182(a)) or deportable under
section 237(a) of such Act (8 U.S.C 1227).
(b) DELEGATION.—The Secretary of Homeland Security may, in the discretion of the Secretary, delegate to the Secretary of State, for designated classes of applicants, the waiver authority of subsection (a)(1) with respect to sections 7 and 8.

SEC. 10. TERMINATION OF TEMPORARY SUSPENSIONS.

Sections 4 through 9 shall cease to be effective one week after the certification by the Secretary of Homeland Security to the Congress that the following conditions are satisfied:

(1) The integrated entry and exit data system required by the Immigration and Naturalization Service Data Management Improvement Act of 2000 (Public Law 106–215), including the requirements added by section 302(a) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107–173), is fully operational at all ports of entry.

(2) The system of machine-readable tamper-resistant visas and other travel and entry documents required by section 302(b) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107–173), as well as the technology standard for visa waiver program participants required by section 302(c) of such Act, are fully operational at
all ports of entry and, where applicable, at consular
posts abroad.

(3) The Department of Homeland Security has
the operational capability to take into custody and
remove from the United States any alien described
in section 237(a) of the Immigration and Nationality
Act (8 U.S.C. 1227(a)) who has been brought to the
attention of the Service by a State or local law en-
forcement agency.

(4) Adequate Federal funds have been appro-
priated and are available to reimburse all verified
claims described in section 12.

(5) The data system for the registration of
aliens under chapter 7 of title II of the Immigration
and Nationality Act (8 U.S.C. 261 et seq.) is fully
operational and—

(A) is fully compliant with the data system
integration and interoperability standards en-
acted in section 202(a) of the Enhanced Border
Security and Visa Entry Reform Act of 2002
(Public Law 107–173);

(B) ensures the entry of all registrations
made in accordance with section 221(b) of the
Immigration and Nationality Act (8 U.S.C.
1201(b)) into the registration system at the
time at the time of the relevant visa application;

(C) ensures that all other registrations
made under procedures required by section 264
of such Act (8 U.S.C. 1304) are entered into
the data system within 72 hours of submission
by the alien of an approved form of registra-
tion; and

(D) ensures that all notices of change of
address required by section 265 of such Act (8
U.S.C. 1305) are entered in the data system
within 5 working days of submission by the
alien of an approved change of address form.

(6) A program for the random audit of the
backlog of applications for changes in immigration
status by aliens present in the United States exist-
ing on the effective date of this Act has been fully
implemented by the Department of Homeland Secu-

(7) The program described in paragraph (6) re-
liably indicates that the incidence of fraud or false
statements is no more than 3 percent of all approved
applications.

(8) The foreign student monitoring system de-
scribed in section 641 of the Illegal Immigration Re-
form and Immigrant Responsibility Act (8 U.S.C. 1372), as amended and expanded by sections 501 and 502 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107–173), is fully operational, and no educational institution certified to receive nonimmigrant students under subparagraph (F), (M), or (J) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) registers or admits aliens present in the United States in violation of law.

(9) The number of aliens removed from the United States, during each of 4 months preceding the month in which the certification under this section is executed, was at least 25 percent higher than in the comparable months of the previous year.

(10) All reports and plans, and all operational transfers of functions, required under title IV of the Homeland Security Act of 2002 (6 U.S.C. 201 et seq.) have been successfully performed and implemented to the extent required by law as of the certification date.

(12) The annual report required by section 205(b) of the American Competitiveness in the Twenty-first Century Act of 2000 (8 U.S.C. 1574(b)), for the fiscal year preceding the date of the certification, has been submitted to the Congress.

(13) Process changes described in section 205(b)(2)(C)(vi) of the American Competitiveness in the Twenty-first Century Act of 2000 (8 U.S.C. 1574(b)(2)(C)(vi)) have been implemented and are substantially operational.

SEC. 11. SUSPENSION OF NONIMMIGRANT VISAS.

(a) IN GENERAL.—The authority of the Secretary of State to issue nonimmigrant visas is suspended. The authority of the Secretary of Homeland Security to admit nonimmigrant aliens into the United States is suspended.

(b) EFFECT ON APPLICATIONS.—The suspensions described in subsection (a) shall include the suspension of acceptance for filing of applications for nonimmigrant visas and applications for admission as a nonimmigrant.

(c) WAIVERS AUTHORIZED.—The Secretary of Homeland Security may, in the Secretary’s discretion, waive the application of subsection (a) in the case of any alien or class of aliens if the following conditions are satisfied:
(1) Section 203(c) of the Immigration and Nationality Act (8 U.S.C. 1153(c), and any other provision of law authorizing the issuance of diversity immigrant visas, is repealed.

(2) Personal interviews are mandatory for admission of aliens to the United States under section 217 of the Immigration and Nationality Act (8 U.S.C. 1187).

(3) The Secretary, with the Secretary of State, verifies that each alien admitted on the basis of a nonimmigrant visa has had a personal interview with a consular officer prior to the issuance of the visa.

(d) CONSTRUCTION.—During any period in which a waiver granted under subsection (c) applies to aliens barred from receipt of nonimmigrant visas under section 7(a)(2), the bar shall supersede the waiver.

SEC. 12. TEMPORARY FUNDING FOR DETENTION AND REMOVAL ASSISTANCE PROVIDED BY STATE AND LOCAL LAW ENFORCEMENT AGENCIES.

The Secretary of Homeland Security shall reimburse verifiable claims submitted by a law enforcement agency of a State, or any political subdivision of a State, that were lawfully incurred for the emergency medical care, housing, and care in a secure facility, and the transportation into Federal custody at a location designated by the
1 Secretary, of any alien detained as inadmissible under section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) or deportable under section 237(a) of such Act (8 U.S.C. 1227(a)), if—

(1) transfer to Federal custody has occurred;

(2)(A) a determination is subsequently made under section 240(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1229a(c)(1)) that such alien is removable; or

(B) a determination is made that the alien has permanently departed the United States;

(3) reimbursement for all costs excepting transportation costs is made according to a per diem rate established by the Secretary; and

(4) the first day of such detention is not later than the date on which the certification described in section 9 is made.

SEC. 13. EFFECTIVE DATE.

This Act shall take effect in each local time zone upon the commencement in such zone of the first Sunday that occurs two weeks after the date of the enactment of this Act.