

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1919

To amend the Immigration and Nationality Act in order to reunify families,  
to provide for earned adjustment of status, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 25, 2005

Mr. HAGEL introduced the following bill; which was read twice and referred  
to the Committee on the Judiciary

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## A BILL

To amend the Immigration and Nationality Act in order  
to reunify families, to provide for earned adjustment  
of status, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Immigrant Accountability Act of 2005”.

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

Sec. 1. Short title.

TITLE I—ACCESS TO EARNED ADJUSTMENT AND MANDATORY  
DEPARTURE AND REENTRY

Sec. 101. Adjustment of status.

Sec. 102. Mandatory departure and reentry.  
 Sec. 103. Correction of Social Security records.

TITLE II—FAMILY REUNIFICATION

Sec. 201. Treatment of immediate relatives with respect to the family immigration cap.  
 Sec. 202. Reclassification of spouses and minor children of legal permanent residents as immediate relatives.  
 Sec. 203. Exceptions.

1 **TITLE I—ACCESS TO EARNED**  
 2 **ADJUSTMENT AND MANDA-**  
 3 **TORY DEPARTURE AND RE-**  
 4 **ENTRY**

5 **SEC. 101. ADJUSTMENT OF STATUS.**

6 (a) IN GENERAL.—Chapter 5 of title II of the Immi-  
 7 gration and Nationality Act (8 U.S.C. 1255 et seq.) is  
 8 amended by inserting after section 245A the following:

9 “ACCESS TO EARNED ADJUSTMENT

10 “SEC. 245B. (a) ADJUSTMENT OF STATUS.—

11 “(1) PRINCIPAL ALIENS.—Notwithstanding any  
 12 other provision of law, the Secretary of Homeland  
 13 Security shall adjust to the status of an alien law-  
 14 fully admitted for permanent residence, an alien who  
 15 satisfies the following requirements:

16 “(A) APPLICATION.—The alien shall file  
 17 an application establishing eligibility for adjust-  
 18 ment of status and pay the fine required under  
 19 subsection (m) and any additional amounts  
 20 owed under that subsection.

21 “(B) CONTINUOUS PHYSICAL PRESENCE.—

1                   “(i) IN GENERAL.—The alien shall es-  
2                   tablish that the alien—

3                   “(I) was physically present in the  
4                   United States on or before the date  
5                   that is 5 years before the date of in-  
6                   troduction of the Immigrant Account-  
7                   ability Act of 2005;

8                   “(II) was not legally present in  
9                   the United States on such date of in-  
10                  troduction; and

11                  “(III) did not depart from the  
12                  United States during the 5-year pe-  
13                  riod ending on such date of introduc-  
14                  tion, except for brief, casual, and in-  
15                  nocent departures.

16                  “(ii) LEGALLY PRESENT.—For pur-  
17                  poses of this subparagraph, an alien who  
18                  has violated any conditions of his or her  
19                  visa shall be considered not to be legally  
20                  present in the United States.

21                  “(C) ADMISSIBLE UNDER IMMIGRATION  
22                  LAWS.—The alien shall establish that the alien  
23                  is not inadmissible under section 212(a) except  
24                  for any provision of that section that is waived  
25                  under subsection (b) of this section.

1 “(D) EMPLOYMENT IN UNITED STATES.—

2 “(i) IN GENERAL.—The alien shall  
3 have been employed in the United States,  
4 in the aggregate, for—

5 “(I) at least 3 years during the  
6 5-year period ending on the date of  
7 introduction of the Immigrant Ac-  
8 countability Act of 2005; and

9 “(II) at least 6 years after the  
10 date of enactment of such Act.

11 “(ii) EXCEPTIONS.—

12 “(I) The employment require-  
13 ment in clause (i)(I) shall not apply to  
14 an individual who is under 20 years of  
15 age on the date of enactment of the  
16 Immigrant Accountability Act of  
17 2005.

18 “(II) The employment require-  
19 ment in clause (i)(II) shall be reduced  
20 for an individual who cannot dem-  
21 onstrate employment based on a phys-  
22 ical or mental disability or as a result  
23 of pregnancy.

24 “(III) The employment require-  
25 ment in clause (i)(II) shall be reduced

1 for an individual who is under 20  
2 years of age on the date of enactment  
3 of the Immigrant Accountability Act  
4 of 2005 by a period of time equal to  
5 the time period beginning on such  
6 date of enactment and ending on the  
7 date on which the individual reaches  
8 20 years of age.

9 “(IV) The employment require-  
10 ments in clause (i) shall be reduced by  
11 1 year for each year of full time post-  
12 secondary study in the United States  
13 during the relevant period.

14 “(iii) PORTABILITY.—An alien shall  
15 not be required to complete the employ-  
16 ment requirements in clause (i) with the  
17 same employer.

18 “(iv) EVIDENCE OF EMPLOYMENT.—

19 “(I) CONCLUSIVE DOCUMENTS.—  
20 For purposes of satisfying the require-  
21 ments in clause (i), the alien shall  
22 submit at least 2 of the following doc-  
23 uments for each period of employ-  
24 ment, which shall be considered con-  
25 clusive evidence of such employment:

1           “(aa) Records maintained by  
2           the Social Security Administra-  
3           tion.

4           “(bb) Records maintained by  
5           an employer, such as pay stubs,  
6           time sheets, or employment work  
7           verification.

8           “(cc) Records maintained by  
9           the Internal Revenue Service.

10          “(dd) Records maintained  
11          by a union or day labor center.

12          “(ee) Records maintained by  
13          any other government agency,  
14          such as worker compensation  
15          records, disability records, or  
16          business licensing records.

17          “(II) OTHER DOCUMENTS.—  
18          Aliens unable to submit documents  
19          described in subclause (I) shall submit  
20          at least 3 other types of reliable docu-  
21          ments, including sworn declarations,  
22          for each period of employment to sat-  
23          isfy the requirement in clause (i).

24          “(III) INTENT OF CONGRESS.—It  
25          is the intent of Congress that the re-

1                    requirement in clause (i) be interpreted  
2                    and implemented in a manner that  
3                    recognizes and takes into account the  
4                    difficulties encountered by aliens in  
5                    obtaining evidence of employment due  
6                    to the undocumented status of the  
7                    alien.

8                    “(v) BURDEN OF PROOF.—An alien  
9                    applying for adjustment of status under  
10                   this subsection has the burden of proving  
11                   by a preponderance of the evidence that  
12                   the alien has satisfied the employment re-  
13                   quirements in clause (i). An alien may sat-  
14                   isfy such burden of proof by producing suf-  
15                   ficient evidence to show the extent of that  
16                   employment as a matter of just and rea-  
17                   sonable inference. Once the burden is met,  
18                   the burden shall shift to the Secretary of  
19                   Homeland Security to disprove the alien’s  
20                   evidence with a showing which negates the  
21                   reasonableness of the inference to be  
22                   drawn from the evidence.

23                   “(E) PAYMENT OF INCOME TAXES.—Not  
24                   later than the date on which status is adjusted  
25                   under this subsection, the alien shall establish

1 the payment of all Federal and State income  
2 taxes owed for employment during the period of  
3 employment required under subparagraph  
4 (D)(i). The alien may satisfy such requirement  
5 by establishing that—

6 “(i) no such tax liability exists;

7 “(ii) all outstanding liabilities have  
8 been met; or

9 “(iii) the alien has entered into an  
10 agreement for payment of all outstanding  
11 liabilities with the Internal Revenue Serv-  
12 ice and with the department of revenue of  
13 each State to which taxes are owed.

14 “(F) BASIC CITIZENSHIP SKILLS.—

15 “(i) IN GENERAL.—Except as pro-  
16 vided in clause (ii), the alien shall dem-  
17 onstrate that the alien either—

18 “(I) meets the requirements of  
19 section 312(a) (relating to minimal  
20 understanding of ordinary English  
21 and a knowledge and understanding  
22 of the history and Government of the  
23 United States); or

24 “(II) is satisfactorily pursuing a  
25 course of study, recognized by the



1 Secretary of Homeland Security, to  
2 achieve such understanding of English  
3 and the history and Government of  
4 the United States.

5 “(ii) EXCEPTIONS.—

6 “(I) MANDATORY.—The require-  
7 ments of clause (i) shall not apply to  
8 any person who is unable to comply  
9 with those requirements because of a  
10 physical or developmental disability or  
11 mental impairment.

12 “(II) DISCRETIONARY.—The Sec-  
13 retary of Homeland Security may  
14 waive all or part of the requirements  
15 of clause (i) in the case of an alien  
16 who is 65 years of age or older as of  
17 the date of the filing of the applica-  
18 tion for adjustment of status.

19 “(G) SECURITY AND LAW ENFORCEMENT  
20 CLEARANCES.—The alien shall submit finger-  
21 prints in accordance with procedures estab-  
22 lished by the Secretary of Homeland Security.  
23 Such fingerprints shall be submitted to relevant  
24 Federal agencies to be checked against existing  
25 databases for information relating to criminal,

1 national security, or other law enforcement ac-  
2 tions that would render the alien ineligible for  
3 adjustment of status under this subsection. The  
4 relevant Federal agencies shall work to ensure  
5 that such clearances are completed within 90  
6 days of the submission of fingerprints. An ap-  
7 peal of a security clearance determination by  
8 the Secretary of Homeland Security shall be  
9 processed through the Department of Home-  
10 land Security.

11 “(H) MILITARY SELECTIVE SERVICE.—The  
12 alien shall establish that if the alien is within  
13 the age period required under the Military Se-  
14 lective Service Act (50 U.S.C. App. 451 et seq.)  
15 that such alien has registered under that Act.

16 “(I) ADJUSTMENT OF STATUS.—An alien  
17 may not adjust to an immigrant classification  
18 under this section until after the earlier of—

19 “(i) the consideration of all applica-  
20 tions filed under section 201, 202, or 203  
21 before the date of enactment of this sec-  
22 tion; or

23 “(ii) 8 years after the date of enact-  
24 ment of this section.

25 “(2) SPOUSES AND CHILDREN.—

1 “(A) IN GENERAL.—

2 “(i) ADJUSTMENT OF STATUS.—Not-  
3 withstanding any other provision of law,  
4 the Secretary of Homeland Security shall,  
5 if otherwise eligible under subparagraph  
6 (B), adjust the status to that of a lawful  
7 permanent resident for—

8 “(I) the spouse, or child who was  
9 under 21 years of age on the date of  
10 enactment of the Immigrant Account-  
11 ability Act of 2005, of an alien who  
12 adjusts status or is eligible to adjust  
13 status to that of a permanent resident  
14 under paragraph (1); or

15 “(II) an alien who, within 5  
16 years preceding the date of enactment  
17 of the Immigrant Accountability Act  
18 of 2005, was the spouse or child of an  
19 alien who adjusts status to that of a  
20 permanent resident under paragraph  
21 (1), if—

22 “(aa) the termination of the  
23 qualifying relationship was con-  
24 nected to domestic violence; or

1           “(bb) the spouse or child  
2           has been battered or subjected to  
3           extreme cruelty by the spouse or  
4           parent who adjusts status or is  
5           eligible to adjust status to that of  
6           a permanent resident under para-  
7           graph (1).

8           “(ii) APPLICATION OF OTHER LAW.—  
9           In acting on applications filed under this  
10          paragraph with respect to aliens who have  
11          been battered or subjected to extreme cru-  
12          elty, the Secretary of Homeland Security  
13          shall apply the provisions of section  
14          204(a)(1)(J) and the protections, prohibi-  
15          tions, and penalties under section 384 of  
16          the Illegal Immigration Reform and Immig-  
17          rant Responsibility Act of 1996 (8 U.S.C.  
18          1367).

19          “(B) GROUNDS OF INADMISSIBILITY NOT  
20          APPLICABLE.—In establishing admissibility to  
21          the United States, the spouse or child described  
22          in subparagraph (A) shall establish that they  
23          are not inadmissible under section 212(a), ex-  
24          cept for any provision of that section that is  
25          waived under subsection (b) of this section.

1           “(C) SECURITY AND LAW ENFORCEMENT  
2           CLEARANCE.—The spouse or child, if that child  
3           is 14 years of age or older, described in sub-  
4           paragraph (A) shall submit fingerprints in ac-  
5           cordance with procedures established by the  
6           Secretary of Homeland Security. Such finger-  
7           prints shall be submitted to relevant Federal  
8           agencies to be checked against existing data-  
9           bases for information relating to criminal, na-  
10          tional security, or other law enforcement actions  
11          that would render the alien ineligible for adjust-  
12          ment of status under this subsection. The rel-  
13          evant Federal agencies shall work to ensure  
14          that such clearances are completed within 90  
15          days of the submission of fingerprints. An ap-  
16          peal of a denial by the Secretary of Homeland  
17          Security shall be processed through the Depart-  
18          ment of Homeland Security.

19          “(3) NONAPPLICABILITY OF NUMERICAL LIM-  
20          TATIONS.—When an alien is granted lawful perma-  
21          nent resident status under this subsection, the num-  
22          ber of immigrant visas authorized to be issued under  
23          any provision of this Act shall not be reduced.

24          “(b) GROUNDS OF INADMISSIBILITY.—

1           “(1) APPLICABLE PROVISIONS.—In the deter-  
2           mination of an alien’s admissibility under para-  
3           graphs (1)(C) and (2) of subsection (a), the fol-  
4           lowing provisions of section 212(a) shall apply and  
5           may not be waived by the Secretary of Homeland  
6           Security under paragraph (3)(A):

7                   “(A) Paragraph (1) (relating to health).

8                   “(B) Paragraph (2) (relating to criminals).

9                   “(C) Paragraph (3) (relating to security  
10           and related grounds).

11                   “(D) Subparagraphs (A) and (C) of para-  
12           graph (10) (relating to polygamists and child  
13           abductors).

14           “(2) GROUNDS OF INADMISSIBILITY NOT APPLI-  
15           CABLE.—The provisions of paragraphs (5), (6)(A),  
16           (6)(B), (6)(C), (6)(F), (6)(G), (7), (9), and (10)(B)  
17           of section 212(a) shall not apply to an alien who is  
18           applying for adjustment of status under subsection  
19           (a).

20           “(3) WAIVER OF OTHER GROUNDS.—

21                   “(A) IN GENERAL.—Except as provided in  
22           paragraph (1), the Secretary of Homeland Se-  
23           curity may waive any provision of section  
24           212(a) in the case of individual aliens for hu-

1           manitarian purposes, to ensure family unity, or  
2           when it is otherwise in the public interest.

3           “(B) CONSTRUCTION.—Nothing in this  
4           paragraph shall be construed as affecting the  
5           authority of the Secretary of Homeland Secu-  
6           rity, other than under this subparagraph, to  
7           waive the provisions of section 212(a).

8           “(4) SPECIAL RULE FOR DETERMINATION OF  
9           PUBLIC CHARGE.—An alien is not ineligible for ad-  
10          justment of status under subsection (a) by reason of  
11          a ground of inadmissibility under section 212(a)(4)  
12          if the alien establishes a history of employment in  
13          the United States evidencing self-support without  
14          public cash assistance.

15          “(5) SPECIAL RULE FOR INDIVIDUALS WHERE  
16          THERE IS NO COMMERCIAL PURPOSE.—An alien is  
17          not ineligible for adjustment of status under sub-  
18          section (a) by reason of a ground of inadmissibility  
19          under section 212(a)(6)(E) if the alien establishes  
20          that the action referred to in that section was taken  
21          for humanitarian purposes, to ensure family unity,  
22          or was otherwise in the public interest.

23          “(6) APPLICABILITY OF OTHER PROVISIONS.—  
24          Section 241(a)(5) and section 240B(d) shall not

1 apply with respect to an alien who is applying for  
2 adjustment of status under subsection (a).

3 “(c) TREATMENT OF APPLICANTS.—

4 “(1) IN GENERAL.—An alien who files an appli-  
5 cation under subsection (a)(1)(A) for adjustment of  
6 status, including a spouse or child who files for ad-  
7 justment of status under subsection (b)—

8 “(A) shall be granted employment author-  
9 ization pending final adjudication of the alien’s  
10 application for adjustment of status;

11 “(B) shall be granted permission to travel  
12 abroad pursuant to regulation pending final ad-  
13 judication of the alien’s application for adjust-  
14 ment of status;

15 “(C) shall not be detained, determined in-  
16 admissible or deportable, or removed pending  
17 final adjudication of the alien’s application for  
18 adjustment of status, unless the alien commits  
19 an act which renders the alien ineligible for  
20 such adjustment of status; and

21 “(D) shall not be considered an unauthor-  
22 ized alien as defined in section 274A(h)(3) until  
23 such time as employment authorization under  
24 subparagraph (A) is denied.



1           “(2) DOCUMENT OF AUTHORIZATION.—The  
2 Secretary of Homeland Security shall provide each  
3 alien described in paragraph (1) with a counterfeit-  
4 resistant document of authorization that—

5           “(A) meets all current requirements estab-  
6 lished by the Secretary of Homeland Security  
7 for travel documents, including the require-  
8 ments under section 403 of the Illegal Immigra-  
9 tion Reform and Immigrant Responsibility Act  
10 of 1996 (8 U.S.C. 1324a note); and

11           “(B) reflects the benefits and status set  
12 forth in paragraph (1).

13           “(3) SECURITY AND LAW ENFORCEMENT  
14 CLEARANCE.—Before an alien is granted employ-  
15 ment authorization or permission to travel under  
16 paragraph (1), the alien shall be required to undergo  
17 a name check against existing databases for infor-  
18 mation relating to criminal, national security, or  
19 other law enforcement actions. The relevant Federal  
20 agencies shall work to ensure that such name checks  
21 are completed not later than 90 days after the date  
22 on which the name check is requested.

23           “(4) TERMINATION OF PROCEEDINGS.—An  
24 alien in removal proceedings who establishes prima  
25 facie eligibility for adjustment of status under sub-

1 section (a) shall be entitled to termination of the  
2 proceedings pending the outcome of the alien’s appli-  
3 cation, unless the removal proceedings are based on  
4 criminal or national security grounds.

5 “(d) APPREHENSION BEFORE APPLICATION PE-  
6 RIOD.—The Secretary of Homeland Security shall provide  
7 that in the case of an alien who is apprehended before  
8 the beginning of the application period described in sub-  
9 section (a) and who can establish prima facie eligibility  
10 to have the alien’s status adjusted under that subsection  
11 (but for the fact that the alien may not apply for such  
12 adjustment until the beginning of such period), until the  
13 alien has had the opportunity during the first 180 days  
14 of the application period to complete the filing of an appli-  
15 cation for adjustment, the alien may not be removed from  
16 the United States unless the alien is removed on the basis  
17 that the alien has engaged in criminal conduct or is a  
18 threat to the national security of the United States.

19 “(e) CONFIDENTIALITY OF INFORMATION.—

20 “(1) IN GENERAL.—Except as otherwise pro-  
21 vided in this section, no Federal agency or bureau,  
22 nor any officer or employee of such agency or bu-  
23 reau, may—

24 “(A) use the information furnished by the  
25 applicant pursuant to an application filed under

1 paragraph (1) or (2) of subsection (a) for any  
2 purpose other than to make a determination on  
3 the application;

4 “(B) make any publication through which  
5 the information furnished by any particular ap-  
6 plicant can be identified; or

7 “(C) permit anyone other than the sworn  
8 officers and employees of such agency, bureau,  
9 or approved entity, as approved by the Sec-  
10 retary of Homeland Security, to examine indi-  
11 vidual applications that have been filed.

12 “(2) REQUIRED DISCLOSURES.—The Secretary  
13 of Homeland Security and the Secretary of State  
14 shall provide the information furnished pursuant to  
15 an application filed under paragraph (1) or (2) of  
16 subsection (a), and any other information derived  
17 from such furnished information, to a duly recog-  
18 nized law enforcement entity in connection with a  
19 criminal investigation or prosecution or a national  
20 security investigation or prosecution, in each in-  
21 stance about an individual suspect or group of sus-  
22 pects, when such information is requested in writing  
23 by such entity.

24 “(3) CRIMINAL PENALTY.—Any person who  
25 knowingly uses, publishes, or permits information to

1 be examined in violation of this subsection shall be  
2 fined not more than \$10,000.

3 “(f) PENALTIES FOR FALSE STATEMENTS IN APPLI-  
4 CATIONS.—

5 “(1) CRIMINAL PENALTY.—

6 “(A) VIOLATION.—It shall be unlawful for  
7 any person to—

8 “(i) file or assist in filing an applica-  
9 tion for adjustment of status under this  
10 section and knowingly and willfully falsify,  
11 conceal, or cover up a material fact or  
12 make any false, fictitious, or fraudulent  
13 statements or representations, or make or  
14 use any false writing or document knowing  
15 the same to contain any false, fictitious, or  
16 fraudulent statement or entry; or

17 “(ii) create or supply a false writing  
18 or document for use in making such an ap-  
19 plication.

20 “(B) PENALTY.—Any person who violates  
21 subparagraph (A) shall be fined in accordance  
22 with title 18, United States Code, or imprisoned  
23 not more than 5 years, or both.

1           “(2) INADMISSIBILITY.—An alien who is con-  
2           victed of a crime under paragraph (1) shall be con-  
3           sidered to be inadmissible to the United States.

4           “(3) EXCEPTION.—Notwithstanding paragraphs  
5           (1) and (2), any alien or other entity (including an  
6           employer or union) that submits an employment  
7           record that contains incorrect data that the alien  
8           used in order to obtain such employment, shall not  
9           have violated this subsection.

10          “(g) INELIGIBILITY FOR PUBLIC BENEFITS.—For  
11          purposes of section 403 of the Personal Responsibility and  
12          Work Opportunity Reconciliation Act of 1996 (8 U.S.C.  
13          1613), an alien whose status has been adjusted in accord-  
14          ance with subsection (a) shall not be eligible for any Fed-  
15          eral means-tested public benefit unless the alien meets the  
16          alien eligibility criteria for such benefit under title IV of  
17          such Act (8 U.S.C. 1601 et seq.).

18          “(h) RELATIONSHIPS OF APPLICATION TO CERTAIN  
19          ORDERS.—

20                 “(1) IN GENERAL.—An alien who is present in  
21                 the United States and has been ordered excluded,  
22                 deported, removed, or to depart voluntarily from the  
23                 United States or is subject to reinstatement of re-  
24                 moval under any provision of this Act may, notwith-  
25                 standing such order, apply for adjustment of status

1 under subsection (a). Such an alien shall not be re-  
2 quired, as a condition of submitting or granting such  
3 application, to file a separate motion to reopen, re-  
4 consider, or vacate the exclusion, deportation, re-  
5 moval or voluntary departure order. If the Secretary  
6 of Homeland Security grants the application, the  
7 order shall be canceled. If the Secretary of Home-  
8 land Security renders a final administrative decision  
9 to deny the application, such order shall be effective  
10 and enforceable. Nothing in this paragraph shall af-  
11 fect the review or stay of removal under subsection  
12 (j).

13 “(2) STAY OF REMOVAL.—The filing of an ap-  
14 plication described in paragraph (1) shall stay the  
15 removal or detainment of the alien pending final ad-  
16 judication of the application, unless the removal or  
17 detainment of the alien is based on criminal or na-  
18 tional security grounds.

19 “(i) APPLICATION OF OTHER PROVISIONS.—Nothing  
20 in this section shall preclude an alien who may be eligible  
21 to be granted adjustment of status under subsection (a)  
22 from seeking such status under any other provision of law  
23 for which the alien may be eligible.

24 “(j) ADMINISTRATIVE AND JUDICIAL REVIEW.—

1           “(1) IN GENERAL.—Except as provided in this  
2 subsection, there shall be no administrative or judi-  
3 cial review of a determination respecting an applica-  
4 tion for adjustment of status under subsection (a).

5           “(2) ADMINISTRATIVE REVIEW.—

6           “(A) SINGLE LEVEL OF ADMINISTRATIVE  
7 APPELLATE REVIEW.—The Secretary of Home-  
8 land Security shall establish an appellate au-  
9 thority to provide for a single level of adminis-  
10 trative appellate review of a determination re-  
11 specting an application for adjustment of status  
12 under subsection (a).

13           “(B) STANDARD FOR REVIEW.—Adminis-  
14 trative appellate review referred to in subpara-  
15 graph (A) shall be based solely upon the admin-  
16 istrative record established at the time of the  
17 determination on the application and upon the  
18 presentation of additional or newly discovered  
19 evidence during the time of the pending appeal.

20           “(3) JUDICIAL REVIEW.—

21           “(A) DIRECT REVIEW.—A person whose  
22 application for adjustment of status under sub-  
23 section (a) is denied after administrative appel-  
24 late review under paragraph (2) may seek re-  
25 view of such denial, in accordance with chapter

1 7 of title 5, United States Code, before the  
2 United States district court for the district in  
3 which the person resides.

4 “(B) REVIEW AFTER REMOVAL PRO-  
5 CEEDINGS.—There shall be judicial review in  
6 the Federal courts of appeal of the denial of an  
7 application for adjustment of status under sub-  
8 section (a) in conjunction with judicial review of  
9 an order of removal, deportation, or exclusion,  
10 but only if the validity of the denial has not  
11 been upheld in a prior judicial proceeding under  
12 subparagraph (A). Notwithstanding any other  
13 provision of law, the standard for review of  
14 such a denial shall be governed by subpara-  
15 graph (C).

16 “(C) STANDARD FOR JUDICIAL REVIEW.—  
17 Judicial review of a denial of an application  
18 under this section shall be based solely upon the  
19 administrative record established at the time of  
20 the review. The findings of fact and other de-  
21 terminations contained in the record shall be  
22 conclusive unless the applicant can establish  
23 abuse of discretion or that the findings are di-  
24 rectly contrary to clear and convincing facts  
25 contained in the record, considered as a whole.



1           “(4) STAY OF REMOVAL.—Aliens seeking ad-  
2           ministrative or judicial review under this subsection  
3           shall not be removed from the United States until a  
4           final decision is rendered establishing ineligibility  
5           under this section, unless such removal is based on  
6           criminal or national security grounds.

7           “(k) DISSEMINATION OF INFORMATION ON ADJUST-  
8           MENT PROGRAM.—During the 12 months following the  
9           issuance of final regulations in accordance with subsection  
10          (o), the Secretary of Homeland Security, in cooperation  
11          with approved entities, approved by the Secretary of  
12          Homeland Security, shall broadly disseminate information  
13          respecting adjustment of status under this section and the  
14          requirements to be satisfied to obtain such status. The  
15          Secretary of Homeland Security shall also disseminate in-  
16          formation to employers and labor unions to advise them  
17          of the rights and protections available to them and to  
18          workers who file applications under this section. Such in-  
19          formation shall be broadly disseminated, in the languages  
20          spoken by the top 15 source countries of the aliens who  
21          would qualify for adjustment of status under this section,  
22          including to television, radio, and print media such aliens  
23          would have access to.

24          “(l) EMPLOYER PROTECTIONS.—

1           “(1) IMMIGRATION STATUS OF ALIEN.—Em-  
2           ployers of aliens applying for adjustment of status  
3           under this section shall not be subject to civil and  
4           criminal tax liability relating directly to the employ-  
5           ment of such alien.

6           “(2) PROVISION OF EMPLOYMENT RECORDS.—  
7           Employers that provide unauthorized aliens with  
8           copies of employment records or other evidence of  
9           employment pursuant to an application for adjust-  
10          ment of status under this section or any other appli-  
11          cation or petition pursuant to other provisions of the  
12          immigration laws, shall not be subject to civil and  
13          criminal liability pursuant to section 274A for em-  
14          ploying such unauthorized aliens.

15          “(3) APPLICABILITY OF OTHER LAW.—Nothing  
16          in this subsection shall be used to shield an employer  
17          from liability pursuant to section 274B or any other  
18          labor and employment law provisions.

19          “(m) AUTHORIZATION OF FUNDS; FINES.—

20          “(1) AUTHORIZATION OF APPROPRIATIONS.—  
21          There are authorized to be appropriated to the De-  
22          partment of Homeland Security such sums as are  
23          necessary to commence the processing of applica-  
24          tions filed under this section.

1           “(2) FINE.—An alien who files an application  
2 under this section shall pay a fine commensurate  
3 with levels charged by the Department of Homeland  
4 Security for other applications for adjustment of sta-  
5 tus.

6           “(3) ADDITIONAL AMOUNTS OWED.—Prior to  
7 the adjudication of an application for adjustment of  
8 status filed under this section, the alien shall pay an  
9 amount equaling \$2,000, but such amount shall not  
10 be required from an alien under the age of 18.

11           “(4) USE OF AMOUNTS COLLECTED.—The Sec-  
12 retary of Homeland Security shall deposit payments  
13 received under this subsection in the Immigration  
14 Examinations Fee Account, and these payments in  
15 such account shall be available, without fiscal year  
16 limitation, such that—

17           “(A) 80 percent of such funds shall be  
18 available to the Department of Homeland Secu-  
19 rity for border security purposes;

20           “(B) 10 percent of such funds shall be  
21 available to the Department of Homeland Secu-  
22 rity for implementing and processing applica-  
23 tions under this section; and

24           “(C) 10 percent of such funds shall be  
25 available to the Department of Homeland Secu-

1           rity and the Department of State to cover ad-  
2           ministrative and other expenses incurred in con-  
3           nection with the review of applications filed by  
4           immediate relatives as a result of the amend-  
5           ments made by title II of the Immigrant Ac-  
6           countability Act of 2005.

7           “(n) MANDATORY DEPARTURE AND REENTRY.—Any  
8           alien who is physically present in the United States on  
9           the date of introduction of the Immigrant Accountability  
10          Act of 2005 who seeks to adjust status under this section  
11          but does not satisfy the requirements of subparagraph (B)  
12          or (D) of subsection (a)(1) shall be eligible to depart the  
13          United States and to seek admission as a nonimmigrant  
14          or immigrant alien as described in section 245C.

15          “(o) ISSUANCE OF REGULATIONS.—Not later than  
16          120 days after the date of enactment of the Immigrant  
17          Accountability Act of 2005, the Secretary of Homeland  
18          Security shall issue regulations to implement this sec-  
19          tion.”.

20          (b) TABLE OF CONTENTS.—The table of contents for  
21          the Immigration and Nationality Act (8 U.S.C. 1101 et  
22          seq.) is amended by inserting after the item relating to  
23          section 245A the following:

“245B. Access to Earned Adjustment.”.

1 **SEC. 102. MANDATORY DEPARTURE AND REENTRY.**

2 (a) IN GENERAL.—Chapter 5 of title II of the Immi-  
3 gration and Nationality Act (8 U.S.C. 1255 et seq.), as  
4 amended by section 101(a), is further amended by insert-  
5 ing after section 245B the following: “

6 “MANDATORY DEPARTURE AND REENTRY

7 “SEC. 245C. (a) IN GENERAL.—The Secretary of  
8 Homeland Security may grant Deferred Mandatory De-  
9 parture status to aliens who are in the United States ille-  
10 gally to allow such aliens time to depart the United States  
11 and to seek admission as a nonimmigrant or immigrant  
12 alien.

13 “(b) REQUIREMENTS.—An alien desiring an adjust-  
14 ment of status under subsection (a) shall meet the fol-  
15 lowing requirements:

16 “(1) PRESENCE.—The alien shall establish that  
17 the alien—

18 “(A) was physically present in the United  
19 States on the date of introduction of the Immi-  
20 grant Accountability Act of 2005;

21 “(B) has been continuously in the United  
22 States since such date, except for brief, casual,  
23 and innocent departures; and

24 “(C) was not legally present in the United  
25 States on that date under any classification set  
26 forth in section 101(a)(15).

1           “(2) EMPLOYMENT.—

2                   “(A) IN GENERAL.—The alien shall estab-  
3           lish that the alien—

4                           “(i) was employed in the United  
5                           States, whether full time, part time, sea-  
6                           sonally, or self-employed, before the date  
7                           on which the Secure America and Orderly  
8                           Immigration Act was introduced; and

9                           “(ii) has been employed in the United  
10                          States since that date.

11           “(B) EVIDENCE OF EMPLOYMENT.—

12                          “(i) IN GENERAL.—An alien may con-  
13                          clusively establish employment status in  
14                          compliance with subparagraph (A) by sub-  
15                          mitting to the Secretary of Homeland Se-  
16                          curity records demonstrating such employ-  
17                          ment maintained by—

18                                   “(I) the Social Security Adminis-  
19                                   tration, Internal Revenue Service, or  
20                                   by any other Federal, State, or local  
21                                   government agency;

22                                   “(II) an employer; or

23                                   “(III) a labor union, day labor  
24                                   center, or an organization that assists

1 workers in matters related to employ-  
2 ment.

3 “(ii) OTHER DOCUMENTS.—An alien  
4 who is unable to submit a document de-  
5 scribed in subclauses (I) through (III) of  
6 clause (i) may satisfy the requirement in  
7 subparagraph (A) by submitting to the  
8 Secretary at least 2 other types of reliable  
9 documents that provide evidence of em-  
10 ployment, including—

11 “(I) bank records;

12 “(II) business records;

13 “(III) sworn affidavits from non-  
14 relatives who have direct knowledge of  
15 the alien’s work; or

16 “(IV) remittance records.

17 “(iii) INTENT OF CONGRESS.—It is  
18 the intent of Congress that the require-  
19 ment in this subsection be interpreted and  
20 implemented in a manner that recognizes  
21 and takes into account the difficulties en-  
22 countered by aliens in obtaining evidence  
23 of employment due to the undocumented  
24 status of the alien.

1           “(iv) BURDEN OF PROOF.—An alien  
2           who is applying for adjustment of status  
3           under this section has the burden of prov-  
4           ing by a preponderance of the evidence  
5           that the alien has satisfied the require-  
6           ments of this subsection. An alien may  
7           meet such burden of proof by producing  
8           sufficient evidence to demonstrate such  
9           employment as a matter of reasonable in-  
10          ference.

11          “(3) ADMISSIBILITY.—

12           “(A) IN GENERAL.—The alien shall estab-  
13          lish that such alien—

14           “(i) is admissible to the United  
15          States, except as provided as in (B); and

16           “(ii) has not assisted in the persecu-  
17          tion of any person or persons on account  
18          of race, religion, nationality, membership  
19          in a particular social group, or political  
20          opinion.

21           “(B) GROUNDS NOT APPLICABLE.—The  
22          provisions of paragraphs (5), (6)(A), and (7) of  
23          section 212(a) shall not apply.

24           “(C) WAIVER.—The Secretary of Home-  
25          land Security may waive any other provision of



1 section 212(a), or a ground of ineligibility  
2 under paragraph (4), in the case of individual  
3 aliens for humanitarian purposes, to assure  
4 family unity, or when it is otherwise in the pub-  
5 lic interest.

6 “(4) INELIGIBLE.—The alien is ineligible for  
7 Deferred Mandatory Departure status if the alien—

8 “(A) has been ordered excluded, deported,  
9 removed, or to depart voluntarily from the  
10 United States; or

11 “(B) fails to comply with any request for  
12 information by the Secretary of Homeland Se-  
13 curity.

14 “(5) MEDICAL EXAMINATION.—The alien may  
15 be required, at the alien’s expense, to undergo such  
16 a medical examination (including a determination of  
17 immunization status) as is appropriate and conforms  
18 to generally accepted professional standards of med-  
19 ical practice.

20 “(6) TERMINATION.—The Secretary of Home-  
21 land Security may terminate an alien’s Deferred  
22 Mandatory Departure status if—

23 “(A) the Secretary of Homeland Security  
24 determines that the alien was not in fact eligi-  
25 ble for such status; or

1           “(B) the alien commits an act that makes  
2 the alien removable from the United States.

3           “(7) APPLICATION CONTENT AND WAIVER.—

4           “(A) APPLICATION FORM.—The Secretary  
5 of Homeland Security shall create an applica-  
6 tion form that an alien shall be required to  
7 complete as a condition of obtaining Deferred  
8 Mandatory Departure status.

9           “(B) CONTENT.—In addition to any other  
10 information that the Secretary requires to de-  
11 termine an alien’s eligibility for Deferred Man-  
12 datory Departure, the Secretary shall require  
13 an alien to answer questions concerning the  
14 alien’s physical and mental health, criminal his-  
15 tory, gang membership, renunciation of gang  
16 affiliation, immigration history, involvement  
17 with groups or individuals that have engaged in  
18 terrorism, genocide, persecution, or who seek  
19 the overthrow of the United States Government,  
20 voter registration history, claims to United  
21 States citizenship, and tax history.

22           “(C) WAIVER.—The Secretary of Home-  
23 land Security shall require an alien to include  
24 with the application a waiver of rights that ex-  
25 plains to the alien that, in exchange for the dis-

1           cretionary benefit of obtaining Deferred Manda-  
2           tory Departure status, the alien agrees to waive  
3           any right to administrative or judicial review or  
4           appeal of an immigration officer's determina-  
5           tion as to the alien's eligibility, or to contest  
6           any removal action, other than on the basis of  
7           an application for asylum or restriction of re-  
8           moval pursuant to the provisions contained in  
9           section 208 or 241(b)(3), or under the Conven-  
10          tion Against Torture and Other Cruel, Inhuman  
11          or Degrading Treatment or Punishment, done  
12          at New York December 10, 1984, or cancella-  
13          tion of removal pursuant to section 240A(a).

14                 “(D) KNOWLEDGE.—The Secretary of  
15                 Homeland Security shall require an alien to in-  
16                 clude with the application a signed certification  
17                 in which the alien certifies that the alien has  
18                 read and understood all of the questions and  
19                 statements on the application form, and that  
20                 the alien certifies under penalty of perjury  
21                 under the laws of the United States that the  
22                 application, and any evidence submitted with it,  
23                 are all true and correct, and that the applicant  
24                 authorizes the release of any information con-

1           tained in the application and any attached evi-  
2           dence for law enforcement purposes.

3           “(c) IMPLEMENTATION AND APPLICATION TIME PE-  
4           RIODS.—

5           “(1) IN GENERAL.—The Secretary of Homeland  
6           Security shall ensure that the application process is  
7           secure and incorporates antifraud protection. The  
8           Secretary of Homeland Security shall interview an  
9           alien to determine eligibility for Deferred Mandatory  
10          Departure status and shall utilize biometric authen-  
11          tication at time of document issuance.

12          “(2) INITIAL RECEIPT OF APPLICATIONS.—The  
13          Secretary of Homeland Security shall begin accept-  
14          ing applications for Deferred Mandatory Departure  
15          status not later than 3 months after the date on  
16          which the application form is first made available.

17          “(3) APPLICATION.—An alien must submit an  
18          initial application for Deferred Mandatory Departure  
19          status not later than 6 months after the date  
20          on which the application form is first made avail-  
21          able. An alien that fails to comply with this require-  
22          ment is ineligible for Deferred Mandatory Departure  
23          status.

24          “(4) COMPLETION OF PROCESSING.—The Sec-  
25          retary of Homeland Security shall ensure that all

1 applications for Deferred Mandatory Departure sta-  
2 tus are processed not later than 12 months after the  
3 date on which the application form is first made  
4 available.

5 “(d) SECURITY AND LAW ENFORCEMENT BACK-  
6 GROUND CHECKS.—An alien may not be granted Deferred  
7 Mandatory Departure status unless the alien submits bio-  
8 metric data in accordance with procedures established by  
9 the Secretary of Homeland Security. The Secretary of  
10 Homeland Security may not grant Deferred Mandatory  
11 Departure status until all appropriate background checks  
12 are completed to the satisfaction of the Secretary of  
13 Homeland Security.

14 “(e) ACKNOWLEDGMENT.—

15 “(1) IN GENERAL.—An alien who applies for  
16 Deferred Mandatory Departure status shall submit  
17 to the Secretary of Homeland Security—

18 “(A) an acknowledgment made in writing  
19 and under oath that the alien—

20 “(i) is unlawfully present in the  
21 United States and subject to removal or  
22 deportation, as appropriate, under this  
23 Act; and

24 “(ii) understands the terms of the  
25 terms of Deferred Mandatory Departure;

1           “(B) any Social Security account number  
2           or card in the possession of the alien or relied  
3           upon by the alien;

4           “(C) any false or fraudulent documents in  
5           the alien’s possession.

6           “(2) USE OF INFORMATION.—None of the doc-  
7           uments or other information provided in accordance  
8           with paragraph (1) may be used in a criminal pro-  
9           ceeding against the alien providing such documents  
10          or information.

11          “(f) MANDATORY DEPARTURE.—

12           “(1) IN GENERAL.—The Secretary of Homeland  
13           Security shall grant Deferred Mandatory Departure  
14           status to an alien who meets the requirements of  
15           this section for a period not to exceed 3 years.

16           “(2) REGISTRATION AT TIME OF DEPARTURE.—An alien granted Deferred Mandatory De-  
17           parture shall—  
18           parture shall—

19           “(A) depart from the United States before  
20           the expiration of the period of Deferred Manda-  
21           tory Departure status;

22           “(B) register with the Secretary of Home-  
23           land Security at the time of departure; and

1           “(C) surrender any evidence of Deferred  
2           Mandatory Departure status at the time of de-  
3           parture.

4           “(3) APPLICATION FOR READMISSION.—An  
5           alien under this section may apply for admission to  
6           the United States as an immigrant or nonimmigrant  
7           while in the United States or from any location out-  
8           side of the United States, but may not be granted  
9           admission until the alien has departed from the  
10          United States in accordance with paragraph (2).

11          “(4) EFFECT OF READMISSION ON SPOUSE OR  
12          CHILD.—The spouse or child of an alien granted De-  
13          ferred Mandatory Departure and subsequently  
14          granted an immigrant or nonimmigrant visa before  
15          departing the United States shall be—

16                 “(A) deemed to have departed under this  
17                 section upon the successful admission of the  
18                 principal alien; and

19                 “(B) eligible for the derivative benefits as-  
20                 sociated with the immigrant or nonimmigrant  
21                 visa granted to the principal alien without re-  
22                 gard to numerical caps related to such visas.

23          “(5) WAIVERS.—The Secretary of Homeland  
24          Security may waive the departure requirement under  
25          this subsection if the alien—

1           “(A) is granted an immigrant or non-  
2 immigrant visa; and

3           “(B) can demonstrate that the departure  
4 of the alien would create a substantial hardship  
5 on the alien or an immediate family member of  
6 the alien.

7           “(6) RETURN IN LEGAL STATUS.—An alien who  
8 complies with the terms of Deferred Mandatory De-  
9 parture status and who departs before the expiration  
10 of such status—

11           “(A) shall not be subject to section  
12 212(a)(9)(B); and

13           “(B) if otherwise eligible, may immediately  
14 seek admission as a nonimmigrant or immi-  
15 grant.

16           “(7) FAILURE TO DEPART.—An alien who fails  
17 to depart the United States prior to the expiration  
18 of Mandatory Deferred Departure status is not eligi-  
19 ble and may not apply for or receive any immigra-  
20 tion relief or benefit under this Act or any other law  
21 for a period of 10 years, with the exception of sec-  
22 tion 208 or 241(b)(3) or the Convention Against  
23 Torture and Other Cruel, Inhuman or Degrading  
24 Treatment or Punishment, done at New York De-  
25 cember 10, 1984, in the case of an alien who indi-



1 cates either an intention to apply for asylum under  
2 section 208 or a fear of persecution or torture.

3 “(8) PENALTIES FOR DELAYED DEPARTURE.—

4 An alien who fails to depart immediately shall be  
5 subject to—

6 “(A) no fine if the alien departs not later  
7 than 1 year after the grant of Deferred Manda-  
8 tory Departure;

9 “(B) a fine of \$2,000 if the alien does not  
10 depart within 2 years after the grant of De-  
11 ferred Mandatory Departure; and

12 “(C) a fine of \$3,000 if the alien does not  
13 depart within 3 years after the grant of De-  
14 ferred Mandatory Departure.

15 “(g) EVIDENCE OF DEFERRED MANDATORY DEPAR-  
16 TURE STATUS.—Evidence of Deferred Mandatory Depar-  
17 ture status shall be machine-readable and tamper-resist-  
18 ant, shall allow for biometric authentication, and shall  
19 comply with the requirements under section 403 of the  
20 Illegal Immigration Reform and Immigrant Responsibility  
21 Act of 1996 (8 U.S.C. 1324a note). The Secretary of  
22 Homeland Security is authorized to incorporate inte-  
23 grated-circuit technology into the document. The Sec-  
24 retary of Homeland Security shall consult with the Foren-  
25 sic Document Laboratory in designing the document. The

1 document may serve as a travel, entry, and work author-  
2 ization document during the period of its validity. The  
3 document may be accepted by an employer as evidence of  
4 employment authorization and identity under section  
5 274A(b)(1)(B).

6 “(h) TERMS OF STATUS.—

7 “(1) REPORTING.—During the period of De-  
8 ferred Mandatory Departure, an alien shall comply  
9 with all registration requirements under section 264.

10 “(2) TRAVEL.—

11 “(A) An alien granted Deferred Mandatory  
12 Departure is not subject to section 212(a)(9)  
13 for any unlawful presence that occurred prior to  
14 the Secretary of Homeland Security granting  
15 the alien Deferred Mandatory Departure status.

16 “(B) Under regulations established by the  
17 Secretary of Homeland Security, an alien grant-  
18 ed Deferred Mandatory Departure—

19 “(i) may travel outside of the United  
20 States and may be readmitted if the period  
21 of Deferred Mandatory Departure status  
22 has not expired; and

23 “(ii) must establish at the time of ap-  
24 plication for admission that the alien is ad-  
25 missible under section 212.

1           “(C) EFFECT ON PERIOD OF AUTHORIZED  
2           ADMISSION.—Time spent outside the United  
3           States under subparagraph (B) shall not extend  
4           the period of Deferred Mandatory Departure  
5           status.

6           “(3) BENEFITS.—During the period in which  
7           an alien is granted Deferred Mandatory Departure  
8           under this section—

9           “(A) the alien shall not be considered to be  
10           permanently residing in the United States  
11           under the color of law and shall be treated as  
12           a nonimmigrant admitted under section 214;  
13           and

14           “(B) the alien may be deemed ineligible for  
15           public assistance by a State (as defined in sec-  
16           tion 101(a)(36)) or any political subdivision  
17           thereof which furnishes such assistance.

18           “(i) PROHIBITION ON CHANGE OF STATUS OR AD-  
19           JUSTMENT OF STATUS.—Before leaving the United  
20           States, an alien granted Deferred Mandatory Departure  
21           status may not apply to change status under section 248.

22           “(j) APPLICATION FEE.—

23           “(1) IN GENERAL.—An alien seeking a grant of  
24           Deferred Mandatory Departure status shall submit,

1 in addition to any other fees authorized by law, an  
2 application fee of \$1,000.

3 “(2) USE OF FEE.—The fees collected under  
4 paragraph (1) shall be available for use by the Sec-  
5 retary of Homeland Security for activities to iden-  
6 tify, locate, or remove illegal aliens.

7 “(k) FAMILY MEMBERS.—

8 “(1) IN GENERAL.—Subject subsection (f)(4),  
9 the spouse or child of an alien granted Deferred  
10 Mandatory Departure status is subject to the same  
11 terms and conditions as the principal alien.

12 “(2) APPLICATION FEE.—

13 “(A) IN GENERAL.—The spouse or child of  
14 an alien seeking Deferred Mandatory Departure  
15 status shall submit, in addition to any other fee  
16 authorized by law, an additional fee of \$500.

17 “(B) USE OF FEE.—The fees collected  
18 under subparagraph (A) shall be available for  
19 use by the Secretary of Homeland Security for  
20 activities to identify, locate, or remove aliens  
21 who are removable under section 237.

22 “(l) EMPLOYMENT.—

23 “(1) IN GENERAL.—An alien who has applied  
24 for or has been granted Deferred Mandatory Departure  
25 status may be employed in the United States.

1           “(2) CONTINUOUS EMPLOYMENT.—An alien  
2           granted Deferred Mandatory Departure status must  
3           be employed while in the United States. An alien  
4           who fails to be employed for 60 days is ineligible for  
5           hire until the alien has departed the United States  
6           and reentered. The Secretary of Homeland Security  
7           may reauthorize an alien for employment without re-  
8           quiring the alien’s departure from the United States.

9           “(m) ENUMERATION OF SOCIAL SECURITY NUM-  
10          BER.—The Secretary of Homeland Security, in coordina-  
11          tion with the Commissioner of the Social Security system,  
12          shall implement a system to allow for the enumeration of  
13          a Social Security number and production of a Social Secu-  
14          rity card at the time the Secretary of Homeland Security  
15          grants an alien Deferred Mandatory Departure status.

16          “(n) PENALTIES FOR FALSE STATEMENTS IN APPLI-  
17          CATION FOR DEFERRED MANDATORY DEPARTURE.—

18                 “(1) CRIMINAL PENALTY.—

19                         “(A) VIOLATION.—It shall be unlawful for  
20                         any person—

21                                 “(i) to file or assist in filing an appli-  
22                                 cation for adjustment of status under this  
23                                 section and knowingly and willfully falsify,  
24                                 misrepresent, conceal, or cover up a mate-  
25                                 rial fact or make any false, fictitious, or

1           fraudulent statements or representations,  
2           or make or use any false writing or docu-  
3           ment knowing the same to contain any  
4           false, fictitious, or fraudulent statement or  
5           entry; or

6           “(ii) to create or supply a false writ-  
7           ing or document for use in making such an  
8           application.

9           “(B) PENALTY.—Any person who violates  
10          subparagraph (A) shall be fined in accordance  
11          with title 18, United States Code, imprisoned  
12          not more than 5 years, or both.

13          “(2) INADMISSIBILITY.—An alien who is con-  
14          victed of a crime under paragraph (1) shall be con-  
15          sidered to be inadmissible to the United States on  
16          the ground described in section 212(a)(6)(C)(i).

17          “(o) RELATION TO CANCELLATION OF REMOVAL.—  
18          With respect to an alien granted Deferred Mandatory De-  
19          parture status under this section, the period of such status  
20          shall not be counted as a period of physical presence in  
21          the United States for purposes of section 240A(a), unless  
22          the Secretary of Homeland Security determines that ex-  
23          treme hardship exists.

24          “(p) WAIVER OF RIGHTS.—An alien is not eligible  
25          for Deferred Mandatory Departure status, unless the alien

1 has waived any right to contest, other than on the basis  
2 of an application for asylum, restriction of removal, or  
3 protection under the Convention Against Torture and  
4 Other Cruel, Inhuman or Degrading Treatment or Pun-  
5 ishment, done at New York December 10, 1984, or can-  
6 cellation of removal pursuant to section 240A(a), any ac-  
7 tion for deportation or removal of the alien that is insti-  
8 tuted against the alien subsequent to a grant of Deferred  
9 Mandatory Departure status.

10 “(q) DENIAL OF DISCRETIONARY RELIEF.—The de-  
11 termination of whether an alien is eligible for a grant of  
12 Deferred Mandatory Departure status is solely within the  
13 discretion of the Secretary of Homeland Security. Not-  
14 withstanding any other provision of law, no court shall  
15 have jurisdiction to review—

16 “(1) any judgment regarding the granting of  
17 relief under this section; or

18 “(2) any other decision or action of the Sec-  
19 retary of Homeland Security the authority for which  
20 is specified under this section to be in the discretion  
21 of the Secretary, other than the granting of relief  
22 under section 208(a).

23 “(r) JUDICIAL REVIEW.—

24 “(1) LIMITATIONS ON RELIEF.—Without regard  
25 to the nature of the action or claim and without re-

1       gard to the identity of the party or parties bringing  
2       the action, no court may—

3               “(A) enter declaratory, injunctive, or other  
4       equitable relief in any action pertaining to—

5                       “(i) an order or notice denying an  
6       alien a grant of Deferred Mandatory De-  
7       parture status or any other benefit arising  
8       from such status; or

9                       “(ii) an order of removal, exclusion, or  
10      deportation entered against an alien after  
11      a grant of Deferred Mandatory Departure  
12      status; or

13               “(B) certify a class under Rule 23 of the  
14      Federal Rules of Civil Procedure in any action  
15      for which judicial review is authorized under a  
16      subsequent paragraph of this subsection.

17      “(2) CHALLENGES TO VALIDITY.—

18               “(A) IN GENERAL.—Any right or benefit  
19      not otherwise waived or limited pursuant this  
20      section is available in an action instituted in the  
21      United States District Court for the District of  
22      Columbia, but shall be limited to determina-  
23      tions of—

24                       “(i) whether such section, or any reg-  
25      ulation issued to implement such section,



1 violates the Constitution of the United  
2 States; or

3 “(ii) whether such a regulation, or a  
4 written policy directive, written policy  
5 guideline, or written procedure issued by  
6 or under the authority of the Secretary of  
7 Homeland Security to implement such sec-  
8 tion, is not consistent with applicable pro-  
9 visions of this section or is otherwise in  
10 violation of law.”.

11 (b) TABLE OF CONTENTS.—The table of contents for  
12 the Immigration and Nationality Act (8 U.S.C. 1101 et  
13 seq.), as amended by section 101(b) is amended by insert-  
14 ing after the item relating to section 245B the following:

“245C. Mandatory Departure and Reentry.”.

15 (c) CONFORMING AMENDMENT.—Amend section  
16 237(a)(2)(A)(i)(II) of the Immigration and Nationality  
17 Act (8 U.S.C. 1227(a)(2)(A)(i)(II)) is amended by strik-  
18 ing the period at the end and inserting “(or 6 months in  
19 the case of an alien granted Deferred Mandatory Departure  
20 status under section 245C),”.

21 (d) STATUTORY CONSTRUCTION.—Nothing in this  
22 section, or any amendment made by this section, shall be  
23 construed to create any substantive or procedural right or  
24 benefit that is legally enforceable by any party against the

1 United States or its agencies or officers or any other per-  
2 son.

3 (e) AUTHORIZATION OF APPROPRIATIONS.—There  
4 are authorized to be appropriated such amounts as may  
5 be necessary for facilities, personnel (including consular  
6 officers), training, technology, and processing necessary to  
7 carry out the amendments made by this section.

8 **SEC. 103. CORRECTION OF SOCIAL SECURITY RECORDS.**

9 Section 208(e)(1) of the Social Security Act (42  
10 U.S.C. 408(e)(1)) is amended—

11 (1) in subparagraph (B), by striking “or” at  
12 the end of clause (ii);

13 (2) in subparagraph (C), by inserting “or” at  
14 the end;

15 (3) by inserting after subparagraph (C) the fol-  
16 lowing:

17 “(D) whose status is adjusted to that of  
18 lawful permanent resident under section 245B  
19 of the Immigration and Nationality Act,”; and

20 (4) by striking “1990.” and inserting “1990, or  
21 in the case of an alien described in subparagraph  
22 (D), if such conduct is alleged to have occurred prior  
23 to the date on which the alien became lawfully ad-  
24 mitted for temporary residence.”.

1                   **TITLE II—FAMILY**  
2                   **REUNIFICATION**

3   **SEC. 201. TREATMENT OF IMMEDIATE RELATIVES WITH RE-**  
4                   **SPECT TO THE FAMILY IMMIGRATION CAP.**

5           (a) EXEMPTION OF IMMEDIATE RELATIVES FROM  
6 FAMILY SPONSORED IMMIGRANT CAP.—Section  
7 201(c)(1)(A) of the Immigration and Nationality Act (8  
8 U.S.C. 1151(c)(1)(A)) is amended by striking clauses (i),  
9 (ii), and (iii) and inserting the following:

10                   “(i) 480,000, minus

11                   “(ii) the number computed under paragraph  
12 (3), plus

13                   “(iii) the number (if any) computed under para-  
14 graph (2).”.

15           (b) TECHNICAL AND CONFORMING AMENDMENTS.—  
16 Section 201(c) of the Immigration and Nationality Act (8  
17 U.S.C. 1151(c)) is amended—

18                   (1) by striking paragraph (2); and

19                   (2) by redesignating paragraphs (3), (4), and

20                   (5) as paragraphs (2), (3), and (4), respectively.

1 **SEC. 202. RECLASSIFICATION OF SPOUSES AND MINOR**  
2 **CHILDREN OF LEGAL PERMANENT RESI-**  
3 **DENTS AS IMMEDIATE RELATIVES.**

4 (a) IMMEDIATE RELATIVES.—Section  
5 201(b)(2)(A)(i) of the Immigration and Nationality Act  
6 (8 U.S.C. 1151(b)(2)(A)(i)) is amended—

7 (1) in the first sentence, by inserting “or the  
8 spouses and children of aliens lawfully admitted for  
9 permanent residence,” after “United States,”;

10 (2) in the second sentence—

11 (A) by inserting “or lawful permanent resi-  
12 dent” after “citizen” each place that term ap-  
13 pears; and

14 (B) by inserting “or lawful permanent resi-  
15 dent’s” after “citizen’s” each place that term  
16 appears;

17 (3) in the third sentence, by inserting “or the  
18 lawful permanent resident loses lawful permanent  
19 resident status” after “United States citizenship”;  
20 and

21 (4) by adding at the end the following: “A  
22 spouse or child, as defined in subparagraph (A), (B),  
23 (C), (D), or (E) of section 101(b)(1), shall be enti-  
24 tled to the same status, and the same order of con-  
25 sideration provided in the respective subsection, if  
26 accompanying or following to join the spouse or par-

1 ent. The same treatment shall apply to parents of  
2 citizens of the United States being entitled to the  
3 same status, and the same order of consideration  
4 provided in the respective subsection, if accom-  
5 panying or following to join their daughter or son.”.

6 (b) ALLOCATION OF IMMIGRANT VISAS.—Section  
7 203(a) of the Immigration and Nationality Act (8 U.S.C.  
8 1153(a)) is amended—

9 (1) in paragraph (1), by striking “23,400” and  
10 inserting “38,000”;

11 (2) by striking paragraph (2) and inserting the  
12 following:

13 “(2) UNMARRIED SONS AND UNMARRIED  
14 DAUGHTERS OF PERMANENT RESIDENT ALIENS.—  
15 Qualified immigrants who are the unmarried sons or  
16 unmarried daughters (but are not the children) of  
17 an alien lawfully admitted for permanent residence  
18 shall be allocated visas in a number not to exceed  
19 60,000 plus the number (if any) by which such  
20 worldwide level exceeds 226,000, plus any visas not  
21 required for the class specified in paragraph (1).”;

22 (3) in paragraph (3), by striking “23,400” and  
23 inserting “38,000”; and

24 (4) in paragraph (4), by striking “65,000” and  
25 inserting “90,000”.

1 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

2 (1) RULES FOR DETERMINING WHETHER CER-  
3 TAIN ALIENS ARE IMMEDIATE RELATIVES.—Section  
4 201(f) of the Immigration and Nationality Act (8  
5 U.S.C. 1151(f)) is amended—

6 (A) in paragraph (1), by striking “para-  
7 graphs (2) and (3),” and inserting “paragraph  
8 (2),”;

9 (B) by striking paragraph (2); and

10 (C) by redesignating paragraph (3) as  
11 paragraph (2).

12 (2) NUMERICAL LIMITATION TO ANY SINGLE  
13 FOREIGN STATE.—Section 202 of the Immigration  
14 and Nationality Act (8 U.S.C. 1152) is amended—

15 (A) in subsection (a)(4)—

16 (i) by striking subparagraphs (A) and  
17 (B);

18 (ii) by redesignating subparagraphs  
19 (C) and (D) as subparagraphs (A) and  
20 (B), respectively; and

21 (iii) in subparagraph (A), as redesi-  
22 gnated, by striking “section 203(a)(2)(B)”  
23 and inserting “section 203(a)(2)”;

24 (B) in subsection (e), in the flush matter  
25 following paragraph (3), by striking “, or as

1 limiting the number of visas that may be issued  
2 under section 203(a)(2)(A) pursuant to sub-  
3 section (a)(4)(A)’’.

4 (3) ALLOCATION OF IMMIGRATION VISAS.—Sec-  
5 tion 203(h) of the Immigration and Nationality Act  
6 (8 U.S.C. 1153(h)) is amended—

7 (A) in paragraph (1)—

8 (i) in the matter preceding subpara-  
9 graph (A), by striking “subsections  
10 (a)(2)(A) and (d)” and inserting “sub-  
11 section (d)”;

12 (ii) in subparagraph (A), by striking  
13 “becomes available for such alien (or, in  
14 the case of subsection (d), the date on  
15 which an immigrant visa number became  
16 available for the alien’s parent),” and in-  
17 serting “became available for the alien’s  
18 parent,”; and

19 (iii) in subparagraph (B), by striking  
20 “applicable”;

21 (B) in paragraph (2), by striking “The pe-  
22 tition” and all that follows through the period  
23 and inserting “The petition described in this  
24 paragraph is a petition filed under section 204

1 for classification of the alien’s parent under  
 2 subsection (a), (b), or (c).”; and

3 (C) in paragraph (3), by striking “sub-  
 4 sections (a)(2)(A) and (d)” and inserting “sub-  
 5 section (d)”.

6 (4) PROCEDURE FOR GRANTING IMMIGRANT  
 7 STATUS.—Section 204 of the Immigration and Na-  
 8 tionality Act (8 U.S.C. 1154) is amended—

9 (A) in subsection (a)(1)—

10 (i) in subparagraph (A)—

11 (I) in clause (iii)—

12 (aa) by inserting “or legal  
 13 permanent resident” after “cit-  
 14 izen” each place that term ap-  
 15 pears; and

16 (bb) in subclause  
 17 (II)(aa)(CC)(bbb), by inserting  
 18 “or legal permanent resident”  
 19 after “citizenship”;

20 (II) in clause (iv)—

21 (aa) by inserting “or legal  
 22 permanent resident” after “cit-  
 23 izen” each place that term ap-  
 24 pears; and



1 (bb) by inserting “or legal  
2 permanent resident” after “citi-  
3 zenship”;

4 (III) in clause (v)(I), by inserting  
5 “or legal permanent resident” after  
6 “citizen”; and

7 (IV) in clause (vi)—

8 (aa) by inserting “or legal  
9 permanent resident status” after  
10 “renunciation of citizenship”;  
11 and

12 (bb) by inserting “or legal  
13 permanent resident” after “abus-  
14 er’s citizenship”;

15 (ii) by striking subparagraph (B);

16 (iii) by redesignating subparagraphs  
17 (C) through (J) as subparagraphs (B)  
18 through (I), respectively;

19 (iv) in subparagraph (B), as so redesi-  
20 gnated, by striking “subparagraph  
21 (A)(iii), (A)(iv), (B)(ii), or (B)(iii)” and in-  
22 serting “clause (iii) or (iv) of subpara-  
23 graph (A)”; and

24 (v) in subparagraph (I), as so redesi-  
25 gnated—

1 (I) by striking “or clause (ii) or  
2 (iii) of subparagraph (B)”;  
3 (II) by striking “under subpara-  
4 graphs (C) and (D)” and inserting  
5 “under subparagraphs (B) and (C”;  
6 (B) by striking subsection (a)(2);  
7 (C) in subsection (h), by striking “or a pe-  
8 tition filed under subsection (a)(1)(B)(ii)”;  
9 (D) in subsection (j), by striking “sub-  
10 section (a)(1)(D)” and inserting “subsection  
11 (a)(1)(C)”.

12 **SEC. 203. EXCEPTIONS.**

13 Section 212(a)(9)(B)(iii) of the Immigration and Na-  
14 tionality Act (8 U.S.C. 1182(a)(9)(B)(iii)) is amended by  
15 adding at the end the following:

16 “(V) SPOUSES, CHILDREN, AND  
17 PARENTS.—The provisions of this  
18 subparagraph and subparagraph  
19 (C)(i)(I) shall be waived for spouses  
20 and children of legal permanent resi-  
21 dents or citizens of the United States  
22 and parents of citizens of the United  
23 States (as such terms are defined in  
24 section 201(b)(2)(A)(i)) on whose be-  
25 half a petition was filed under section

1                   203 on or before the date of introduc-  
2                   tion of the Immigrant Accountability  
3                   Act of 2005, or who are derivative  
4                   beneficiaries of such a petition.”.

○