

109TH CONGRESS
2D SESSION

S. 2611

AN ACT

To provide for comprehensive immigration reform 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 “Comprehensive Immigration Reform Act of 2006”.

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

- Sec. 1. Short title; table of contents.
 Sec. 2. Reference to the Immigration and Nationality Act.
 Sec. 3. Definitions.
 Sec. 4. Severability.

TITLE I—BORDER ENFORCEMENT

Subtitle A—Assets for Controlling United States Borders

- Sec. 101. Enforcement personnel.
 Sec. 102. Technological assets.
 Sec. 103. Infrastructure.
 Sec. 104. Border patrol checkpoints.
 Sec. 105. Ports of entry.
 Sec. 106. Construction of strategic border fencing and vehicle barriers.

Subtitle B—Border Security Plans, Strategies, and Reports

- Sec. 111. Surveillance plan.
 Sec. 112. National Strategy for Border Security.
 Sec. 113. Reports on improving the exchange of information on North American security.
 Sec. 114. Improving the security of Mexico's southern border.
 Sec. 115. Combating human smuggling.
 Sec. 116. Deaths at United States-Mexico border.
 Sec. 117. Cooperation with the Government of Mexico.

Subtitle C—Other Border Security Initiatives

- Sec. 121. Biometric data enhancements.
 Sec. 122. Secure communication.
 Sec. 123. Border patrol training capacity review.
 Sec. 124. US-VISIT System.
 Sec. 125. Document fraud detection.
 Sec. 126. Improved document integrity.
 Sec. 127. Cancellation of visas.
 Sec. 128. Biometric entry-exit system.
 Sec. 129. Border study.
 Sec. 130. Secure border initiative financial accountability.
 Sec. 131. Mandatory detention for aliens apprehended at or between ports of entry.
 Sec. 132. Evasion of inspection or violation of arrival, reporting, entry, or clearance requirements.
 Sec. 133. Temporary National Guard support for securing the southern land border of the United States.
 Sec. 134. Report on incentives to encourage certain members and former members of the Armed Forces to serve in the Bureau of Customs and Border Protection.
 Sec. 135. Western Hemisphere Travel Initiative.

Subtitle D—Border Tunnel Prevention Act

- Sec. 141. Short title.

- Sec. 142. Construction of border tunnel or passage.
- Sec. 143. Directive to the United States Sentencing Commission.

Subtitle E—Border Law Enforcement Relief Act

- Sec. 151. Short title.
- Sec. 152. Findings.
- Sec. 153. Border relief grant program.
- Sec. 154. Enforcement of Federal immigration law.

Subtitle F—Rapid Response Measures

- Sec. 161. Deployment of Border Patrol agents.
- Sec. 162. Border Patrol major assets.
- Sec. 163. Electronic equipment.
- Sec. 164. Personal equipment.
- Sec. 165. Authorization of appropriations.

TITLE II—INTERIOR ENFORCEMENT

- Sec. 201. Removal and denial of benefits to terrorist aliens.
- Sec. 202. Detention and removal of aliens ordered removed.
- Sec. 203. Aggravated felony.
- Sec. 204. Terrorist bars.
- Sec. 205. Increased criminal penalties related to gang violence, removal, and alien smuggling.
- Sec. 206. Illegal entry.
- Sec. 207. Illegal reentry.
- Sec. 208. Reform of passport, visa, and immigration fraud offenses.
- Sec. 209. Inadmissibility and removal for passport and immigration fraud offenses.
- Sec. 210. Incarceration of criminal aliens.
- Sec. 211. Encouraging aliens to depart voluntarily.
- Sec. 212. Deterring aliens ordered removed from remaining in the United States unlawfully.
- Sec. 213. Prohibition of the sale of firearms to, or the possession of firearms by certain aliens.
- Sec. 214. Uniform statute of limitations for certain immigration, naturalization, and peonage offenses.
- Sec. 215. Diplomatic security service.
- Sec. 216. Field agent allocation and background checks.
- Sec. 217. Construction.
- Sec. 218. State criminal alien assistance program.
- Sec. 219. Transportation and processing of illegal aliens apprehended by State and local law enforcement officers.
- Sec. 220. Reducing illegal immigration and alien smuggling on tribal lands.
- Sec. 221. Alternatives to detention.
- Sec. 222. Conforming amendment.
- Sec. 223. Reporting requirements.
- Sec. 224. State and local enforcement of Federal immigration laws.
- Sec. 225. Removal of drunk drivers.
- Sec. 226. Medical services in underserved areas.
- Sec. 227. Expedited removal.
- Sec. 228. Protecting immigrants from convicted sex offenders.
- Sec. 229. Law enforcement authority of States and political subdivisions and transfer to Federal custody.

- Sec. 230. Laundering of monetary instruments.
- Sec. 231. Listing of immigration violators in the National Crime Information Center database.
- Sec. 232. Cooperative enforcement programs.
- Sec. 233. Increase of Federal detention space and the utilization of facilities identified for closures as a result of the Defense Base Closure Realignment Act of 1990.
- Sec. 234. Determination of immigration status of individuals charged with Federal offenses.
- Sec. 235. Expansion of the Justice Prisoner and Alien Transfer System.

TITLE III—UNLAWFUL EMPLOYMENT OF ALIENS

- Sec. 301. Unlawful employment of aliens.
- Sec. 302. Employer Compliance Fund.
- Sec. 303. Additional worksite enforcement and fraud detection agents.
- Sec. 304. Clarification of ineligibility for misrepresentation.
- Sec. 305. Antidiscrimination protections.

TITLE IV—NONIMMIGRANT AND IMMIGRANT VISA REFORM

Subtitle A—Temporary Guest Workers

- Sec. 401. Immigration impact study.
- Sec. 402. Nonimmigrant temporary worker.
- Sec. 403. Admission of nonimmigrant temporary guest workers.
- Sec. 404. Employer obligations.
- Sec. 405. Alien employment management system.
- Sec. 406. Rulemaking; effective date.
- Sec. 407. Recruitment of United States workers.
- Sec. 408. Temporary guest worker visa program task force.
- Sec. 409. Requirements for participating countries.
- Sec. 410. S visas.
- Sec. 411. L visa limitations.
- Sec. 412. Compliance investigators.
- Sec. 413. VISA waiver program expansion.
- Sec. 414. Authorization of appropriations.

Subtitle B—Immigration Injunction Reform

- Sec. 421. Short title.
- Sec. 422. Appropriate remedies for immigration legislation.
- Sec. 423. Effective date.

TITLE V—BACKLOG REDUCTION

- Sec. 501. Elimination of existing backlogs.
- Sec. 502. Country limits.
- Sec. 503. Allocation of immigrant visas.
- Sec. 504. Relief for minor children and widows.
- Sec. 505. Shortage occupations.
- Sec. 506. Relief for widows and orphans.
- Sec. 507. Student visas.
- Sec. 508. Visas for individuals with advanced degrees.
- Sec. 509. Children of Filipino World War II veterans.
- Sec. 510. Expedited adjudication of employer petitions for aliens of extraordinary artistic ability.

- Sec. 511. Powerline workers.
- Sec. 512. Determinations with respect to children under the Haitian Refugee Immigration Fairness Act of 1998.

Subtitle B—SKIL Act

- Sec. 521. Short title.
- Sec. 522. H-1B visa holders.
- Sec. 523. Market-based visa limits.
- Sec. 524. United States educated immigrants.
- Sec. 525. Student visa reform.
- Sec. 526. L-1 visa holders subject to visa backlog.
- Sec. 527. Retaining workers subject to green card backlog.
- Sec. 528. Streamlining the adjudication process for established employers.
- Sec. 529. Providing premium processing of employment-based visa petitions.
- Sec. 530. Eliminating procedural delays in labor certification process.
- Sec. 531. Completion of background and security checks.
- Sec. 532. Visa revalidation.

Subtitle C—Preservation of Immigration Benefits for Hurricane Katrina Victims

- Sec. 541. Short title.
- Sec. 542. Definitions.
- Sec. 543. Special immigrant status.
- Sec. 544. Extension of filing or reentry deadlines.
- Sec. 545. Humanitarian relief for certain surviving spouses and children.
- Sec. 546. Recipient of public benefits.
- Sec. 547. Age-out protection.
- Sec. 548. Employment eligibility verification.
- Sec. 549. Naturalization.
- Sec. 550. Discretionary authority.
- Sec. 551. Evidentiary standards and regulations.
- Sec. 552. Identification documents.
- Sec. 553. Waiver of regulations.
- Sec. 554. Notices of change of address.
- Sec. 555. Foreign students and exchange program participants.

TITLE VI—WORK AUTHORIZATION AND LEGALIZATION OF UNDOCUMENTED INDIVIDUALS

Subtitle A—Access to Earned Adjustment and Mandatory Departure and Reentry

- Sec. 601. Access to earned adjustment and mandatory departure and reentry.

Subtitle B—Agricultural Job Opportunities, Benefits, and Security

- Sec. 611. Short title.
- Sec. 612. Definitions.

CHAPTER 1—PILOT PROGRAM FOR EARNED STATUS ADJUSTMENT OF AGRICULTURAL WORKERS

- Sec. 613. Agricultural workers.
- Sec. 614. Correction of Social Security records.

CHAPTER 2—REFORM OF H-2A WORKER PROGRAM

Sec. 615. Amendment to the Immigration and Nationality Act.

CHAPTER 3—MISCELLANEOUS PROVISIONS

Sec. 616. Determination and use of user fees.

Sec. 617. Regulations.

Sec. 618. Report to Congress.

Sec. 619. Effective date.

Subtitle C—DREAM Act

Sec. 621. Short title.

Sec. 622. Definitions.

Sec. 623. Restoration of State option to determine residency for purposes of higher education benefits.

Sec. 624. Cancellation of removal and adjustment of status of certain long-term residents who entered the United States as children.

Sec. 625. Conditional permanent resident status.

Sec. 626. Retroactive benefits.

Sec. 627. Exclusive jurisdiction.

Sec. 628. Penalties for false statements in application.

Sec. 629. Confidentiality of information.

Sec. 630. Expedited processing of applications; prohibition on fees.

Sec. 631. Higher education assistance.

Sec. 632. GAO report.

Subtitle D—Programs To Assist Nonimmigrant Workers

Sec. 641. Ineligibility and removal prior to application period.

Sec. 642. Grants to support public education and community training.

Sec. 643. Strengthening American citizenship.

Sec. 644. Supplemental immigration fee.

Sec. 645. Addressing poverty in Mexico.

TITLE VII—MISCELLANEOUS

Subtitle A—Immigration Litigation Reduction

CHAPTER 1—APPEALS AND REVIEW

Sec. 701. Additional immigration personnel.

CHAPTER 2—IMMIGRATION REVIEW REFORM

Sec. 702. Board of Immigration Appeals.

Sec. 703. Immigration judges.

Sec. 704. Removal and review of judges.

Sec. 705. Legal orientation program.

Sec. 706. Regulations.

Sec. 707. GAO study on the appellate process for immigration appeals.

Sec. 708. Senior judge participation in the selection of magistrates.

Subtitle B—Citizenship Assistance for Members of the Armed Services

Sec. 711. Short title.

Sec. 712. Waiver of requirement for fingerprints for members of the Armed Forces.

- Sec. 713. Provision of information on naturalization to members of the Armed Forces.
- Sec. 714. Provision of information on naturalization to the public.
- Sec. 715. Reports.

Subtitle C—State Court Interpreter Grant Program

- Sec. 721. Short title.
- Sec. 722. Findings.
- Sec. 723. State court interpreter program.
- Sec. 724. Authorization of appropriations.

Subtitle D—Border Infrastructure and Technology Modernization

- Sec. 731. Short title.
- Sec. 732. Definitions.
- Sec. 733. Port of Entry Infrastructure Assessment Study.
- Sec. 734. National Land Border Security Plan.
- Sec. 735. Expansion of commerce security programs.
- Sec. 736. Port of entry technology demonstration program.
- Sec. 737. Authorization of appropriations.

Subtitle E—Family Humanitarian Relief

- Sec. 741. Short title.
- Sec. 742. Adjustment of status for certain nonimmigrant victims of terrorism.
- Sec. 743. Cancellation of removal for certain immigrant victims of terrorism.
- Sec. 744. Exceptions.
- Sec. 745. Evidence of death.
- Sec. 746. Definitions.

Subtitle F—Other Matters

- Sec. 751. Noncitizen membership in the Armed Forces.
- Sec. 752. Nonimmigrant alien status for certain athletes.
- Sec. 753. Extension of returning worker exemption.
- Sec. 754. Surveillance technologies programs.
- Sec. 755. Comprehensive immigration efficiency review.
- Sec. 756. Northern Border Prosecution Initiative.
- Sec. 757. Southwest Border Prosecution Initiative.
- Sec. 758. Grant program to assist eligible applicants.
- Sec. 759. Screening of municipal solid waste.
- Sec. 760. Access to immigration services in areas that are not accessible by road.
- Sec. 761. Border security on certain Federal land.
- Sec. 762. Unmanned aerial vehicles.
- Sec. 763. Relief for widows and orphans.
- Sec. 764. Terrorist activities.
- Sec. 765. Family unity.
- Sec. 766. Travel document plan.
- Sec. 767. English as national language.
- Sec. 768. Requirements for naturalization.
- Sec. 769. Declaration of English.
- Sec. 770. Preserving and enhancing the role of the English language.
- Sec. 771. Exclusion of illegal aliens from congressional apportionment tabulations.
- Sec. 772. Office of Internal Corruption Investigation.

- Sec. 773. Adjustment of status for certain persecuted religious minorities.
- Sec. 774. Eligibility of agricultural and forestry workers for certain legal assistance.
- Sec. 775. Designation of program countries.
- Sec. 776. Global healthcare cooperation.
- Sec. 777. Attestation by healthcare workers.
- Sec. 778. Public access to the Statue of Liberty.
- Sec. 779. National security determination.

TITLE VIII—INTERCOUNTRY ADOPTION REFORM

- Sec. 801. Short title.
- Sec. 802. Findings; purposes.
- Sec. 803. Definitions.

Subtitle A—Administration of Intercountry Adoptions

- Sec. 811. Office of Intercountry Adoptions.
- Sec. 812. Recognition of convention adoptions in the United States.
- Sec. 813. Technical and conforming amendment.
- Sec. 814. Transfer of functions.
- Sec. 815. Transfer of resources.
- Sec. 816. Incidental transfers.
- Sec. 817. Savings provisions.

Subtitle B—Reform of United States Laws Governing Intercountry Adoptions

- Sec. 821. Automatic acquisition of citizenship for adopted children born outside the United States.
- Sec. 822. Revised procedures.
- Sec. 823. Nonimmigrant visas for children traveling to the United States to be adopted by a United States citizen.
- Sec. 824. Definition of adoptable child.
- Sec. 825. Approval to adopt.
- Sec. 826. Adjudication of child status.
- Sec. 827. Funds.

Subtitle C—Enforcement

- Sec. 831. Civil penalties and enforcement.
- Sec. 832. Criminal penalties.

1 **SEC. 2. REFERENCE TO THE IMMIGRATION AND NATION-** 2 **ALITY ACT.**

3 Except as otherwise expressly provided, whenever in
4 this Act an amendment or repeal is expressed in terms
5 of an amendment to, or repeal of, a section or other provi-
6 sion, the reference shall be considered to be made to a

1 section or other provision of the Immigration and Nation-
 2 ality Act (8 U.S.C. 1101 et seq.).

3 **SEC. 3. DEFINITIONS.**

4 In this Act:

5 (1) DEPARTMENT.—Except as otherwise pro-
 6 vided, the term “Department” means the Depart-
 7 ment of Homeland Security.

8 (2) SECRETARY.—Except as otherwise provided,
 9 the term “Secretary” means the Secretary of Home-
 10 land Security.

11 **SEC. 4. SEVERABILITY.**

12 If any provision of this Act, any amendment made
 13 by this Act, or the application of such provision or amend-
 14 ment to any person or circumstance is held to be invalid
 15 for any reason, the remainder of this Act, the amendments
 16 made by this Act, and the application of the provisions
 17 of such to any other person or circumstance shall not be
 18 affected by such holding.

19 **TITLE I—BORDER**

20 **ENFORCEMENT**

21 **Subtitle A—Assets for Controlling**

22 **United States Borders**

23 **SEC. 101. ENFORCEMENT PERSONNEL.**

24 (a) ADDITIONAL PERSONNEL.—

1 (1) PORT OF ENTRY INSPECTORS.—In each of
2 the fiscal years 2007 through 2011, the Secretary
3 shall, subject to the availability of appropriations, in-
4 crease by not less than 500 the number of positions
5 for full-time active duty port of entry inspectors and
6 provide appropriate training, equipment, and sup-
7 port to such additional inspectors.

8 (2) INVESTIGATIVE PERSONNEL.—

9 (A) IMMIGRATION AND CUSTOMS EN-
10 FORCEMENT INVESTIGATORS.—Section 5203 of
11 the Intelligence Reform and Terrorism Preven-
12 tion Act of 2004 (Public Law 108–458; 118
13 Stat. 3734) is amended by striking “800” and
14 inserting “1000”.

15 (B) ADDITIONAL PERSONNEL.—In addi-
16 tion to the positions authorized under section
17 5203 of the Intelligence Reform and Terrorism
18 Prevention Act of 2004, as amended by sub-
19 paragraph (A), during each of the fiscal years
20 2007 through 2011, the Secretary shall, subject
21 to the availability of appropriations, increase by
22 not less than 200 the number of positions for
23 personnel within the Department assigned to
24 investigate alien smuggling.

1 (3) DEPUTY UNITED STATES MARSHALS.—In
2 each of the fiscal years 2007 through 2011, the At-
3 torney General shall, subject to the availability of
4 appropriations, increase by not less than 50 the
5 number of positions for full-time active duty Deputy
6 United States Marshals that investigate criminal
7 matters related to immigration.

8 (4) RECRUITMENT OF FORMER MILITARY PER-
9 SONNEL.—

10 (A) IN GENERAL.—The Commissioner of
11 United States Customs and Border Protection,
12 in conjunction with the Secretary of Defense or
13 a designee of the Secretary of Defense, shall es-
14 tablish a program to actively recruit members
15 of the Army, Navy, Air Force, Marine Corps,
16 and Coast Guard who have elected to separate
17 from active duty.

18 (B) REPORT.—Not later than 180 days
19 after the date of the enactment of this Act, the
20 Commissioner shall submit a report on the im-
21 plementation of the recruitment program estab-
22 lished pursuant to subparagraph (A) to the
23 Committee on the Judiciary of the Senate and
24 the Committee on the Judiciary of the House of
25 Representatives.

1 (b) AUTHORIZATION OF APPROPRIATIONS.—

2 (1) PORT OF ENTRY INSPECTORS.—There are
3 authorized to be appropriated to the Secretary such
4 sums as may be necessary for each of the fiscal
5 years 2007 through 2011 to carry out paragraph (1)
6 of subsection (a).

7 (2) DEPUTY UNITED STATES MARSHALS.—
8 There are authorized to be appropriated to the At-
9 torney General such sums as may be necessary for
10 each of the fiscal years 2007 through 2011 to carry
11 out subsection (a)(3).

12 (3) BORDER PATROL AGENTS.—Section 5202 of
13 the Intelligence Reform and Terrorism Prevention
14 Act of 2004 (118 Stat. 3734) is amended to read as
15 follows:

16 **“SEC. 5202. INCREASE IN FULL-TIME BORDER PATROL**
17 **AGENTS.**

18 “(a) ANNUAL INCREASES.—The Secretary of Home-
19 land Security shall, subject to the availability of appropria-
20 tions for such purpose, increase the number of positions
21 for full-time active-duty border patrol agents within the
22 Department of Homeland Security (above the number of
23 such positions for which funds were appropriated for the
24 preceding fiscal year), by—

25 “(1) 2,000 in fiscal year 2006;

1 “(2) 2,400 in fiscal year 2007;

2 “(3) 2,400 in fiscal year 2008;

3 “(4) 2,400 in fiscal year 2009;

4 “(5) 2,400 in fiscal year 2010; and

5 “(6) 2,400 in fiscal year 2011;

6 “(b) NORTHERN BORDER.—In each of the fiscal
7 years 2006 through 2011, in addition to the border patrol
8 agents assigned along the northern border of the United
9 States during the previous fiscal year, the Secretary shall
10 assign a number of border patrol agents equal to not less
11 than 20 percent of the net increase in border patrol agents
12 during each such fiscal year.

13 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
14 are authorized to be appropriated such sums as may be
15 necessary for each of fiscal years 2007 through 2011 to
16 carry out this section.”.

17 **SEC. 102. TECHNOLOGICAL ASSETS.**

18 (a) ACQUISITION.—Subject to the availability of ap-
19 propriations, the Secretary shall procure additional un-
20 manned aerial vehicles, cameras, poles, sensors, and other
21 technologies necessary to achieve operational control of the
22 international borders of the United States and to establish
23 a security perimeter known as a “virtual fence” along such
24 international borders to provide a barrier to illegal immi-
25 gration.

1 (b) INCREASED AVAILABILITY OF EQUIPMENT.—The
2 Secretary and the Secretary of Defense shall develop and
3 implement a plan to use authorities provided to the Sec-
4 retary of Defense under chapter 18 of title 10, United
5 States Code, to increase the availability and use of Depart-
6 ment of Defense equipment, including unmanned aerial
7 vehicles, tethered aerostat radars, and other surveillance
8 equipment, to assist the Secretary in carrying out surveil-
9 lance activities conducted at or near the international land
10 borders of the United States to prevent illegal immigra-
11 tion.

12 (c) REPORT.—Not later than 6 months after the date
13 of enactment of this Act, the Secretary and the Secretary
14 of Defense shall submit to Congress a report that
15 contains—

16 (1) a description of the current use of Depart-
17 ment of Defense equipment to assist the Secretary
18 in carrying out surveillance of the international land
19 borders of the United States and assessment of the
20 risks to citizens of the United States and foreign
21 policy interests associated with the use of such
22 equipment;

23 (2) the plan developed under subsection (b) to
24 increase the use of Department of Defense equip-
25 ment to assist such surveillance activities; and

1 (3) a description of the types of equipment and
2 other support to be provided by the Secretary of De-
3 fense under such plan during the 1-year period be-
4 ginning on the date of the submission of the report.

5 (d) AUTHORIZATION OF APPROPRIATIONS.—There
6 are authorized to be appropriated to the Secretary such
7 sums as may be necessary for each of the fiscal years 2007
8 through 2011 to carry out subsection (a).

9 (e) UNMANNED AERIAL VEHICLE PILOT PRO-
10 GRAM.—During the 1-year period beginning on the date
11 on which the report is submitted under subsection (c), the
12 Secretary shall conduct a pilot program to test unmanned
13 aerial vehicles for border surveillance along the inter-
14 national border between Canada and the United States.

15 (f) CONSTRUCTION.—Nothing in this section may be
16 construed as altering or amending the prohibition on the
17 use of any part of the Army or the Air Force as a posse
18 comitatus under section 1385 of title 18, United States
19 Code.

20 **SEC. 103. INFRASTRUCTURE.**

21 (a) CONSTRUCTION OF BORDER CONTROL FACILI-
22 TIES.—Subject to the availability of appropriations, the
23 Secretary shall construct all-weather roads and acquire
24 additional vehicle barriers and facilities necessary to

1 achieve operational control of the international borders of
2 the United States.

3 (b) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated to the Secretary such
5 sums as may be necessary for each of the fiscal years 2007
6 through 2011 to carry out subsection (a).

7 **SEC. 104. BORDER PATROL CHECKPOINTS.**

8 The Secretary may maintain temporary or permanent
9 checkpoints on roadways in border patrol sectors that are
10 located in proximity to the international border between
11 the United States and Mexico.

12 **SEC. 105. PORTS OF ENTRY.**

13 The Secretary is authorized to—

14 (1) construct additional ports of entry along the
15 international land borders of the United States, at
16 locations to be determined by the Secretary; and

17 (2) make necessary improvements to the ports
18 of entry in existence on the date of the enactment
19 of this Act.

20 **SEC. 106. CONSTRUCTION OF STRATEGIC BORDER FENC-**
21 **ING AND VEHICLE BARRIERS.**

22 (a) TUCSON SECTOR.—The Secretary shall—

23 (1) replace all aged, deteriorating, or damaged
24 primary fencing in the Tucson Sector located proximi-
25 mate to population centers in Douglas, Nogales,

1 Naco, and Lukeville, Arizona with double- or triple-
2 layered fencing running parallel to the international
3 border between the United States and Mexico;

4 (2) extend the double- or triple-layered fencing
5 for a distance of not less than 2 miles beyond urban
6 areas, except that the double- or triple-layered fence
7 shall extend west of Naco, Arizona, for a distance of
8 10 miles; and

9 (3) construct not less than 150 miles of vehicle
10 barriers and all-weather roads in the Tucson Sector
11 running parallel to the international border between
12 the United States and Mexico in areas that are
13 known transit points for illegal cross-border traffic.

14 (b) YUMA SECTOR.—The Secretary shall—

15 (1) replace all aged, deteriorating, or damaged
16 primary fencing in the Yuma Sector located proximate
17 to population centers in Yuma, Somerton, and
18 San Luis, Arizona with double- or triple-layered
19 fencing running parallel to the international border
20 between the United States and Mexico;

21 (2) extend the double- or triple-layered fencing
22 for a distance of not less than 2 miles beyond urban
23 areas in the Yuma Sector; and

24 (3) construct not less than 50 miles of vehicle
25 barriers and all-weather roads in the Yuma Sector

1 running parallel to the international border between
2 the United States and Mexico in areas that are
3 known transit points for illegal cross-border traffic.

4 (c) OTHER HIGH TRAFFICKED AREAS.—The Sec-
5 retary shall construct not less than 370 miles of triple-
6 layered fencing which may include portions already con-
7 structed in San Diego Tucson and Yuma Sectors, and 500
8 miles of vehicle barriers in other areas along the southwest
9 border that the Secretary determines are areas that are
10 most often used by smugglers and illegal aliens attempting
11 to gain illegal entry into the United States.

12 (d) CONSTRUCTION DEADLINE.—The Secretary shall
13 immediately commence construction of the fencing, bar-
14 riers, and roads described in subsections (a), (b), and (c)
15 and shall complete such construction not later than 2
16 years after the date of the enactment of this Act.

17 (e) REPORT.—Not later than 1 year after the date
18 of the enactment of this Act, the Secretary shall submit
19 a report to the Committee on the Judiciary of the Senate
20 and the Committee on the Judiciary of the House of Rep-
21 resentatives that describes the progress that has been
22 made in constructing the fencing, barriers, and roads de-
23 scribed in subsections (a), (b), and (c).

1 (f) AUTHORIZATION OF APPROPRIATIONS.—There
 2 are authorized to be appropriated such sums as may be
 3 necessary to carry out this section.

4 **Subtitle B—Border Security Plans,**
 5 **Strategies, and Reports**

6 **SEC. 111. SURVEILLANCE PLAN.**

7 (a) REQUIREMENT FOR PLAN.—The Secretary shall
 8 develop a comprehensive plan for the systematic surveil-
 9 lance of the international land and maritime borders of
 10 the United States.

11 (b) CONTENT.—The plan required by subsection (a)
 12 shall include the following:

13 (1) An assessment of existing technologies em-
 14 ployed on the international land and maritime bor-
 15 ders of the United States.

16 (2) A description of the compatibility of new
 17 surveillance technologies with surveillance tech-
 18 nologies in use by the Secretary on the date of the
 19 enactment of this Act.

20 (3) A description of how the Commissioner of
 21 the United States Customs and Border Protection of
 22 the Department is working, or is expected to work,
 23 with the Under Secretary for Science and Tech-
 24 nology of the Department to identify and test sur-
 25 veillance technology.

1 (4) A description of the specific surveillance
2 technology to be deployed.

3 (5) Identification of any obstacles that may im-
4 pede such deployment.

5 (6) A detailed estimate of all costs associated
6 with such deployment and with continued mainte-
7 nance of such technologies.

8 (7) A description of how the Secretary is work-
9 ing with the Administrator of the Federal Aviation
10 Administration on safety and airspace control issues
11 associated with the use of unmanned aerial vehicles.

12 (c) SUBMISSION TO CONGRESS.—Not later than 6
13 months after the date of the enactment of this Act, the
14 Secretary shall submit to Congress the plan required by
15 this section.

16 **SEC. 112. NATIONAL STRATEGY FOR BORDER SECURITY.**

17 (a) REQUIREMENT FOR STRATEGY.—The Secretary,
18 in consultation with the heads of other appropriate Fed-
19 eral agencies, shall develop a National Strategy for Border
20 Security that describes actions to be carried out to achieve
21 operational control over all ports of entry into the United
22 States and the international land and maritime borders
23 of the United States.

24 (b) CONTENT.—The National Strategy for Border
25 Security shall include the following:

1 (1) The implementation schedule for the com-
2 prehensive plan for systematic surveillance described
3 in section 111.

4 (2) An assessment of the threat posed by ter-
5 rorists and terrorist groups that may try to infiltrate
6 the United States at locations along the inter-
7 national land and maritime borders of the United
8 States.

9 (3) A risk assessment for all United States
10 ports of entry and all portions of the international
11 land and maritime borders of the United States that
12 includes a description of activities being
13 undertaken—

14 (A) to prevent the entry of terrorists, other
15 unlawful aliens, instruments of terrorism, nar-
16 cotics, and other contraband into the United
17 States; and

18 (B) to protect critical infrastructure at or
19 near such ports of entry or borders.

20 (4) An assessment of the legal requirements
21 that prevent achieving and maintaining operational
22 control over the entire international land and mari-
23 time borders of the United States.

24 (5) An assessment of the most appropriate,
25 practical, and cost-effective means of defending the

1 international land and maritime borders of the
2 United States against threats to security and illegal
3 transit, including intelligence capacities, technology,
4 equipment, personnel, and training needed to ad-
5 dress security vulnerabilities.

6 (6) An assessment of staffing needs for all bor-
7 der security functions, taking into account threat
8 and vulnerability information pertaining to the bor-
9 ders and the impact of new security programs, poli-
10 cies, and technologies.

11 (7) A description of the border security roles
12 and missions of Federal, State, regional, local, and
13 tribal authorities, and recommendations regarding
14 actions the Secretary can carry out to improve co-
15 ordination with such authorities to enable border se-
16 curity and enforcement activities to be carried out in
17 a more efficient and effective manner.

18 (8) An assessment of existing efforts and tech-
19 nologies used for border security and the effect of
20 the use of such efforts and technologies on civil
21 rights, personal property rights, privacy rights, and
22 civil liberties, including an assessment of efforts to
23 take into account asylum seekers, trafficking vic-
24 tims, unaccompanied minor aliens, and other vulner-
25 able populations.

1 (9) A prioritized list of research and develop-
2 ment objectives to enhance the security of the inter-
3 national land and maritime borders of the United
4 States.

5 (10) A description of ways to ensure that the
6 free flow of travel and commerce is not diminished
7 by efforts, activities, and programs aimed at secur-
8 ing the international land and maritime borders of
9 the United States.

10 (11) An assessment of additional detention fa-
11 cilities and beds that are needed to detain unlawful
12 aliens apprehended at United States ports of entry
13 or along the international land borders of the United
14 States.

15 (12) A description of the performance metrics
16 to be used to ensure accountability by the bureaus
17 of the Department in implementing such Strategy.

18 (13) A schedule for the implementation of the
19 security measures described in such Strategy, includ-
20 ing a prioritization of security measures, realistic
21 deadlines for addressing the security and enforce-
22 ment needs, an estimate of the resources needed to
23 carry out such measures, and a description of how
24 such resources should be allocated.

1 (c) CONSULTATION.—In developing the National
2 Strategy for Border Security, the Secretary shall consult
3 with representatives of—

4 (1) State, local, and tribal authorities with re-
5 sponsibility for locations along the international land
6 and maritime borders of the United States; and

7 (2) appropriate private sector entities, non-
8 governmental organizations, and affected commu-
9 nities that have expertise in areas related to border
10 security.

11 (d) COORDINATION.—The National Strategy for Bor-
12 der Security shall be consistent with the National Strategy
13 for Maritime Security developed pursuant to Homeland
14 Security Presidential Directive 13, dated December 21,
15 2004.

16 (e) SUBMISSION TO CONGRESS.—

17 (1) STRATEGY.—Not later than 1 year after the
18 date of the enactment of this Act, the Secretary
19 shall submit to Congress the National Strategy for
20 Border Security.

21 (2) UPDATES.—The Secretary shall submit to
22 Congress any update of such Strategy that the Sec-
23 retary determines is necessary, not later than 30
24 days after such update is developed.

1 (f) IMMEDIATE ACTION.—Nothing in this section or
 2 section 111 may be construed to relieve the Secretary of
 3 the responsibility to take all actions necessary and appro-
 4 priate to achieve and maintain operational control over the
 5 entire international land and maritime borders of the
 6 United States.

7 **SEC. 113. REPORTS ON IMPROVING THE EXCHANGE OF IN-**
 8 **FORMATION ON NORTH AMERICAN SECU-**
 9 **RITY.**

10 (a) REQUIREMENT FOR REPORTS.—Not later than 1
 11 year after the date of the enactment of this Act, and annu-
 12 ally thereafter, the Secretary of State, in coordination with
 13 the Secretary and the heads of other appropriate Federal
 14 agencies, shall submit to Congress a report on improving
 15 the exchange of information related to the security of
 16 North America.

17 (b) CONTENTS.—Each report submitted under sub-
 18 section (a) shall contain a description of the following:

19 (1) SECURITY CLEARANCES AND DOCUMENT IN-
 20 TEGRITY.—The progress made toward the develop-
 21 ment of common enrollment, security, technical, and
 22 biometric standards for the issuance, authentication,
 23 validation, and repudiation of secure documents,
 24 including—

1 (A) technical and biometric standards
2 based on best practices and consistent with
3 international standards for the issuance, au-
4 thentication, validation, and repudiation of trav-
5 el documents, including—

- 6 (i) passports;
7 (ii) visas; and
8 (iii) permanent resident cards;

9 (B) working with Canada and Mexico to
10 encourage foreign governments to enact laws to
11 combat alien smuggling and trafficking, and
12 laws to forbid the use and manufacture of
13 fraudulent travel documents and to promote in-
14 formation sharing;

15 (C) applying the necessary pressures and
16 support to ensure that other countries meet
17 proper travel document standards and are com-
18 mitted to travel document verification before
19 the citizens of such countries travel internation-
20 ally, including travel by such citizens to the
21 United States; and

22 (D) providing technical assistance for the
23 development and maintenance of a national
24 database built upon identified best practices for

1 biometrics associated with visa and travel docu-
2 ments.

3 (2) IMMIGRATION AND VISA MANAGEMENT.—

4 The progress of efforts to share information regard-
5 ing high-risk individuals who may attempt to enter
6 Canada, Mexico, or the United States, including the
7 progress made—

8 (A) in implementing the Statement of Mu-
9 tual Understanding on Information Sharing,
10 signed by Canada and the United States in
11 February 2003; and

12 (B) in identifying trends related to immi-
13 gration fraud, including asylum and document
14 fraud, and to analyze such trends.

15 (3) VISA POLICY COORDINATION AND IMMIGRA-
16 TION SECURITY.—The progress made by Canada,
17 Mexico, and the United States to enhance the secu-
18 rity of North America by cooperating on visa policy
19 and identifying best practices regarding immigration
20 security, including the progress made—

21 (A) in enhancing consultation among offi-
22 cials who issue visas at the consulates or em-
23 bassies of Canada, Mexico, or the United States
24 throughout the world to share information,
25 trends, and best practices on visa flows;

1 (B) in comparing the procedures and poli-
2 cies of Canada and the United States related to
3 visitor visa processing, including—

- 4 (i) application process;
5 (ii) interview policy;
6 (iii) general screening procedures;
7 (iv) visa validity;
8 (v) quality control measures; and
9 (vi) access to appeal or review;

10 (C) in exploring methods for Canada, Mex-
11 ico, and the United States to waive visa re-
12 quirements for nationals and citizens of the
13 same foreign countries;

14 (D) in providing technical assistance for
15 the development and maintenance of a national
16 database built upon identified best practices for
17 biometrics associated with immigration viola-
18 tors;

19 (E) in developing and implementing an im-
20 migration security strategy for North America
21 that works toward the development of a com-
22 mon security perimeter by enhancing technical
23 assistance for programs and systems to support
24 advance automated reporting and risk targeting
25 of international passengers;

1 (F) in sharing information on lost and sto-
 2 len passports on a real-time basis among immi-
 3 gration or law enforcement officials of Canada,
 4 Mexico, and the United States; and

5 (G) in collecting 10 fingerprints from each
 6 individual who applies for a visa.

7 (4) NORTH AMERICAN VISITOR OVERSTAY PRO-
 8 GRAM.—The progress made by Canada and the
 9 United States in implementing parallel entry-exit
 10 tracking systems that, while respecting the privacy
 11 laws of both countries, share information regarding
 12 third country nationals who have overstayed their
 13 period of authorized admission in either Canada or
 14 the United States.

15 (5) TERRORIST WATCH LISTS.—The progress
 16 made in enhancing the capacity of the United States
 17 to combat terrorism through the coordination of
 18 counterterrorism efforts, including the progress
 19 made—

20 (A) in developing and implementing bilat-
 21 eral agreements between Canada and the
 22 United States and between Mexico and the
 23 United States to govern the sharing of terrorist
 24 watch list data and to comprehensively enu-

merate the uses of such data by the governments of each country;

(B) in establishing appropriate linkages among Canada, Mexico, and the United States Terrorist Screening Center; and

(C) in exploring with foreign governments the establishment of a multilateral watch list mechanism that would facilitate direct coordination between the country that identifies an individual as an individual included on a watch list, and the country that owns such list, including procedures that satisfy the security concerns and are consistent with the privacy and other laws of each participating country.

(6) MONEY LAUNDERING, CURRENCY SMUGGLING, AND ALIEN SMUGGLING.—The progress made in improving information sharing and law enforcement cooperation in combating organized crime, including the progress made—

(A) in combating currency smuggling, money laundering, alien smuggling, and trafficking in alcohol, firearms, and explosives;

(B) in implementing the agreement between Canada and the United States known as the Firearms Trafficking Action Plan;

1 (C) in determining the feasibility of formu-
2 lating a firearms trafficking action plan be-
3 tween Mexico and the United States;

4 (D) in developing a joint threat assessment
5 on organized crime between Canada and the
6 United States;

7 (E) in determining the feasibility of formu-
8 lating a joint threat assessment on organized
9 crime between Mexico and the United States;

10 (F) in developing mechanisms to exchange
11 information on findings, seizures, and capture
12 of individuals transporting undeclared currency;
13 and

14 (G) in developing and implementing a plan
15 to combat the transnational threat of illegal
16 drug trafficking.

17 (7) LAW ENFORCEMENT COOPERATION.—The
18 progress made in enhancing law enforcement co-
19 operation among Canada, Mexico, and the United
20 States through enhanced technical assistance for the
21 development and maintenance of a national database
22 built upon identified best practices for biometrics as-
23 sociated with known and suspected criminals or ter-
24 rorists, including exploring the formation of law en-
25 forcement teams that include personnel from the

1 United States and Mexico, and appropriate proce-
2 dures for such teams.

3 **SEC. 114. IMPROVING THE SECURITY OF MEXICO'S SOUTH-**
4 **ERN BORDER.**

5 (a) **TECHNICAL ASSISTANCE.**—The Secretary of
6 State, in coordination with the Secretary, shall work to
7 cooperate with the head of Foreign Affairs Canada and
8 the appropriate officials of the Government of Mexico to
9 establish a program—

10 (1) to assess the specific needs of Guatemala
11 and Belize in maintaining the security of the inter-
12 national borders of such countries;

13 (2) to use the assessment made under para-
14 graph (1) to determine the financial and technical
15 support needed by Guatemala and Belize from Can-
16 ada, Mexico, and the United States to meet such
17 needs;

18 (3) to provide technical assistance to Guatemala
19 and Belize to promote issuance of secure passports
20 and travel documents by such countries; and

21 (4) to encourage Guatemala and Belize—

22 (A) to control alien smuggling and traf-
23 ficking;

24 (B) to prevent the use and manufacture of
25 fraudulent travel documents; and

1 (C) to share relevant information with
2 Mexico, Canada, and the United States.

3 (b) BORDER SECURITY FOR BELIZE, GUATEMALA,
4 AND MEXICO.—The Secretary, in consultation with the
5 Secretary of State, shall work to cooperate—

6 (1) with the appropriate officials of the Govern-
7 ment of Guatemala and the Government of Belize to
8 provide law enforcement assistance to Guatemala
9 and Belize that specifically addresses immigration
10 issues to increase the ability of the Government of
11 Guatemala to dismantle human smuggling organiza-
12 tions and gain additional control over the inter-
13 national border between Guatemala and Belize; and

14 (2) with the appropriate officials of the Govern-
15 ment of Belize, the Government of Guatemala, the
16 Government of Mexico, and the governments of
17 neighboring contiguous countries to establish a pro-
18 gram to provide needed equipment, technical assist-
19 ance, and vehicles to manage, regulate, and patrol
20 the international borders between Mexico and Guate-
21 mala and between Mexico and Belize.

22 (c) TRACKING CENTRAL AMERICAN GANGS.—The
23 Secretary of State, in coordination with the Secretary and
24 the Director of the Federal Bureau of Investigation, shall
25 work to cooperate with the appropriate officials of the

1 Government of Mexico, the Government of Guatemala, the
2 Government of Belize, and the governments of other Cen-
3 tral American countries—

4 (1) to assess the direct and indirect impact on
5 the United States and Central America of deporting
6 violent criminal aliens;

7 (2) to establish a program and database to
8 track individuals involved in Central American gang
9 activities;

10 (3) to develop a mechanism that is acceptable
11 to the governments of Belize, Guatemala, Mexico,
12 the United States, and other appropriate countries
13 to notify such a government if an individual sus-
14 pected of gang activity will be deported to that coun-
15 try prior to the deportation and to provide support
16 for the reintegration of such deportees into that
17 country; and

18 (4) to develop an agreement to share all rel-
19 evant information related to individuals connected
20 with Central American gangs.

21 (d) LIMITATIONS ON ASSISTANCE.—Any funds made
22 available to carry out this section shall be subject to the
23 limitations contained in section 551 of the Foreign Oper-
24 ations, Export Financing, and Related Programs Appro-

1 priations Act of 2006 (Public Law 109–102; 119 Stat.
2 2218).

3 **SEC. 115. COMBATING HUMAN SMUGGLING.**

4 (a) REQUIREMENT FOR PLAN.—The Secretary shall
5 develop and implement a plan to improve coordination be-
6 tween the Bureau of Immigration and Customs Enforce-
7 ment and the Bureau of Customs and Border Protection
8 of the Department and any other Federal, State, local,
9 or tribal authorities, as determined appropriate by the
10 Secretary, to improve coordination efforts to combat
11 human smuggling.

12 (b) CONTENT.—In developing the plan required by
13 subsection (a), the Secretary shall consider—

14 (1) the interoperability of databases utilized to
15 prevent human smuggling;

16 (2) adequate and effective personnel training;

17 (3) methods and programs to effectively target
18 networks that engage in such smuggling;

19 (4) effective utilization of—

20 (A) visas for victims of trafficking and
21 other crimes; and

22 (B) investigatory techniques, equipment,
23 and procedures that prevent, detect, and pros-
24 ecute international money laundering and other
25 operations that are utilized in smuggling;

1 (5) joint measures, with the Secretary of State,
2 to enhance intelligence sharing and cooperation with
3 foreign governments whose citizens are preyed on by
4 human smugglers; and

5 (6) other measures that the Secretary considers
6 appropriate to combating human smuggling.

7 (c) REPORT.—Not later than 1 year after imple-
8 menting the plan described in subsection (a), the Sec-
9 retary shall submit to Congress a report on such plan, in-
10 cluding any recommendations for legislative action to im-
11 prove efforts to combating human smuggling.

12 (d) SAVINGS PROVISION.—Nothing in this section
13 may be construed to provide additional authority to any
14 State or local entity to enforce Federal immigration laws.

15 **SEC. 116. DEATHS AT UNITED STATES-MEXICO BORDER.**

16 (a) COLLECTION OF STATISTICS.—The Commis-
17 sioner of the Bureau of Customs and Border Protection
18 shall collect statistics relating to deaths occurring at the
19 border between the United States and Mexico, including—

20 (1) the causes of the deaths; and

21 (2) the total number of deaths.

22 (b) REPORT.—Not later than 1 year after the date
23 of enactment of this Act, and annually thereafter, the
24 Commissioner of the Bureau of Customs and Border Pro-
25 tection shall submit to the Secretary a report that—

1 (1) analyzes trends with respect to the statistics
2 collected under subsection (a) during the preceding
3 year; and

4 (2) recommends actions to reduce the deaths
5 described in subsection (a).

6 **SEC. 117. COOPERATION WITH THE GOVERNMENT OF MEX-**
7 **ICO.**

8 (a) COOPERATION REGARDING BORDER SECU-
9 RITY.—The Secretary of State, in cooperation with the
10 Secretary and representatives of Federal, State, and local
11 law enforcement agencies that are involved in border secu-
12 rity and immigration enforcement efforts, shall work with
13 the appropriate officials from the Government of Mexico
14 to improve coordination between the United States and
15 Mexico regarding—

16 (1) improved border security along the inter-
17 national border between the United States and Mex-
18 ico;

19 (2) the reduction of human trafficking and
20 smuggling between the United States and Mexico;

21 (3) the reduction of drug trafficking and smug-
22 gling between the United States and Mexico;

23 (4) the reduction of gang membership in the
24 United States and Mexico;

1 (5) the reduction of violence against women in
2 the United States and Mexico; and

3 (6) the reduction of other violence and criminal
4 activity.

5 (b) COOPERATION REGARDING EDUCATION ON IMMI-
6 GRATION LAWS.—The Secretary of State, in cooperation
7 with other appropriate Federal officials, shall work with
8 the appropriate officials from the Government of Mexico
9 to carry out activities to educate citizens and nationals
10 of Mexico regarding eligibility for status as a non-
11 immigrant under Federal law to ensure that the citizens
12 and nationals are not exploited while working in the
13 United States.

14 (c) COOPERATION REGARDING CIRCULAR MIGRA-
15 TION.—The Secretary of State, in cooperation with the
16 Secretary of Labor and other appropriate Federal offi-
17 cials, shall work with the appropriate officials from the
18 Government of Mexico to improve coordination between
19 the United States and Mexico to encourage circular migra-
20 tion, including assisting in the development of economic
21 opportunities and providing job training for citizens and
22 nationals in Mexico.

23 (d) CONSULTATION REQUIREMENT.—Federal, State,
24 and local representatives in the United States shall consult
25 with their counterparts in Mexico concerning the construc-

tion of additional fencing and related border security structures along the international border between the United States and Mexico, as authorized by this title, before the commencement of any such construction in order to—

- (1) solicit the views of affected communities;
- (2) lessen tensions; and
- (3) foster greater understanding and stronger cooperation on this and other important security issues of mutual concern.

(e) ANNUAL REPORT.—Not later than 180 days after the date of enactment of this Act, and annually thereafter, the Secretary of State shall submit to Congress a report on the actions taken by the United States and Mexico under this section.

Subtitle C—Other Border Security Initiatives

SEC. 121. BIOMETRIC DATA ENHANCEMENTS.

Not later than October 1, 2007, the Secretary shall—

- (1) in consultation with the Attorney General, enhance connectivity between the Automated Biometric Fingerprint Identification System (IDENT) of the Department and the Integrated Automated Fingerprint Identification System (IAFIS) of the

1 Federal Bureau of Investigation to ensure more ex-
2 peditious data searches; and

3 (2) in consultation with the Secretary of State,
4 collect all fingerprints from each alien required to
5 provide fingerprints during the alien's initial enroll-
6 ment in the integrated entry and exit data system
7 described in section 110 of the Illegal Immigration
8 Reform and Immigrant Responsibility Act of 1996
9 (8 U.S.C. 1365a).

10 **SEC. 122. SECURE COMMUNICATION.**

11 The Secretary shall, as expeditiously as practicable,
12 develop and implement a plan to improve the use of sat-
13 ellite communications and other technologies to ensure
14 clear and secure 2-way communication capabilities—

15 (1) among all Border Patrol agents conducting
16 operations between ports of entry;

17 (2) between Border Patrol agents and their re-
18 spective Border Patrol stations;

19 (3) between Border Patrol agents and residents
20 in remote areas along the international land borders
21 of the United States; and

22 (4) between all appropriate border security
23 agencies of the Department and State, local, and
24 tribal law enforcement agencies.

1 **SEC. 123. BORDER PATROL TRAINING CAPACITY REVIEW.**

2 (a) IN GENERAL.—The Comptroller General of the
3 United States shall conduct a review of the basic training
4 provided to Border Patrol agents by the Secretary to en-
5 sure that such training is provided as efficiently and cost-
6 effectively as possible.

7 (b) COMPONENTS OF REVIEW.—The review under
8 subsection (a) shall include the following components:

9 (1) An evaluation of the length and content of
10 the basic training curriculum provided to new Bor-
11 der Patrol agents by the Federal Law Enforcement
12 Training Center, including a description of how such
13 curriculum has changed since September 11, 2001,
14 and an evaluation of language and cultural diversity
15 training programs provided within such curriculum.

16 (2) A review and a detailed breakdown of the
17 costs incurred by the Bureau of Customs and Bor-
18 der Protection and the Federal Law Enforcement
19 Training Center to train 1 new Border Patrol agent.

20 (3) A comparison, based on the review and
21 breakdown under paragraph (2), of the costs, effec-
22 tiveness, scope, and quality, including geographic
23 characteristics, with other similar training programs
24 provided by State and local agencies, nonprofit orga-
25 nizations, universities, and the private sector.

1 (4) An evaluation of whether utilizing com-
2 parable non-Federal training programs, proficiency
3 testing, and long-distance learning programs may
4 affect—

5 (A) the cost-effectiveness of increasing the
6 number of Border Patrol agents trained per
7 year;

8 (B) the per agent costs of basic training;
9 and

10 (C) the scope and quality of basic training
11 needed to fulfill the mission and duties of a
12 Border Patrol agent.

13 **SEC. 124. US-VISIT SYSTEM.**

14 Not later than 6 months after the date of the enact-
15 ment of this Act, the Secretary, in consultation with the
16 heads of other appropriate Federal agencies, shall submit
17 to Congress a schedule for—

18 (1) equipping all land border ports of entry of
19 the United States with the U.S.-Visitor and Immi-
20 grant Status Indicator Technology (US-VISIT) sys-
21 tem implemented under section 110 of the Illegal
22 Immigration Reform and Immigrant Responsibility
23 Act of 1996 (8 U.S.C. 1365a);

1 (2) developing and deploying at such ports of
2 entry the exit component of the US–VISIT system;
3 and

4 (3) making interoperable all immigration
5 screening systems operated by the Secretary.

6 **SEC. 125. DOCUMENT FRAUD DETECTION.**

7 (a) TRAINING.—Subject to the availability of appro-
8 priations, the Secretary shall provide all Customs and
9 Border Protection officers with training in identifying and
10 detecting fraudulent travel documents. Such training shall
11 be developed in consultation with the head of the Forensic
12 Document Laboratory of the Bureau of Immigration and
13 Customs Enforcement.

14 (b) FORENSIC DOCUMENT LABORATORY.—The Sec-
15 retary shall provide all Customs and Border Protection of-
16 ficers with access to the Forensic Document Laboratory.

17 (c) ASSESSMENT.—

18 (1) REQUIREMENT FOR ASSESSMENT.—The In-
19 spector General of the Department shall conduct an
20 independent assessment of the accuracy and reli-
21 ability of the Forensic Document Laboratory.

22 (2) REPORT TO CONGRESS.—Not later than 6
23 months after the date of the enactment of this Act,
24 the Inspector General shall submit to Congress the

1 findings of the assessment required by paragraph
2 (1).

3 (d) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated to the Secretary such
5 sums as may be necessary for each of fiscal years 2007
6 through 2011 to carry out this section.

7 **SEC. 126. IMPROVED DOCUMENT INTEGRITY.**

8 (a) IN GENERAL.—Section 303 of the Enhanced Bor-
9 der Security and Visa Entry Reform Act of 2002 (8
10 U.S.C. 1732) is amended—

11 (1) by striking “Attorney General” each place
12 it appears and inserting “Secretary of Homeland Se-
13 curity”;

14 (2) in the heading, by striking “**ENTRY AND**
15 **EXIT DOCUMENTS**” and inserting “**TRAVEL AND**
16 **ENTRY DOCUMENTS AND EVIDENCE OF STA-**
17 **TUS**”;

18 (3) in subsection (b)(1)—

19 (A) by striking “Not later than October
20 26, 2004, the” and inserting “The”; and

21 (B) by striking “visas and” both places it
22 appears and inserting “visas, evidence of status,
23 and”;

24 (4) by redesignating subsection (d) as sub-
25 section (e); and

1 (5) by inserting after subsection (c) the fol-
 2 lowing:

3 “(d) OTHER DOCUMENTS.—Not later than October
 4 26, 2007, every document, other than an interim docu-
 5 ment, issued by the Secretary of Homeland Security,
 6 which may be used as evidence of an alien’s status as an
 7 immigrant, nonimmigrant, parolee, asylee, or refugee,
 8 shall be machine-readable and tamper-resistant, and shall
 9 incorporate a biometric identifier to allow the Secretary
 10 of Homeland Security to verify electronically the identity
 11 and status of the alien.”.

12 **SEC. 127. CANCELLATION OF VISAS.**

13 Section 222(g) (8 U.S.C. 1202(g)) is amended—

14 (1) in paragraph (1)—

15 (A) by striking “Attorney General” and in-
 16 serting “Secretary of Homeland Security”; and

17 (B) by inserting “and any other non-
 18 immigrant visa issued by the United States that
 19 is in the possession of the alien” after “such
 20 visa”; and

21 (2) in paragraph (2)(A), by striking “(other
 22 than the visa described in paragraph (1)) issued in
 23 a consular office located in the country of the alien’s
 24 nationality” and inserting “(other than a visa de-
 25 scribed in paragraph (1)) issued in a consular office

1 located in the country of the alien's nationality or
 2 foreign residence”.

3 **SEC. 128. BIOMETRIC ENTRY-EXIT SYSTEM.**

4 (a) COLLECTION OF BIOMETRIC DATA FROM ALIENS
 5 DEPARTING THE UNITED STATES.—Section 215 (8
 6 U.S.C. 1185) is amended—

7 (1) by redesignating subsection (c) as sub-
 8 section (g);

9 (2) by moving subsection (g), as redesignated
 10 by paragraph (1), to the end; and

11 (3) by inserting after subsection (b) the fol-
 12 lowing:

13 “(c) The Secretary of Homeland Security is author-
 14 ized to require aliens departing the United States to pro-
 15 vide biometric data and other information relating to their
 16 immigration status.”.

17 (b) INSPECTION OF APPLICANTS FOR ADMISSION.—
 18 Section 235(d) (8 U.S.C. 1225(d)) is amended by adding
 19 at the end the following:

20 “(5) AUTHORITY TO COLLECT BIOMETRIC
 21 DATA.—In conducting inspections under subsection
 22 (b), immigration officers are authorized to collect bi-
 23 ometric data from—

24 “(A) any applicant for admission or alien
 25 seeking to transit through the United States; or

1 “(B) any lawful permanent resident who is
 2 entering the United States and who is not re-
 3 garded as seeking admission pursuant to sec-
 4 tion 101(a)(13)(C).”.

5 (c) COLLECTION OF BIOMETRIC DATA FROM ALIEN
 6 CREWMEN.—Section 252 (8 U.S.C. 1282) is amended by
 7 adding at the end the following:

8 “(d) An immigration officer is authorized to collect
 9 biometric data from an alien crewman seeking permission
 10 to land temporarily in the United States.”.

11 (d) GROUNDS OF INADMISSIBILITY.—Section 212 (8
 12 U.S.C. 1182) is amended—

13 (1) in subsection (a)(7), by adding at the end
 14 the following:

15 “(C) WITHHOLDERS OF BIOMETRIC
 16 DATA.—Any alien who knowingly fails to com-
 17 ply with a lawful request for biometric data
 18 under section 215(c) or 235(d) is inadmis-
 19 sible.”; and

20 (2) in subsection (d), by inserting after para-
 21 graph (1) the following:

22 “(2) The Secretary of Homeland Security shall
 23 determine whether a ground for inadmissibility ex-
 24 ists with respect to an alien described in subpara-
 25 graph (C) of subsection (a)(7) and may waive the

1 application of such subparagraph for an individual
 2 alien or a class of aliens, at the discretion of the
 3 Secretary.”.

4 (e) IMPLEMENTATION.—Section 7208 of the 9/11
 5 Commission Implementation Act of 2004 (8 U.S.C.
 6 1365b) is amended—

7 (1) in subsection (c), by adding at the end the
 8 following:

9 “(3) IMPLEMENTATION.—In fully implementing
 10 the automated biometric entry and exit data system
 11 under this section, the Secretary is not required to
 12 comply with the requirements of chapter 5 of title 5,
 13 United States Code (commonly referred to as the
 14 Administrative Procedure Act) or any other law re-
 15 lating to rulemaking, information collection, or pub-
 16 lication in the Federal Register.”; and

17 (2) in subsection (l)—

18 (A) by striking “There are authorized”
 19 and inserting the following:

20 “(1) IN GENERAL.—There are authorized”; and

21 (B) by adding at the end the following:

22 “(2) IMPLEMENTATION AT ALL LAND BORDER
 23 PORTS OF ENTRY.—There are authorized to be ap-
 24 propriated such sums as may be necessary for each
 25 of fiscal years 2007 and 2008 to implement the

1 automated biometric entry and exit data system at
2 all land border ports of entry.”.

3 **SEC. 129. BORDER STUDY.**

4 (a) SOUTHERN BORDER STUDY.—The Secretary, in
5 consultation with the Attorney General, the Secretary of
6 the Interior, the Secretary of Agriculture, the Secretary
7 of Defense, the Secretary of Commerce, and the Adminis-
8 trator of the Environmental Protection Agency, shall con-
9 duct a study on the construction of a system of physical
10 barriers along the southern international land and mari-
11 time border of the United States. The study shall
12 include—

13 (1) an assessment of the necessity of con-
14 structing such a system, including the identification
15 of areas of high priority for the construction of such
16 a system determined after consideration of factors
17 including the amount of narcotics trafficking and
18 the number of illegal immigrants apprehended in
19 such areas;

20 (2) an assessment of the feasibility of con-
21 structing such a system;

22 (3) an assessment of the international, national,
23 and regional environmental impact of such a system,
24 including the impact on zoning, global climate

1 change, ozone depletion, biodiversity loss, and
2 transboundary pollution;

3 (4) an assessment of the necessity for ports of
4 entry along such a system;

5 (5) an assessment of the impact such a system
6 would have on international trade, commerce, and
7 tourism;

8 (6) an assessment of the effect of such a system
9 on private property rights including issues of emi-
10 nent domain and riparian rights;

11 (7) an estimate of the costs associated with
12 building a barrier system, including costs associated
13 with excavation, construction, and maintenance;

14 (8) an assessment of the effect of such a system
15 on Indian reservations and units of the National
16 Park System;

17 (9) an assessment of the necessity of con-
18 structing such a system after the implementation of
19 provisions of this Act relating to guest workers, visa
20 reform, and interior and worksite enforcement, and
21 the likely effect of such provisions on undocumented
22 immigration and the flow of illegal immigrants
23 across the international border of the United States;

24 (10) an assessment of the impact of such a sys-
25 tem on diplomatic relations between the United

1 States and Mexico, Central America, and South
2 America, including the likely impact of such a sys-
3 tem on existing and potential areas of bilateral and
4 multilateral cooperative enforcement efforts;

5 (11) an assessment of the impact of such a sys-
6 tem on the quality of life within border communities
7 in the United States and Mexico, including its im-
8 pact on noise and light pollution, housing, transpor-
9 tation, security, and environmental health;

10 (12) an assessment of the likelihood that such
11 a system would lead to increased violations of the
12 human rights, health, safety, or civil rights of indi-
13 viduals in the region near the southern international
14 border of the United States, regardless of the immi-
15 gration status of such individuals;

16 (13) an assessment of the effect such a system
17 would have on violence near the southern inter-
18 national border of the United States; and

19 (14) an assessment of the effect of such a sys-
20 tem on the vulnerability of the United States to in-
21 filtration by terrorists or other agents intending to
22 inflict direct harm on the United States.

23 (b) REPORT.—Not later than 9 months after the date
24 of the enactment of this Act, the Secretary shall submit

1 to Congress a report on the study described in subsection
2 (a).

3 **SEC. 130. SECURE BORDER INITIATIVE FINANCIAL AC-**
4 **COUNTABILITY.**

5 (a) IN GENERAL.—The Inspector General of the De-
6 partment shall review each contract action relating to the
7 Secure Border Initiative having a value of more than
8 \$20,000,000, to determine whether each such action fully
9 complies with applicable cost requirements, performance
10 objectives, program milestones, inclusion of small, minor-
11 ity, and women-owned business, and time lines. The In-
12 spector General shall complete a review under this sub-
13 section with respect to each contract action—

14 (1) not later than 60 days after the date of the
15 initiation of the action; and

16 (2) upon the conclusion of the performance of
17 the contract.

18 (b) INSPECTOR GENERAL.—

19 (1) ACTION.—If the Inspector General becomes
20 aware of any improper conduct or wrongdoing in the
21 course of conducting a contract review under sub-
22 section (a), the Inspector General shall, as expedi-
23 tiously as practicable, refer information relating to
24 such improper conduct or wrongdoing to the Sec-
25 retary, or to another appropriate official of the De-

partment, who shall determine whether to temporarily suspend the contractor from further participation in the Secure Border Initiative.

(2) REPORT.—Upon the completion of each review described in subsection (a), the Inspector General shall submit to the Secretary a report containing the findings of the review, including findings regarding—

(A) cost overruns;

(B) significant delays in contract execution;

(C) lack of rigorous departmental contract management;

(D) insufficient departmental financial oversight;

(E) bundling that limits the ability of small businesses to compete; or

(F) other high risk business practices.

(c) REPORTS BY THE SECRETARY.—

(1) IN GENERAL.—Not later than 30 days after the receipt of each report required under subsection (b)(2), the Secretary shall submit a report, to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, that describes—

1 (A) the findings of the report received
2 from the Inspector General; and

3 (B) the steps the Secretary has taken, or
4 plans to take, to address the problems identified
5 in such report.

6 (2) CONTRACTS WITH FOREIGN COMPANIES.—

7 Not later than 60 days after the initiation of each
8 contract action with a company whose headquarters
9 is not based in the United States, the Secretary
10 shall submit a report to the Committee on the Judi-
11 ciary of the Senate and the Committee on the Judi-
12 ciary of the House of Representatives, regarding the
13 Secure Border Initiative.

14 (d) REPORTS ON UNITED STATES PORTS.—Not later
15 that 30 days after receiving information regarding a pro-
16 posed purchase of a contract to manage the operations of
17 a United States port by a foreign entity, the Committee
18 on Foreign Investment in the United States shall submit
19 a report to Congress that describes—

20 (1) the proposed purchase;

21 (2) any security concerns related to the pro-
22 posed purchase; and

23 (3) the manner in which such security concerns
24 have been addressed.

1 (e) AUTHORIZATION OF APPROPRIATIONS.—In addi-
 2 tion to amounts that are otherwise authorized to be appro-
 3 priated to the Office of the Inspector General of the De-
 4 partment, there are authorized to be appropriated to the
 5 Office, to enable the Office to carry out this section—

6 (1) for fiscal year 2007, not less than 5 percent
 7 of the overall budget of the Office for such fiscal
 8 year;

9 (2) for fiscal year 2008, not less than 6 percent
 10 of the overall budget of the Office for such fiscal
 11 year; and

12 (3) for fiscal year 2009, not less than 7 percent
 13 of the overall budget of the Office for such fiscal
 14 year.

15 **SEC. 131. MANDATORY DETENTION FOR ALIENS APPRE-**
 16 **HENDED AT OR BETWEEN PORTS OF ENTRY.**

17 (a) IN GENERAL.—Beginning on October 1, 2007, an
 18 alien (other than a national of Mexico) who is attempting
 19 to illegally enter the United States and who is appre-
 20 hended at a United States port of entry or along the inter-
 21 national land and maritime border of the United States
 22 shall be detained until removed or a final decision granting
 23 admission has been determined, unless the alien—

24 (1) is permitted to withdraw an application for
 25 admission under section 235(a)(4) of the Immigra-

1 tion and Nationality Act (8 U.S.C. 1225(a)(4)) and
 2 immediately departs from the United States pursu-
 3 ant to such section; or

4 (2) is paroled into the United States by the
 5 Secretary for urgent humanitarian reasons or sig-
 6 nificant public benefit in accordance with section
 7 212(d)(5)(A) of such Act (8 U.S.C. 1182(d)(5)(A)).

8 (b) REQUIREMENTS DURING INTERIM PERIOD.—Be-
 9 ginning 60 days after the date of the enactment of this
 10 Act and before October 1, 2007, an alien described in sub-
 11 section (a) may be released with a notice to appear only
 12 if—

13 (1) the Secretary determines, after conducting
 14 all appropriate background and security checks on
 15 the alien, that the alien does not pose a national se-
 16 curity risk; and

17 (2) the alien provides a bond of not less than
 18 \$5,000.

19 (c) RULES OF CONSTRUCTION.—

20 (1) ASYLUM AND REMOVAL.—Nothing in this
 21 section shall be construed as limiting the right of an
 22 alien to apply for asylum or for relief or deferral of
 23 removal based on a fear of persecution.

24 (2) TREATMENT OF CERTAIN ALIENS.—The
 25 mandatory detention requirement in subsection (a)

1 does not apply to any alien who is a native or citizen
 2 of a country in the Western Hemisphere with whose
 3 government the United States does not have full dip-
 4 lomatic relations.

5 (3) DISCRETION.—Nothing in this section shall
 6 be construed as limiting the authority of the Sec-
 7 retary, in the Secretary’s sole unreviewable discre-
 8 tion, to determine whether an alien described in
 9 clause (ii) of section 235(b)(1)(B) of the Immigra-
 10 tion and Nationality Act shall be detained or re-
 11 leased after a finding of a credible fear of persecu-
 12 tion (as defined in clause (v) of such section).

13 **SEC. 132. EVASION OF INSPECTION OR VIOLATION OF AR-**
 14 **RIVAL, REPORTING, ENTRY, OR CLEARANCE**
 15 **REQUIREMENTS.**

16 (a) IN GENERAL.—Chapter 27 of title 18, United
 17 States Code, is amended by adding at the end the fol-
 18 lowing:

19 **“§ 555. Evasion of inspection or during violation of**
 20 **arrival, reporting, entry, or clearance re-**
 21 **quirements**

22 “(a) PROHIBITION.—A person shall be punished as
 23 described in subsection (b) if such person attempts to
 24 elude or eludes customs, immigration, or agriculture in-
 25 spection or fails to stop at the command of an officer or

1 employee of the United States charged with enforcing the
 2 immigration, customs, or other laws of the United States
 3 at a port of entry or customs or immigration checkpoint.

4 “(b) PENALTIES.—A person who commits an offense
 5 described in subsection (a) shall be—

6 “(1) fined under this title;

7 “(2)(A) imprisoned for not more than 3 years,
 8 or both;

9 “(B) imprisoned for not more than 10 years, or
 10 both, if in commission of this violation, attempts to
 11 inflict or inflicts bodily injury (as defined in section
 12 1365(g) of this title); or

13 “(C) imprisoned for any term of years or for
 14 life, or both, if death results, and may be sentenced
 15 to death; or

16 “(3) both fined and imprisoned under this sub-
 17 section.

18 “(c) CONSPIRACY.—If 2 or more persons conspire to
 19 commit an offense described in subsection (a), and 1 or
 20 more of such persons do any act to effect the object of
 21 the conspiracy, each shall be punishable as a principal, ex-
 22 cept that the sentence of death may not be imposed.

23 “(d) PRIMA FACIE EVIDENCE.—For the purposes of
 24 seizure and forfeiture under applicable law, in the case of
 25 use of a vehicle or other conveyance in the commission

1 of this offense, or in the case of disregarding or disobeying
 2 the lawful authority or command of any officer or em-
 3 ployee of the United States under section 111(b) of this
 4 title, such conduct shall constitute prima facie evidence of
 5 smuggling aliens or merchandise.”.

6 (b) CONFORMING AMENDMENT.—The table of sec-
 7 tions for chapter 27 of title 18, United States Code, is
 8 amended by inserting at the end:

“555. Evasion of inspection or during violation of arrival, reporting, entry, or
 clearance requirements.”.

9 (c) FAILURE TO OBEY BORDER ENFORCEMENT OF-
 10 FICERS.—Section 111 of title 18, United States Code, is
 11 amended by inserting after subsection (b) the following:

12 “(c) FAILURE TO OBEY LAWFUL ORDERS OF BOR-
 13 DER ENFORCEMENT OFFICERS.—Whoever willfully dis-
 14 regards or disobeys the lawful authority or command of
 15 any officer or employee of the United States charged with
 16 enforcing the immigration, customs, or other laws of the
 17 United States while engaged in, or on account of, the per-
 18 formance of official duties shall be fined under this title
 19 or imprisoned for not more than 5 years, or both.”.

20 **SEC. 133. TEMPORARY NATIONAL GUARD SUPPORT FOR SE-**
 21 **CURING THE SOUTHERN LAND BORDER OF**
 22 **THE UNITED STATES.**

23 (a) AUTHORITY TO PROVIDE ASSISTANCE.—(1) With
 24 the approval of the Secretary of Defense, the Governor

1 of a State may order any units or personnel of the Na-
2 tional Guard of such State to perform annual training
3 duty under section 502(a) of title 32, United States Code,
4 to carry out in any State along the southern land border
5 of the United States the activities authorized in subsection
6 (b), for the purpose of securing such border. Such duty
7 shall not exceed 21 days in any year.

8 (2) With the approval of the Secretary of Defense,
9 the Governor of a State may order any units or personnel
10 of the National Guard of such State to perform duty
11 under section 502(f) of title 32, United States Code, to
12 provide command, control, and continuity of support for
13 units or personnel performing annual training duty under
14 paragraph (1).

15 (b) AUTHORIZED ACTIVITIES.—The activities author-
16 ized by this subsection are any of the following:

- 17 (1) Ground reconnaissance activities;
- 18 (2) Airborne reconnaissance activities;
- 19 (3) Logistical support;
- 20 (4) Provision of translation services and train-
21 ing;
- 22 (5) Administrative support services;
- 23 (6) Technical training services;
- 24 (7) Emergency medical assistance and services;
- 25 (8) Communications services;

1 (9) Rescue of aliens in peril;

2 (10) Construction of roadways, patrol roads,
3 fences, barriers, and other facilities to secure the
4 southern land border of the United States; and

5 (11) Ground and air transportation.

6 (c) COOPERATIVE AGREEMENTS.—Units and per-
7 sonnel of the National Guard of a State may perform ac-
8 tivities in another State under subsection (a) only pursu-
9 ant to the terms of an emergency management assistance
10 compact or other cooperative arrangement entered into be-
11 tween Governors of such States for purposes of this sec-
12 tion, and only with the approval of the Secretary of De-
13 fense.

14 (d) COORDINATION OF ASSISTANCE.—The Secretary
15 of Homeland Security shall, in consultation with the Sec-
16 retary of Defense and the Governors of the States con-
17 cerned, coordinate the performance of activities under this
18 section by units and personnel of the National Guard.

19 (e) ANNUAL TRAINING.—Annual training duty per-
20 formed by members of the National Guard under sub-
21 section (a) shall be appropriate for the units and indi-
22 vidual members concerned, taking into account the types
23 of units and military occupational specialties of individual
24 members performing such duty.

25 (f) DEFINITIONS.—In this section:

1 (1) The term “Governor of a State” means, in
2 the case of the District of Columbia, the Com-
3 manding General of the National Guard of the Dis-
4 trict of Columbia.

5 (2) The term “State” means each of the several
6 States, the District of Columbia, the Commonwealth
7 of Puerto Rico, Guam, and the Virgin Islands.

8 (3) The term “State along the southern border
9 of the United States” means each of the following:

10 (A) The State of Arizona.

11 (B) The State of California.

12 (C) The State of New Mexico.

13 (D) The State of Texas.

14 (g) DURATION OF AUTHORITY.—The authority of
15 this section shall expire on January 1, 2009.

16 (h) PROHIBITION ON DIRECT PARTICIPATION IN LAW
17 ENFORCEMENT.—Activities carried out under the author-
18 ity of this section shall not include the direct participation
19 of a member of the National Guard in a search, seizure,
20 arrest, or similar activity.

1 **SEC. 134. REPORT ON INCENTIVES TO ENCOURAGE CER-**
2 **TAIN MEMBERS AND FORMER MEMBERS OF**
3 **THE ARMED FORCES TO SERVE IN THE BU-**
4 **REAU OF CUSTOMS AND BORDER PROTEC-**
5 **TION.**

6 (a) REPORT REQUIRED.—Not later than 60 days
7 after the date of the enactment of this Act, the Secretary
8 of Homeland Security and the Secretary of Defense shall
9 jointly submit to the appropriate committees of Congress
10 a report assessing the desirability and feasibility of offer-
11 ing incentives to covered members and former members
12 of the Armed Forces for the purpose of encouraging such
13 members to serve in the Bureau of Customs and Border
14 Protection.

15 (b) COVERED MEMBERS AND FORMER MEMBERS OF
16 THE ARMED FORCES.—For purposes of this section, cov-
17 ered members and former members of the Armed Forces
18 are the following:

19 (1) Members of the reserve components of the
20 Armed Forces.

21 (2) Former members of the Armed Forces with-
22 in two years of separation from service in the Armed
23 Forces.

24 (c) REQUIREMENTS AND LIMITATIONS.—

25 (1) NATURE OF INCENTIVES.—In considering
26 incentives for purposes of the report required by

1 subsection (a), the Secretaries shall consider such
2 incentives, whether monetary or otherwise and
3 whether or not authorized by current law or regula-
4 tions, as the Secretaries jointly consider appropriate.

5 (2) TARGETING OF INCENTIVES.—In assessing
6 any incentive for purposes of the report, the Secre-
7 taries shall give particular attention to the utility of
8 such incentive in—

9 (A) encouraging service in the Bureau of
10 Customs and Border Protection after service in
11 the Armed Forces by covered members and
12 former of the Armed Forces who have provided
13 border patrol or border security assistance to
14 the Bureau as part of their duties as members
15 of the Armed Forces; and

16 (B) leveraging military training and expe-
17 rience by accelerating training, or allowing
18 credit to be applied to related areas of training,
19 required for service with the Bureau of Cus-
20 toms and Border Protection.

21 (3) PAYMENT.—In assessing incentives for pur-
22 poses of the report, the Secretaries shall assume
23 that any costs of such incentives shall be borne by
24 the Department of Homeland Security.

1 (d) ELEMENTS.—The report required by subsection
2 (a) shall include the following:

3 (1) A description of various monetary and non-
4 monetary incentives considered for purposes of the
5 report.

6 (2) An assessment of the desirability and feasi-
7 bility of utilizing any such incentive for the purpose
8 specified in subsection (a), including an assessment
9 of the particular utility of such incentive in encour-
10 aging service in the Bureau of Customs and Border
11 Protection after service in the Armed Forces by cov-
12 ered members and former members of the Armed
13 Forces described in subsection (c)(2).

14 (3) Any other matters that the Secretaries
15 jointly consider appropriate.

16 (e) APPROPRIATE COMMITTEES OF CONGRESS DE-
17 FINED.—In this section, the term “appropriate commit-
18 tees of Congress” means—

19 (1) the Committees on Armed Services, Home-
20 land Security and Governmental Affairs, and Appro-
21 priations of the Senate; and

22 (2) the Committees on Armed Services, Home-
23 land Security, and Appropriations of the House of
24 Representatives.

1 **SEC. 135. WESTERN HEMISPHERE TRAVEL INITIATIVE.**

2 (a) FINDINGS.—Congress makes the following find-
3 ings:

4 (1) United States citizens make approximately
5 130,000,000 land border crossings each year be-
6 tween the United States and Canada and the United
7 States and Mexico, with approximately 23,000,000
8 individual United States citizens crossing the border
9 annually.

10 (2) Approximately 27 percent of United States
11 citizens possess United States passports.

12 (3) In fiscal year 2005, the Secretary of State
13 issued an estimated 10,100,000 passports, rep-
14 resenting an increase of 15 percent from fiscal year
15 2004.

16 (4) The Secretary of State estimates that
17 13,000,000 passports will be issued in fiscal year
18 2006, 16,000,000 passports will be issued in fiscal
19 year 2007, and 17,000,000 passports will be issued
20 in fiscal year 2008.

21 (b) EXTENSION OF WESTERN HEMISPHERE TRAVEL
22 INITIATIVE IMPLEMENTATION DEADLINE.—Section
23 7209(b)(1) of the Intelligence Reform and Terrorism Pre-
24 vention Act of 2004 (Public Law 108–458; 8 U.S.C. 1185
25 note) is amended by striking “January 1, 2008” and in-
26 serting “the later of June 1, 2009, or 3 months after the

1 Secretary of State and the Secretary of Homeland Secu-
2 rity make the certification required in subsection (i) of sec-
3 tion 133 of the Comprehensive Immigration Reform Act
4 of 2006.”.

5 (c) PASSPORT CARDS.—

6 (1) AUTHORITY TO ISSUE.—In order to facili-
7 tate travel of United States citizens to Canada, Mex-
8 ico, the countries located in the Caribbean, and Ber-
9 muda, the Secretary of State, in consultation with
10 the Secretary, is authorized to develop a travel docu-
11 ment known as a Passport Card.

12 (2) ISSUANCE.—In accordance with the West-
13 ern Hemisphere Travel Initiative carried out pursu-
14 ant to section 7209 of the Intelligence Reform and
15 Terrorism Prevention Act of 2004 (Public Law 108–
16 458; 8 U.S.C. 1185 note), the Secretary of State, in
17 consultation with the Secretary, shall be authorized
18 to issue to a citizen of the United States who sub-
19 mits an application in accordance with paragraph
20 (5) a travel document that will serve as a Passport
21 Card.

22 (3) APPLICABILITY.—A Passport Card shall be
23 deemed to be a United States passport for the pur-
24 pose of United States laws and regulations relating
25 to United States passports.

1 (4) VALIDITY.—A Passport Card shall be valid
2 for the same period as a United States passport.

3 (5) LIMITATION ON USE.—A Passport Card
4 may only be used for the purpose of international
5 travel by United States citizens through land and
6 sea ports of entry between—

7 (A) the United States and Canada;

8 (B) the United States and Mexico; and

9 (C) the United States and a country lo-
10 cated in the Caribbean or Bermuda.

11 (6) APPLICATION FOR ISSUANCE.—To be issued
12 a Passport Card, a United States citizen shall sub-
13 mit an application to the Secretary of State. The
14 Secretary of State shall require that such application
15 shall contain the same information as is required to
16 determine citizenship, identity, and eligibility for
17 issuance of a United States passport.

18 (7) TECHNOLOGY.—

19 (A) EXPEDITED TRAVELER PROGRAMS.—

20 To the maximum extent practicable, a Passport
21 Card shall be designed and produced to provide
22 a platform on which the expedited traveler pro-
23 grams carried out by the Secretary, such as
24 NEXUS, NEXUS AIR, SENTRI, FAST, and
25 Register Traveler may be added. The Secretary

1 of State and the Secretary shall notify Congress
2 not later than July 1, 2007, if the technology
3 to add expedited travel features to the Passport
4 Card is not developed by that date.

5 (B) TECHNOLOGY.—The Secretary and the
6 Secretary of State shall establish a technology
7 implementation plan that accommodates desired
8 technology requirements of the Department of
9 State and the Department, allows for future
10 technological innovations, and ensures max-
11 imum facilitation at the northern and southern
12 borders.

13 (8) SPECIFICATIONS FOR CARD.—A Passport
14 Card shall be easily portable and durable. The Sec-
15 retary of State and the Secretary shall consult re-
16 garding the other technical specifications of the
17 Card, including whether the security features of the
18 Card could be combined with other existing identity
19 documentation.

20 (9) FEE.—

21 (A) IN GENERAL.—An applicant for a
22 Passport Card shall submit an application
23 under paragraph (6) together with a nonrefund-
24 able fee in an amount to be determined by the
25 Secretary of State. Passport Card fees shall be

deposited as an offsetting collection to the appropriate Department of State appropriation, to remain available until expended.

(B) LIMITATION ON FEES.—

(i) IN GENERAL.—The Secretary of State shall seek to make the application fee under this paragraph as low as possible.

(ii) MAXIMUM FEE WITHOUT CERTIFICATION.—Except as provided in clause (iii), the application fee may not exceed \$24.

(iii) MAXIMUM FEE WITH CERTIFICATION.—The application fee may be not more than \$34 if the Secretary of State, the Secretary, and the Postmaster General—

(I) jointly certify to Congress that the cost to produce and issue a Passport Card significantly exceeds \$24; and

(II) provide a detailed cost analysis for such fee.

(C) REDUCTION OF FEE.—The Secretary of State shall reduce the fee for a Passport

1 Card for an individual who submits an applica-
 2 tion for a Passport Card together with an appli-
 3 cation for a United States passport.

4 (D) WAIVER OF FEE FOR CHILDREN.—
 5 The Secretary of State shall waive the fee for
 6 a Passport Card for a child under 18 years of
 7 age.

8 (E) AUDIT.—In the event that the fee for
 9 a Passport Card exceeds \$24, the Comptroller
 10 General of the United States shall conduct an
 11 audit to determine whether Passport Cards are
 12 issued at the lowest possible cost.

13 (10) ACCESSIBILITY.—In order to make the
 14 Passport Card easily obtainable, an application for a
 15 Passport Card shall be accepted in the same manner
 16 and at the same locations as an application for a
 17 United States passport.

18 (11) RULE OF CONSTRUCTION.—Nothing in
 19 this section shall be construed as limiting, altering,
 20 modifying, or otherwise affecting the validity of a
 21 United States passport. A United States citizen may
 22 possess a United States passport and a Passport
 23 Card.

24 (d) STATE ENROLLMENT DEMONSTRATION PRO-
 25 GRAM.—

1 (1) IN GENERAL.—Notwithstanding any other
2 provisions of law, the Secretary of State and the
3 Secretary shall enter into a memorandum of under-
4 standing with 1 or more appropriate States to carry
5 out at least 1 demonstration program as follows:

6 (A) A State may include an individual's
7 United States citizenship status on a driver's li-
8 cense which meets the requirements of section
9 202 of the REAL ID Act of 2005 (division B
10 of Public Law 109–13; 49 U.S.C. 30301 note).

11 (B) The Secretary of State shall develop a
12 mechanism to communicate with a participating
13 State to verify the United States citizenship
14 status of an applicant who voluntarily seeks to
15 have the applicant's United States citizenship
16 status included on a driver's license.

17 (C) All information collected about the in-
18 dividual shall be managed exclusively in the
19 same manner as information collected through
20 a passport application and no further distribu-
21 tion of such information shall be permitted.

22 (D) A State may not require an individual
23 to include the individual's citizenship status on
24 a driver's license.

1 (E) Notwithstanding any other provision of
2 law, a driver's license which meets the require-
3 ments of this paragraph shall be deemed to be
4 sufficient documentation to permit the bearer to
5 enter the United States from Canada or Mexico
6 through not less than at least 1 designated
7 international border crossing in each State par-
8 ticipating in the demonstration program.

9 (2) RULE OF CONSTRUCTION.—Nothing in this
10 subsection shall have the effect of creating a na-
11 tional identity card.

12 (3) AUTHORITY TO EXPAND.—The Secretary of
13 State and the Secretary may expand the demonstra-
14 tion program under this subsection so that such pro-
15 gram is carried out in additional States, through ad-
16 ditional ports of entry, for additional foreign coun-
17 tries, and in a manner that permits the use of addi-
18 tional types of identification documents to prove
19 identity under the program.

20 (4) STUDY.—Not later than 6 months after the
21 date that the demonstration program under this sub-
22 section is carried out, the Comptroller General of the
23 United States shall conduct a study of—

1 (A) the cost of the production and issuance
2 of documents that meet the requirements of the
3 program compared with other travel documents;

4 (B) the impact of the program on the flow
5 of cross-border traffic and the economic impact
6 of the program; and

7 (C) the security of travel documents that
8 meet the requirements of the program com-
9 pared with other travel documents.

10 (5) RECIPROCITY WITH CANADA.—Notwith-
11 standing any other provision of law, if the Secretary
12 of State and the Secretary certify that certain iden-
13 tity documents issued by Canada (or any of its prov-
14 inces) meet security and citizenship standards com-
15 parable to the requirements described in paragraph
16 (1), the Secretary may determine that such docu-
17 ments are sufficient to permit entry into the United
18 States. The Secretary shall work, to the maximum
19 extent possible, to ensure that identification docu-
20 ments issued by Canada that are used as described
21 in this paragraph contain the same technology as
22 identification documents issued by the United States
23 (or any State).

24 (6) ADDITIONAL PILOT PROGRAMS.—To the
25 maximum extent possible, the Secretary shall seek to

1 conduct pilot programs related to Passport Cards
 2 and the State Enrollment Demonstration Program
 3 described in this subsection on the international bor-
 4 der between the United States and Canada and the
 5 international border between the United States and
 6 Mexico.

7 (e) EXPEDITED PROCESSING FOR REPEAT TRAV-
 8 ELERS.—

9 (1) LAND CROSSINGS.—To the maximum extent
 10 practicable at the United States border with Canada
 11 and the United States border with Mexico, the Sec-
 12 retary shall expand expedited traveler programs car-
 13 ried out by the Secretary to all ports of entry and
 14 should encourage citizens of the United States to
 15 participate in the preenrollment programs, as such
 16 programs assist border control officers of the United
 17 States in the fight against terrorism by increasing
 18 the number of known travelers crossing the border.
 19 The identities of such expedited travelers should be
 20 entered into a database of known travelers who have
 21 been subjected to in-depth background and watch-
 22 list checks to permit border control officers to focus
 23 more attention on unknown travelers, potential
 24 criminals, and terrorists. The Secretary, in consulta-
 25 tion with the appropriate officials of the Government

1 of Canada, shall equip at least 6 additional northern
2 border crossings with NEXUS technology and 6 ad-
3 ditional southern ports of entry with SENTRI tech-
4 nology.

5 (2) SEA CROSSINGS.—The Commissioner of
6 Customs and Border Patrol shall conduct and ex-
7 pand trusted traveler programs and pilot programs
8 to facilitate expedited processing of United States
9 citizens returning from pleasure craft trips in Can-
10 ada, Mexico, the Caribbean, or Bermuda. One such
11 program shall be conducted in Florida and modeled
12 on the I-68 program.

13 (f) PROCESS FOR INDIVIDUALS LACKING APPRO-
14 PRIATE DOCUMENTS.—

15 (1) IN GENERAL.—The Secretary shall establish
16 a program that satisfies section 7209 of the Intel-
17 ligence Reform and Terrorism Prevention Act of
18 2004 (Public Law 108–458; 8 U.S.C. 1185 note)—

19 (A) to permit a citizen of the United
20 States who has not been issued a United States
21 passport or other appropriate travel document
22 to cross the international border and return to
23 the United States for a time period of not more
24 than 72 hours, on a limited basis, and at no ad-
25 ditional fee; or

1 (B) to establish a process to ascertain the
2 identity of, and make admissibility determina-
3 tions for, a citizen described in paragraph (A)
4 upon the arrival of such citizen at an inter-
5 national border of the United States.

6 (2) GRACE PERIOD.—During a time period de-
7 termined by the Secretary, officers of the United
8 States Customs and Border Patrol may permit citi-
9 zens of the United States and Canada who are un-
10 aware of the requirements of section 7209 of the In-
11 telligence Reform and Terrorism Prevention Act of
12 2004 (Public Law 108–458; 8 U.S.C. 1185 note), or
13 otherwise lacking appropriate documentation, to
14 enter the United States upon a demonstration of
15 citizenship satisfactory to the officer. Officers of the
16 United States Customs and Border Patrol shall edu-
17 cate such individuals about documentary require-
18 ments.

19 (g) TRAVEL BY CHILDREN.—Notwithstanding any
20 other provision of law, the Secretary shall develop a proce-
21 dure to accommodate groups of children traveling by land
22 across an international border under adult supervision
23 with parental consent without requiring a government-
24 issued identity and citizenship document.

1 (h) PUBLIC PROMOTION.—The Secretary of State, in
2 consultation with the Secretary, shall develop and imple-
3 ment an outreach plan to inform United States citizens
4 about the Western Hemisphere Travel Initiative and the
5 provisions of this Act, to facilitate the acquisition of ap-
6 propriate documentation to travel to Canada, Mexico, the
7 countries located in the Caribbean, and Bermuda, and to
8 educate United States citizens who are unaware of the re-
9 quirements for such travel. Such outreach plan should
10 include—

11 (1) written notifications posted at or near pub-
12 lic facilities, including border crossings, schools, li-
13 braries, Amtrak stations, and United States Post
14 Offices located within 50 miles of the international
15 border between the United States and Canada or the
16 international border between the United States and
17 Mexico and other ports of entry;

18 (2) provisions to seek consent to post such noti-
19 fications on commercial property, such as offices of
20 State departments of motor vehicles, gas stations,
21 supermarkets, convenience stores, hotels, and travel
22 agencies;

23 (3) the collection and analysis of data to meas-
24 ure the success of the public promotion plan; and

25 (4) additional measures as appropriate.

1 (i) CERTIFICATION.—Notwithstanding any other pro-
2 vision of law, the Secretary may not implement the plan
3 described in section 7209(b) of the Intelligence Reform
4 and Terrorism Prevention Act of 2004 (Public Law 108–
5 458; 8 U.S.C. 1185 note) until the later of June 1, 2009,
6 or the date that is 3 months after the Secretary of State
7 and the Secretary certify to Congress that—

8 (1)(A) if the Secretary and the Secretary of
9 State develop and issue Passport Cards under this
10 section—

11 (i) such cards have been distributed to at
12 least 90 percent of the eligible United States
13 citizens who applied for such cards during the
14 6-month period beginning not earlier than the
15 date the Secretary of State began accepting ap-
16 plications for such cards and ending not earlier
17 than 10 days prior to the date of certification;

18 (ii) Passport Cards are provided to appli-
19 cants, on average, within 4 weeks of application
20 or within the same period of time required to
21 adjudicate a passport; and

22 (iii) a successful pilot has demonstrated
23 the effectiveness of the Passport Card; or

24 (B) if the Secretary and the Secretary of State
25 do not develop and issue Passport Cards under this

1 section and develop a program to issue an alter-
2 native document that satisfies the requirements of
3 section 7209 of the Intelligence Reform and Ter-
4 rorism Prevention Act of 2004, in addition to the
5 NEXUS, SENTRI, FAST and Border Crossing
6 Card programs, such alternative document is widely
7 available and well publicized;

8 (2) United States border crossings have been
9 equipped with sufficient document readers and other
10 technologies to ensure that implementation will not
11 substantially slow the flow of traffic and persons
12 across international borders;

13 (3) officers of the Bureau of Customs and Bor-
14 der Protection have received training and been pro-
15 vided the infrastructure necessary to accept Pass-
16 port Cards and all alternative identity documents at
17 all United States border crossings; and

18 (4) the outreach plan described in subsection
19 (g) has been implemented and the Secretary deter-
20 mines such plan has been successful in providing in-
21 formation to United States citizens.

22 (j) AUTHORIZATION OF APPROPRIATIONS.—There is
23 authorized to be appropriated to the Secretary of State
24 and the Secretary such sums as may be necessary to carry
25 out this section, and the amendment made by this section.

Subtitle D—Border Tunnel Prevention Act

SEC. 141. SHORT TITLE.

This subtitle may be cited as the “Border Tunnel Prevention Act”.

SEC. 142. CONSTRUCTION OF BORDER TUNNEL OR PASSAGE.

(a) IN GENERAL.—Chapter 27 of title 18, United States Code, as amended by section 132, is further amended by adding at the end the following:

“§ 556. Border tunnels and passages

“(a) Any person who knowingly constructs or finances the construction of a tunnel or subterranean passage that crosses the international border between the United States and another country, other than a lawfully authorized tunnel or passage known to the Secretary of Homeland Security and subject to inspection by the Bureau of Immigration and Customs Enforcement, shall be fined under this title and imprisoned for not more than 20 years.

“(b) Any person who knows or recklessly disregards the construction or use of a tunnel or passage described in subsection (a) on land that the person owns or controls shall be fined under this title and imprisoned for not more than 10 years.

“Sec. 556. Border tunnels and passages.”.

19 SEC. 143. DIRECTIVE TO THE UNITED STATES SENTENCING
20 COMMISSION.

† S 2611 ES

1 offenses described in section 556 of title 18, United States
2 Code, as added by section 142.

3 (b) REQUIREMENTS.—In carrying out this section,
4 the United States Sentencing Commission shall—

5 (1) ensure that the sentencing guidelines, policy
6 statements, and official commentary reflect the seri-
7 ous nature of the offenses described in section 556
8 of title 18, United States Code, and the need for ag-
9 gressive and appropriate law enforcement action to
10 prevent such offenses;

11 (2) provide adequate base offense levels for of-
12 fenses under such section;

13 (3) account for any aggravating or mitigating
14 circumstances that might justify exceptions,
15 including—

16 (A) the use of a tunnel or passage de-
17 scribed in subsection (a) of such section to fa-
18 cilitate other felonies; and

19 (B) the circumstances for which the sen-
20 tencing guidelines currently provide applicable
21 sentencing enhancements;

22 (4) ensure reasonable consistency with other
23 relevant directives, other sentencing guidelines, and
24 statutes;

(5) make any necessary and conforming changes to the sentencing guidelines and policy statements; and

(6) ensure that the sentencing guidelines adequately meet the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code.

Subtitle E—Border Law Enforcement Relief Act

SEC. 151. SHORT TITLE.

This subtitle may be cited as the “Border Law Enforcement Relief Act of 2006”.

SEC. 152. FINDINGS.

Congress finds the following:

(1) It is the obligation of the Federal Government of the United States to adequately secure the Nation’s borders and prevent the flow of undocumented persons and illegal drugs into the United States.

(2) Despite the fact that the United States Border Patrol apprehends over 1,000,000 people each year trying to illegally enter the United States, according to the Congressional Research Service, the net growth in the number of unauthorized aliens has increased by approximately 500,000 each year. The Southwest border accounts for approximately 94

1 percent of all migrant apprehensions each year. Cur-
2 rently, there are an estimated 11,000,000 unauthor-
3 ized aliens in the United States.

4 (3) The border region is also a major corridor
5 for the shipment of drugs. According to the El Paso
6 Intelligence Center, 65 percent of the narcotics that
7 are sold in the markets of the United States enter
8 the country through the Southwest Border.

9 (4) Border communities continue to incur sig-
10 nificant costs due to the lack of adequate border se-
11 curity. A 2001 study by the United States-Mexico
12 Border Counties Coalition found that law enforce-
13 ment and criminal justice expenses associated with
14 illegal immigration exceed \$89,000,000 annually for
15 the Southwest border counties.

16 (5) In August 2005, the States of New Mexico
17 and Arizona declared states of emergency in order to
18 provide local law enforcement immediate assistance
19 in addressing criminal activity along the Southwest
20 border.

21 (6) While the Federal Government provides
22 States and localities assistance in covering costs re-
23 lated to the detention of certain criminal aliens and
24 the prosecution of Federal drug cases, local law en-
25 forcement along the border are provided no assist-

1 ance in covering such expenses and must use their
2 limited resources to combat drug trafficking, human
3 smuggling, kidnappings, the destruction of private
4 property, and other border-related crimes.

5 (7) The United States shares 5,525 miles of
6 border with Canada and 1,989 miles with Mexico.
7 Many of the local law enforcement agencies located
8 along the border are small, rural departments
9 charged with patrolling large areas of land. Counties
10 along the Southwest United States-Mexico border
11 are some of the poorest in the country and lack the
12 financial resources to cover the additional costs asso-
13 ciated with illegal immigration, drug trafficking, and
14 other border-related crimes.

15 (8) Federal assistance is required to help local
16 law enforcement operating along the border address
17 the unique challenges that arise as a result of their
18 proximity to an international border and the lack of
19 overall border security in the region

20 **SEC. 153. BORDER RELIEF GRANT PROGRAM.**

21 (a) GRANTS AUTHORIZED.—

22 (1) IN GENERAL.—The Secretary is authorized
23 to award grants, subject to the availability of appro-
24 priations, to an eligible law enforcement agency to
25 provide assistance to such agency to address—

1 (A) criminal activity that occurs in the ju-
2 risdiction of such agency by virtue of such
3 agency's proximity to the United States border;
4 and

5 (B) the impact of any lack of security
6 along the United States border.

7 (2) DURATION.—Grants may be awarded under
8 this subsection during fiscal years 2007 through
9 2011.

10 (3) COMPETITIVE BASIS.—The Secretary shall
11 award grants under this subsection on a competitive
12 basis, except that the Secretary shall give priority to
13 applications from any eligible law enforcement agen-
14 cy serving a community—

15 (A) with a population of less than 50,000;
16 and

17 (B) located no more than 100 miles from
18 a United States border with—

19 (i) Canada; or

20 (ii) Mexico.

21 (b) USE OF FUNDS.—Grants awarded pursuant to
22 subsection (a) may only be used to provide additional re-
23 sources for an eligible law enforcement agency to address
24 criminal activity occurring along any such border,
25 including—

- 1 (1) to obtain equipment;
- 2 (2) to hire additional personnel;
- 3 (3) to upgrade and maintain law enforcement
- 4 technology;
- 5 (4) to cover operational costs, including over-
- 6 time and transportation costs; and
- 7 (5) such other resources as are available to as-
- 8 sist that agency.

9 (c) APPLICATION.—

10 (1) IN GENERAL.—Each eligible law enforce-
11 ment agency seeking a grant under this section shall
12 submit an application to the Secretary at such time,
13 in such manner, and accompanied by such informa-
14 tion as the Secretary may reasonably require.

15 (2) CONTENTS.—Each application submitted
16 pursuant to paragraph (1) shall—

17 (A) describe the activities for which assist-
18 ance under this section is sought; and

19 (B) provide such additional assurances as
20 the Secretary determines to be essential to en-
21 sure compliance with the requirements of this
22 section.

23 (d) DEFINITIONS.—For the purposes of this section:

1 (1) ELIGIBLE LAW ENFORCEMENT AGENCY.—

2 The term “eligible law enforcement agency” means
3 a tribal, State, or local law enforcement agency—

4 (A) located in a county no more than 100
5 miles from a United States border with—

6 (i) Canada; or

7 (ii) Mexico; or

8 (B) located in a county more than 100
9 miles from any such border, but where such
10 county has been certified by the Secretary as a
11 High Impact Area.

12 (2) HIGH IMPACT AREA.—The term “High Im-
13 pact Area” means any county designated by the Sec-
14 retary as such, taking into consideration—

15 (A) whether local law enforcement agencies
16 in that county have the resources to protect the
17 lives, property, safety, or welfare of the resi-
18 dents of that county;

19 (B) the relationship between any lack of
20 security along the United States border and the
21 rise, if any, of criminal activity in that county;
22 and

23 (C) any other unique challenges that local
24 law enforcement face due to a lack of security
25 along the United States border.

1 (e) AUTHORIZATION OF APPROPRIATIONS.—

2 (1) IN GENERAL.—There are authorized to be
3 appropriated \$50,000,000 for each of fiscal years
4 2007 through 2011 to carry out the provisions of
5 this section.

6 (2) DIVISION OF AUTHORIZED FUNDS.—Of the
7 amounts authorized under paragraph (1)—

8 (A) $\frac{2}{3}$ shall be set aside for eligible law en-
9 forcement agencies located in the 6 States with
10 the largest number of undocumented alien ap-
11 prehensions; and

12 (B) $\frac{1}{3}$ shall be set aside for areas des-
13 igned as a High Impact Area under sub-
14 section (d).

15 (f) SUPPLEMENT NOT SUPPLANT.—Amounts appro-
16 priated for grants under this section shall be used to sup-
17 plement and not supplant other State and local public
18 funds obligated for the purposes provided under this title.

19 **SEC. 154. ENFORCEMENT OF FEDERAL IMMIGRATION LAW.**

20 Nothing in this subtitle shall be construed to author-
21 ize State or local law enforcement agencies or their officers
22 to exercise Federal immigration law enforcement author-
23 ity.

Subtitle F—Rapid Response Measures

SEC. 161. DEPLOYMENT OF BORDER PATROL AGENTS.

(a) EMERGENCY DEPLOYMENT OF BORDER PATROL AGENTS.—

(1) IN GENERAL.—If the Governor of a State on an international border of the United States declares an international border security emergency and requests additional United States Border Patrol agents (referred to in this subtitle as “agents”) from the Secretary, the Secretary, subject to paragraphs (1) and (2), may provide the State with not more than 1,000 additional agents for the purpose of patrolling and defending the international border, in order to prevent individuals from crossing the international border into the United States at any location other than an authorized port of entry.

(2) CONSULTATION.—Upon receiving a request for agents under paragraph (1), the Secretary, after consultation with the President, shall grant such request to the extent that providing such agents will not significantly impair the Department’s ability to provide border security for any other State.

(3) COLLECTIVE BARGAINING.—Emergency deployments under this subsection shall be made in ac-

1 cordance with all applicable collective bargaining
2 agreements and obligations.

3 (b) ELIMINATION OF FIXED DEPLOYMENT OF BOR-
4 DER PATROL AGENTS.—The Secretary shall ensure that
5 agents are not precluded from performing patrol duties
6 and apprehending violators of law, except in unusual cir-
7 cumstances if the temporary use of fixed deployment posi-
8 tions is necessary.

9 (c) INCREASE IN FULL-TIME BORDER PATROL
10 AGENTS.—Section 5202(a)(1) of the Intelligence Reform
11 and Terrorism Prevention Act of 2004 (118 Stat. 3734),
12 as amended by section 101(b)(2), is further amended by
13 striking “2,000” and inserting “3,000”.

14 **SEC. 162. BORDER PATROL MAJOR ASSETS.**

15 (a) CONTROL OF BORDER PATROL ASSETS.—The
16 United States Border Patrol shall have complete and ex-
17 clusive administrative and operational control over all the
18 assets utilized in carrying out its mission, including, air-
19 craft, watercraft, vehicles, detention space, transportation,
20 and all of the personnel associated with such assets.

21 (b) HELICOPTERS AND POWER BOATS.—

22 (1) HELICOPTERS.—The Secretary shall in-
23 crease, by not less than 100, the number of heli-
24 copters under the control of the United States Bor-
25 der Patrol. The Secretary shall ensure that appro-

1 piate types of helicopters are procured for the var-
2 ious missions being performed.

3 (2) POWER BOATS.—The Secretary shall in-
4 crease, by not less than 250, the number of power
5 boats under the control of the United States Border
6 Patrol. The Secretary shall ensure that the types of
7 power boats that are procured are appropriate for
8 both the waterways in which they are used and the
9 mission requirements.

10 (3) USE AND TRAINING.—The Secretary shall—

11 (A) establish an overall policy on how the
12 helicopters and power boats procured under this
13 subsection will be used; and

14 (B) implement training programs for the
15 agents who use such assets, including safe oper-
16 ating procedures and rescue operations.

17 (c) MOTOR VEHICLES.—

18 (1) QUANTITY.—The Secretary shall establish a
19 fleet of motor vehicles appropriate for use by the
20 United States Border Patrol that will permit a ratio
21 of not less than 1 police-type vehicle for every 3
22 agents. These police-type vehicles shall be replaced
23 not less than every 3 years. The Secretary shall en-
24 sure that there are sufficient numbers and types of

1 other motor vehicles to support the mission of the
2 United States Border Patrol.

3 (2) FEATURES.—All motor vehicles purchased
4 for the United States Border Patrol shall—

5 (A) be appropriate for the mission of the
6 United States Border Patrol; and

7 (B) have a panic button and a global posi-
8 tioning system device that is activated solely in
9 emergency situations to track the location of
10 agents in distress.

11 **SEC. 163. ELECTRONIC EQUIPMENT.**

12 (a) PORTABLE COMPUTERS.—The Secretary shall en-
13 sure that each police-type motor vehicle in the fleet of the
14 United States Border Patrol is equipped with a portable
15 computer with access to all necessary law enforcement
16 databases and otherwise suited to the unique operational
17 requirements of the United States Border Patrol.

18 (b) RADIO COMMUNICATIONS.—The Secretary shall
19 augment the existing radio communications system so that
20 all law enforcement personnel working in each area where
21 United States Border Patrol operations are conducted
22 have clear and encrypted 2-way radio communication ca-
23 pabilities at all times. Each portable communications de-
24 vice shall be equipped with a panic button and a global

1 positioning system device that is activated solely in emer-
2 gency situations to track the location of agents in distress.

3 (c) HAND-HELD GLOBAL POSITIONING SYSTEM DE-
4 VICES.—The Secretary shall ensure that each United
5 States Border Patrol agent is issued a state-of-the-art
6 hand-held global positioning system device for navigational
7 purposes.

8 (d) NIGHT VISION EQUIPMENT.—The Secretary shall
9 ensure that sufficient quantities of state-of-the-art night
10 vision equipment are procured and maintained to enable
11 each United States Border Patrol agent working during
12 the hours of darkness to be equipped with a portable night
13 vision device.

14 **SEC. 164. PERSONAL EQUIPMENT.**

15 (a) BORDER ARMOR.—The Secretary shall ensure
16 that every agent is issued high-quality body armor that
17 is appropriate for the climate and risks faced by the agent.
18 Each agent shall be permitted to select from among a vari-
19 ety of approved brands and styles. Agents shall be strongly
20 encouraged, but not required, to wear such body armor
21 whenever practicable. All body armor shall be replaced not
22 less than every 5 years.

23 (b) WEAPONS.—The Secretary shall ensure that
24 agents are equipped with weapons that are reliable and
25 effective to protect themselves, their fellow agents, and in-

1 nocent third parties from the threats posed by armed
 2 criminals. The Secretary shall ensure that the policies of
 3 the Department authorize all agents to carry weapons that
 4 are suited to the potential threats that they face.

5 (c) UNIFORMS.—The Secretary shall ensure that all
 6 agents are provided with all necessary uniform items, in-
 7 cluding outerwear suited to the climate, footwear, belts,
 8 holsters, and personal protective equipment, at no cost to
 9 such agents. Such items shall be replaced at no cost to
 10 such agents as they become worn, unserviceable, or no
 11 longer fit properly.

12 **SEC. 165. AUTHORIZATION OF APPROPRIATIONS.**

13 There are authorized to be appropriated to the Sec-
 14 retary such sums as may be necessary for each of the fis-
 15 cal years 2007 through 2011 to carry out this subtitle.

16 **TITLE II—INTERIOR**
 17 **ENFORCEMENT**

18 **SEC. 201. REMOVAL AND DENIAL OF BENEFITS TO TER-**
 19 **RORIST ALIENS.**

20 (a) ASYLUM.—Section 208(b)(2)(A)(v) (8 U.S.C.
 21 1158(b)(2)(A)(v)) is amended by striking “or (VI)” and
 22 inserting “(V), (VI), (VII), or (VIII)”.

23 (b) CANCELLATION OF REMOVAL.—Section
 24 240A(c)(4) (8 U.S.C. 1229b(c)(4)) is amended—

1 (1) by striking “inadmissible under” and insert-
2 ing “described in”; and

3 (2) by striking “deportable under” and insert-
4 ing “described in”.

5 (c) VOLUNTARY DEPARTURE.—Section
6 240B(b)(1)(C) (8 U.S.C. 1229c(b)(1)(C)) is amended by
7 striking “deportable under section 237(a)(2)(A)(iii) or
8 section 237(a)(4)” and inserting “described in paragraph
9 (2)(A)(iii) or (4) of section 237(a)”.

10 (d) RESTRICTION ON REMOVAL.—Section
11 241(b)(3)(B) (8 U.S.C. 1231(b)(3)(B)) is amended—

12 (1) in clause (iii), by striking “or” at the end;

13 (2) in clause (iv) by striking the period at the
14 end and inserting “; or”;

15 (3) by inserting after clause (iv) the following:

16 “(v) the alien is described in section
17 237(a)(4)(B) (other than an alien de-
18 scribed in section 212(a)(3)(B)(i)(IV) if
19 the Secretary of Homeland Security deter-
20 mines that there are not reasonable
21 grounds for regarding the alien as a dan-
22 ger to the security of the United States).”;
23 and

24 (4) in the undesignated paragraph, by striking
25 “For purposes of clause (iv), an alien who is de-

1 scribed in section 237(a)(4)(B) shall be considered
 2 to be an alien with respect to whom there are rea-
 3 sonable grounds for regarding as a danger to the se-
 4 curity of the United States.”.

5 (e) RECORD OF ADMISSION.—Section 249 (8 U.S.C.
 6 1259) is amended to read as follows:

7 **“SEC. 249. RECORD OF ADMISSION FOR PERMANENT RESI-**
 8 **DENCE IN THE CASE OF CERTAIN ALIENS**
 9 **WHO ENTERED THE UNITED STATES PRIOR**
 10 **TO JANUARY 1, 1972.**

11 “A record of lawful admission for permanent resi-
 12 dence may be made, in the discretion of the Secretary of
 13 Homeland Security and under such regulations as the Sec-
 14 retary may prescribe, for any alien, as of the date of the
 15 approval of the alien’s application or, if entry occurred be-
 16 fore July 1, 1924, as of the date of such entry if no such
 17 record is otherwise available, if the alien establishes that
 18 the alien—

19 “(1) is not described in section 212(a)(3)(E) or
 20 in section 212(a) (insofar as it relates to criminals,
 21 procurers, other immoral persons, subversives, viola-
 22 tors of the narcotics laws, or smugglers of aliens);
 23 “(2) entered the United States before January
 24 1, 1972;

1 “(3) has resided in the United States continu-
2 ously since such entry;

3 “(4) is a person of good moral character;

4 “(5) is not ineligible for citizenship; and

5 “(6) is not described in section 237(a)(4)(B).”.

6 (f) EFFECTIVE DATE AND APPLICATION.—The
7 amendments made by this section shall—

8 (1) take effect on the date of the enactment of
9 this Act; and

10 (2) apply to any act or condition constituting a
11 ground for inadmissibility, excludability, or removal
12 occurring or existing on or after the date of the en-
13 actment of this Act.

14 **SEC. 202. DETENTION AND REMOVAL OF ALIENS ORDERED**
15 **REMOVED.**

16 (a) IN GENERAL.—

17 (1) AMENDMENTS.—Section 241(a) (8 U.S.C.
18 1231(a)) is amended—

19 (A) by striking “Attorney General” the
20 first place it appears and inserting “Secretary
21 of Homeland Security”;

22 (B) by striking “Attorney General” any
23 other place it appears and inserting “Sec-
24 retary”;

25 (C) in paragraph (1)—

1 (i) in subparagraph (B), by amending
2 clause (ii) to read as follows:

3 “(ii) If a court, the Board of Immi-
4 gration Appeals, or an immigration judge
5 orders a stay of the removal of the alien,
6 the expiration date of the stay of re-
7 moval.”;

8 (ii) by amending subparagraph (C) to
9 read as follows:

10 “(C) EXTENSION OF PERIOD.—The re-
11 moval period shall be extended beyond a period
12 of 90 days and the alien may remain in deten-
13 tion during such extended period if the alien
14 fails or refuses to—

15 “(i) make all reasonable efforts to
16 comply with the removal order; or

17 “(ii) fully cooperate with the Sec-
18 retary’s efforts to establish the alien’s
19 identity and carry out the removal order,
20 including failing to make timely application
21 in good faith for travel or other documents
22 necessary to the alien’s departure, or con-
23 spiring or acting to prevent the alien’s re-
24 moval.”; and

1 (iii) by adding at the end the fol-
2 lowing:

3 “(D) TOLLING OF PERIOD.—If, at the
4 time described in subparagraph (B), the alien is
5 not in the custody of the Secretary under the
6 authority of this Act, the removal period shall
7 not begin until the alien is taken into such cus-
8 tody. If the Secretary lawfully transfers custody
9 of the alien during the removal period to an-
10 other Federal agency or to a State or local gov-
11 ernment agency in connection with the official
12 duties of such agency, the removal period shall
13 be tolled, and shall recommence on the date on
14 which the alien is returned to the custody of the
15 Secretary.”;

16 (D) in paragraph (2), by adding at the end
17 the following: “If a court, the Board of Immi-
18 gration Appeals, or an immigration judge or-
19 ders a stay of removal of an alien who is sub-
20 ject to an administrative final order of removal,
21 the Secretary, in the exercise of discretion, may
22 detain the alien during the pendency of such
23 stay of removal.”;

24 (E) in paragraph (3), by amending sub-
25 paragraph (D) to read as follows:

“(D) to obey reasonable restrictions on the alien’s conduct or activities, or to perform affirmative acts, that the Secretary prescribes for the alien—

“(i) to prevent the alien from absconding;

“(ii) for the protection of the community; or

“(iii) for other purposes related to the enforcement of the immigration laws.”;

(F) in paragraph (6), by striking “removal period and, if released,” and inserting “removal period, in the discretion of the Secretary, without any limitations other than those specified in this section, until the alien is removed. If an alien is released, the alien”;

(G) by redesignating paragraph (7) as paragraph (10); and

(H) by inserting after paragraph (6) the following:

“(7) PAROLE.—If an alien detained pursuant to paragraph (6) is an applicant for admission, the Secretary of Homeland Security, in the Secretary’s discretion, may parole the alien under section 212(d)(5) and may provide, notwithstanding section

1 212(d)(5), that the alien shall not be returned to
 2 custody unless either the alien violates the conditions
 3 of the alien’s parole or the alien’s removal becomes
 4 reasonably foreseeable, provided that in no cir-
 5 cumstance shall such alien be considered admitted.

6 “(8) ADDITIONAL RULES FOR DETENTION OR
 7 RELEASE OF ALIENS.—The following procedures
 8 shall apply to an alien detained under this section:

9 “(A) DETENTION REVIEW PROCESS FOR
 10 ALIENS WHO HAVE EFFECTED AN ENTRY AND
 11 FULLY COOPERATE WITH REMOVAL.—The Sec-
 12 retary of Homeland Security shall establish an
 13 administrative review process to determine
 14 whether an alien described in subparagraph (B)
 15 should be detained or released after the removal
 16 period in accordance with this paragraph.

17 “(B) ALIEN DESCRIBED.—An alien is de-
 18 scribed in this subparagraph if the alien—

19 “(i) has effected an entry into the
 20 United States;

21 “(ii) has made all reasonable efforts
 22 to comply with the alien’s removal order;

23 “(iii) has cooperated fully with the
 24 Secretary’s efforts to establish the alien’s
 25 identity and to carry out the removal

1 order, including making timely application
2 in good faith for travel or other documents
3 necessary for the alien's departure; and

4 “(iv) has not conspired or acted to
5 prevent removal.

6 “(C) EVIDENCE.—In making a determina-
7 tion under subparagraph (A), the Secretary—

8 “(i) shall consider any evidence sub-
9 mitted by the alien;

10 “(ii) may consider any other evidence,
11 including—

12 “(I) any information or assist-
13 ance provided by the Department of
14 State or other Federal agency; and

15 “(II) any other information avail-
16 able to the Secretary pertaining to the
17 ability to remove the alien.

18 “(D) AUTHORITY TO DETAIN FOR 90 DAYS
19 BEYOND REMOVAL PERIOD.—The Secretary, in
20 the exercise of the Secretary's discretion and
21 without any limitations other than those speci-
22 fied in this section, may detain an alien for 90
23 days beyond the removal period (including any
24 extension of the removal period under para-
25 graph (1)(C)).

“(E) AUTHORITY TO DETAIN FOR ADDITIONAL PERIOD.—The Secretary, in the exercise of the Secretary’s discretion and without any limitations other than those specified in this section, may detain an alien beyond the 90-day period authorized under subparagraph (D) until the alien is removed, if the Secretary—

“(i) determines that there is a significant likelihood that the alien will be removed in the reasonably foreseeable future; or

“(ii) certifies in writing—

“(I) in consultation with the Secretary of Health and Human Services, that the alien has a highly contagious disease that poses a threat to public safety;

“(II) after receipt of a written recommendation from the Secretary of State, that the release of the alien would likely have serious adverse foreign policy consequences for the United States;

“(III) based on information available to the Secretary (including classi-

1 fied, sensitive, or national security in-
2 formation, and regardless of the
3 grounds upon which the alien was or-
4 dered removed), that there is reason
5 to believe that the release of the alien
6 would threaten the national security
7 of the United States;

8 “(IV) that—

9 “(aa) the release of the alien
10 would threaten the safety of the
11 community or any person, and
12 conditions of release cannot rea-
13 sonably be expected to ensure the
14 safety of the community or any
15 person; and

16 “(bb) the alien—

17 “(AA) has been con-
18 victed of 1 or more aggra-
19 vated felonies (as defined in
20 section 101(a)(43)(A)), or of
21 1 or more attempts or con-
22 spiracies to commit any such
23 aggravated felonies for an
24 aggregate term of imprison-
25 ment of at least 5 years; or

1 “(BB) has committed a
2 crime of violence (as defined
3 in section 16 of title 18,
4 United States Code, but not
5 including a purely political
6 offense) and, because of a
7 mental condition or person-
8 ality disorder and behavior
9 associated with that condi-
10 tion or disorder, is likely to
11 engage in acts of violence in
12 the future; or

13 “(V) that—

14 “(aa) the release of the alien
15 would threaten the safety of the
16 community or any person, not-
17 withstanding conditions of release
18 designed to ensure the safety of
19 the community or any person;
20 and

21 “(bb) the alien has been
22 convicted of 1 or more aggra-
23 vated felonies (as defined in sec-
24 tion 101(a)(43)) for which the
25 alien was sentenced to an aggre-

1 gate term of imprisonment of not
2 less than 1 year.

3 “(F) ADMINISTRATIVE REVIEW PROC-
4 ESS.—The Secretary, without any limitations
5 other than those specified in this section, may
6 detain an alien pending a determination under
7 subparagraph (E)(ii), if the Secretary has initi-
8 ated the administrative review process identified
9 in subparagraph (A) not later than 30 days
10 after the expiration of the removal period (in-
11 cluding any extension of the removal period
12 under paragraph (1)(C)).

13 “(G) RENEWAL AND DELEGATION OF CER-
14 TIFICATION.—

15 “(i) RENEWAL.—The Secretary may
16 renew a certification under subparagraph
17 (E)(ii) every 6 months, without limitation,
18 after providing the alien with an oppor-
19 tunity to request reconsideration of the
20 certification and to submit documents or
21 other evidence in support of that request.
22 If the Secretary does not renew such cer-
23 tification, the Secretary shall release the
24 alien, pursuant to subparagraph (H).

1 “(ii) DELEGATION.—Notwithstanding
2 any other provision of law, the Secretary
3 may not delegate the authority to make or
4 renew a certification described in subclause
5 (II), (III), or (V) of subparagraph (E)(ii)
6 to any employee reporting to the Assistant
7 Secretary for Immigration and Customs
8 Enforcement.

9 “(iii) HEARING.—The Secretary may
10 request that the Attorney General, or a
11 designee of the Attorney General, provide
12 for a hearing to make the determination
13 described in subparagraph
14 (E)(ii)(IV)(bb)(BB).

15 “(H) RELEASE ON CONDITIONS.—If it is
16 determined that an alien should be released
17 from detention, the Secretary may, in the Sec-
18 retary’s discretion, impose conditions on release
19 in accordance with the regulations prescribed
20 pursuant to paragraph (3).

21 “(I) REDETENTION.—The Secretary, with-
22 out any limitations other than those specified in
23 this section, may detain any alien subject to a
24 final removal order who has previously been re-
25 leased from custody if—

1 “(i) the alien fails to comply with the
2 conditions of release;

3 “(ii) the alien fails to continue to sat-
4 isfy the conditions described in subpara-
5 graph (B); or

6 “(iii) upon reconsideration, the Sec-
7 retary determines that the alien can be de-
8 tained under subparagraph (E).

9 “(J) APPLICABILITY.—This paragraph and
10 paragraphs (6) and (7) shall apply to any alien
11 returned to custody under subparagraph (I) as
12 if the removal period terminated on the day of
13 the redetention.

14 “(K) DETENTION REVIEW PROCESS FOR
15 ALIENS WHO HAVE EFFECTED AN ENTRY AND
16 FAIL TO COOPERATE WITH REMOVAL.—The
17 Secretary shall detain an alien until the alien
18 makes all reasonable efforts to comply with a
19 removal order and to cooperate fully with the
20 Secretary’s efforts, if the alien—

21 “(i) has effected an entry into the
22 United States; and

23 “(ii)(I) and the alien faces a signifi-
24 cant likelihood that the alien will be re-
25 moved in the reasonably foreseeable future,

1 or would have been removed if the alien
2 had not—

3 “(aa) failed or refused to make
4 all reasonable efforts to comply with a
5 removal order;

6 “(bb) failed or refused to fully
7 cooperate with the Secretary’s efforts
8 to establish the alien’s identity and
9 carry out the removal order, including
10 the failure to make timely application
11 in good faith for travel or other docu-
12 ments necessary to the alien’s depar-
13 ture; or

14 “(cc) conspired or acted to pre-
15 vent removal; or

16 “(II) the Secretary makes a certifi-
17 cation as specified in subparagraph (E), or
18 the renewal of a certification specified in
19 subparagraph (G).

20 “(L) DETENTION REVIEW PROCESS FOR
21 ALIENS WHO HAVE NOT EFFECTED AN
22 ENTRY.—Except as otherwise provided in this
23 subparagraph, the Secretary shall follow the
24 guidelines established in section 241.4 of title 8,
25 Code of Federal Regulations, when detaining

1 aliens who have not effected an entry. The Sec-
2 retary may decide to apply the review process
3 outlined in this paragraph.

4 “(9) JUDICIAL REVIEW.—Without regard to the
5 place of confinement, judicial review of any action or
6 decision made pursuant to paragraph (6), (7), or (8)
7 shall be available exclusively in a habeas corpus pro-
8 ceeding brought in a United States district court
9 and only if the alien has exhausted all administrative
10 remedies (statutory and nonstatutory) available to
11 the alien as of right.”.

12 (2) EFFECTIVE DATE.—The amendments made
13 by paragraph (1)—

14 (A) shall take effect on the date of the en-
15 actment of this Act; and

16 (B) shall apply to—

17 (i) any alien subject to a final admin-
18 istrative removal, deportation, or exclusion
19 order that was issued before, on, or after
20 the date of the enactment of this Act; and

21 (ii) any act or condition occurring or
22 existing before, on, or after the date of the
23 enactment of this Act.

24 (b) CRIMINAL DETENTION OF ALIENS.—Section
25 3142 of title 18, United States Code, is amended—

1 (1) in subsection (e)—

2 (A) by redesignating paragraphs (1), (2),
3 and (3) as subparagraphs (A), (B), and (C), re-
4 spectively;

5 (B) by inserting “(1)” before “If, after a
6 hearing”;

7 (C) in subparagraphs (B) and (C), as re-
8 designated, by striking “paragraph (1)” and in-
9 serting “subparagraph (A)”; and

10 (D) by adding after subparagraph (C), as
11 redesignated, the following:

12 “(2) Subject to rebuttal by the person, it shall be pre-
13 sumed that no condition or combination of conditions will
14 reasonably assure the appearance of the person as re-
15 quired if the judicial officer finds that there is probable
16 cause to believe that the person—

17 “(A) is an alien; and

18 “(B)(i) has no lawful immigration status in the
19 United States;

20 “(ii) is the subject of a final order of removal;
21 or

22 “(iii) has committed a felony offense under sec-
23 tion 911, 922(g)(5), 1015, 1028, 1425, or 1426 of
24 this title, chapter 75 or 77 of this title, or section
25 243, 274, 275, 276, 277, or 278 of the Immigration

1 and Nationality Act (8 U.S.C. 1253, 1324, 1325,
2 1326, 2327, and 1328).”; and

3 (2) in subsection (g)(3)—

4 (A) in subparagraph (A), by striking
5 “and” at the end; and

6 (B) by adding at the end the following:

7 “(C) the person’s immigration status;
8 and”.

9 **SEC. 203. AGGRAVATED FELONY.**

10 (a) DEFINITION OF AGGRAVATED FELONY.—Section
11 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended—

12 (1) by striking “The term ‘aggravated felony’
13 means—” and inserting “Notwithstanding any other
14 provision of law (except for the provision providing
15 an effective date for section 203 of the Comprehen-
16 sive Immigration Reform Act of 2006), the term ‘ag-
17 gravated felony’ applies to an offense described in
18 this paragraph, whether in violation of Federal or
19 State law and to such an offense in violation of the
20 law of a foreign country, for which the term of im-
21 prisonment was completed within the previous 15
22 years, even if the length of the term of imprisonment
23 is based on recidivist or other enhancements and re-
24 gardless of whether the conviction was entered be-

1 fore, on, or after September 30, 1996, and means—
2 ”;

3 (2) in subparagraph (A), by striking “murder,
4 rape, or sexual abuse of a minor;” and inserting
5 “murder, rape, or sexual abuse of a minor, whether
6 or not the minority of the victim is established by
7 evidence contained in the record of conviction or by
8 evidence extrinsic to the record of conviction;”;

9 (3) in subparagraph (N), by striking “para-
10 graph (1)(A) or (2) of”;

11 (4) in subparagraph (O), by striking “section
12 275(a) or 276 committed by an alien who was pre-
13 viously deported on the basis of a conviction for an
14 offense described in another subparagraph of this
15 paragraph” and inserting “section 275 or 276 for
16 which the term of imprisonment is at least 1 year”;

17 (5) in subparagraph (U), by striking “an at-
18 tempt or conspiracy to commit an offense described
19 in this paragraph” and inserting “aiding or abetting
20 an offense described in this paragraph, or soliciting,
21 counseling, procuring, commanding, or inducing an-
22 other, attempting, or conspiring to commit such an
23 offense”; and

24 (6) by striking the undesignated matter fol-
25 lowing subparagraph (U).

1 (b) EFFECTIVE DATE AND APPLICATION.—

2 (1) IN GENERAL.—The amendments made by
3 subsection (a) shall—

4 (A) take effect on the date of the enact-
5 ment of this Act; and

6 (B) apply to any act that occurred on or
7 after the date of the enactment of this Act.

8 (2) APPLICATION OF HIRAIRA AMENDMENTS.—

9 The amendments to section 101(a)(43) of the Immi-
10 gration and Nationality Act made by section 321 of
11 the Illegal Immigration Reform and Immigrant Re-
12 sponsibility Act of 1996 (division C of Public Law
13 104–208; 110 Stat. 3009–627) shall continue to
14 apply, whether the conviction was entered before, on,
15 or after September 30, 1996.

16 **SEC. 204. TERRORIST BARS.**

17 (a) DEFINITION OF GOOD MORAL CHARACTER.—

18 Section 101(f) (8 U.S.C. 1101(f)) is amended—

19 (1) by inserting after paragraph (1) the fol-
20 lowing:

21 “(2) an alien described in section 212(a)(3) or
22 237(a)(4), as determined by the Secretary of Home-
23 land Security or Attorney General based upon any
24 relevant information or evidence, including classified,
25 sensitive, or national security information;”;

(2) in paragraph (8), by striking “(as defined in subsection (a)(43))” and inserting the following: “, regardless of whether the crime was defined as an aggravated felony under subsection (a)(43) at the time of the conviction, unless—

“(A) the person completed the term of imprisonment and sentence not later than 10 years before the date of application; and

“(B) the Secretary of Homeland Security or the Attorney General waives the application of this paragraph; or”; and

(3) in the undesignated matter following paragraph (9), by striking “a finding that for other reasons such person is or was not of good moral character” and inserting the following: “a discretionary finding for other reasons that such a person is or was not of good moral character. In determining an applicant’s moral character, the Secretary of Homeland Security and the Attorney General may take into consideration the applicant’s conduct and acts at any time and are not limited to the period during which good moral character is required.”.

(b) PENDING PROCEEDINGS.—Section 204(b) (8 U.S.C. 1154(b)) is amended by adding at the end the following: “A petition may not be approved under this section

1 if there is any administrative or judicial proceeding
 2 (whether civil or criminal) pending against the petitioner
 3 that could directly or indirectly result in the petitioner’s
 4 denaturalization or the loss of the petitioner’s lawful per-
 5 manent resident status.”.

6 (c) **CONDITIONAL PERMANENT RESIDENT STATUS.**—

7 (1) **IN GENERAL.**—Section 216(e) (8 U.S.C.
 8 1186a(e)) is amended by inserting “if the alien has
 9 had the conditional basis removed pursuant to this
 10 section” before the period at the end.

11 (2) **CERTAIN ALIEN ENTREPRENEURS.**—Section
 12 216A(e) (8 U.S.C. 1186b(e)) is amended by insert-
 13 ing “if the alien has had the conditional basis re-
 14 moved pursuant to this section” before the period at
 15 the end.

16 (d) **JUDICIAL REVIEW OF NATURALIZATION APPLI-**
 17 **CATIONS.**—Section 310(c) (8 U.S.C. 1421(c)) is
 18 amended—

19 (1) by inserting “, not later than 120 days after
 20 the Secretary of Homeland Security’s final deter-
 21 mination,” after “may”; and

22 (2) by adding at the end the following: “Except
 23 that in any proceeding, other than a proceeding
 24 under section 340, the court shall review for sub-
 25 stantial evidence the administrative record and find-

1 ings of the Secretary of Homeland Security regard-
2 ing whether an alien is a person of good moral char-
3 acter, understands and is attached to the principles
4 of the Constitution of the United States, or is well
5 disposed to the good order and happiness of the
6 United States. The petitioner shall have the burden
7 of showing that the Secretary’s denial of the applica-
8 tion was contrary to law.”.

9 (e) PERSONS ENDANGERING NATIONAL SECURITY.—
10 Section 316 (8 U.S.C. 1427) is amended by adding at the
11 end the following:

12 “(g) PERSONS ENDANGERING THE NATIONAL SECU-
13 RITY.—A person may not be naturalized if the Secretary
14 of Homeland Security determines, based upon any rel-
15 evant information or evidence, including classified, sen-
16 sitive, or national security information, that the person
17 was once an alien described in section 212(a)(3) or
18 237(a)(4).”.

19 (f) CONCURRENT NATURALIZATION AND REMOVAL
20 PROCEEDINGS.—Section 318 (8 U.S.C. 1429) is amended
21 by striking “the Attorney General if” and all that follows
22 and inserting: “the Secretary of Homeland Security or any
23 court if there is pending against the applicant any removal
24 proceeding or other proceeding to determine the appli-
25 cant’s inadmissibility or deportability, or to determine

1 whether the applicant's lawful permanent resident status
2 should be rescinded, regardless of when such proceeding
3 was commenced. The findings of the Attorney General in
4 terminating removal proceedings or canceling the removal
5 of an alien under this Act shall not be deemed binding
6 in any way upon the Secretary of Homeland Security with
7 respect to the question of whether such person has estab-
8 lished eligibility for naturalization in accordance with this
9 title.”.

10 (g) DISTRICT COURT JURISDICTION.—Section
11 336(b) (8 U.S.C. 1447(b)) is amended to read as follows:

12 “(b) REQUEST FOR HEARING BEFORE DISTRICT
13 COURT.—If there is a failure to render a final administra-
14 tive decision under section 335 before the end of the 180-
15 day period beginning on the date on which the Secretary
16 of Homeland Security completes all examinations and
17 interviews required under such section, the applicant may
18 apply to the district court for the district in which the
19 applicant resides for a hearing on the matter. The Sec-
20 retary shall notify the applicant when such examinations
21 and interviews have been completed. Such district court
22 shall only have jurisdiction to review the basis for delay
23 and remand the matter, with appropriate instructions, to
24 the Secretary for the Secretary's determination on the ap-
25 plication.”.

1 (h) EFFECTIVE DATE.—The amendments made by
2 this section—

3 (1) shall take effect on the date of the enact-
4 ment of this Act; and

5 (2) shall apply to any act that occurred on or
6 after such date of enactment.

7 **SEC. 205. INCREASED CRIMINAL PENALTIES RELATED TO**
8 **GANG VIOLENCE, REMOVAL, AND ALIEN**
9 **SMUGGLING.**

10 (a) CRIMINAL STREET GANGS.—

11 (1) INADMISSIBILITY.—Section 212(a)(2) (8
12 U.S.C. 1182(a)(2)) is amended—

13 (A) by redesignating subparagraph (F) as
14 subparagraph (J); and

15 (B) by inserting after subparagraph (E)
16 the following:

17 “(F) MEMBERS OF CRIMINAL STREET
18 GANGS.—Unless the Secretary of Homeland Se-
19 curity or the Attorney General waives the appli-
20 cation of this subparagraph, any alien who a
21 consular officer, the Attorney General, or the
22 Secretary of Homeland Security knows or has
23 reason to believe—

1 “(i) is, or has been, a member of a
 2 criminal street gang (as defined in section
 3 521(a) of title 18, United States Code); or

4 “(ii) has participated in the activities
 5 of a criminal street gang, knowing or hav-
 6 ing reason to know that such activities pro-
 7 moted, furthered, aided, or supported the
 8 illegal activity of the criminal gang,

9 is inadmissible.”.

10 (2) DEPORTABILITY.—Section 237(a)(2) (8
 11 U.S.C. 1227(a)(2)) is amended by adding at the end
 12 the following:

13 “(F) MEMBERS OF CRIMINAL STREET
 14 GANGS.—Unless the Secretary of Homeland Se-
 15 curity or the Attorney General waives the appli-
 16 cation of this subparagraph, any alien who the
 17 Secretary of Homeland Security or the Attorney
 18 General knows or has reason to believe—

19 “(i) is, or at any time after admission
 20 has been, a member of a criminal street
 21 gang (as defined in section 521(a) of title
 22 18, United States Code); or

23 “(ii) has participated in the activities
 24 of a criminal street gang, knowing or hav-
 25 ing reason to know that such activities pro-

1 moted, furthered, aided, or supported the
2 illegal activity of the criminal gang,
3 is deportable.”.

4 (3) TEMPORARY PROTECTED STATUS.—Section
5 244 (8 U.S.C. 1254a) is amended—

6 (A) by striking “Attorney General” each
7 place it appears and inserting “Secretary of
8 Homeland Security”;

9 (B) in subsection (b)(3)—

10 (i) in subparagraph (B), by striking
11 the last sentence and inserting the fol-
12 lowing: “Notwithstanding any other provi-
13 sion of this section, the Secretary of
14 Homeland Security may, for any reason
15 (including national security), terminate or
16 modify any designation under this section.
17 Such termination or modification is effec-
18 tive upon publication in the Federal Reg-
19 ister, or after such time as the Secretary
20 may designate in the Federal Register.”;

21 (ii) in subparagraph (C), by striking
22 “a period of 12 or 18 months” and insert-
23 ing “any other period not to exceed 18
24 months”;

25 (C) in subsection (c)—

1 (i) in paragraph (1)(B), by striking
 2 “The amount of any such fee shall not ex-
 3 ceed \$50.”;

4 (ii) in paragraph (2)(B)—

5 (I) in clause (i), by striking “,
 6 or” at the end;

7 (II) in clause (ii), by striking the
 8 period at the end and inserting “; or”;
 9 and

10 (III) by adding at the end the
 11 following:

12 “(iii) the alien is, or at any time after
 13 admission has been, a member of a crimi-
 14 nal street gang (as defined in section
 15 521(a) of title 18, United States Code).”;
 16 and

17 (D) in subsection (d)—

18 (i) by striking paragraph (3); and

19 (ii) in paragraph (4), by adding at the
 20 end the following: “The Secretary of
 21 Homeland Security may detain an alien
 22 provided temporary protected status under
 23 this section whenever appropriate under
 24 any other provision of law.”.

1 (b) PENALTIES RELATED TO REMOVAL.—Section
 2 243 (8 U.S.C. 1253) is amended—

3 (1) in subsection (a)(1)—

4 (A) in the matter preceding subparagraph
 5 (A), by inserting “212(a) or” after “section”;
 6 and

7 (B) in the matter following subparagraph
 8 (D)—

9 (i) by striking “or imprisoned not
 10 more than four years” and inserting “and
 11 imprisoned for not less than 6 months or
 12 more than 5 years”; and

13 (ii) by striking “, or both”;

14 (2) in subsection (b), by striking “not more
 15 than \$1000 or imprisoned for not more than one
 16 year, or both” and inserting “under title 18, United
 17 States Code, and imprisoned for not less than 6
 18 months or more than 5 years (or for not more than
 19 10 years if the alien is a member of any of the class-
 20 es described in paragraphs (1)(E), (2), (3), and (4)
 21 of section 237(a)).”; and

22 (3) by amending subsection (d) to read as fol-
 23 lows:

24 “(d) DENYING VISAS TO NATIONALS OF COUNTRY
 25 DENYING OR DELAYING ACCEPTING ALIEN.—The Sec-

1 retary of Homeland Security, after making a determina-
 2 tion that the government of a foreign country has denied
 3 or unreasonably delayed accepting an alien who is a citi-
 4 izen, subject, national, or resident of that country after
 5 the alien has been ordered removed, and after consultation
 6 with the Secretary of State, may instruct the Secretary
 7 of State to deny a visa to any citizen, subject, national,
 8 or resident of that country until the country accepts the
 9 alien that was ordered removed.”.

10 (c) ALIEN SMUGGLING AND RELATED OFFENSES.—

11 (1) IN GENERAL.—Section 274 (8 U.S.C.
 12 1324), is amended to read as follows:

13 **“SEC. 274. ALIEN SMUGGLING AND RELATED OFFENSES.**

14 “(a) CRIMINAL OFFENSES AND PENALTIES.—

15 “(1) PROHIBITED ACTIVITIES.—Except as pro-
 16 vided in paragraph (3), a person shall be punished
 17 as provided under paragraph (2), if the person—

18 “(A) facilitates, encourages, directs, or in-
 19 duces a person to come to or enter the United
 20 States, or to cross the border to the United
 21 States, knowing or in reckless disregard of the
 22 fact that such person is an alien who lacks law-
 23 ful authority to come to, enter, or cross the bor-
 24 der to the United States;

1 “(B) facilitates, encourages, directs, or in-
2 duces a person to come to or enter the United
3 States, or to cross the border to the United
4 States, at a place other than a designated port
5 of entry or place other than as designated by
6 the Secretary of Homeland Security, knowing
7 or in reckless disregard of the fact that such
8 person is an alien and regardless of whether
9 such alien has official permission or lawful au-
10 thority to be in the United States;

11 “(C) transports, moves, harbors, conceals,
12 or shields from detection a person outside of
13 the United States knowing or in reckless dis-
14 regard of the fact that such person is an alien
15 in unlawful transit from 1 country to another
16 or on the high seas, under circumstances in
17 which the alien is seeking to enter the United
18 States without official permission or legal au-
19 thority;

20 “(D) encourages or induces a person to re-
21 side in the United States, knowing or in reck-
22 less disregard of the fact that such person is an
23 alien who lacks lawful authority to reside in the
24 United States;

“(E) transports or moves a person in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to enter or be in the United States, if the transportation or movement will further the alien’s illegal entry into or illegal presence in the United States;

“(F) harbors, conceals, or shields from detection a person in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to be in the United States; or

“(G) conspires or attempts to commit any of the acts described in subparagraphs (A) through (F).

“(2) CRIMINAL PENALTIES.—A person who violates any provision under paragraph (1)—

“(A) except as provided in subparagraphs (C) through (G), if the offense was not committed for commercial advantage, profit, or private financial gain, shall be fined under title 18, United States Code, imprisoned for not more than 5 years, or both;

“(B) except as provided in subparagraphs (C) through (G), if the offense was committed

1 for commercial advantage, profit, or private fi-
2 nancial gain—

3 “(i) if the violation is the offender’s
4 first violation under this subparagraph,
5 shall be fined under such title, imprisoned
6 for not more than 20 years, or both; or

7 “(ii) if the violation is the offender’s
8 second or subsequent violation of this sub-
9 paragraph, shall be fined under such title,
10 imprisoned for not less than 3 years or
11 more than 20 years, or both;

12 “(C) if the offense furthered or aided the
13 commission of any other offense against the
14 United States or any State that is punishable
15 by imprisonment for more than 1 year, shall be
16 fined under such title, imprisoned for not less
17 than 5 years or more than 20 years, or both;

18 “(D) shall be fined under such title, im-
19 prisoned not less than 5 years or more than 20
20 years, or both, if the offense created a substan-
21 tial and foreseeable risk of death, a substantial
22 and foreseeable risk of serious bodily injury (as
23 defined in section 2119(2) of title 18, United
24 States Code), or inhumane conditions to an-
25 other person, including—

1 “(i) transporting the person in an en-
2 gine compartment, storage compartment,
3 or other confined space;

4 “(ii) transporting the person at an ex-
5 cessive speed or in excess of the rated ca-
6 pacity of the means of transportation; or

7 “(iii) transporting the person in, har-
8 boring the person in, or otherwise sub-
9 jecting the person to crowded or dangerous
10 conditions;

11 “(E) if the offense caused serious bodily
12 injury (as defined in section 2119(2) of title 18,
13 United States Code) to any person, shall be
14 fined under such title, imprisoned for not less
15 than 7 years or more than 30 years, or both;

16 “(F) shall be fined under such title and
17 imprisoned for not less than 10 years or more
18 than 30 years if the offense involved an alien
19 who the offender knew or had reason to believe
20 was—

21 “(i) engaged in terrorist activity (as
22 defined in section 212(a)(3)(B)); or

23 “(ii) intending to engage in terrorist
24 activity;

1 “(G) if the offense caused or resulted in
2 the death of any person, shall be punished by
3 death or imprisoned for a term of years not less
4 than 10 years and up to life, and fined under
5 title 18, United States Code.

6 “(3) LIMITATION.—It is not a violation of sub-
7 paragraph (D), (E), or (F) of paragraph (1)—

8 “(A) for a religious denomination having a
9 bona fide nonprofit, religious organization in
10 the United States, or the agents or officers of
11 such denomination or organization, to encour-
12 age, invite, call, allow, or enable an alien who
13 is present in the United States to perform the
14 vocation of a minister or missionary for the de-
15 nomination or organization in the United States
16 as a volunteer who is not compensated as an
17 employee, notwithstanding the provision of
18 room, board, travel, medical assistance, and
19 other basic living expenses, provided the min-
20 ister or missionary has been a member of the
21 denomination for at least 1 year; or

22 “(B) for an individual or organization, not
23 previously convicted of a violation of this sec-
24 tion, to provide an alien who is present in the
25 United States with humanitarian assistance, in-

cluding medical care, housing, counseling, victim services, and food, or to transport the alien to a location where such assistance can be rendered.

“(4) EXTRATERRITORIAL JURISDICTION.—

There is extraterritorial Federal jurisdiction over the offenses described in this subsection.

“(b) EMPLOYMENT OF UNAUTHORIZED ALIENS.—

“(1) CRIMINAL OFFENSE AND PENALTIES.—

Any person who, during any 12-month period, knowingly employs 10 or more individuals with actual knowledge or in reckless disregard of the fact that the individuals are aliens described in paragraph (2), shall be fined under title 18, United States Code, imprisoned for not more than 10 years, or both.

“(2) DEFINITION.—An alien described in this paragraph is an alien who—

“(A) is an unauthorized alien (as defined in section 274A(i));

“(B) is present in the United States without lawful authority; and

“(C) has been brought into the United States in violation of this subsection.

“(c) SEIZURE AND FORFEITURE.—

1 “(1) IN GENERAL.—Any real or personal prop-
2 erty used to commit or facilitate the commission of
3 a violation of this section, the gross proceeds of such
4 violation, and any property traceable to such prop-
5 erty or proceeds, shall be subject to forfeiture.

6 “(2) APPLICABLE PROCEDURES.—Seizures and
7 forfeitures under this subsection shall be governed
8 by the provisions of chapter 46 of title 18, United
9 States Code, relating to civil forfeitures, except that
10 such duties as are imposed upon the Secretary of
11 the Treasury under the customs laws described in
12 section 981(d) shall be performed by such officers,
13 agents, and other persons as may be designated for
14 that purpose by the Secretary of Homeland Security.

15 “(3) PRIMA FACIE EVIDENCE IN DETERMINA-
16 TIONS OF VIOLATIONS.—In determining whether a
17 violation of subsection (a) has occurred, prima facie
18 evidence that an alien involved in the alleged viola-
19 tion lacks lawful authority to come to, enter, reside
20 in, remain in, or be in the United States or that
21 such alien had come to, entered, resided in, re-
22 mained in, or been present in the United States in
23 violation of law shall include—

24 “(A) any order, finding, or determination
25 concerning the alien’s status or lack of status

1 made by a Federal judge or administrative ad-
 2 judicator (including an immigration judge or
 3 immigration officer) during any judicial or ad-
 4 ministrative proceeding authorized under Fed-
 5 eral immigration law;

6 “(B) official records of the Department of
 7 Homeland Security, the Department of Justice,
 8 or the Department of State concerning the
 9 alien’s status or lack of status; and

10 “(C) testimony by an immigration officer
 11 having personal knowledge of the facts con-
 12 cerning the alien’s status or lack of status.

13 “(d) AUTHORITY TO ARREST.—No officer or person
 14 shall have authority to make any arrests for a violation
 15 of any provision of this section except—

16 “(1) officers and employees designated by the
 17 Secretary of Homeland Security, either individually
 18 or as a member of a class; and

19 “(2) other officers responsible for the enforce-
 20 ment of Federal criminal laws.

21 “(e) ADMISSIBILITY OF VIDEOTAPED WITNESS TES-
 22 TIMONY.—Notwithstanding any provision of the Federal
 23 Rules of Evidence, the videotaped or otherwise audio-
 24 visually preserved deposition of a witness to a violation
 25 of subsection (a) who has been deported or otherwise ex-

1 pelled from the United States, or is otherwise unavailable
2 to testify, may be admitted into evidence in an action
3 brought for that violation if—

4 “(1) the witness was available for cross exam-
5 ination at the deposition by the party, if any, oppos-
6 ing admission of the testimony; and

7 “(2) the deposition otherwise complies with the
8 Federal Rules of Evidence.

9 “(f) OUTREACH PROGRAM.—

10 “(1) IN GENERAL.—The Secretary of Homeland
11 Security, in consultation with the Attorney General
12 and the Secretary of State, as appropriate, shall—

13 “(A) develop and implement an outreach
14 program to educate people in and out of the
15 United States about the penalties for bringing
16 in and harboring aliens in violation of this sec-
17 tion; and

18 “(B) establish the American Local and In-
19 terior Enforcement Needs (ALIEN) Task Force
20 to identify and respond to the use of Federal,
21 State, and local transportation infrastructure to
22 further the trafficking of unlawful aliens within
23 the United States.

24 “(2) FIELD OFFICES.—The Secretary of Home-
25 land Security, after consulting with State and local

1 government officials, shall establish such field offices
 2 as may be necessary to carry out this subsection.

3 “(3) AUTHORIZATION OF APPROPRIATIONS.—
 4 There are authorized to be appropriated such sums
 5 are necessary for the fiscal years 2007 through 2011
 6 to carry out this subsection.

7 “(g) DEFINITIONS.—In this section:

8 “(1) CROSSED THE BORDER INTO THE UNITED
 9 STATES.—An alien is deemed to have crossed the
 10 border into the United States regardless of whether
 11 the alien is free from official restraint.

12 “(2) LAWFUL AUTHORITY.—The term ‘lawful
 13 authority’ means permission, authorization, or li-
 14 cense that is expressly provided for in the immigra-
 15 tion laws of the United States or accompanying reg-
 16 ulations. The term does not include any such au-
 17 thority secured by fraud or otherwise obtained in
 18 violation of law or authority sought, but not ap-
 19 proved. No alien shall be deemed to have lawful au-
 20 thority to come to, enter, reside in, remain in, or be
 21 in the United States if such coming to, entry, resi-
 22 dence, remaining, or presence was, is, or would be
 23 in violation of law.

24 “(3) PROCEEDS.—The term ‘proceeds’ includes
 25 any property or interest in property obtained or re-

1 tained as a consequence of an act or omission in vio-
2 lation of this section.

3 “(4) UNLAWFUL TRANSIT.—The term ‘unlawful
4 transit’ means travel, movement, or temporary pres-
5 ence that violates the laws of any country in which
6 the alien is present or any country from which the
7 alien is traveling or moving.”.

8 (2) CLERICAL AMENDMENT.—The table of con-
9 tents is amended by striking the item relating to sec-
10 tion 274 and inserting the following:

“Sec. 274. Alien smuggling and related offenses.”.

11 (d) PROHIBITING CARRYING OR USING A FIREARM
12 DURING AND IN RELATION TO AN ALIEN SMUGGLING
13 CRIME.—Section 924(c) of title 18, United States Code,
14 is amended—

15 (1) in paragraph (1)—

16 (A) in subparagraph (A), by inserting “,
17 alien smuggling crime,” after “any crime of vio-
18 lence”;

19 (B) in subparagraph (A), by inserting “,
20 alien smuggling crime,” after “such crime of vi-
21 olence”;

22 (C) in subparagraph (D)(ii), by inserting
23 “, alien smuggling crime,” after “crime of vio-
24 lence”; and

25 (2) by adding at the end the following:

1 “(6) For purposes of this subsection, the term ‘alien
2 smuggling crime’ means any felony punishable under sec-
3 tion 274(a), 277, or 278 of the Immigration and Nation-
4 ality Act (8 U.S.C. 1324(a), 1327, and 1328).”.

5 **SEC. 206. ILLEGAL ENTRY.**

6 (a) IN GENERAL.—Section 275 (8 U.S.C. 1325) is
7 amended to read as follows:

8 **“SEC. 275. ILLEGAL ENTRY.**

9 “(a) IN GENERAL.—

10 “(1) CRIMINAL OFFENSES.—An alien shall be
11 subject to the penalties set forth in paragraph (2) if
12 the alien—

13 “(A) knowingly enters or crosses the bor-
14 der into the United States at any time or place
15 other than as designated by the Secretary of
16 Homeland Security;

17 “(B) knowingly eludes examination or in-
18 spection by an immigration officer (including
19 failing to stop at the command of such officer),
20 or a customs or agriculture inspection at a port
21 of entry; or

22 “(C) knowingly enters or crosses the bor-
23 der to the United States by means of a know-
24 ingly false or misleading representation or the
25 knowing concealment of a material fact (includ-

1 ing such representation or concealment in the
2 context of arrival, reporting, entry, or clearance
3 requirements of the customs laws, immigration
4 laws, agriculture laws, or shipping laws).

5 “(2) CRIMINAL PENALTIES.—Any alien who
6 violates any provision under paragraph (1)—

7 “(A) shall, for the first violation, be fined
8 under title 18, United States Code, imprisoned
9 not more than 6 months, or both;

10 “(B) shall, for a second or subsequent vio-
11 lation, or following an order of voluntary depar-
12 ture, be fined under such title, imprisoned not
13 more than 2 years, or both;

14 “(C) if the violation occurred after the
15 alien had been convicted of 3 or more mis-
16 demeanors or for a felony, shall be fined under
17 such title, imprisoned not more than 10 years,
18 or both;

19 “(D) if the violation occurred after the
20 alien had been convicted of a felony for which
21 the alien received a term of imprisonment of
22 not less than 30 months, shall be fined under
23 such title, imprisoned not more than 15 years,
24 or both; and

1 “(E) if the violation occurred after the
2 alien had been convicted of a felony for which
3 the alien received a term of imprisonment of
4 not less than 60 months, such alien shall be
5 fined under such title, imprisoned not more
6 than 20 years, or both.

7 “(3) PRIOR CONVICTIONS.—The prior convic-
8 tions described in subparagraphs (C) through (E) of
9 paragraph (2) are elements of the offenses described
10 in that paragraph and the penalties in such subpara-
11 graphs shall apply only in cases in which the convic-
12 tion or convictions that form the basis for the addi-
13 tional penalty are—

14 “(A) alleged in the indictment or informa-
15 tion; and

16 “(B) proven beyond a reasonable doubt at
17 trial or admitted by the defendant.

18 “(4) DURATION OF OFFENSE.—An offense
19 under this subsection continues until the alien is dis-
20 covered within the United States by an immigration
21 officer.

22 “(5) ATTEMPT.—Whoever attempts to commit
23 any offense under this section shall be punished in
24 the same manner as for a completion of such of-
25 fense.

1 “(b) IMPROPER TIME OR PLACE; CIVIL PEN-
2 ALTIES.—

3 “(1) IN GENERAL.—Any alien who is appre-
4 hended while entering, attempting to enter, or know-
5 ingly crossing or attempting to cross the border to
6 the United States at a time or place other than as
7 designated by immigration officers shall be subject
8 to a civil penalty, in addition to any criminal or
9 other civil penalties that may be imposed under any
10 other provision of law, in an amount equal to—

11 “(A) not less than \$50 or more than \$250
12 for each such entry, crossing, attempted entry,
13 or attempted crossing; or

14 “(B) twice the amount specified in para-
15 graph (1) if the alien had previously been sub-
16 ject to a civil penalty under this subsection.

17 “(2) CROSSED THE BORDER DEFINED.—In this
18 section, an alien is deemed to have crossed the bor-
19 der if the act was voluntary, regardless of whether
20 the alien was under observation at the time of the
21 crossing.”.

22 (b) CLERICAL AMENDMENT.—The table of contents
23 is amended by striking the item relating to section 275
24 and inserting the following:

“Sec. 275. Illegal entry.”.

1 **SEC. 207. ILLEGAL REENTRY.**

2 Section 276 (8 U.S.C. 1326) is amended to read as
3 follows:

4 **“SEC. 276. REENTRY OF REMOVED ALIEN.**

5 “(a) REENTRY AFTER REMOVAL.—Any alien who
6 has been denied admission, excluded, deported, or re-
7 moved, or who has departed the United States while an
8 order of exclusion, deportation, or removal is outstanding,
9 and subsequently enters, attempts to enter, crosses the
10 border to, attempts to cross the border to, or is at any
11 time found in the United States, shall be fined under title
12 18, United States Code, imprisoned not more than 2
13 years, or both.

14 “(b) REENTRY OF CRIMINAL OFFENDERS.—Not-
15 withstanding the penalty provided in subsection (a), if an
16 alien described in that subsection—

17 “(1) was convicted for 3 or more misdemeanors
18 or a felony before such removal or departure, the
19 alien shall be fined under title 18, United States
20 Code, imprisoned not more than 10 years, or both;

21 “(2) was convicted for a felony before such re-
22 moval or departure for which the alien was sen-
23 tenced to a term of imprisonment of not less than
24 30 months, the alien shall be fined under such title,
25 imprisoned not more than 15 years, or both;

1 “(3) was convicted for a felony before such re-
 2 moval or departure for which the alien was sen-
 3 tenced to a term of imprisonment of not less than
 4 60 months, the alien shall be fined under such title,
 5 imprisoned not more than 20 years, or both;

6 “(4) was convicted for 3 felonies before such re-
 7 moval or departure, the alien shall be fined under
 8 such title, imprisoned not more than 20 years, or
 9 both; or

10 “(5) was convicted, before such removal or de-
 11 parture, for murder, rape, kidnaping, or a felony of-
 12 fense described in chapter 77 (relating to peonage
 13 and slavery) or 113B (relating to terrorism) of such
 14 title, the alien shall be fined under such title, impris-
 15 oned not more than 20 years, or both.

16 “(c) REENTRY AFTER REPEATED REMOVAL.—Any
 17 alien who has been denied admission, excluded, deported,
 18 or removed 3 or more times and thereafter enters, at-
 19 tempts to enter, crosses the border to, attempts to cross
 20 the border to, or is at any time found in the United States,
 21 shall be fined under title 18, United States Code, impris-
 22 oned not more than 10 years, or both.

23 “(d) PROOF OF PRIOR CONVICTIONS.—The prior
 24 convictions described in subsection (b) are elements of the
 25 crimes described in that subsection, and the penalties in

1 that subsection shall apply only in cases in which the con-
2 viction or convictions that form the basis for the additional
3 penalty are—

4 “(1) alleged in the indictment or information;
5 and

6 “(2) proven beyond a reasonable doubt at trial
7 or admitted by the defendant.

8 “(e) AFFIRMATIVE DEFENSES.—It shall be an af-
9 firmative defense to a violation of this section that—

10 “(1) prior to the alleged violation, the alien had
11 sought and received the express consent of the Sec-
12 retary of Homeland Security to reapply for admis-
13 sion into the United States; or

14 “(2) with respect to an alien previously denied
15 admission and removed, the alien—

16 “(A) was not required to obtain such ad-
17 vance consent under the Immigration and Na-
18 tionality Act or any prior Act; and

19 “(B) had complied with all other laws and
20 regulations governing the alien’s admission into
21 the United States.

22 “(f) LIMITATION ON COLLATERAL ATTACK ON UN-
23 DERLYING REMOVAL ORDER.—In a criminal proceeding
24 under this section, an alien may not challenge the validity
25 of any prior removal order concerning the alien unless the

1 alien demonstrates by clear and convincing evidence
2 that—

3 “(1) the alien exhausted all administrative rem-
4 edies that may have been available to seek relief
5 against the order;

6 “(2) the removal proceedings at which the order
7 was issued improperly deprived the alien of the op-
8 portunity for judicial review; and

9 “(3) the entry of the order was fundamentally
10 unfair.

11 “(g) REENTRY OF ALIEN REMOVED PRIOR TO COM-
12 PLETION OF TERM OF IMPRISONMENT.—Any alien re-
13 moved pursuant to section 241(a)(4) who enters, attempts
14 to enter, crosses the border to, attempts to cross the bor-
15 der to, or is at any time found in, the United States shall
16 be incarcerated for the remainder of the sentence of im-
17 prisonment which was pending at the time of deportation
18 without any reduction for parole or supervised release un-
19 less the alien affirmatively demonstrates that the Sec-
20 retary of Homeland Security has expressly consented to
21 the alien’s reentry. Such alien shall be subject to such
22 other penalties relating to the reentry of removed aliens
23 as may be available under this section or any other provi-
24 sion of law.

1 “(h) LIMITATION.—It is not aiding and abetting a
 2 violation of this section for an individual to provide an
 3 alien with emergency humanitarian assistance, including
 4 emergency medical care and food, or to transport the alien
 5 to a location where such assistance can be rendered with-
 6 out compensation or the expectation of compensation.

7 “(i) DEFINITIONS.—In this section:

8 “(1) CROSSES THE BORDER.—The term
 9 ‘crosses the border’ applies if an alien acts volun-
 10 tarily, regardless of whether the alien was under ob-
 11 servation at the time of the crossing.

12 “(2) FELONY.—Term ‘felony’ means any crimi-
 13 nal offense punishable by a term of imprisonment of
 14 more than 1 year under the laws of the United
 15 States, any State, or a foreign government.

16 “(3) MISDEMEANOR.—The term ‘misdemeanor’
 17 means any criminal offense punishable by a term of
 18 imprisonment of not more than 1 year under the ap-
 19 plicable laws of the United States, any State, or a
 20 foreign government.

21 “(4) REMOVAL.—The term ‘removal’ includes
 22 any denial of admission, exclusion, deportation, or
 23 removal, or any agreement by which an alien stipu-
 24 lates or agrees to exclusion, deportation, or removal.

1 “(5) STATE.—The term ‘State’ means a State
2 of the United States, the District of Columbia, and
3 any commonwealth, territory, or possession of the
4 United States.”.

5 **SEC. 208. REFORM OF PASSPORT, VISA, AND IMMIGRATION**

6 **FRAUD OFFENSES.**

7 (a) PASSPORT, VISA, AND IMMIGRATION FRAUD.—

8 (1) IN GENERAL.—Chapter 75 of title 18,
9 United States Code, is amended to read as follows:

10 **“CHAPTER 75—PASSPORT, VISA, AND**
11 **IMMIGRATION FRAUD**

“Sec.

“1541. Trafficking in passports.

“1542. False statement in an application for a passport.

“1543. Forgery and unlawful production of a passport.

“1544. Misuse of a passport.

“1545. Schemes to defraud aliens.

“1546. Immigration and visa fraud.

“1547. Marriage fraud.

“1548. Attempts and conspiracies.

“1549. Alternative penalties for certain offenses.

“1550. Seizure and forfeiture.

“1551. Additional jurisdiction.

“1552. Additional venue.

“1553. Definitions.

“1554. Authorized law enforcement activities.

“1555. Exception for refugees and asylees.

12 **“§ 1541. Trafficking in passports**

13 “(a) MULTIPLE PASSPORTS.—Any person who, dur-
14 ing any 3-year period, knowingly—

15 “(1) and without lawful authority produces,
16 issues, or transfers 10 or more passports;

17 “(2) forges, counterfeits, alters, or falsely
18 makes 10 or more passports;

1 “(3) secures, possesses, uses, receives, buys,
 2 sells, or distributes 10 or more passports, knowing
 3 the passports to be forged, counterfeited, altered,
 4 falsely made, stolen, procured by fraud, or produced
 5 or issued without lawful authority; or

6 “(4) completes, mails, prepares, presents, signs,
 7 or submits 10 or more applications for a United
 8 States passport (including any supporting docu-
 9 mentation), knowing the applications to contain any
 10 false statement or representation,

11 shall be fined under this title, imprisoned not more than
 12 20 years, or both.

13 “(b) PASSPORT MATERIALS.—Any person who know-
 14 ingly and without lawful authority produces, counterfeits,
 15 secures, possesses, or uses any official paper, seal,
 16 hologram, image, text, symbol, stamp, engraving, plate, or
 17 other material used to make a passport shall be fined
 18 under this title, imprisoned not more than 20 years, or
 19 both.

20 **“§ 1542. False statement in an application for a pass-**
 21 **port**

22 “Any person who knowingly—

23 “(1) makes any false statement or representa-
 24 tion in an application for a United States passport
 25 (including any supporting documentation);

1 “(2) completes, mails, prepares, presents, signs,
 2 or submits an application for a United States pass-
 3 port (including any supporting documentation)
 4 knowing the application to contain any false state-
 5 ment or representation; or

6 “(3) causes or attempts to cause the production
 7 of a passport by means of any fraud or false applica-
 8 tion for a United States passport (including any
 9 supporting documentation), if such production oc-
 10 curs or would occur at a facility authorized by the
 11 Secretary of State for the production of passports,
 12 shall be fined under this title, imprisoned not more than
 13 15 years, or both.

14 **“§ 1543. Forgery and unlawful production of a pass-**
 15 **port**

16 “(a) FORGERY.—Any person who—

17 “(1) knowingly forges, counterfeits, alters, or
 18 falsely makes any passport; or

19 “(2) knowingly transfers any passport knowing
 20 it to be forged, counterfeited, altered, falsely made,
 21 stolen, or to have been produced or issued without
 22 lawful authority,

23 shall be fined under this title, imprisoned not more than
 24 15 years, or both.

1 “(b) UNLAWFUL PRODUCTION.—Any person who
2 knowingly and without lawful authority—

3 “(1) produces, issues, authorizes, or verifies a
4 passport in violation of the laws, regulations, or
5 rules governing the issuance of the passport;

6 “(2) produces, issues, authorizes, or verifies a
7 United States passport for or to any person not
8 owing allegiance to the United States; or

9 “(3) transfers or furnishes a passport to a per-
10 son for use when such person is not the person for
11 whom the passport was issued or designed,

12 shall be fined under this title, imprisoned not more than
13 15 years, or both.

14 **“§ 1544. Misuse of a passport**

15 “(a) IN GENERAL.—Any person who—

16 “(1) knowingly uses any passport issued or de-
17 signed for the use of another;

18 “(2) knowingly uses any passport in violation of
19 the conditions or restrictions therein contained, or in
20 violation of the laws, regulations, or rules governing
21 the issuance and use of the passport;

22 “(3) knowingly secures, possesses, uses, re-
23 ceives, buys, sells, or distributes any passport know-
24 ing it to be forged, counterfeited, altered, falsely

1 made, procured by fraud, or produced or issued
2 without lawful authority; or

3 “(4) knowingly violates the terms and condi-
4 tions of any safe conduct duly obtained and issued
5 under the authority of the United States,

6 shall be fined under this title, imprisoned not more than
7 15 years, or both.

8 “(b) ENTRY; FRAUD.—Any person who knowingly
9 uses any passport, knowing the passport to be forged,
10 counterfeited, altered, falsely made, procured by fraud,
11 produced or issued without lawful authority, or issued or
12 designed for the use of another—

13 “(1) to enter or to attempt to enter the United
14 States; or

15 “(2) to defraud the United States, a State, or
16 a political subdivision of a State,

17 shall be fined under this title, imprisoned not more than
18 15 years, or both.

19 **“§ 1545. Schemes to defraud aliens**

20 “(a) IN GENERAL.—Any person who knowingly exe-
21 cutes a scheme or artifice, in connection with any matter
22 that is authorized by or arises under Federal immigration
23 laws, or any matter the offender claims or represents is
24 authorized by or arises under Federal immigration laws—

25 “(1) to defraud any person, or

1 “(2) to obtain or receive from any person, by
 2 means of false or fraudulent pretenses, representa-
 3 tions, promises, money or anything else of value,
 4 shall be fined under this title, imprisoned not more than
 5 15 years, or both.

6 “(b) MISREPRESENTATION.—Any person who know-
 7 ingly and falsely represents himself to be an attorney in
 8 any matter arising under Federal immigration laws shall
 9 be fined under this title, imprisoned not more than 15
 10 years, or both.

11 **“§ 1546. Immigration and visa fraud**

12 “(a) IN GENERAL.—Any person who knowingly—

13 “(1) uses any immigration document issued or
 14 designed for the use of another;

15 “(2) forges, counterfeits, alters, or falsely
 16 makes any immigration document;

17 “(3) completes, mails, prepares, presents, signs,
 18 or submits any immigration document knowing it to
 19 contain any materially false statement or representa-
 20 tion;

21 “(4) secures, possesses, uses, transfers, re-
 22 ceives, buys, sells, or distributes any immigration
 23 document knowing it to be forged, counterfeited, al-
 24 tered, falsely made, stolen, procured by fraud, or
 25 produced or issued without lawful authority;

1 “(5) adopts or uses a false or fictitious name to
2 evade or to attempt to evade the immigration laws;
3 or

4 “(6) transfers or furnishes an immigration doc-
5 ument to a person without lawful authority for use
6 if such person is not the person for whom the immi-
7 gration document was issued or designed,
8 shall be fined under this title, imprisoned not more than
9 15 years, or both.

10 “(b) MULTIPLE VIOLATIONS.—Any person who, dur-
11 ing any 3-year period, knowingly—

12 “(1) and without lawful authority produces,
13 issues, or transfers 10 or more immigration docu-
14 ments;

15 “(2) forges, counterfeits, alters, or falsely
16 makes 10 or more immigration documents;

17 “(3) secures, possesses, uses, buys, sells, or dis-
18 tributes 10 or more immigration documents, know-
19 ing the immigration documents to be forged, coun-
20 terfeited, altered, stolen, falsely made, procured by
21 fraud, or produced or issued without lawful author-
22 ity; or

23 “(4) completes, mails, prepares, presents, signs,
24 or submits 10 or more immigration documents

1 knowing the documents to contain any materially
 2 false statement or representation,
 3 shall be fined under this title, imprisoned not more than
 4 20 years, or both.

5 “(c) IMMIGRATION DOCUMENT MATERIALS.—Any
 6 person who knowingly and without lawful authority pro-
 7 duces, counterfeits, secures, possesses, or uses any official
 8 paper, seal, hologram, image, text, symbol, stamp, engrav-
 9 ing, plate, or other material, used to make an immigration
 10 document shall be fined under this title, imprisoned not
 11 more than 20 years, or both.

12 **“§ 1547. Marriage fraud**

13 “(a) EVASION OR MISREPRESENTATION.—Any per-
 14 son who—

15 “(1) knowingly enters into a marriage for the
 16 purpose of evading any provision of the immigration
 17 laws; or

18 “(2) knowingly misrepresents the existence or
 19 circumstances of a marriage—

20 “(A) in an application or document author-
 21 ized by the immigration laws; or

22 “(B) during any immigration proceeding
 23 conducted by an administrative adjudicator (in-
 24 cluding an immigration officer or examiner, a

1 consular officer, an immigration judge, or a
 2 member of the Board of Immigration Appeals),
 3 shall be fined under this title, imprisoned not more than
 4 10 years, or both.

5 “(b) MULTIPLE MARRIAGES.—Any person who—

6 “(1) knowingly enters into 2 or more marriages
 7 for the purpose of evading any immigration law; or

8 “(2) knowingly arranges, supports, or facilitates
 9 2 or more marriages designed or intended to evade
 10 any immigration law,

11 shall be fined under this title, imprisoned not more than
 12 20 years, or both.

13 “(c) COMMERCIAL ENTERPRISE.—Any person who
 14 knowingly establishes a commercial enterprise for the pur-
 15 pose of evading any provision of the immigration laws
 16 shall be fined under this title, imprisoned for not more
 17 than 10 years, or both.

18 “(d) DURATION OF OFFENSE.—

19 “(1) IN GENERAL.—An offense under sub-
 20 section (a) or (b) continues until the fraudulent na-
 21 ture of the marriage or marriages is discovered by
 22 an immigration officer.

23 “(2) COMMERCIAL ENTERPRISE.—An offense
 24 under subsection (c) continues until the fraudulent

1 nature of commercial enterprise is discovered by an
 2 immigration officer or other law enforcement officer.

3 **“§ 1548. Attempts and conspiracies**

4 “Any person who attempts or conspires to violate any
 5 section of this chapter shall be punished in the same man-
 6 ner as a person who completed a violation of that section.

7 **“§ 1549. Alternative penalties for certain offenses**

8 “(a) **TERRORISM.**—Any person who violates any sec-
 9 tion of this chapter—

10 “(1) knowing that such violation will facilitate
 11 an act of international terrorism or domestic ter-
 12 rorism (as those terms are defined in section 2331);
 13 or

14 “(2) with the intent to facilitate an act of inter-
 15 national terrorism or domestic terrorism,
 16 shall be fined under this title, imprisoned not more than
 17 25 years, or both.

18 “(b) **OFFENSE AGAINST GOVERNMENT.**—Any person
 19 who violates any section of this chapter—

20 “(1) knowing that such violation will facilitate
 21 the commission of any offense against the United
 22 States (other than an offense in this chapter) or
 23 against any State, which offense is punishable by
 24 imprisonment for more than 1 year; or

1 “(2) with the intent to facilitate the commission
2 of any offense against the United States (other than
3 an offense in this chapter) or against any State,
4 which offense is punishable by imprisonment for
5 more than 1 year,
6 shall be fined under this title, imprisoned not more than
7 20 years, or both.

8 **“§ 1550. Seizure and forfeiture**

9 “(a) FORFEITURE.—Any property, real or personal,
10 used to commit or facilitate the commission of a violation
11 of any section of this chapter, the gross proceeds of such
12 violation, and any property traceable to such property or
13 proceeds, shall be subject to forfeiture.

14 “(b) APPLICABLE LAW.—Seizures and forfeitures
15 under this section shall be governed by the provisions of
16 chapter 46 relating to civil forfeitures, except that such
17 duties as are imposed upon the Secretary of the Treasury
18 under the customs laws described in section 981(d) shall
19 be performed by such officers, agents, and other persons
20 as may be designated for that purpose by the Secretary
21 of Homeland Security, the Secretary of State, or the At-
22 torney General.

23 **“§ 1551. Additional jurisdiction**

24 “(a) IN GENERAL.—Any person who commits an of-
25 fense under this chapter within the special maritime and

1 territorial jurisdiction of the United States shall be pun-
2 ished as provided under this chapter.

3 “(b) EXTRATERRITORIAL JURISDICTION.—Any per-
4 son who commits an offense under this chapter outside
5 the United States shall be punished as provided under this
6 chapter if—

7 “(1) the offense involves a United States immi-
8 gration document (or any document purporting to be
9 such a document) or any matter, right, or benefit
10 arising under or authorized by Federal immigration
11 laws;

12 “(2) the offense is in or affects foreign com-
13 merce;

14 “(3) the offense affects, jeopardizes, or poses a
15 significant risk to the lawful administration of Fed-
16 eral immigration laws, or the national security of the
17 United States;

18 “(4) the offense is committed to facilitate an
19 act of international terrorism (as defined in section
20 2331) or a drug trafficking crime (as defined in sec-
21 tion 929(a)(2)) that affects or would affect the na-
22 tional security of the United States;

23 “(5) the offender is a national of the United
24 States (as defined in section 101(a)(22) of the Im-
25 migration and Nationality Act (8 U.S.C.

1 1101(a)(22))) or an alien lawfully admitted for per-
 2 manent residence in the United States (as defined in
 3 section 101(a)(20) of such Act); or

4 “(6) the offender is a stateless person whose
 5 habitual residence is in the United States.

6 **“§ 1552. Additional venue**

7 “(a) IN GENERAL.—An offense under section 1542
 8 may be prosecuted in—

9 “(1) any district in which the false statement or
 10 representation was made;

11 “(2) any district in which the passport applica-
 12 tion was prepared, submitted, mailed, received, proc-
 13 essed, or adjudicated; or

14 “(3) in the case of an application prepared and
 15 adjudicated outside the United States, in the district
 16 in which the resultant passport was produced.

17 “(b) SAVINGS CLAUSE.—Nothing in this section lim-
 18 its the venue otherwise available under sections 3237 and
 19 3238.

20 **“§ 1553. Definitions**

21 “As used in this chapter:

22 “(1) The term ‘falsely make’ means to prepare
 23 or complete an immigration document with knowl-
 24 edge or in reckless disregard of the fact that the
 25 document—

1 “(A) contains a statement or representa-
2 tion that is false, fictitious, or fraudulent;

3 “(B) has no basis in fact or law; or

4 “(C) otherwise fails to state a fact which
5 is material to the purpose for which the docu-
6 ment was created, designed, or submitted.

7 “(2) The term a ‘false statement or representa-
8 tion’ includes a personation or an omission.

9 “(3) The term ‘felony’ means any criminal of-
10 fense punishable by a term of imprisonment of more
11 than 1 year under the laws of the United States, any
12 State, or a foreign government.

13 “(4) The term ‘immigration document’—

14 “(A) means—

15 “(i) any passport or visa; or

16 “(ii) any application, petition, affi-
17 davit, declaration, attestation, form, identi-
18 fication card, alien registration document,
19 employment authorization document, bor-
20 der crossing card, certificate, permit,
21 order, license, stamp, authorization, grant
22 of authority, or other evidentiary docu-
23 ment, arising under or authorized by the
24 immigration laws of the United States; and

1 “(B) includes any document, photograph,
2 or other piece of evidence attached to or sub-
3 mitted in support of an immigration document.

4 “(5) The term ‘immigration laws’ includes—

5 “(A) the laws described in section
6 101(a)(17) of the Immigration and Nationality
7 Act (8 U.S.C. 1101(a)(17));

8 “(B) the laws relating to the issuance and
9 use of passports; and

10 “(C) the regulations prescribed under the
11 authority of any law described in paragraphs
12 (1) and (2).

13 “(6) The term ‘immigration proceeding’ in-
14 cludes an adjudication, interview, hearing, or review.

15 “(7) A person does not exercise ‘lawful author-
16 ity’ if the person abuses or improperly exercises law-
17 ful authority the person otherwise holds.

18 “(8) The term ‘passport’ means a travel docu-
19 ment attesting to the identity and nationality of the
20 bearer that is issued under the authority of the Sec-
21 retary of State, a foreign government, or an inter-
22 national organization; or any instrument purporting
23 to be the same.

24 “(9) The term ‘produce’ means to make, pre-
25 pare, assemble, issue, print, authenticate, or alter.

1 “(10) The term ‘State’ means a State of the
 2 United States, the District of Columbia, or any com-
 3 monwealth, territory, or possession of the United
 4 States.

5 **“§ 1554. Authorized law enforcement activities**

6 “Nothing in this chapter shall prohibit any lawfully
 7 authorized investigative, protective, or intelligence activity
 8 of a law enforcement agency of the United States, a State,
 9 or a political subdivision of a State, or an intelligence
 10 agency of the United States, or any activity authorized
 11 under title V of the Organized Crime Control Act of 1970
 12 (84 Stat. 933).

13 **“§ 1555. Exception for refugees, asylees, and other**
 14 **vulnerable persons**

15 “(a) IN GENERAL.—If a person believed to have vio-
 16 lated section 1542, 1544, 1546, or 1548 while attempting
 17 to enter the United States, without delay, indicates an in-
 18 tention to apply for asylum under section 208 or 241(b)(3)
 19 of the Immigration and Nationality Act (8 U.S.C. 1158
 20 and 1231), or for relief under the Convention Against Tor-
 21 ture and Other Cruel, Inhuman or Degrading Treatment
 22 or Punishment (in accordance with section 208.17 of title
 23 8, Code of Federal Regulations), or under section
 24 101(a)(15)(T), 101(a)(15)(U), 101(a)(27)(J),
 25 101(a)(51), 216(c)(4)(C), 240A(b)(2), or 244(a)(3) (as in

1 effect prior to March 31, 1997) of such Act, or a credible
2 fear of persecution or torture—

3 “(1) the person shall be referred to an appro-
4 priate Federal immigration official to review such
5 claim and make a determination if such claim is
6 warranted;

7 “(2) if the Federal immigration official deter-
8 mines that the person qualifies for the claimed relief,
9 the person shall not be considered to have violated
10 any such section; and

11 “(3) if the Federal immigration official deter-
12 mines that the person does not qualify for the
13 claimed relief, the person shall be referred to an ap-
14 propriate Federal official for prosecution under this
15 chapter.

16 “(b) SAVINGS PROVISION.—Nothing in this section
17 shall be construed to diminish, increase, or alter the obli-
18 gations of refugees or the United States under article
19 31(1) of the Convention Relating to the Status of Refu-
20 gees, done at Geneva July 28, 1951 (as made applicable
21 by the Protocol Relating to the Status of Refugees, done
22 at New York January 31, 1967 (19 UST 6223)).”.

23 (2) CLERICAL AMENDMENT.—The table of
24 chapters in title 18, United States Code, is amended

1 by striking the item relating to chapter 75 and in-
 2 serting the following:

“75. Passport, visa, and immigration fraud 1541”.

3 (b) PROTECTION FOR LEGITIMATE REFUGEES AND
 4 ASYLUM SEEKERS.—Section 208 (8 U.S.C. 1158) is
 5 amended by adding at the end the following:

6 “(e) PROTECTION FOR LEGITIMATE REFUGEES AND
 7 ASYLUM SEEKERS.—The Attorney General, in consulta-
 8 tion with the Secretary of Homeland Security, shall de-
 9 velop binding prosecution guidelines for federal prosecu-
 10 tors to ensure that any prosecution of an alien seeking
 11 entry into the United States by fraud is consistent with
 12 the written terms and limitations of Article 31(1) of the
 13 Convention Relating to the Status of Refugees, done at
 14 Geneva July 28, 1951 (as made applicable by the Protocol
 15 Relating to the Status of Refugees, done at New York
 16 January 31, 1967 (19 UST 6223)).”.

17 **SEC. 209. INADMISSIBILITY AND REMOVAL FOR PASSPORT**
 18 **AND IMMIGRATION FRAUD OFFENSES.**

19 (a) INADMISSIBILITY.—Section 212(a)(2)(A)(i) (8
 20 U.S.C. 1182(a)(2)(A)(i)) is amended—

21 (1) in subclause (I), by striking “, or” at the
 22 end and inserting a semicolon;

23 (2) in subclause (II), by striking the comma at
 24 the end and inserting “; or”; and

1 (3) by inserting after subclause (II) the fol-
 2 lowing:

3 “(III) a violation of (or a con-
 4 spiracy or attempt to violate) any pro-
 5 vision of chapter 75 of title 18,
 6 United States Code,”.

7 (b) REMOVAL.—Section 237(a)(3)(B)(iii) (8 U.S.C.
 8 1227(a)(3)(B)(iii)) is amended to read as follows:

9 “(iii) of a violation of any provision of
 10 chapter 75 of title 18, United States
 11 Code,”.

12 (c) EFFECTIVE DATE.—The amendments made by
 13 subsections (a) and (b) shall apply to proceedings pending
 14 on or after the date of the enactment of this Act, with
 15 respect to conduct occurring on or after that date.

16 **SEC. 210. INCARCERATION OF CRIMINAL ALIENS.**

17 (a) INSTITUTIONAL REMOVAL PROGRAM.—

18 (1) CONTINUATION.—The Secretary shall con-
 19 tinue to operate the Institutional Removal Program
 20 (referred to in this section as the “Program”) or
 21 shall develop and implement another program to—

22 (A) identify removable criminal aliens in
 23 Federal and State correctional facilities;

24 (B) ensure that such aliens are not re-
 25 leased into the community; and

1 (C) remove such aliens from the United
2 States after the completion of their sentences.

3 (2) EXPANSION.—The Secretary may extend
4 the scope of the Program to all States.

5 (b) AUTHORIZATION FOR DETENTION AFTER COM-
6 PLETION OF STATE OR LOCAL PRISON SENTENCE.—Law
7 enforcement officers of a State or political subdivision of
8 a State may—

9 (1) hold an illegal alien for a period not to ex-
10 ceed 14 days after the completion of the alien's
11 State prison sentence to effectuate the transfer of
12 the alien to Federal custody if the alien is removable
13 or not lawfully present in the United States; or

14 (2) issue a detainer that would allow aliens who
15 have served a State prison sentence to be detained
16 by the State prison until authorized employees of the
17 Bureau of Immigration and Customs Enforcement
18 can take the alien into custody.

19 (c) TECHNOLOGY USAGE.—Technology, such as
20 videoconferencing, shall be used to the maximum extent
21 practicable to make the Program available in remote loca-
22 tions. Mobile access to Federal databases of aliens, such
23 as IDENT, and live scan technology shall be used to the
24 maximum extent practicable to make these resources

1 available to State and local law enforcement agencies in
2 remote locations.

3 (d) REPORT TO CONGRESS.—Not later than 6
4 months after the date of the enactment of this Act, and
5 annually thereafter, the Secretary shall submit a report
6 to Congress on the participation of States in the Program
7 and in any other program authorized under subsection (a).

8 (e) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated such sums as may be
10 necessary in each of the fiscal years 2007 through 2011
11 to carry out the Program.

12 **SEC. 211. ENCOURAGING ALIENS TO DEPART VOLUN-**
13 **TARILY.**

14 (a) IN GENERAL.—Section 240B (8 U.S.C. 1229c)
15 is amended—

16 (1) in subsection (a)—

17 (A) by amending paragraph (1) to read as
18 follows:

19 “(1) INSTEAD OF REMOVAL PROCEEDINGS.—If
20 an alien is not described in paragraph (2)(A)(iii) or
21 (4) of section 237(a), the Secretary of Homeland Se-
22 curity may permit the alien to voluntarily depart the
23 United States at the alien’s own expense under this
24 subsection instead of being subject to proceedings
25 under section 240.”;

1 (B) by striking paragraph (3);

2 (C) by redesignating paragraph (2) as
3 paragraph (3);

4 (D) by adding after paragraph (1) the fol-
5 lowing:

6 “(2) BEFORE THE CONCLUSION OF REMOVAL
7 PROCEEDINGS.—If an alien is not described in para-
8 graph (2)(A)(iii) or (4) of section 237(a), the Attor-
9 ney General may permit the alien to voluntarily de-
10 part the United States at the alien’s own expense
11 under this subsection after the initiation of removal
12 proceedings under section 240 and before the con-
13 clusion of such proceedings before an immigration
14 judge.”;

15 (E) in paragraph (3), as redesignated—

16 (i) by amending subparagraph (A) to
17 read as follows:

18 “(A) INSTEAD OF REMOVAL.—Subject to
19 subparagraph (C), permission to voluntarily de-
20 part under paragraph (1) shall not be valid for
21 any period in excess of 120 days. The Secretary
22 may require an alien permitted to voluntarily
23 depart under paragraph (1) to post a voluntary
24 departure bond, to be surrendered upon proof

1 that the alien has departed the United States
2 within the time specified.”;

3 (ii) by redesignating subparagraphs
4 (B), (C), and (D) as paragraphs (C), (D),
5 and (E), respectively;

6 (iii) by adding after subparagraph (A)
7 the following:

8 “(B) BEFORE THE CONCLUSION OF RE-
9 MOVAL PROCEEDINGS.—Permission to volun-
10 tarily depart under paragraph (2) shall not be
11 valid for any period in excess of 60 days, and
12 may be granted only after a finding that the
13 alien has the means to depart the United States
14 and intends to do so. An alien permitted to vol-
15 untarily depart under paragraph (2) shall post
16 a voluntary departure bond, in an amount nec-
17 essary to ensure that the alien will depart, to be
18 surrendered upon proof that the alien has de-
19 parted the United States within the time speci-
20 fied. An immigration judge may waive the re-
21 quirement to post a voluntary departure bond
22 in individual cases upon a finding that the alien
23 has presented compelling evidence that the
24 posting of a bond will pose a serious financial
25 hardship and the alien has presented credible

evidence that such a bond is unnecessary to guarantee timely departure.”;

(iv) in subparagraph (C), as redesignated, by striking “subparagraphs (C) and (D)(ii)” and inserting “subparagraphs (D) and (E)(ii)”;

(v) in subparagraph (D), as redesignated, by striking “subparagraph (B)” each place that term appears and inserting “subparagraph (C)”;

(vi) in subparagraph (E), as redesignated, by striking “subparagraph (B)” each place that term appears and inserting “subparagraph (C)”;

(F) in paragraph (4), by striking “paragraph (1)” and inserting “paragraphs (1) and (2)”;

(2) in subsection (b)(2), by striking “a period exceeding 60 days” and inserting “any period in excess of 45 days”;

(3) by amending subsection (c) to read as follows:

“(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

“(1) VOLUNTARY DEPARTURE AGREEMENT.—

Voluntary departure may only be granted as part of

1 an affirmative agreement by the alien. A voluntary
2 departure agreement under subsection (b) shall in-
3 clude a waiver of the right to any further motion,
4 appeal, application, petition, or petition for review
5 relating to removal or relief or protection from re-
6 moval.

7 “(2) CONCESSIONS BY THE SECRETARY.—In
8 connection with the alien’s agreement to depart vol-
9 untarily under paragraph (1), the Secretary of
10 Homeland Security may agree to a reduction in the
11 period of inadmissibility under subparagraph (A) or
12 (B)(i) of section 212(a)(9).

13 “(3) ADVISALS.—Agreements relating to vol-
14 untary departure granted during removal pro-
15 ceedings under section 240, or at the conclusion of
16 such proceedings, shall be presented on the record
17 before the immigration judge. The immigration
18 judge shall advise the alien of the consequences of
19 a voluntary departure agreement before accepting
20 such agreement.

21 “(4) FAILURE TO COMPLY WITH AGREE-
22 MENT.—

23 “(A) IN GENERAL.—If an alien agrees to
24 voluntary departure under this section and fails
25 to depart the United States within the time al-

1 lowed for voluntary departure or fails to comply
 2 with any other terms of the agreement (includ-
 3 ing failure to timely post any required bond),
 4 the alien is—

5 “(i) ineligible for the benefits of the
 6 agreement;

7 “(ii) subject to the penalties described
 8 in subsection (d); and

9 “(iii) subject to an alternate order of
 10 removal if voluntary departure was granted
 11 under subsection (a)(2) or (b).

12 “(B) EFFECT OF FILING TIMELY AP-
 13 PEAL.—If, after agreeing to voluntary depart-
 14 ure, the alien files a timely appeal of the immi-
 15 gration judge’s decision granting voluntary de-
 16 parture, the alien may pursue the appeal in-
 17 stead of the voluntary departure agreement.
 18 Such appeal operates to void the alien’s vol-
 19 untary departure agreement and the con-
 20 sequences of such agreement, but precludes the
 21 alien from another grant of voluntary departure
 22 while the alien remains in the United States.

23 “(5) VOLUNTARY DEPARTURE PERIOD NOT AF-
 24 FECTED.—Except as expressly agreed to by the Sec-
 25 retary in writing in the exercise of the Secretary’s

1 discretion before the expiration of the period allowed
 2 for voluntary departure, no motion, appeal, applica-
 3 tion, petition, or petition for review shall affect, rein-
 4 state, enjoin, delay, stay, or toll the alien's obligation
 5 to depart from the United States during the period
 6 agreed to by the alien and the Secretary.”;

7 (4) by amending subsection (d) to read as fol-
 8 lows:

9 “(d) PENALTIES FOR FAILURE TO DEPART.—If an
 10 alien is permitted to voluntarily depart under this section
 11 and fails to voluntarily depart from the United States
 12 within the time period specified or otherwise violates the
 13 terms of a voluntary departure agreement, the alien will
 14 be subject to the following penalties:

15 “(1) CIVIL PENALTY.—The alien shall be liable
 16 for a civil penalty of \$3,000. The order allowing vol-
 17 untary departure shall specify the amount of the
 18 penalty, which shall be acknowledged by the alien on
 19 the record. If the Secretary thereafter establishes
 20 that the alien failed to depart voluntarily within the
 21 time allowed, no further procedure will be necessary
 22 to establish the amount of the penalty, and the Sec-
 23 retary may collect the civil penalty at any time
 24 thereafter and by whatever means provided by law.

1 An alien will be ineligible for any benefits under this
2 chapter until this civil penalty is paid.

3 “(2) INELIGIBILITY FOR RELIEF.—The alien
4 shall be ineligible during the time the alien remains
5 in the United States and for a period of 10 years
6 after the alien’s departure for any further relief
7 under this section and sections 240A, 245, 248, and
8 249. The order permitting the alien to depart volun-
9 tarily shall inform the alien of the penalties under
10 this subsection.

11 “(3) REOPENING.—The alien shall be ineligible
12 to reopen the final order of removal that took effect
13 upon the alien’s failure to depart, or upon the alien’s
14 other violations of the conditions for voluntary de-
15 parture, during the period described in paragraph
16 (2). This paragraph does not preclude a motion to
17 reopen to seek withholding of removal under section
18 241(b)(3) or protection against torture, if the
19 motion—

20 “(A) presents material evidence of changed
21 country conditions arising after the date of the
22 order granting voluntary departure in the coun-
23 try to which the alien would be removed; and

1 “(B) makes a sufficient showing to the sat-
 2 isfaction of the Attorney General that the alien
 3 is otherwise eligible for such protection.”; and
 4 (5) by amending subsection (e) to read as fol-
 5 lows:

6 “(e) ELIGIBILITY.—

7 “(1) PRIOR GRANT OF VOLUNTARY DEPAR-
 8 TURE.—An alien shall not be permitted to volun-
 9 tarily depart under this section if the Secretary of
 10 Homeland Security or the Attorney General pre-
 11 viously permitted the alien to depart voluntarily.

12 “(2) RULEMAKING.—The Secretary may pro-
 13 mulgate regulations to limit eligibility or impose ad-
 14 ditional conditions for voluntary departure under
 15 subsection (a)(1) for any class of aliens. The Sec-
 16 retary or Attorney General may by regulation limit
 17 eligibility or impose additional conditions for vol-
 18 untary departure under subsections (a)(2) or (b) of
 19 this section for any class or classes of aliens.”; and

20 (6) in subsection (f), by adding at the end the
 21 following: “Notwithstanding section 242(a)(2)(D) of
 22 this Act, sections 1361, 1651, and 2241 of title 28,
 23 United States Code, any other habeas corpus provi-
 24 sion, and any other provision of law (statutory or
 25 nonstatutory), no court shall have jurisdiction to af-

1 fect, reinstate, enjoin, delay, stay, or toll the period
2 allowed for voluntary departure under this section.”.

3 (b) RULEMAKING.—The Secretary shall promulgate
4 regulations to provide for the imposition and collection of
5 penalties for failure to depart under section 240B(d) of
6 the Immigration and Nationality Act (8 U.S.C. 1229c(d)).

7 (c) EFFECTIVE DATES.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2), the amendments made by this section
10 shall apply with respect to all orders granting vol-
11 untary departure under section 240B of the Immi-
12 gration and Nationality Act (8 U.S.C. 1229c) made
13 on or after the date that is 180 days after the enact-
14 ment of this Act.

15 (2) EXCEPTION.—The amendment made by
16 subsection (a)(6) shall take effect on the date of the
17 enactment of this Act and shall apply with respect
18 to any petition for review which is filed on or after
19 such date.

20 **SEC. 212. DETERRING ALIENS ORDERED REMOVED FROM**
21 **REMAINING IN THE UNITED STATES UNLAW-**
22 **FULLY.**

23 (a) INADMISSIBLE ALIENS.—Section 212(a)(9)(A) (8
24 U.S.C. 1182(a)(9)(A)) is amended—

1 (1) in clause (i), by striking “seeks admission
2 within 5 years of the date of such removal (or within
3 20 years” and inserting “seeks admission not later
4 than 5 years after the date of the alien’s removal (or
5 not later than 20 years after the alien’s removal”;
6 and

7 (2) in clause (ii), by striking “seeks admission
8 within 10 years of the date of such alien’s departure
9 or removal (or within 20 years of” and inserting
10 “seeks admission not later than 10 years after the
11 date of the alien’s departure or removal (or not later
12 than 20 years after”.

13 (b) BAR ON DISCRETIONARY RELIEF.—Section 274D
14 (9 U.S.C. 324d) is amended—

15 (1) in subsection (a), by striking “Commis-
16 sioner” and inserting “Secretary of Homeland Secu-
17 rity”; and

18 (2) by adding at the end the following:

19 “(c) INELIGIBILITY FOR RELIEF.—

20 “(1) IN GENERAL.—Unless a timely motion to
21 reopen is granted under section 240(c)(6), an alien
22 described in subsection (a) shall be ineligible for any
23 discretionary relief from removal (including cancella-
24 tion of removal and adjustment of status) during the
25 time the alien remains in the United States and for

1 a period of 10 years after the alien’s departure from
 2 the United States.

3 “(2) SAVINGS PROVISION.—Nothing in para-
 4 graph (1) shall preclude a motion to reopen to seek
 5 withholding of removal under section 241(b)(3) or
 6 protection against torture, if the motion—

7 “(A) presents material evidence of changed
 8 country conditions arising after the date of the
 9 final order of removal in the country to which
 10 the alien would be removed; and

11 “(B) makes a sufficient showing to the sat-
 12 isfaction of the Attorney General that the alien
 13 is otherwise eligible for such protection.”.

14 (c) EFFECTIVE DATES.—The amendments made by
 15 this section shall take effect on the date of the enactment
 16 of this Act with respect to aliens who are subject to a final
 17 order of removal entered on or after such date.

18 **SEC. 213. PROHIBITION OF THE SALE OF FIREARMS TO, OR**
 19 **THE POSSESSION OF FIREARMS BY CERTAIN**
 20 **ALIENS.**

21 Section 922 of title 18, United States Code, is
 22 amended—

23 (1) in subsection (d)(5)—

24 (A) in subparagraph (A), by striking “or”
 25 at the end;

1 (B) in subparagraph (B), by striking
 2 “(y)(2)” and all that follows and inserting “(y),
 3 is in a nonimmigrant classification; or”; and

4 (C) by adding at the end the following:

5 “(C) has been paroled into the United
 6 States under section 212(d)(5) of the Immigra-
 7 tion and Nationality Act (8 U.S.C.
 8 1182(d)(5));”;
 9 (2) in subsection (g)(5)—

10 (A) in subparagraph (A), by striking “or”
 11 at the end;

12 (B) in subparagraph (B), by striking
 13 “(y)(2)” and all that follows and inserting “(y),
 14 is in a nonimmigrant classification; or”; and

15 (C) by adding at the end the following:

16 “(C) has been paroled into the United
 17 States under section 212(d)(5) of the Immigra-
 18 tion and Nationality Act (8 U.S.C.
 19 1182(d)(5));”; and
 20 (3) in subsection (y)—

21 (A) in the header, by striking “ADMITTED
 22 UNDER NONIMMIGRANT VISAS” and inserting
 23 “IN A NONIMMIGRANT CLASSIFICATION”;

24 (B) in paragraph (1), by amending sub-
 25 paragraph (B) to read as follows:

“(B) the term ‘nonimmigrant classification’ includes all classes of nonimmigrant aliens described in section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), or otherwise described in the immigration laws (as defined in section 101(a)(17) of such Act).”;

(C) in paragraph (2), by striking “has been lawfully admitted to the United States under a nonimmigrant visa” and inserting “is in a nonimmigrant classification”; and

(D) in paragraph (3)(A), by striking “Any individual who has been admitted to the United States under a nonimmigrant visa may receive a waiver from the requirements of subsection (g)(5)” and inserting “Any alien in a nonimmigrant classification may receive a waiver from the requirements of subsection (g)(5)(B)”.

SEC. 214. UNIFORM STATUTE OF LIMITATIONS FOR CERTAIN IMMIGRATION, NATURALIZATION, AND PEONAGE OFFENSES.

(a) IN GENERAL.—Section 3291 of title 18, United States Code, is amended to read as follows:

1 **“§ 3291. Immigration, naturalization, and peonage of-**
 2 **fenses**

3 “No person shall be prosecuted, tried, or punished
 4 for a violation of any section of chapters 69 (relating to
 5 nationality and citizenship offenses), 75 (relating to pass-
 6 port, visa, and immigration offenses), or 77 (relating to
 7 peonage, slavery, and trafficking in persons), for an at-
 8 tempt or conspiracy to violate any such section, for a viola-
 9 tion of any criminal provision under section 243, 266, 274,
 10 275, 276, 277, or 278 of the Immigration and Nationality
 11 Act (8 U.S.C. 1253, 1306, 1324, 1325, 1326, 1327, and
 12 1328), or for an attempt or conspiracy to violate any such
 13 section, unless the indictment is returned or the informa-
 14 tion filed not later than 10 years after the commission
 15 of the offense.”.

16 (b) CLERICAL AMENDMENT.—The table of sections
 17 for chapter 213 of title 18, United States Code, is amend-
 18 ed by striking the item relating to section 3291 and insert-
 19 ing the following:

“3291. Immigration, naturalization, and peonage offenses.”.

20 **SEC. 215. DIPLOMATIC SECURITY SERVICE.**

21 Section 2709(a)(1) of title 22, United States Code,
 22 is amended to read as follows:

23 “(1) conduct investigations concerning—

24 “(A) illegal passport or visa issuance or
 25 use;

“(B) identity theft or document fraud affecting or relating to the programs, functions, and authorities of the Department of State;

“(C) violations of chapter 77 of title 18, United States Code; and

“(D) Federal offenses committed within the special maritime and territorial jurisdiction of the United States (as defined in section 7(9) of title 18, United States Code);”.

SEC. 216. FIELD AGENT ALLOCATION AND BACKGROUND CHECKS.

(a) IN GENERAL.—Section 103 (8 U.S.C. 1103) is amended—

(1) by amending subsection (f) to read as follows:

“(f) MINIMUM NUMBER OF AGENTS IN STATES.—

“(1) IN GENERAL.—The Secretary of Homeland Security shall allocate to each State—

“(A) not fewer than 40 full-time active duty agents of the Bureau of Immigration and Customs Enforcement to—

“(i) investigate immigration violations; and

“(ii) ensure the departure of all removable aliens; and

1 “(B) not fewer than 15 full-time active
2 duty agents of the Bureau of Citizenship and
3 Immigration Services to carry out immigration
4 and naturalization adjudication functions.

5 “(2) WAIVER.—The Secretary may waive the
6 application of paragraph (1) for any State with a
7 population of less than 2,000,000, as most recently
8 reported by the Bureau of the Census”; and

9 (2) by adding at the end the following:

10 “(i) Notwithstanding any other provision of law, ap-
11 propriate background and security checks, as determined
12 by the Secretary of Homeland Security, shall be completed
13 and assessed and any suspected or alleged fraud relating
14 to the granting of any status (including the granting of
15 adjustment of status), relief, protection from removal, or
16 other benefit under this Act shall be investigated and re-
17 solved before the Secretary or the Attorney General may—

18 “(1) grant or order the grant of adjustment of
19 status of an alien to that of an alien lawfully admit-
20 ted for permanent residence;

21 “(2) grant or order the grant of any other sta-
22 tus, relief, protection from removal, or other benefit
23 under the immigration laws; or

1 “(3) issue any documentation evidencing or re-
2 lated to such grant by the Secretary, the Attorney
3 General, or any court.”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 subsection (a)(1) shall take effect on the date that is 90
6 days after the date of the enactment of this Act.

7 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
8 authorized to be appropriated to the Director of the Fed-
9 eral Bureau of Investigations \$3,125,000 for each of fiscal
10 years 2007 through 2011 for improving the speed and ac-
11 curacy of background and security checks conducted by
12 the Federal Bureau of Investigations on behalf of the Bu-
13 reau of Citizenship and Immigrations Services.

14 (d) REPORT ON BACKGROUND AND SECURITY
15 CHECKS.—

16 (1) IN GENERAL.—Not later than 180 days
17 after the date of the enactment of this Act, the Di-
18 rector of the Federal Bureau of Investigations shall
19 submit to the Committee on the Judiciary of the
20 Senate and the Committee on the Judiciary of the
21 House of Representatives a report on the back-
22 ground and security checks conducted by the Fed-
23 eral Bureau of Investigations on behalf of the Bu-
24 reau of Citizenship and Immigrations Services

1 (2) CONTENT.—The report required under
2 paragraph (1) shall include—

3 (A) a description of the background and
4 security check program;

5 (B) a statistical breakdown of the back-
6 ground and security check delays associated
7 with different types of immigration applications;

8 (C) a statistical breakdown of the back-
9 ground and security check delays by applicant
10 country of origin; and

11 (D) the steps the Federal Bureau of Inves-
12 tigation is taking to expedite background and
13 security checks that have been pending for
14 more than 60 days.

15 **SEC. 217. CONSTRUCTION.**

16 (a) IN GENERAL.—Chapter 4 of title III (8 U.S.C.
17 1501 et seq.) is amended by adding at the end the fol-
18 lowing:

19 **“SEC. 362. CONSTRUCTION.**

20 “(a) IN GENERAL.—Nothing in this Act or in any
21 other provision of law shall be construed to require the
22 Secretary of Homeland Security, the Attorney General,
23 the Secretary of State, the Secretary of Labor, or any
24 other authorized head of any Federal agency to grant any
25 application, approve any petition, or grant or continue any

1 status or benefit under the immigration laws by, to, or
 2 on behalf of—

3 “(1) any alien described in subparagraph (A)(i),
 4 (A)(iii), (B), or (F) of section 212(a)(3) or subpara-
 5 graph (A)(i), (A)(iii), or (B) of section 237(a)(4);

6 “(2) any alien with respect to whom a criminal
 7 or other investigation or case is pending that is ma-
 8 terial to the alien’s inadmissibility, deportability, or
 9 eligibility for the status or benefit sought; or

10 “(3) any alien for whom all law enforcement
 11 checks, as deemed appropriate by such authorized
 12 official, have not been conducted and resolved.

13 “(b) DENIAL; WITHHOLDING.—An official described
 14 in subsection (a) may deny or withhold (with respect to
 15 an alien described in subsection (a)(1)) or withhold pend-
 16 ing resolution of the investigation, case, or law enforce-
 17 ment checks (with respect to an alien described in para-
 18 graph (2) or (3) of subsection (a)) any such application,
 19 petition, status, or benefit on such basis.”.

20 (b) CLERICAL AMENDMENT.—The table of contents
 21 is amended by inserting after the item relating to section
 22 361 the following:

“Sec. 362. Construction.”.

23 **SEC. 218. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM.**

24 (a) REIMBURSEMENT FOR COSTS ASSOCIATED WITH
 25 PROCESSING CRIMINAL ILLEGAL ALIENS.—The Secretary

1 shall reimburse States and units of local government for
 2 costs associated with processing undocumented criminal
 3 aliens through the criminal justice system, including—

- 4 (1) indigent defense;
- 5 (2) criminal prosecution;
- 6 (3) autopsies;
- 7 (4) translators and interpreters; and
- 8 (5) courts costs.

9 (b) AUTHORIZATION OF APPROPRIATIONS.—

10 (1) PROCESSING CRIMINAL ILLEGAL ALIENS.—

11 There are authorized to be appropriated
 12 \$400,000,000 for each of the fiscal years 2007
 13 through 2012 to carry out subsection (a).

14 (2) COMPENSATION UPON REQUEST.—Section
 15 241(i)(5) (8 U.S.C. 1231(i)) is amended to read as
 16 follows:

17 “(5) There are authorized to be appropriated to
 18 carry this subsection—

19 “(A) such sums as may be necessary for
 20 fiscal year 2007;

21 “(B) \$750,000,000 for fiscal year 2008;

22 “(C) \$850,000,000 for fiscal year 2009;

23 and

24 “(D) \$950,000,000 for each of the fiscal
 25 years 2010 through 2012.”.

1 (c) TECHNICAL AMENDMENT.—Section 501 of the
 2 Immigration Reform and Control Act of 1986 (8 U.S.C.
 3 1365) is amended by striking “Attorney General” each
 4 place it appears and inserting “Secretary of Homeland Se-
 5 curity”.

6 **SEC. 219. TRANSPORTATION AND PROCESSING OF ILLEGAL**
 7 **ALIENS APPREHENDED BY STATE AND LOCAL**
 8 **LAW ENFORCEMENT OFFICERS.**

9 (a) IN GENERAL.—The Secretary shall provide suffi-
 10 cient transportation and officers to take illegal aliens ap-
 11 prehended by State and local law enforcement officers into
 12 custody for processing at a detention facility operated by
 13 the Department.

14 (b) AUTHORIZATION OF APPROPRIATIONS.—There
 15 are authorized to be appropriated such sums as may be
 16 necessary for each of fiscal years 2007 through 2011 to
 17 carry out this section.

18 **SEC. 220. REDUCING ILLEGAL IMMIGRATION AND ALIEN**
 19 **SMUGGLING ON TRIBAL LANDS.**

20 (a) GRANTS AUTHORIZED.—The Secretary may
 21 award grants to Indian tribes with lands adjacent to an
 22 international border of the United States that have been
 23 adversely affected by illegal immigration.

24 (b) USE OF FUNDS.—Grants awarded under sub-
 25 section (a) may be used for—

- 1 (1) law enforcement activities;
- 2 (2) health care services;
- 3 (3) environmental restoration; and
- 4 (4) the preservation of cultural resources.

5 (c) REPORT.—Not later than 180 days after the date
6 of the enactment of this Act, the Secretary shall submit
7 a report to the Committee on the Judiciary of the Senate
8 and the Committee on the Judiciary of the House of Rep-
9 resentatives that—

10 (1) describes the level of access of Border Pa-
11 trol agents on tribal lands;

12 (2) describes the extent to which enforcement of
13 immigration laws may be improved by enhanced ac-
14 cess to tribal lands;

15 (3) contains a strategy for improving such ac-
16 cess through cooperation with tribal authorities; and

17 (4) identifies grants provided by the Depart-
18 ment for Indian tribes, either directly or through
19 State or local grants, relating to border security ex-
20 penses.

21 (d) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated such sums as may be
23 necessary for each of the fiscal years 2007 through 2011
24 to carry out this section.

1 **SEC. 221. ALTERNATIVES TO DETENTION.**

2 The Secretary shall conduct a study of—

3 (1) the effectiveness of alternatives to detention,
4 including electronic monitoring devices and intensive
5 supervision programs, in ensuring alien appearance
6 at court and compliance with removal orders;

7 (2) the effectiveness of the Intensive Super-
8 vision Appearance Program and the costs and bene-
9 fits of expanding that program to all States; and

10 (3) other alternatives to detention, including—

11 (A) release on an order of recognizance;

12 (B) appearance bonds; and

13 (C) electronic monitoring devices.

14 **SEC. 222. CONFORMING AMENDMENT.**

15 Section 101(a)(43)(P) (8 U.S.C. 1101(a)(43)(P)) is
16 amended—

17 (1) by striking “(i) which either is falsely mak-
18 ing, forging, counterfeiting, mutilating, or altering a
19 passport or instrument in violation of section 1543
20 of title 18, United States Code, or is described in
21 section 1546(a) of such title (relating to document
22 fraud) and (ii)” and inserting “which is described in
23 chapter 75 of title 18, United States Code, and”;
24 and

1 (2) by inserting the following: “that is not de-
 2 scribed in section 1548 of such title (relating to in-
 3 creased penalties), and” after “first offense”.

4 **SEC. 223. REPORTING REQUIREMENTS.**

5 (a) CLARIFYING ADDRESS REPORTING REQUIRE-
 6 MENTS.—Section 265 (8 U.S.C. 1305) is amended—

7 (1) in subsection (a)—

8 (A) by striking “notify the Attorney Gen-
 9 eral in writing” and inserting “submit written
 10 or electronic notification to the Secretary of
 11 Homeland Security, in a manner approved by
 12 the Secretary,”;

13 (B) by striking “the Attorney General may
 14 require by regulation” and inserting “the Sec-
 15 retary may require”; and

16 (C) by adding at the end the following: “If
 17 the alien is involved in proceedings before an
 18 immigration judge or in an administrative ap-
 19 peal of such proceedings, the alien shall submit
 20 to the Attorney General the alien’s current ad-
 21 dress and a telephone number, if any, at which
 22 the alien may be contacted.”;

23 (2) in subsection (b), by striking “Attorney
 24 General” each place such term appears and inserting
 25 “Secretary of Homeland Security”;

1 (3) in subsection (c), by striking “given to such
2 parent” and inserting “given by such parent”; and

3 (4) by adding at the end the following:

4 “(d) ADDRESS TO BE PROVIDED.—

5 “(1) IN GENERAL.—Except as otherwise pro-
6 vided by the Secretary under paragraph (2), an ad-
7 dress provided by an alien under this section shall
8 be the alien’s current residential mailing address,
9 and shall not be a post office box or other non-resi-
10 dential mailing address or the address of an attor-
11 ney, representative, labor organization, or employer.

12 “(2) SPECIFIC REQUIREMENTS.—The Secretary
13 may provide specific requirements with respect to—

14 “(A) designated classes of aliens and spe-
15 cial circumstances, including aliens who are em-
16 ployed at a remote location; and

17 “(B) the reporting of address information
18 by aliens who are incarcerated in a Federal,
19 State, or local correctional facility.

20 “(3) DETENTION.—An alien who is being de-
21 tained by the Secretary under this Act is not re-
22 quired to report the alien’s current address under
23 this section during the time the alien remains in de-
24 tention, but shall be required to notify the Secretary

1 of the alien's address under this section at the time
2 of the alien's release from detention.

3 “(e) USE OF MOST RECENT ADDRESS PROVIDED BY
4 THE ALIEN.—

5 “(1) IN GENERAL.—Notwithstanding any other
6 provision of law, the Secretary may provide for the
7 appropriate coordination and cross referencing of
8 address information provided by an alien under this
9 section with other information relating to the alien's
10 address under other Federal programs, including—

11 “(A) any information pertaining to the
12 alien, which is submitted in any application, pe-
13 tition, or motion filed under this Act with the
14 Secretary of Homeland Security, the Secretary
15 of State, or the Secretary of Labor;

16 “(B) any information available to the At-
17 torney General with respect to an alien in a
18 proceeding before an immigration judge or an
19 administrative appeal or judicial review of such
20 proceeding;

21 “(C) any information collected with respect
22 to nonimmigrant foreign students or exchange
23 program participants under section 641 of the
24 Illegal Immigration Reform and Immigrant Re-
25 sponsibility Act of 1996 (8 U.S.C. 1372); and

1 “(D) any information collected from State
2 or local correctional agencies pursuant to the
3 State Criminal Alien Assistance Program.

4 “(2) RELIANCE.—The Secretary may rely on
5 the most recent address provided by the alien under
6 this section or section 264 to send to the alien any
7 notice, form, document, or other matter pertaining
8 to Federal immigration laws, including service of a
9 notice to appear. The Attorney General and the Sec-
10 retary may rely on the most recent address provided
11 by the alien under section 239(a)(1)(F) to contact
12 the alien about pending removal proceedings.

13 “(3) OBLIGATION.—The alien’s provision of an
14 address for any other purpose under the Federal im-
15 migration laws does not excuse the alien’s obligation
16 to submit timely notice of the alien’s address to the
17 Secretary under this section (or to the Attorney
18 General under section 239(a)(1)(F) with respect to
19 an alien in a proceeding before an immigration judge
20 or an administrative appeal of such proceeding).”.

21 (b) CONFORMING CHANGES WITH RESPECT TO REG-
22 ISTRATION REQUIREMENTS.—Chapter 7 of title II (8
23 U.S.C. 1301 et seq.) is amended—

1 (1) in section 262(c), by striking “Attorney
2 General” and inserting “Secretary of Homeland Se-
3 curity”;

4 (2) in section 263(a), by striking “Attorney
5 General” and inserting “Secretary of Homeland Se-
6 curity”; and

7 (3) in section 264—

8 (A) in subsections (a), (b), (c), and (d), by
9 striking “Attorney General” each place it ap-
10 pears and inserting “Secretary of Homeland
11 Security”; and

12 (B) in subsection (f)—

13 (i) by striking “Attorney General is
14 authorized” and inserting “Secretary of
15 Homeland Security and Attorney General
16 are authorized”; and

17 (ii) by striking “Attorney General or
18 the Service” and inserting “Secretary or
19 the Attorney General”.

20 (c) PENALTIES.—Section 266 (8 U.S.C. 1306) is
21 amended—

22 (1) by amending subsection (b) to read as fol-
23 lows:

24 “(b) FAILURE TO PROVIDE NOTICE OF ALIEN’S
25 CURRENT ADDRESS.—

1 “(1) CRIMINAL PENALTIES.—Any alien or any
2 parent or legal guardian in the United States of any
3 minor alien who fails to notify the Secretary of
4 Homeland Security of the alien’s current address in
5 accordance with section 265 shall be fined under
6 title 18, United States Code, imprisoned for not
7 more than 6 months, or both.

8 “(2) EFFECT ON IMMIGRATION STATUS.—Any
9 alien who violates section 265 (regardless of whether
10 the alien is punished under paragraph (1)) and does
11 not establish to the satisfaction of the Secretary that
12 such failure was reasonably excusable or was not
13 willful shall be taken into custody in connection with
14 removal of the alien. If the alien has not been in-
15 spected or admitted, or if the alien has failed on
16 more than 1 occasion to submit notice of the alien’s
17 current address as required under section 265, the
18 alien may be presumed to be a flight risk. The Sec-
19 retary or the Attorney General, in considering any
20 form of relief from removal which may be granted
21 in the discretion of the Secretary or the Attorney
22 General, may take into consideration the alien’s fail-
23 ure to comply with section 265 as a separate nega-
24 tive factor. If the alien failed to comply with the re-
25 quirements of section 265 after becoming subject to

1 a final order of removal, deportation, or exclusion,
 2 the alien's failure shall be considered as a strongly
 3 negative factor with respect to any discretionary mo-
 4 tion for reopening or reconsideration filed by the
 5 alien.”;

6 (2) in subsection (c), by inserting “or a notice
 7 of current address” before “containing statements”;
 8 and

9 (3) in subsections (c) and (d), by striking “At-
 10 torney General” each place it appears and inserting
 11 “Secretary”.

12 (d) EFFECTIVE DATES.—

13 (1) IN GENERAL.—Except as provided in para-
 14 graph (2), the amendments made by this section
 15 shall apply to proceedings initiated on or after the
 16 date of the enactment of this Act.

17 (2) CONFORMING AND TECHNICAL AMEND-
 18 MENTS.—The amendments made by paragraphs
 19 (1)(A), (1)(B), (2) and (3) of subsection (a) are ef-
 20 fective as if enacted on March 1, 2003.

21 **SEC. 224. STATE AND LOCAL ENFORCEMENT OF FEDERAL**
 22 **IMMIGRATION LAWS.**

23 (a) IN GENERAL.—Section 287(g) (8 U.S.C.
 24 1357(g)) is amended—

(1) in paragraph (2), by adding at the end the following: “If such training is provided by a State or political subdivision of a State to an officer or employee of such State or political subdivision of a State, the cost of such training (including applicable overtime costs) shall be reimbursed by the Secretary of Homeland Security.”; and

(2) in paragraph (4), by adding at the end the following: “The cost of any equipment required to be purchased under such written agreement and necessary to perform the functions under this subsection shall be reimbursed by the Secretary of Homeland Security.”.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this section and the amendments made by this section.

SEC. 225. REMOVAL OF DRUNK DRIVERS.

(a) IN GENERAL.—Section 101(a)(43)(F) (8 U.S.C. 1101(a)(43)(F)) is amended by inserting “, including a third drunk driving conviction, regardless of the States in which the convictions occurred or whether the offenses are classified as misdemeanors or felonies under State law,” after “offense)”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall—

3 (1) take effect on the date of the enactment of
4 this Act; and

5 (2) apply to convictions entered on or after
6 such date.

7 **SEC. 226. MEDICAL SERVICES IN UNDERSERVED AREAS.**

8 Section 220(c) of the Immigration and Nationality
9 Technical Corrections Act of 1994 (8 U.S.C. 1182 note)
10 is amended by striking “and before June 1, 2006.”.

11 **SEC. 227. EXPEDITED REMOVAL.**

12 (a) IN GENERAL.—Section 238 (8 U.S.C. 1228) is
13 amended—

14 (1) by striking the section heading and insert-
15 ing “EXPEDITED REMOVAL OF CRIMINAL ALIENS”;

16 (2) in subsection (a), by striking the subsection
17 heading and inserting: “EXPEDITED REMOVAL
18 FROM CORRECTIONAL FACILITIES.—”;

19 (3) in subsection (b), by striking the subsection
20 heading and inserting: “REMOVAL OF CRIMINAL
21 ALIENS.—”;

22 (4) in subsection (b), by striking paragraphs
23 (1) and (2) and inserting the following:

24 “(1) IN GENERAL.—The Secretary of Homeland
25 Security may, in the case of an alien described in

paragraph (2), determine the deportability of such alien and issue an order of removal pursuant to the procedures set forth in this subsection or section 240.

“(2) ALIENS DESCRIBED.—An alien is described in this paragraph if the alien—

“(A) has not been lawfully admitted to the United States for permanent residence; and

“(B) was convicted of any criminal offense described in subparagraph (A)(iii), (C), or (D) of section 237(a)(2).”;

(5) in the subsection (c) that relates to presumption of deportability, by striking “convicted of an aggravated felony” and inserting “described in subsection (b)(2)”;

(6) by redesignating the subsection (c) that relates to judicial removal as subsection (d); and

(7) in subsection (d)(5) (as so redesignated), by striking “, who is deportable under this Act,”.

(b) APPLICATION TO CERTAIN ALIENS.—

(1) IN GENERAL.—Section 235(b)(1)(A)(iii) (8 U.S.C. 1225(b)(1)(A)(iii)) is amended—

(A) in subclause (I), by striking “Attorney General” and inserting “Secretary of Homeland Security” each place it appears; and

(B) by adding at the end the following new subclause:

“(III) EXCEPTION.—Notwithstanding subclauses (I) and (II), the Secretary of Homeland Security shall apply clauses (i) and (ii) of this subparagraph to any alien (other than an alien described in subparagraph (F)) who is not a national of a country contiguous to the United States, who has not been admitted or paroled into the United States, and who is apprehended within 100 miles of an international land border of the United States and within 14 days of entry.”.

(2) EXCEPTIONS.—Section 235(b)(1)(F) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(F)) is amended—

(A) by striking “and who arrives by aircraft at a port of entry” and inserting “and—”; and

(B) by adding at the end the following:

“(i) who arrives by aircraft at a port of entry; or

1 “(ii) who is present in the United
 2 States and arrived in any manner at or be-
 3 tween a port of entry.”.

4 (c) EFFECTIVE DATE.—The amendments made by
 5 this section shall take effect on the date of the enactment
 6 of this Act and shall apply to all aliens apprehended or
 7 convicted on or after such date.

8 **SEC. 228. PROTECTING IMMIGRANTS FROM CONVICTED**
 9 **SEX OFFENDERS.**

10 (a) IMMIGRANTS.—Section 204(a)(1) (8 U.S.C.
 11 1154(a)(1)), is amended—

12 (1) in subparagraph (A)(i), by striking “Any”
 13 and inserting “Except as provided in clause (vii),
 14 any”;

15 (2) in subparagraph (A), by inserting after
 16 clause (vi) the following:

17 “(vii) Clause (i) shall not apply to a citizen of the
 18 United States who has been convicted of an offense de-
 19 scribed in subparagraph (A), (I), or (K) of section
 20 101(a)(43), unless the Secretary of Homeland Security,
 21 in the Secretary’s sole and unreviewable discretion, deter-
 22 mines that the citizen poses no risk to the alien with re-
 23 spect to whom a petition described in clause (i) is filed.”;
 24 and

25 (3) in subparagraph (B)(i)—

1 (A) by striking “Any alien” and inserting
 2 the following: “(I) Except as provided in sub-
 3 clause (II), any alien”; and

4 (B) by adding at the end the following:

5 “(II) Subclause (I) shall not apply in the case of an
 6 alien admitted for permanent residence who has been con-
 7 victed of an offense described in subparagraph (A), (I),
 8 or (K) of section 101(a)(43), unless the Secretary of
 9 Homeland Security, in the Secretary’s sole and
 10 unreviewable discretion, determines that the alien lawfully
 11 admitted for permanent residence poses no risk to the
 12 alien with respect to whom a petition described in sub-
 13 clause (I) is filed.”.

14 (b) NONIMMIGRANTS.—Section 101(a)(15)(K) (8
 15 U.S.C. 1101(a)(15)(K)), is amended by inserting “(other
 16 than a citizen described in section 204(a)(1)(A)(vii))”
 17 after “citizen of the United States” each place that phrase
 18 appears.

19 **SEC. 229. LAW ENFORCEMENT AUTHORITY OF STATES AND**
 20 **POLITICAL SUBDIVISIONS AND TRANSFER TO**
 21 **FEDERAL CUSTODY.**

22 (a) IN GENERAL.—Title II (8 U.S.C. 1151 et. seq.)
 23 is amended by adding after section 240C the following new
 24 section:

1 **“SEC. 240D. LAW ENFORCEMENT AUTHORITY OF STATES**
2 **AND POLITICAL SUBDIVISIONS AND TRANS-**
3 **FER OF ALIENS TO FEDERAL CUSTODY.**

4 “(a) **AUTHORITY.**—Notwithstanding any other provi-
5 sion of law, law enforcement personnel of a State, or a
6 political subdivision of a State, have the inherent authority
7 of a sovereign entity to investigate, apprehend, arrest, de-
8 tain, or transfer to Federal custody (including the trans-
9 portation across State lines to detention centers) an alien
10 for the purpose of assisting in the enforcement of the
11 criminal provisions of the immigration laws of the United
12 States in the normal course of carrying out the law en-
13 forcement duties of such personnel. This State authority
14 has never been displaced or preempted by a Federal law.

15 “(b) **CONSTRUCTION.**—Nothing in this section shall
16 be construed to require law enforcement personnel of a
17 State or a political subdivision to assist in the enforcement
18 of the immigration laws of the United States.

19 “(c) **TRANSFER.**—If the head of a law enforcement
20 entity of a State (or, if appropriate, a political subdivision
21 of the State) exercising authority with respect to the ap-
22 prehension or arrest of an alien submits a request to the
23 Secretary of Homeland Security that the alien be taken
24 into Federal custody, the Secretary of Homeland
25 Security—

26 “(1) shall—

1 “(A) deem the request to include the in-
2 quiry to verify immigration status described in
3 section 642(c) of the Illegal Immigration Re-
4 form and Immigrant Responsibility Act of 1996
5 (8 U.S.C. 1373(c)), and expeditiously inform
6 the requesting entity whether such individual is
7 an alien lawfully admitted to the United States
8 or is otherwise lawfully present in the United
9 States; and

10 “(B) if the individual is an alien who is not
11 lawfully admitted to the United States or other-
12 wise is not lawfully present in the United
13 States—

14 “(i) take the illegal alien into the cus-
15 tody of the Federal Government not later
16 than 72 hours after—

17 “(I) the conclusion of the State
18 charging process or dismissal process;
19 or

20 “(II) the illegal alien is appre-
21 hended, if no State charging or dis-
22 missal process is required; or

23 “(ii) request that the relevant State or
24 local law enforcement agency temporarily

1 detain or transport the alien to a location
 2 for transfer to Federal custody; and

3 “(2) shall designate at least 1 Federal, State,
 4 or local prison or jail or a private contracted prison
 5 or detention facility within each State as the central
 6 facility for that State to transfer custody of aliens
 7 to the Department of Homeland Security.

8 “(d) REIMBURSEMENT.—

9 “(1) IN GENERAL.—The Secretary of Homeland
 10 Security shall reimburse a State, or a political sub-
 11 division of a State, for expenses, as verified by the
 12 Secretary, incurred by the State or political subdivi-
 13 sion in the detention and transportation of an alien
 14 as described in subparagraphs (A) and (B) of sub-
 15 section (c)(1).

16 “(2) COST COMPUTATION.—Compensation pro-
 17 vided for costs incurred under subparagraphs (A)
 18 and (B) of subsection (c)(1) shall be—

19 “(A) the product of—

20 “(i) the average daily cost of incarcer-
 21 ation of a prisoner in the relevant State, as
 22 determined by the chief executive officer of
 23 a State (or, as appropriate, a political sub-
 24 division of the State); multiplied by

1 “(ii) the number of days that the alien
2 was in the custody of the State or political
3 subdivision; plus

4 “(B) the cost of transporting the alien
5 from the point of apprehension or arrest to the
6 location of detention, and if the location of de-
7 tention and of custody transfer are different, to
8 the custody transfer point; plus

9 “(C) the cost of uncompensated emergency
10 medical care provided to a detained alien during
11 the period between the time of transmittal of
12 the request described in subsection (c) and the
13 time of transfer into Federal custody.

14 “(e) REQUIREMENT FOR APPROPRIATE SECURITY.—

15 The Secretary of Homeland Security shall ensure that—

16 “(1) aliens incarcerated in a Federal facility
17 pursuant to this section are held in facilities which
18 provide an appropriate level of security; and

19 “(2) if practicable, aliens detained solely for
20 civil violations of Federal immigration law are sepa-
21 rated within a facility or facilities.

22 “(f) REQUIREMENT FOR SCHEDULE.—In carrying
23 out this section, the Secretary of Homeland Security shall
24 establish a regular circuit and schedule for the prompt
25 transportation of apprehended aliens from the custody of

1 those States, and political subdivisions of States, which
 2 routinely submit requests described in subsection (c), into
 3 Federal custody.

4 “(g) AUTHORITY FOR CONTRACTS.—

5 “(1) IN GENERAL.—The Secretary of Homeland
 6 Security may enter into contracts or cooperative
 7 agreements with appropriate State and local law en-
 8 forcement and detention agencies to implement this
 9 section.

10 “(2) DETERMINATION BY SECRETARY.—Prior
 11 to entering into a contract or cooperative agreement
 12 with a State or political subdivision of a State under
 13 paragraph (1), the Secretary shall determine wheth-
 14 er the State, or if appropriate, the political subdivi-
 15 sion in which the agencies are located, has in place
 16 any formal or informal policy that violates section
 17 642 of the Illegal Immigration Reform and Immig-
 18 rant Responsibility Act of 1996 (8 U.S.C. 1373).
 19 The Secretary shall not allocate any of the funds
 20 made available under this section to any State or po-
 21 litical subdivision that has in place a policy that vio-
 22 lates such section.”.

23 (b) AUTHORIZATION OF APPROPRIATIONS FOR THE
 24 DETENTION AND TRANSPORTATION TO FEDERAL CUS-
 25 TODY OF ALIENS NOT LAWFULLY PRESENT.—There are

1 authorized to be appropriated \$850,000,000 for fiscal year
 2 2007 and each subsequent fiscal year for the detention
 3 and removal of aliens not lawfully present in the United
 4 States under the Immigration and Nationality Act (8
 5 U.S.C. 1101 et. seq.).

6 **SEC. 230. LAUNDERING OF MONETARY INSTRUMENTS.**

7 Section 1956(c)(7)(D) of title 18, United States
 8 Code, is amended—

9 (1) by inserting “section 1590 (relating to traf-
 10 ficking with respect to peonage, slavery, involuntary
 11 servitude, or forced labor),” after “section 1363 (re-
 12 lating to destruction of property within the special
 13 maritime and territorial jurisdiction),”; and

14 (2) by inserting “section 274(a) of the Immi-
 15 gration and Nationality Act (8 U.S.C.1324(a)) (re-
 16 lating to bringing in and harboring certain aliens),”
 17 after “section 590 of the Tariff Act of 1930 (19
 18 U.S.C. 1590) (relating to aviation smuggling),”.

19 **SEC. 231. LISTING OF IMMIGRATION VIOLATORS IN THE NA-**
 20 **TIONAL CRIME INFORMATION CENTER DATA-**
 21 **BASE.**

22 (a) PROVISION OF INFORMATION TO THE NATIONAL
 23 CRIME INFORMATION CENTER.—

24 (1) IN GENERAL.—Except as provided in para-
 25 graph (3), not later than 180 days after the date of

1 the enactment of this Act, the Secretary shall pro-
2 vide to the head of the National Crime Information
3 Center of the Department of Justice the information
4 that the Secretary has or maintains related to any
5 alien—

6 (A) against whom a final order of removal
7 has been issued;

8 (B) who enters into a voluntary departure
9 agreement, or is granted voluntary departure by
10 an immigration judge, whose period for depar-
11 ture has expired under subsection (a)(3) of sec-
12 tion 240B of the Immigration and Nationality
13 Act (8 U.S.C. 1229c) (as amended by section
14 211(a)(1)(C)), subsection (b)(2) of such section
15 240B, or who has violated a condition of a vol-
16 untary departure agreement under such section
17 240B;

18 (C) whom a Federal immigration officer
19 has confirmed to be unlawfully present in the
20 United States; and

21 (D) whose visa has been revoked.

22 (2) REMOVAL OF INFORMATION.—The head of
23 the National Crime Information Center should
24 promptly remove any information provided by the
25 Secretary under paragraph (1) related to an alien

1 who is granted lawful authority to enter or remain
2 legally in the United States.

3 (3) PROCEDURE FOR REMOVAL OF ERRONEOUS
4 INFORMATION.—The Secretary, in consultation with
5 the head of the National Crime Information Center
6 of the Department of Justice, shall develop and im-
7 plement a procedure by which an alien may petition
8 the Secretary or head of the National Crime Infor-
9 mation Center, as appropriate, to remove any erro-
10 neous information provided by the Secretary under
11 paragraph (1) related to such alien. Under such pro-
12 cedures, failure by the alien to receive notice of a
13 violation of the immigration laws shall not constitute
14 cause for removing information provided by the Sec-
15 retary under paragraph (1) related to such alien, un-
16 less such information is erroneous. Notwithstanding
17 the 180-day time period set forth in paragraph (1),
18 the Secretary shall not provide the information re-
19 quired under paragraph (1) until the procedures re-
20 quired by this paragraph are developed and imple-
21 mented.

22 (b) INCLUSION OF INFORMATION IN THE NATIONAL
23 CRIME INFORMATION CENTER DATABASE.—Section
24 534(a) of title 28, United States Code, is amended—

1 (1) in paragraph (3), by striking “and” at the
2 end;

3 (2) by redesignating paragraph (4) as para-
4 graph (5); and

5 (3) by inserting after paragraph (3) the fol-
6 lowing new paragraph:

7 “(4) acquire, collect, classify, and preserve
8 records of violations of the immigration laws of the
9 United States; and”.

10 **SEC. 232. COOPERATIVE ENFORCEMENT PROGRAMS.**

11 Not later than 2 years after the date of the enact-
12 ment of this Act, the Secretary shall negotiate and exe-
13 cute, where practicable, a cooperative enforcement agree-
14 ment described in section 287(g) of the Immigration and
15 Nationality Act (8 U.S.C. 1357(g)) with at least 1 law
16 enforcement agency in each State, to train law enforce-
17 ment officers in the detection and apprehension of individ-
18 uals engaged in transporting, harboring, sheltering, or en-
19 couraging aliens in violation of section 274 of such Act
20 (8 U.S.C. 1324).

1 **SEC. 233. INCREASE OF FEDERAL DETENTION SPACE AND**
2 **THE UTILIZATION OF FACILITIES IDENTIFIED**
3 **FOR CLOSURES AS A RESULT OF THE DE-**
4 **FENSE BASE CLOSURE REALIGNMENT ACT**
5 **OF 1990.**

6 (a) CONSTRUCTION OR ACQUISITION OF DETENTION
7 FACILITIES.—

8 (1) IN GENERAL.—The Secretary shall con-
9 struct or acquire, in addition to existing facilities for
10 the detention of aliens, at least 20 detention facili-
11 ties in the United States that have the capacity to
12 detain a combined total of not less than 20,000 indi-
13 viduals at any time for aliens detained pending re-
14 moval or a decision on removal of such aliens from
15 the United States subject to available appropria-
16 tions.

17 (b) CONSTRUCTION OF OR ACQUISITION OF DETEN-
18 TION FACILITIES.—

19 (1) REQUIREMENT TO CONSTRUCT OR AC-
20 QUIRE.—The Secretary shall construct or acquire
21 additional detention facilities in the United States to
22 accommodate the detention beds required by section
23 5204(a) of the Intelligence Reform and Terrorism
24 Protection Act of 2004, as amended by subsection
25 (a), subject to available appropriations.

1 (2) USE OF ALTERNATE DETENTION FACILI-
2 TIES.—Subject to the availability of appropriations,
3 the Secretary shall fully utilize all possible options to
4 cost effectively increase available detention capac-
5 ities, and shall utilize detention facilities that are
6 owned and operated by the Federal Government if
7 the use of such facilities is cost effective.

8 (3) USE OF INSTALLATIONS UNDER BASE CLO-
9 SURE LAWS.—In acquiring additional detention fa-
10 cilities under this subsection, the Secretary shall
11 consider the transfer of appropriate portions of mili-
12 tary installations approved for closure or realign-
13 ment under the Defense Base Closure and Realignment
14 Act of 1990 (part A of title XXIX of Public
15 Law 101–510; 10 U.S.C. 2687 note) for use in ac-
16 cordance with subsection (a).

17 (4) DETERMINATION OF LOCATION.—The loca-
18 tion of any detention facility constructed or acquired
19 in accordance with this subsection shall be deter-
20 mined, with the concurrence of the Secretary, by the
21 senior officer responsible for Detention and Removal
22 Operations in the Department. The detention facili-
23 ties shall be located so as to enable the officers and
24 employees of the Department to increase to the max-

1 imum extent practicable the annual rate and level of
2 removals of illegal aliens from the United States.

3 (c) ANNUAL REPORT TO CONGRESS.—Not later than
4 1 year after the date of the enactment of this Act, and
5 annually thereafter, in consultation with the heads of
6 other appropriate Federal agencies, the Secretary shall
7 submit to Congress an assessment of the additional deten-
8 tion facilities and bed space needed to detain unlawful
9 aliens apprehended at the United States ports of entry or
10 along the international land borders of the United States.

11 (d) TECHNICAL AND CONFORMING AMENDMENT.—
12 Section 241(g)(1) (8 U.S.C. 1231(g)(1)) is amended by
13 striking “may expend” and inserting “shall expend”.

14 (e) AUTHORIZATION OF APPROPRIATIONS.—There
15 are authorized to be appropriated such sums as may be
16 necessary to carry out this section.

17 **SEC. 234. DETERMINATION OF IMMIGRATION STATUS OF**
18 **INDIVIDUALS CHARGED WITH FEDERAL OF-**
19 **FENSES.**

20 (a) RESPONSIBILITY OF UNITED STATES ATTOR-
21 NEYS.—Beginning not later than 2 years after the date
22 of the enactment of this Act, the office of the United
23 States Attorney that is prosecuting a criminal case in a
24 Federal court—

1 (1) shall determine, not later than 30 days
2 after filing the initial pleadings in the case, whether
3 each defendant in the case is lawfully present in the
4 United States (subject to subsequent legal pro-
5 ceedings to determine otherwise);

6 (2)(A) if the defendant is determined to be an
7 alien lawfully present in the United States, shall no-
8 tify the court in writing of the determination and
9 the current status of the alien under the Immigra-
10 tion and Nationality Act (8 U.S.C. 1101 et seq.);
11 and

12 (B) if the defendant is determined not to be
13 lawfully present in the United States, shall notify
14 the court in writing of the determination, the de-
15 fendant's alien status, and, to the extent possible,
16 the country of origin or legal residence of the de-
17 fendant; and

18 (3) ensure that the information described in
19 paragraph (2) is included in the case file and the
20 criminal records system of the office of the United
21 States attorney.

22 (b) GUIDELINES.—A determination made under sub-
23 section (a)(1) shall be made in accordance with guidelines
24 of the Executive Office for Immigration Review of the De-
25 partment of Justice.

1 (c) RESPONSIBILITIES OF FEDERAL COURTS.—

2 (1) MODIFICATIONS OF RECORDS AND CASE
3 MANAGERMENTS SYSTEMS.—Not later than 2 years
4 after the date of the enactment of this Act, all Fed-
5 eral courts that hear criminal cases, or appeals of
6 criminal cases, shall modify their criminal records
7 and case management systems, in accordance with
8 guidelines which the Director of the Administrative
9 Office of the United States Courts shall establish, so
10 as to enable accurate reporting of information de-
11 scribed in subsection (a)(2).

12 (2) DATA ENTRIES.—Beginning not later than
13 2 years after the date of the enactment of this Act,
14 each Federal court described in paragraph (1) shall
15 enter into its electronic records the information con-
16 tained in each notification to the court under sub-
17 section (a)(2).

18 (d) CONSTRUCTION.—Nothing in this section may be
19 construed to provide a basis for admitting evidence to a
20 jury or releasing information to the public regarding an
21 alien’s immigration status.

22 (e) ANNUAL REPORT TO CONGRESS.—The Director
23 of the Administrative Office of the United States Courts
24 shall include, in the annual report filed with Congress
25 under section 604 of title 28, United States Code—

1 (1) statistical information on criminal trials of
2 aliens in the courts and criminal convictions of
3 aliens in the lower courts and upheld on appeal, in-
4 cluding the type of crime in each case and including
5 information on the legal status of the aliens; and

6 (2) recommendations on whether additional
7 court resources are needed to accommodate the vol-
8 ume of criminal cases brought against aliens in the
9 Federal courts.

10 (f) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated for each of fiscal years
12 2007 through 2011, such sums as may be necessary to
13 carry out this Act. Funds appropriated pursuant to this
14 subsection in any fiscal year shall remain available until
15 expended.

16 **SEC. 235. EXPANSION OF THE JUSTICE PRISONER AND**
17 **ALIEN TRANSFER SYSTEM.**

18 Not later than 60 days after the date of enactment
19 of this Act, the Attorney General shall issue a directive
20 to expand the Justice Prisoner and Alien Transfer System
21 (JPATs) so that such System provides additional services
22 with respect to aliens who are illegally present in the
23 United States. Such expansion should include—

24 (1) increasing the daily operations of such Sys-
25 tem with buses and air hubs in 3 geographic regions;

1 (2) allocating a set number of seats for such
2 aliens for each metropolitan area;

3 (3) allowing metropolitan areas to trade or give
4 some of seats allocated to them under the System
5 for such aliens to other areas in their region based
6 on the transportation needs of each area; and

7 (4) requiring an annual report that analyzes of
8 the number of seats that each metropolitan area is
9 allocated under this System for such aliens and
10 modifies such allocation if necessary.

11 **TITLE III—UNLAWFUL** 12 **EMPLOYMENT OF ALIENS**

13 **SEC. 301. UNLAWFUL EMPLOYMENT OF ALIENS.**

14 (a) IN GENERAL.—Section 274A (8 U.S.C. 1324a)
15 is amended to read as follows:

16 **“SEC. 274A. UNLAWFUL EMPLOYMENT OF ALIENS.**

17 “(a) MAKING EMPLOYMENT OF UNAUTHORIZED
18 ALIENS UNLAWFUL.—

19 “(1) IN GENERAL.—It is unlawful for an
20 employer—

21 “(A) to hire, or to recruit or refer for a
22 fee, an alien for employment in the United
23 States knowing, or with reckless disregard, that
24 the alien is an unauthorized alien with respect
25 to such employment; or

1 “(B) to hire, or to recruit or refer for a
2 fee, for employment in the United States an in-
3 dividual unless such employer meets the re-
4 quirements of subsections (c) and (d).

5 “(2) CONTINUING EMPLOYMENT.—It is unlaw-
6 ful for an employer, after lawfully hiring an alien for
7 employment, to continue to employ the alien in the
8 United States knowing that the alien is (or has be-
9 come) an unauthorized alien with respect to such
10 employment.

11 “(3) USE OF LABOR THROUGH CONTRACT.—

12 “(A) IN GENERAL.—An employer who uses
13 a contract, subcontract, or exchange to obtain
14 the labor of an alien in the United States know-
15 ing, or with reckless disregard—

16 “(i) that the alien is an unauthorized
17 alien with respect to performing such
18 labor, shall be considered to have hired the
19 alien in violation of paragraph (1)(A); or

20 “(ii) that the person hiring such alien
21 failed to comply with the requirements of
22 subsection (c) and (d) shall be considered
23 to have hired the alien in violation of para-
24 graph (1)(B).

1 “(B) INFORMATION SHARING.—The person
2 hiring the alien shall provide to the employer,
3 who obtains the labor of the alien, the employer
4 identification number assigned to such person
5 by the Commissioner of Internal Revenue. Fail-
6 ure to provide such number shall be considered
7 a recordkeeping violation under subsection
8 (e)(4)(B).

9 “(C) REPORTING REQUIREMENT.—The
10 employer shall submit to the Electronic
11 Verification System established under sub-
12 section (d), in a manner prescribed by the Sec-
13 retary, the employer identification number pro-
14 vided by the person hiring the alien. Failure to
15 submit such number shall be considered a rec-
16 ordkeeping violation under subsection (e)(4)(B).

17 “(D) ENFORCEMENT.—The Secretary shall
18 implement procedures to utilize the information
19 obtained under subparagraphs (B) and (C) to
20 identify employers who use a contract, sub-
21 contract, or exchange to obtain the labor of an
22 alien from another person, where such person
23 hiring such alien fails to comply with the re-
24 quirements of subsections (c) and (d).

25 “(4) DEFENSE.—

1 “(A) IN GENERAL.—Subject to subpara-
 2 graph (B), an employer that establishes that
 3 the employer has complied in good faith with
 4 the requirements of subsections (c) and (d) has
 5 established an affirmative defense that the em-
 6 ployer has not violated paragraph (1)(A) with
 7 respect to such hiring, recruiting, or referral.

8 “(B) EXCEPTION.—Until the date that an
 9 employer is required to participate in the Elec-
 10 tronic Employment Verification System under
 11 subsection (d) or is participating in such Sys-
 12 tem on a voluntary basis, the employer may es-
 13 tablish an affirmative defense under subpara-
 14 graph (A) by complying with the requirements
 15 of subsection (c).

16 “(b) ORDER OF INTERNAL REVIEW AND CERTIFI-
 17 CATION OF COMPLIANCE.—

18 “(1) AUTHORITY TO REQUIRE CERTIFI-
 19 CATION.—If the Secretary has reasonable cause to
 20 believe that an employer has failed to comply with
 21 this section, the Secretary is authorized, at any time,
 22 to require that the employer certify that the em-
 23 ployer is in compliance with this section, or has in-
 24 stituted a program to come into compliance.

1 “(2) CONTENT OF CERTIFICATION.—Not later
2 than 60 days after the date an employer receives a
3 request for a certification under paragraph (1) the
4 employer shall certify under penalty of perjury
5 that—

6 “(A) the employer is in compliance with
7 the requirements of subsections (c) and (d); or

8 “(B) that the employer has instituted a
9 program to come into compliance with such re-
10 quirements.

11 “(3) EXTENSION.—The 60-day period referred
12 to in paragraph (2), may be extended by the Sec-
13 retary for good cause, at the request of the em-
14 ployer.

15 “(4) PUBLICATION.—The Secretary is author-
16 ized to publish in the Federal Register standards or
17 methods for certification under paragraph (1) and
18 for specific recordkeeping practices with respect to
19 such certification, and procedures for the audit of
20 any records related to such certification.

21 “(c) DOCUMENT VERIFICATION REQUIREMENTS.—
22 An employer hiring, or recruiting or referring for a fee,
23 an individual for employment in the United States shall
24 verify that the individual is eligible for such employment
25 by meeting the following requirements:

1 “(1) ATTESTATION BY EMPLOYER.—

2 “(A) REQUIREMENTS.—

3 “(i) IN GENERAL.—The employer
4 shall attest, under penalty of perjury and
5 on a form prescribed by the Secretary, that
6 the employer has verified the identity and
7 eligibility for employment of the individual
8 by examining a document described in sub-
9 paragraph (B).

10 “(ii) SIGNATURE REQUIREMENTS.—

11 An attestation required by clause (i) may
12 be manifested by a handwritten or elec-
13 tronic signature.

14 “(iii) STANDARDS FOR EXAMINA-

15 TION.—The employer has complied with
16 the requirement of this paragraph with re-
17 spect to examination of documentation if a
18 reasonable person would conclude that the
19 document examined is genuine and relates
20 to the individual whose identity and eligi-
21 bility for employment in the United States
22 is being verified. If the individual provides
23 a document sufficient to meet the require-
24 ments of this paragraph, nothing in this
25 paragraph shall be construed as requiring

1 an employer to solicit any other document
2 or as requiring the individual to produce
3 any other document.

4 “(B) IDENTIFICATION DOCUMENTS.—A
5 document described in this subparagraph is—

6 “(i) in the case of an individual who
7 is a national of the United States—

8 “(I) a United States passport; or

9 “(II) a driver’s license or identity
10 card issued by a State, the Common-
11 wealth of the Northern Mariana Is-
12 lands, or an outlying possession of the
13 United States that satisfies the re-
14 quirements of division B of Public
15 Law 109–13 (119 Stat. 302);

16 “(ii) in the case of an alien lawfully
17 admitted for permanent residence in the
18 United States, a permanent resident card,
19 as specified by the Secretary;

20 “(iii) in the case of an alien who is
21 authorized under this Act or by the Sec-
22 retary to be employed in the United States,
23 an employment authorization card, as
24 specified by the Secretary that—

1 “(I) contains a photograph of the
2 individual or other identifying infor-
3 mation, including name, date of birth,
4 gender, and address; and

5 “(II) contains security features
6 to make the document resistant to
7 tampering, counterfeiting, and fraudu-
8 lent use;

9 “(iv) in the case of an individual who
10 is unable to obtain a document described
11 in clause (i), (ii), or (iii), a document des-
12 ignated by the Secretary that—

13 “(I) contains a photograph of the
14 individual or other identifying infor-
15 mation, including name, date of birth,
16 gender, and address; and

17 “(II) contains security features
18 to make the document resistant to
19 tampering, counterfeiting, and fraudu-
20 lent use; or

21 “(v) until the date that an employer is
22 required to participate in the Electronic
23 Employment Verification System under
24 subsection (d) or is participating in such
25 System on a voluntary basis, a document,

1 or a combination of documents, of such
 2 type that, as of the date of the enactment
 3 of the Comprehensive Immigration Reform
 4 Act of 2006, the Secretary had established
 5 by regulation were sufficient for purposes
 6 of this section.

7 “(C) AUTHORITY TO PROHIBIT USE OF
 8 CERTAIN DOCUMENTS.—

9 “(i) AUTHORITY.—If the Secretary
 10 finds that a document or class of docu-
 11 ments described in subparagraph (B) is
 12 not reliable to establish identity or is being
 13 used fraudulently to an unacceptable de-
 14 gree, the Secretary shall prohibit, or im-
 15 pose conditions, on the use of such docu-
 16 ment or class of documents for purposes of
 17 this subsection.

18 “(ii) REQUIREMENT FOR PUBLICA-
 19 TION.—The Secretary shall publish notice
 20 of any findings under clause (i) in the Fed-
 21 eral Register.

22 “(2) ATTESTATION OF EMPLOYEE.—

23 “(A) REQUIREMENTS.—

24 “(i) IN GENERAL.—The individual
 25 shall attest, under penalty of perjury on

1 the form described in paragraph (1)(A)(i),
2 that the individual is a national of the
3 United States, an alien lawfully admitted
4 for permanent residence, or an alien who is
5 authorized under this Act or by the Sec-
6 retary to be hired, or to be recruited or re-
7 ferred for a fee, in the United States.

8 “(ii) SIGNATURE FOR EXAMINA-
9 TION.—An attestation required by clause
10 (i) may be manifested by a handwritten or
11 electronic signature.

12 “(B) PENALTIES.—An individual who
13 falsely represents that the individual is eligible
14 for employment in the United States in an at-
15 testation required by subparagraph (A) shall,
16 for each such violation, be subject to a fine of
17 not more than \$5,000, a term of imprisonment
18 not to exceed 3 years, or both.

19 “(3) RETENTION OF ATTESTATION.—The em-
20 ployer shall retain a paper, microfiche, microfilm, or
21 electronic version of the attestations made under
22 paragraph (1) and (2) and make such attestations
23 available for inspection by an officer of the Depart-
24 ment of Homeland Security, any other person des-
25 ignated by the Secretary, the Special Counsel for

1 Immigration-Related Unfair Employment Practices
 2 of the Department of Justice, or the Secretary of
 3 Labor during a period beginning on the date of the
 4 hiring, or recruiting or referring for a fee, of the in-
 5 dividual and ending—

6 “(A) in the case of the recruiting or refer-
 7 ral for a fee (without hiring) of an individual,
 8 5 years after the date of the recruiting or refer-
 9 ral; or

10 “(B) in the case of the hiring of an indi-
 11 vidual the later of—

12 “(i) 5 years after the date of such hir-
 13 ing;

14 “(ii) 1 year after the date the individ-
 15 ual’s employment is terminated; or

16 “(iii) in the case of an employer or
 17 class of employers, a period that is less
 18 than the applicable period described in
 19 clause (i) or (ii) if the Secretary reduces
 20 such period for such employer or class of
 21 employers.

22 “(4) DOCUMENT RETENTION AND RECORD-
 23 KEEPING REQUIREMENTS.—

24 “(A) RETENTION OF DOCUMENTS.—Not-
 25 withstanding any other provision of law, an em-

1 employer shall retain, for the applicable period de-
2 scribed in paragraph (3), the following docu-
3 ments:

4 “(i) IN GENERAL.—The employer
5 shall copy all documents presented by an
6 individual described in paragraph (1)(B)
7 and shall retain paper, microfiche, micro-
8 film, or electronic copies of such docu-
9 ments. Such copies shall be designated as
10 copied documents.

11 “(ii) OTHER DOCUMENTS.—The em-
12 ployer shall maintain records of any action
13 taken and copies of any correspondence
14 written or received with respect to the
15 verification of an individual’s identity or
16 eligibility for employment in the United
17 States.

18 “(B) USE OF RETAINED DOCUMENTS.—An
19 employer shall use copies retained under clause
20 (i) or (ii) of subparagraph (A) only for the pur-
21 poses of complying with the requirements of
22 this subsection, except as otherwise permitted
23 under law.

24 “(5) PENALTIES.—An employer that fails to
25 comply with the recordkeeping requirements of this

1 subsection shall be subject to the penalties described
 2 in subsection (e)(4)(B).

3 “(6) NO AUTHORIZATION OF NATIONAL IDENTI-
 4 FICATION CARDS.—Nothing in this section may be
 5 construed to authorize, directly or indirectly, the
 6 issuance, use, or establishment of a national identi-
 7 fication card.

8 “(d) ELECTRONIC EMPLOYMENT VERIFICATION SYS-
 9 TEM.—

10 “(1) REQUIREMENT FOR SYSTEM.—The Sec-
 11 retary, in cooperation with the Commissioner of So-
 12 cial Security, shall implement an Electronic Employ-
 13 ment Verification System (referred to in this sub-
 14 section as the ‘System’) to determine whether—

15 “(A) the identifying information submitted
 16 by an individual is consistent with the informa-
 17 tion maintained by the Secretary or the Com-
 18 missioner of Social Security; and

19 “(B) such individual is eligible for employ-
 20 ment in the United States.

21 “(2) REQUIREMENT FOR PARTICIPATION.—The
 22 Secretary shall require all employers in the United
 23 States to participate in the System, with respect to
 24 all employees hired by the employer on or after the
 25 date that is 18 months after the date that not less

1 than \$400,000,000 have been appropriated and
2 made available to implement this subsection.

3 “(3) OTHER PARTICIPATION IN SYSTEM.—Not-
4 withstanding paragraph (2), the Secretary has the
5 authority—

6 “(A) to permit any employer that is not re-
7 quired to participate in the System under para-
8 graph (2) to participate in the System on a vol-
9 untary basis; and

10 “(B) to require any employer or class of
11 employers to participate on a priority basis in
12 the System with respect to individuals employed
13 as of, or hired after, the date of enactment of
14 the Comprehensive Immigration Reform Act of
15 2006—

16 “(i) if the Secretary designates such
17 employer or class of employers as a critical
18 employer based on an assessment of home-
19 land security or national security needs; or

20 “(ii) if the Secretary has reasonable
21 cause to believe that the employer has en-
22 gaged in material violations of paragraph
23 (1), (2), or (3) of subsection (a).

24 “(4) REQUIREMENT TO NOTIFY.—The Sec-
25 retary shall notify the employer or class of employers

1 in writing regarding the requirement for participa-
 2 tion in the System under paragraph (3)(B) not less
 3 than 60 days prior to the effective date of such re-
 4 quirement. Such notice shall include the training
 5 materials described in paragraph (8)(E)(v).

6 “(5) REGISTRATION OF EMPLOYERS.—An em-
 7 ployer shall register the employer’s participation in
 8 the System in the manner prescribed by the Sec-
 9 retary prior to the date the employer is required or
 10 permitted to submit information with respect to an
 11 employee under this subsection.

12 “(6) ADDITIONAL GUIDANCE.—A registered em-
 13 ployer shall be permitted to utilize any technology
 14 that is consistent with this section and with any reg-
 15 ulation or guidance from the Secretary to streamline
 16 the procedures to facilitate compliance with—

17 “(A) the attestation requirement in sub-
 18 section (c); and

19 “(B) the employment eligibility verification
 20 requirements in this subsection.

21 “(7) CONSEQUENCE OF FAILURE TO PARTICI-
 22 PATE.—If an employer is required to participate in
 23 the System and fails to comply with the require-
 24 ments of the System with respect to an employee—

1 “(A) such failure shall be treated as a vio-
 2 lation of subsection (a)(1)(B); and

3 “(B) a rebuttable presumption is created
 4 that the employer has violated subsection
 5 (a)(1)(A), however, such presumption may not
 6 apply to a prosecution under subsection (f)(1).

7 “(8) DESIGN AND OPERATION OF SYSTEM.—

8 “(A) IN GENERAL.—The Secretary shall,
 9 through the System—

10 “(i) respond to each inquiry made by
 11 a registered employer through the Internet
 12 or other electronic media, or over a toll-
 13 free telephone line regarding an individ-
 14 ual’s identity and eligibility for employ-
 15 ment in the United States; and

16 “(ii) maintain a record of each such
 17 inquiry and the information provided in re-
 18 sponse to such inquiry.

19 “(B) INITIAL INQUIRY.—

20 “(i) INFORMATION REQUIRED.—A
 21 registered employer shall, with respect to
 22 the hiring, or recruiting or referring for a
 23 fee, any individual for employment in the
 24 United States, obtain from the individual

1 and record on the form described in sub-
2 section (c)(1)(A)(i)—

3 “(I) the individual’s name and
4 date of birth and, if the individual
5 was born in the United States, the
6 State in which such individual was
7 born;

8 “(II) the individual’s social secu-
9 rity account number;

10 “(III) the employment identifica-
11 tion number of the individual’s em-
12 ployer during any one of the 5 most
13 recently completed calendar years;
14 and

15 “(IV) in the case of an individual
16 who does not attest that the indi-
17 vidual is a national of the United
18 States under subsection (c)(1)(A)(i),
19 such alien identification or authoriza-
20 tion number that the Secretary shall
21 require.

22 “(ii) SUBMISSION TO SYSTEM.—A reg-
23 istered employer shall submit an inquiry
24 through the System to seek confirmation of

the individual’s identity and eligibility for employment in the United States—

“(I) not later than 3 days after the date of the hiring, or recruiting or referring for a fee, of the individual (as the case may be); or

“(II) in the case of an employee hired by a critical employer designated by the Secretary under paragraph (3)(B) at such time as the Secretary shall specify.

“(iii) EIN REQUIREMENTS.—

“(I) REQUIREMENT TO PROVIDE.—An employer shall provide the employer identification number issued to such employer to the individual, upon request, for purposes of providing the information under clause (i)(III).

“(II) REQUIREMENT TO AFFIRMATIVELY STATE A LACK OF RECENT EMPLOYMENT.—An individual providing information under clause (i)(III) who was not employed in the United States during any of the 5

1 most recently completed calendar
2 years shall affirmatively state on the
3 form described in subsection
4 (c)(1)(A)(i) that no employer identi-
5 fication number is provided because
6 the individual was not employed in the
7 United States during such period.

8 “(C) INITIAL RESPONSE.—Not later than
9 10 days after an employer submits an inquiry
10 to the System regarding an individual, the Sec-
11 retary shall provide, through the System, to the
12 employer—

13 “(i) if the System is able to confirm
14 the individual’s identity and eligibility for
15 employment in the United States, a con-
16 firmation notice, including the appropriate
17 codes on such confirmation notice; or

18 “(ii) if the System is unable to con-
19 firm the individual’s identity or eligibility
20 for employment in the United States, and
21 after a secondary manual verification has
22 been conducted, a tentative nonconfirma-
23 tion notice, including the appropriate codes
24 on such tentative nonconfirmation notice.

1 “(D) CONFIRMATION OR NONCONFIRMA-
2 TION.—

3 “(i) CONFIRMATION UPON INITIAL IN-
4 QUIRY.—If an employer receives a con-
5 firmation notice under paragraph (C)(i) for
6 an individual, the employer shall record, on
7 the form described in subsection
8 (c)(1)(A)(i), the appropriate code provided
9 in such notice.

10 “(ii) TENTATIVE NONCONFIRMA-
11 TION.—If an employer receives a tentative
12 nonconfirmation notice under paragraph
13 (C)(ii) for an individual, the employer shall
14 inform such individual of the issuance of
15 such notice in writing, on a form pre-
16 scribed by the Secretary not later than 3
17 days after receiving such notice. Such indi-
18 vidual shall acknowledge receipt of such
19 notice in writing on the form described in
20 subsection (c)(1)(A)(i).

21 “(iii) NO CONTEST.—If the individual
22 does not contest the tentative nonconfirma-
23 tion notice within 10 days of receiving no-
24 tice from the individual’s employer, the no-
25 tice shall become final and the employer

1 shall record on the form described in sub-
 2 section (1)(A)(i), the appropriate code pro-
 3 vided through the System to indicate the
 4 individual did not contest the tentative
 5 nonconfirmation. An individual's failure to
 6 contest a tentative nonconfirmation shall
 7 not be considered an admission of guilt
 8 with respect to any violation of this Act or
 9 any other provision of law.

10 “(iv) CONTEST.—If the individual
 11 contests the tentative nonconfirmation no-
 12 tice, the individual shall submit appro-
 13 priate information to contest such notice
 14 under the procedures established in sub-
 15 paragraph (E)(iii) not later than 10 days
 16 after receiving the notice from the individ-
 17 ual's employer.

18 “(v) EFFECTIVE PERIOD OF TEN-
 19 TATIVE NONCONFIRMATION NOTICE.—A
 20 tentative nonconfirmation notice shall re-
 21 main in effect until such notice becomes
 22 final under clause (iii), or the earlier of—

23 “(I) a final confirmation notice
 24 or final nonconfirmation notice is
 25 issued through the System; or

1 “(II) 30 days after the individual
2 contests a tentative nonconfirmation
3 under clause (iv).

4 “(vi) AUTOMATIC FINAL NOTICE.—

5 “(I) IN GENERAL.—If a final no-
6 tice is not issued within the 30-day
7 period described in clause (v)(II), the
8 Secretary shall automatically provide
9 to the employer, through the System,
10 the appropriate code indicating a final
11 notice.

12 “(II) PERIOD PRIOR TO INITIAL
13 CERTIFICATION.—During the period
14 beginning on the date of the enact-
15 ment of the Comprehensive Immigra-
16 tion Reform Act of 2006 and ending
17 on the date the Secretary submits the
18 initial report described in subpara-
19 graph (E)(ii), an automatic notice
20 issued under subclause (I) shall be a
21 final confirmation notice.

22 “(III) PERIOD AFTER INITIAL
23 CERTIFICATION.—After the date that
24 the Secretary submits the initial re-
25 port described in subparagraph

1 (E)(ii), an automatic notice issued
2 under subclause (I) shall be a final
3 confirmation notice unless the most
4 recent such report includes a certifi-
5 cation that the System is able to cor-
6 rectly issue, within the period begin-
7 ning on the date an employer submits
8 an inquiry to the System and ending
9 on the date an automatic default no-
10 tice would be issued by the System, a
11 final notice in at least 99 percent of
12 the cases in which the notice relates
13 to an individual who is eligible for em-
14 ployment in the United States. If the
15 most recent such report includes such
16 a certification, the automatic notice
17 issued under subclause (I) shall be a
18 final nonconfirmation notice.

19 “(IV) ADDITIONAL AUTHOR-
20 ITY.—Notwithstanding the second
21 sentence of subclause (III), the Sec-
22 retary shall have the authority to
23 issue a final confirmation notice for
24 an individual who would be subject to
25 a final nonconfirmation notice under

1 such sentence. In such a case, the
2 Secretary shall determine the individ-
3 ual's eligibility for employment in the
4 United States and record the results
5 of such determination in the System
6 within 12 months.

7 “(vii) EFFECTIVE PERIOD OF FINAL
8 NOTICE.—A final confirmation notice
9 issued under this paragraph for an indi-
10 vidual shall remain in effect—

11 “(I) during any continuous pe-
12 riod of employment of such individual
13 by such employer, unless the Sec-
14 retary determines the final confirma-
15 tion was the result of identity fraud;
16 or

17 “(II) in the case of an alien au-
18 thorized to be employed in the United
19 States for a temporary period, during
20 such period.

21 “(viii) PROHIBITION ON TERMI-
22 NATION.—An employer may not terminate
23 the employment of an individual based on
24 a tentative nonconfirmation notice until
25 such notice becomes final under clause (iii)

1 or a final nonconfirmation notice is issued
2 for the individual by the System. Nothing
3 in this clause shall prohibit the termination
4 of employment for any reason other than
5 such tentative nonconfirmation.

6 “(ix) RECORDING OF CONTEST RESO-
7 LUTION.—The employer shall record on
8 the form described in subsection
9 (c)(1)(A)(i) the appropriate code that is
10 provided through the System to indicate a
11 final confirmation notice or final noncon-
12 firmation notice.

13 “(x) CONSEQUENCES OF NONCON-
14 FIRMATION.—If the employer has received
15 a final nonconfirmation regarding an indi-
16 vidual, the employer shall terminate the
17 employment, recruitment, or referral of the
18 individual. Such employer shall provide to
19 the Secretary any information relating to
20 the individual that the Secretary deter-
21 mines would assist the Secretary in enforce-
22 ing or administering the immigration laws.
23 If the employer continues to employ, re-
24 cruit, or refer the individual after receiving
25 final nonconfirmation, a rebuttable pre-

1 sumption is created that the employer has
2 violated subsections (a)(1)(A) and (a)(2).
3 Such presumption may not apply to a
4 prosecution under subsection (f)(1).

5 “(E) RESPONSIBILITIES OF THE SEC-
6 RETARY.—

7 “(i) IN GENERAL.—The Secretary
8 shall establish a reliable, secure method to
9 provide through the System, within the
10 time periods required by this subsection—

11 “(I) a determination of whether
12 the name and alien identification or
13 authorization number provided in an
14 inquiry by an employer is consistent
15 with such information maintained by
16 the Secretary in order to confirm the
17 validity of the information provided;
18 and

19 “(II) a determination of whether
20 the individual is authorized to be em-
21 ployed in the United States.

22 “(ii) ANNUAL REPORT AND CERTIFI-
23 CATION.—Not later than the date that is
24 24 months after the date that not less
25 than \$400,000,000 have been appropriated

1 and made available to the Secretary to im-
2 plement this subsection, and annually
3 thereafter, the Secretary shall submit to
4 Congress a report that includes—

5 “(I) an assessment of whether
6 the System is able to correctly issue,
7 within the period described in sub-
8 paragraph (D)(v)(II), a final notice in
9 at least 99 percent of the cases in
10 which the final notice relates to an in-
11 dividual who is eligible for employ-
12 ment in the United States (excluding
13 an individual who fails to contest a
14 tentative nonconfirmation notice); and

15 “(II) if the assessment under
16 subclause (I) is that the System is
17 able to correctly issue within the spec-
18 ified time period a final notice in at
19 least 99 percent of the cases described
20 in such subclause, a certification of
21 such assessment.

22 “(iii) CONTEST AND SELF-
23 VERIFICATION.—The Secretary in con-
24 sultation with the Commissioner of Social
25 Security, shall establish procedures to per-

1 mit an individual who contests a tentative
2 or final nonconfirmation notice, or seeks to
3 verify the individual's own employment eli-
4 gibility prior to obtaining or changing em-
5 ployment, to contact the appropriate agen-
6 cy and, in a timely manner, correct or up-
7 date the information used by the System.

8 “(iv) INFORMATION TO EMPLOYEE.—
9 The Secretary shall develop a written form
10 for employers to provide to individuals who
11 receive a tentative or final nonconfirmation
12 notice. Such form shall be made available
13 in a language other than English, as nec-
14 essary and reasonable, and shall include—

15 “(I) information about the reason
16 for such notice;

17 “(II) the right to contest such
18 notice;

19 “(III) contact information for the
20 appropriate agency and instructions
21 for initiating such contest; and

22 “(IV) a 24-hour toll-free tele-
23 phone number to respond to inquiries
24 related to such notice.

1 “(v) TRAINING MATERIALS.—The Sec-
 2 retary shall make available or provide to
 3 the employer, upon request, not later than
 4 60 days prior to such employer’s partici-
 5 pation in the System, appropriate training
 6 materials to facilitate compliance with this
 7 subsection, and sections 274B(a)(7) and
 8 274C(a).

9 “(F) RESPONSIBILITIES OF THE COMMIS-
 10 SIONER OF SOCIAL SECURITY.—The responsibil-
 11 ities of the Commissioner of Social Security
 12 with respect to the System are set out in sec-
 13 tion 205(c)(2) of the Social Security Act.

14 “(9) PROTECTION FROM LIABILITY.—No em-
 15 ployer that participates in the System shall be liable
 16 under any law for any employment-related action
 17 taken with respect to an individual in good faith reli-
 18 ance on information provided by the System.

19 “(10) ADMINISTRATIVE REVIEW.—

20 “(A) IN GENERAL.—An individual who is
 21 terminated from employment as a result of a
 22 final nonconfirmation notice may, not later than
 23 60 days after the date of such termination, file
 24 an appeal of such notice.

1 “(B) PROCEDURES.—The Secretary and
 2 Commissioner of Social Security shall develop
 3 procedures to review appeals filed under sub-
 4 paragraph (A) and to make final determina-
 5 tions on such appeals.

6 “(C) REVIEW FOR ERRORS.—If a final de-
 7 termination on an appeal filed under subpara-
 8 graph (A) results in a confirmation of an indi-
 9 vidual’s eligibility to work in the United States,
 10 the administrative review process shall require
 11 the Secretary to determine if the final noncon-
 12 firmation notice issued for the individual was
 13 the result of—

14 “(i) an error or negligence on the part
 15 of an employee or official operating or re-
 16 sponsible for the System;

17 “(ii) the decision rules, processes, or
 18 procedures utilized by the System; or

19 “(iii) erroneous system information
 20 that was not the result of acts or omissions
 21 of the individual.

22 “(D) COMPENSATION FOR ERROR.—

23 “(i) IN GENERAL.—If the Secretary
 24 makes a determination under subpara-
 25 graph (C) that the final nonconfirmation

1 notice issued for an individual was not
2 caused by an act or omission of the indi-
3 vidual, the Secretary shall compensate the
4 individual for lost wages.

5 “(ii) CALCULATION OF LOST
6 WAGES.—Lost wages shall be calculated
7 based on the wage rate and work schedule
8 that prevailed prior to termination. The in-
9 dividual shall be compensated for wages
10 lost beginning on the first scheduled work
11 day after employment was terminated and
12 ending 180 days after completion of the
13 administrative review process described in
14 this paragraph or the day after the indi-
15 vidual is reinstated or obtains employment
16 elsewhere, whichever occurs first.

17 “(E) LIMITATION ON COMPENSATION.—
18 For purposes of determining an individual’s
19 compensation for the loss of employment, such
20 compensation shall not include any period in
21 which the individual was ineligible for employ-
22 ment in the United States.

23 “(F) SOURCE OF FUNDS.—Compensation
24 or reimbursement provided under this para-
25 graph shall not be provided from funds appro-

1 priated in annual appropriations Acts to the
2 Secretary for the Department of Homeland Se-
3 curity.

4 “(11) JUDICIAL REVIEW.—

5 “(A) IN GENERAL.—After the Secretary
6 makes a final determination on an appeal filed
7 by an individual under the administrative re-
8 view process described in paragraph (10), the
9 individual may obtain judicial review of such
10 determination by a civil action commenced not
11 later than 60 days after the date of such deci-
12 sion, or such further time as the Secretary may
13 allow.

14 “(B) JURISDICTION.—A civil action for
15 such judicial review shall be brought in the dis-
16 trict court of the United States for the judicial
17 district in which the plaintiff resides, or has a
18 principal place of business, or, if the plaintiff
19 does not reside or have a principal place of
20 business within any such judicial district, in the
21 District Court of the United States for the Dis-
22 trict of Columbia.

23 “(C) ANSWER.—As part of the Secretary’s
24 answer to a complaint for such judicial review,
25 the Secretary shall file a certified copy of the

1 administrative record compiled during the ad-
 2 ministrative review under paragraph (10), in-
 3 cluding the evidence upon which the findings
 4 and decision complained of are based. The court
 5 shall have power to enter, upon the pleadings
 6 and transcript of the record, a judgment affirm-
 7 ing or reversing the result of that administra-
 8 tive review, with or without remanding the
 9 cause for a rehearing.

10 “(D) COMPENSATION FOR ERROR.—

11 “(i) IN GENERAL.—In cases in which
 12 such judicial review reverses the final de-
 13 termination of the Secretary made under
 14 paragraph (10), the court shall compensate
 15 the individual for lost wages.

16 “(ii) CALCULATION OF LOST
 17 WAGES.—Lost wages shall be calculated
 18 based on the wage rate and work scheduled
 19 that prevailed prior to termination. The in-
 20 dividual shall be compensated for wages
 21 lost beginning on the first scheduled work
 22 day after employment was terminated and
 23 ending 180 days after completion of the ju-
 24 dicial review described in this paragraph or
 25 the day after the individual is reinstated or

1 obtains employment elsewhere, whichever
2 occurs first.

3 “(12) LIMITATION ON COLLECTION AND USE
4 OF DATA.—

5 “(A) LIMITATION ON COLLECTION OF
6 DATA.—

7 “(i) IN GENERAL.—The System shall
8 collect and maintain only the minimum
9 data necessary to facilitate the successful
10 operation of the System, and in no case
11 shall the data be other than—

12 “(I) information necessary to
13 register employers under paragraph
14 (5);

15 “(II) information necessary to
16 initiate and respond to inquiries or
17 contests under paragraph (8);

18 “(III) information necessary to
19 establish and enforce compliance with
20 paragraphs (5) and (8);

21 “(IV) information necessary to
22 detect and prevent employment re-
23 lated identity fraud; and

24 “(V) such other information the
25 Secretary determines is necessary,

1 subject to a 180 day notice and com-
2 ment period in the Federal Register.

3 “(ii) PENALTIES.—Any officer, em-
4 ployee, or contractor who willfully and
5 knowingly collects and maintains data in
6 the System other than data described in
7 clause (i) shall be guilty of a misdemeanor
8 and fined not more than \$1,000 for each
9 violation.

10 “(B) LIMITATION ON USE OF DATA.—
11 Whoever willfully and knowingly accesses, dis-
12 closes, or uses any information obtained or
13 maintained by the System—

14 “(i) for the purpose of committing
15 identity fraud, or assisting another person
16 in committing identity fraud, as defined in
17 section 1028 of title 18, United States
18 Code;

19 “(ii) for the purpose of unlawfully ob-
20 taining employment in the United States
21 or unlawfully obtaining employment in the
22 United States for any other person; or

23 “(iii) for any purpose other than as
24 provided for under any provision of law;

1 shall be guilty of a felony and upon conviction
2 shall be fined under title 18, United States
3 Code, or imprisoned for not more than 5 years,
4 or both.

5 “(C) EXCEPTIONS.—Nothing in subpara-
6 graph (A) or (B) may be construed to limit the
7 collection, maintenance, or use of data by the
8 Commissioner of Internal Revenue or the Com-
9 missioner of Social Security as provided by law.

10 “(13) MODIFICATION AUTHORITY.—The Sec-
11 retary, after notice is submitted to Congress and
12 provided to the public in the Federal Register, is au-
13 thorized to modify the requirements of this sub-
14 section with respect to completion of forms, method
15 of storage, attestations, copying of documents, sig-
16 natures, methods of transmitting information, and
17 other operational and technical aspects to improve
18 the efficiency, accuracy, and security of the System.

19 “(14) ANNUAL GAO STUDY AND REPORT.—

20 “(A) REQUIREMENT.—The Comptroller
21 General of the United States shall conduct an
22 annual study of the System.

23 “(B) PURPOSE.—The study shall evaluate
24 the accuracy, efficiency, integrity, and impact of
25 the System.

1 “(C) REPORT.—Not later than the date
2 that is 24 months after the date that not less
3 than \$400,000,000 have been appropriated and
4 made available to the Secretary to implement
5 this subsection, and annually thereafter, the
6 Comptroller General shall submit to Congress a
7 report containing the findings of the study car-
8 ried out under this paragraph. Each such re-
9 port shall include, at a minimum, the following:

10 “(i) An assessment of the annual re-
11 port and certification described in para-
12 graph (8)(E)(ii).

13 “(ii) An assessment of System per-
14 formance with respect to the rate at which
15 individuals who are eligible for employment
16 in the United States are correctly approved
17 within each of the periods specified in
18 paragraph (8), including a separate assess-
19 ment of such rate for nationals and aliens.

20 “(iii) An assessment of the privacy
21 and security of the System and its effects
22 on identity fraud or the misuse of personal
23 data.

1 “(iv) An assessment of the effects of
2 the System on the employment of unau-
3 thorized aliens.

4 “(v) An assessment of the effects of
5 the System, including the effects of ten-
6 tative confirmations, on unfair immigra-
7 tion-related employment practices and em-
8 ployment discrimination based on national
9 origin or citizenship status.

10 “(vi) An assessment of whether the
11 Secretary and the Commissioner of Social
12 Security have adequate resources to carry
13 out the duties and responsibilities of this
14 section.

15 “(e) COMPLIANCE.—

16 “(1) COMPLAINTS AND INVESTIGATIONS.—The
17 Secretary shall establish procedures—

18 “(A) for individuals and entities to file
19 complaints regarding potential violations of sub-
20 section (a);

21 “(B) for the investigation of such com-
22 plaints that the Secretary determines are ap-
23 propriate to investigate; and

1 “(C) for the investigation of other viola-
2 tions of subsection (a) that the Secretary deter-
3 mines is appropriate.

4 “(2) AUTHORITY IN INVESTIGATIONS.—

5 “(A) IN GENERAL.—In conducting inves-
6 tigations and hearings under this subsection, of-
7 ficers and employees of the Department of
8 Homeland Security—

9 “(i) shall have reasonable access to
10 examine evidence regarding any employer
11 being investigated; and

12 “(ii) if designated by the Secretary,
13 may compel by subpoena the attendance of
14 witnesses and the production of evidence at
15 any designated place in an investigation or
16 case under this subsection.

17 “(B) FAILURE TO COOPERATE.—In case of
18 refusal to obey a subpoena lawfully issued
19 under subparagraph (A)(ii), the Secretary may
20 request that the Attorney General apply in an
21 appropriate district court of the United States
22 for an order requiring compliance with such
23 subpoena, and any failure to obey such order
24 may be punished by such court as contempt.

1 “(C) DEPARTMENT OF LABOR.—The Sec-
 2 retary of Labor shall have the investigative au-
 3 thority provided under section 11(a) of the Fair
 4 Labor Standards Act of 1938 (29 U.S.C.
 5 211(a)) to ensure compliance with the provi-
 6 sions of this section.

7 “(3) COMPLIANCE PROCEDURES.—

8 “(A) PREPENALTY NOTICE.—If the Sec-
 9 retary has reasonable cause to believe that
 10 there has been a violation of a requirement of
 11 this section and determines that further pro-
 12 ceedings related to such violation are war-
 13 ranted, the Secretary shall issue to the em-
 14 ployer concerned a written notice of the Sec-
 15 retary’s intention to issue a claim for a fine or
 16 other penalty. Such notice shall—

17 “(i) describe the violation;

18 “(ii) specify the laws and regulations
 19 allegedly violated;

20 “(iii) specify the amount of fines or
 21 other penalties to be imposed;

22 “(iv) disclose the material facts which
 23 establish the alleged violation; and

24 “(v) inform such employer that the
 25 employer shall have a reasonable oppor-

1 tunity to make representations as to why a
2 claim for a monetary or other penalty
3 should not be imposed.

4 “(B) REMISSION OR MITIGATION OF PEN-
5 ALTIES.—

6 “(i) REVIEW BY SECRETARY.—If the
7 Secretary determines that such fine or
8 other penalty was incurred erroneously, or
9 determines the existence of such mitigating
10 circumstances as to justify the remission
11 or mitigation of such fine or penalty, the
12 Secretary may remit or mitigate such fine
13 or other penalty on the terms and condi-
14 tions as the Secretary determines are rea-
15 sonable and just, or order termination of
16 any proceedings related to the notice.

17 “(ii) APPLICABILITY.—This subpara-
18 graph may not apply to an employer that
19 has or is engaged in a pattern or practice
20 of violations of paragraph (1), (2), or (3)
21 of subsection (a) or of any other require-
22 ments of this section.

23 “(C) PENALTY CLAIM.—After considering
24 evidence and representations offered by the em-
25 ployer, the Secretary shall determine whether

1 there was a violation and promptly issue a writ-
2 ten final determination setting forth the find-
3 ings of fact and conclusions of law on which the
4 determination is based and the appropriate pen-
5 alty.

6 “(4) CIVIL PENALTIES.—

7 “(A) HIRING OR CONTINUING TO EMPLOY
8 UNAUTHORIZED ALIENS.—Any employer that
9 violates any provision of paragraph (1), (2), or
10 (3) of subsection (a) shall pay civil penalties as
11 follows:

12 “(i) Pay a civil penalty of not less
13 than \$500 and not more than \$4,000 for
14 each unauthorized alien with respect to
15 each such violation.

16 “(ii) If the employer has previously
17 been fined 1 time during the 12-month pe-
18 riod preceding the violation under this sub-
19 paragraph, pay a civil penalty of not less
20 than \$4,000 and not more than \$10,000
21 for each unauthorized alien with respect to
22 each such violation.

23 “(iii) If the employer has previously
24 been fined more than 1 time during the
25 24-month period preceding the violation

1 under this subparagraph or has failed to
2 comply with a previously issued and final
3 order related to any such provision, pay a
4 civil penalty of not less than \$6,000 and
5 not more than \$20,000 for each unauthor-
6 ized alien with respect to each such viola-
7 tion.

8 “(B) RECORDKEEPING OR VERIFICATION
9 PRACTICES.—Any employer that violates or fails
10 to comply with the recordkeeping requirements
11 of subsections (a), (c), and (d), shall pay a civil
12 penalty as follows:

13 “(i) Pay a civil penalty of not less
14 than \$200 and not more than \$2,000 for
15 each such violation.

16 “(ii) If the employer has previously
17 been fined 1 time during the 12-month pe-
18 riod preceding the violation under this sub-
19 paragraph, pay a civil penalty of not less
20 than \$400 and not more than \$4,000 for
21 each such violation.

22 “(iii) If the employer has previously
23 been fined more than 1 time during the
24 24-month period preceding the violation
25 under this subparagraph or has failed to

1 comply with a previously issued and final
2 order related to such requirements, pay a
3 civil penalty of not less than \$600 and not
4 more than \$6,000 for each such violation.

5 “(C) OTHER PENALTIES.—Notwith-
6 standing subparagraphs (A) and (B), the Sec-
7 retary may impose additional penalties for vio-
8 lations, including violations of cease and desist
9 orders, specially designed compliance plans to
10 prevent further violations, suspended fines to
11 take effect in the event of a further violation,
12 and in appropriate cases, the criminal penalty
13 described in subsection (f).

14 “(5) JUDICIAL REVIEW.—An employer ad-
15 versely affected by a final determination may, within
16 45 days after the date the final determination is
17 issued, file a petition in any appropriate district
18 court of the United States. The filing of a petition
19 as provided in this paragraph shall stay the Sec-
20 retary’s determination until entry of judgment by
21 the court. The burden shall be on the employer to
22 show that the final determination was not supported
23 by substantial evidence. The Secretary is authorized
24 to require that the petitioner provide, prior to filing
25 for review, security for payment of fines and pen-

1 alties through bond or other guarantee of payment
2 acceptable to the Secretary.

3 “(6) ENFORCEMENT OF ORDERS.—If an em-
4 ployer fails to comply with a final determination
5 issued against that employer under this subsection,
6 and the final determination is not subject to review
7 as provided in paragraph (5), the Attorney General
8 may file suit to enforce compliance with the final de-
9 termination, not earlier than 46 days and not later
10 than 180 days after the date the final determination
11 is issued, in any appropriate district court of the
12 United States. In any such suit, the validity and ap-
13 propriateness of the final determination shall not be
14 subject to review.

15 “(7) RECOVERY OF COSTS AND ATTORNEY’S
16 FEES.—In any appeal brought under paragraph (5)
17 or suit brought under paragraph (6) of this section
18 the employer shall be entitled to recover from the
19 Secretary reasonable costs and attorney’s fees if
20 such employer substantially prevails on the merits of
21 the case. Such an award of attorney’s fees may not
22 exceed \$25,000. Any such costs and attorney’s fees
23 assessed against the Secretary shall be charged
24 against the operating expenses of the Department

1 for the fiscal year in which the assessment is made,
2 and may not be reimbursed from any other source.

3 “(f) CRIMINAL PENALTIES AND INJUNCTIONS FOR
4 PATTERN OR PRACTICE VIOLATIONS.—

5 “(1) CRIMINAL PENALTY.—An employer that
6 engages in a pattern or practice of knowing viola-
7 tions of subsection (a)(1)(A) or (a)(2) shall be fined
8 not more than \$20,000 for each unauthorized alien
9 with respect to whom such a violation occurs, im-
10 prisoned for not more than 3 years for the entire
11 pattern or practice, or both.

12 “(2) ENJOINING OF PATTERN OR PRACTICE
13 VIOLATIONS.—If the Secretary or the Attorney Gen-
14 eral has reasonable cause to believe that an employer
15 is engaged in a pattern or practice of employment,
16 recruitment, or referral in violation of paragraph
17 (1)(A) or (2) of subsection (a), the Attorney General
18 may bring a civil action in the appropriate district
19 court of the United States requesting a permanent
20 or temporary injunction, restraining order, or other
21 order against the employer, as the Secretary deems
22 necessary.

23 “(g) ADJUSTMENT FOR INFLATION.—All penalties
24 and limitations on the recovery of costs and attorney’s fees
25 in this section shall be increased every 4 years beginning

1 January 2010 to reflect the percentage increase in the
2 consumer price index for all urban consumers (all items;
3 U.S. city average) for the 48 month period ending with
4 September of the year preceding the year such adjustment
5 is made. Any adjustment under this subparagraph shall
6 be rounded to the nearest dollar.

7 “(h) PROHIBITION OF INDEMNITY BONDS.—

8 “(1) PROHIBITION.—It is unlawful for an em-
9 ployer, in the hiring, recruiting, or referring for a
10 fee, of an individual, to require the individual to post
11 a bond or security, to pay or agree to pay an
12 amount, or otherwise to provide a financial guar-
13 antee or indemnity, against any potential liability
14 arising under this section relating to such hiring, re-
15 cruiting, or referring of the individual.

16 “(2) CIVIL PENALTY.—Any employer which is
17 determined, after notice and opportunity for mitiga-
18 tion of the monetary penalty under subsection (e), to
19 have violated paragraph (1) of this subsection shall
20 be subject to a civil penalty of \$10,000 for each vio-
21 lation and to an administrative order requiring the
22 return of any amounts received in violation of such
23 paragraph to the employee or, if the employee can-
24 not be located, to the Employer Compliance Fund
25 established under section 286(w).

1 “(i) PROHIBITION ON AWARD OF GOVERNMENT CON-
2 TRACTS, GRANTS, AND AGREEMENTS.—

3 “(1) EMPLOYERS WITH NO CONTRACTS,
4 GRANTS, OR AGREEMENTS.—

5 “(A) IN GENERAL.—If an employer who
6 does not hold a Federal contract, grant, or co-
7 operative agreement is determined by the Sec-
8 retary to be a repeat violator of this section or
9 is convicted of a crime under this section, the
10 employer shall be debarred from the receipt of
11 a Federal contract, grant, or cooperative agree-
12 ment for a period of 5 years. The Secretary or
13 the Attorney General shall advise the Adminis-
14 trator of General Services of such a debarment,
15 and the Administrator of General Services shall
16 list the employer on the List of Parties Ex-
17 cluded from Federal Procurement and Non-
18 procurement Programs for a period of 5 years.

19 “(B) WAIVER.—The Administrator of Gen-
20 eral Services, in consultation with the Secretary
21 and the Attorney General, may waive operation
22 of this subsection or may limit the duration or
23 scope of the debarment.

24 “(2) EMPLOYERS WITH CONTRACTS, GRANTS,
25 OR AGREEMENTS.—

1 “(A) IN GENERAL.—An employer who
2 holds a Federal contract, grant, or cooperative
3 agreement and is determined by the Secretary
4 to be a repeat violator of this section or is con-
5 victed of a crime under this section, shall be
6 debarred from the receipt of new Federal con-
7 tracts, grants, or cooperative agreements for a
8 period of 5 years.

9 “(B) NOTICE TO AGENCIES.—Prior to de-
10 barring the employer under subparagraph (A),
11 the Secretary, in cooperation with the Adminis-
12 trator of General Services, shall advise any
13 agency or department holding a contract, grant,
14 or cooperative agreement with the employer of
15 the Government’s intention to debar the em-
16 ployer from the receipt of new Federal con-
17 tracts, grants, or cooperative agreements for a
18 period of 5 years.

19 “(C) WAIVER.—After consideration of the
20 views of any agency or department that holds
21 a contract, grant, or cooperative agreement
22 with the employer, the Secretary may, in lieu of
23 debarring the employer from the receipt of new
24 Federal contracts, grants, or cooperative agree-
25 ments for a period of 5 years, waive operation

1 of this subsection, limit the duration or scope of
2 the debarment, or may refer to an appropriate
3 lead agency the decision of whether to debar the
4 employer, for what duration, and under what
5 scope in accordance with the procedures and
6 standards prescribed by the Federal Acquisition
7 Regulation. However, any proposed debarment
8 predicated on an administrative determination
9 of liability for civil penalty by the Secretary or
10 the Attorney General shall not be reviewable in
11 any debarment proceeding. The decision of
12 whether to debar or take alternate action under
13 this subparagraph shall not be judicially re-
14 viewed.

15 “(3) SUSPENSION.—Indictments for violations
16 of this section or adequate evidence of actions that
17 could form the basis for debarment under this sub-
18 section shall be considered a cause for suspension
19 under the procedures and standards for suspension
20 prescribed by the Federal Acquisition Regulation.

21 “(j) MISCELLANEOUS PROVISIONS.—

22 “(1) DOCUMENTATION.—In providing docu-
23 mentation or endorsement of authorization of aliens
24 eligible to be employed in the United States, the
25 Secretary shall provide that any limitations with re-

1 spect to the period or type of employment or em-
 2 ployer shall be conspicuously stated on the docu-
 3 mentation or endorsement (other than aliens law-
 4 fully admitted for permanent residence).

5 “(2) PREEMPTION.—The provisions of this sec-
 6 tion preempt any State or local law imposing civil or
 7 criminal sanctions (other than through licensing and
 8 similar laws) upon those who employ, or recruit or
 9 refer for a fee for employment, unauthorized aliens.

10 “(k) DEPOSIT OF AMOUNTS RECEIVED.—Except as
 11 otherwise specified, civil penalties collected under this sec-
 12 tion shall be deposited by the Secretary into the Employer
 13 Compliance Fund established under section 286(w).

14 “(l) DEFINITIONS.—In this section:

15 “(1) EMPLOYER.—The term ‘employer’ means
 16 any person or entity, including any entity of the
 17 Government of the United States, hiring, recruiting,
 18 or referring an individual for employment in the
 19 United States.

20 “(2) SECRETARY.—Except as otherwise pro-
 21 vided, the term ‘Secretary’ means the Secretary of
 22 Homeland Security.

23 “(3) UNAUTHORIZED ALIEN.—The term ‘unau-
 24 thorized alien’ means, with respect to the employ-

ment of an alien at a particular time, that the alien
is not at that time either—

“(A) an alien lawfully admitted for permanent residence; or

“(B) authorized to be so employed by this Act or by the Secretary.”.

(b) CONFORMING AMENDMENTS.—

(1) AMENDMENTS.—

(A) REPEAL OF BASIC PILOT.—Sections 401, 402, 403, 404, and 405 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 8 U.S.C. 1324a note) are repealed.

(B) REPEAL OF REPORTING REQUIREMENTS.—

(i) REPORT ON EARNINGS OF ALIENS NOT AUTHORIZED TO WORK.—Subsection (c) of section 290 (8 U.S.C. 1360) is repealed.

(ii) REPORT ON FRAUDULENT USE OF SOCIAL SECURITY ACCOUNT NUMBERS.—Subsection (b) of section 414 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of

1 Public Law 104–208; 8 U.S.C. 1360 note)
 2 is repealed.

3 (2) CONSTRUCTION.—Nothing in this sub-
 4 section or in subsection (d) of section 274A, as
 5 amended by subsection (a), may be construed to
 6 limit the authority of the Secretary to allow or con-
 7 tinue to allow the participation of employers who
 8 participated in the basic pilot program under sec-
 9 tions 401, 402, 403, 404, and 405 of the Illegal Im-
 10 migration Reform and Immigrant Responsibility Act
 11 of 1996 (division C of Public Law 104–208; 8
 12 U.S.C. 1324a note) in the Electronic Employment
 13 Verification System established pursuant to such
 14 subsection (d).

15 (c) TECHNICAL AMENDMENTS.—

16 (1) DEFINITION OF UNAUTHORIZED ALIEN.—
 17 Sections 218(i)(1) (8 U.S.C. 1188(i)(1)), 245(c)(8)
 18 (8 U.S.C. 1255(c)(8)), 274(a)(3)(B)(i) (8 U.S.C.
 19 1324(a)(3)(B)(i)), and 274B(a)(1) (8 U.S.C.
 20 1324b(a)(1)) are amended by striking “274A(h)(3)”
 21 and inserting “274A”.

22 (2) DOCUMENT REQUIREMENTS.—Section 274B
 23 (8 U.S.C. 1324b) is amended—

1 (A) in subsections (a)(6) and (g)(2)(B), by
 2 striking “274A(b)” and inserting “274A(c) and
 3 (d)”;

4 (B) in subsection (g)(2)(B)(ii), by striking
 5 “274A(b)(5)” and inserting “274A(c)”.

6 (d) AMENDMENTS TO THE SOCIAL SECURITY ACT.—
 7 Section 205(c)(2) of the Social Security Act (42 U.S.C.
 8 405(c)(2)) is amended by adding at the end the following
 9 new subparagraphs:

10 “(I)(i) The Commissioner of Social Security shall,
 11 subject to the provisions of section 301(f)(2) of the Com-
 12 prehensive Immigration Reform Act of 2006, establish a
 13 reliable, secure method to provide through the Electronic
 14 Employment Verification System established pursuant to
 15 subsection (d) of section 274A of the Immigration and Na-
 16 tionality Act (referred to in this subparagraph as the ‘Sys-
 17 tem’), within the time periods required by paragraph (8)
 18 of such subsection—

19 “(I) a determination of whether the name, date
 20 of birth, employer identification number, and social
 21 security account number of an individual provided in
 22 an inquiry made to the System by an employer is
 23 consistent with such information maintained by the
 24 Commissioner in order to confirm the validity of the
 25 information provided;

1 “(II) a determination of the citizenship status
2 associated with such name and social security ac-
3 count number, according to the records maintained
4 by the Commissioner;

5 “(III) a determination of whether the name and
6 number belongs to an individual who is deceased, ac-
7 cording to the records maintained by the Commis-
8 sioner;

9 “(IV) a determination of whether the name and
10 number is blocked in accordance with clause (ii); and

11 “(V) a confirmation notice or a nonconfirma-
12 tion notice described in such paragraph (8), in a
13 manner that ensures that other information main-
14 tained by the Commissioner is not disclosed or re-
15 leased to employers through the System.

16 “(ii) The Commissioner of Social Security shall pre-
17 vent the fraudulent or other misuse of a social security
18 account number by establishing procedures under which
19 an individual who has been assigned a social security ac-
20 count number may block the use of such number under
21 the System and remove such block.

22 “(J) In assigning social security account numbers to
23 aliens who are authorized to work in the United States
24 under section 218A of the Immigration and Nationality
25 Act, the Commissioner of Social Security shall, to the

1 maximum extent practicable, assign such numbers by em-
 2 ploying the enumeration procedure administered jointly by
 3 the Commissioner, the Secretary of State, and the Sec-
 4 retary.”.

5 (e) DISCLOSURE OF CERTAIN TAXPAYER IDENTITY
 6 INFORMATION.—

7 (1) IN GENERAL.—Section 6103(l) of the Inter-
 8 nal Revenue Code of 1986 is amended by adding at
 9 the end the following new paragraph:

10 “(21) DISCLOSURE OF CERTAIN TAXPAYER
 11 IDENTITY INFORMATION BY SOCIAL SECURITY AD-
 12 MINISTRATION TO DEPARTMENT OF HOMELAND SE-
 13 CURITY.—

14 “(A) IN GENERAL.—From taxpayer iden-
 15 tity information which has been disclosed to the
 16 Social Security Administration and upon writ-
 17 ten request by the Secretary of Homeland Secu-
 18 rity, the Commissioner of Social Security shall
 19 disclose directly to officers, employees, and con-
 20 tractors of the Department of Homeland Secu-
 21 rity the following information:

22 “(i) DISCLOSURE OF EMPLOYER NO-
 23 MATCH NOTICES.—Taxpayer identity infor-
 24 mation of each person who has filed an in-
 25 formation return required by reason of sec-

tion 6051 during calendar year 2006,
2007, or 2008 which contains—

“(I) more than 100 names and
taxpayer identifying numbers of em-
ployees (within the meaning of such
section) that did not match the
records maintained by the Commis-
sioner of Social Security, or

“(II) more than 10 names of em-
ployees (within the meaning of such
section) with the same taxpayer iden-
tifying number.

“(ii) DISCLOSURE OF INFORMATION
REGARDING USE OF DUPLICATE EMPLOYEE
TAXPAYER IDENTIFYING INFORMATION.—
Taxpayer identity information of each per-
son who has filed an information return re-
quired by reason of section 6051 which the
Commissioner of Social Security has rea-
son to believe, based on a comparison with
information submitted by the Secretary of
Homeland Security, contains evidence of
identity fraud due to the multiple use of
the same taxpayer identifying number (as-

1 signed under section 6109) of an employee
2 (within the meaning of section 6051).

3 “(iii) DISCLOSURE OF INFORMATION
4 REGARDING NONPARTICIPATING EMPLOY-
5 ERS.—Taxpayer identity information of
6 each person who has filed an information
7 return required by reason of section 6051
8 which the Commissioner of Social Security
9 has reason to believe, based on a compari-
10 son with information submitted by the Sec-
11 retary of Homeland Security, contains evi-
12 dence of such person’s failure to register
13 and participate in the Electronic Employ-
14 ment Verification System authorized under
15 section 274A(d) of the Immigration and
16 Nationality Act (hereafter in this para-
17 graph referred to as the ‘System’).

18 “(iv) DISCLOSURE OF INFORMATION
19 REGARDING NEW EMPLOYEES OF NON-
20 PARTICIPATING EMPLOYERS.—Taxpayer
21 identity information of all employees (with-
22 in the meaning of section 6051) hired after
23 the date a person identified in clause (iii)
24 is required to participate in the System
25 under section 274A(d)(2) or section

1 274A(d)(3)(B) of the Immigration and Na-
2 tionality Act.

3 “(v) DISCLOSURE OF INFORMATION
4 REGARDING EMPLOYEES OF CERTAIN DES-
5 IGNATED EMPLOYERS.—Taxpayer identity
6 information of all employees (within the
7 meaning of section 6051) of each person
8 who is required to participate in the Sys-
9 tem under section 274A(d)(3)(B) of the
10 Immigration and Nationality Act.

11 “(vi) DISCLOSURE OF NEW HIRE TAX-
12 PAYER IDENTITY INFORMATION.—Tax-
13 payer identity information of each person
14 participating in the System and taxpayer
15 identity information of all employees (with-
16 in the meaning of section 6051) of such
17 person hired during the period beginning
18 with the later of—

19 “(I) the date such person begins
20 to participate in the System, or

21 “(II) the date of the request im-
22 mediately preceding the most recent
23 request under this clause,
24 ending with the date of the most recent re-
25 quest under this clause.

1 “(B) RESTRICTION ON DISCLOSURE.—The
2 Commissioner of Social Security shall disclose
3 taxpayer identity information under subpara-
4 graph (A) only for purposes of, and to the ex-
5 tent necessary in—

6 “(i) establishing and enforcing em-
7 ployer participation in the System,

8 “(ii) carrying out, including through
9 civil administrative and civil judicial pro-
10 ceedings, of sections 212, 217, 235, 237,
11 238, 274A, 274B, and 274C of the Immi-
12 gration and Nationality Act, and

13 “(iii) the civil operation of the Alien
14 Terrorist Removal Court.

15 “(C) REIMBURSEMENT.—The Commis-
16 sioner of Social Security shall prescribe a rea-
17 sonable fee schedule for furnishing taxpayer
18 identity information under this paragraph and
19 collect such fees in advance from the Secretary
20 of Homeland Security.

21 “(D) TERMINATION.—This paragraph
22 shall not apply to any request made after the
23 date which is 3 years after the date of the en-
24 actment of this paragraph.”.

1 (2) COMPLIANCE BY DHS CONTRACTORS WITH
2 CONFIDENTIALITY SAFEGUARDS.—

3 (A) IN GENERAL.—Section 6103(p) of
4 such Code is amended by adding at the end the
5 following new paragraph:

6 “(9) DISCLOSURE TO DHS CONTRACTORS.—
7 Notwithstanding any other provision of this section,
8 no return or return information shall be disclosed to
9 any contractor of the Department of Homeland Se-
10 curity unless such Department, to the satisfaction of
11 the Secretary—

12 “(A) has requirements in effect which re-
13 quire each such contractor which would have
14 access to returns or return information to pro-
15 vide safeguards (within the meaning of para-
16 graph (4)) to protect the confidentiality of such
17 returns or return information,

18 “(B) agrees to conduct an on-site review
19 every 3 years (mid-point review in the case of
20 contracts or agreements of less than 1 year in
21 duration) of each contractor to determine com-
22 pliance with such requirements,

23 “(C) submits the findings of the most re-
24 cent review conducted under subparagraph (B)

1 to the Secretary as part of the report required
2 by paragraph (4)(E), and

3 “(D) certifies to the Secretary for the most
4 recent annual period that such contractor is in
5 compliance with all such requirements.

6 The certification required by subparagraph (D) shall
7 include the name and address of each contractor, a
8 description of the contract or agreement with such
9 contractor, and the duration of such contract or
10 agreement.”.

11 (3) CONFORMING AMENDMENTS.—

12 (A) Section 6103(a)(3) of such Code is
13 amended by striking “or (20)” and inserting
14 “(20), or (21)”.

15 (B) Section 6103(p)(3)(A) of such Code is
16 amended by adding at the end the following
17 new sentence: “The Commissioner of Social Se-
18 curity shall provide to the Secretary such infor-
19 mation as the Secretary may require in carrying
20 out this paragraph with respect to return infor-
21 mation inspected or disclosed under the author-
22 ity of subsection (l)(21).”.

23 (C) Section 6103(p)(4) of such Code is
24 amended—

- 1 (i) by striking “or (17)” both places it
 2 appears and inserting “(17), or (21)”, and
 3 (ii) by striking “or (20)” each place it
 4 appears and inserting “(20), or (21)”.

5 (D) Section 6103(p)(8)(B) of such Code is
 6 amended by inserting “or paragraph (9)” after
 7 “subparagraph (A)”.

8 (E) Section 7213(a)(2) of such Code is
 9 amended by striking “or (20)” and inserting
 10 “(20), or (21)”.

11 (f) AUTHORIZATION OF APPROPRIATIONS.—

12 (1) IN GENERAL.—There are authorized to be
 13 appropriated to the Secretary such sums as are nec-
 14 essary to carry out the amendments made by this
 15 section.

16 (2) LIMITATION ON VERIFICATION RESPON-
 17 SIBILITIES OF COMMISSIONER OF SOCIAL SECU-
 18 RITY.—The Commissioner of Social Security is au-
 19 thorized to perform activities with respect to car-
 20 rying out the Commissioner’s responsibilities in this
 21 title or the amendments made by this title, but only
 22 to the extent the Secretary has provided, in advance,
 23 funds to cover the Commissioner’s full costs in car-
 24 rying out such responsibilities. In no case shall
 25 funds from the Federal Old-Age and Survivors In-

1 surance Trust Fund or the Federal Disability Insur-
 2 ance Trust Fund be used to carry out such respon-
 3 sibilities.

4 (g) EFFECTIVE DATES.—

5 (1) IN GENERAL.—The amendments made by
 6 subsections (a), (b), (c), and (d) shall take effect on
 7 the date that is 180 days after the date of the enact-
 8 ment of this Act.

9 (2) SUBSECTION (e).—

10 (A) IN GENERAL.—The amendments made
 11 by subsection (e) shall apply to disclosures
 12 made after the date of the enactment of this
 13 Act.

14 (B) CERTIFICATIONS.—The first certifi-
 15 cation under section 6103(p)(9)(D) of the In-
 16 ternal Revenue Code of 1986, as added by sub-
 17 section (e)(2), shall be made with respect to cal-
 18 endar year 2007.

19 **SEC. 302. EMPLOYER COMPLIANCE FUND.**

20 Section 286 (8 U.S.C. 1356) is amended by adding
 21 at the end the following new subsection:

22 “(w) EMPLOYER COMPLIANCE FUND.—

23 “(1) IN GENERAL.—There is established in the
 24 general fund of the Treasury, a separate account,

1 which shall be known as the ‘Employer Compliance
2 Fund’ (referred to in this subsection as the ‘Fund’).

3 “(2) DEPOSITS.—There shall be deposited as
4 offsetting receipts into the Fund all civil monetary
5 penalties collected by the Secretary of Homeland Se-
6 curity under section 274A.

7 “(3) PURPOSE.—Amounts refunded to the Sec-
8 retary from the Fund shall be used for the purposes
9 of enhancing and enforcing employer compliance
10 with section 274A.

11 “(4) AVAILABILITY OF FUNDS.—Amounts de-
12 posited into the Fund shall remain available until
13 expended and shall be refunded out of the Fund by
14 the Secretary of the Treasury, at least on a quar-
15 terly basis, to the Secretary of Homeland Security.”.

16 **SEC. 303. ADDITIONAL WORKSITE ENFORCEMENT AND**
17 **FRAUD DETECTION AGENTS.**

18 (a) INCREASE IN NUMBER OF PERSONNEL.—The
19 Secretary shall, subject to the availability of appropria-
20 tions for such purpose, annually increase, by not less than
21 2,200, the number of personnel of the Bureau of Immigra-
22 tion and Customs Enforcement during the 5-year period
23 beginning on the date of the enactment of this Act.

24 (b) USE OF PERSONNEL.—The Secretary shall en-
25 sure that not less than 25 percent of all the hours ex-

1 pending by personnel of the Bureau of Immigration and
 2 Customs Enforcement shall be used to enforce compliance
 3 with sections 274A and 274C of the Immigration and Na-
 4 tionality Act (8 U.S.C. 1324a and 1324c).

5 (c) AUTHORIZATION OF APPROPRIATIONS.—There
 6 are authorized to be appropriated to the Secretary for
 7 each of the fiscal years 2007 through 2011 such sums as
 8 may be necessary to carry out this section.

9 **SEC. 304. CLARIFICATION OF INELIGIBILITY FOR MIS-**
 10 **REPRESENTATION.**

11 Section 212(a)(6)(C)(ii)(I) (8 U.S.C.
 12 1182(a)(6)(C)(ii)(I)), is amended by striking “citizen”
 13 and inserting “national”.

14 **SEC. 305. ANTIDISCRIMINATION PROTECTIONS.**

15 (a) APPLICATION OF PROHIBITION OF DISCRIMINA-
 16 TION TO VERIFICATION SYSTEM.—Section 274B(a)(1) (8
 17 U.S.C. 1324b(a)(1)) is amended by inserting “, the
 18 verification of the individual’s work authorization through
 19 the Electronic Employment Verification System described
 20 in section 274A(d),” after “the individual for employ-
 21 ment”.

22 (b) CLASSES OF ALIENS AS PROTECTED INDIVID-
 23 UALS.—Section 274B(a)(3)(B) (8 U.S.C. 1324b(a)(3)(B))
 24 is amended to read as follows:

25 “(B) is an alien who is—

1 “(i) lawfully admitted for permanent
2 residence;

3 “(ii) granted the status of an alien
4 lawfully admitted for temporary residence
5 under section 210(a) or 245(a)(1);

6 “(iii) admitted as a refugee under sec-
7 tion 207;

8 “(iv) granted asylum under section
9 208;

10 “(v) granted the status of a non-
11 immigrant under section
12 101(a)(15)(H)(ii)(c);

13 “(vi) granted temporary protected sta-
14 tus under section 244; or

15 “(vii) granted parole under section
16 212(d)(5).”.

17 (c) REQUIREMENTS FOR ELECTRONIC EMPLOYMENT
18 VERIFICATION.—Section 274B(a) (8 U.S.C. 1324b(a)) is
19 amended by adding at the end the following:

20 “(7) ANTIDISCRIMINATION REQUIREMENTS OF
21 THE ELECTRONIC EMPLOYMENT VERIFICATION SYS-
22 TEM.—It is an unfair immigration-related employ-
23 ment practice for a person or other entity, in the
24 course of the electronic verification process described
25 in section 274A(d)—

1 “(A) to terminate or undertake any ad-
 2 verse employment action due to a tentative non-
 3 confirmation;

4 “(B) to use the verification system for
 5 screening of an applicant prior to an offer of
 6 employment;

7 “(C) except as described in section
 8 274A(d)(3)(B), to use the verification system
 9 for a current employee after the first 3 days of
 10 employment, or for the reverification of an em-
 11 ployee after the employee has satisfied the proc-
 12 ess described in section 274A(d); or

13 “(D) to require an individual to make an
 14 inquiry under the self-verification procedures
 15 established in section 274A(d)(8)(E)(iii).”.

16 (d) INCREASE IN CIVIL MONEY PENALTIES.—Section
 17 274B(g)(2) (8 U.S.C. 1324b(g)(2)) is amended—

18 (1) in subparagraph (B)(iv)—

19 (A) in subclause (I), by striking “\$250 and
 20 not more than \$2,000” and inserting “\$1,000
 21 and not more than \$4,000”;

22 (B) in subclause (II), by striking “\$2,000
 23 and not more than \$5,000” and inserting
 24 “\$4,000 and not more than \$10,000”;

1 (C) in subclause (III), by striking “\$3,000
2 and not more than \$10,000” and inserting
3 “\$6,000 and not more than \$20,000”; and

4 (D) in subclause (IV), by striking “\$100
5 and not more than \$1,000” and inserting
6 “\$500 and not more than \$5,000”.

7 (e) INCREASED FUNDING OF INFORMATION CAM-
8 PAIGN.—Section 274B(l)(3) (8 U.S.C. 1324b(l)(3)) is
9 amended by inserting “and an additional \$40,000,000 for
10 each of fiscal years 2007 through 2009” before the period
11 at the end.

12 (f) EFFECTIVE DATE.—The amendments made by
13 this section shall take effect on the date that is 180 days
14 after the date of the enactment of this Act and shall apply
15 to violations occurring on or after such date.

16 **TITLE IV—NONIMMIGRANT AND**
17 **IMMIGRANT VISA REFORM**
18 **Subtitle A—Temporary Guest**
19 **Workers**

20 **SEC. 401. IMMIGRATION IMPACT STUDY.**

21 (a) EFFECTIVE DATE.—Any regulation that would
22 increase the number of aliens who are eligible for legal
23 status may not take effect before 90 days after the date
24 on which the Director of the Bureau of the Census sub-
25 mits a report to Congress under subsection (c).

1 (b) STUDY.—The Director of the Bureau of the Cen-
2 sus, jointly with the Secretary, the Secretary of Agri-
3 culture, the Secretary of Education, the Secretary of En-
4 ergy, the Secretary of Health and Human Services, the
5 Secretary of Housing and Urban Development, the Sec-
6 retary of the Interior, the Secretary of Labor, the Sec-
7 retary of Transportation, the Secretary of the Treasury,
8 the Attorney General, and the Administrator of the Envi-
9 ronmental Protection Agency, shall undertake a study ex-
10 amining the impacts of the current and proposed annual
11 grants of legal status, including immigrant and non-
12 immigrant status, along with the current level of illegal
13 immigration, on the infrastructure of and quality of life
14 in the United States.

15 (c) REPORT.—Not later than 90 days after the date
16 of the enactment of this Act, the Director of the Bureau
17 of the Census shall submit to Congress a report on the
18 findings of the study required by subsection (b), including
19 the following information:

20 (1) An estimate of the total legal and illegal im-
21 migrant populations of the United States, as they
22 relate to the total population.

23 (2) The projected impact of legal and illegal im-
24 migration on the size of the population of the United
25 States over the next 50 years, which regions of the

1 country are likely to experience the largest increases,
2 which small towns and rural counties are likely to
3 lose their character as a result of such growth, and
4 how the proposed regulations would affect these pro-
5 jections.

6 (3) The impact of the current and projected
7 foreign-born populations on the natural environment,
8 including the consumption of nonrenewable re-
9 sources, waste production and disposal, the emission
10 of pollutants, and the loss of habitat and productive
11 farmland, an estimate of the public expenditures re-
12 quired to maintain current standards in each of
13 these areas, the degree to which current standards
14 will deteriorate if such expenditures are not forth-
15 coming, and the additional effects the proposed reg-
16 ulations would have.

17 (4) The impact of the current and projected
18 foreign-born populations on employment and wage
19 rates, particularly in industries such as agriculture
20 and services in which the foreign born are con-
21 centrated, an estimate of the associated public costs,
22 and the additional effects the proposed regulations
23 would have.

24 (5) The impact of the current and projected
25 foreign-born populations on the need for additions

1 and improvements to the transportation infrastruc-
2 ture of the United States, an estimate of the public
3 expenditures required to meet this need, the impact
4 on Americans' mobility if such expenditures are not
5 forthcoming, and the additional effect the proposed
6 regulations would have.

7 (6) The impact of the current and projected
8 foreign-born populations on enrollment, class size,
9 teacher-student ratios, and the quality of education
10 in public schools, an estimate of the public expendi-
11 tures required to maintain current median stand-
12 ards, the degree to those standards will deteriorate
13 if such expenditures are not forthcoming, and the
14 additional effect the proposed regulations would
15 have.

16 (7) The impact of the current and projected
17 foreign-born populations on home ownership rates,
18 housing prices, and the demand for low-income and
19 subsidized housing, the public expenditures required
20 to maintain current median standards in these
21 areas, the degree to which those standards will dete-
22 riorate if such expenditures are not forthcoming, and
23 the additional effect the proposed regulations would
24 have.

(8) The impact of the current and projected foreign-born populations on access to quality health care and on the cost of health care and health insurance, an estimate of the public expenditures required to maintain current median standards, the degree to which those standards will deteriorate if such expenditures are not forthcoming, and the additional effect the proposed regulations would have.

(9) The impact of the current and projected foreign-born populations on the criminal justice system in the United States, an estimate of the associated public costs, and the additional effect the proposed regulations would have.

SEC. 402. NONIMMIGRANT TEMPORARY WORKER.

(a) TEMPORARY WORKER CATEGORY.—Section 101(a)(15)(H) (8 U.S.C. 1101(a)(15)(H)) is amended to read as follows:

“(H) an alien—

“(i)(b) subject to section 212(j)(2)—

“(aa) who is coming temporarily to the United States to perform services (other than services described in clause (ii)(a) or subparagraph (O) or (P)) in a specialty occupation de-

1 scribed in section 214(i)(1) or as a
2 fashion model;

3 “(bb) who meets the require-
4 ments for the occupation specified in
5 section 214(i)(2) or, in the case of a
6 fashion model, is of distinguished
7 merit and ability; and

8 “(cc) with respect to whom the
9 Secretary of Labor determines and
10 certifies to the Secretary of Homeland
11 Security that the intending employer
12 has filed an application with the Sec-
13 retary in accordance with section
14 212(n)(1);

15 “(b1)(aa) who is entitled to enter the
16 United States under the provisions of an
17 agreement listed in section 214(g)(8)(A);

18 “(bb) who is engaged in a specialty
19 occupation described in section 214(i)(3);
20 and

21 “(cc) with respect to whom the Sec-
22 retary of Labor determines and certifies to
23 the Secretary of Homeland Security and
24 the Secretary of State that the intending
25 employer has filed an attestation with the

1 Secretary of Labor in accordance with sec-
2 tion 212(t)(1); or

3 “(c)(aa) who is coming temporarily to
4 the United States to perform services as a
5 registered nurse;

6 “(bb) who meets the qualifications de-
7 scribed in section 212(m)(1); and

8 “(cc) with respect to whom the Sec-
9 retary of Labor determines and certifies to
10 the Secretary of Homeland Security that
11 an unexpired attestation is on file and in
12 effect under section 212(m)(2) for the fa-
13 cility (as defined in section 212(m)(6)) for
14 which the alien will perform the services;
15 or

16 “(ii)(a) who—

17 “(aa) has a residence in a foreign
18 country which the alien has no inten-
19 tion of abandoning; and

20 “(bb) is coming temporarily to
21 the United States to perform agricul-
22 tural labor or services (as defined by
23 the Secretary of Labor), including ag-
24 ricultural labor (as defined in section
25 3121(g) of the Internal Revenue Code

1 of 1986), agriculture (as defined in
2 section 3(f) of the Fair Labor Stand-
3 ards Act of 1938 (29 U.S.C. 203(f))),
4 and the pressing of apples for cider on
5 a farm, of a temporary or seasonal
6 nature;

7 “(b) who—

8 “(aa) has a residence in a foreign
9 country which the alien has no inten-
10 tion of abandoning;

11 “(bb) is coming temporarily to
12 the United States to perform non-
13 agricultural work or services of a tem-
14 porary or seasonal nature (if unem-
15 ployed persons capable of performing
16 such work or services cannot be found
17 in the United States), excluding med-
18 ical school graduates coming to the
19 United States to perform services as
20 members of the medical profession; or

21 “(c) who—

22 “(aa) has a residence in a foreign
23 country which the alien has no inten-
24 tion of abandoning;

1 “(bb) is coming temporarily to
2 the United States to perform tem-
3 porary labor or services other than the
4 labor or services described in clause
5 (i)(b), (i)(c), (ii)(a), or (iii), or sub-
6 paragraph (L), (O), (P), or (R) (if
7 unemployed persons capable of per-
8 forming such labor or services cannot
9 be found in the United States); and

10 “(cc) meets the requirements of
11 section 218A, including the filing of a
12 petition under such section on behalf
13 of the alien;

14 “(iii) who—

15 “(a) has a residence in a foreign
16 country which the alien has no inten-
17 tion of abandoning; and

18 “(b) is coming temporarily to the
19 United States as a trainee (other than
20 to receive graduate medical education
21 or training) in a training program
22 that is not designed primarily to pro-
23 vide productive employment; or

24 “(iv) who—

1 “(a) is the spouse or a minor
 2 child of an alien described in this sub-
 3 paragraph; and

4 “(b) is accompanying or following
 5 to join such alien.”.

6 (b) EFFECTIVE DATE AND APPLICATION.—The
 7 amendment made by subsection (a) shall take effect on
 8 the date that is 18 months after the date that not less
 9 than \$400,000,000 have been appropriated and made
 10 available to the Secretary to implement the Electronic
 11 Employment Verification System established under
 12 274A(d) of the Immigration and Nationality Act, as
 13 amended by section 301(a), with respect to aliens, who,
 14 on such effective date, are outside of the United States.

15 **SEC. 403. ADMISSION OF NONIMMIGRANT TEMPORARY**
 16 **GUEST WORKERS.**

17 (a) TEMPORARY GUEST WORKERS.—

18 (1) IN GENERAL.—Chapter 2 of title II (8
 19 U.S.C. 1181 et seq.) is amended by inserting after
 20 section 218 the following:

21 **“SEC. 218A. ADMISSION OF H-2C NONIMMIGRANTS.**

22 “(a) AUTHORIZATION.—The Secretary of State may
 23 grant a temporary visa to an H-2C nonimmigrant who
 24 demonstrates an intent to perform labor or services in the
 25 United States (other than the labor or services described

1 in clause (i)(b) or (ii)(a) of section 101(a)(15)(H) or sub-
 2 paragraph (L), (O), (P), or (R)) of section 101(a)(15).

3 “(b) REQUIREMENTS FOR ADMISSION.—An alien
 4 shall be eligible for H-2C nonimmigrant status if the alien
 5 meets the following requirements:

6 “(1) ELIGIBILITY TO WORK.—The alien shall
 7 establish that the alien is capable of performing the
 8 labor or services required for an occupation under
 9 section 101(a)(15)(H)(ii)(c).

10 “(2) EVIDENCE OF EMPLOYMENT.—The alien
 11 shall establish that the alien has received a job offer
 12 from an employer who has complied with the re-
 13 quirements of 218B.

14 “(3) FEE.—The alien shall pay a \$500 visa
 15 issuance fee in addition to the cost of processing and
 16 adjudicating such application. Nothing in this para-
 17 graph shall be construed to affect consular proce-
 18 dures for charging reciprocal fees.

19 “(4) MEDICAL EXAMINATION.—The alien shall
 20 undergo a medical examination (including a deter-
 21 mination of immunization status), at the alien’s ex-
 22 pense, that conforms to generally accepted standards
 23 of medical practice.

24 “(5) APPLICATION CONTENT AND WAIVER.—

1 “(A) APPLICATION FORM.—The alien shall
2 submit to the Secretary a completed applica-
3 tion, on a form designed by the Secretary of
4 Homeland Security, including proof of evidence
5 of the requirements under paragraphs (1) and
6 (2).

7 “(B) CONTENT.—In addition to any other
8 information that the Secretary requires to de-
9 termine an alien’s eligibility for H-2C non-
10 immigrant status, the Secretary shall require an
11 alien to provide information concerning the
12 alien’s—

13 “(i) physical and mental health;

14 “(ii) criminal history and gang mem-
15 bership;

16 “(iii) immigration history; and

17 “(iv) involvement with groups or indi-
18 viduals that have engaged in terrorism,
19 genocide, persecution, or who seek the
20 overthrow of the United States Govern-
21 ment.

22 “(C) KNOWLEDGE.—The alien shall in-
23 clude with the application submitted under this
24 paragraph a signed certification in which the
25 alien certifies that—

1 “(i) the alien has read and under-
 2 stands all of the questions and statements
 3 on the application form;

4 “(ii) the alien certifies under penalty
 5 of perjury under the laws of the United
 6 States that the application, and any evi-
 7 dence submitted with it, are all true and
 8 correct; and

9 “(iii) the applicant authorizes the re-
 10 lease of any information contained in the
 11 application and any attached evidence for
 12 law enforcement purposes.

13 “(c) GROUNDS OF INADMISSIBILITY.—

14 “(1) IN GENERAL.—In determining an alien’s
 15 admissibility as an H–2C nonimmigrant—

16 “(A) paragraphs (5), (6)(A), (7), (9)(B),
 17 and (9)(C) of section 212(a) may be waived for
 18 conduct that occurred before the effective date
 19 of the Comprehensive Immigration Reform Act
 20 of 2006;

21 “(B) the Secretary of Homeland Security
 22 may not waive the application of—

23 “(i) subparagraph (A), (B), (C), (E),
 24 (G), (H), or (I) of section 212(a)(2) (relat-
 25 ing to criminals);

1 “(ii) section 212(a)(3) (relating to se-
 2 curity and related grounds); or

3 “(iii) subparagraph (A), (C) or (D) of
 4 section 212(a)(10) (relating to polygamists
 5 and child abductors); and

6 “(C) for conduct that occurred before the
 7 date of the enactment of the Comprehensive
 8 Immigration Reform Act of 2006, the Secretary
 9 of Homeland Security may waive the applica-
 10 tion of any provision of section 212(a) not list-
 11 ed in subparagraph (B) on behalf of an indi-
 12 vidual alien—

13 “(i) for humanitarian purposes;

14 “(ii) to ensure family unity; or

15 “(iii) if such a waiver is otherwise in
 16 the public interest.

17 “(2) RENEWAL OF AUTHORIZED ADMISSION
 18 AND SUBSEQUENT ADMISSIONS.—An alien seeking
 19 renewal of authorized admission or subsequent ad-
 20 mission as an H–2C nonimmigrant shall establish
 21 that the alien is not inadmissible under section
 22 212(a).

23 “(d) BACKGROUND CHECKS.—The Secretary of
 24 Homeland Security shall not admit, and the Secretary of
 25 State shall not issue a visa to, an alien seeking H–2C non-

1 immigrant status unless all appropriate background
2 checks have been completed.

3 “(e) INELIGIBLE TO CHANGE NONIMMIGRANT CLAS-
4 SIFICATION.—An H-2C nonimmigrant may not change
5 nonimmigrant classification under section 248.

6 “(f) PERIOD OF AUTHORIZED ADMISSION.—

7 “(1) AUTHORIZED PERIOD AND RENEWAL.—

8 The initial period of authorized admission as an H-
9 2C nonimmigrant shall be 3 years, and the alien
10 may seek 1 extension for an additional 3-year pe-
11 riod.

12 “(2) INTERNATIONAL COMMUTERS.—An alien
13 who resides outside the United States and commutes
14 into the United States to work as an H-2C non-
15 immigrant, is not subject to the time limitations
16 under paragraph (1).

17 “(3) LOSS OF EMPLOYMENT.—

18 “(A) IN GENERAL.—

19 “(i) PERIOD OF UNEMPLOYMENT.—

20 Subject to clause (ii) and subsection (c),
21 the period of authorized admission of an
22 H-2C nonimmigrant shall terminate if the
23 alien is unemployed for 60 or more con-
24 secutive days.

“(ii) EXCEPTION.—The period of authorized admission of an H-2C non-immigrant shall not terminate if the alien is unemployed for 60 or more consecutive days if such unemployment is caused by—

“(I) a period of physical or mental disability of the alien or the spouse, son, daughter, or parent (as defined in section 101 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611)) of the alien;

“(II) a period of vacation, medical leave, maternity leave, or similar leave from employment authorized by employer policy, State law, or Federal law; or

“(III) any other period of temporary unemployment caused by circumstances beyond the control of the alien.

“(B) RETURN TO FOREIGN RESIDENCE.—Any alien whose period of authorized admission terminates under subparagraph (A) shall be required to leave the United States.

1 “(C) PERIOD OF VISA VALIDITY.—Any
 2 alien, whose period of authorized admission ter-
 3 minates under subparagraph (A), who leaves
 4 the United States under subparagraph (B),
 5 may reenter the United States as an H-2C
 6 nonimmigrant to work for an employer, if the
 7 alien has complied with the requirements of
 8 subsection (b). The Secretary may, in the Sec-
 9 retary’s sole and unreviewable discretion, reau-
 10 thorize such alien for admission as an H-2C
 11 nonimmigrant without requiring the alien’s de-
 12 parture from the United States.

13 “(4) VISITS OUTSIDE UNITED STATES.—

14 “(A) IN GENERAL.—Under regulations es-
 15 tablished by the Secretary of Homeland Secu-
 16 rity, an H-2C nonimmigrant—

17 “(i) may travel outside of the United
 18 States; and

19 “(ii) may be readmitted without hav-
 20 ing to obtain a new visa if the period of
 21 authorized admission has not expired.

22 “(B) EFFECT ON PERIOD OF AUTHORIZED
 23 ADMISSION.—Time spent outside the United
 24 States under subparagraph (A) shall not extend

1 the period of authorized admission in the
2 United States.

3 “(5) BARS TO EXTENSION OR ADMISSION.—An
4 alien may not be granted H–2C nonimmigrant sta-
5 tus, or an extension of such status, if—

6 “(A) the alien has violated any material
7 term or condition of such status granted pre-
8 viously, including failure to comply with the
9 change of address reporting requirements under
10 section 265;

11 “(B) the alien is inadmissible as a non-
12 immigrant; or

13 “(C) the granting of such status or exten-
14 sion of such status would allow the alien to ex-
15 ceed 6 years as an H–2C nonimmigrant, unless
16 the alien has resided and been physically
17 present outside the United States for at least 1
18 year after the expiration of such H–2C non-
19 immigrant status.

20 “(g) EVIDENCE OF NONIMMIGRANT STATUS.—Each
21 H–2C nonimmigrant shall be issued documentary evidence
22 of nonimmigrant status, which—

23 “(1) shall be machine-readable, tamper-resist-
24 ant, and allow for biometric authentication;

1 “(2) shall be designed in consultation with the
2 Forensic Document Laboratory of the Bureau of
3 Immigration and Customs Enforcement;

4 “(3) shall, during the alien’s authorized period
5 of admission under subsection (f), serve as a valid
6 entry document for the purpose of applying for ad-
7 mission to the United States—

8 “(A) instead of a passport and visa if the
9 alien—

10 “(i) is a national of a foreign territory
11 contiguous to the United States; and

12 “(ii) is applying for admission at a
13 land border port of entry; and

14 “(B) in conjunction with a valid passport,
15 if the alien is applying for admission at an air
16 or sea port of entry;

17 “(4) may be accepted during the period of its
18 validity by an employer as evidence of employment
19 authorization and identity under section
20 274A(b)(1)(B); and

21 “(5) shall be issued to the H–2C nonimmigrant
22 by the Secretary of Homeland Security promptly
23 after the final adjudication of such alien’s applica-
24 tion for H–2C nonimmigrant status.

1 “(h) PENALTY FOR FAILURE TO DEPART.—If an H–
 2 2C nonimmigrant fails to depart the United States before
 3 the date which is 10 days after the date that the alien’s
 4 authorized period of admission as an H–2C nonimmigrant
 5 terminates, the H–2C nonimmigrant may not apply for
 6 or receive any immigration relief or benefit under this Act
 7 or any other law, except for relief under sections 208 and
 8 241(b)(3) and relief under the Convention Against Tor-
 9 ture and Other Cruel, Inhuman or Degrading Treatment
 10 or Punishment, for an alien who indicates either an inten-
 11 tion to apply for asylum under section 208 or a fear of
 12 persecution or torture.

13 “(i) PENALTY FOR ILLEGAL ENTRY OR OVERSTAY.—
 14 Any alien who enters, attempts to enter, or crosses the
 15 border after the date of the enactment of this section, and
 16 is physically present in the United States after such date
 17 in violation of this Act or of any other Federal law, may
 18 not receive, for a period of 10 years—

19 “(1) any relief under section 240A(a),
 20 240A(b)(1), or 240B; or

21 “(2) nonimmigrant status under section
 22 101(a)(15) (except subparagraphs (T) and (U)).

23 “(j) PORTABILITY.—A nonimmigrant alien described
 24 in this section, who was previously issued a visa or other-

1 wise provided H-2C nonimmigrant status, may accept a
 2 new offer of employment with a subsequent employer, if—

3 “(1) the employer complies with section 218B;
 4 and

5 “(2) the alien, after lawful admission to the
 6 United States, did not work without authorization.

7 “(k) CHANGE OF ADDRESS.—An H-2C non-
 8 immigrant shall comply with the change of address report-
 9 ing requirements under section 265 through either elec-
 10 tronic or paper notification.

11 “(l) COLLECTION OF FEES.—All fees collected under
 12 this section shall be deposited in the Treasury in accord-
 13 ance with section 286(c).

14 “(m) ISSUANCE OF H-4 NONIMMIGRANT VISAS FOR
 15 SPOUSE AND CHILDREN.—

16 “(1) IN GENERAL.—The alien spouse and chil-
 17 dren of an H-2C nonimmigrant (referred to in this
 18 section as ‘dependent aliens’) who are accompanying
 19 or following to join the H-2C nonimmigrant may be
 20 issued nonimmigrant visas under section
 21 101(a)(15)(H)(iv).

22 “(2) REQUIREMENTS FOR ADMISSION.—A de-
 23 pendent alien is eligible for nonimmigrant status
 24 under 101(a)(15)(H)(iv) if the dependent alien
 25 meets the following requirements:

1 “(A) ELIGIBILITY.—The dependent alien is
 2 admissible as a nonimmigrant and does not fall
 3 within a class of aliens ineligible for H–4A non-
 4 immigrant status listed under subsection (c).

5 “(B) MEDICAL EXAMINATION.—Before a
 6 nonimmigrant visa is issued to a dependent
 7 alien under this subsection, the dependent alien
 8 shall submit to a medical examination (includ-
 9 ing a determination of immunization status) at
 10 the alien’s expense, that conforms to generally
 11 accepted standards of medical practice.

12 “(C) BACKGROUND CHECKS.—Before a
 13 nonimmigrant visa is issued to a dependent
 14 alien under this section, the consular officer
 15 shall conduct such background checks as the
 16 Secretary of State, in consultation with the Sec-
 17 retary of Homeland Security, considers appro-
 18 priate.

19 “(n) DEFINITIONS.—In this section and sections
 20 218B, 218C, and 218D:

21 “(1) AGGRIEVED PERSON.— term ‘aggrieved
 22 person’ means a person adversely affected by an al-
 23 leged violation of this section, including—

1 “(A) a worker whose job, wages, or work-
 2 ing conditions are adversely affected by the vio-
 3 lation; and

4 “(B) a representative for workers whose
 5 jobs, wages, or working conditions are adversely
 6 affected by the violation who brings a complaint
 7 on behalf of such worker.

8 “(2) AREA OF EMPLOYMENT.—The terms ‘area
 9 of employment’ and ‘area of intended employment’
 10 mean the area within normal commuting distance of
 11 the worksite or physical location at which the work
 12 of the temporary worker is or will be performed. If
 13 such worksite or location is within a Metropolitan
 14 Statistical Area, any place within such area is
 15 deemed to be within the area of employment.

16 “(3) ELIGIBLE INDIVIDUAL.—The term ‘eligible
 17 individual’ means, with respect to employment, an
 18 individual who is not an unauthorized alien (as de-
 19 fined in section 274A) with respect to that employ-
 20 ment.

21 “(4) EMPLOY; EMPLOYEE; EMPLOYER.—The
 22 terms ‘employ’, ‘employee’, and ‘employer’ have the
 23 meanings given such terms in section 3 of the Fair
 24 Labor Standards Act of 1938 (29 U.S.C. 203).

1 “(5) FOREIGN LABOR CONTRACTOR.—The term
2 ‘foreign labor contractor’ means any person who for
3 any compensation or other valuable consideration
4 paid or promised to be paid, performs any foreign
5 labor contracting activity.

6 “(6) FOREIGN LABOR CONTRACTING ACTIV-
7 ITY.—The term ‘foreign labor contracting activity’
8 means recruiting, soliciting, hiring, employing, or
9 furnishing, an individual who resides outside of the
10 United States for employment in the United States
11 as a nonimmigrant alien described in section
12 101(a)(15)(H)(ii)(c).

13 “(7) H-2C NONIMMIGRANT.—The term ‘H-2C
14 nonimmigrant’ means a nonimmigrant described in
15 section 101(a)(15)(H)(ii)(c).

16 “(8) SEPARATION FROM EMPLOYMENT.—The
17 term ‘separation from employment’ means the work-
18 er’s loss of employment, other than through a dis-
19 charge for inadequate performance, violation of
20 workplace rules, cause, voluntary departure, vol-
21 untary retirement, or the expiration of a grant or
22 contract. The term does not include any situation in
23 which the worker is offered, as an alternative to
24 such loss of employment, a similar employment op-
25 portunity with the same employer at equivalent or

1 higher compensation and benefits than the position
 2 from which the employee was discharged, regardless
 3 of whether the employee accepts the offer. Nothing
 4 in this paragraph shall limit an employee's rights
 5 under a collective bargaining agreement or other em-
 6 ployment contract.

7 “(9) UNITED STATES WORKER.—The term
 8 ‘United States worker’ means an employee who is—

9 “(A) a citizen or national of the United
 10 States; or

11 “(B) an alien who is—

12 “(i) lawfully admitted for permanent
 13 residence;

14 “(ii) admitted as a refugee under sec-
 15 tion 207;

16 “(iii) granted asylum under section
 17 208; or

18 “(iv) otherwise authorized, under this
 19 Act or by the Secretary of Homeland Secu-
 20 rity, to be employed in the United States.”.

21 (2) CLERICAL AMENDMENT.—The table of con-
 22 tents for the Immigration and Nationality Act (8
 23 U.S.C. 1101 et seq.) is amended by inserting after
 24 the item relating to section 218 the following:

“Sec. 218A. Admission of temporary H-2C workers.”.

1 **SEC. 404. EMPLOYER OBLIGATIONS.**

2 (a) IN GENERAL.—Title II (8 U.S.C. 1201 et seq.)
3 is amended by inserting after section 218A, as added by
4 section 403, the following:

5 **“SEC. 218B. EMPLOYER OBLIGATIONS.**

6 “(a) GENERAL REQUIREMENTS.—Each employer
7 who employs an H–2C nonimmigrant shall—

8 “(1) file a petition in accordance with sub-
9 section (b); and

10 “(2) pay the appropriate fee, as determined by
11 the Secretary of Labor.

12 “(b) REQUIRED PROCEDURE.—Except where the
13 Secretary of Labor has determined that there is a shortage
14 of United States workers in the occupation and area of
15 intended employment to which the H–2C nonimmigrant
16 is sought—

17 “(1) EFFORTS TO RECRUIT UNITED STATES
18 WORKERS.—During the period beginning not later
19 than 90 days prior to the date on which a petition
20 is filed under subsection (a)(1), and ending on the
21 date that is 14 days prior to the date on which the
22 petition is filed, the employer involved shall take the
23 following steps to recruit United States workers for
24 the position for which the H–2C nonimmigrant is
25 sought under the petition:

1 “(A) Submit a copy of the job opportunity,
2 including a description of the wages and other
3 terms and conditions of employment and the
4 minimum education, training, experience and
5 other requirements of the job, to the State Em-
6 ployment Service Agency that serves the area of
7 employment in the State in which the employer
8 is located.

9 “(B) Authorize the State Employment
10 Service Agency to post the job opportunity on
11 the Internet through the website for America’s
12 Job Bank, with local job banks, and with unem-
13 ployment agencies and other labor referral and
14 recruitment sources pertinent to the job in-
15 volved.

16 “(C) Authorize the State Employment
17 Service Agency to notify labor organizations in
18 the State in which the job is located, and if ap-
19 plicable, the office of the local union which rep-
20 resents the employees in the same or substan-
21 tially equivalent job classification of the job op-
22 portunity.

23 “(D) Post the availability of the job oppor-
24 tunity for which the employer is seeking a

1 worker in conspicuous locations at the place of
2 employment for all employees to see.

3 “(2) EFFORTS TO EMPLOY UNITED STATES
4 WORKERS.—An employer that seeks to employ an
5 H-2C nonimmigrant shall—

6 “(A) first offer the job to any eligible
7 United States worker who applies, is qualified
8 for the job and is available at the time of need,
9 notwithstanding any other valid employment
10 criteria.

11 “(c) PETITION.—A petition to hire an H-2C non-
12 immigrant under this section shall include an attestation
13 by the employer of the following:

14 “(1) PROTECTION OF UNITED STATES WORK-
15 ERS.—The employment of an H-2C
16 nonimmigrant—

17 “(A) will not adversely affect the wages
18 and working conditions of workers in the
19 United States similarly employed; and

20 “(B) did not and will not cause the separa-
21 tion from employment of a United States work-
22 er employed by the employer within the 180-day
23 period beginning 90 days before the date on
24 which the petition is filed.

25 “(2) WAGES.—

1 “(A) IN GENERAL.—The H-2C non-
2 immigrant will be paid not less than the greater
3 of—

4 “(i) the actual wage level paid by the
5 employer to all other individuals with simi-
6 lar experience and qualifications for the
7 specific employment in question; or

8 “(ii) the prevailing wage level for the
9 occupational classification in the area of
10 employment, taking into account experi-
11 ence and skill levels of employees.

12 “(B) CALCULATION.—The wage levels
13 under subparagraph (A) shall be calculated
14 based on the best information available at the
15 time of the filing of the application.

16 “(C) PREVAILING WAGE LEVEL.—For pur-
17 poses of subparagraph (A)(ii), the prevailing
18 wage level shall be determined in accordance as
19 follows:

20 “(i) If the job opportunity is covered
21 by a collective bargaining agreement be-
22 tween a union and the employer, the pre-
23 vailing wage shall be the wage rate set
24 forth in the collective bargaining agree-
25 ment.

1 “(ii) If the job opportunity is not cov-
2 ered by such an agreement and it is in an
3 occupation that is covered by a wage deter-
4 mination under a provision of subchapter
5 IV of chapter 31 of title 40, United States
6 Code, or the Service Contract Act of 1965
7 (41 U.S.C. 351 et seq.), the prevailing
8 wage level shall be the appropriate statu-
9 tory wage.

10 “(iii)(I) If the job opportunity is not
11 covered by such an agreement and it is in
12 an occupation that is not covered by a
13 wage determination under a provision of
14 subchapter IV of chapter 31 of title 40,
15 United States Code, or the Service Con-
16 tract Act of 1965 (41 U.S.C. 351 et seq.),
17 the prevailing wage level shall be based on
18 published wage data for the occupation
19 from the Bureau of Labor Statistics, in-
20 cluding the Occupational Employment Sta-
21 tistics survey, Current Employment Statis-
22 tics data, National Compensation Survey,
23 and Occupational Employment Projections
24 program. If the Bureau of Labor Statistics
25 does not have wage data applicable to such

1 occupation, the employer may base the pre-
2 vailing wage level on another wage survey
3 approved by the Secretary of Labor.

4 “(II) The Secretary shall promulgate
5 regulations applicable to approval of such
6 other wage surveys that require, among
7 other things, that the Bureau of Labor
8 Statistics determine such surveys are sta-
9 tistically viable.

10 “(3) WORKING CONDITIONS.—All workers in
11 the occupation at the place of employment at which
12 the H-2C nonimmigrant will be employed will be
13 provided the working conditions and benefits that
14 are normal to workers similarly employed in the area
15 of intended employment.

16 “(4) LABOR DISPUTE.—There is not a strike,
17 lockout, or work stoppage in the course of a labor
18 dispute in the occupation at the place of employment
19 at which the H-2C nonimmigrant will be employed.
20 If such strike, lockout, or work stoppage occurs fol-
21 lowing submission of the petition, the employer will
22 provide notification in accordance with regulations
23 promulgated by the Secretary of Labor.

24 “(5) PROVISION OF INSURANCE.—If the posi-
25 tion for which the H-2C nonimmigrant is sought is

1 not covered by the State workers' compensation law,
 2 the employer will provide, at no cost to the H-2C
 3 nonimmigrant, insurance covering injury and disease
 4 arising out of, and in the course of, the worker's em-
 5 ployment, which will provide benefits at least equal
 6 to those provided under the State workers' com-
 7 pensation law for comparable employment.

8 “(6) NOTICE TO EMPLOYEES.—

9 “(A) IN GENERAL.—The employer has pro-
 10 vided notice of the filing of the petition to the
 11 bargaining representative of the employer's em-
 12 ployees in the occupational classification and
 13 area of employment for which the H-2C non-
 14 immigrant is sought.

15 “(B) NO BARGAINING REPRESENTATIVE.—

16 If there is no such bargaining representative,
 17 the employer has—

18 “(i) posted a notice of the filing of the
 19 petition in a conspicuous location at the
 20 place or places of employment for which
 21 the H-2C nonimmigrant is sought; or

22 “(ii) electronically disseminated such
 23 a notice to the employer's employees in the
 24 occupational classification for which the
 25 H-2C nonimmigrant is sought.

1 “(7) RECRUITMENT.—Except where the Sec-
2 retary of Labor has determined that there is a
3 shortage of United States workers in the occupation
4 and area of intended employment for which the H-
5 2C nonimmigrant is sought—

6 “(A) there are not sufficient workers who
7 are able, willing, and qualified, and who will be
8 available at the time and place needed, to per-
9 form the labor or services involved in the peti-
10 tion; and

11 “(B) good faith efforts have been taken to
12 recruit United States workers, in accordance
13 with regulations promulgated by the Secretary
14 of Labor, which efforts included—

15 “(i) the completion of recruitment
16 during the period beginning on the date
17 that is 90 days before the date on which
18 the petition was filed with the Department
19 of Homeland Security and ending on the
20 date that is 14 days before such filing
21 date; and

22 “(ii) the actual wage paid by the em-
23 ployer for the occupation in the areas of
24 intended employment was used in con-
25 ducting recruitment.

1 “(8) INELIGIBILITY.—The employer is not cur-
2 rently ineligible from using the H-2C nonimmigrant
3 program described in this section.

4 “(9) BONAFIDE OFFER OF EMPLOYMENT.—The
5 job for which the H-2C nonimmigrant is sought is
6 a bona fide job—

7 “(A) for which the employer needs labor or
8 services;

9 “(B) which has been and is clearly open to
10 any United States worker; and

11 “(C) for which the employer will be able to
12 place the H-2C nonimmigrant on the payroll.

13 “(10) PUBLIC AVAILABILITY AND RECORDS RE-
14 TENTION.—A copy of each petition filed under this
15 section and documentation supporting each attesta-
16 tion, in accordance with regulations promulgated by
17 the Secretary of Labor, will—

18 “(A) be provided to every H-2C non-
19 immigrant employed under the petition;

20 “(B) be made available for public examina-
21 tion at the employer’s place of business or work
22 site;

23 “(C) be made available to the Secretary of
24 Labor during any audit; and

1 “(D) remain available for examination for
2 5 years after the date on which the petition is
3 filed.

4 “(11) NOTIFICATION UPON SEPARATION FROM
5 OR TRANSFER OF EMPLOYMENT.—The employer will
6 notify the Secretary of Labor and the Secretary of
7 Homeland Security of an H–2C nonimmigrant’s sep-
8 aration from employment or transfer to another em-
9 ployer not more than 3 business days after the date
10 of such separation or transfer, in accordance with
11 regulations promulgated by the Secretary of Home-
12 land Security.

13 “(12) ACTUAL NEED FOR LABOR OR SERV-
14 ICES.—The petition was filed not more than 60 days
15 before the date on which the employer needed labor
16 or services for which the H–2C nonimmigrant is
17 sought.

18 “(d) AUDIT OF ATTESTATIONS.—

19 “(1) REFERRALS BY SECRETARY OF HOMELAND
20 SECURITY.—The Secretary of Homeland Security
21 shall refer all approved petitions for H–2C non-
22 immigrants to the Secretary of Labor for potential
23 audit.

24 “(2) AUDITS AUTHORIZED.—The Secretary of
25 Labor may audit any approved petition referred pur-

1 suant to paragraph (1), in accordance with regula-
 2 tions promulgated by the Secretary of Labor.

3 “(e) INELIGIBLE EMPLOYERS.—

4 “(1) IN GENERAL.—The Secretary of Homeland
 5 Security shall not approve an employer’s petitions,
 6 applications, certifications, or attestations under any
 7 immigrant or nonimmigrant program if the Sec-
 8 retary of Labor determines, after notice and an op-
 9 portunity for a hearing, that the employer submit-
 10 ting such documents—

11 “(A) has, with respect to the attestations
 12 required under subsection (b)—

13 “(i) misrepresented a material fact;

14 “(ii) made a fraudulent statement; or

15 “(iii) failed to comply with the terms
 16 of such attestations; or

17 “(B) failed to cooperate in the audit proc-
 18 ess in accordance with regulations promulgated
 19 by the Secretary of Labor.

20 “(2) LENGTH OF INELIGIBILITY.—An employer
 21 described in paragraph (1) shall be ineligible to par-
 22 ticipate in the labor certification programs of the
 23 Secretary of Labor for not less than the time period
 24 determined by the Secretary, not to exceed 3 years.

1 “(3) EMPLOYERS IN HIGH UNEMPLOYMENT
 2 AREAS.—Beginning on the date that is 1 year after
 3 the date of the enactment of the Initial Entry, Ad-
 4 justment, and Citizenship Assistance Grant Act of
 5 2006, the Secretary of Homeland Security may not
 6 approve any employer’s petition under subsection (b)
 7 if the work to be performed by the H–2C non-
 8 immigrant is not agriculture based and is located in
 9 a metropolitan or micropolitan statistical area (as
 10 defined by the Office of Management and Budget)
 11 in which the unemployment rate for workers who
 12 have not completed any education beyond a high
 13 school diploma during the most recently completed
 14 6-month period averaged more than 9.0 percent.

15 “(f) REGULATION OF FOREIGN LABOR CONTRAC-
 16 TORS.—

17 “(1) COVERAGE.—Notwithstanding any other
 18 provision of law, an H–2C nonimmigrant may not be
 19 treated as an independent contractor.

20 “(2) APPLICABILITY OF LAWS.—An H–2C non-
 21 immigrant shall not be denied any right or any rem-
 22 edy under Federal, State, or local labor or employ-
 23 ment law that would be applicable to a United
 24 States worker employed in a similar position with

1 the employer because of the alien's status as a non-
2 immigrant worker.

3 “(3) TAX RESPONSIBILITIES.—With respect to
4 each employed H-2C nonimmigrant, an employer
5 shall comply with all applicable Federal, State, and
6 local tax and revenue laws.

7 “(g) WHISTLEBLOWER PROTECTION.—It shall be un-
8 lawful for an employer or a labor contractor of an H-2C
9 nonimmigrant to intimidate, threaten, restrain, coerce, re-
10 taliate, discharge, or in any other manner, discriminate
11 against an employee or former employee because the em-
12 ployee or former employee—

13 “(1) discloses information to the employer or
14 any other person that the employee or former em-
15 ployee reasonably believes demonstrates a violation
16 of this Act; or

17 “(2) cooperates or seeks to cooperate in an in-
18 vestigation or other proceeding concerning compli-
19 ance with the requirements of this Act.

20 “(h) LABOR RECRUITERS.—

21 “(1) IN GENERAL.—Each employer that en-
22 gages in foreign labor contracting activity and each
23 foreign labor contractor shall ascertain and disclose,
24 to each such worker who is recruited for employment
25 at the time of the worker's recruitment—

1 “(A) the place of employment;

2 “(B) the compensation for the employ-
3 ment;

4 “(C) a description of employment activi-
5 ties;

6 “(D) the period of employment;

7 “(E) any other employee benefit to be pro-
8 vided and any costs to be charged for each ben-
9 efit;

10 “(F) any travel or transportation expenses
11 to be assessed;

12 “(G) the existence of any labor organizing
13 effort, strike, lockout, or other labor dispute at
14 the place of employment;

15 “(H) the existence of any arrangement
16 with any owner, employer, foreign contractor,
17 or its agent where such person receives a com-
18 mission from the provision of items or services
19 to workers;

20 “(I) the extent to which workers will be
21 compensated through workers’ compensation,
22 private insurance, or otherwise for injuries or
23 death, including—

24 “(i) work related injuries and death
25 during the period of employment;

1 “(ii) the name of the State workers’
 2 compensation insurance carrier or the
 3 name of the policyholder of the private in-
 4 surance;

5 “(iii) the name and the telephone
 6 number of each person who must be noti-
 7 fied of an injury or death; and

8 “(iv) the time period within which
 9 such notice must be given;

10 “(J) any education or training to be pro-
 11 vided or required, including—

12 “(i) the nature and cost of such train-
 13 ing;

14 “(ii) the entity that will pay such
 15 costs; and

16 “(iii) whether the training is a condi-
 17 tion of employment, continued employ-
 18 ment, or future employment; and

19 “(K) a statement, in a form specified by
 20 the Secretary of Labor, describing the protec-
 21 tions of this Act for workers recruited abroad.

22 “(2) FALSE OR MISLEADING INFORMATION.—

23 No foreign labor contractor or employer who en-
 24 gages in foreign labor contracting activity shall
 25 knowingly provide material false or misleading infor-

1 mation to any worker concerning any matter re-
2 quired to be disclosed in paragraph (1).

3 “(3) LANGUAGES.—The information required to
4 be disclosed under paragraph (1) shall be provided
5 in writing in English or, as necessary and reason-
6 able, in the language of the worker being recruited.
7 The Secretary of Labor shall make forms available
8 in English, Spanish, and other languages, as nec-
9 essary, which may be used in providing workers with
10 information required under this section.

11 “(4) FEES.—A person conducting a foreign
12 labor contracting activity shall not assess any fee to
13 a worker for such foreign labor contracting activity.

14 “(5) TERMS.—No employer or foreign labor
15 contractor shall, without justification, violate the
16 terms of any agreement made by that contractor or
17 employer regarding employment under this program.

18 “(6) TRAVEL COSTS.—If the foreign labor con-
19 tractor or employer charges the employee for trans-
20 portation such transportation costs shall be reason-
21 able.

22 “(7) OTHER WORKER PROTECTIONS.—

23 “(A) NOTIFICATION.—Not less frequently
24 than once every 2 years, each employer shall
25 notify the Secretary of Labor of the identity of

1 any foreign labor contractor engaged by the em-
2 ployer in any foreign labor contractor activity
3 for, or on behalf of, the employer.

4 “(B) REGISTRATION OF FOREIGN LABOR
5 CONTRACTORS.—

6 “(i) IN GENERAL.—No person shall
7 engage in foreign labor recruiting activity
8 unless such person has a certificate of reg-
9 istration from the Secretary of Labor
10 specifying the activities that such person is
11 authorized to perform. An employer who
12 retains the services of a foreign labor con-
13 tractor shall only use those foreign labor
14 contractors who are registered under this
15 subparagraph.

16 “(ii) ISSUANCE.—The Secretary shall
17 promulgate regulations to establish an effi-
18 cient electronic process for the investiga-
19 tion and approval of an application for a
20 certificate of registration of foreign labor
21 contractors not later than 14 days after
22 such application is filed, including—

23 “(I) requirements under para-
24 graphs (1), (4), and (5) of section 102
25 of the Migrant and Seasonal Agricul-

1 tural Worker Protection Act (29
2 U.S.C. 1812);

3 “(II) an expeditious means to up-
4 date registrations and renew certifi-
5 cates; and

6 “(III) any other requirements
7 that the Secretary may prescribe.

8 “(iii) TERM.—Unless suspended or re-
9 voked, a certificate under this subpara-
10 graph shall be valid for 2 years.

11 “(iv) REFUSAL TO ISSUE; REVOCATION;
12 SUSPENSION.—In accordance with
13 regulations promulgated by the Secretary
14 of Labor, the Secretary may refuse to issue
15 or renew, or may suspend or revoke, a cer-
16 tificate of registration under this subpara-
17 graph if—

18 “(I) the application or holder of
19 the certification has knowingly made a
20 material misrepresentation in the ap-
21 plication for such certificate;

22 “(II) the applicant for, or holder
23 of, the certification is not the real
24 party in interest in the application or

1 certificate of registration and the real
2 party in interest—

3 “(aa) is a person who has
4 been refused issuance or renewal
5 of a certificate;

6 “(bb) has had a certificate
7 suspended or revoked; or

8 “(cc) does not qualify for a
9 certificate under this paragraph;
10 or

11 “(III) the applicant for or holder
12 of the certification has failed to com-
13 ply with this Act.

14 “(C) REMEDY FOR VIOLATIONS.—An em-
15 ployer engaging in foreign labor contracting ac-
16 tivity and a foreign labor contractor that vio-
17 lates the provisions of this subsection shall be
18 subject to remedies for foreign labor contractor
19 violations under subsections (h) and (i). If a
20 foreign labor contractor acting as an agent of
21 an employer violates any provision of this sub-
22 section, the employer shall also be subject to
23 remedies under subsections (h) and (i). An em-
24 ployer that violates a provision of this sub-
25 section relating to employer obligations shall be

1 subject to remedies under subsections (h) and
2 (i).

3 “(D) EMPLOYER NOTIFICATION.—An em-
4 ployer shall notify the Secretary of Labor if the
5 employer becomes aware of a violation of this
6 subsection by a foreign labor recruiter.

7 “(E) WRITTEN AGREEMENTS.—A foreign
8 labor contractor may not violate the terms of
9 any written agreements made with an employer
10 relating to any contracting activity or worker
11 protection under this subsection.

12 “(F) BONDING REQUIREMENT.—The Sec-
13 retary of Labor may require a foreign labor
14 contractor to post a bond in an amount suffi-
15 cient to ensure the protection of individuals re-
16 cruited by the foreign labor contractor. The
17 Secretary may consider the extent to which the
18 foreign labor contractor has sufficient ties to
19 the United States to adequately enforce this
20 subsection.

21 “(i) ENFORCEMENT.—

22 “(1) IN GENERAL.—The Secretary of Labor
23 shall promulgate regulations for the receipt, inves-
24 tigation, and disposition of complaints by an ag-
25 grievied person respecting a violation of this section.

1 “(2) FILING DEADLINE.—No investigation or
2 hearing shall be conducted on a complaint con-
3 cerning a violation under this section unless the
4 complaint was filed not later than 12 months after
5 the date of such violation.

6 “(3) REASONABLE CAUSE.—The Secretary of
7 Labor shall conduct an investigation under this sub-
8 section if there is reasonable cause to believe that a
9 violation of this section has occurred. The process
10 established under this subsection shall provide that,
11 not later than 30 days after a complaint is filed, the
12 Secretary shall determine if there is reasonable
13 cause to find such a violation.

14 “(4) NOTICE AND HEARING.—

15 “(A) IN GENERAL.—Not later than 60
16 days after the Secretary of Labor makes a de-
17 termination of reasonable cause under para-
18 graph (4), the Secretary shall issue a notice to
19 the interested parties and offer an opportunity
20 for a hearing on the complaint, in accordance
21 with section 556 of title 5, United States Code.

22 “(B) COMPLAINT.—If the Secretary of
23 Labor, after receiving a complaint under this
24 subsection, does not offer the aggrieved party
25 or organization an opportunity for a hearing

1 under subparagraph (A), the Secretary shall no-
2 tify the aggrieved party or organization of such
3 determination and the aggrieved party or orga-
4 nization may seek a hearing on the complaint
5 in accordance with such section 556.

6 “(C) HEARING DEADLINE.—Not later than
7 60 days after the date of a hearing under this
8 paragraph, the Secretary of Labor shall make a
9 finding on the matter in accordance with para-
10 graph (5).

11 “(5) ATTORNEYS’ FEES.—A complainant who
12 prevails with respect to a claim under this sub-
13 section shall be entitled to an award of reasonable
14 attorneys’ fees and costs.

15 “(6) POWER OF THE SECRETARY.—The Sec-
16 retary may bring an action in any court of com-
17 petent jurisdiction—

18 “(A) to seek remedial action, including in-
19 junctive relief;

20 “(B) to recover the damages described in
21 subsection (i); or

22 “(C) to ensure compliance with terms and
23 conditions described in subsection (g).

24 “(7) SOLICITOR OF LABOR.—Except as pro-
25 vided in section 518(a) of title 28, United States

Code, the Solicitor of Labor may appear for and represent the Secretary of Labor in any civil litigation brought under this subsection. All such litigation shall be subject to the direction and control of the Attorney General.

“(8) PROCEDURES IN ADDITION TO OTHER RIGHTS OF EMPLOYEES.—The rights and remedies provided to workers under this section are in addition to any other contractual or statutory rights and remedies of the workers, and are not intended to alter or affect such rights and remedies.

“(j) PENALTIES.—

“(1) IN GENERAL.—If, after notice and an opportunity for a hearing, the Secretary of Labor finds a violation of subsection (b), (e), (f), or (g), the Secretary may impose administrative remedies and penalties, including—

“(A) back wages;

“(B) benefits; and

“(C) civil monetary penalties.

“(2) CIVIL PENALTIES.—The Secretary of Labor may impose, as a civil penalty—

“(A) for a violation of subsection (e) or

(f)—

1 “(i) a fine in an amount not to exceed
2 \$2,000 per violation per affected worker;

3 “(ii) if the violation was willful viola-
4 tion, a fine in an amount not to exceed
5 \$5,000 per violation per affected worker;

6 “(iii) if the violation was willful and if
7 in the course of such violation a United
8 States worker was harmed, a fine in an
9 amount not to exceed \$25,000 per viola-
10 tion per affected worker; and

11 “(B) for a violation of subsection (g)—

12 “(i) a fine in an amount not less than
13 \$500 and not more than \$4,000 per viola-
14 tion per affected worker;

15 “(ii) if the violation was willful, a fine
16 in an amount not less than \$2,000 and not
17 more than \$5,000 per violation per af-
18 fected worker; and

19 “(iii) if the violation was willful and if
20 in the course of such violation a United
21 States worker was harmed, a fine in an
22 amount not less than \$6,000 and not more
23 than \$35,000 per violation per affected
24 worker.

1 “(3) USE OF CIVIL PENALTIES.—All penalties
2 collected under this subsection shall be deposited in
3 the Treasury in accordance with section 286(w).

4 “(4) CRIMINAL PENALTIES.—If a willful and
5 knowing violation of subsection (g) causes extreme
6 physical or financial harm to an individual, the per-
7 son in violation of such subsection may be impris-
8 oned for not more than 6 months, fined in an
9 amount not more than \$35,000, or both.”.

10 (b) CLERICAL AMENDMENT.—The table of contents
11 is amended by inserting after the item relating to section
12 218A, as added by section 403, the following:

 “Sec. 218B. Employer obligations.”.

13 **SEC. 405. ALIEN EMPLOYMENT MANAGEMENT SYSTEM.**

14 (a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.)
15 is amended by inserting after section 218B, as added by
16 section 404, the following:

17 **“SEC. 218C. ALIEN EMPLOYMENT MANAGEMENT SYSTEM.**

18 “(a) ESTABLISHMENT.—The Secretary of Homeland
19 Security, in consultation with the Secretary of Labor, the
20 Secretary of State, and the Commission of Social Security,
21 shall develop and implement a program (referred to in this
22 section as the ‘alien employment management system’) to
23 manage and track the employment of aliens described in
24 sections 218A and 218D.

1 “(b) REQUIREMENTS.—The alien employment man-
2 agement system shall—

3 “(1) provide employers who seek employees with
4 an opportunity to recruit and advertise employment
5 opportunities available to United States workers be-
6 fore hiring an H-2C nonimmigrant;

7 “(2) collect sufficient information from employ-
8 ers to enable the Secretary of Homeland Security to
9 determine—

10 “(A) if the nonimmigrant is employed;

11 “(B) which employers have hired an H-2C
12 nonimmigrant;

13 “(C) the number of H-2C nonimmigrants
14 that an employer is authorized to hire and is
15 currently employing;

16 “(D) the occupation, industry, and length
17 of time that an H-2C nonimmigrant has been
18 employed in the United States;

19 “(3) allow employers to request approval of
20 multiple H-2C nonimmigrant workers; and

21 “(4) permit employers to submit applications
22 under this section in an electronic form.”.

23 (b) CLERICAL AMENDMENT.—The table of contents
24 for the Immigration and Nationality Act (8 U.S.C. 1101

1 et seq.) is amended by inserting after the item relating
2 to section 218B, as added by section 404, the following:

“Sec. 218C. Alien employment management system.”.

3 **SEC. 406. RULEMAKING; EFFECTIVE DATE.**

4 (a) **RULEMAKING.**—Not later than 6 months after
5 the date of enactment of this Act, the Secretary of Labor
6 shall promulgate regulations, in accordance with the notice
7 and comment provisions of section 553 of title 5, United
8 States Code, to carry out the provisions of sections 218A,
9 218B, and 218C, as added by this Act.

10 (b) **EFFECTIVE DATE.**—The amendments made by
11 sections 403, 404, and 405 shall take effect on the date
12 that is 1 year after the date of the enactment of this Act
13 with regard to aliens, who, on such effective date, are in
14 the foreign country where they maintain residence.

15 **SEC. 407. RECRUITMENT OF UNITED STATES WORKERS.**

16 (a) **ELECTRONIC JOB REGISTRY.**—The Secretary of
17 Labor shall establish a publicly accessible Web page on
18 the Internet website of the Department of Labor that pro-
19 vides a single Internet link to each State workforce agen-
20 cy’s statewide electronic registry of jobs available through-
21 out the United States to United States workers.

22 (b) **RECRUITMENT OF UNITED STATES WORKERS.**—

23 (1) **POSTING.**—An employer shall attest that
24 the employer has posted an employment opportunity
25 at a prevailing wage level (as described in section

1 218B(b)(2)(C) of the Immigration and Nationality
2 Act).

3 (2) RECORDS.—An employer shall maintain
4 records for not less than 1 year after the date on
5 which an H-2C nonimmigrant is hired that describe
6 the reasons for not hiring any of the United States
7 workers who may have applied for such position.

8 (c) OVERSIGHT AND MAINTENANCE OF RECORDS.—
9 The Secretary of Labor shall promulgate regulations re-
10 garding the maintenance of electronic job registry records
11 for the purpose of audit or investigation.

12 (d) ACCESS TO ELECTRONIC JOB REGISTRY.—The
13 Secretary of Labor shall ensure that job opportunities ad-
14 vertised on an electronic job registry established under
15 this section are accessible—

16 (1) by the State workforce agencies, which may
17 further disseminate job opportunity information to
18 other interested parties; and

19 (2) through the Internet, for access by workers,
20 employers, labor organizations, and other interested
21 parties.

1 **SEC. 408. TEMPORARY GUEST WORKER VISA PROGRAM**
2 **TASK FORCE.**

3 (a) ESTABLISHMENT.—There is established a task
4 force to be known as the “Temporary Worker Task
5 Force” (referred to in this section as the “Task Force”).

6 (b) PURPOSES.—The purposes of the Task Force
7 are—

8 (1) to study the impact of the admission of
9 aliens under section 101(a)(15)(ii)(c) on the wages,
10 working conditions, and employment of United
11 States workers; and

12 (2) to make recommendations to the Secretary
13 of Labor regarding the need for an annual numerical
14 limitation on the number of aliens that may be ad-
15 mitted in any fiscal year under section
16 101(a)(15)(ii)(c).

17 (c) MEMBERSHIP.—

18 (1) IN GENERAL.—The Task Force shall be
19 composed of 10 members, of whom—

20 (A) 1 shall be appointed by the President
21 and shall serve as chairman of the Task Force;

22 (B) 1 shall be appointed by the leader of
23 the minority party in the Senate, in consulta-
24 tion with the leader of the minority party in the
25 House of Representatives, and shall serve as
26 vice chairman of the Task Force;

1 (C) 2 shall be appointed by the majority
2 leader of the Senate;

3 (D) 2 shall be appointed by the minority
4 leader of the Senate;

5 (E) 2 shall be appointed by the Speaker of
6 the House of Representatives; and

7 (F) 2 shall be appointed by the minority
8 leader of the House of Representatives.

9 (2) DEADLINE FOR APPOINTMENT.—All mem-
10 bers of the Task Force shall be appointed not later
11 than 6 months after the date of the enactment of
12 this Act.

13 (3) VACANCIES.—Any vacancy in the Task
14 Force shall not affect its powers, but shall be filled
15 in the same manner in which the original appoint-
16 ment was made.

17 (4) QUORUM.—Six members of the Task Force
18 shall constitute a quorum.

19 (d) QUALIFICATIONS.—

20 (1) IN GENERAL.—Members of the Task Force
21 shall be—

22 (A) individuals with expertise in economics,
23 demography, labor, business, or immigration or
24 other pertinent qualifications or experience; and

1 (B) representative of a broad cross-section
2 of perspectives within the United States, includ-
3 ing the public and private sectors and aca-
4 demia.

5 (2) POLITICAL AFFILIATION.—Not more than 5
6 members of the Task Force may be members of the
7 same political party.

8 (3) NONGOVERNMENTAL APPOINTEES.—An in-
9 dividual appointed to the Task Force may not be an
10 officer or employee of the Federal Government or of
11 any State or local government.

12 (e) MEETINGS.—

13 (1) INITIAL MEETING.—The Task Force shall
14 meet and begin the operations of the Task Force as
15 soon as practicable.

16 (2) SUBSEQUENT MEETINGS.—After its initial
17 meeting, the Task Force shall meet upon the call of
18 the chairman or a majority of its members.

19 (f) REPORT.—Not later than 18 months after the
20 date of the enactment of this Act, the Task Force shall
21 submit, to Congress, the Secretary of Labor, and the Sec-
22 retary, a report that contains—

23 (1) findings with respect to the duties of the
24 Task Force; and

1 (2) recommendations for imposing a numerical
2 limit.

3 (g) NUMERICAL LIMITATIONS.—Section 214(g)(1) (8
4 U.S.C. 1184(g)(1)) is amended—

5 (1) in subparagraph (B), by striking the period
6 at the end and inserting “; and”; and

7 (2) by adding at the end the following:

8 “(C) under section 101(a)(15)(H)(ii)(c)
9 may not exceed 200,000.”.

10 (h) ADJUSTMENT TO LAWFUL PERMANENT RESI-
11 DENT STATUS.—Section 245 (8 U.S.C. 1255) is amended
12 by adding at the end the following:

13 “(n)(1) For purposes of adjustment of status under
14 subsection (a), employment-based immigrant visas shall be
15 made available, subject to the numerical limitations set
16 out in sections 201(d) and 203(b), to an alien having non-
17 immigrant status described in section 101(a)(15)(H)(ii)(c)
18 upon the filing of a petition for such a visa—

19 “(A) by the alien’s employer; or

20 “(B) by the alien, if—

21 “(i) the alien has been employed in H-2C
22 status for a cumulative period of not less than
23 4 years;

24 “(ii) an employer attests that the employer
25 will employ the alien in the offered job position;

1 “(iii) the Secretary of Labor determines
2 and certifies that there are not sufficient
3 United States workers who are able, willing,
4 qualified, and available to fill the job position;
5 or

6 “(iv) the Secretary of Labor determines
7 and certifies that there are not sufficient
8 United States workers who are able, willing,
9 qualified, and available to fill the position in
10 which the alien is, or will be, employed; and

11 “(v) the alien submits at least 2 documents
12 to establish current employment, as follows:

13 “(I) Records maintained by the Social
14 Security Administration.

15 “(II) Records maintained by the
16 alien’s employer, such as pay stubs, time
17 sheets, or employment work verification.

18 “(III) Records maintained by the In-
19 ternal Revenue Service.

20 “(IV) Records maintained by any
21 other government agency, such as worker
22 compensation records, disability records, or
23 business licensing records.

1 “(2) An alien having nonimmigrant status described
2 in section 101(a)(15)(H)(ii)(c) may not apply for adjust-
3 ment of status under this section unless the alien—

4 “(A) is physically present in the United States;
5 and

6 “(B) establishes that the alien meets the re-
7 quirements of section 312.

8 “(3) An alien who demonstrates that the alien meets
9 the requirements of section 312 may be considered to have
10 satisfied the requirements of that section for purposes of
11 becoming naturalized as a citizen of the United States
12 under title III.

13 “(4) Filing a petition under paragraph (1) on behalf
14 of an alien or otherwise seeking permanent residence in
15 the United States for such alien shall not constitute evi-
16 dence of the alien’s ineligibility for nonimmigrant status
17 under section 101(a)(15)(H)(ii)(c).

18 “(5) The Secretary of Homeland Security shall ex-
19 tend, in 1-year increments, the stay of an alien for whom
20 a labor certification petition filed under section 203(b) or
21 an immigrant visa petition filed under section 204(b) is
22 pending until a final decision is made on the alien’s lawful
23 permanent residence.

24 “(6) Nothing in this subsection shall be construed to
25 prevent an alien having nonimmigrant status described in

1 section 101(a)(15)(H)(ii)(c) from filing an application for
 2 adjustment of status under this section in accordance with
 3 any other provision of law.”.

4 **SEC. 409. REQUIREMENTS FOR PARTICIPATING COUN-**
 5 **TRIES.**

6 (a) IN GENERAL.—The Secretary of State, in co-
 7 operation with the Secretary and the Attorney General,
 8 shall negotiate with each home country of aliens described
 9 in section 101(a)(15)(H)(ii)(c) of the Immigration and
 10 Nationality Act, as added by section 402, to enter into
 11 a bilateral agreement with the United States that con-
 12 forms to the requirements under subsection (b).

13 (b) REQUIREMENTS OF BILATERAL AGREEMENTS.—
 14 Each agreement negotiated under subsection (a) shall re-
 15 quire the participating home country to—

16 (1) accept the return of nationals who are or-
 17 dered removed from the United States within 3 days
 18 of such removal;

19 (2) cooperate with the United States Govern-
 20 ment to—

21 (A) identify, track, and reduce gang mem-
 22 bership, violence, and human trafficking and
 23 smuggling; and

24 (B) control illegal immigration;

1 (3) provide the United States Government
2 with—

3 (A) passport information and criminal
4 records of aliens who are seeking admission to,
5 or are present in, the United States; and

6 (B) admission and entry data to facilitate
7 United States entry-exit data systems; and

8 (4) educate nationals of the home country re-
9 garding United States temporary worker programs
10 to ensure that such nationals are not exploited; and

11 (5) evaluate means to provide housing incen-
12 tives in the alien’s home country for returning work-
13 ers.

14 **SEC. 410. S VISAS.**

15 (a) EXPANSION OF S VISA CLASSIFICATION.—Sec-
16 tion 101(a)(15)(S) (8 U.S.C. 1101(a)(15)(S)) is
17 amended—

18 (1) in clause (i)—

19 (A) by striking “Attorney General” each
20 place that term appears and inserting “Sec-
21 retary of Homeland Security”;

22 (B) in subclause (I), by inserting before
23 the semicolon, ‘, including a criminal enterprise
24 undertaken by a foreign government, its agents,
25 representatives, or officials’;

1 (C) in subclause (III), by inserting “where
2 the information concerns a criminal enterprise
3 undertaken by an individual or organization
4 that is not a foreign government, its agents,
5 representatives, or officials,” before “whose”;
6 and

7 (D) by striking “or” at the end; and
8 (2) in clause (ii)—

9 (A) by striking “Attorney General” and in-
10 serting “Secretary of Homeland Security”; and

11 (B) by striking “1956,” and all that fol-
12 lows through “the alien;” and inserting the fol-
13 lowing: “1956; or

14 “(iii) who the Secretary of Homeland Se-
15 curity and the Secretary of State, in consulta-
16 tion with the Director of Central Intelligence,
17 jointly determine—

18 “(I) is in possession of critical reliable
19 information concerning the activities of
20 governments or organizations, or their
21 agents, representatives, or officials, with
22 respect to weapons of mass destruction
23 and related delivery systems, if such gov-
24 ernments or organizations are at risk of

1 developing, selling, or transferring such
2 weapons or related delivery systems; and

3 “(II) is willing to supply or has sup-
4 plied, fully and in good faith, information
5 described in subclause (I) to appropriate
6 persons within the United States Govern-
7 ment;

8 “and, if the Secretary of Homeland Security (or
9 with respect to clause (ii), the Secretary of State
10 and the Secretary of Homeland Security jointly)
11 considers it to be appropriate, the spouse, married
12 and unmarried sons and daughters, and parents of
13 an alien described in clause (i), (ii), or (iii) if accom-
14 panying, or following to join, the alien;”.

15 (b) NUMERICAL LIMITATION.—Section 214(k)(1) (8
16 U.S.C. 1184(k)(1)) is amended by striking “The number
17 of aliens” and all that follows through the period and in-
18 serting the following: “The number of aliens who may be
19 provided a visa as nonimmigrants under section
20 101(a)(15)(S) in any fiscal year may not exceed 1,000.”.

21 (c) REPORTS.—

22 (1) CONTENT.—Paragraph (4) of section
23 214(k) (8 U.S.C. 1184(k)) is amended—

24 (A) in the matter preceding subparagraph

25 (A)—

1 (i) by striking “The Attorney Gen-
2 eral” and inserting “The Secretary of
3 Homeland Security”; and

4 (ii) by striking “concerning—” and
5 inserting “that includes—”;

6 (B) in subparagraph (D), by striking
7 “and”;

8 (C) in subparagraph (E), by striking the
9 period at the end and inserting “; and”; and

10 (D) by inserting at the end the following:

11 “(F) in the event that the total number of such
12 nonimmigrants admitted is fewer than 25 percent of
13 the total number provided for under paragraph (1)
14 of this subsection—

15 “(i) the reasons why the number of such
16 nonimmigrants admitted is fewer than 25 per-
17 cent of that provided for by law;

18 “(ii) the efforts made by the Secretary of
19 Homeland Security to admit such non-
20 immigrants; and

21 “(iii) any extenuating circumstances that
22 contributed to the admission of a number of
23 such nonimmigrants that is fewer than 25 per-
24 cent of that provided for by law.”.

1 (2) FORM OF REPORT.—Section 214(k) (8
2 U.S.C. 1184(k)) is amended by adding at the end
3 the following new paragraph:

4 “(5) To the extent required by law and if it is
5 in the interests of national security or the security
6 of such nonimmigrants that are admitted, as deter-
7 mined by the Secretary of Homeland Security, the
8 information contained in a report described in para-
9 graph (4) may be classified, and the Secretary of
10 Homeland Security shall, to the extent feasible, sub-
11 mit a non-classified version of the report to the
12 Committee on the Judiciary of the House of Rep-
13 resentatives and the Committee on the Judiciary of
14 the Senate.”.

15 **SEC. 411. L VISA LIMITATIONS.**

16 Section 214(c)(2) (8 U.S.C. 1184(c)(2)) is
17 amended—

18 (1) by striking “Attorney General” each place
19 it appears and inserting “Secretary of Homeland Se-
20 curity”;

21 (2) in subparagraph (E), by striking “In the
22 case” and inserting “Except as provided in subpara-
23 graph (H), in the case”; and

24 (3) by adding at the end the following:

1 “(G)(i) If the beneficiary of a petition under
2 this subsection is coming to the United States to
3 open, or be employed in, a new facility, the petition
4 may be approved for a period not to exceed 12
5 months only if the employer operating the new facil-
6 ity has—

7 “(I) a business plan;

8 “(II) sufficient physical premises to carry
9 out the proposed business activities; and

10 “(III) the financial ability to commence
11 doing business immediately upon the approval
12 of the petition.

13 “(ii) An extension of the approval period under
14 clause (i) may not be granted until the importing
15 employer submits to the Secretary of Homeland
16 Security—

17 “(I) evidence that the importing employer
18 meets the requirements of this subsection;

19 “(II) evidence that the beneficiary meets
20 the requirements of section 101(a)(15)(L);

21 “(III) a statement summarizing the origi-
22 nal petition;

23 “(IV) evidence that the importing employer
24 has fully complied with the business plan sub-
25 mitted under clause (i);

1 “(V) evidence of the truthfulness of any
2 representations made in connection with the fil-
3 ing of the original petition;

4 “(VI) evidence that the importing em-
5 ployer, during the previous 12 months, has been
6 doing business at the new facility through reg-
7 ular, systematic, and continuous provision of
8 goods or services, or has otherwise been taking
9 commercially reasonable steps to establish the
10 new facility as a commercial enterprise;

11 “(VII) a statement of the duties the bene-
12 ficiary has performed at the new facility during
13 the previous 12 months and the duties the ben-
14 eficiary will perform at the new facility during
15 the extension period approved under this clause;

16 “(VIII) a statement describing the staffing
17 at the new facility, including the number of em-
18 ployees and the types of positions held by such
19 employees;

20 “(IX) evidence of wages paid to employees
21 if the beneficiary will be employed in a manage-
22 rial or executive capacity;

23 “(X) evidence of the financial status of the
24 new facility; and

1 “(XI) any other evidence or data pre-
2 scribed by the Secretary.

3 “(iii) Notwithstanding subclauses (I) through
4 (VI) of clause (ii) and subject to the maximum pe-
5 riod of authorized admission set forth in subpara-
6 graph (D), the Secretary of Homeland Security may
7 approve a subsequently filed petition on behalf of the
8 beneficiary to continue employment at the facility
9 described in this subsection for a period beyond the
10 initially granted 12-month period if the importing
11 employer demonstrates that the failure to satisfy any
12 of the requirements described in those subclauses
13 was directly caused by extraordinary circumstances
14 beyond the control of the importing employer.

15 “(H)(i) The Secretary of Homeland Security
16 may not authorize the spouse of an alien described
17 under section 101(a)(15)(L), who is a dependent of
18 a beneficiary under subparagraph (G), to engage in
19 employment in the United States during the initial
20 9-month period described in subparagraph (G)(i).

21 “(ii) A spouse described in clause (i) may be
22 provided employment authorization upon the ap-
23 proval of an extension under subparagraph (G)(ii).

24 “(I) For purposes of determining the eligibility
25 of an alien for classification under Section

1 101(a)(15)(L) of this Act, the Secretary of Home-
 2 land Security shall establish a program to work co-
 3 operatively with the Department of State to verify a
 4 company or facility’s existence in the United States
 5 and abroad.”.

6 **SEC. 412. COMPLIANCE INVESTIGATORS.**

7 The Secretary of Labor shall, subject to the avail-
 8 ability of appropriations for such purpose, annually in-
 9 crease, by not less than 2,000, the number of positions
 10 for compliance investigators dedicated to enforcing compli-
 11 ance with this title, and the amendments made by this
 12 title.

13 **SEC. 413. VISA WAIVER PROGRAM EXPANSION.**

14 Section 217(c) (8 U.S.C. 1187(c)) is amended by
 15 adding at the end the following:

16 “(8) PROBATIONARY ADMISSION.—

17 “(A) DEFINITION OF MATERIAL SUP-
 18 PORT.—In this paragraph, the term ‘material
 19 support’ means the current provision of the
 20 equivalent of, but not less than, a battalion
 21 (which consists of 300 to 1,000 military per-
 22 sonnel) to Operation Iraqi Freedom or Oper-
 23 ation Enduring Freedom to provide training,
 24 logistical or tactical support, or a military pres-
 25 ence.

1 “(B) DESIGNATION AS A PROGRAM COUN-
2 TRY.—Notwithstanding any other provision of
3 this section, a country may be designated as a
4 program country, on a probationary basis,
5 under this section if—

6 “(i) the country is a member of the
7 European Union;

8 “(ii) the country is providing material
9 support to the United States or the multi-
10 lateral forces in Afghanistan or Iraq, as
11 determined by the Secretary of Defense, in
12 consultation with the Secretary of State;
13 and

14 “(iii) the Secretary of Homeland Se-
15 curity, in consultation with the Secretary
16 of State, determines that participation of
17 the country in the visa waiver program
18 under this section does not compromise the
19 law enforcement interests of the United
20 States.

21 “(C) REFUSAL RATES; OVERSTAY
22 RATES.—The determination under subpara-
23 graph (B)(iii) shall only take into account any
24 refusal rates or overstay rates after the expira-

tion of the first full year of the country's admission into the European Union.

“(D) FULL COMPLIANCE.—Not later than 2 years after the date of a country's designation under subparagraph (B), the country—

“(i) shall be in full compliance with all applicable requirements for program country status under this section; or

“(ii) shall have its program country designation terminated.

“(E) EXTENSIONS.—The Secretary of State may extend, for a period not to exceed 2 years, the probationary designation granted under subparagraph (B) if the country—

“(i) is making significant progress towards coming into full compliance with all applicable requirements for program country status under this section;

“(ii) is likely to achieve full compliance before the end of such 2-year period; and

“(iii) continues to be an ally of the United States against terrorist states, organizations, and individuals, as determined

1 by the Secretary of Defense, in consulta-
 2 tion with the Secretary of State.”.

3 **SEC. 414. AUTHORIZATION OF APPROPRIATIONS.**

4 There are authorized to be appropriated to the Sec-
 5 retary such sums as may be necessary to carry out this
 6 subtitle and the amendments made by this subtitle for the
 7 first fiscal year beginning before the date of enactment
 8 of this Act and each of the subsequent fiscal years begin-
 9 ning not more than 7 years after the effective date of the
 10 regulations promulgated by the Secretary to implement
 11 this subtitle.

12 **Subtitle B—Immigration Injunction**
 13 **Reform**

14 **SEC. 421. SHORT TITLE.**

15 This subtitle may be cited as the “Fairness in Immi-
 16 gration Litigation Act of 2006”.

17 **SEC. 422. APPROPRIATE REMEDIES FOR IMMIGRATION**
 18 **LEGISLATION.**

19 (a) REQUIREMENTS FOR AN ORDER GRANTING PRO-
 20 SPECTIVE RELIEF AGAINST THE GOVERNMENT.—

21 (1) IN GENERAL.—If a court determines that
 22 prospective relief should be ordered against the Gov-
 23 ernment in any civil action pertaining to the admin-
 24 istration or enforcement of the immigration laws of
 25 the United States, the court shall—

1 (A) limit the relief to the minimum nec-
 2 essary to correct the violation of law;

3 (B) adopt the least intrusive means to cor-
 4 rect the violation of law;

5 (C) minimize, to the greatest extent prac-
 6 ticable, the adverse impact on national security,
 7 border security, immigration administration and
 8 enforcement, and public safety, and

9 (D) provide for the expiration of the relief
 10 on a specific date, which is not later than the
 11 earliest date necessary for the Government to
 12 remedy the violation.

13 (2) WRITTEN EXPLANATION.—The require-
 14 ments described in subsection (1) shall be discussed
 15 and explained in writing in the order granting pro-
 16 spective relief and must be sufficiently detailed to
 17 allow review by another court.

18 (3) EXPIRATION OF PRELIMINARY INJUNCTIVE
 19 RELIEF.—Preliminary injunctive relief shall auto-
 20 matically expire on the date that is 90 days after the
 21 date on which such relief is entered, unless the
 22 court—

23 (A) makes the findings required under
 24 paragraph (1) for the entry of permanent pro-
 25 spective relief; and

1 (B) makes the order final before expiration
2 of such 90-day period.

3 (4) REQUIREMENTS FOR ORDER DENYING MO-
4 TION.—This subsection shall apply to any order de-
5 nying the Government’s motion to vacate, modify,
6 dissolve or otherwise terminate an order granting
7 prospective relief in any civil action pertaining to the
8 administration or enforcement of the immigration
9 laws of the United States.

10 (b) PROCEDURE FOR MOTION AFFECTING ORDER
11 GRANTING PROSPECTIVE RELIEF AGAINST THE GOVERN-
12 MENT.—

13 (1) IN GENERAL.—A court shall promptly rule
14 on the Government’s motion to vacate, modify, dis-
15 solve or otherwise terminate an order granting pro-
16 spective relief in any civil action pertaining to the
17 administration or enforcement of the immigration
18 laws of the United States.

19 (2) AUTOMATIC STAYS.—

20 (A) IN GENERAL.—The Government’s mo-
21 tion to vacate, modify, dissolve, or otherwise
22 terminate an order granting prospective relief
23 made in any civil action pertaining to the ad-
24 ministration or enforcement of the immigration
25 laws of the United States shall automatically,

1 and without further order of the court, stay the
2 order granting prospective relief on the date
3 that is 15 days after the date on which such
4 motion is filed unless the court previously has
5 granted or denied the Government's motion.

6 (B) DURATION OF AUTOMATIC STAY.—An
7 automatic stay under subparagraph (A) shall
8 continue until the court enters an order grant-
9 ing or denying the Government's motion.

10 (C) POSTPONEMENT.—The court, for good
11 cause, may postpone an automatic stay under
12 subparagraph (A) for not longer than 15 days.

13 (D) ORDERS BLOCKING AUTOMATIC
14 STAYS.—Any order staying, suspending, delay-
15 ing, or otherwise barring the effective date of
16 the automatic stay described in subparagraph
17 (A), other than an order to postpone the effec-
18 tive date of the automatic stay for not longer
19 than 15 days under subparagraph (C), shall
20 be—

21 (i) treated as an order refusing to va-
22 cate, modify, dissolve or otherwise termi-
23 nate an injunction; and

1 (ii) immediately appealable under sec-
2 tion 1292(a)(1) of title 28, United States
3 Code.

4 (c) SETTLEMENTS.—

5 (1) CONSENT DECREES.—In any civil action
6 pertaining to the administration or enforcement of
7 the immigration laws of the United States, the court
8 may not enter, approve, or continue a consent decree
9 that does not comply with subsection (a).

10 (2) PRIVATE SETTLEMENT AGREEMENTS.—
11 Nothing in this section shall preclude parties from
12 entering into a private settlement agreement that
13 does not comply with subsection (a) if the terms of
14 that agreement are not subject to court enforcement
15 other than reinstatement of the civil proceedings
16 that the agreement settled.

17 (d) DEFINITIONS.—In this section:

18 (1) CONSENT DECREE.—The term “consent
19 decree”—

20 (A) means any relief entered by the court
21 that is based in whole or in part on the consent
22 or acquiescence of the parties; and

23 (B) does not include private settlements.

1 (2) GOOD CAUSE.—The term “good cause”
2 does not include discovery or congestion of the
3 court’s calendar.

4 (3) GOVERNMENT.—The term “Government”
5 means the United States, any Federal department or
6 agency, or any Federal agent or official acting with-
7 in the scope of official duties.

8 (4) PERMANENT RELIEF.—The term “perma-
9 nent relief” means relief issued in connection with a
10 final decision of a court.

11 (5) PRIVATE SETTLEMENT AGREEMENT.—The
12 term “private settlement agreement” means an
13 agreement entered into among the parties that is not
14 subject to judicial enforcement other than the rein-
15 statement of the civil action that the agreement set-
16 tled.

17 (6) PROSPECTIVE RELIEF.—The term “pro-
18 spective relief” means temporary, preliminary, or
19 permanent relief other than compensatory monetary
20 damages.

21 (e) EXPEDITED PROCEEDINGS.—It shall be the duty
22 of every court to advance on the docket and to expedite
23 the disposition of any civil action or motion considered
24 under this section.

1 **SEC. 423. EFFECTIVE DATE.**

2 (a) IN GENERAL.—This subtitle shall apply with re-
 3 spect to all orders granting prospective relief in any civil
 4 action pertaining to the administration or enforcement of
 5 the immigration laws of the United States, whether such
 6 relief was ordered before, on, or after the date of the en-
 7 actment of this Act.

8 (b) PENDING MOTIONS.—Every motion to vacate,
 9 modify, dissolve or otherwise terminate an order granting
 10 prospective relief in any such action, which motion is
 11 pending on the date of the enactment of this Act, shall
 12 be treated as if it had been filed on such date of enact-
 13 ment.

14 (c) AUTOMATIC STAY FOR PENDING MOTIONS.—

15 (1) IN GENERAL.—An automatic stay with re-
 16 spect to the prospective relief that is the subject of
 17 a motion described in subsection (b) shall take effect
 18 without further order of the court on the date which
 19 is 10 days after the date of the enactment of this
 20 Act if the motion—

21 (A) was pending for 45 days as of the date
 22 of the enactment of this Act; and

23 (B) is still pending on the date which is 10
 24 days after such date of enactment.

25 (2) DURATION OF AUTOMATIC STAY.—An auto-
 26 matic stay that takes effect under paragraph (1)

1 shall continue until the court enters an order grant-
 2 ing or denying the Government’s motion under sec-
 3 tion 422(b). There shall be no further postponement
 4 of the automatic stay with respect to any such pend-
 5 ing motion under section 422(b)(2). Any order, stay-
 6 ing, suspending, delaying or otherwise barring the
 7 effective date of this automatic stay with respect to
 8 pending motions described in subsection (b) shall be
 9 an order blocking an automatic stay subject to im-
 10 mediate appeal under section 422(b)(2)(D).

11 **TITLE V—BACKLOG REDUCTION**

12 **SEC. 501. ELIMINATION OF EXISTING BACKLOGS.**

13 (a) FAMILY-SPONSORED IMMIGRANTS.—Section
 14 201(c) (8 U.S.C. 1151(c)) is amended to read as follows:

15 “(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED
 16 IMMIGRANTS.—The worldwide level of family-sponsored
 17 immigrants under this subsection for a fiscal year is equal
 18 to the sum of—

19 “(1) 480,000;

20 “(2) the difference between the maximum num-
 21 ber of visas authorized to be issued under this sub-
 22 section during the previous fiscal year and the num-
 23 ber of visas issued during the previous fiscal year;

24 “(3) the difference between—

1 “(A) the maximum number of visas au-
 2 thorized to be issued under this subsection dur-
 3 ing fiscal years 2001 through 2005 minus the
 4 number of visas issued under this subsection
 5 during those fiscal years; and

6 “(B) the number of visas calculated under
 7 subparagraph (A) that were issued after fiscal
 8 year 2005.”.

9 (b) EMPLOYMENT-BASED IMMIGRANTS.—Section
 10 201(d) (8 U.S.C. 1151(d)) is amended to read as follows:

11 “(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED
 12 IMMIGRANTS.—

13 “(1) IN GENERAL.—Subject to paragraph (2),
 14 the worldwide level of employment-based immigrants
 15 under this subsection for a fiscal year is equal to the
 16 sum of—

17 “(A)(i) 450,000, for each of the fiscal
 18 years 2007 through 2016; or

19 “(ii) 290,000, for fiscal year 2017 and
 20 each subsequent fiscal year;

21 “(B) the difference between the maximum
 22 number of visas authorized to be issued under
 23 this subsection during the previous fiscal year
 24 and the number of visas issued during the pre-
 25 vious fiscal year; and

1 “(C) the difference between—

2 “(i) the maximum number of visas au-
3 thorized to be issued under this subsection
4 during fiscal years 2001 through 2005 and
5 the number of visa numbers issued under
6 this subsection during those fiscal years;
7 and

8 “(ii) the number of visas calculated
9 under clause (i) that were issued after fis-
10 cal year 2005.

11 “(2) VISAS FOR SPOUSES AND CHILDREN.—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraph (B), immigrant visas issued on or
14 after October 1, 2004, to spouses and children
15 of employment-based immigrants shall not be
16 counted against the numerical limitation set
17 forth in paragraph (1).

18 “(B) NUMERICAL LIMITATION.—The total
19 number of visas issued under paragraph (1)(A)
20 and paragraph (2), excluding such visas issued
21 to aliens pursuant to section 245B or section
22 245C of the Immigration and Nationality Act,
23 may not exceed 650,000 during any fiscal year.

24 “(C) CONSTRUCTION.—Nothing in this
25 paragraph may be construed to modify the re-

1 quirement set out in 245B(a)(1)(I) or
 2 245C(i)(2)(A) that prohibit an alien from re-
 3 ceiving an adjustment of status to that of a
 4 legal permanent resident prior to the consider-
 5 ation of all applications filed under section 201,
 6 202, or 203 before the date of enactment of
 7 section 245B and 245C.”.

8 **SEC. 502. COUNTRY LIMITS.**

9 Section 202(a) (8 U.S.C. 1152(a)) is amended by
 10 striking “7 percent (in the case of a single foreign state)
 11 or 2 percent” and inserting “10 percent (in the case of
 12 a single foreign state) or 5 percent”.

13 **SEC. 503. ALLOCATION OF IMMIGRANT VISAS.**

14 (a) PREFERENCE ALLOCATION FOR FAMILY-SPON-
 15 SORED IMMIGRANTS.—Section 203(a) (8 U.S.C. 1153(a))
 16 is amended to read as follows:

17 “(a) PREFERENCE ALLOCATIONS FOR FAMILY-SPON-
 18 SORED IMMIGRANTS.—Aliens subject to the worldwide
 19 level specified in section 201(c) for family-sponsored immi-
 20 grants shall be allocated visas as follows:

21 “(1) UNMARRIED SONS AND DAUGHTERS OF
 22 CITIZENS.—Qualified immigrants who are the un-
 23 married sons or daughters of citizens of the United
 24 States shall be allocated visas in a quantity not to
 25 exceed the sum of—

1 “(A) 10 percent of such worldwide level;
2 and

3 “(B) any visas not required for the class
4 specified in paragraph (4).

5 “(2) SPOUSES AND UNMARRIED SONS AND
6 DAUGHTERS OF PERMANENT RESIDENT ALIENS.—

7 “(A) IN GENERAL.—Visas in a quantity
8 not to exceed 50 percent of such worldwide level
9 plus any visas not required for the class speci-
10 fied in paragraph (1) shall be allocated to quali-
11 fied immigrants who are—

12 “(i) the spouses or children of an
13 alien lawfully admitted for permanent resi-
14 dence; or

15 “(ii) the unmarried sons or daughters
16 of an alien lawfully admitted for perma-
17 nent residence.

18 “(B) MINIMUM PERCENTAGE.—Visas allo-
19 cated to individuals described in subparagraph
20 (A)(i) shall constitute not less than 77 percent
21 of the visas allocated under this paragraph.

22 “(3) MARRIED SONS AND DAUGHTERS OF CITI-
23 ZENS.—Qualified immigrants who are the married
24 sons and daughters of citizens of the United States

1 shall be allocated visas in a quantity not to exceed
 2 the sum of—

3 “(A) 10 percent of such worldwide level;
 4 and

5 “(B) any visas not required for the classes
 6 specified in paragraphs (1) and (2).

7 “(4) BROTHERS AND SISTERS OF CITIZENS.—
 8 Qualified immigrants who are the brothers or sisters
 9 of a citizen of the United States who is at least 21
 10 years of age shall be allocated visas in a quantity
 11 not to exceed 30 percent of the worldwide level.”.

12 (b) PREFERENCE ALLOCATION FOR EMPLOYMENT-
 13 BASED IMMIGRANTS.—Section 203(b) (8 U.S.C. 1153(b))
 14 is amended—

15 (1) in paragraph (1), by striking “28.6 per-
 16 cent” and inserting “15 percent”;

17 (2) in paragraph (2)(A), by striking “28.6 per-
 18 cent” and inserting “15 percent”;

19 (3) in paragraph (3)(A)—

20 (A) by striking “28.6 percent” and insert-
 21 ing “35 percent”; and

22 (B) by striking clause (iii);

23 (4) by striking paragraph (4);

24 (5) by redesignating paragraph (5) as para-
 25 graph (4);

1 (6) in paragraph (4)(A), as redesignated, by
2 striking “7.1 percent” and inserting “5 percent”;

3 (7) by inserting after paragraph (4), as redesign-
4 nated, the following:

5 “(5) OTHER WORKERS.—

6 “(A) IN GENERAL.—Visas shall be made
7 available, in a number not to exceed 30 percent
8 of such worldwide level, plus any visa numbers
9 not required for the classes specified in para-
10 graphs (1) through (4), to qualified immigrants
11 who are capable, at the time of petitioning for
12 classification under this paragraph, of per-
13 forming unskilled labor that is not of a tem-
14 porary or seasonal nature, for which qualified
15 workers are determined to be unavailable in the
16 United States.

17 “(B) PRIORITY IN ALLOCATING VISAS.—In
18 allocating visas under subparagraph (A) for
19 each of the fiscal years 2007 through 2017, the
20 Secretary shall reserve 30 percent of such visas
21 for qualified immigrants who were physically
22 present in the United States before January 7,
23 2004.”; and

24 (8) by striking paragraph (6).

1 (c) SPECIAL IMMIGRANTS NOT SUBJECT TO NUMER-
 2 ICAL LIMITATIONS.—Section 201(b)(1)(A) (8 U.S.C.
 3 1151(b)(1)(A)) is amended by striking “subparagraph (A)
 4 or (B) of ”.

5 (d) CONFORMING AMENDMENTS.—

6 (1) DEFINITION OF SPECIAL IMMIGRANT.—Sec-
 7 tion 101(a)(27)(M) (8 U.S.C. 1101(a)(27)(M)) is
 8 amended by striking “subject to the numerical limi-
 9 tations of section 203(b)(4),”.

10 (2) REPEAL OF TEMPORARY REDUCTION IN
 11 WORKERS’ VISAS.—Section 203(e) of the Nicaraguan
 12 Adjustment and Central American Relief Act (Public
 13 Law 105–100; 8 U.S.C. 1153 note) is repealed.

14 **SEC. 504. RELIEF FOR MINOR CHILDREN AND WIDOWS.**

15 (a) IN GENERAL.—Section 201(b)(2) (8 U.S.C.
 16 1151(b)(2)) is amended to read as follows:

17 “(2)(A)(i) Aliens admitted under section 211(a)
 18 on the basis of a prior issuance of a visa under sec-
 19 tion 203(a) to their accompanying parent who is an
 20 immediate relative.

21 “(ii) In this subparagraph, the term ‘immediate
 22 relative’ means a child, spouse, or parent of a citizen
 23 of the United States (and each child of such child,
 24 spouse, or parent who is accompanying or following
 25 to join the child, spouse, or parent), except that, in

1 the case of parents, such citizens shall be at least 21
2 years of age.

3 “(iii) An alien who was the spouse of a citizen
4 of the United States for not less than 2 years at the
5 time of the citizen’s death or, if married for less
6 than 2 years at the time of the citizen’s death,
7 proves by a preponderance of the evidence that the
8 marriage was entered into in good faith and not
9 solely for the purpose of obtaining an immigration
10 benefit and was not legally separated from the citi-
11 zen at the time of the citizen’s death, and each child
12 of such alien, shall be considered, for purposes of
13 this subsection, to remain an immediate relative
14 after the date of the citizen’s death if the spouse
15 files a petition under section 204(a)(1)(A)(ii) before
16 the earlier of—

17 “(I) 2 years after such date; or

18 “(II) the date on which the spouse remar-
19 ries.

20 “(iv) In this clause, an alien who has filed a pe-
21 tition under clause (iii) or (iv) of section
22 204(a)(1)(A) remains an immediate relative if the
23 United States citizen spouse or parent loses United
24 States citizenship on account of the abuse.

1 “(B) Aliens born to an alien lawfully admitted
2 for permanent residence during a temporary visit
3 abroad.”.

4 (b) PETITION.—Section 204(a)(1)(A)(ii) (8 U.S.C.
5 1154(a)(1)(A)(ii)) is amended by striking “in the second
6 sentence of section 201(b)(2)(A)(i) also” and inserting “in
7 section 201(b)(2)(A)(iii) or an alien child or alien parent
8 described in the 201(b)(2)(A)(iv)”.

9 **SEC. 505. SHORTAGE OCCUPATIONS.**

10 (a) EXCEPTION TO DIRECT NUMERICAL LIMITA-
11 TIONS.—Section 201(b)(1) (8 U.S.C. 1151(b)(1)) is
12 amended by adding at the end the following new subpara-
13 graph:

14 “(F)(i) During the period beginning on the
15 date of the enactment the Comprehensive Immi-
16 gration Reform Act of 2006 and ending on Sep-
17 tember 30, 2017, an alien—

18 “(I) who is otherwise described in sec-
19 tion 203(b); and

20 “(II) who is seeking admission to the
21 United States to perform labor in shortage
22 occupations designated by the Secretary of
23 Labor for blanket certification under sec-
24 tion 212(a)(5)(A) due to the lack of suffi-
25 cient United States workers able, willing,

1 qualified, and available for such occupa-
 2 tions and for which the employment of
 3 aliens will not adversely affect the terms
 4 and conditions of similarly employed
 5 United States workers.

6 “(ii) During the period described in clause
 7 (i), the spouse or dependents of an alien de-
 8 scribed in clause (i), if accompanying or fol-
 9 lowing to join such alien.”.

10 (b) EXCEPTION TO NONDISCRIMINATION REQUIRE-
 11 MENTS.—Section 202(a)(1)(A) (8 U.S.C. 1152(a)(1)(A))
 12 is amended by striking “201(b)(2)(A)(i)” and inserting
 13 “201(b)”.

14 (c) EXCEPTION TO PER COUNTRY LEVELS FOR FAM-
 15 ILY-SPONSORED AND EMPLOYMENT-BASED IMMI-
 16 GRANTS.—Section 202(a)(2) (8 U.S.C. 1152(a)(2)), as
 17 amended by section 502(1), is further amended by insert-
 18 ing “, except for aliens described in section 201(b),” after
 19 “any fiscal year”.

20 (d) INCREASING THE DOMESTIC SUPPLY OF NURSES
 21 AND PHYSICAL THERAPISTS.—Not later than January 1,
 22 2007, the Secretary of Health and Human Services
 23 shall—

1 (1) submit to Congress a report on the source
2 of newly licensed nurses and physical therapists in
3 each State, which report shall—

4 (A) include the past 3 years for which data
5 are available;

6 (B) provide separate data for each occupa-
7 tion and for each State;

8 (C) separately identify those receiving their
9 initial license and those licensed by endorse-
10 ment from another State;

11 (D) within those receiving their initial li-
12 cense in each year, identify the number who re-
13 ceived their professional education in the
14 United States and those who received such edu-
15 cation outside the United States; and

16 (E) to the extent possible, identify, by
17 State of residence and country of education, the
18 number of nurses and physical therapists who
19 were educated in any of the 5 countries (other
20 than the United States) from which the most
21 nurses and physical therapists arrived;

22 (F) identify the barriers to increasing the
23 supply of nursing faculty, domestically trained
24 nurses, and domestically trained physical thera-
25 pists;

1 (G) recommend strategies to be followed by
2 Federal and State governments that would be
3 effective in removing such barriers, including
4 strategies that address barriers to advancement
5 to become registered nurses for other health
6 care workers, such as home health aides and
7 nurses assistants;

8 (H) recommend amendments to Federal
9 legislation that would increase the supply of
10 nursing faculty, domestically trained nurses,
11 and domestically trained physical therapists;

12 (I) recommend Federal grants, loans, and
13 other incentives that would provide increases in
14 nurse educators, nurse training facilities, and
15 other steps to increase the domestic education
16 of new nurses and physical therapists;

17 (J) identify the effects of nurse emigration
18 on the health care systems in their countries of
19 origin; and

20 (K) recommend amendments to Federal
21 law that would minimize the effects of health
22 care shortages in the countries of origin from
23 which immigrant nurses arrived;

24 (2) enter into a contract with the National
25 Academy of Sciences Institute of Medicine to deter-

1 mine the level of Federal investment under titles VII
 2 and VIII of the Public Health Service Act necessary
 3 to eliminate the domestic nursing and physical ther-
 4 apist shortage not later than 7 years from the date
 5 on which the report is published; and

6 (3) collaborate with other agencies, as appro-
 7 priate, in working with ministers of health or other
 8 appropriate officials of the 5 countries from which
 9 the most nurses and physical therapists arrived,
 10 to—

11 (A) address health worker shortages
 12 caused by emigration;

13 (B) ensure that there is sufficient human
 14 resource planning or other technical assistance
 15 needed to reduce further health worker short-
 16 ages in such countries.

17 **SEC. 506. RELIEF FOR WIDOWS AND ORPHANS.**

18 (a) **SHORT TITLE.**—This section may be cited as the
 19 “Widows and Orphans Act of 2006”.

20 (b) **NEW SPECIAL IMMIGRANT CATEGORY.**—

21 (1) **CERTAIN CHILDREN AND WOMEN AT RISK**
 22 **OF HARM.**—Section 101(a)(27) (8 U.S.C.
 23 1101(a)(27)) is amended—

24 (A) in subparagraph (L), by inserting a
 25 semicolon at the end;

1 (B) in subparagraph (M), by striking the
 2 period at the end and inserting “; or”; and

3 (C) by adding at the end the following:

4 “(N) subject to subsection (j), an immi-
 5 grant who is not present in the United States—

6 “(i) who is—

7 “(I) referred to a consular, immi-
 8 gration, or other designated official by
 9 a United States Government agency,
 10 an international organization, or rec-
 11 ognized nongovernmental entity des-
 12 ignated by the Secretary of State for
 13 purposes of such referrals; and

14 “(II) determined by such official
 15 to be a minor under 18 years of age
 16 (as determined under subsection
 17 (j)(5))—

18 “(aa) for whom no parent or
 19 legal guardian is able to provide
 20 adequate care;

21 “(bb) who faces a credible
 22 fear of harm related to his or her
 23 age;

24 “(cc) who lacks adequate
 25 protection from such harm; and

1 “(dd) for whom it has been
 2 determined to be in his or her
 3 best interests to be admitted to
 4 the United States; or

5 “(ii) who is—

6 “(I) referred to a consular or im-
 7 migration official by a United States
 8 Government agency, an international
 9 organization or recognized nongovern-
 10 mental entity designated by the Sec-
 11 retary of State for purposes of such
 12 referrals; and

13 “(II) determined by such official
 14 to be a female who has—

15 “(aa) a credible fear of
 16 harm related to her sex; and

17 “(bb) a lack of adequate
 18 protection from such harm.”.

19 (2) STATUTORY CONSTRUCTION.—Section 101
 20 (8 U.S.C. 1101) is amended by adding at the end
 21 the following:

22 “(j)(1) No natural parent or prior adoptive parent
 23 of any alien provided special immigrant status under sub-
 24 section (a)(27)(N)(i) shall thereafter, by virtue of such

1 parentage, be accorded any right, privilege, or status
2 under this Act.

3 “(2)(A) No alien who qualifies for a special immi-
4 grant visa under subsection (a)(27)(N)(ii) may apply for
5 derivative status or petition for any spouse who is rep-
6 resented by the alien as missing, deceased, or the source
7 of harm at the time of the alien’s application and admis-
8 sion. The Secretary of Homeland Security may waive this
9 requirement for an alien who demonstrates that the alien’s
10 representations regarding the spouse were bona fide.

11 “(B) An alien who qualifies for a special immigrant
12 visa under subsection (a)(27)(N) may apply for derivative
13 status or petition for any sibling under the age of 18 years
14 or children under the age of 18 years of any such alien,
15 if accompanying or following to join the alien. For pur-
16 poses of this subparagraph, a determination of age shall
17 be made using the age of the alien on the date the petition
18 is filed with the Department of Homeland Security.

19 “(3) An alien who qualifies for a special immigrant
20 visa under subsection (a)(27)(N) shall be treated in the
21 same manner as a refugee solely for purposes of section
22 412.

23 “(4) The provisions of paragraphs (4), (5), and
24 (7)(A) of section 212(a) shall not be applicable to any
25 alien seeking admission to the United States under sub-

1 section (a)(27)(N), and the Secretary of Homeland Secu-
 2 rity may waive any other provision of such section (other
 3 than paragraph 2(C) or subparagraph (A), (B), (C), or
 4 (E) of paragraph (3)) with respect to such an alien for
 5 humanitarian purposes, to assure family unity, or when
 6 it is otherwise in the public interest. Any such waiver by
 7 the Secretary of Homeland Security shall be in writing
 8 and shall be granted only on an individual basis following
 9 an investigation. The Secretary of Homeland Security
 10 shall provide for the annual reporting to Congress of the
 11 number of waivers granted under this paragraph in the
 12 previous fiscal year and a summary of the reasons for
 13 granting such waivers.

14 “(5) For purposes of subsection (a)(27)(N)(i)(II), a
 15 determination of age shall be made using the age of the
 16 alien on the date on which the alien was referred to the
 17 consular, immigration, or other designated official.

18 “(6) The Secretary of Homeland Security shall waive
 19 any application fee for a special immigrant visa for an
 20 alien described in section 101(a)(27)(N).”.

21 (3) EXPEDITED PROCESS.—Not later than 45
 22 days after the date of referral to a consular, immi-
 23 gration, or other designated official (as described in
 24 section 101(a)(27)(N) of the Immigration and Na-
 25 tionality Act, as added by paragraph (1))—

1 (A) special immigrant status shall be adju-
2 dicated; and

3 (B) if special immigrant status is granted,
4 the alien shall be paroled to the United States
5 pursuant to section 212(d)(5) of that Act (8
6 U.S.C. 1182(d)(5)) and allowed to apply for ad-
7 justment of status to permanent residence
8 under section 245 of that Act (8 U.S.C. 1255)
9 within 1 year after the alien's arrival in the
10 United States.

11 (4) REPORT TO CONGRESS.—Not later than 1
12 year after the date of the enactment of this Act, the
13 Secretary shall submit a report to the Committee on
14 the Judiciary of the Senate and the Committee on
15 the Judiciary of the House of Representatives on the
16 progress of the implementation of this section and
17 the amendments made by this section, including—

18 (A) data related to the implementation of
19 this section and the amendments made by this
20 section;

21 (B) data regarding the number of place-
22 ments of females and children who faces a cred-
23 ible fear of harm as referred to in section
24 101(a)(27)(N) of the Immigration and Nation-
25 ality Act, as added by paragraph (1); and

1 (C) any other information that the Sec-
2 retary considers appropriate.

3 (5) AUTHORIZATION OF APPROPRIATIONS.—

4 There are authorized to be appropriated such sums
5 as may be necessary to carry out this subsection and
6 the amendments made by this subsection.

7 (c) REQUIREMENTS FOR ALIENS.—

8 (1) REQUIREMENT PRIOR TO ENTRY INTO THE
9 UNITED STATES.—

10 (A) DATABASE SEARCH.—An alien may
11 not be admitted to the United States unless the
12 Secretary has ensured that a search of each
13 database maintained by an agency or depart-
14 ment of the United States has been conducted
15 to determine whether such alien is ineligible to
16 be admitted to the United States on criminal,
17 security, or related grounds.

18 (B) COOPERATION AND SCHEDULE.—The
19 Secretary and the head of each appropriate
20 agency or department of the United States shall
21 work cooperatively to ensure that each database
22 search required by subparagraph (A) is com-
23 pleted not later than 45 days after the date on
24 which an alien files a petition seeking a special
25 immigration visa under section 101(a)(27)(N)

1 of the Immigration and Nationality Act, as
2 added by subsection (b)(1).

3 (2) REQUIREMENT AFTER ENTRY INTO THE
4 UNITED STATES.—

5 (A) REQUIREMENT TO SUBMIT FINGER-
6 PRINTS.—

7 (i) IN GENERAL.—Not later than 30
8 days after the date that an alien enters the
9 United States, the alien shall be
10 fingerprinted and submit to the Secretary
11 such fingerprints and any other personal
12 biometric data required by the Secretary.

13 (ii) OTHER REQUIREMENTS.—The
14 Secretary may prescribe regulations that
15 permit fingerprints submitted by an alien
16 under section 262 of the Immigration and
17 Nationality Act (8 U.S.C. 1302) or any
18 other provision of law to satisfy the re-
19 quirement to submit fingerprints of clause
20 (i).

21 (B) DATABASE SEARCH.—The Secretary
22 shall ensure that a search of each database that
23 contains fingerprints that is maintained by an
24 agency or department of the United States be
25 conducted to determine whether such alien is

ineligible for an adjustment of status under any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) on criminal, security, or related grounds.

(C) COOPERATION AND SCHEDULE.—The Secretary and the head of each appropriate agency or department of the United States shall work cooperatively to ensure that each database search required by subparagraph (B) is completed not later than 180 days after the date on which the alien enters the United States.

(D) ADMINISTRATIVE AND JUDICIAL REVIEW.—

(i) IN GENERAL.—There may be no review of a determination by the Secretary, after a search required by subparagraph (B), that an alien is ineligible for an adjustment of status, under any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) on criminal, security, or related grounds except as provided in this subparagraph.

(ii) ADMINISTRATIVE REVIEW.—An alien may appeal a determination described in clause (i) through the Administrative

1 Appeals Office of the Bureau of Citizen-
 2 ship and Immigration Services. The Sec-
 3 retary shall ensure that a determination on
 4 such appeal is made not later than 60 days
 5 after the date that the appeal is filed.

6 (iii) JUDICIAL REVIEW.—There may
 7 be no judicial review of a determination de-
 8 scribed in clause (i).

9 **SEC. 507. STUDENT VISAS.**

10 (a) IN GENERAL.—Section 101(a)(15)(F) (8 U.S.C.
 11 1101(a)(15)(F)) is amended—

12 (1) in clause (i)—

13 (A) by striking “he has no intention of
 14 abandoning, who is” and inserting the fol-
 15 lowing: “except in the case of an alien described
 16 in clause (iv), the alien has no intention of
 17 abandoning, who is—

18 “(I”;

19 (B) by striking “consistent with section
 20 214(l)” and inserting “(except for a graduate
 21 program described in clause (iv)) consistent
 22 with section 214(m)”;

23 (C) by striking the comma at the end and
 24 inserting the following: “; or

“(II) engaged in temporary employment for optional practical training related to the alien’s area of study, which practical training shall be authorized for a period or periods of up to 24 months;”;

(2) in clause (ii)—

(A) by inserting “or (iv)” after “clause (i)”; and

(B) by striking “, and” and inserting a semicolon; and

(3) by adding at the end the following:

“(iv) an alien described in clause (i) who has been accepted and plans to attend an accredited graduate program in mathematics, engineering, technology, or the sciences in the United States for the purpose of obtaining an advanced degree; and

“(v) an alien who maintains actual residence and place of abode in the alien’s country of nationality, who is described in clause (i), except that the alien’s actual course of study may involve a distance learning program, for which the alien is temporarily visiting the United States for a period not to exceed 30 days.

1 (b) CREATION OF J-STEM VISA CATEGORY.—Sec-
2 tion 101(a)(15)(J) (8 U.S.C. 1101(a)(15)(J)) is amended
3 to read as follows:

4 “(J) an alien with a residence in a foreign
5 country that (except in the case of an alien de-
6 scribed in clause (ii)) the alien has no intention
7 of abandoning, who is a bona fide student,
8 scholar, trainee, teacher, professor, research as-
9 sistant, specialist, or leader in a field of special-
10 ized knowledge or skill, or other person of simi-
11 lar description, and who—

12 “(i) is coming temporarily to the
13 United States as a participant in a pro-
14 gram (other than a graduate program de-
15 scribed in clause (ii)) designated by the
16 Secretary of State, for the purpose of
17 teaching, instructing or lecturing, studying,
18 observing, conducting research, consulting,
19 demonstrating special skills, or receiving
20 training and who, if coming to the United
21 States to participate in a program under
22 which the alien will receive graduate med-
23 ical education or training, also meets the
24 requirements of section 212(j), and the
25 alien spouse and minor children of any

1 such alien if accompanying the alien or fol-
 2 lowing to join the alien; or

3 “(ii) has been accepted and plans to
 4 attend an accredited graduate program in
 5 the sciences, technology, engineering, or
 6 mathematics in the United States for the
 7 purpose of obtaining an advanced degree.

8 (c) ADMISSION OF NONIMMIGRANTS.—Section
 9 214(b) (8 U.S.C. 1184(b)) is amended by striking “sub-
 10 paragraph (L) or (V)” and inserting “subparagraph
 11 (F)(iv), (J)(ii), (L), or (V)”.

12 (d) REQUIREMENTS FOR F-4 OR J-STEM VISA.—
 13 Section 214(m) (8 U.S.C. 1184(m)) is amended—

14 (1) by inserting before paragraph (1) the fol-
 15 lowing:

16 “(m) NONIMMIGRANT ELEMENTARY, SECONDARY,
 17 AND POST-SECONDARY SCHOOL STUDENTS.—”; and

18 (2) by adding at the end the following:

19 “(3) A visa issued to an alien under subparagraph
 20 (F)(iv) or (J)(ii) of section 101(a)(15) shall be valid—

21 “(A) during the intended period of study in a
 22 graduate program described in such section;

23 “(B) for an additional period, not to exceed 1
 24 year after the completion of the graduate program,
 25 if the alien is actively pursuing an offer of employ-

1 ment related to the knowledge and skills obtained
2 through the graduate program; and

3 “(C) for the additional period necessary for the
4 adjudication of any application for labor certifi-
5 cation, employment-based immigrant petition, and
6 application under section 245(a)(2) to adjust such
7 alien’s status to that of an alien lawfully admitted
8 for permanent residence, if such application for
9 labor certification or employment-based immigrant
10 petition has been filed not later than 1 year after
11 the completion of the graduate program.

12 (e) WAIVER OF FOREIGN RESIDENCE REQUIRE-
13 MENT.—Section 212(e) (8 U.S.C. 1182(e)) is amended—

14 (1) by inserting “(1)” before “No person”;

15 (2) by striking “admission (i) whose” and in-
16 serting the following: “admission—

17 “(A) whose

18 (3) by striking “residence, (ii) who” and insert-
19 ing the following: “residence;

20 “(B) who

21 (4) by striking “engaged, or (iii) who” and in-
22 serting the following: “engaged; or

23 “(C) who

24 (5) by striking “training, shall” and inserting
25 the following: “training,

1 “shall

2 (6) by striking “United States: *Provided*, That
3 upon” and inserting the following: “United States.

4 “(2) Upon”;

5 (7) by striking “section 214(l): And provided
6 further, That, except” and inserting the following:
7 “section 214(l).

8 “(3) Except”; and

9 (8) by adding at the end the following:

10 “(4) An alien who has been issued a visa or otherwise
11 provided nonimmigrant status under section
12 101(a)(15)(J)(ii), or who would have qualified for such
13 nonimmigrant status if section 101(a)(15)(J)(ii) had been
14 enacted before the completion of such alien’s graduate
15 studies, shall not be subject to the 2-year foreign residency
16 requirement under this subsection.

17 (f) OFF CAMPUS WORK AUTHORIZATION FOR FOR-
18 EIGN STUDENTS.—

19 (1) IN GENERAL.—Aliens admitted as non-
20 immigrant students described in section
21 101(a)(15)(F) of the Immigration and Nationality
22 Act (8 U.S.C. 1101(a)(15)(F)) may be employed in
23 an off-campus position unrelated to the alien’s field
24 of study if—

1 (A) the alien has enrolled full-time at the
2 educational institution and is maintaining good
3 academic standing;

4 (B) the employer provides the educational
5 institution and the Secretary of Labor with an
6 attestation that the employer—

7 (i) has spent at least 21 days recruit-
8 ing United States citizens to fill the posi-
9 tion; and

10 (ii) will pay the alien and other simi-
11 larly situated workers at a rate equal to
12 not less than the greater of—

13 (I) the actual wage level for the
14 occupation at the place of employ-
15 ment; or

16 (II) the prevailing wage level for
17 the occupation in the area of employ-
18 ment; and

19 (C) the alien will not be employed more
20 than—

21 (i) 20 hours per week during the aca-
22 demic term; or

23 (ii) 40 hours per week during vacation
24 periods and between academic terms.

1 (2) DISQUALIFICATION.—If the Secretary of
 2 Labor determines that an employer has provided an
 3 attestation under paragraph (1)(B) that is materi-
 4 ally false or has failed to pay wages in accordance
 5 with the attestation, the employer, after notice and
 6 opportunity for a hearing, shall be disqualified from
 7 employing an alien student under paragraph (1).

8 (g) ADJUSTMENT OF STATUS.—Section 245(a) (8
 9 U.S.C. 1255(a)) is amended to read as follows:

10 “(a) AUTHORIZATION.—

11 “(1) IN GENERAL.—The status of an alien, who
 12 was inspected and admitted or paroled into the
 13 United States, or who has an approved petition for
 14 classification under subparagraph (A)(iii), (A)(iv),
 15 (B)(ii), or (B)(iii) of section 204(a)(1), may be ad-
 16 justed by the Secretary of Homeland Security or the
 17 Attorney General, under such regulations as the Sec-
 18 retary or the Attorney General may prescribe, to
 19 that of an alien lawfully admitted for permanent res-
 20 idence if—

21 “(A) the alien makes an application for
 22 such adjustment;

23 “(B) the alien is eligible to receive an im-
 24 migrant visa;

1 “(C) the alien is admissible to the United
2 States for permanent residence; and

3 “(D) an immigrant visa is immediately
4 available to the alien at the time the application
5 is filed.

6 “(2) STUDENT VISAS.—Notwithstanding the re-
7 quirement under paragraph (1)(D), an alien may file
8 an application for adjustment of status under this
9 section if—

10 “(A) the alien has been issued a visa or
11 otherwise provided nonimmigrant status under
12 subparagraph (J)(ii) or (F)(iv) of section
13 101(a)(15), or would have qualified for such
14 nonimmigrant status if subparagraph (J)(ii) or
15 (F)(iv) of section 101(a)(15) had been enacted
16 before the completion of such alien’s graduate
17 studies;

18 “(B) the alien has earned an advanced de-
19 gree in the sciences, technology, engineering, or
20 mathematics;

21 “(C) the alien is the beneficiary of a peti-
22 tion filed under subparagraph (E) or (F) of sec-
23 tion 204(a)(1); and

24 “(D) a fee of \$2,000 is remitted to the
25 Secretary on behalf of the alien.

1 “(3) LIMITATION.—An application for adjust-
2 ment of status filed under this section may not be
3 approved until an immigrant visa number becomes
4 available.

5 “(4) FILING IN CASES OF UNAVAILABLE VISA
6 NUMBERS.—Subject to the limitation described in
7 paragraph (3), if a supplemental petition fee is paid
8 for a petition under subparagraph (E) or (F) of sec-
9 tion 204(a)(1), an application under paragraph (1)
10 on behalf of an alien that is a beneficiary of the peti-
11 tion (including a spouse or child who is accom-
12 panying or following to join the beneficiary) may be
13 filed without regard to the requirement under para-
14 graph (1)(D).

15 “(5) PENDING APPLICATIONS.—Subject to the
16 limitation described in paragraph (3), if a petition
17 under subparagraph (E) or (F) of section 204(a)(1)
18 is pending or approved as of the date of enactment
19 of this paragraph, on payment of the supplemental
20 petition fee under that section, the alien that is the
21 beneficiary of the petition may submit an application
22 for adjustment of status under this subsection with-
23 out regard to the requirement under paragraph
24 (1)(D).

1 “(6) EMPLOYMENT AUTHORIZATIONS AND AD-
 2 VANCED PAROLE TRAVEL DOCUMENTATION.—The
 3 Attorney General shall—

4 “(A) provide to any immigrant who has
 5 submitted an application for adjustment of sta-
 6 tus under this subsection not less than 3 incre-
 7 ments, the duration of each of which shall be
 8 not less than 3 years, for any applicable em-
 9 ployment authorization or advanced parole trav-
 10 el document of the immigrant; and

11 “(B) adjust each applicable fee payment
 12 schedule in accordance with the increments pro-
 13 vided under subparagraph (A) so that 1 fee for
 14 each authorization or document is required for
 15 each 3-year increment.”

16 (h) USE OF FEES.—

17 (1) JOB TRAINING; SCHOLARSHIPS.—Section
 18 286(s)(1) (8 U.S.C. 1356(s)(1)) is amended by in-
 19 serting “and 80 percent of the fees collected under
 20 section 245(a)(2)(D)” before the period at the end.

21 (2) FRAUD PREVENTION AND DETECTION.—
 22 Section 286(v)(1) (8 U.S.C. 1356(v)(1)) is amended
 23 by inserting “and 20 percent of the fees collected
 24 under section 245(a)(2)(D)” before the period at the
 25 end.

1 **SEC. 508. VISAS FOR INDIVIDUALS WITH ADVANCED DE-**
2 **GREES.**

3 (a) ALIENS WITH CERTAIN ADVANCED DEGREES
4 NOT SUBJECT TO NUMERICAL LIMITATIONS ON EMPLOY-
5 MENT BASED IMMIGRANTS.—

6 (1) IN GENERAL.—Section 201(b)(1) (8 U.S.C.
7 1151(b)(1)), as amended by section 505, is amended
8 by adding at the end the following:

9 “(G) Aliens who have earned an advanced
10 degree in science, technology, engineering, or
11 math and have been working in a related field
12 in the United States under a nonimmigrant visa
13 during the 3-year period preceding their appli-
14 cation for an immigrant visa under section
15 203(b).

16 “(H) Aliens described in subparagraph (A)
17 or (B) of section 203(b)(1)(A) or who have re-
18 ceived a national interest waiver under section
19 203(b)(2)(B).

20 “(I) The spouse and minor children of an
21 alien who is admitted as an employment-based
22 immigrant under section 203(b).”.

23 (2) APPLICABILITY.—The amendment made by
24 paragraph (1) shall apply to any visa application—

25 (A) pending on the date of the enactment
26 of this Act; or

1 (B) filed on or after such date of enact-
2 ment.

3 (b) LABOR CERTIFICATION.—Section
4 212(a)(5)(A)(ii) (8 U.S.C. 1182(a)(5)(A)(ii)) is
5 amended—

6 (1) in subclause (I), by striking “or” at the
7 end;

8 (2) in subclause (II), by striking the period at
9 the end and inserting “; or”; and

10 (3) by adding at the end the following:

11 “(III) has an advanced degree in
12 the sciences, technology, engineering,
13 or mathematics from an accredited
14 university in the United States and is
15 employed in a field related to such de-
16 gree.”.

17 (c) TEMPORARY WORKERS.—Section 214(g) (8
18 U.S.C. 1184(g)) is amended—

19 (1) in paragraph (1)—

20 (A) by striking “(beginning with fiscal year
21 1992)”; and

22 (B) in subparagraph (A)—

23 (i) in clause (vii), by striking “each
24 succeeding fiscal year; or” and inserting

1 “each of fiscal years 2004, 2005, and
2 2006;”; and

3 (ii) by adding after clause (vii) the
4 following:

5 “(viii) 115,000 in the first fiscal year
6 beginning after the date of the enactment
7 of this clause; and

8 “(ix) the number calculated under
9 paragraph (9) in each fiscal year after the
10 year described in clause (viii); or”;

11 (2) in paragraph (5)—

12 (A) in subparagraph (B), by striking “or”
13 at the end;

14 (B) in subparagraph (C), by striking the
15 period at the end and inserting “; or”; and

16 (C) by adding at the end the following:

17 “(D) has earned an advanced degree in
18 science, technology, engineering, or math.”;

19 (3) by redesignating paragraphs (9), (10), and
20 (11) as paragraphs (10), (11), and (12), respec-
21 tively; and

22 (4) by inserting after paragraph (8) the fol-
23 lowing:

24 “(9) If the numerical limitation in paragraph
25 (1)(A)—

1 “(A) is reached during a given fiscal year,
 2 the numerical limitation under paragraph
 3 (1)(A)(ix) for the subsequent fiscal year shall
 4 be equal to 120 percent of the numerical limita-
 5 tion of the given fiscal year; or

6 “(B) is not reached during a given fiscal
 7 year, the numerical limitation under paragraph
 8 (1)(A)(ix) for the subsequent fiscal year shall
 9 be equal to the numerical limitation of the given
 10 fiscal year.”.

11 (d) APPLICABILITY.—The amendment made by sub-
 12 section (c)(2) shall apply to any visa application—

13 (1) pending on the date of the enactment of
 14 this Act; or

15 (2) filed on or after such date of enactment.

16 (e) WORLDWIDE LEVEL OF IMMIGRANTS WITH AD-
 17 VANCED DEGREES.—Section 201 (8 U.S.C. 1151) is
 18 amended—

19 (1) in subsection (a)(3), by inserting “and im-
 20 migrants with advanced degrees” after “diversity
 21 immigrants”; and

22 (2) by amending subsection (e) to read as fol-
 23 lows:

24 “(e) WORLDWIDE LEVEL OF DIVERSITY IMMIGRANTS
 25 AND IMMIGRANTS WITH ADVANCED DEGREES.—

1 “(1) DIVERSITY IMMIGRANTS.—The worldwide
2 level of diversity immigrants described in section
3 203(c)(1) is equal to 18,333 for each fiscal year.

4 “(2) IMMIGRANTS WITH ADVANCED DE-
5 GREES.—The worldwide level of immigrants with ad-
6 vanced degrees described in section 203(c)(2) is
7 equal to 36,667 for each fiscal year.”.

8 (f) IMMIGRANTS WITH ADVANCED DEGREES.—Sec-
9 tion 203 (8 U.S.C. 1153(c)) is amended—

10 (1) in subsection (c)—

11 (A) in paragraph (1), by striking “para-
12 graph (2), aliens subject to the worldwide level
13 specified in section 201(e)” and inserting
14 “paragraphs (2) and (3), aliens subject to the
15 worldwide level specified in section 201(e)(1)”;

16 (B) by redesignating paragraphs (2) and
17 (3) as paragraphs (3) and (4), respectively;

18 (C) by inserting after paragraph (1) the
19 following:

20 “(2) ALIENS WHO HOLD AN ADVANCED DEGREE
21 IN SCIENCE, MATHEMATICS, TECHNOLOGY, OR ENGI-
22 NEERING.—

23 “(A) IN GENERAL.—Qualified immigrants
24 who hold a master’s or doctorate degree in the
25 life sciences, the physical sciences, mathematics,

1 technology, or engineering from an accredited
2 university in the United States, or an equiva-
3 lent foreign degree, shall be allotted visas each
4 fiscal year in a number not to exceed the world-
5 wide level specified in section 201(e)(2).

6 “(B) ECONOMIC CONSIDERATIONS.—Be-
7 ginning on the date which is 1 year after the
8 date of the enactment of this paragraph, the
9 Secretary of State, in consultation with the Sec-
10 retary of Commerce and the Secretary of
11 Labor, and after notice and public hearing,
12 shall determine which of the degrees described
13 in subparagraph (A) will provide immigrants
14 with the knowledge and skills that are most
15 needed to meet anticipated workforce needs and
16 protect the economic security of the United
17 States.”;

18 (D) in paragraph (3), as redesignated, by
19 striking “this subsection” each place it appears
20 and inserting “paragraph (1)”; and

21 (E) by amending paragraph (4), as redес-
22 igned, to read as follows:

23 “(4) MAINTENANCE OF INFORMATION.—

24 “(A) DIVERSITY IMMIGRANTS.—The Sec-
25 retary of State shall maintain information on

1 the age, occupation, education level, and other
 2 relevant characteristics of immigrants issued
 3 visas under paragraph (1).

4 “(B) IMMIGRANTS WITH ADVANCED DE-
 5 GREES.—The Secretary of State shall maintain
 6 information on the age, degree (including field
 7 of study), occupation, work experience, and
 8 other relevant characteristics of immigrants
 9 issued visas under paragraph (2).”; and
 10 (2) in subsection (e)—

11 (A) in paragraph (2), by striking “(c)” and
 12 inserting “(c)(1)”;

13 (B) by redesignating paragraph (3) as
 14 paragraph (4); and

15 (C) by inserting after paragraph (2) the
 16 following:

17 “(3) Immigrant visas made available under sub-
 18 section (c)(2) shall be issued as follows:

19 “(A) If the Secretary of State has not made a deter-
 20 mination under subsection (c)(2)(B), immigrant visas
 21 shall be issued in a strictly random order established by
 22 the Secretary for the fiscal year involved.

23 “(B) If the Secretary of State has made a determina-
 24 tion under subsection (c)(2)(B) and the number of eligible
 25 qualified immigrants who have a degree selected under

1 such subsection and apply for an immigrant visa described
2 in subsection (c)(2) is greater than the worldwide level
3 specified in section 201(e)(2), the Secretary shall issue im-
4 migrant visas only to such immigrants and in a strictly
5 random order established by the Secretary for the fiscal
6 year involved.

7 “(C) If the Secretary of State has made a determina-
8 tion under subsection (c)(2)(B) and the number of eligible
9 qualified immigrants who have degrees selected under
10 such subsection and apply for an immigrant visa described
11 in subsection (c)(2) is not greater than the worldwide level
12 specified in section 201(e)(2), the Secretary shall—

13 “(i) issue immigrant visas to eligible qualified immi-
14 grants with degrees selected in subsection (c)(2)(B); and

15 “(ii) issue any immigrant visas remaining thereafter
16 to other eligible qualified immigrants with degrees de-
17 scribed in subsection (c)(2)(A) in a strictly random order
18 established by the Secretary for the fiscal year involved.”.

19 (g) EFFECTIVE DATE.—The amendments made by
20 subsections (e) and (f) shall take effect on October 1,
21 2006.

1 **SEC. 509. CHILDREN OF FILIPINO WORLD WAR II VET-**
 2 **ERANS.**

3 Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended
 4 by sections 505 and 508, is further amended by adding
 5 at the end the following:

6 “(J) Aliens who are eligible for a visa under
 7 paragraph (1) or (3) of section 203(a) and are the
 8 children of a citizen of the United States who was
 9 naturalized pursuant to section 405 of the Immigra-
 10 tion Act of 1990 (8 U.S.C. 1440 note).”.

11 **SEC. 510. EXPEDITED ADJUDICATION OF EMPLOYER PETI-**
 12 **TIONS FOR ALIENS OF EXTRAORDINARY AR-**
 13 **TISTIC ABILITY.**

14 Section 214(c) (8 U.S.C. 1184(c)) is amended—

15 (1) by striking “Attorney General” each place
 16 it appears and inserting “Secretary of Homeland Se-
 17 curity”; and

18 (2) in paragraph (6)(D)—

19 (A) by Striking “Any person” and insert-
 20 ing “(i) Except as provided in clause (ii), any
 21 person”; and

22 (B) adding at the end the following:

23 “(ii) The Secretary of Homeland Security shall
 24 adjudicate each petition for an alien with extraor-
 25 dinary ability in the arts (as described in section
 26 101(a)(15)(O)(i)), an alien accompanying such an

1 alien (as described in clauses (ii) and (iii) of section
 2 101(a)(15)(O)), or an alien described in section
 3 101(a)(15)(P) not later than 30 days after—

4 “(I) the date on which the petitioner sub-
 5 mits the petition with a written advisory opin-
 6 ion, letter of no objection, or request for a waiv-
 7 er; or

8 “(II) the date on which the 15-day period
 9 described in clause (i) has expired, if the peti-
 10 tioner has had an opportunity, as appropriate,
 11 to supply rebuttal evidence.

12 “(iii) If a petition described in clause (ii) is not
 13 adjudicated before the end of the 30-day period de-
 14 scribed in clause (ii) and the petitioner is a qualified
 15 nonprofit organization or an individual or entity pe-
 16 titioning primarily on behalf of a qualified nonprofit
 17 organization, the Secretary of Homeland Security
 18 shall provide the petitioner with the premium-proc-
 19 essing services referred to in section 286(u), without
 20 a fee.”.

21 **SEC. 511. POWERLINE WORKERS.**

22 Section 214(e) (8 U.S.C. 1184(e)) is amended by
 23 adding at the end the following new paragraph:

24 “(7) A citizen of Canada who is a powerline
 25 worker, who has received significant training, and

1 who seeks admission to the United States to perform
 2 powerline repair and maintenance services shall be
 3 admitted in the same manner and under the same
 4 authority as a citizen of Canada described in para-
 5 graph (2).”.

6 **SEC. 512. DETERMINATIONS WITH RESPECT TO CHILDREN**
 7 **UNDER THE HAITIAN REFUGEE IMMIGRA-**
 8 **TION FAIRNESS ACT OF 1998.**

9 (a) IN GENERAL.—Section 902(d) of the Haitian
 10 Refugee Immigration Fairness Act of 1998 (8 U.S.C.
 11 1255 note) is amended by adding at the end the following:

12 “(3) DETERMINATIONS WITH RESPECT TO
 13 CHILDREN.—

14 “(A) USE OF APPLICATION FILING
 15 DATE.—Determinations made under this sub-
 16 section as to whether an individual is a child of
 17 a parent shall be made using the age and status
 18 of the individual on October 21, 1998.

19 “(B) APPLICATION SUBMISSION BY PAR-
 20 ENT.—Notwithstanding paragraph (1)(C), an
 21 application under this subsection filed based on
 22 status as a child may be filed for the benefit of
 23 such child by a parent or guardian of the child,
 24 if the child is physically present in the United
 25 States on such filing date.”.

1 (b) NEW APPLICATIONS AND MOTIONS TO RE-
2 OPEN.—

3 (1) NEW APPLICATIONS.—Notwithstanding sec-
4 tion 902(a)(1)(A) of the Haitian Refugee Immigra-
5 tion Fairness Act of 1998, an alien who is eligible
6 for adjustment of status under such Act, as amend-
7 ed by subsection (a), may submit an application for
8 adjustment of status under such Act not later than
9 the later of—

10 (A) 2 years after the date of the enactment
11 of this Act; or

12 (B) 1 year after the date on which final
13 regulations implementing this section, and the
14 amendment made by subsection (a), are pro-
15 mulgated.

16 (2) MOTIONS TO REOPEN.—The Secretary shall
17 establish procedures for the reopening and reconsid-
18 eration of applications for adjustment of status
19 under the Haitian Refugee Immigration Fairness
20 Act of 1998 that are affected by the amendment
21 made by subsection (a).

22 (3) RELATIONSHIP OF APPLICATION TO CER-
23 TAIN ORDERS.—Section 902(a)(3) of the Haitian
24 Refugee Immigration Fairness Act of 1998 shall
25 apply to an alien present in the United States who

1 has been ordered excluded, deported, removed, or or-
 2 dered to depart voluntarily, and who files an applica-
 3 tion under paragraph (1) or a motion under para-
 4 graph (2), in the same manner as such section
 5 902(a)(3) applied to aliens filing applications for ad-
 6 justment of status under such Act prior to April 1,
 7 2000.

8 (c) INADMISSIBILITY DETERMINATION.—Section 902
 9 of the Haitian Refugee Immigration Fairness Act of 1998
 10 (8 U.S.C. 1255 note) is amended in subsections (a)(1)(B)
 11 and (d)(1)(D) by inserting “(6)(C)(i),” after “(6)(A),”.

12 **Subtitle B—SKIL Act**

13 **SEC. 521. SHORT TITLE.**

14 This subtitle may be cited as the “Securing Knowl-
 15 edge, Innovation, and Leadership Act of 2006” or the
 16 “SKIL Act of 2006”

17 **SEC. 522. H-1B VISA HOLDERS.**

18 (a) IN GENERAL.—Section 214(g)(5) (8 U.S.C.
 19 1184(g)(5)) is amended—

20 (1) in subparagraph (B)—

21 (A) by striking “nonprofit research” and
 22 inserting “nonprofit”;

23 (B) by inserting “Federal, State, or local”
 24 before “governmental”; and

25 (C) by striking “or” at the end;

1 (2) in subparagraph (C)—

2 (A) by striking “a United States institu-
3 tion of higher education (as defined in section
4 101(a) of the Higher Education Act of 1965
5 (20 U.S.C. 1001(a))),” and inserting “an insti-
6 tution of higher education in a foreign coun-
7 try,”; and

8 (B) by striking the period at the end and
9 inserting a semicolon;

10 (3) by adding at the end, the following new sub-
11 paragraphs:

12 “(D) has earned a master’s or higher degree
13 from a United States institution of higher education
14 (as defined in section 101(a) of the Higher Edu-
15 cation Act of 1965 (20 U.S.C. 1001(a)));

16 “(E) has been awarded medical specialty certifi-
17 cation based on post-doctoral training and experi-
18 ence in the United States; or”.

19 (b) **APPLICABILITY.**—The amendments made by sub-
20 section (a) shall apply to any petition or visa application
21 pending on the date of enactment of this Act and any peti-
22 tion or visa application filed on or after such date.

23 **SEC. 523. MARKET-BASED VISA LIMITS.**

24 Section 214(g) (8 U.S.C. 1184(g)) is amended—

25 (1) in paragraph (1)—

1 (A) in the matter preceding subparagraph
 2 (A), by striking “(beginning with fiscal year
 3 1992)”;

4 (B) in subparagraph (A)—

5 (i) in clause (vi) by striking “and”;

6 (ii) in clause (vii), by striking “each
 7 succeeding fiscal year; or” and inserting
 8 “each of fiscal years 2004, 2005, and
 9 2006;”; and

10 (iii) by adding after clause (vii) the
 11 following:

12 “(viii) 115,000 in the first fiscal year
 13 beginning after the date of the enactment
 14 of the Securing Knowledge, Innovation,
 15 and Leadership Act of 2006; and

16 “(ix) the number calculated under
 17 paragraph (9) in each fiscal year after the
 18 year described in clause (viii); or”;

19 (2) in paragraph (8), by striking subparagraphs
 20 (B)(iv) and (D);

21 (3) by redesignating paragraphs (9), (10), and
 22 (11) as paragraphs (10), (11), and (12), respec-
 23 tively; and

24 (4) by inserting after paragraph (8) the fol-
 25 lowing:

1 “(9) If the numerical limitation in paragraph
2 (1)(A)—

3 “(A) is reached during a given fiscal year,
4 the numerical limitation under paragraph
5 (1)(A)(ix) for the subsequent fiscal year shall
6 be equal to 120 percent of the numerical limita-
7 tion of the given fiscal year; or

8 “(B) is not reached during a given fiscal
9 year, the numerical limitation under paragraph
10 (1)(A)(ix) for the subsequent fiscal year shall
11 be equal to the numerical limitation of the given
12 fiscal year.”.

13 **SEC. 524. UNITED STATES EDUCATED IMMIGRANTS.**

14 (a) IN GENERAL.—Section 201(b)(1) (8 U.S.C.
15 1151(b)(1)) is amended by adding at the end the fol-
16 lowing:

17 “(F) Aliens who have earned a master’s or
18 higher degree from an accredited United States
19 university.

20 “(G) Aliens who have been awarded med-
21 ical specialty certification based on post-doc-
22 toral training and experience in the United
23 States preceding their application for an immi-
24 grant visa under section 203(b).

1 “(H) Aliens who will perform labor in
2 shortage occupations designated by the Sec-
3 retary of Labor for blanket certification under
4 section 212(a)(5)(A) as lacking sufficient
5 United States workers able, willing, qualified,
6 and available for such occupations and for
7 which the employment of aliens will not ad-
8 versely affect the terms and conditions of simi-
9 larly employed United States workers.

10 “(I) Aliens who have earned a master’s de-
11 gree or higher in science, technology, engineer-
12 ing, or math and have been working in a re-
13 lated field in the United States in a non-
14 immigrant status during the 3-year period pre-
15 ceding their application for an immigrant visa
16 under section 203(b).

17 “(J) Aliens described in subparagraph (A)
18 or (B) of section 203(b)(1) or who have re-
19 ceived a national interest waiver under section
20 203(b)(2)(B).

21 “(K) The spouse and minor children of an
22 alien who is admitted as an employment-based
23 immigrant under section 203(b).”.

1 (b) LABOR CERTIFICATIONS.—Section
 2 212(a)(5)(A)(ii) (8 U.S.C. 1182(a)(5)(A)(ii)) is
 3 amended—

4 (1) by striking “or” at the end of subclause (I);

5 (2) by striking the period at the end of sub-
 6 clause (II) and inserting “; or”; and

7 (3) by adding at the end the following:

8 “(III) is a member of the profes-
 9 sions and has a master’s degree or
 10 higher from an accredited United
 11 States university or has been awarded
 12 medical specialty certification based
 13 on post-doctoral training and experi-
 14 ence in the United States.”.

15 **SEC. 525. STUDENT VISA REFORM.**

16 (a) IN GENERAL.—

17 (1) NONIMMIGRANT CLASSIFICATION.—Section
 18 101(a)(15)(F) (8 U.S.C. 1101(a)(15)(F)) is amend-
 19 ed to read as follows:

20 “(F) an alien—

21 “(i) who—

22 “(I) is a bona fide student qualified to
 23 pursue a full course of study in mathe-
 24 matics, engineering, technology, or the
 25 sciences leading to a bachelors or graduate

1 degree and who seeks to enter the United
2 States for the purpose of pursuing such a
3 course of study consistent with section
4 214(m) at an institution of higher edu-
5 cation (as defined by section 101(a) of the
6 Higher Education Act of 1965 (20 U.S.C.
7 1001(a))) in the United States, particu-
8 larly designated by the alien and approved
9 by the Secretary of Homeland Security,
10 after consultation with the Secretary of
11 Education, which institution or place of
12 study shall have agreed to report to the
13 Secretary the termination of attendance of
14 each nonimmigrant student, and if any
15 such institution of learning or place of
16 study fails to make reports promptly the
17 approval shall be withdrawn; or

18 “(II) is engaged in temporary employ-
19 ment for optional practical training related
20 to such alien’s area of study following com-
21 pletion of the course of study described in
22 subclause (I) for a period or periods of not
23 more than 24 months;

24 “(ii) who—

1 “(I) has a residence in a foreign coun-
2 try which the alien has no intention of
3 abandoning, who is a bona fide student
4 qualified to pursue a full course of study,
5 and who seeks to enter the United States
6 temporarily and solely for the purpose of
7 pursuing such a course of study consistent
8 with section 214(m) at an established col-
9 lege, university, seminary, conservatory,
10 academic high school, elementary school, or
11 other academic institution or in a language
12 training program in the United States,
13 particularly designated by the alien and
14 approved by the Secretary of Homeland
15 Security, after consultation with the Sec-
16 retary of Education, which institution or
17 place of study shall have agreed to report
18 to the Secretary the termination of attend-
19 ance of each nonimmigrant student, and if
20 any such institution of learning or place of
21 study fails to make reports promptly the
22 approval shall be withdrawn; or

23 “(II) is engaged in temporary employ-
24 ment for optional practical training related
25 to such alien’s area of study following com-

1 pletion of the course of study described in
 2 subclause (I) for a period or periods of not
 3 more than 24 months;

4 “(iii) who is the spouse or minor child of
 5 an alien described in clause (i) or (ii) if accom-
 6 panying or following to join such an alien; or

7 “(iv) who—

8 “(I) is a national of Canada or Mex-
 9 ico, who maintains actual residence and
 10 place of abode in the country of nation-
 11 ality, who is described in clause (i) or (ii)
 12 except that the alien’s qualifications for
 13 and actual course of study may be full or
 14 part-time, and who commutes to the
 15 United States institution or place of study
 16 from Canada or Mexico; or

17 “(II) is engaged in temporary employ-
 18 ment for optional practical training related
 19 to such the student’s area of study fol-
 20 lowing completion of the course of study
 21 described in subclause (I) for a period or
 22 periods of not more than 24 months;”.

23 (2) ADMISSION.—Section 214(b) (8 U.S.C.
 24 1184(b)) is amended by inserting “(F)(i),” before
 25 “(L) or (V)”.

1 (3) CONFORMING AMENDMENT.—Section
 2 214(m)(1) (8 U.S.C. 1184(m)(1)) is amended, in the
 3 matter preceding subparagraph (A), by striking “(i)
 4 or (iii)” and inserting “(i), (ii), or (iv)”.

5 (b) OFF CAMPUS WORK AUTHORIZATION FOR FOR-
 6 EIGN STUDENTS.—

7 (1) IN GENERAL.—Aliens admitted as non-
 8 immigrant students described in section
 9 101(a)(15)(F), as amended by subsection (a), (8
 10 U.S.C. 1101(a)(15)(F)) may be employed in an off-
 11 campus position unrelated to the alien’s field of
 12 study if—

13 (A) the alien has enrolled full-time at the
 14 educational institution and is maintaining good
 15 academic standing;

16 (B) the employer provides the educational
 17 institution and the Secretary of Labor with an
 18 attestation that the employer—

19 (i) has spent at least 21 days recruit-
 20 ing United States citizens to fill the posi-
 21 tion; and

22 (ii) will pay the alien and other simi-
 23 larly situated workers at a rate equal to
 24 not less than the greater of—

1 (I) the actual wage level for the
 2 occupation at the place of employ-
 3 ment; or

4 (II) the prevailing wage level for
 5 the occupation in the area of employ-
 6 ment; and

7 (C) the alien will not be employed more
 8 than—

9 (i) 20 hours per week during the aca-
 10 demic term; or

11 (ii) 40 hours per week during vacation
 12 periods and between academic terms.

13 (2) DISQUALIFICATION.—If the Secretary of
 14 Labor determines that an employer has provided an
 15 attestation under paragraph (1)(B) that is materi-
 16 ally false or has failed to pay wages in accordance
 17 with the attestation, the employer, after notice and
 18 opportunity for a hearing, shall be disqualified from
 19 employing an alien student under paragraph (1).

20 **SEC. 526. L-1 VISA HOLDERS SUBJECT TO VISA BACKLOG.**

21 Section 214(c)(2) (8 U.S.C. 1184(c)(2)) is amended
 22 by adding at the end the following new subparagraph:

23 “(G) The limitations contained in subparagraph (D)
 24 with respect to the duration of authorized stay shall not
 25 apply to any nonimmigrant alien previously issued a visa

1 or otherwise provided nonimmigrant status under section
 2 101(a)(15)(L) on whose behalf a petition under section
 3 204(b) to accord the alien immigrant status under section
 4 203(b), or an application for labor certification (if such
 5 certification is required for the alien to obtain status
 6 under such section 203(b)) has been filed, if 365 days or
 7 more have elapsed since such filing. The Secretary of
 8 Homeland Security shall extend the stay of an alien who
 9 qualifies for an exemption under this subparagraph until
 10 such time as a final decision is made on the alien's lawful
 11 permanent residence.”.

12 **SEC. 527. RETAINING WORKERS SUBJECT TO GREEN CARD**
 13 **BACKLOG.**

14 (a) ADJUSTMENT OF STATUS.—

15 (1) IN GENERAL.—Section 245(a) (8 U.S.C.
 16 1255(a)) is amended to read as follows:

17 “(a) ELIGIBILITY.—

18 “(1) IN GENERAL.—The status of an alien who
 19 was inspected and admitted or paroled into the
 20 United States or the status of any other alien having
 21 an approved petition for classification under sub-
 22 paragraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) of sec-
 23 tion 204(a)(1) may be adjusted by the Secretary of
 24 Homeland Security or the Attorney General, in the
 25 discretion of the Secretary or the Attorney General

1 under such regulations as the Secretary or Attorney
2 General may prescribe, to that of an alien lawfully
3 admitted for permanent residence if—

4 “(A) the alien makes an application for
5 such adjustment;

6 “(B) the alien is eligible to receive an im-
7 migrant visa and is admissible to the United
8 States for permanent residence; and

9 “(C) an immigrant visa is immediately
10 available to the alien at the time the application
11 is filed.

12 “(2) SUPPLEMENTAL FEE.—An application
13 under paragraph (1) that is based on a petition ap-
14 proved or approvable under subparagraph (E) or (F)
15 of section 204(a)(1) may be filed without regard to
16 the limitation set forth in paragraph (1)(C) if a sup-
17 plemental fee of \$500 is paid by the principal alien
18 at the time the application is filed. A supplemental
19 fee may not be required for any dependent alien ac-
20 companying or following to join the principal alien.

21 “(3) VISA AVAILABILITY.—An application for
22 adjustment filed under this paragraph may not be
23 approved until such time as an immigrant visa be-
24 come available.”.

1 (b) USE OF FEES.—Section 286(v)(1) (8 U.S.C.
2 1356(v)(1)) is amended by inserting before the period at
3 the end “and the fees collected under section 245(a)(2).”.

4 **SEC. 528. STREAMLINING THE ADJUDICATION PROCESS**
5 **FOR ESTABLISHED EMPLOYERS.**

6 Section 214(c) (8. U.S.C. 1184) is amended by add-
7 ing at the end the following new paragraph:

8 “(1) Not later than 180 days after the date of the
9 enactment of the Securing Knowledge, Innovation, and
10 Leadership Act of 2006, the Secretary of Homeland Secu-
11 rity shall establish a pre-certification procedure for em-
12 ployers who file multiple petitions described in this sub-
13 section or section 203(b). Such precertification procedure
14 shall enable an employer to avoid repeatedly submitting
15 documentation that is common to multiple petitions and
16 establish through a single filing criteria relating to the em-
17 ployer and the offered employment opportunity.”.

18 **SEC. 529. PROVIDING PREMIUM PROCESSING OF EMPLOY-**
19 **MENT-BASED VISA PETITIONS.**

20 (a) IN GENERAL.—Pursuant to section 286(u) of the
21 Immigration and Nationality Act (8 U.S.C. 1356(u)), the
22 Secretary of Homeland Security shall establish and collect
23 a fee for premium processing of employment-based immi-
24 grant petitions.

1 (b) APPEALS.—Pursuant to such section 286(u), the
 2 Secretary of Homeland Security shall establish and collect
 3 a fee for premium processing of an administrative appeal
 4 of any decision on a permanent employment-based immi-
 5 grant petition.

6 **SEC. 530. ELIMINATING PROCEDURAL DELAYS IN LABOR**
 7 **CERTIFICATION PROCESS.**

8 (a) PREVAILING WAGE RATE.—

9 (1) REQUIREMENT TO PROVIDE.—The Sec-
 10 retary of Labor shall provide prevailing wage deter-
 11 minations to employers seeking a labor certification
 12 for aliens pursuant to part 656 of title 20, Code of
 13 Federal Regulation (or any successor regulation).
 14 The Secretary of Labor may not delegate this func-
 15 tion to any agency of a State.

16 (2) SCHEDULE FOR DETERMINATION.—Except
 17 as provided in paragraph (3), the Secretary of Labor
 18 shall provide a response to an employer's request for
 19 a prevailing wage determination in no more than 20
 20 calendar days from the date of receipt of such re-
 21 quest. If the Secretary of Labor fails to reply during
 22 such 20-day period, then the wage proposed by the
 23 employer shall be the valid prevailing wage rate.

24 (3) USE OF SURVEYS.—The Secretary of Labor
 25 shall accept an alternative wage survey provided by

1 the employer unless the Secretary of Labor deter-
2 mines that the wage component of the Occupational
3 Employment Statistics Survey is more accurate for
4 the occupation in the labor market area.

5 (b) PLACEMENT OF JOB ORDER.—The Secretary of
6 Labor shall maintain a website with links to the official
7 website of each workforce agency of a State, and such offi-
8 cial website shall contain instructions on the filing of a
9 job order in order to satisfy the job order requirements
10 of section 656.17(e)(1) of title 20, Code of Federal Regu-
11 lation (or any successor regulation).

12 (c) TECHNICAL CORRECTIONS.—The Secretary of
13 Labor shall establish a process by which employers seeking
14 certification under section 212(a)(5) of the Immigration
15 and Nationality Act (8 U.S.C. 1182(a)(5)), as amended
16 by section 524(b), may make technical corrections to ap-
17 plications in order to avoid requiring employers to conduct
18 additional recruitment to correct an initial technical error.
19 A technical error shall include any error that would not
20 have a material effect on the validity of the employer's
21 recruitment of able, willing, and qualified United States
22 workers.

23 (d) ADMINISTRATIVE APPEALS.—Motions to recon-
24 sider, and administrative appeals of, a denial of a perma-
25 nent labor certification application, shall be decided by the

1 Secretary of Labor not later than 60 days after the date
2 of the filing of such motion or such appeal.

3 (e) APPLICATIONS UNDER PREVIOUS SYSTEM.—Not
4 later than 180 days after the date of the enactment of
5 this Act, the Secretary of Labor shall process and issue
6 decisions on all applications for permanent alien labor cer-
7 tification that were filed prior to March 28, 2005.

8 (f) EFFECTIVE DATE.—The provisions of this section
9 shall take effect 90 days after the date of enactment of
10 this Act, whether or not the Secretary of Labor has
11 amended the regulations at part 656 of title 20, Code of
12 Federal Regulation to implement such changes.

13 **SEC. 531. COMPLETION OF BACKGROUND AND SECURITY**
14 **CHECKS.**

15 Section 103 (8 U.S.C. 1103) is amended by adding
16 at the end the following new subsection:

17 “(i) REQUIREMENT FOR BACKGROUND CHECKS.—
18 Notwithstanding any other provision of law, until appro-
19 priate background and security checks, as determined by
20 the Secretary of Homeland Security, have been completed,
21 and the information provided to and assessed by the offi-
22 cial with jurisdiction to grant or issue the benefit or docu-
23 mentation, on an in camera basis as may be necessary
24 with respect to classified, law enforcement, or other infor-
25 mation that cannot be disclosed publicly, the Secretary of

1 Homeland Security, the Attorney General, or any court
2 may not—

3 “(1) grant or order the grant of adjustment of
4 status of an alien to that of an alien lawfully admit-
5 ted for permanent residence;

6 “(2) grant or order the grant of any other sta-
7 tus, relief, protection from removal, or other benefit
8 under the immigration laws; or

9 “(3) issue any documentation evidencing or re-
10 lated to such grant by the Secretary, the Attorney
11 General, or any court.

12 “(j) REQUIREMENT TO RESOLVE FRAUD ALLEGA-
13 TIONS.—Notwithstanding any other provision of law, until
14 any suspected or alleged fraud relating to the granting of
15 any status (including the granting of adjustment of sta-
16 tus), relief, protection from removal, or other benefit
17 under this Act has been investigated and resolved, the Sec-
18 retary of Homeland Security and the Attorney General
19 may not be required to—

20 “(1) grant or order the grant of adjustment of
21 status of an alien to that of an alien lawfully admit-
22 ted for permanent residence;

23 “(2) grant or order the grant of any other sta-
24 tus, relief, protection from removal, or other benefit
25 under the immigration laws; or

1 “(3) issue any documentation evidencing or re-
 2 lated to such grant by the Secretary, the Attorney
 3 General, or any court.

4 “(k) PROHIBITION OF JUDICIAL ENFORCEMENT.—
 5 Notwithstanding any other provision of law, no court may
 6 require any act described in subsection (i) or (j) to be com-
 7 pleted by a certain time or award any relief for the failure
 8 to complete such acts.”.

9 **SEC. 532. VISA REVALIDATION.**

10 (a) IN GENERAL.—Section 222 (8 U.S.C. 1202) is
 11 amended by adding at the end the following:

12 “(i) The Secretary of State shall permit an alien
 13 granted a nonimmigrant visa under subparagraph E, H,
 14 I, L, O, or P of section 101(a)(15) to apply for a renewal
 15 of such visa within the United States if—

16 “(1) such visa expired during the 12-month pe-
 17 riod ending on the date of such application;

18 “(2) the alien is seeking a nonimmigrant visa
 19 under the same subparagraph under which the alien
 20 had previously received a visa; and

21 “(3) the alien has complied with the immigra-
 22 tion laws and regulations of the United States.”.

23 (b) CONFORMING AMENDMENT.—Section 222(h) of
 24 such Act is amended, in the matter preceding subpara-

1 graph (1), by inserting “and except as provided under sub-
 2 section (i),” after “Act”.

3 **Subtitle C—Preservation of Immi-**
 4 **gration Benefits for Hurricane**
 5 **Katrina Victims**

6 **SEC. 541. SHORT TITLE.**

7 This subtitle may be cited as the “Hurricane Katrina
 8 Victims Immigration Benefits Preservation Act”.

9 **SEC. 542. DEFINITIONS.**

10 In this subtitle:

11 (1) APPLICATION OF DEFINITIONS FROM THE
 12 IMMIGRATION AND NATIONALITY ACT.—Except as
 13 otherwise specifically provided in this subtitle, the
 14 definitions in the Immigration and Nationality Act
 15 shall apply in the administration of this subtitle.

16 (2) DIRECT RESULT OF A SPECIFIED HURRI-
 17 CANE DISASTER.—The term “direct result of a spec-
 18 ified hurricane disaster”—

19 (A) means physical damage, disruption of
 20 communications or transportation, forced or
 21 voluntary evacuation, business closures, or
 22 other circumstances directly caused by Hurri-
 23 cane Katrina (on or after August 26, 2005) or
 24 Hurricane Rita (on or after September 21,
 25 2005); and

1 (B) does not include collateral or con-
 2 sequential economic effects in or on the United
 3 States or global economies.

4 **SEC. 543. SPECIAL IMMIGRANT STATUS.**

5 (a) PROVISION OF STATUS.—

6 (1) IN GENERAL.—For purposes of the Immi-
 7 gration and Nationality Act (8 U.S.C. 1101 et seq.),
 8 the Secretary may provide an alien described in sub-
 9 section (b) with the status of a special immigrant
 10 under section 101(a)(27) of such Act (8 U.S.C.
 11 1101(a)(27)), if the alien—

12 (A) files with the Secretary a petition
 13 under section 204 of such Act (8 U.S.C. 1154)
 14 for classification under section 203(b)(4) of
 15 such Act (8 U.S.C. 1153(b)(4));

16 (B) is otherwise eligible to receive an im-
 17 migrant visa; and

18 (C) is otherwise admissible to the United
 19 States for permanent residence.

20 (2) INAPPLICABLE PROVISION.—In determining
 21 admissibility under paragraph (1)(C), the grounds
 22 for inadmissibility specified in section 212(a)(4) of
 23 such Act (8 U.S.C. 1182(a)(4)) shall not apply.

24 (b) ALIENS DESCRIBED.—

1 (1) PRINCIPAL ALIENS.—An alien is described
2 in this subsection if—

3 (A) the alien was the beneficiary of—

4 (i) a petition that was filed with the
5 Secretary on or before August 26, 2005—

6 (I) under section 204 of the Im-
7 migration and Nationality Act (8
8 U.S.C. 1154) to classify the alien as
9 a family-sponsored immigrant under
10 section 203(a) of such Act (8 U.S.C.
11 1153(a)) or as an employment-based
12 immigrant under section 203(b) of
13 such Act (8 U.S.C. 1153(b)); or

14 (II) under section 214(d) of such
15 Act (8 U.S.C. 1184(d)) to authorize
16 the issuance of a nonimmigrant visa
17 to the alien under section
18 101(a)(15)(K) of such Act (8 U.S.C.
19 1101(a)(15)(K)); or

20 (ii) an application for labor certifi-
21 cation under section 212(a)(5)(A) of such
22 Act (8 U.S.C. 1182(a)(5)(A)) that was
23 filed under regulations of the Secretary of
24 Labor on or before such date; and

(B) such petition or application was revoked or terminated (or otherwise rendered null), before or after its approval, solely due to—

(i) the death or disability of the petitioner, applicant, or alien beneficiary as a direct result of a specified hurricane disaster; or

(ii) loss of employment as a direct result of a specified hurricane disaster.

(2) SPOUSES AND CHILDREN.—

(A) IN GENERAL.—An alien is described in this subsection if—

(i) the alien, as of August 26, 2005, was the spouse or child of a principal alien described in paragraph (1); and

(ii) the alien—

(I) is accompanying such principal alien; or

(II) is following to join such principal alien not later than August 26, 2007.

(B) CONSTRUCTION.—In construing the terms “accompanying” and “following to join” in subparagraph (A)(ii), the death of a prin-

1 cipro alien described in paragraph (1)(B)(i)
 2 shall be disregarded.

3 (3) GRANDPARENTS OR LEGAL GUARDIANS OF
 4 ORPHANS.—An alien is described in this subsection
 5 if the alien is a grandparent or legal guardian of a
 6 child whose parents died as a direct result of a spec-
 7 ified hurricane disaster, if either of the deceased
 8 parents was, as of August 26, 2005, a citizen or na-
 9 tional of the United States or an alien lawfully ad-
 10 mitted for permanent residence in the United States.

11 (c) PRIORITY DATE.—Immigrant visas made avail-
 12 able under this section shall be issued to aliens in the
 13 order in which a petition on behalf of each such alien is
 14 filed with the Secretary under subsection (a)(1), except
 15 that if an alien was assigned a priority date with respect
 16 to a petition described in subsection (b)(1)(A)(i), the alien
 17 may maintain that priority date.

18 (d) NUMERICAL LIMITATIONS.—In applying sections
 19 201 through 203 of the Immigration and Nationality Act
 20 (8 U.S.C. 1151–1153) in any fiscal year, aliens eligible
 21 to be provided status under this section shall be treated
 22 as special immigrants who are not described in subpara-
 23 graph (A), (B), (C), or (K) of section 101(a)(27) of such
 24 Act (8 U.S.C. 1101(a)(27)).

1 **SEC. 544. EXTENSION OF FILING OR REENTRY DEADLINES.**

2 (a) AUTOMATIC EXTENSION OF NONIMMIGRANT STA-
3 TUS.—

4 (1) IN GENERAL.—Notwithstanding section 214
5 of the Immigration and Nationality Act (8 U.S.C.
6 1184), an alien described in paragraph (2) who was
7 lawfully present in the United States as a non-
8 immigrant on August 26, 2005, may, unless other-
9 wise determined by the Secretary in the Secretary's
10 discretion, lawfully remain in the United States in
11 the same nonimmigrant status until the later of—

12 (A) the date on which such lawful non-
13 immigrant status would have otherwise termi-
14 nated absent the enactment of this subsection;
15 or

16 (B) 1 year after the death or onset of dis-
17 ability described in paragraph (2).

18 (2) ALIENS DESCRIBED.—

19 (A) PRINCIPAL ALIENS.—An alien is de-
20 scribed in this paragraph if the alien was dis-
21 abled as a direct result of a specified hurricane
22 disaster.

23 (B) SPOUSES AND CHILDREN.—An alien is
24 described in this paragraph if the alien, as of
25 August 26, 2005, was the spouse or child of—

1 (i) a principal alien described in sub-
2 paragraph (A); or

3 (ii) an alien who died as a direct re-
4 sult of a specified hurricane disaster.

5 (3) AUTHORIZED EMPLOYMENT.—During the
6 period in which a principal alien or alien spouse is
7 in lawful nonimmigrant status under paragraph (1),
8 the alien may be provided an “employment author-
9 ized” endorsement or other appropriate document
10 signifying authorization of employment.

11 (b) NEW DEADLINES FOR EXTENSION OR CHANGE
12 OF NONIMMIGRANT STATUS.—

13 (1) FILING DELAYS.—

14 (A) IN GENERAL.—If an alien, who was
15 lawfully present in the United States as a non-
16 immigrant on August 26, 2005, was prevented
17 from filing a timely application for an extension
18 or change of nonimmigrant status as a direct
19 result of a specified hurricane disaster, the
20 alien’s application may be considered timely
21 filed if it is filed not later 1 year after the ap-
22 plication would have otherwise been due.

23 (B) CIRCUMSTANCES PREVENTING TIMELY
24 ACTION.—For purposes of subparagraph (A),

1 circumstances preventing an alien from timely
2 acting are—

3 (i) office closures;

4 (ii) mail or courier service cessations
5 or delays;

6 (iii) other closures, cessations, or
7 delays affecting case processing or travel
8 necessary to satisfy legal requirements;

9 (iv) mandatory evacuation and reloca-
10 tion; or

11 (v) other circumstances, including
12 medical problems or financial hardship.

13 (2) DEPARTURE DELAYS.—

14 (A) IN GENERAL.—If an alien, who was
15 lawfully present in the United States as a non-
16 immigrant on August 26, 2005, is unable to
17 timely depart the United States as a direct re-
18 sult of a specified hurricane disaster, the alien
19 shall not be considered to have been unlawfully
20 present in the United States during the period
21 beginning on August 26, 2005, and ending on
22 the date of the alien's departure, if such depar-
23 ture occurred on or before February 28, 2006.

24 (B) CIRCUMSTANCES PREVENTING TIMELY
25 ACTION.—For purposes of subparagraph (A),

1 circumstances preventing an alien from timely
 2 acting are—

3 (i) office closures;

4 (ii) transportation cessations or
 5 delays;

6 (iii) other closures, cessations, or
 7 delays affecting case processing or travel
 8 necessary to satisfy legal requirements;

9 (iv) mandatory evacuation and reloca-
 10 tion; or

11 (v) other circumstances, including
 12 medical problems or financial hardship.

13 (c) DIVERSITY IMMIGRANTS.—Section
 14 204(a)(1)(I)(ii)(II) (8 U.S.C. 1154(a)(1)(I)(ii)(II)), is
 15 amended to read as follows:

16 “(II) An immigrant visa made available under sub-
 17 section 203(c) for fiscal year 1998, or for a subsequent
 18 fiscal year, may be issued, or adjustment of status under
 19 section 245(a) based upon the availability of such visa may
 20 be granted, to an eligible qualified alien who has properly
 21 applied for such visa or adjustment in the fiscal year for
 22 which the alien was selected notwithstanding the end of
 23 such fiscal year. Such visa or adjustment of status shall
 24 be counted against the worldwide level set forth in sub-

1 section 201(e) for the fiscal year for which the alien was
2 selected.”.

3 (d) EXTENSION OF FILING PERIOD.—If an alien is
4 unable to timely file an application to register or reregister
5 for Temporary Protected Status under section 244 of the
6 Immigration and Nationality Act (8 U.S.C. 1254a) as a
7 direct result of a specified hurricane disaster, the alien’s
8 application may be considered timely filed if it is filed not
9 later than 90 days after it otherwise would have been due.

10 (e) VOLUNTARY DEPARTURE.—

11 (1) IN GENERAL.—Notwithstanding section
12 240B of the Immigration and Nationality Act (8
13 U.S.C. 1229c), if a period for voluntary departure
14 under such section expired during the period begin-
15 ning on August 26, 2005, and ending on December
16 31, 2005, and the alien was unable to voluntarily de-
17 part before the expiration date as a direct result of
18 a specified hurricane disaster, such voluntary depart-
19 ure period is deemed extended for an additional 60
20 days.

21 (2) CIRCUMSTANCES PREVENTING DEPAR-
22 TURE.—For purposes of this subsection, cir-
23 cumstances preventing an alien from voluntarily de-
24 parting the United States are—

25 (A) office closures;

- 1 (B) transportation cessations or delays;
- 2 (C) other closures, cessations, or delays af-
- 3 fecting case processing or travel necessary to
- 4 satisfy legal requirements;
- 5 (D) mandatory evacuation and removal;
- 6 and
- 7 (E) other circumstances, including medical
- 8 problems or financial hardship.

9 (f) CURRENT NONIMMIGRANT VISA HOLDERS.—

10 (1) IN GENERAL.—An alien, who was lawfully
 11 present in the United States on August 26, 2005, as
 12 a nonimmigrant under section 101(a)(15)(H) of the
 13 Immigration and Nationality Act (8 U.S.C.
 14 1101(a)(15)(H)) and lost employment as a direct re-
 15 sult of a specified hurricane disaster may accept new
 16 employment upon the filing by a prospective em-
 17 ployer of a new petition on behalf of such non-
 18 immigrant not later than August 26, 2006.

19 (2) CONTINUATION OF EMPLOYMENT AUTHOR-
 20 IZATION.—Employment authorization shall continue
 21 for such alien until the new petition is adjudicated.
 22 If the new petition is denied, such employment shall
 23 cease.

24 (3) SAVINGS PROVISION.—Nothing in this sub-
 25 section shall be construed to limit eligibility for port-

1 ability under section 214(n) of the Immigration and
 2 Nationality Act (8 U.S.C. 1184(n)).

3 **SEC. 545. HUMANITARIAN RELIEF FOR CERTAIN SURVIVING**
 4 **SPOUSES AND CHILDREN.**

5 (a) TREATMENT AS IMMEDIATE RELATIVES.—

6 (1) SPOUSES.—Notwithstanding the second
 7 sentence of section 201(b)(2)(A)(i) of the Immigra-
 8 tion and Nationality Act (8 U.S.C.
 9 1151(b)(2)(A)(i)), in the case of an alien who was
 10 the spouse of a citizen of the United States at the
 11 time of the citizen's death and was not legally sepa-
 12 rated from the citizen at the time of the citizen's
 13 death, if the citizen died as a direct result of a speci-
 14 fied hurricane disaster, the alien (and each child of
 15 the alien) may be considered, for purposes of section
 16 201(b) of such Act, to remain an immediate relative
 17 after the date of the citizen's death if the alien files
 18 a petition under section 204(a)(1)(A)(ii) of such Act
 19 not later than 2 years after such date and only until
 20 the date on which the alien remarries. For purposes
 21 of such section 204(a)(1)(A)(ii), an alien granted re-
 22 lief under this paragraph shall be considered an
 23 alien spouse described in the second sentence of sec-
 24 tion 201(b)(2)(A)(i) of such Act.

25 (2) CHILDREN.—

1 (A) IN GENERAL.—In the case of an alien
 2 who was the child of a citizen of the United
 3 States at the time of the citizen’s death, if the
 4 citizen died as a direct result of a specified hur-
 5 ricane disaster, the alien may be considered, for
 6 purposes of section 201(b) of the Immigration
 7 and Nationality Act (8 U.S.C. 1151(b)), to re-
 8 main an immediate relative after the date of the
 9 citizen’s death (regardless of subsequent
 10 changes in age or marital status), but only if
 11 the alien files a petition under subparagraph
 12 (B) not later than 2 years after such date.

13 (B) PETITIONS.—An alien described in
 14 subparagraph (A) may file a petition with the
 15 Secretary for classification of the alien under
 16 section 201(b)(2)(A)(i) of the Immigration and
 17 Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)),
 18 which shall be considered a petition filed under
 19 section 204(a)(1)(A) of such Act (8 U.S.C.
 20 1154(a)(1)(A)).

21 (b) SPOUSES, CHILDREN, UNMARRIED SONS AND
 22 DAUGHTERS OF LAWFUL PERMANENT RESIDENT
 23 ALIENS.—

24 (1) IN GENERAL.—Any spouse, child, or unmar-
 25 ried son or daughter of an alien described in para-

graph (3) who is included in a petition for classification as a family-sponsored immigrant under section 203(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(2)) that was filed by such alien before August 26, 2005, may be considered (if the spouse, child, son, or daughter has not been admitted or approved for lawful permanent residence by such date) a valid petitioner for preference status under such section with the same priority date as that assigned before the death described in paragraph (3)(A). No new petition shall be required to be filed. Such spouse, child, son, or daughter may be eligible for deferred action and work authorization.

(2) SELF-PETITIONS.—Any spouse, child, or unmarried son or daughter of an alien described in paragraph (3) who is not a beneficiary of a petition for classification as a family-sponsored immigrant under section 203(a)(2) of the Immigration and Nationality Act may file a petition for such classification with the Secretary, if the spouse, child, son, or daughter was present in the United States on August 26, 2005. Such spouse, child, son, or daughter may be eligible for deferred action and work authorization.

1 (3) ALIENS DESCRIBED.—An alien is described
2 in this paragraph if the alien—

3 (A) died as a direct result of a specified
4 hurricane disaster; and

5 (B) on the day of such death, was lawfully
6 admitted for permanent residence in the United
7 States.

8 (c) APPLICATIONS FOR ADJUSTMENT OF STATUS BY
9 SURVIVING SPOUSES AND CHILDREN OF EMPLOYMENT-
10 BASED IMMIGRANTS.—

11 (1) IN GENERAL.—Any alien who was, on Au-
12 gust 26, 2005, the spouse or child of an alien de-
13 scribed in paragraph (2), and who applied for ad-
14 justment of status before the death described in
15 paragraph (2)(A), may have such application adju-
16 dicated as if such death had not occurred.

17 (2) ALIENS DESCRIBED.—An alien is described
18 in this paragraph if the alien—

19 (A) died as a direct result of a specified
20 hurricane disaster; and

21 (B) on the day before such death, was—

22 (i) an alien lawfully admitted for per-
23 manent residence in the United States by
24 reason of having been allotted a visa under

1 section 203(b) of the Immigration and Na-
 2 tionality Act (8 U.S.C. 1153(b)); or

3 (ii) an applicant for adjustment of
 4 status to that of an alien described in
 5 clause (i), and admissible to the United
 6 States for permanent residence.

7 (d) APPLICATIONS BY SURVIVING SPOUSES AND
 8 CHILDREN OF REFUGEES AND ASYLEES.—

9 (1) IN GENERAL.—Any alien who, on August
 10 26, 2005, was the spouse or child of an alien de-
 11 scribed in paragraph (2), may have his or her eligi-
 12 bility to be admitted under section 207(c)(2)(A) or
 13 208(b)(3)(A) of the Immigration and Nationality
 14 Act (8 U.S.C. 1157(c)(2)(A), 1158(b)(3)(A)) consid-
 15 ered as if the alien's death had not occurred.

16 (2) ALIENS DESCRIBED.—An alien is described
 17 in this paragraph if the alien—

18 (A) died as a direct result of a specified
 19 hurricane disaster; and

20 (B) on the day before such death, was—

21 (i) an alien admitted as a refugee
 22 under section 207 of the Immigration and
 23 Nationality Act (8 U.S.C. 1157); or

24 (ii) granted asylum under section 208
 25 of such Act (8 U.S.C. 1158).

1 (e) WAIVER OF PUBLIC CHARGE GROUNDS.—In de-
2 termining the admissibility of any alien accorded an immi-
3 gration benefit under this section, the grounds for inad-
4 missibility specified in section 212(a)(4) of the Immigra-
5 tion and Nationality Act (8 U.S.C. 1182(a)(4)) shall not
6 apply.

7 **SEC. 546. RECIPIENT OF PUBLIC BENEFITS.**

8 An alien shall not be inadmissible under section
9 212(a)(4) of the Immigration and Nationality Act (8
10 U.S.C. 1182(a)(4)) or deportable under section 237(a)(5)
11 of such Act (8 U.S.C. 1227(a)(5)) on the basis that the
12 alien received any public benefit as a direct result of a
13 specified hurricane disaster.

14 **SEC. 547. AGE-OUT PROTECTION.**

15 In administering the immigration laws, the Secretary
16 and the Attorney General may grant any application or
17 benefit notwithstanding the applicant or beneficiary (in-
18 cluding a derivative beneficiary of the applicant or bene-
19 ficiary) reaching an age that would render the alien ineli-
20 gible for the benefit sought, if the alien's failure to meet
21 the age requirement occurred as a direct result of a speci-
22 fied hurricane disaster.

23 **SEC. 548. EMPLOYMENT ELIGIBILITY VERIFICATION.**

24 (a) IN GENERAL.—The Secretary may suspend or
25 modify any requirement under section 274A(b) of the Im-

1 migration and Nationality Act (8 U.S.C. 1324a(b)) or
2 subtitle A of title IV of the Illegal Immigration Reform
3 and Immigrant Responsibility Act of 1996 (8 U.S.C.
4 1324a note), either generally or with respect to particular
5 persons, class of persons, geographic areas, or economic
6 sectors, to the extent to which the Secretary determines
7 necessary or appropriate to respond to national emer-
8 gencies or disasters.

9 (b) NOTIFICATION.—If the Secretary suspends or
10 modifies any requirement under section 274A(b) of the
11 Immigration and Nationality Act pursuant to subsection
12 (a), the Secretary shall send notice of such decision, in-
13 cluding the reasons for the suspension or modification,
14 to—

15 (1) the Committee on the Judiciary of the Sen-
16 ate; and

17 (2) the Committee of the Judiciary of the
18 House of Representatives.

19 (c) SUNSET DATE.—The authority under subsection
20 (a) shall expire on August 26, 2008.

21 **SEC. 549. NATURALIZATION.**

22 The Secretary may, with respect to applicants for
23 naturalization in any district of the United States Citizen-
24 ship and Immigration Services affected by a specified hur-
25 ricane disaster, administer the provisions of Title III of

1 the Immigration and Nationality Act (8 U.S.C. 1401 et
2 seq.) notwithstanding any provision of such title relating
3 to the jurisdiction of an eligible court to administer the
4 oath of allegiance, or requiring residence to be maintained
5 or any action to be taken in any specific district or State
6 within the United States.

7 **SEC. 550. DISCRETIONARY AUTHORITY.**

8 The Secretary or the Attorney General may waive vio-
9 lations of the immigration laws committed, on or before
10 March 1, 2006, by an alien—

11 (1) who was in lawful status on August 26,
12 2005; and

13 (2) whose failure to comply with the immigra-
14 tion laws was a direct result of a specified hurricane
15 disaster.

16 **SEC. 551. EVIDENTIARY STANDARDS AND REGULATIONS.**

17 The Secretary shall establish appropriate evidentiary
18 standards for demonstrating, for purposes of this subtitle,
19 that a specified hurricane disaster directly resulted in—

20 (1) death;

21 (2) disability; or

22 (3) loss of employment due to physical damage
23 to, or destruction of, a business.

1 **SEC. 552. IDENTIFICATION DOCUMENTS.**

2 (a) TEMPORARY IDENTIFICATION.—The Secretary
3 shall have the authority to instruct any Federal agency
4 to issue temporary identification documents to individuals
5 affected by a specified hurricane disaster. Such documents
6 shall be acceptable for purposes of identification under any
7 Federal law or regulation until August 26, 2006.

8 (b) ISSUANCE.—An agency may not issue identity
9 documents under this section after January 1, 2006.

10 (c) NO COMPULSION TO ACCEPT OR CARRY IDENTI-
11 FICATION DOCUMENTS.—Nationals of the United States
12 shall not be compelled to accept or carry documents issued
13 under this section.

14 (d) NO PROOF OF CITIZENSHIP.—Identity docu-
15 ments issued under this section shall not constitute proof
16 of citizenship or immigration status.

17 **SEC. 553. WAIVER OF REGULATIONS.**

18 The Secretary shall carry out the provisions of this
19 subtitle as expeditiously as possible. The Secretary is not
20 required to promulgate regulations before implementing
21 this subtitle. The requirements of chapter 5 of title 5,
22 United States Code (commonly referred to as the “Admin-
23 istrative Procedure Act”) or any other law relating to rule
24 making, information collection, or publication in the Fed-
25 eral Register, shall not apply to any action to implement
26 this subtitle to the extent the Secretary of Homeland Se-

1 curity, the Secretary of Labor, or the Secretary of State
2 determine that compliance with such requirement would
3 impede the expeditious implementation of such Act.

4 **SEC. 554. NOTICES OF CHANGE OF ADDRESS.**

5 (a) IN GENERAL.—If a notice of change of address
6 otherwise required to be submitted to the Secretary by an
7 alien described in subsection (b) relates to a change of
8 address occurring during the period beginning on August
9 26, 2005, and ending on the date of the enactment of this
10 Act, the alien may submit such notice.

11 (b) ALIENS DESCRIBED.—An alien is described in
12 this subsection if the alien—

13 (1) resided, on August 26, 2005, within a dis-
14 trict of the United States that was declared by the
15 President to be affected by a specified hurricane dis-
16 aster; and

17 (2) is required, under section 265 of the Immi-
18 gration and Nationality Act (8 U.S.C. 1305) or any
19 other provision of law, to notify the Secretary in
20 writing of a change of address.

21 **SEC. 555. FOREIGN STUDENTS AND EXCHANGE PROGRAM**
22 **PARTICIPANTS.**

23 (a) IN GENERAL.—The nonimmigrant status of an
24 alien described in subsection (b) shall be deemed to have
25 been maintained during the period beginning on August

1 26, 2005, and ending on September 15, 2006, if, on Sep-
2 tember 15, 2006, the alien is enrolled in a course of study,
3 or participating in a designated exchange visitor program,
4 sufficient to satisfy the terms and conditions of the alien's
5 nonimmigrant status on August 26, 2005.

6 (b) **ALIENS DESCRIBED.**—An alien is described in
7 this subsection if the alien—

8 (1) was, on August 26, 2005, lawfully present
9 in the United States in the status of a non-
10 immigrant described in subparagraph (F), (J), or
11 (M) of section 101(a)(15) of the Immigration and
12 Nationality Act (8 U.S.C. 1101(a)(15)); and

13 (2) fails to satisfy a term or condition of such
14 status as a direct result of a specified hurricane dis-
15 aster.

1 **TITLE VI—WORK AUTHORIZA-**
 2 **TION AND LEGALIZATION OF**
 3 **UNDOCUMENTED INDIVID-**
 4 **UALS**

5 **Subtitle A—Access to Earned Ad-**
 6 **justment and Mandatory Depart-**
 7 **ture and Reentry**

8 **SEC. 601. ACCESS TO EARNED ADJUSTMENT AND MANDA-**
 9 **TORY DEPARTURE AND REENTRY.**

10 (a) SHORT TITLE.—This section may be cited as the
 11 “Immigrant Accountability Act of 2006”.

12 (b) ADJUSTMENT OF STATUS.—

13 (1) IN GENERAL.—Chapter 5 of title II (8
 14 U.S.C. 1255 et seq.) is amended by inserting after
 15 section 245A the following:

16 **“SEC. 245B. ACCESS TO EARNED ADJUSTMENT.**

17 **“(a) ADJUSTMENT OF STATUS.—**

18 **“(1) PRINCIPAL ALIENS.—**Notwithstanding any
 19 other provision of law, including section 244(h) of
 20 this Act, the Secretary of Homeland Security shall
 21 adjust to the status of an alien lawfully admitted for
 22 permanent residence, an alien who satisfies the fol-
 23 lowing requirements:

24 **“(A) APPLICATION.—**The alien shall file
 25 an application establishing eligibility for adjust-

ment of status and pay the fine required under subsection (m) and any additional amounts owed under that subsection.

“(B) CONTINUOUS PHYSICAL PRESENCE.—

“(i) IN GENERAL.—The alien shall establish that the alien—

“(I) was physically present in the United States on or before the date that is 5 years before April 5, 2006;

“(II) was not legally present in the United States on April 5, 2006, under any classification set forth in section 101(a)(15); and

“(III) did not depart from the United States during the 5-year period ending on April 5, 2006, except for brief, casual, and innocent departures.

“(ii) LEGALLY PRESENT.—For purposes of this subparagraph, an alien who has violated any conditions of his or her visa shall be considered not to be legally present in the United States.

“(C) ADMISSIBLE UNDER IMMIGRATION LAWS.—The alien shall establish that the alien

1 is not inadmissible under section 212(a) except
 2 for any provision of that section that is waived
 3 under subsection (b) of this section.

4 “(D) EMPLOYMENT IN UNITED STATES.—

5 “(i) IN GENERAL.—The alien shall
 6 have been employed in the United States,
 7 in the aggregate, for—

8 “(I) at least 3 years during the
 9 5-year period ending on April 5, 2006;
 10 and

11 “(II) at least 6 years after the
 12 date of enactment of the Immigrant
 13 Accountability Act of 2006.

14 “(ii) EXCEPTIONS.—

15 “(I) The employment require-
 16 ment in clause (i)(I) shall not apply to
 17 an individual who is under 20 years of
 18 age on the date of enactment of the
 19 Immigrant Accountability Act of
 20 2006.

21 “(II) The employment require-
 22 ment in clause (i)(II) shall be reduced
 23 for an individual who cannot dem-
 24 onstrate employment based on a phys-

1 ical or mental disability or as a result
2 of pregnancy.

3 “(III) The employment require-
4 ment in clause (i)(II) shall be reduced
5 for an individual who is under 20
6 years of age on the date of enactment
7 of the Immigrant Accountability Act
8 of 2006 by a period of time equal to
9 the time period beginning on such
10 date of enactment and ending on the
11 date on which the individual reaches
12 20 years of age.

13 “(IV) The employment require-
14 ments in clause (i) shall be reduced by
15 1 year for each year of full time post-
16 secondary study in the United States
17 during the relevant period.

18 “(V) The employment require-
19 ment under clause (i)(I) shall not
20 apply to any individual who is 65
21 years of age or older on the date of
22 the enactment of the Immigrant Ac-
23 countability Act of 2006.

24 “(iii) PORTABILITY.—An alien shall
25 not be required to complete the employ-

1 ment requirements in clause (i) with the
2 same employer.

3 “(iv) EVIDENCE OF EMPLOYMENT.—

4 “(I) CONCLUSIVE DOCUMENTS.—

5 For purposes of satisfying the require-
6 ments in clause (i), the alien shall
7 submit at least 2 of the following doc-
8 uments for each period of employ-
9 ment, which shall be considered con-
10 clusive evidence of such employment:

11 “(aa) Records maintained by
12 the Social Security Administra-
13 tion.

14 “(bb) Records maintained by
15 an employer, such as pay stubs,
16 time sheets, or employment work
17 verification.

18 “(cc) Records maintained by
19 the Internal Revenue Service.

20 “(dd) Records maintained
21 by a union or day labor center.

22 “(ee) Records maintained by
23 any other government agency,
24 such as worker compensation

1 records, disability records, or
2 business licensing records.

3 “(II) OTHER DOCUMENTS.—An
4 alien who is unable to submit a docu-
5 ment described in subclause (I) may
6 satisfy the requirement in clause (i)
7 by submitting to the Secretary at
8 least 2 other types of reliable docu-
9 ments that provide evidence of em-
10 ployment for each required period of
11 employment, including—

12 “(aa) bank records;

13 “(bb) business records;

14 “(cc) sworn affidavits from
15 non-relatives who have direct
16 knowledge of the alien’s work, in-
17 cluding the name, address, and
18 phone number of the affiant, the
19 nature and duration of the rela-
20 tionship between the affiant and
21 the alien, and other verification
22 information; or

23 “(dd) remittance records.

24 “(v) BURDEN OF PROOF.—An alien
25 applying for adjustment of status under

1 this subsection has the burden of proving
 2 by a preponderance of the evidence that
 3 the alien has satisfied the employment re-
 4 quirements in clause (i). Once the burden
 5 is met, the burden shall shift to the Sec-
 6 retary of Homeland Security to disprove
 7 the alien’s evidence with a showing which
 8 negates the reasonableness of the inference
 9 to be drawn from the evidence.

10 “(E) PAYMENT OF INCOME TAXES.—

11 “(i) IN GENERAL.—Not later than the
 12 date on which status is adjusted under this
 13 section, the alien establishes the payment
 14 of any applicable Federal tax liability by
 15 establishing that—

16 “(I) no such tax liability exists;

17 “(II) all outstanding liabilities
 18 have been paid; or

19 “(III) the alien has entered into
 20 an agreement for payment of all out-
 21 standing liabilities with the Internal
 22 Revenue Service.

23 “(ii) APPLICABLE FEDERAL TAX LI-
 24 ABILITY.—For purposes of clause (i), the
 25 term ‘applicable Federal tax liability’

means liability for Federal taxes, including penalties and interest, owed for any year during the period of employment required by subparagraph (D)(i) for which the statutory period for assessment of any deficiency for such taxes has not expired.

“(iii) IRS COOPERATION.—The Secretary of the Treasury shall establish rules and procedures under which the Commissioner of Internal Revenue shall provide documentation to an alien upon request to establish the payment of all taxes required by this subparagraph.

“(i) IN GENERAL.—The alien may satisfy such requirement by establishing that—

“(I) no such tax liability exists;

“(II) all outstanding liabilities have been met; or

“(III) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service and with the department of revenue of each State to which taxes are owed.

“(ii) LIMITATION.—Provided further that an alien required to pay taxes under this subpara-

graph, or who otherwise satisfies the requirements of clause (i), shall not be allowed to collect any tax refund for any taxable year prior to 2006, or to file any claim for the Earned Income Tax Credit, or any other tax credit otherwise allowable under the tax code, prior to such taxable year.

“(F) BASIC CITIZENSHIP SKILLS.—

“(i) IN GENERAL.—Except as provided in clause (ii), the alien shall demonstrate that the alien meets the requirements of section 312(a) (relating to English proficiency and understanding of United States history and Government).

“(ii) EXCEPTIONS.—

“(I) MANDATORY.—The requirements of clause (i) shall not apply to any person who is unable to comply with those requirements because of a physical or developmental disability or mental impairment.

“(II) DISCRETIONARY.—The Secretary of Homeland Security may waive all or part of the requirements of clause (i) in the case of an alien

1 who is 65 years of age or older as of
2 the date of the filing of the applica-
3 tion for adjustment of status.

4 “(G) SECURITY AND LAW ENFORCEMENT
5 CLEARANCES.—The alien shall submit finger-
6 prints in accordance with procedures estab-
7 lished by the Secretary of Homeland Security.
8 Such fingerprints shall be submitted to relevant
9 Federal agencies to be checked against existing
10 databases for information relating to criminal,
11 national security, or other law enforcement ac-
12 tions that would render the alien ineligible for
13 adjustment of status under this subsection. The
14 relevant Federal agencies shall work to ensure
15 that such clearances are completed within 90
16 days of the submission of fingerprints. An ap-
17 peal of a security clearance determination by
18 the Secretary of Homeland Security shall be
19 processed through the Department of Home-
20 land Security.

21 “(H) MILITARY SELECTIVE SERVICE.—The
22 alien shall establish that if the alien is within
23 the age period required under the Military Se-
24 lective Service Act (50 U.S.C. App. 451 et seq.)
25 that such alien has registered under that Act.

1 “(I) ADJUSTMENT OF STATUS.—The Sec-
2 retary may not adjust the status of an alien
3 under this section to that of lawful permanent
4 resident until the Secretary determines that the
5 priority dates have become current for the class
6 of aliens whose family-based or employment-
7 based petitions for permanent residence were
8 pending on the date of the enactment of the
9 Comprehensive Immigration Reform Act of
10 2006.

11 “(2) SPOUSES AND CHILDREN.—

12 “(A) IN GENERAL.—

13 “(i) ADJUSTMENT OF STATUS.—Not-
14 withstanding any other provision of law,
15 the Secretary of Homeland Security shall,
16 if otherwise eligible under subparagraph
17 (B), adjust the status to that of a lawful
18 permanent resident for—

19 “(I) the spouse, or child who was
20 under 21 years of age on the date of
21 enactment of the Immigrant Account-
22 ability Act of 2006, of an alien who
23 adjusts status or is eligible to adjust
24 status to that of a permanent resident
25 under paragraph (1); or

1 “(II) an alien who, within 5
2 years preceding the date of enactment
3 of the Immigrant Accountability Act
4 of 2006, was the spouse or child of an
5 alien who adjusts status to that of a
6 permanent resident under paragraph
7 (1), if—

8 “(aa) the termination of the
9 qualifying relationship was con-
10 nected to domestic violence; or

11 “(bb) the spouse or child
12 has been battered or subjected to
13 extreme cruelty by the spouse or
14 parent who adjusts status or is
15 eligible to adjust status to that of
16 a permanent resident under para-
17 graph (1).

18 “(ii) APPLICATION OF OTHER LAW.—

19 In acting on applications filed under this
20 paragraph with respect to aliens who have
21 been battered or subjected to extreme cru-
22 elty, the Secretary of Homeland Security
23 shall apply the provisions of section
24 204(a)(1)(J) and the protections, prohibi-
25 tions, and penalties under section 384 of

1 the Illegal Immigration Reform and Immi-
2 grant Responsibility Act of 1996 (8 U.S.C.
3 1367).

4 “(B) GROUNDS OF INADMISSIBILITY NOT
5 APPLICABLE.—In establishing admissibility to
6 the United States, the spouse or child described
7 in subparagraph (A) shall establish that they
8 are not inadmissible under section 212(a), ex-
9 cept for any provision of that section that is
10 waived under subsection (b) of this section.

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

1 peal of a denial by the Secretary of Homeland
2 Security shall be processed through the Depart-
3 ment of Homeland Security.

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

9 “(b) GROUNDS OF INADMISSIBILITY.—

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

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

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

18 “(C) Paragraph (3) (relating to security
19 and related grounds).

20 “(D) Subparagraphs (A) and (C) of para-
21 graph (10) (relating to polygamists and child
22 abductors).

23 “(2) GROUNDS OF INADMISSIBILITY NOT APPLI-
24 CABLE.—The provisions of paragraphs (5), (6)(A),
25 (6)(B), (6)(C), (6)(F), (6)(G), (7), (9) (other than

1 subparagraph (C)(i)(II)), and (10)(B) of section
 2 212(a) shall not apply to an alien who is applying
 3 for adjustment of status under subsection (a).

4 “(3) WAIVER OF OTHER GROUNDS.—

5 “(A) IN GENERAL.—Except as provided in
 6 paragraph (1), the Secretary of Homeland Se-
 7 curity may waive any provision of section
 8 212(a) in the case of individual aliens for hu-
 9 manitarian purposes, to ensure family unity, or
 10 when it is otherwise in the public interest.

11 “(B) CONSTRUCTION.—Nothing in this
 12 paragraph shall be construed as affecting the
 13 authority of the Secretary of Homeland Secu-
 14 rity, other than under this subparagraph, to
 15 waive the provisions of section 212(a).

16 “(4) SPECIAL RULE FOR DETERMINATION OF
 17 PUBLIC CHARGE.—An alien is not ineligible for ad-
 18 justment of status under subsection (a) by reason of
 19 a ground of inadmissibility under section 212(a)(4)
 20 if the alien establishes a history of employment in
 21 the United States evidencing self-support without
 22 public cash assistance.

23 “(5) SPECIAL RULE FOR INDIVIDUALS WHERE
 24 THERE IS NO COMMERCIAL PURPOSE.—An alien is
 25 not ineligible for adjustment of status under sub-

1 section (a) by reason of a ground of inadmissibility
 2 under section 212(a)(6)(E) if the alien establishes
 3 that the action referred to in that section was taken
 4 for humanitarian purposes, to ensure family unity,
 5 or was otherwise in the public interest.

6 “(6) APPLICABILITY OF OTHER PROVISIONS.—
 7 Section 241(a)(5) and section 240B(d) shall not
 8 apply with respect to an alien who is applying for
 9 adjustment of status under subsection (a).

10 “(6) INELIGIBILITY.—

11 “(A) IN GENERAL.—An alien is ineligible
 12 for adjustment to lawful permanent resident
 13 status under this section if—

14 “(i) the alien has been ordered re-
 15 moved from the United States—

16 “(I) for overstaying the period of
 17 authorized admission under section
 18 217;

19 “(II) under section 235 or 238;
 20 or

21 “(III) pursuant to a final order
 22 of removal under section 240;

23 “(ii) the alien failed to depart the
 24 United States during the period of a vol-

1 untary departure order issued under sec-
2 tion 240B;

3 “(iii) the alien is subject to section
4 241(a)(5);

5 “(iv) the Secretary of Homeland Secu-
6 rity determines that—

7 “(I) the alien, having been con-
8 victed by a final judgment of a serious
9 crime, constitutes a danger to the
10 community of the United States;

11 “(II) there are reasonable
12 grounds for believing that the alien
13 has committed a serious crime outside
14 the United States prior to the arrival
15 of the alien in the United States; or

16 “(III) there are reasonable
17 grounds for regarding the alien as a
18 danger to the security of the United
19 States; or

20 “(v) the alien has been convicted of a
21 felony or 3 or more misdemeanors.

22 “(B) EXCEPTION.—Notwithstanding sub-
23 paragraph (A), an alien who has not been or-
24 dered removed from the United States shall re-
25 main eligible for adjustment to lawful perma-

1 nent resident status under this section if the
 2 alien's ineligibility under subparagraph (A) is
 3 solely related to the alien's—

4 “(i) entry into the United States with-
 5 out inspection;

6 “(ii) remaining in the United States
 7 beyond the period of authorized admission;
 8 or

9 “(iii) failure to maintain legal status
 10 while in the United States.

11 “(C) WAIVER.—The Secretary may, in the
 12 Secretary's sole and unreviewable discretion,
 13 waive the application of subparagraph (A) if the
 14 alien was ordered removed on the basis that the
 15 alien—

16 “(i) entered without inspection;

17 “(ii) failed to maintain status; or

18 “(iii) was ordered removed under
 19 212(a)(6)(C)(i) prior to April 7, 2006,

20 “and—

21 “(i) demonstrates that the alien did
 22 not receive notice of removal proceedings
 23 in accordance with paragraph (1) or (2) of
 24 section 239(a); or

1 “(ii) establishes that the alien’s fail-
 2 ure to appear was due to exceptional cir-
 3 cumstances beyond the control of the alien;
 4 or

5 “(iii) the alien’s departure from the
 6 United States now would result in extreme
 7 hardship to the alien’s spouse, parent, or
 8 child who is a citizen of the United States
 9 or an alien lawfully admitted for perma-
 10 nent residence.

11 “(c) TREATMENT OF APPLICANTS.—

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

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

19 “(B) shall be granted permission to travel
 20 abroad pursuant to regulation pending final ad-
 21 judication of the alien’s application for adjust-
 22 ment of status;

23 “(C) shall not be detained, determined in-
 24 admissible or deportable, or removed pending
 25 final adjudication of the alien’s application for

1 adjustment of status, unless the alien commits
2 an act which renders the alien ineligible for
3 such adjustment of status; and

4 “(D) shall not be considered an unauthor-
5 ized alien as defined in section 274A(i) until
6 such time as employment authorization under
7 subparagraph (A) is denied.

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

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

18 “(B) reflects the benefits and status set
19 forth in paragraph (1).

20 “(3) SECURITY AND LAW ENFORCEMENT
21 CLEARANCE.—Before an alien is granted employ-
22 ment authorization or permission to travel under
23 paragraph (1), the alien shall be required to undergo
24 a name check against existing databases for infor-
25 mation relating to criminal, national security, or

1 other law enforcement actions. The relevant Federal
2 agencies shall work to ensure that such name checks
3 are completed not later than 90 days after the date
4 on which the name check is requested.

5 “(4) TERMINATION OF PROCEEDINGS.—An
6 alien in removal proceedings who establishes prima
7 facie eligibility for adjustment of status under sub-
8 section (a) shall be entitled to termination of the
9 proceedings pending the outcome of the alien’s appli-
10 cation, unless the removal proceedings are based on
11 criminal or national security grounds.

12 “(e) CONFIDENTIALITY OF INFORMATION.—

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

17 “(A) use the information furnished by the
18 applicant pursuant to an application filed under
19 paragraph (1) or (2) of subsection (a) for any
20 purpose other than to make a determination on
21 the application;

22 “(B) make any publication through which
23 the information furnished by any particular ap-
24 plicant can be identified; or

1 “(C) permit anyone other than the sworn
2 officers and employees of such agency, bureau,
3 or approved entity, as approved by the Sec-
4 retary of Homeland Security, to examine indi-
5 vidual applications that have been filed.

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

18 “(3) CRIMINAL PENALTY.—Any person who
19 knowingly uses, publishes, or permits information to
20 be examined in violation of this subsection shall be
21 fined not more than \$10,000.

22 “(f) PENALTIES FOR FALSE STATEMENTS IN APPLI-
23 CATIONS.—

24 “(1) CRIMINAL PENALTY.—

1 “(A) VIOLATION.—It shall be unlawful for
2 any person to—

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

12 “(ii) create or supply a false writing
13 or document for use in making such an ap-
14 plication.

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

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

22 “(3) EXCEPTION.—Notwithstanding paragraphs
23 (1) and (2), any alien or other entity (including an
24 employer or union) that submits an employment
25 record that contains incorrect data that the alien

1 used in order to obtain such employment, shall not
2 have violated this subsection.

3 “(g) INELIGIBILITY FOR PUBLIC BENEFITS.—For
4 purposes of section 403 of the Personal Responsibility and
5 Work Opportunity Reconciliation Act of 1996 (8 U.S.C.
6 1613), an alien whose status has been adjusted in accord-
7 ance with subsection (a) shall not be eligible for any Fed-
8 eral means-tested public benefit unless the alien meets the
9 alien eligibility criteria for such benefit under title IV of
10 such Act (8 U.S.C. 1601 et seq.).

11 “(h) RELATIONSHIPS OF APPLICATION TO CERTAIN
12 ORDERS.—

13 “(1) IN GENERAL.—An alien who is present in
14 the United States and has been ordered excluded,
15 deported, removed, or to depart voluntarily from the
16 United States or is subject to reinstatement of re-
17 moval under any provision of this Act may, notwith-
18 standing such order, apply for adjustment of status
19 under subsection (a). Such an alien shall not be re-
20 quired, as a condition of submitting or granting such
21 application, to file a separate motion to reopen, re-
22 consider, or vacate the exclusion, deportation, re-
23 moval or voluntary departure order. If the Secretary
24 of Homeland Security grants the application, the
25 order shall be canceled. If the Secretary of Home-

1 land Security renders a final administrative decision
 2 to deny the application, such order shall be effective
 3 and enforceable. Nothing in this paragraph shall af-
 4 fect the review or stay of removal under subsection
 5 (j).

6 “(2) STAY OF REMOVAL.—The filing of an ap-
 7 plication described in paragraph (1) shall stay the
 8 removal or detainment of the alien pending final ad-
 9 judication of the application, unless the removal or
 10 detainment of the alien is based on criminal or na-
 11 tional security grounds.

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

17 “(j) ADMINISTRATIVE AND JUDICIAL REVIEW.—

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

22 “(2) ADMINISTRATIVE REVIEW.—

23 “(A) SINGLE LEVEL OF ADMINISTRATIVE
 24 APPELLATE REVIEW.—The Secretary of Home-
 25 land Security shall establish an appellate au-

1 thority to provide for a single level of adminis-
2 trative appellate review of a determination re-
3 specting an application for adjustment of status
4 under subsection (a).

5 “(B) STANDARD FOR REVIEW.—Adminis-
6 trative appellate review referred to in subpara-
7 graph (A) shall be based solely upon the admin-
8 istrative record established at the time of the
9 determination on the application and upon the
10 presentation of additional or newly discovered
11 evidence during the time of the pending appeal.

12 “(3) JUDICIAL REVIEW.—

13 “(A) DIRECT REVIEW.—A person whose
14 application for adjustment of status under sub-
15 section (a) is denied after administrative appel-
16 late review under paragraph (2) may seek re-
17 view of such denial, in accordance with chapter
18 7 of title 5, United States Code, before the
19 United States district court for the district in
20 which the person resides.

21 “(B) REVIEW AFTER REMOVAL PRO-
22 CEEDINGS.—There shall be judicial review in
23 the Federal courts of appeal of the denial of an
24 application for adjustment of status under sub-
25 section (a) in conjunction with judicial review of

1 an order of removal, deportation, or exclusion,
2 but only if the validity of the denial has not
3 been upheld in a prior judicial proceeding under
4 subparagraph (A). Notwithstanding any other
5 provision of law, the standard for review of
6 such a denial shall be governed by subpara-
7 graph (C).

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

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

24 “(k) DISSEMINATION OF INFORMATION ON ADJUST-
25 MENT PROGRAM.—During the 12 months following the

1 issuance of final regulations in accordance with subsection
2 (o), the Secretary of Homeland Security, in cooperation
3 with approved entities, approved by the Secretary of
4 Homeland Security, shall broadly disseminate information
5 respecting adjustment of status under this section and the
6 requirements to be satisfied to obtain such status. The
7 Secretary of Homeland Security shall also disseminate in-
8 formation to employers and labor unions to advise them
9 of the rights and protections available to them and to
10 workers who file applications under this section. Such in-
11 formation shall be broadly disseminated, in the languages
12 spoken by the top 15 source countries of the aliens who
13 would qualify for adjustment of status under this section,
14 including to television, radio, and print media such aliens
15 would have access to.

16 “(l) EMPLOYER PROTECTIONS.—

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

22 “(2) PROVISION OF EMPLOYMENT RECORDS.—

23 Employers that provide unauthorized aliens with
24 copies of employment records or other evidence of
25 employment pursuant to an application for adjust-

1 ment of status under this section or any other appli-
2 cation or petition pursuant to other provisions of the
3 immigration laws, shall not be subject to civil and
4 criminal liability pursuant to section 274A for em-
5 ploying such unauthorized aliens.

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

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

11 “(1) AUTHORIZATION OF APPROPRIATIONS.—
12 There are authorized to be appropriated to the De-
13 partment of Homeland Security such sums as are
14 necessary to commence the processing of applica-
15 tions filed under this section.

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

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

1 “(4) USE OF AMOUNTS COLLECTED.—The Sec-
2 retary of Homeland Security shall deposit payments
3 received under paragraphs (2) and (3) in the Immi-
4 gration Examinations Fee Account, and these pay-
5 ments in such account shall be available, without fis-
6 cal year limitation, such that—

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

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

14 “(C) 10 percent of such funds shall be
15 available to the Department of Homeland Secu-
16 rity and the Department of State to cover ad-
17 ministrative and other expenses incurred in con-
18 nection with the review of applications filed by
19 immediate relatives of aliens applying for ad-
20 justment of status under this section.

21 “(5) STATE IMPACT ASSISTANCE FEE.—

22 “(A) IN GENERAL.—In addition to any
23 other amounts required to be paid under this
24 subsection, an alien shall submit, at the time

1 the alien files an application under this section,
2 a State impact assistance fee equal to—

3 “(i) \$750 for the principal alien; and

4 “(ii) \$100 for the spouse and each
5 child described in subsection (a)(2).

6 “(B) USE OF FEE.—The fees collected
7 under subparagraph (A) shall be deposited in
8 the State Impact Assistance Account estab-
9 lished under section 286(x).

10 “(n) MANDATORY DEPARTURE AND REENTRY.—Any
11 alien who was physically present in the United States on
12 January 7, 2004, who seeks to adjust status under this
13 section, but does not satisfy the requirements of subpara-
14 graph (B) or (D) of subsection (a)(1), shall be eligible to
15 depart the United States and to seek admission as a non-
16 immigrant or an immigrant alien described in section
17 245C.

18 “(o) ISSUANCE OF REGULATIONS.—Not later than
19 120 days after the date of enactment of the Immigrant
20 Accountability Act of 2006, the Secretary of Homeland
21 Security shall issue regulations to implement this sec-
22 tion.”.

23 (2) TABLE OF CONTENTS.—The table of con-
24 tents (8 U.S.C. 1101 et seq.) is amended by insert-

1 ing after the item relating to section 245A the fol-
 2 lowing:

“245B. Access to Earned Adjustment.”.

3 (c) MANDATORY DEPARTURE AND REENTRY.—

4 (1) IN GENERAL.—Chapter 5 of title II (8
 5 U.S.C. 1255 et seq.), as amended by subsection
 6 (b)(1), is further amended by inserting after section
 7 245B the following:

8 **“SEC. 245C. MANDATORY DEPARTURE AND REENTRY.**

9 “(a) IN GENERAL.—The Secretary of Homeland Se-
 10 curity may grant Deferred Mandatory Departure status
 11 to aliens who are in the United States illegally to allow
 12 such aliens time to depart the United States and to seek
 13 admission as a nonimmigrant or immigrant alien.

14 “(b) REQUIREMENTS.—Notwithstanding section
 15 244(h), an alien desiring an adjustment of status under
 16 subsection (a) shall meet the following requirements:

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

19 “(A) was physically present in the United
 20 States on January 7, 2004;

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

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

4 “(2) EMPLOYMENT.—

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

7 “(i) was employed in the United
8 States, whether full time, part time, sea-
9 sonally, or self-employed, before January
10 7, 2004; and

11 “(ii) has been continuously employed
12 in the United States since that date, ex-
13 cept for brief periods of unemployment
14 lasting not longer than 60 days.

15 “(B) EVIDENCE OF EMPLOYMENT.—

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

22 “(I) the Social Security Adminis-
23 tration, Internal Revenue Service, or
24 by any other Federal, State, or local
25 government agency;

1 “(II) an employer; or

2 “(III) a labor union, day labor
3 center, or an organization that assists
4 workers in matters related to employ-
5 ment.

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

14 “(I) bank records;

15 “(II) business records;

16 “(III) sworn affidavits from non-
17 relatives who have direct knowledge of
18 the alien’s work, including the name,
19 address, and phone number of the af-
20 fiant, the nature and duration of the
21 relationship between the affiant and
22 the alien, and other verification infor-
23 mation; or

24 “(IV) remittance records.

1 “(iii) INTENT OF CONGRESS.—It is
2 the intent of Congress that the require-
3 ment in this subsection be interpreted and
4 implemented in a manner that recognizes
5 and takes into account the difficulties en-
6 countered by aliens in obtaining evidence
7 of employment due to the undocumented
8 status of the alien.

9 “(iv) BURDEN OF PROOF.—An alien
10 who is applying for adjustment of status
11 under this section has the burden of prov-
12 ing by a preponderance of the evidence
13 that the alien has satisfied the require-
14 ments of this subsection. An alien may
15 meet such burden of proof by producing
16 sufficient evidence to demonstrate such
17 employment as a matter of reasonable in-
18 ference.

19 “(C) EXEMPTION.—The employment re-
20 quirement under subparagraph (A) shall not
21 apply to any individual who is 65 years of age
22 or older on the date of the enactment of the
23 Immigrant Accountability Act of 2006.

24 “(3) ADMISSIBILITY.—

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

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

5 “(ii) has not assisted in the persecu-
6 tion of any person or persons on account
7 of race, religion, nationality, membership
8 in a particular social group, or political
9 opinion.

10 “(B) GROUNDS NOT APPLICABLE.—The
11 provisions of paragraphs (5), (6)(A), (7), and
12 (9)(B) of section 212(a) shall not apply.

13 “(C) WAIVER.—The Secretary of Home-
14 land Security may waive any other provision of
15 section 212(a), or a ground of ineligibility
16 under paragraph (4), in the case of individual
17 aliens for humanitarian purposes, to assure
18 family unity, or when it is otherwise in the pub-
19 lic interest.

20 “(4) INELIGIBILITY.—

21 “(A) IN GENERAL.—The alien is ineligible
22 for Deferred Mandatory Departure status if the
23 alien—

24 “(i) has been ordered removed from
25 the United States—

1 “(I) for overstaying the period of
2 authorized admission under section
3 217;

4 “(II) under section 235 or 238;
5 or

6 “(III) pursuant to a final order
7 of removal under section 240;

8 “(ii) the alien failed to depart the
9 United States during the period of a vol-
10 untary departure order issued under sec-
11 tion 240B;

12 “(iii) the alien is subject to section
13 241(a)(5);

14 “(iv) the Secretary of Homeland Secu-
15 rity determines that—

16 “(I) the alien, having been con-
17 victed by a final judgment of a serious
18 crime, constitutes a danger to the
19 community of the United States;

20 “(II) there are reasonable
21 grounds for believing that the alien
22 has committed a serious crime outside
23 the United States prior to the arrival
24 of the alien in the United States; or

1 “(III) there are reasonable
2 grounds for regarding the alien as a
3 danger to the security of the United
4 States; or

5 “(v) the alien has been convicted of a
6 felony or 3 or more misdemeanors.

7 “(B) EXCEPTION.—Notwithstanding sub-
8 paragraph (A), an alien who has not been or-
9 dered removed from the United States shall re-
10 main eligible for adjustment to lawful perma-
11 nent resident status under this section if the
12 alien’s ineligibility under subparagraph (A) is
13 solely related to the alien’s—

14 “(i) entry into the United States with-
15 out inspection;

16 “(ii) remaining in the United States
17 beyond the period of authorized admission;
18 or

19 “(iii) failure to maintain legal status
20 while in the United States.

21 “(C) WAIVER.—The Secretary may, in the
22 Secretary’s sole and unreviewable discretion,
23 waive the application of subparagraph (A) if the
24 alien was ordered removed on the basis that the
25 alien—

1 “(i) entered without inspection;
2 “(ii) failed to maintain status; or
3 “(iii) was ordered removed under
4 212(a)(6)(C)(i) prior to April 7, 2006,
5 “and—

6 “(i) demonstrates that the alien did
7 not receive notice of removal proceedings
8 in accordance with paragraph (1) or (2) of
9 section 239(a); or

10 “(ii) establishes that the alien’s fail-
11 ure to appear was due to exceptional cir-
12 cumstances beyond the control of the alien;
13 or

14 “(iii) the alien’s departure from the
15 United States now would result in extreme
16 hardship to the alien’s spouse, parent, or
17 child who is a citizen of the United States
18 or an alien lawfully admitted for perma-
19 nent residence.

20 “(5) MEDICAL EXAMINATION.—The alien may
21 be required, at the alien’s expense, to undergo such
22 a medical examination (including a determination of
23 immunization status) as is appropriate and conforms
24 to generally accepted professional standards of med-
25 ical practice.

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

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

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

9 “(7) APPLICATION CONTENT AND WAIVER.—

10 “(A) APPLICATION FORM.—The Secretary
11 of Homeland Security shall create an applica-
12 tion form that an alien shall be required to
13 complete as a condition of obtaining Deferred
14 Mandatory Departure status.

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

1 voter registration history, claims to United
2 States citizenship, and tax history.

3 “(C) WAIVER.—The Secretary of Home-
4 land Security shall require an alien to include
5 with the application a waiver of rights that ex-
6 plains to the alien that, in exchange for the dis-
7 cretionary benefit of obtaining Deferred Manda-
8 tory Departure status, the alien agrees to waive
9 any right to judicial review or to contest any re-
10 moval action, other than on the basis of an ap-
11 plication for asylum or restriction of removal
12 pursuant to the provisions contained in section
13 208 or 241(b)(3), or under the Convention
14 Against Torture and Other Cruel, Inhuman or
15 Degrading Treatment or Punishment, done at
16 New York December 10, 1984, or cancellation
17 of removal pursuant to section 240A(a).

18 “(D) KNOWLEDGE.—The Secretary of
19 Homeland Security shall require an alien to in-
20 clude with the application a signed certification
21 in which the alien certifies that the alien has
22 read and understood all of the questions and
23 statements on the application form, and that
24 the alien certifies under penalty of perjury
25 under the laws of the United States that the

1 application, and any evidence submitted with it,
 2 are all true and correct, and that the applicant
 3 authorizes the release of any information con-
 4 tained in the application and any attached evi-
 5 dence for law enforcement purposes.

6 “(c) IMPLEMENTATION AND APPLICATION TIME PE-
 7 RIODS.—

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

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

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

1 status. The provisions under subsections (e) and (f)
2 of section 245B shall apply to applications filed
3 under this section.

4 “(4) COMPLETION OF PROCESSING.—The Sec-
5 retary of Homeland Security shall ensure that all
6 applications for Deferred Mandatory Departure sta-
7 tus are processed not later than 12 months after the
8 date on which the application form is first made
9 available.

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

19 “(e) ACKNOWLEDGMENT.—

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

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

1 “(i) is unlawfully present in the
 2 United States and subject to removal or
 3 deportation, as appropriate, under this
 4 Act; and

5 “(ii) understands the terms of the
 6 terms of Deferred Mandatory Departure;

7 “(B) any Social Security account number
 8 or card in the possession of the alien or relied
 9 upon by the alien;

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

12 “(2) USE OF INFORMATION.—None of the doc-
 13 uments or other information provided in accordance
 14 with paragraph (1) may be used in a criminal pro-
 15 ceeding against the alien providing such documents
 16 or information.

17 “(f) MANDATORY DEPARTURE.—

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

22 “(2) REGISTRATION AT TIME OF DEPAR-
 23 TURE.—An alien granted Deferred Mandatory De-
 24 parture shall—

1 “(A) depart from the United States before
2 the expiration of the period of Deferred Manda-
3 tory Departure status;

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

6 “(C) surrender any evidence of Deferred
7 Mandatory Departure status at the time of de-
8 parture.

9 “(3) APPLICATION FOR READMISSION.—

10 “(A) IN GENERAL.—An alien under this
11 section may apply for admission to the United
12 States as an immigrant or nonimmigrant while
13 in the United States or from any location out-
14 side of the United States, but may not be
15 granted admission until the alien has departed
16 from the United States in accordance with
17 paragraph (2).

18 “(B) APPROVAL.—The Secretary may ap-
19 prove an application under subparagraph (A)
20 during the period in which the alien is present
21 in the United States under Deferred Mandatory
22 Departure status.

23 “(C) US-VISIT.—An alien in Deferred
24 Mandatory Departure status who is seeking ad-
25 mission as a nonimmigrant or immigrant alien

1 may exit the United States and immediately re-
2 enter the United States at any land port of
3 entry at which the US-VISIT exit and entry
4 system can process such alien for admission
5 into the United States.

6 “(D) INTERVIEW REQUIREMENTS.—Not-
7 withstanding any other provision of law, any
8 admission requirement involving in-person
9 interviews at a consulate of the United States
10 shall be waived for aliens granted Deferred
11 Mandatory Departure status under this section.

12 “(E) WAIVER OF NUMERICAL LIMITA-
13 TIONS.—The numerical limitations under sec-
14 tion 214 shall not apply to any alien who is ad-
15 mitted as a nonimmigrant under this para-
16 graph.

17 “(4) EFFECT OF READMISSION ON SPOUSE OR
18 CHILD.—The spouse or child of an alien granted De-
19 ferred Mandatory Departure and subsequently
20 granted an immigrant or nonimmigrant visa before
21 departing the United States shall be—

22 “(A) deemed to have departed under this
23 section upon the successful admission of the
24 principal alien; and

1 “(B) eligible for the derivative benefits as-
2 sociated with the immigrant or nonimmigrant
3 visa granted to the principal alien without re-
4 gard to numerical caps related to such visas.

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

8 “(A) is granted an immigrant or non-
9 immigrant visa; and

10 “(B) can demonstrate that the departure
11 of the alien would create a substantial hardship
12 on the alien or an immediate family member of
13 the alien.

14 “(6) RETURN IN LEGAL STATUS.—An alien who
15 complies with the terms of Deferred Mandatory De-
16 parture status and who departs before the expiration
17 of such status—

18 “(A) shall not be subject to section
19 212(a)(9)(B);

20 “(B) if otherwise eligible, may immediately
21 seek admission as a nonimmigrant or immi-
22 grant; and

23 “(C) is eligible to be employed by an em-
24 ployer in the United States regardless of wheth-

1 er the employer has complied with the require-
2 ments of section 218B(b)(7).

3 “(7) FAILURE TO DEPART.—An alien who fails
4 to depart the United States prior to the expiration
5 of Mandatory Deferred Departure status is not eligi-
6 ble and may not apply for or receive any immigra-
7 tion relief or benefit under this Act or any other law
8 for a period of 10 years, with the exception of sec-
9 tion 208 or 241(b)(3) or the Convention Against
10 Torture and Other Cruel, Inhuman or Degrading
11 Treatment or Punishment, done at New York De-
12 cember 10, 1984, in the case of an alien who indi-
13 cates either an intention to apply for asylum under
14 section 208 or a fear of persecution or torture.

15 “(8) PENALTIES FOR DELAYED DEPARTURE.—
16 An alien who fails to depart immediately shall be
17 subject to—

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

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

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

4 “(g) EVIDENCE OF DEFERRED MANDATORY DEPAR-
5 TURE STATUS.—Evidence of Deferred Mandatory Depar-
6 ture status shall be machine-readable and tamper-resist-
7 ant, shall allow for biometric authentication, and shall
8 comply with the requirements under section 403 of the
9 Illegal Immigration Reform and Immigrant Responsibility
10 Act of 1996 (8 U.S.C. 1324a note). The Secretary of
11 Homeland Security is authorized to incorporate inte-
12 grated-circuit technology into the document. The Sec-
13 retary of Homeland Security shall consult with the Foren-
14 sic Document Laboratory in designing the document. The
15 document may serve as a travel, entry, and work author-
16 ization document during the period of its validity. The
17 document may be accepted by an employer as evidence of
18 employment authorization and identity under section
19 274A(c).

20 “(h) TERMS OF STATUS.—

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

24 “(2) TRAVEL.—

1 “(A) An alien granted Deferred Mandatory
 2 Departure is not subject to section 212(a)(9)
 3 for any unlawful presence that occurred prior to
 4 the Secretary of Homeland Security granting
 5 the alien Deferred Mandatory Departure status.

6 “(B) Under regulations established by the
 7 Secretary of Homeland Security, an alien grant-
 8 ed Deferred Mandatory Departure—

9 “(i) may travel outside of the United
 10 States and may be readmitted if the period
 11 of Deferred Mandatory Departure status
 12 has not expired; and

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

16 “(C) EFFECT ON PERIOD OF AUTHORIZED
 17 ADMISSION.—Time spent outside the United
 18 States under subparagraph (B) shall not extend
 19 the period of Deferred Mandatory Departure
 20 status.

21 “(3) BENEFITS.—During the period in which
 22 an alien is granted Deferred Mandatory Departure
 23 under this section—

24 “(A) the alien shall not be considered to be
 25 permanently residing in the United States

1 under the color of law and shall be treated as
 2 a nonimmigrant admitted under section 214;
 3 and

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

8 “(i) PROHIBITION ON CHANGE OF STATUS OR AD-
 9 JUSTMENT OF STATUS.—

10 “(1) IN GENERAL.—Before leaving the United
 11 States, an alien granted Deferred Mandatory Depart-
 12 ure status may not apply to change status under
 13 section 248.

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

17 “(A) the consideration of all applications
 18 filed under section 201, 202, or 203 before the
 19 date of enactment of this section; or

20 “(B) 8 years after the date of enactment
 21 of this section.

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 “(3) STATE IMPACT ASSISTANCE FEE.—

8 “(A) IN GENERAL.—In addition to any
 9 other amounts required to be paid under this
 10 subsection, an alien seeking Deferred Manda-
 11 tory Departure status shall submit, at the time
 12 the alien files an application under this section,
 13 a State impact assistance fee equal to \$750.

14 “(B) USE OF FEE.—The fees collected
 15 under subparagraph (A) shall be deposited in
 16 the State Impact Assistance Account estab-
 17 lished under section 286(x).

18 “(k) FAMILY MEMBERS.—

19 “(1) IN GENERAL.—Subject to subsection
 20 (f)(4), the spouse or child of an alien granted De-
 21 ferred Mandatory Departure status is subject to the
 22 same terms and conditions as the principal alien.

23 “(2) APPLICATION FEE.—

24 “(A) IN GENERAL.—The spouse or child of
 25 an alien seeking Deferred Mandatory Departure

1 status shall submit, in addition to any other fee
2 authorized by law, an additional fee of \$500.

3 “(B) USE OF FEE.—The fees collected
4 under subparagraph (A) shall be available for
5 use by the Secretary of Homeland Security for
6 activities to identify, locate, or remove aliens
7 who are removable under section 237.

8 “(3) STATE IMPACT ASSISTANCE FEE.—

9 “(A) IN GENERAL.—In addition to any
10 other amounts required to be paid under this
11 subsection, the spouse and each child of an
12 alien seeking Deferred Mandatory Departure
13 status shall submit a State impact assistance
14 fee equal to \$100.

15 “(B) USE OF FEE.—The fees collected
16 under subparagraph (A) shall be deposited in
17 the State Impact Assistance Account estab-
18 lished under section 286(x).

19 “(1) EMPLOYMENT.—

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

23 “(2) CONTINUOUS EMPLOYMENT.—An alien
24 granted Deferred Mandatory Departure status must
25 be employed while in the United States. An alien

1 who fails to be employed for 60 days is ineligible for
 2 hire until the alien has departed the United States
 3 and reentered. The Secretary of Homeland Security
 4 may reauthorize an alien for employment without re-
 5 quiring the alien's departure from the United States.

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

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

15 “(1) CRIMINAL PENALTY.—

16 “(A) VIOLATION.—It shall be unlawful for
 17 any person—

18 “(i) to file or assist in filing an appli-
 19 cation for adjustment of status under this
 20 section and knowingly and willfully falsify,
 21 misrepresent, conceal, or cover up a mate-
 22 rial fact or make any false, fictitious, or
 23 fraudulent statements or representations,
 24 or make or use any false writing or docu-
 25 ment knowing the same to contain any

1 false, fictitious, or fraudulent statement or
2 entry; or

3 “(ii) to create or supply a false writ-
4 ing or document for use in making such an
5 application.

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

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

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

21 “(p) WAIVER OF RIGHTS.—An alien is not eligible
22 for Deferred Mandatory Departure status, unless the alien
23 has waived any right under subsection (b)(7)(C), other
24 than on the basis of an application for asylum, restriction
25 of removal, or protection under the Convention Against

1 Torture and Other Cruel, Inhuman or Degrading Treat-
 2 ment or Punishment, done at New York December 10,
 3 1984, or cancellation of removal pursuant to section
 4 240A(a), any action for deportation or removal of the alien
 5 that is instituted against the alien subsequent to a grant
 6 of Deferred Mandatory Departure status.

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

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

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

20 “(r) JUDICIAL REVIEW.—

21 “(1) LIMITATIONS ON RELIEF.—Without regard
 22 to the nature of the action or claim and without re-
 23 gard to the identity of the party or parties bringing
 24 the action, no court may—

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

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

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

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

15 “(2) CHALLENGES TO VALIDITY.—

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

22 “(i) whether such section, or any reg-
23 ulation issued to implement such section,
24 violates the Constitution of the United
25 States; or

“(ii) whether such a regulation, or a written policy directive, written policy guideline, or written procedure issued by or under the authority of the Secretary of Homeland Security to implement such section, is not consistent with applicable provisions of this section or is otherwise in violation of law.”.

(2) TABLE OF CONTENTS.—The table of contents (8 U.S.C. 1101 et seq.), as amended by this subsection (b)(2), is further amended by inserting after the item relating to section 245B the following:

“245C. Mandatory Departure and Reentry.”.

(3) CONFORMING AMENDMENT.—Section 237(a)(2)(A)(i)(II) (8 U.S.C. 1227(a)(2)(A)(i)(II)) is amended by inserting “(or 6 months in the case of an alien granted Deferred Mandatory Departure status under section 245C)” after “imposed”.

(4) STATUTORY CONSTRUCTION.—Nothing in this subsection, or any amendment made by this subsection, shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such

1 amounts as may be necessary for facilities, personnel
 2 (including consular officers), training, technology,
 3 and processing necessary to carry out the amend-
 4 ments made by this subsection.

5 (d) CORRECTION OF SOCIAL SECURITY RECORDS.—
 6 Section 208(e)(1) of the Social Security Act (42 U.S.C.
 7 408(e)(1)) is amended—

8 (1) in subparagraph (B)(ii), by striking “or” at
 9 the end;

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

12 (3) by inserting after subparagraph (C) the fol-
 13 lowing:

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

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

22 (e) STATE IMPACT ASSISTANCE ACCOUNT.—Section
 23 286 (8 U.S.C. 1356) is amended by inserting after sub-
 24 section (w) the following:

25 “(x) STATE IMPACT ASSISTANCE ACCOUNT.—

1 “(1) ESTABLISHMENT.—There is established in
2 the general fund of the Treasury a separate account,
3 which shall be known as the ‘State Impact Assist-
4 ance Account’.

5 “(2) SOURCE OF FUNDS.—Notwithstanding any
6 other provision under this Act, there shall be depos-
7 ited as offsetting receipts into the State Impact As-
8 sistance Account all State impact assistance fees col-
9 lected under section 245B(m)(5) and subsections
10 (j)(3) and (k)(3) of section 245C.

11 “(3) USE OF FUNDS.—Amounts deposited into
12 the State Impact Assistance Account may only be
13 used to carry out the State Impact Assistance Grant
14 Program established under paragraph (4).

15 “(4) STATE IMPACT ASSISTANCE GRANT PRO-
16 GRAM.—

17 “(A) ESTABLISHMENT.—The Secretary of
18 Health and Human Services, in consultation
19 with the Secretary of Education, shall establish
20 the State Impact Assistance Grant Program
21 (referred to in this section as the ‘Program’),
22 under which the Secretary may award grants to
23 States to provide health and education services
24 to noncitizens in accordance with this para-
25 graph.

1 “(B) STATE ALLOCATIONS.—The Sec-
2 retary of Health and Human Services shall an-
3 nually allocate the amounts available in the
4 State Impact Assistance Account among the
5 States as follows:

6 “(i) NONCITIZEN POPULATION.—
7 Eighty percent of such amounts shall be
8 allocated so that each State receives the
9 greater of—

10 “(I) \$5,000,000; or

11 “(II) after adjusting for alloca-
12 tions under subclause (I), the percent-
13 age of the amount to be distributed
14 under this clause that is equal to the
15 noncitizen resident population of the
16 State divided by the noncitizen resi-
17 dent population of all States, based on
18 the most recent data available from
19 the Bureau of the Census.

20 “(ii) HIGH GROWTH RATES.—Twenty
21 percent of such amounts shall be allocated
22 among the 20 States with the largest
23 growth rates in noncitizen resident popu-
24 lation, as determined by the Secretary of
25 Health and Human Services, so that each

1 such State receives the percentage of the
 2 amount distributed under this clause that
 3 is equal to—

4 “(I) the growth rate in the non-
 5 citizen resident population of the
 6 State during the most recent 3-year
 7 period for which data is available from
 8 the Bureau of the Census; divided by

9 “(II) the average growth rate in
 10 noncitizen resident population for the
 11 20 States during such 3-year period.

12 “(iii) LEGISLATIVE APPROPRIA-
 13 TIONS.—The use of grant funds allocated
 14 to States under this paragraph shall be
 15 subject to appropriation by the legislature
 16 of each State in accordance with the terms
 17 and conditions under this paragraph.

18 “(C) FUNDING FOR LOCAL GOVERN-
 19 MENT.—

20 “(i) DISTRIBUTION CRITERIA.—Grant
 21 funds received by States under this para-
 22 graph shall be distributed to units of local
 23 government based on need and function.

24 “(ii) MINIMUM DISTRIBUTION.—Ex-
 25 cept as provided in clause (iii), a State

1 shall distribute not less than 30 percent of
 2 the grant funds received under this para-
 3 graph to units of local government not
 4 later than 180 days after receiving such
 5 funds.

6 “(iii) EXCEPTION.—If an eligible unit
 7 of local government that is available to
 8 carry out the activities described in sub-
 9 paragraph (D) cannot be found in a State,
 10 the State does not need to comply with
 11 clause (ii).

12 “(iv) UNEXPENDED FUNDS.—Any
 13 grant funds distributed by a State to a
 14 unit of local government that remain unex-
 15 pended as of the end of the grant period
 16 shall revert to the State for redistribution
 17 to another unit of local government.

18 “(D) USE OF FUNDS.—States and units of
 19 local government shall use grant funds received
 20 under this paragraph to provide health services,
 21 educational services, and related services to
 22 noncitizens within their jurisdiction directly, or
 23 through contracts with eligible services pro-
 24 viders, including—

25 “(i) health care providers;

1 “(ii) local educational agencies; and

2 “(iii) charitable and religious organi-
3 zations.

4 “(E) STATE DEFINED.—In this paragraph,
5 the term ‘State’ means each of the several
6 States of the United States, the District of Co-
7 lumbia, the Commonwealth of Puerto Rico, the
8 Virgin Islands, Guam, American Samoa, and
9 the Commonwealth of the Northern Mariana Is-
10 lands.

11 “(F) CERTIFICATION.—In order to receive
12 a payment under this section, the State shall
13 provide the Secretary of Health and Human
14 Services with a certification that the State’s
15 proposed uses of the fund are consistent with
16 (D).

17 “(G) ANNUAL REPORT.—The Secretary of
18 Health and Human Services shall inform the
19 States annually of the amount of funds avail-
20 able to each State under the Program.”.

1 **Subtitle B—Agricultural Job Op-**
 2 **portunities, Benefits, and Secu-**
 3 **rity**

4 **SEC. 611. SHORT TITLE.**

5 This subtitle may be cited as the “Agricultural Job
 6 Opportunities, Benefits, and Security Act of 2006” or the
 7 “AgJOBS Act of 2006”.

8 **SEC. 612. DEFINITIONS.**

9 In this subtitle:

10 (1) **AGRICULTURAL EMPLOYMENT.**—The term
 11 “agricultural employment” means any service or ac-
 12 tivity that is considered to be agricultural under sec-
 13 tion 3(f) of the Fair Labor Standards Act of 1938
 14 (29 U.S.C. 203(f)) or agricultural labor under sec-
 15 tion 3121(g) of the Internal Revenue Code of 1986
 16 (26 U.S.C. 3121(g)). For purposes of this para-
 17 graph, agricultural employment includes employment
 18 under section 101(a)(15)(H)(ii)(a) of the Immigra-
 19 tion and Nationality Act (8 U.S.C.
 20 1101(a)(15)(H)(ii)(a)).

21 (2) **BLUE CARD STATUS.**—The term “blue card
 22 status” means the status of an alien who has been
 23 lawfully admitted into the United States for tem-
 24 porary residence under section 613(a).

1 (3) EMPLOYER.—The term “employer” means
2 any person or entity, including any farm labor con-
3 tractor and any agricultural association, that em-
4 ploys workers in agricultural employment.

5 (4) JOB OPPORTUNITY.—The term “job oppor-
6 tunity” means a job opening for temporary full-time
7 employment at a place in the United States to which
8 United States workers can be referred.

9 (5) TEMPORARY.—A worker is employed on a
10 “temporary” basis where the employment is in-
11 tended not to exceed 10 months.

12 (6) UNITED STATES WORKER.—The term
13 “United States worker” means any worker, whether
14 a United States citizen or national, a lawfully admit-
15 ted permanent resident alien, or any other alien,
16 who is authorized to work in the job opportunity
17 within the United States, except an alien admitted
18 or otherwise provided status under section
19 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
20 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

21 (7) WORK DAY.—The term “work day” means
22 any day in which the individual is employed 5.75 or
23 more hours in agricultural employment.

1 **CHAPTER 1—PILOT PROGRAM FOR**
2 **EARNED STATUS ADJUSTMENT OF AG-**
3 **RICULTURAL WORKERS**

4 **SEC. 613. AGRICULTURAL WORKERS.**

5 (a) BLUE CARD PROGRAM.—

6 (1) IN GENERAL.—Notwithstanding any other
7 provision of law, the Secretary shall confer blue card
8 status upon an alien who qualifies under this sub-
9 section if the Secretary determines that the alien—

10 (A) has performed agricultural employment
11 in the United States for at least 863 hours or
12 150 work days during the 24-month period end-
13 ing on December 31, 2005;

14 (B) applied for such status during the 18-
15 month application period beginning on the first
16 day of the seventh month that begins after the
17 date of enactment of this Act; and

18 (C) is otherwise admissible to the United
19 States under section 212 of the Immigration
20 and Nationality Act (8 U.S.C. 1182), except as
21 otherwise provided under subsection (e)(2).

22 (2) AUTHORIZED TRAVEL.—An alien in blue
23 card status has the right to travel abroad (including
24 commutation from a residence abroad) in the same

1 manner as an alien lawfully admitted for permanent
2 residence.

3 (3) AUTHORIZED EMPLOYMENT.—An alien in
4 blue card status shall be provided an “employment
5 authorized” endorsement or other appropriate work
6 permit, in the same manner as an alien lawfully ad-
7 mitted for permanent residence.

8 (4) TERMINATION OF BLUE CARD STATUS.—

9 (A) IN GENERAL.—The Secretary may ter-
10 minate blue card status granted under this sub-
11 section only upon a determination under this
12 subtitle that the alien is deportable.

13 (B) GROUNDS FOR TERMINATION OF BLUE
14 CARD STATUS.—Before any alien becomes eligi-
15 ble for adjustment of status under subsection
16 (c), the Secretary may deny adjustment to per-
17 manent resident status and provide for termi-
18 nation of the blue card status granted such
19 alien under paragraph (1) if—

20 (i) the Secretary finds, by a prepon-
21 derance of the evidence, that the adjust-
22 ment to blue card status was the result of
23 fraud or willful misrepresentation (as de-
24 scribed in section 212(a)(6)(C)(i) of the

1 Immigration and Nationality Act (8 U.S.C.
2 1182(a)(6)(C)(i)); or

3 (ii) the alien—

4 (I) commits an act that makes
5 the alien inadmissible to the United
6 States as an immigrant, except as
7 provided under subsection (e)(2);

8 (II) is convicted of a felony or 3
9 or more misdemeanors committed in
10 the United States; or

11 (III) is convicted of an offense,
12 an element of which involves bodily in-
13 jury, threat of serious bodily injury,
14 or harm to property in excess of \$500.

15 (5) RECORD OF EMPLOYMENT.—

16 (A) IN GENERAL.—Each employer of a
17 worker granted status under this subsection
18 shall annually—

19 (i) provide a written record of employ-
20 ment to the alien; and

21 (ii) provide a copy of such record to
22 the Secretary.

23 (B) SUNSET.—The obligation under sub-
24 paragraph (A) shall terminate on the date that

1 is 6 years after the date of the enactment of
2 this Act.

3 (6) REQUIRED FEATURES OF BLUE CARD.—The
4 Secretary shall provide each alien granted blue card
5 status and the spouse and children of each such
6 alien residing in the United States with a card that
7 contains—

8 (A) an encrypted, machine-readable, elec-
9 tronic identification strip that is unique to the
10 alien to whom the card is issued;

11 (B) biometric identifiers, including finger-
12 prints and a digital photograph; and

13 (C) physical security features designed to
14 prevent tampering, counterfeiting, or duplica-
15 tion of the card for fraudulent purposes.

16 (7) FINE.—An alien granted blue card status
17 shall pay a fine to the Secretary in an amount equal
18 to \$100.

19 (8) MAXIMUM NUMBER.—The Secretary may
20 issue not more than 1,500,000 blue cards during the
21 5-year period beginning on the date of the enact-
22 ment of this Act.

23 (b) RIGHTS OF ALIENS GRANTED BLUE CARD STA-
24 TUS.—

(1) IN GENERAL.—Except as otherwise provided under this subsection, an alien in blue card status shall be considered to be an alien lawfully admitted for permanent residence for purposes of any law other than any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(2) DELAYED ELIGIBILITY FOR CERTAIN FEDERAL PUBLIC BENEFITS.—An alien in blue card status shall not be eligible, by reason of such status, for any form of assistance or benefit described in section 403(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(a)) until 5 years after the date on which the Secretary confers blue card status upon that alien.

(3) TERMS OF EMPLOYMENT RESPECTING ALIENS ADMITTED UNDER THIS SECTION.—

(A) PROHIBITION.—No alien granted blue card status may be terminated from employment by any employer during the period of blue card status except for just cause.

(B) TREATMENT OF COMPLAINTS.—

(i) ESTABLISHMENT OF PROCESS.—

The Secretary shall establish a process for the receipt, initial review, and disposition of complaints by aliens granted blue card

1 status who allege that they have been ter-
2 minated without just cause. No proceeding
3 shall be conducted under this subpara-
4 graph with respect to a termination unless
5 the Secretary determines that the com-
6 plaint was filed not later than 6 months
7 after the date of the termination.

8 (ii) INITIATION OF ARBITRATION.—If
9 the Secretary finds that a complaint has
10 been filed in accordance with clause (i) and
11 there is reasonable cause to believe that
12 the complainant was terminated without
13 just cause, the Secretary shall initiate
14 binding arbitration proceedings by request-
15 ing the Federal Mediation and Conciliation
16 Service to appoint a mutually agreeable ar-
17 bitrator from the roster of arbitrators
18 maintained by such Service for the geo-
19 graphical area in which the employer is lo-
20 cated. The procedures and rules of such
21 Service shall be applicable to the selection
22 of such arbitrator and to such arbitration
23 proceedings. The Secretary shall pay the
24 fee and expenses of the arbitrator, subject

1 to the availability of appropriations for
2 such purpose.

3 (iii) ARBITRATION PROCEEDINGS.—

4 The arbitrator shall conduct the pro-
5 ceeding in accordance with the policies and
6 procedures promulgated by the American
7 Arbitration Association applicable to pri-
8 vate arbitration of employment disputes.

9 The arbitrator shall make findings respect-
10 ing whether the termination was for just
11 cause. The arbitrator may not find that
12 the termination was for just cause unless
13 the employer so demonstrates by a prepon-
14 derance of the evidence. If the arbitrator
15 finds that the termination was not for just
16 cause, the arbitrator shall make a specific
17 finding of the number of days or hours of
18 work lost by the employee as a result of
19 the termination. The arbitrator shall have
20 no authority to order any other remedy, in-
21 cluding, but not limited to, reinstatement,
22 back pay, or front pay to the affected em-
23 ployee. Within 30 days from the conclusion
24 of the arbitration proceeding, the arbi-
25 trator shall transmit the findings in the

1 form of a written opinion to the parties to
2 the arbitration and the Secretary. Such
3 findings shall be final and conclusive, and
4 no official or court of the United States
5 shall have the power or jurisdiction to re-
6 view any such findings.

7 (iv) EFFECT OF ARBITRATION FIND-
8 INGS.—If the Secretary receives a finding
9 of an arbitrator that an employer has ter-
10 minated an alien granted blue card status
11 without just cause, the Secretary shall
12 credit the alien for the number of days or
13 hours of work lost for purposes of the re-
14 quirement of subsection (c)(1).

15 (v) TREATMENT OF ATTORNEY'S
16 FEES.—The parties shall bear the cost of
17 their own attorney's fees involved in the
18 litigation of the complaint.

19 (vi) NONEXCLUSIVE REMEDY.—The
20 complaint process provided for in this sub-
21 paragraph is in addition to any other
22 rights an employee may have in accordance
23 with applicable law.

24 (vii) EFFECT ON OTHER ACTIONS OR
25 PROCEEDINGS.—Any finding of fact or

1 law, judgment, conclusion, or final order
2 made by an arbitrator in the proceeding
3 before the Secretary shall not be conclusive
4 or binding in any separate or subsequent
5 action or proceeding between the employee
6 and the employee's current or prior em-
7 ployer brought before an arbitrator, admin-
8 istrative agency, court, or judge of any
9 State or the United States, regardless of
10 whether the prior action was between the
11 same or related parties or involved the
12 same facts, except that the arbitrator's
13 specific finding of the number of days or
14 hours of work lost by the employee as a re-
15 sult of the employment termination may be
16 referred to the Secretary pursuant to
17 clause (iv).

18 (C) CIVIL PENALTIES.—

19 (i) IN GENERAL.—If the Secretary
20 finds, after notice and opportunity for a
21 hearing, that an employer of an alien
22 granted blue card status has failed to pro-
23 vide the record of employment required
24 under subsection (a)(5) or has provided a
25 false statement of material fact in such a

1 record, the employer shall be subject to a
2 civil money penalty in an amount not to
3 exceed \$1,000 per violation.

4 (ii) LIMITATION.—The penalty appli-
5 cable under clause (i) for failure to provide
6 records shall not apply unless the alien has
7 provided the employer with evidence of em-
8 ployment authorization granted under this
9 section.

10 (c) ADJUSTMENT TO PERMANENT RESIDENCE.—

11 (1) AGRICULTURAL WORKERS.—

12 (A) IN GENERAL.—Except as provided in
13 subparagraph (B), the Secretary shall adjust
14 the status of an alien granted blue card status
15 to that of an alien lawfully admitted for perma-
16 nent residence if the Secretary determines that
17 the following requirements are satisfied:

18 (i) QUALIFYING EMPLOYMENT.—The
19 alien has performed at least—

20 (I) 5 years of agricultural em-
21 ployment in the United States, for at
22 least 100 work days or 575 hours, but
23 in no case less than 575 hours per
24 year, during the 5-year period begin-

1 ning on the date of the enactment of
2 this Act; or

3 (II) 3 years of agricultural em-
4 ployment in the United States, for at
5 least 150 work days or 863 hours, but
6 in no case less than 863 hours per
7 year, during the 5-year period begin-
8 ning on the date of the enactment of
9 this Act.

10 (ii) PROOF.—An alien may dem-
11 onstrate compliance with the requirement
12 under clause (i) by submitting—

13 (I) the record of employment de-
14 scribed in subsection (a)(5); or

15 (II) such documentation as may
16 be submitted under subsection (d)(3).

17 (iii) EXTRAORDINARY CIR-
18 CUMSTANCES.—In determining whether an
19 alien has met the requirement under clause
20 (i)(I), the Secretary may credit the alien
21 with not more than 12 additional months
22 to meet the requirement under clause (i) if
23 the alien was unable to work in agricul-
24 tural employment due to—

1 (I) pregnancy, injury, or disease,
 2 if the alien can establish such preg-
 3 nancy, disabling injury, or disease
 4 through medical records;

5 (II) illness, disease, or other spe-
 6 cial needs of a minor child, if the alien
 7 can establish such illness, disease, or
 8 special needs through medical records;
 9 or

10 (III) severe weather conditions
 11 that prevented the alien from engag-
 12 ing in agricultural employment for a
 13 significant period of time.

14 (iv) APPLICATION PERIOD.—The alien
 15 applies for adjustment of status not later
 16 than 7 years after the date of the enact-
 17 ment of this Act.

18 (v) FINE.—The alien pays a fine to
 19 the Secretary in an amount equal to \$400.

20 (B) GROUNDS FOR DENIAL OF ADJUST-
 21 MENT OF STATUS.—The Secretary may deny an
 22 alien adjustment to permanent resident status,
 23 and provide for termination of the blue card
 24 status granted such alien, if—

1 (i) the Secretary finds by a prepon-
2 derance of the evidence that the adjust-
3 ment to blue card status was the result of
4 fraud or willful misrepresentation, as de-
5 scribed in section 212(a)(6)(C)(i) of the
6 Immigration and Nationality Act (8 U.S.C.
7 1182(a)(6)(C)(i)); or

8 (ii) the alien—

9 (I) commits an act that makes
10 the alien inadmissible to the United
11 States under section 212 of the Immi-
12 gration and Nationality Act (8 U.S.C.
13 1182), except as provided under sub-
14 section (e)(2);

15 (II) is convicted of a felony or 3
16 or more misdemeanors committed in
17 the United States; or

18 (III) is convicted of a single mis-
19 demeanor for which the actual sen-
20 tence served is 6 months or longer.

21 (C) GROUNDS FOR REMOVAL.—Any alien
22 granted blue card status who does not apply for
23 adjustment of status under this subsection be-
24 fore the expiration of the application period de-
25 scribed in subparagraph (A)(iv), or who fails to

1 meet the other requirements of subparagraph
 2 (A) by the end of the applicable period, is de-
 3 portable and may be removed under section 240
 4 of the Immigration and Nationality Act (8
 5 U.S.C. 1229a).

6 (D) PAYMENT OF TAXES.—

7 (i) IN GENERAL.—Not later than the
 8 date on which an alien’s status is adjusted
 9 under this subsection, the alien shall estab-
 10 lish the payment of any applicable Federal
 11 tax liability by establishing that—

12 (I) no such tax liability exists;

13 (II) all outstanding liabilities
 14 have been paid; or

15 (III) the alien has entered into
 16 an agreement for payment of all out-
 17 standing liabilities with the Internal
 18 Revenue Service.

19 (ii) APPLICABLE FEDERAL TAX LI-
 20 ABILITY.—For purposes of clause (i), the
 21 term “applicable Federal tax liability”
 22 means liability for Federal taxes, including
 23 penalties and interest, owed for any year
 24 during the period of employment required
 25 under paragraph (1)(A) for which the stat-

1 utary period for assessment of any defi-
2 ciency for such taxes has not expired.

3 (iii) IRS COOPERATION.—The Sec-
4 retary of the Treasury shall establish rules
5 and procedures under which the Commis-
6 sioner of Internal Revenue shall provide
7 documentation to an alien upon request to
8 establish the payment of all taxes required
9 by this subparagraph.

10 (2) SPOUSES AND MINOR CHILDREN.—

11 (A) IN GENERAL.—Notwithstanding any
12 other provision of law, the Secretary shall con-
13 fer the status of lawful permanent resident on
14 the spouse and minor child of an alien granted
15 status under paragraph (1), including any indi-
16 vidual who was a minor child on the date such
17 alien was granted blue card status, if the
18 spouse or minor child applies for such status, or
19 if the principal alien includes the spouse or
20 minor child in an application for adjustment of
21 status to that of a lawful permanent resident.

22 (B) TREATMENT OF SPOUSES AND MINOR
23 CHILDREN BEFORE ADJUSTMENT OF STATUS.—

24 (i) REMOVAL.—The spouse and any
25 minor child of an alien granted blue card

1 status may not be removed while such
2 alien maintains such status, except as pro-
3 vided in subparagraph (C).

4 (ii) TRAVEL.—The spouse and any
5 minor child of an alien granted blue card
6 status may travel outside the United
7 States in the same manner as an alien law-
8 fully admitted for permanent residence.

9 (iii) EMPLOYMENT.—The spouse of an
10 alien granted blue card status may apply
11 to the Secretary for a work permit to au-
12 thorize such spouse to engage in any law-
13 ful employment in the United States while
14 such alien maintains blue card status.

15 (C) GROUNDS FOR DENIAL OF ADJUST-
16 MENT OF STATUS AND REMOVAL.—The Sec-
17 retary may deny an alien spouse or child ad-
18 justment of status under subparagraph (A) and
19 may remove such spouse or child under section
20 240 of the Immigration and Nationality Act (8
21 U.S.C. 1229a) if the spouse or child—

22 (i) commits an act that makes the
23 alien spouse or child inadmissible to the
24 United States under section 212 of such

1 Act (8 U.S.C. 1182), except as provided
2 under subsection (e)(2);

3 (ii) is convicted of a felony or 3 or
4 more misdemeanors committed in the
5 United States; or

6 (iii) is convicted of a single mis-
7 demeanor for which the actual sentence
8 served is 6 months or longer.

9 (d) APPLICATIONS.—

10 (1) TO WHOM MAY BE MADE.—The Secretary
11 shall provide that—

12 (A) applications for blue card status may
13 be filed—

14 (i) with the Secretary, but only if the
15 applicant is represented by an attorney or
16 a non-profit religious, charitable, social
17 service, or similar organization recognized
18 by the Board of Immigration Appeals
19 under section 292.2 of title 8, Code of
20 Federal Regulations; or

21 (ii) with a qualified designated entity
22 (designated under paragraph (2)), but only
23 if the applicant consents to the forwarding
24 of the application to the Secretary; and

1 (B) applications for adjustment of status
2 under subsection (c) shall be filed directly with
3 the Secretary.

4 (2) DESIGNATION OF ENTITIES TO RECEIVE AP-
5 PPLICATIONS.—

6 (A) IN GENERAL.—For purposes of receiv-
7 ing applications under subsection (a), the
8 Secretary—

9 (i) shall designate qualified farm labor
10 organizations and associations of employ-
11 ers; and

12 (ii) may designate such other persons
13 as the Secretary determines are qualified
14 and have substantial experience, dem-
15 onstrate competence, and have traditional
16 long-term involvement in the preparation
17 and submission of applications for adjust-
18 ment of status under section 209, 210, or
19 245 of the Immigration and Nationality
20 Act, Public Law 89–732, Public Law 95–
21 145, or the Immigration Reform and Con-
22 trol Act of 1986.

23 (B) REFERENCES.—Organizations, asso-
24 ciations, and persons designated under subpara-

graph (A) are referred to in this subtitle as “qualified designated entities”.

(3) PROOF OF ELIGIBILITY.—

(A) IN GENERAL.—An alien may establish that the alien meets the requirement of subsection (a)(1)(A) or (c)(1)(A) through government employment records or records supplied by employers or collective bargaining organizations, and other reliable documentation as the alien may provide. The Secretary shall establish special procedures to properly credit work in cases in which an alien was employed under an assumed name.

(B) DOCUMENTATION OF WORK HISTORY.—

(i) BURDEN OF PROOF.—An alien applying for status under subsection (a)(1) or (c)(1) has the burden of proving by a preponderance of the evidence that the alien has worked the requisite number of hours or days (as required under subsection (a)(1)(A) or (c)(1)(A)).

(ii) TIMELY PRODUCTION OF RECORDS.—If an employer or farm labor contractor employing such an alien has

1 kept proper and adequate records respect-
2 ing such employment, the alien's burden of
3 proof under clause (i) may be met by se-
4 curing timely production of those records
5 under regulations to be promulgated by the
6 Secretary.

7 (iii) SUFFICIENT EVIDENCE.—An
8 alien can meet the burden of proof under
9 clause (i) to establish that the alien has
10 performed the work described in subsection
11 (a)(1)(A) or (c)(1)(A) by producing suffi-
12 cient evidence to show the extent of that
13 employment as a matter of just and rea-
14 sonable inference.

15 (4) TREATMENT OF APPLICATIONS BY QUALI-
16 FIED DESIGNATED ENTITIES.—Each qualified des-
17 ignated entity shall agree to forward to the Sec-
18 retary applications filed with it in accordance with
19 paragraph (1)(A)(i)(II) but shall not forward to the
20 Secretary applications filed with it unless the appli-
21 cant has consented to such forwarding. No such en-
22 tity may make a determination required by this sec-
23 tion to be made by the Secretary. Upon the request
24 of the alien, a qualified designated entity shall assist

1 the alien in obtaining documentation of the work
2 history of the alien.

3 (5) LIMITATION ON ACCESS TO INFORMA-
4 TION.—Files and records prepared for purposes of
5 this subsection by qualified designated entities oper-
6 ating under this subsection are confidential and the
7 Secretary shall not have access to such files or
8 records relating to an alien without the consent of
9 the alien, except as allowed by a court order issued
10 pursuant to paragraph (6).

11 (6) CONFIDENTIALITY OF INFORMATION.—

12 (A) IN GENERAL.—Except as otherwise
13 provided in this subsection, neither the Sec-
14 retary, nor any other official or employee of the
15 Department, or a bureau or agency of the De-
16 partment, may—

17 (i) use the information furnished by
18 the applicant pursuant to an application
19 filed under this section, the information
20 provided to the applicant by a person des-
21 ignated under paragraph (2)(A), or any in-
22 formation provided by an employer or
23 former employer, for any purpose other
24 than to make a determination on the appli-

1 cation, or for enforcement of paragraph
2 (7);

3 (ii) make any publication whereby the
4 information furnished by any particular in-
5 dividual can be identified; or

6 (iii) permit anyone other than the
7 sworn officers and employees of the De-
8 partment, or a bureau or agency of the
9 Department, or, with respect to applica-
10 tions filed with a qualified designated enti-
11 ty, that qualified designated entity, to ex-
12 amine individual applications.

13 (B) REQUIRED DISCLOSURES.—The Sec-
14 retary shall provide the information furnished
15 under this section, or any other information de-
16 rived from such furnished information, to—

17 (i) a duly recognized law enforcement
18 entity in connection with a criminal inves-
19 tigation or prosecution, if such information
20 is requested in writing by such entity; or

21 (ii) an official coroner, for purposes of
22 affirmatively identifying a deceased indi-
23 vidual, whether or not the death of such
24 individual resulted from a crime.

25 (C) CONSTRUCTION.—

(i) IN GENERAL.—Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the Department pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(ii) CRIMINAL CONVICTIONS.—Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

(D) CRIME.—Any person who knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be subject to a fine in an amount not to exceed \$10,000.

(7) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—

(A) CRIMINAL PENALTY.—Any person who—

1 (i) files an application for status
2 under subsection (a) or (c) and knowingly
3 and willfully falsifies, conceals, or covers
4 up a material fact or makes any false, fic-
5 titious, or fraudulent statements or rep-
6 resentations, or makes or uses any false
7 writing or document knowing the same to
8 contain any false, fictitious, or fraudulent
9 statement or entry; or

10 (ii) creates or supplies a false writing
11 or document for use in making such an ap-
12 plication,

13 shall be fined in accordance with title 18,
14 United States Code, imprisoned not more than
15 5 years, or both.

16 (B) INADMISSIBILITY.—An alien who is
17 convicted of a crime under subparagraph (A)
18 shall be considered to be inadmissible to the
19 United States on the ground described in sec-
20 tion 212(a)(6)(C)(i) of the Immigration and
21 Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)).

22 (8) ELIGIBILITY FOR LEGAL SERVICES.—Sec-
23 tion 504(a)(11) of Public Law 104–134 (110 Stat.
24 1321–53 et seq.) shall not be construed to prevent
25 a recipient of funds under the Legal Services Cor-

1 poration Act (42 U.S.C. 2996 et seq.) from pro-
2 viding legal assistance directly related to an applica-
3 tion for adjustment of status under this section.

4 (9) APPLICATION FEES.—

5 (A) FEE SCHEDULE.—The Secretary shall
6 provide for a schedule of fees that—

7 (i) shall be charged for the filing of
8 applications for status under subsections
9 (a) and (c); and

10 (ii) may be charged by qualified des-
11 ignated entities to help defray the costs of
12 services provided to such applicants.

13 (B) PROHIBITION ON EXCESS FEES BY
14 QUALIFIED DESIGNATED ENTITIES.—A quali-
15 fied designated entity may not charge any fee
16 in excess of, or in addition to, the fees author-
17 ized under subparagraph (A)(ii) for services
18 provided to applicants.

19 (C) DISPOSITION OF FEES.—

20 (i) IN GENERAL.—There is established
21 in the general fund of the Treasury a sepa-
22 rate account, which shall be known as the
23 “Agricultural Worker Immigration Status
24 Adjustment Account”. Notwithstanding
25 any other provision of law, there shall be

deposited as offsetting receipts into the account all fees collected under subparagraph (A)(i).

(ii) USE OF FEES FOR APPLICATION PROCESSING.—Amounts deposited in the “Agricultural Worker Immigration Status Adjustment Account” shall remain available to the Secretary until expended for processing applications for status under subsections (a) and (c).

(e) WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR INADMISSIBILITY.—

(1) NUMERICAL LIMITATIONS DO NOT APPLY.—

The numerical limitations of sections 201 and 202 of the Immigration and Nationality Act (8 U.S.C. 1151 and 1152) shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

(2) WAIVER OF CERTAIN GROUNDS OF INADMISSIBILITY.—In the determination of an alien’s eligibility for status under subsection (a)(1)(C) or an alien’s eligibility for adjustment of status under subsection (c)(1)(B)(ii)(I), the following rules shall apply:

1 (A) GROUNDS OF EXCLUSION NOT APPLI-
2 CABLE.—The provisions of paragraphs (5),
3 (6)(A), (7), and (9) of section 212(a) of the Im-
4 migration and Nationality Act (8 U.S.C.
5 1182(a)) shall not apply.

6 (B) WAIVER OF OTHER GROUNDS.—

7 (i) IN GENERAL.—Except as provided
8 in clause (ii), the Secretary may waive any
9 other provision of such section 212(a) in
10 the case of individual aliens for humani-
11 tarian purposes, to ensure family unity, or
12 if otherwise in the public interest.

13 (ii) GROUNDS THAT MAY NOT BE
14 WAIVED.—Paragraphs (2)(A), (2)(B),
15 (2)(C), (3), and (4) of such section 212(a)
16 may not be waived by the Secretary under
17 clause (i).

18 (iii) CONSTRUCTION.—Nothing in this
19 subparagraph shall be construed as affect-
20 ing the authority of the Secretary other
21 than under this subparagraph to waive
22 provisions of such section 212(a).

23 (C) SPECIAL RULE FOR DETERMINATION
24 OF PUBLIC CHARGE.—An alien is not ineligible
25 for status under this section by reason of a

ground of inadmissibility under section 212(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(4)) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

(f) TEMPORARY STAY OF REMOVAL AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

(1) BEFORE APPLICATION PERIOD.—Effective on the date of enactment of this Act, the Secretary shall provide that, in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1)(B) and who can establish a nonfrivolous case of eligibility for blue card status (but for the fact that the alien may not apply for such status until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for blue card status, the alien—

(A) may not be removed; and

(B) shall be granted authorization to engage in employment in the United States and be provided an “employment authorized” en-

1 dorsement or other appropriate work permit for
2 such purpose.

3 (2) DURING APPLICATION PERIOD.—The Sec-
4 retary shall provide that, in the case of an alien who
5 presents a nonfrivolous application for blue card sta-
6 tus during the application period described in sub-
7 section (a)(1)(B), including an alien who files such
8 an application within 30 days of the alien’s appre-
9 hension, and until a final determination on the ap-
10 plication has been made in accordance with this sec-
11 tion, the alien—

12 (A) may not be removed; and

13 (B) shall be granted authorization to en-
14 gage in employment in the United States and
15 be provided an “employment authorized” en-
16 dorsement or other appropriate work permit for
17 such purpose.

18 (g) ADMINISTRATIVE AND JUDICIAL REVIEW.—

19 (1) IN GENERAL.—There shall be no adminis-
20 trative or judicial review of a determination respect-
21 ing an application for status under subsection (a) or
22 (c) except in accordance with this subsection.

23 (2) ADMINISTRATIVE REVIEW.—

24 (A) SINGLE LEVEL OF ADMINISTRATIVE
25 APPELLATE REVIEW.—The Secretary shall es-

1 tablish an appellate authority to provide for a
2 single level of administrative appellate review of
3 such a determination.

4 (B) STANDARD FOR REVIEW.—Such ad-
5 ministrative appellate review shall be based
6 solely upon the administrative record estab-
7 lished at the time of the determination on the
8 application and upon such additional or newly
9 discovered evidence as may not have been avail-
10 able at the time of the determination.

11 (3) JUDICIAL REVIEW.—

12 (A) LIMITATION TO REVIEW OF RE-
13 MOVAL.—There shall be judicial review of such
14 a determination only in the judicial review of an
15 order of removal under section 242 of the Im-
16 migration and Nationality Act (8 U.S.C. 1252).

17 (B) STANDARD FOR JUDICIAL REVIEW.—
18 Such judicial review shall be based solely upon
19 the administrative record established at the
20 time of the review by the appellate authority
21 and the findings of fact and determinations
22 contained in such record shall be conclusive un-
23 less the applicant can establish abuse of discre-
24 tion or that the findings are directly contrary to

1 clear and convincing facts contained in the
2 record considered as a whole.

3 (h) DISSEMINATION OF INFORMATION ON ADJUST-
4 MENT PROGRAM.—Beginning not later than the first day
5 of the application period described in subsection (a)(1)(B),
6 the Secretary, in cooperation with qualified designated en-
7 tities, shall broadly disseminate information respecting the
8 benefits that aliens may receive under this section and the
9 requirements to be satisfied to obtain such benefits.

10 (i) REGULATIONS.—The Secretary shall issue regula-
11 tions to implement this section not later than the first day
12 of the seventh month that begins after the date of enact-
13 ment of this Act.

14 (j) EFFECTIVE DATE.—This section shall take effect
15 on the date that regulations are issued implementing this
16 section on an interim or other basis.

17 (k) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated to the Secretary to carry
19 out this section \$40,000,000 for each of fiscal years 2007
20 through 2010.

21 **SEC. 614. CORRECTION OF SOCIAL SECURITY RECORDS.**

22 (a) IN GENERAL.—Section 208(d)(1) of the Social
23 Security Act (42 U.S.C. 408(d)(1)) is amended—

24 (1) in subparagraph (B)(ii), by striking “or” at
25 the end;

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

5 “(D) who is granted blue card status under the
6 Agricultural Job Opportunity, Benefits, and Security
7 Act of 2006,”; and

8 (4) by striking “1990.” and inserting “1990, or
9 in the case of an alien described in subparagraph
10 (D), if such conduct is alleged to have occurred be-
11 fore the date on which the alien was granted blue
12 card status.”.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect on the first day of the seventh month that begins after the date of the enactment of this Act.

17 **CHAPTER 2—REFORM OF H-2A WORKER**
18 **PROGRAM**

19 SEC. 615. AMENDMENT TO THE IMMIGRATION AND NATION-
20 ALITY ACT.

21 (a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.)
22 is amended—

23 (1) by striking section 218 and inserting the
24 following:

1 **“SEC. 218. H-2A EMPLOYER APPLICATIONS.**

2 “(a) APPLICATIONS TO THE SECRETARY OF
3 LABOR.—

4 “(1) IN GENERAL.—No alien may be admitted
5 to the United States as an H-2A worker, or other-
6 wise provided status as an H-2A worker, unless the
7 employer has filed with the Secretary of Labor an
8 application containing—

9 “(A) the assurances described in sub-
10 section (b);

11 “(B) a description of the nature and loca-
12 tion of the work to be performed;

13 “(C) the anticipated period (expected be-
14 ginning and ending dates) for which the work-
15 ers will be needed; and

16 “(D) the number of job opportunities in
17 which the employer seeks to employ the work-
18 ers.

19 “(2) ACCOMPANIED BY JOB OFFER.—Each ap-
20 plication filed under paragraph (1) shall be accom-
21 panied by a copy of the job offer describing the
22 wages and other terms and conditions of employ-
23 ment and the bona fide occupational qualifications
24 that shall be possessed by a worker to be employed
25 in the job opportunity in question.

1 “(b) ASSURANCES FOR INCLUSION IN APPLICA-
 2 TIONS.—The assurances referred to in subsection (a)(1)
 3 are the following:

4 “(1) JOB OPPORTUNITIES COVERED BY COL-
 5 LECTIVE BARGAINING AGREEMENTS.—With respect
 6 to a job opportunity that is covered under a collec-
 7 tive bargaining agreement:

8 “(A) UNION CONTRACT DESCRIBED.—The
 9 job opportunity is covered by a union contract
 10 which was negotiated at arm’s length between a
 11 bona fide union and the employer.

12 “(B) STRIKE OR LOCKOUT.—The specific
 13 job opportunity for which the employer is re-
 14 questing an H-2A worker is not vacant because
 15 the former occupant is on strike or being locked
 16 out in the course of a labor dispute.

17 “(C) NOTIFICATION OF BARGAINING REP-
 18 RESENTATIVES.—The employer, at the time of
 19 filing the application, has provided notice of the
 20 filing under this paragraph to the bargaining
 21 representative of the employer’s employees in
 22 the occupational classification at the place or
 23 places of employment for which aliens are
 24 sought.

1 “(D) TEMPORARY OR SEASONAL JOB OP-
 2 PORTUNITIES.—The job opportunity is tem-
 3 porary or seasonal.

4 “(E) OFFERS TO UNITED STATES WORK-
 5 ERS.—The employer has offered or will offer
 6 the job to any eligible United States worker
 7 who applies and is equally or better qualified
 8 for the job for which the nonimmigrant is, or
 9 the nonimmigrants are, sought and who will be
 10 available at the time and place of need.

11 “(F) PROVISION OF INSURANCE.—If the
 12 job opportunity is not covered by the State
 13 workers’ compensation law, the employer will
 14 provide, at no cost to the worker, insurance cov-
 15 ering injury and disease arising out of, and in
 16 the course of, the worker’s employment which
 17 will provide benefits at least equal to those pro-
 18 vided under the State’s workers’ compensation
 19 law for comparable employment.

20 “(2) JOB OPPORTUNITIES NOT COVERED BY
 21 COLLECTIVE BARGAINING AGREEMENTS.—With re-
 22 spect to a job opportunity that is not covered under
 23 a collective bargaining agreement:

24 “(A) STRIKE OR LOCKOUT.—The specific
 25 job opportunity for which the employer is re-

1 questing an H-2A worker is not vacant because
2 the former occupant is on strike or being locked
3 out in the course of a labor dispute.

4 “(B) TEMPORARY OR SEASONAL JOB OP-
5 PORTUNITIES.—The job opportunity is tem-
6 porary or seasonal.

7 “(C) BENEFIT, WAGE, AND WORKING CON-
8 DITIONS.—The employer will provide, at a min-
9 imum, the benefits, wages, and working condi-
10 tions required by section 218E to all workers
11 employed in the job opportunities for which the
12 employer has applied under subsection (a) and
13 to all other workers in the same occupation at
14 the place of employment.

15 “(D) NONDISPLACEMENT OF UNITED
16 STATES WORKERS.—The employer did not dis-
17 place and will not displace a United States
18 worker employed by the employer during the
19 period of employment and for a period of 30
20 days preceding the period of employment in the
21 occupation at the place of employment for
22 which the employer seeks approval to employ
23 H-2A workers.

24 “(E) REQUIREMENTS FOR PLACEMENT OF
25 NONIMMIGRANT WITH OTHER EMPLOYERS.—

1 The employer will not place the nonimmigrant
2 with another employer unless—

3 “(i) the nonimmigrant performs du-
4 ties in whole or in part at 1 or more work
5 sites owned, operated, or controlled by
6 such other employer;

7 “(ii) there are indicia of an employ-
8 ment relationship between the non-
9 immigrant and such other employer; and

10 “(iii) the employer has inquired of the
11 other employer as to whether, and has no
12 actual knowledge or notice that, during the
13 period of employment and for a period of
14 30 days preceding the period of employ-
15 ment, the other employer has displaced or
16 intends to displace a United States worker
17 employed by the other employer in the oc-
18 cupation at the place of employment for
19 which the employer seeks approval to em-
20 ploy H-2A workers.

21 “(F) STATEMENT OF LIABILITY.—The ap-
22 plication form shall include a clear statement
23 explaining the liability under subparagraph (E)
24 of an employer if the other employer described

1 in such subparagraph displaces a United States
2 worker as described in such subparagraph.

3 “(G) PROVISION OF INSURANCE.—If the
4 job opportunity is not covered by the State
5 workers’ compensation law, the employer will
6 provide, at no cost to the worker, insurance cov-
7 ering injury and disease arising out of and in
8 the course of the worker’s employment which
9 will provide benefits at least equal to those pro-
10 vided under the State’s workers’ compensation
11 law for comparable employment.

12 “(H) EMPLOYMENT OF UNITED STATES
13 WORKERS.—

14 “(i) RECRUITMENT.—The employer
15 has taken or will take the following steps
16 to recruit United States workers for the
17 job opportunities for which the H–2A non-
18 immigrant is, or H–2A nonimmigrants are,
19 sought:

20 “(I) CONTACTING FORMER
21 WORKERS.—The employer shall make
22 reasonable efforts through the sending
23 of a letter by United States Postal
24 Service mail, or otherwise, to contact
25 any United States worker the em-

1 employer employed during the previous
2 season in the occupation at the place
3 of intended employment for which the
4 employer is applying for workers and
5 has made the availability of the em-
6 ployer's job opportunities in the occu-
7 pation at the place of intended em-
8 ployment known to such previous
9 workers, unless the worker was termi-
10 nated from employment by the em-
11 ployer for a lawful job-related reason
12 or abandoned the job before the work-
13 er completed the period of employ-
14 ment of the job opportunity for which
15 the worker was hired.

16 “(II) FILING A JOB OFFER WITH
17 THE LOCAL OFFICE OF THE STATE
18 EMPLOYMENT SECURITY AGENCY.—
19 Not later than 28 days before the
20 date on which the employer desires to
21 employ an H-2A worker in a tem-
22 porary or seasonal agricultural job op-
23 portunity, the employer shall submit a
24 copy of the job offer described in sub-
25 section (a)(2) to the local office of the

1 State employment security agency
2 which serves the area of intended em-
3 ployment and authorize the posting of
4 the job opportunity on ‘America’s Job
5 Bank’ or other electronic job registry,
6 except that nothing in this subclause
7 shall require the employer to file an
8 interstate job order under section 653
9 of title 20, Code of Federal Regula-
10 tions.

11 “(III) ADVERTISING OF JOB OP-
12 PORTUNITIES.—Not later than 14
13 days before the date on which the em-
14 ployer desires to employ an H-2A
15 worker in a temporary or seasonal ag-
16 ricultural job opportunity, the em-
17 ployer shall advertise the availability
18 of the job opportunities for which the
19 employer is seeking workers in a pub-
20 lication in the local labor market that
21 is likely to be patronized by potential
22 farm workers.

23 “(IV) EMERGENCY PROCE-
24 DURES.—The Secretary of Labor
25 shall, by regulation, provide a proce-

1 dure for acceptance and approval of
2 applications in which the employer
3 has not complied with the provisions
4 of this subparagraph because the em-
5 ployer’s need for H-2A workers could
6 not reasonably have been foreseen.

7 “(ii) **JOB OFFERS.**—The employer has
8 offered or will offer the job to any eligible
9 United States worker who applies and is
10 equally or better qualified for the job for
11 which the nonimmigrant is, or non-
12 immigrants are, sought and who will be
13 available at the time and place of need.

14 “(iii) **PERIOD OF EMPLOYMENT.**—The
15 employer will provide employment to any
16 qualified United States worker who applies
17 to the employer during the period begin-
18 ning on the date on which the foreign
19 worker departs for the employer’s place of
20 employment and ending on the date on
21 which 50 percent of the period of employ-
22 ment for which the foreign worker who is
23 in the job was hired has elapsed, subject to
24 the following requirements:

1 “(I) PROHIBITION.—No person
2 or entity shall willfully and knowingly
3 withhold United States workers before
4 the arrival of H-2A workers in order
5 to force the hiring of United States
6 workers under this clause.

7 “(II) COMPLAINTS.—Upon re-
8 ceipt of a complaint by an employer
9 that a violation of subclause (I) has
10 occurred, the Secretary of Labor shall
11 immediately investigate. The Sec-
12 retary of Labor shall, within 36 hours
13 of the receipt of the complaint, issue
14 findings concerning the alleged viola-
15 tion. If the Secretary of Labor finds
16 that a violation has occurred, the Sec-
17 retary of Labor shall immediately sus-
18 pend the application of this clause
19 with respect to that certification for
20 that date of need.

21 “(III) PLACEMENT OF UNITED
22 STATES WORKERS.—Before referring
23 a United States worker to an em-
24 ployer during the period described in
25 the matter preceding subclause (I),

1 the Secretary of Labor shall make all
 2 reasonable efforts to place the United
 3 States worker in an open job accept-
 4 able to the worker, if there are other
 5 job offers pending with the job service
 6 that offer similar job opportunities in
 7 the area of intended employment.

8 “(iv) STATUTORY CONSTRUCTION.—
 9 Nothing in this subparagraph shall be con-
 10 strued to prohibit an employer from using
 11 such legitimate selection criteria relevant
 12 to the type of job that are normal or cus-
 13 tomary to the type of job involved so long
 14 as such criteria are not applied in a dis-
 15 criminatory manner.

16 “(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF
 17 OF EMPLOYER MEMBERS.—

18 “(1) IN GENERAL.—An agricultural association
 19 may file an application under subsection (a) on be-
 20 half of 1 or more of its employer members that the
 21 association certifies in its application has or have
 22 agreed in writing to comply with the requirements of
 23 this section and sections 218E through 218G.

24 “(2) TREATMENT OF ASSOCIATIONS ACTING AS
 25 EMPLOYERS.—If an association filing an application

1 under paragraph (1) is a joint or sole employer of
2 the temporary or seasonal agricultural workers re-
3 quested on the application, the certifications granted
4 under subsection (e)(2)(B) to the association may be
5 used for the certified job opportunities of any of its
6 producer members named on the application, and
7 such workers may be transferred among such pro-
8 ducer members to perform the agricultural services
9 of a temporary or seasonal nature for which the cer-
10 tifications were granted.

11 “(d) WITHDRAWAL OF APPLICATIONS.—

12 “(1) IN GENERAL.—An employer may withdraw
13 an application filed pursuant to subsection (a), ex-
14 cept that if the employer is an agricultural associa-
15 tion, the association may withdraw an application
16 filed pursuant to subsection (a) with respect to 1 or
17 more of its members. To withdraw an application,
18 the employer or association shall notify the Sec-
19 retary of Labor in writing, and the Secretary of
20 Labor shall acknowledge in writing the receipt of
21 such withdrawal notice. An employer who withdraws
22 an application under subsection (a), or on whose be-
23 half an application is withdrawn, is relieved of the
24 obligations undertaken in the application.

1 “(2) LIMITATION.—An application may not be
 2 withdrawn while any alien provided status under sec-
 3 tion 101(a)(15)(H)(ii)(a) pursuant to such applica-
 4 tion is employed by the employer.

5 “(3) OBLIGATIONS UNDER OTHER STATUTES.—
 6 Any obligation incurred by an employer under any
 7 other law or regulation as a result of the recruit-
 8 ment of United States workers or H-2A workers
 9 under an offer of terms and conditions of employ-
 10 ment required as a result of making an application
 11 under subsection (a) is unaffected by withdrawal of
 12 such application.

13 “(e) REVIEW AND APPROVAL OF APPLICATIONS.—

14 “(1) RESPONSIBILITY OF EMPLOYERS.—The
 15 employer shall make available for public examina-
 16 tion, within 1 working day after the date on which
 17 an application under subsection (a) is filed, at the
 18 employer’s principal place of business or work site,
 19 a copy of each such application (and such accom-
 20 panying documents as are necessary).

21 “(2) RESPONSIBILITY OF THE SECRETARY OF
 22 LABOR.—

23 “(A) COMPILATION OF LIST.—The Sec-
 24 retary of Labor shall compile, on a current
 25 basis, a list (by employer and by occupational

classification) of the applications filed under this subsection. Such list shall include the wage rate, number of workers sought, period of intended employment, and date of need. The Secretary of Labor shall make such list available for examination in the District of Columbia.

“(B) REVIEW OF APPLICATIONS.—The Secretary of Labor shall review such an application only for completeness and obvious inaccuracies. Unless the Secretary of Labor finds that the application is incomplete or obviously inaccurate, the Secretary of Labor shall certify that the intending employer has filed with the Secretary of Labor an application as described in subsection (a). Such certification shall be provided within 7 days of the filing of the application.”; and

(2) by inserting after section 218D, as added by section 601 of this Act, the following:

“SEC. 218E. H-2A EMPLOYMENT REQUIREMENTS.

“(a) PREFERENTIAL TREATMENT OF ALIENS PROHIBITED.—Employers seeking to hire United States workers shall offer the United States workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H—

1 2A workers. Conversely, no job offer may impose on
 2 United States workers any restrictions or obligations
 3 which will not be imposed on the employer's H-2A work-
 4 ers.

5 “(b) MINIMUM BENEFITS, WAGES, AND WORKING
 6 CONDITIONS.—Except in cases where higher benefits,
 7 wages, or working conditions are required by the provi-
 8 sions of subsection (a), in order to protect similarly em-
 9 ployed United States workers from adverse effects with
 10 respect to benefits, wages, and working conditions, every
 11 job offer which shall accompany an application under sec-
 12 tion 218(b)(2) shall include each of the following benefit,
 13 wage, and working condition provisions:

14 “(1) REQUIREMENT TO PROVIDE HOUSING OR A
 15 HOUSING ALLOWANCE.—

16 “(A) IN GENERAL.—An employer applying
 17 under section 218(a) for H-2A workers shall
 18 offer to provide housing at no cost to all work-
 19 ers in job opportunities for which the employer
 20 has applied under that section and to all other
 21 workers in the same occupation at the place of
 22 employment, whose place of residence is beyond
 23 normal commuting distance.

24 “(B) TYPE OF HOUSING.—In complying
 25 with subparagraph (A), an employer may, at

1 the employer's election, provide housing that
2 meets applicable Federal standards for tem-
3 porary labor camps or secure housing that
4 meets applicable local standards for rental or
5 public accommodation housing or other sub-
6 stantially similar class of habitation, or in the
7 absence of applicable local standards, State
8 standards for rental or public accommodation
9 housing or other substantially similar class of
10 habitation. In the absence of applicable local or
11 State standards, Federal temporary labor camp
12 standards shall apply.

13 “(C) FAMILY HOUSING.—When it is the
14 prevailing practice in the occupation and area
15 of intended employment to provide family hous-
16 ing, family housing shall be provided to workers
17 with families who request it.

18 “(D) WORKERS ENGAGED IN THE RANGE
19 PRODUCTION OF LIVESTOCK.—The Secretary of
20 Labor shall issue regulations that address the
21 specific requirements for the provision of hous-
22 ing to workers engaged in the range production
23 of livestock.

24 “(E) LIMITATION.—Nothing in this para-
25 graph shall be construed to require an employer

1 to provide or secure housing for persons who
2 were not entitled to such housing under the
3 temporary labor certification regulations in ef-
4 fect on June 1, 1986.

5 “(F) CHARGES FOR HOUSING.—

6 “(i) CHARGES FOR PUBLIC HOUS-
7 ING.—If public housing provided for mi-
8 grant agricultural workers under the aus-
9 pices of a local, county, or State govern-
10 ment is secured by an employer, and use of
11 the public housing unit normally requires
12 charges from migrant workers, such
13 charges shall be paid by the employer di-
14 rectly to the appropriate individual or enti-
15 ty affiliated with the housing’s manage-
16 ment.

17 “(ii) DEPOSIT CHARGES.—Charges in
18 the form of deposits for bedding or other
19 similar incidentals related to housing shall
20 not be levied upon workers by employers
21 who provide housing for their workers. An
22 employer may require a worker found to
23 have been responsible for damage to such
24 housing which is not the result of normal
25 wear and tear related to habitation to re-

1 imburse the employer for the reasonable
2 cost of repair of such damage.

3 “(G) HOUSING ALLOWANCE AS ALTER-
4 NATIVE.—

5 “(i) IN GENERAL.—If the requirement
6 under clause (ii) is satisfied, the employer
7 may provide a reasonable housing allow-
8 ance instead of offering housing under sub-
9 paragraph (A). Upon the request of a
10 worker seeking assistance in locating hous-
11 ing, the employer shall make a good faith
12 effort to assist the worker in identifying
13 and locating housing in the area of in-
14 tended employment. An employer who of-
15 fers a housing allowance to a worker, or
16 assists a worker in locating housing which
17 the worker occupies, pursuant to this
18 clause shall not be deemed a housing pro-
19 vider under section 203 of the Migrant and
20 Seasonal Agricultural Worker Protection
21 Act (29 U.S.C. 1823) solely by virtue of
22 providing such housing allowance. No
23 housing allowance may be used for housing
24 which is owned or controlled by the em-
25 ployer.

1 “(ii) CERTIFICATION.—The require-
 2 ment of this clause is satisfied if the Gov-
 3 ernor of the State certifies to the Secretary
 4 of Labor that there is adequate housing
 5 available in the area of intended employ-
 6 ment for migrant farm workers, and H-2A
 7 workers, who are seeking temporary hous-
 8 ing while employed at farm work. Such
 9 certification shall expire after 3 years un-
 10 less renewed by the Governor of the State.

11 “(iii) AMOUNT OF ALLOWANCE.—

12 “(I) NONMETROPOLITAN COUN-
 13 TIES.—If the place of employment of
 14 the workers provided an allowance
 15 under this subparagraph is a non-
 16 metropolitan county, the amount of
 17 the housing allowance under this sub-
 18 paragraph shall be equal to the state-
 19 wide average fair market rental for
 20 existing housing for nonmetropolitan
 21 counties for the State, as established
 22 by the Secretary of Housing and
 23 Urban Development pursuant to sec-
 24 tion 8(c) of the United States Hous-
 25 ing Act of 1937 (42 U.S.C. 1437f(c)),

1 based on a 2 bedroom dwelling unit
 2 and an assumption of 2 persons per
 3 bedroom.

4 “(II) METROPOLITAN COUN-
 5 TIES.—If the place of employment of
 6 the workers provided an allowance
 7 under this paragraph is in a metro-
 8 politan county, the amount of the
 9 housing allowance under this subpara-
 10 graph shall be equal to the statewide
 11 average fair market rental for existing
 12 housing for metropolitan counties for
 13 the State, as established by the Sec-
 14 retary of Housing and Urban Devel-
 15 opment pursuant to section 8(c) of
 16 the United States Housing Act of
 17 1937 (42 U.S.C. 1437f(c)), based on
 18 a 2-bedroom dwelling unit and an as-
 19 sumption of 2 persons per bedroom.

20 “(2) REIMBURSEMENT OF TRANSPORTATION.—

21 “(A) TO PLACE OF EMPLOYMENT.—A
 22 worker who completes 50 percent of the period
 23 of employment of the job opportunity for which
 24 the worker was hired shall be reimbursed by the
 25 employer for the cost of the worker’s transpor-

1 tation and subsistence from the place from
2 which the worker came to work for the em-
3 ployer (or place of last employment, if the
4 worker traveled from such place) to the place of
5 employment.

6 “(B) FROM PLACE OF EMPLOYMENT.—A
7 worker who completes the period of employment
8 for the job opportunity involved shall be reim-
9 bursed by the employer for the cost of the
10 worker’s transportation and subsistence from
11 the place of employment to the place from
12 which the worker, disregarding intervening em-
13 ployment, came to work for the employer, or to
14 the place of next employment, if the worker has
15 contracted with a subsequent employer who has
16 not agreed to provide or pay for the worker’s
17 transportation and subsistence to such subse-
18 quent employer’s place of employment.

19 “(C) LIMITATION.—

20 “(i) AMOUNT OF REIMBURSEMENT.—

21 Except as provided in clause (ii), the
22 amount of reimbursement provided under
23 subparagraph (A) or (B) to a worker or
24 alien shall not exceed the lesser of—

1 “(I) the actual cost to the worker
2 or alien of the transportation and sub-
3 sistence involved; or

4 “(II) the most economical and
5 reasonable common carrier transpor-
6 tation charges and subsistence costs
7 for the distance involved.

8 “(ii) DISTANCE TRAVELED.—No reim-
9 bursement under subparagraph (A) or (B)
10 shall be required if the distance traveled is
11 100 miles or less, or the worker is not re-
12 siding in employer-provided housing or
13 housing secured through an allowance as
14 provided in paragraph (1)(G).

15 “(D) EARLY TERMINATION.—If the worker
16 is laid off or employment is terminated for con-
17 tract impossibility (as described in paragraph
18 (4)(D)) before the anticipated ending date of
19 employment, the employer shall provide the
20 transportation and subsistence required by sub-
21 paragraph (B) and, notwithstanding whether
22 the worker has completed 50 percent of the pe-
23 riod of employment, shall provide the transpor-
24 tation reimbursement required by subparagraph
25 (A).

1 “(E) TRANSPORTATION BETWEEN LIVING
2 QUARTERS AND WORK SITE.—The employer
3 shall provide transportation between the work-
4 er’s living quarters and the employer’s work site
5 without cost to the worker, and such transpor-
6 tation will be in accordance with applicable laws
7 and regulations.

8 “(3) REQUIRED WAGES.—

9 “(A) IN GENERAL.—An employer applying
10 for workers under section 218(a) shall offer to
11 pay, and shall pay, all workers in the occupa-
12 tion for which the employer has applied for
13 workers, not less (and is not required to pay
14 more) than the greater of the prevailing wage
15 in the occupation in the area of intended em-
16 ployment or the adverse effect wage rate. No
17 worker shall be paid less than the greater of the
18 hourly wage prescribed under section 6(a)(1) of
19 the Fair Labor Standards Act of 1938 (29
20 U.S.C. 206(a)(1)) or the applicable State min-
21 imum wage.

22 “(B) LIMITATION.—Effective on the date
23 of the enactment of the Agricultural Job Op-
24 portunities, Benefits, and Security Act of 2006
25 and continuing for 3 years thereafter, no ad-

verse effect wage rate for a State may be more than the adverse effect wage rate for that State in effect on January 1, 2003, as established by section 655.107 of title 20, Code of Federal Regulations.

“(C) REQUIRED WAGES AFTER 3-YEAR FREEZE.—

“(i) FIRST ADJUSTMENT.—If Congress does not set a new wage standard applicable to this section before the first March 1 that is not less than 3 years after the date of enactment of this section, the adverse effect wage rate for each State beginning on such March 1 shall be the wage rate that would have resulted if the adverse effect wage rate in effect on January 1, 2003, had been annually adjusted, beginning on March 1, 2006, by the lesser of—

“(I) the 12 month percentage change in the Consumer Price Index for All Urban Consumers between December of the second preceding year and December of the preceding year; and

1 “(II) 4 percent.

2 “(ii) SUBSEQUENT ANNUAL ADJUST-
3 MENTS.—Beginning on the first March 1
4 that is not less than 4 years after the date
5 of enactment of this section, and each
6 March 1 thereafter, the adverse effect
7 wage rate then in effect for each State
8 shall be adjusted by the lesser of—

9 “(I) the 12 month percentage
10 change in the Consumer Price Index
11 for All Urban Consumers between De-
12 cember of the second preceding year
13 and December of the preceding year;
14 and

15 “(II) 4 percent.

16 “(D) DEDUCTIONS.—The employer shall
17 make only those deductions from the worker’s
18 wages that are authorized by law or are reason-
19 able and customary in the occupation and area
20 of employment. The job offer shall specify all
21 deductions not required by law which the em-
22 ployer will make from the worker’s wages.

23 “(E) FREQUENCY OF PAY.—The employer
24 shall pay the worker not less frequently than
25 twice monthly, or in accordance with the pre-

1 vailing practice in the area of employment,
2 whichever is more frequent.

3 “(F) HOURS AND EARNINGS STATE-
4 MENTS.—The employer shall furnish to the
5 worker, on or before each payday, in 1 or more
6 written statements—

7 “(i) the worker’s total earnings for
8 the pay period;

9 “(ii) the worker’s hourly rate of pay,
10 piece rate of pay, or both;

11 “(iii) the hours of employment which
12 have been offered to the worker (broken
13 out by hours offered in accordance with
14 and over and above the three-quarters
15 guarantee described in paragraph (4);

16 “(iv) the hours actually worked by the
17 worker;

18 “(v) an itemization of the deductions
19 made from the worker’s wages; and

20 “(vi) if piece rates of pay are used,
21 the units produced daily.

22 “(G) REPORT ON WAGE PROTECTIONS.—
23 Not later than December 31, 2008, the Comp-
24 troller General of the United States shall pre-
25 pare and transmit to the Secretary of Labor,

1 the Committee on the Judiciary of the Senate,
2 and Committee on the Judiciary of the House
3 of Representatives, a report that addresses—

4 “(i) whether the employment of H-2A
5 or unauthorized aliens in the United States
6 agricultural work force has depressed
7 United States farm worker wages below
8 the levels that would otherwise have pre-
9 vailed if alien farm workers had not been
10 employed in the United States;

11 “(ii) whether an adverse effect wage
12 rate is necessary to prevent wages of
13 United States farm workers in occupations
14 in which H-2A workers are employed from
15 falling below the wage levels that would
16 have prevailed in the absence of the em-
17 ployment of H-2A workers in those occu-
18 pations;

19 “(iii) whether alternative wage stand-
20 ards, such as a prevailing wage standard,
21 would be sufficient to prevent wages in oc-
22 cupations in which H-2A workers are em-
23 ployed from falling below the wage level
24 that would have prevailed in the absence of
25 H-2A employment;

“(iv) whether any changes are warranted in the current methodologies for calculating the adverse effect wage rate and the prevailing wage; and

“(v) recommendations for future wage protection under this section.

“(H) COMMISSION ON WAGE STANDARDS.—

“(i) ESTABLISHMENT.—There is established the Commission on Agricultural Wage Standards under the H-2A program (in this subparagraph referred to as the ‘Commission’).

“(ii) COMPOSITION.—The Commission shall consist of 10 members as follows:

“(I) 4 representatives of agricultural employers and 1 representative of the Department of Agriculture, each appointed by the Secretary of Agriculture.

“(II) 4 representatives of agricultural workers and 1 representative of the Department of Labor, each appointed by the Secretary of Labor.

1 “(iii) FUNCTIONS.—The Commission
2 shall conduct a study that shall address—

3 “(I) whether the employment of
4 H–2A or unauthorized aliens in the
5 United States agricultural workforce
6 has depressed United States farm
7 worker wages below the levels that
8 would otherwise have prevailed if alien
9 farm workers had not been employed
10 in the United States;

11 “(II) whether an adverse effect
12 wage rate is necessary to prevent
13 wages of United States farm workers
14 in occupations in which H–2A work-
15 ers are employed from falling below
16 the wage levels that would have pre-
17 vailed in the absence of the employ-
18 ment of H–2A workers in those occu-
19 pations;

20 “(III) whether alternative wage
21 standards, such as a prevailing wage
22 standard, would be sufficient to pre-
23 vent wages in occupations in which
24 H–2A workers are employed from fall-
25 ing below the wage level that would

1 have prevailed in the absence of H-2A
2 employment;

3 “(IV) whether any changes are
4 warranted in the current methodolo-
5 gies for calculating the adverse effect
6 wage rate and the prevailing wage
7 rate; and

8 “(V) recommendations for future
9 wage protection under this section.

10 “(iv) FINAL REPORT.—Not later than
11 December 31, 2008, the Commission shall
12 submit a report to the Congress setting
13 forth the findings of the study conducted
14 under clause (iii).

15 “(v) TERMINATION DATE.—The Com-
16 mission shall terminate upon submitting
17 its final report.

18 “(4) GUARANTEE OF EMPLOYMENT.—

19 “(A) OFFER TO WORKER.—The employer
20 shall guarantee to offer the worker employment
21 for the hourly equivalent of at least three-
22 fourths of the work days of the total period of
23 employment, beginning with the first work day
24 after the arrival of the worker at the place of
25 employment and ending on the expiration date

1 specified in the job offer. For purposes of this
2 subparagraph, the hourly equivalent means the
3 number of hours in the work days as stated in
4 the job offer and shall exclude the worker's
5 Sabbath and Federal holidays. If the employer
6 affords the United States or H-2A worker less
7 employment than that required under this para-
8 graph, the employer shall pay such worker the
9 amount which the worker would have earned
10 had the worker, in fact, worked for the guaran-
11 teed number of hours.

12 “(B) FAILURE TO WORK.—Any hours
13 which the worker fails to work, up to a max-
14 imum of the number of hours specified in the
15 job offer for a work day, when the worker has
16 been offered an opportunity to do so, and all
17 hours of work actually performed (including vol-
18 untary work in excess of the number of hours
19 specified in the job offer in a work day, on the
20 worker's Sabbath, or on Federal holidays) may
21 be counted by the employer in calculating
22 whether the period of guaranteed employment
23 has been met.

24 “(C) ABANDONMENT OF EMPLOYMENT,
25 TERMINATION FOR CAUSE.—If the worker vol-

1 untarily abandons employment before the end
2 of the contract period, or is terminated for
3 cause, the worker is not entitled to the ‘three-
4 fourths guarantee’ described in subparagraph
5 (A).

6 “(D) CONTRACT IMPOSSIBILITY.—If, be-
7 fore the expiration of the period of employment
8 specified in the job offer, the services of the
9 worker are no longer required for reasons be-
10 yond the control of the employer due to any
11 form of natural disaster, including but not lim-
12 ited to a flood, hurricane, freeze, earthquake,
13 fire, drought, plant or animal disease or pest in-
14 festation, or regulatory drought, before the
15 guarantee in subparagraph (A) is fulfilled, the
16 employer may terminate the worker’s employ-
17 ment. In the event of such termination, the em-
18 ployer shall fulfill the employment guarantee in
19 subparagraph (A) for the work days that have
20 elapsed from the first work day after the arrival
21 of the worker to the termination of employ-
22 ment. In such cases, the employer will make ef-
23 forts to transfer the United States worker to
24 other comparable employment acceptable to the
25 worker. If such transfer is not effected, the em-

1 employer shall provide the return transportation
2 required in paragraph (2)(D).

3 “(5) MOTOR VEHICLE SAFETY.—

4 “(A) MODE OF TRANSPORTATION SUBJECT
5 TO COVERAGE.—

6 “(i) IN GENERAL.—Except as pro-
7 vided in clauses (iii) and (iv), this sub-
8 section applies to any H-2A employer that
9 uses or causes to be used any vehicle to
10 transport an H-2A worker within the
11 United States.

12 “(ii) DEFINED TERM.—In this para-
13 graph, the term ‘uses or causes to be
14 used’—

15 “(I) applies only to transpor-
16 tation provided by an H-2A employer
17 to an H-2A worker, or by a farm
18 labor contractor to an H-2A worker
19 at the request or direction of an H-
20 2A employer; and

21 “(II) does not apply to—

22 “(aa) transportation pro-
23 vided, or transportation arrange-
24 ments made, by an H-2A work-
25 er, unless the employer specifi-

1 cally requested or arranged such
2 transportation; or

3 “(bb) car pooling arrange-
4 ments made by H-2A workers
5 themselves, using 1 of the work-
6 ers’ own vehicles, unless specifi-
7 cally requested by the employer
8 directly or through a farm labor
9 contractor.

10 “(iii) CLARIFICATION.—Providing a
11 job offer to an H-2A worker that causes
12 the worker to travel to or from the place
13 of employment, or the payment or reim-
14 bursement of the transportation costs of
15 an H-2A worker by an H-2A employer,
16 shall not constitute an arrangement of, or
17 participation in, such transportation.

18 “(iv) AGRICULTURAL MACHINERY AND
19 EQUIPMENT EXCLUDED.—This subsection
20 does not apply to the transportation of an
21 H-2A worker on a tractor, combine, har-
22 vester, picker, or other similar machinery
23 or equipment while such worker is actually
24 engaged in the planting, cultivating, or
25 harvesting of agricultural commodities or

1 the care of livestock or poultry or engaged
 2 in transportation incidental thereto.

3 “(v) COMMON CARRIERS EX-
 4 CLUDED.—This subsection does not apply
 5 to common carrier motor vehicle transpor-
 6 tation in which the provider holds itself out
 7 to the general public as engaging in the
 8 transportation of passengers for hire and
 9 holds a valid certification of authorization
 10 for such purposes from an appropriate
 11 Federal, State, or local agency.

12 “(B) APPLICABILITY OF STANDARDS, LI-
 13 CENSING, AND INSURANCE REQUIREMENTS.—

14 “(i) IN GENERAL.—When using, or
 15 causing to be used, any vehicle for the pur-
 16 pose of providing transportation to which
 17 this subparagraph applies, each employer
 18 shall—

19 “(I) ensure that each such vehi-
 20 cle conforms to the standards pre-
 21 scribed by the Secretary of Labor
 22 under section 401(b) of the Migrant
 23 and Seasonal Agricultural Worker
 24 Protection Act (29 U.S.C. 1841(b))

1 and other applicable Federal and
2 State safety standards;

3 “(II) ensure that each driver has
4 a valid and appropriate license, as
5 provided by State law, to operate the
6 vehicle; and

7 “(III) have an insurance policy
8 or a liability bond that is in effect
9 which insures the employer against li-
10 ability for damage to persons or prop-
11 erty arising from the ownership, oper-
12 ation, or causing to be operated, of
13 any vehicle used to transport any H-
14 2A worker.

15 “(ii) AMOUNT OF INSURANCE RE-
16 QUIRED.—The level of insurance required
17 shall be determined by the Secretary of
18 Labor pursuant to regulations to be issued
19 under this subsection.

20 “(iii) EFFECT OF WORKERS’ COM-
21 PENSATION COVERAGE.—If the employer
22 of any H-2A worker provides workers’
23 compensation coverage for such worker in
24 the case of bodily injury or death as pro-
25 vided by State law, the following adjust-

1 ments in the requirements of subparagraph
2 (B)(i)(III) relating to having an insurance
3 policy or liability bond apply:

4 “(I) No insurance policy or liabil-
5 ity bond shall be required of the em-
6 ployer, if such workers are trans-
7 ported only under circumstances for
8 which there is coverage under such
9 State law.

10 “(II) An insurance policy or li-
11 ability bond shall be required of the
12 employer for circumstances under
13 which coverage for the transportation
14 of such workers is not provided under
15 such State law.

16 “(c) COMPLIANCE WITH LABOR LAWS.—An em-
17 ployer shall assure that, except as otherwise provided in
18 this section, the employer will comply with all applicable
19 Federal, State, and local labor laws, including laws affect-
20 ing migrant and seasonal agricultural workers, with re-
21 spect to all United States workers and alien workers em-
22 ployed by the employer, except that a violation of this as-
23 surance shall not constitute a violation of the Migrant and
24 Seasonal Agricultural Worker Protection Act (29 U.S.C.
25 1801 et seq.).

1 “(d) COPY OF JOB OFFER.—The employer shall pro-
 2 vide to the worker, not later than the day the work com-
 3 mences, a copy of the employer’s application and job offer
 4 described in section 218(a), or, if the employer will require
 5 the worker to enter into a separate employment contract
 6 covering the employment in question, such separate em-
 7 ployment contract.

8 “(e) RANGE PRODUCTION OF LIVESTOCK.—Nothing
 9 in this section, section 218, or section 218F shall preclude
 10 the Secretary of Labor and the Secretary from continuing
 11 to apply special procedures and requirements to the ad-
 12 mission and employment of aliens in occupations involving
 13 the range production of livestock.

14 **“SEC. 218F. PROCEDURE FOR ADMISSION AND EXTENSION**
 15 **OF STAY OF H-2A WORKERS.**

16 “(a) PETITIONING FOR ADMISSION.—An employer,
 17 or an association acting as an agent or joint employer for
 18 its members, that seeks the admission into the United
 19 States of an H-2A worker may file a petition with the
 20 Secretary. The petition shall be accompanied by an accept-
 21 ed and currently valid certification provided by the Sec-
 22 retary of Labor under section 218(e)(2)(B) covering the
 23 petitioner.

24 “(b) EXPEDITED ADJUDICATION BY THE SEC-
 25 RETARY.—The Secretary shall establish a procedure for

1 expedited adjudication of petitions filed under subsection
 2 (a) and within 7 working days shall, by fax, cable, or other
 3 means assuring expedited delivery, transmit a copy of no-
 4 tice of action on the petition to the petitioner and, in the
 5 case of approved petitions, to the appropriate immigration
 6 officer at the port of entry or United States consulate (as
 7 the case may be) where the petitioner has indicated that
 8 the alien beneficiary (or beneficiaries) will apply for a visa
 9 or admission to the United States.

10 “(c) CRITERIA FOR ADMISSIBILITY.—

11 “(1) IN GENERAL.—An H-2A worker shall be
 12 considered admissible to the United States if the
 13 alien is otherwise admissible under this section, sec-
 14 tion 218, and section 218E, and the alien is not in-
 15 eligible under paragraph (2).

16 “(2) DISQUALIFICATION.—An alien shall be
 17 considered inadmissible to the United States and in-
 18 eligible for nonimmigrant status under section
 19 101(a)(15)(H)(ii)(a) if the alien has, at any time
 20 during the past 5 years—

21 “(A) violated a material provision of this
 22 section, including the requirement to promptly
 23 depart the United States when the alien’s au-
 24 thorized period of admission under this section
 25 has expired; or

1 “(B) otherwise violated a term or condition
2 of admission into the United States as a non-
3 immigrant, including overstaying the period of
4 authorized admission as such a nonimmigrant.

5 “(3) WAIVER OF INELIGIBILITY FOR UNLAW-
6 FUL PRESENCE.—

7 “(A) IN GENERAL.—An alien who has not
8 previously been admitted into the United States
9 pursuant to this section, and who is otherwise
10 eligible for admission in accordance with para-
11 graphs (1) and (2), shall not be deemed inad-
12 missible by virtue of section 212(a)(9)(B). If an
13 alien described in the preceding sentence is
14 present in the United States, the alien may
15 apply from abroad for H-2A status, but may
16 not be granted that status in the United States.

17 “(B) MAINTENANCE OF WAIVER.—An
18 alien provided an initial waiver of ineligibility
19 pursuant to subparagraph (A) shall remain eli-
20 gible for such waiver unless the alien violates
21 the terms of this section or again becomes ineli-
22 gible under section 212(a)(9)(B) by virtue of
23 unlawful presence in the United States after
24 the date of the initial waiver of ineligibility pur-
25 suant to subparagraph (A).

1 “(d) PERIOD OF ADMISSION.—

2 “(1) IN GENERAL.—The alien shall be admitted
3 for the period of employment in the application cer-
4 tified by the Secretary of Labor pursuant to section
5 218(e)(2)(B), not to exceed 10 months, supple-
6 mented by a period of not more than 1 week before
7 the beginning of the period of employment for the
8 purpose of travel to the work site and a period of
9 14 days following the period of employment for the
10 purpose of departure or extension based on a subse-
11 quent offer of employment, except that—

12 “(A) the alien is not authorized to be em-
13 ployed during such 14-day period except in the
14 employment for which the alien was previously
15 authorized; and

16 “(B) the total period of employment, in-
17 cluding such 14-day period, may not exceed 10
18 months.

19 “(2) CONSTRUCTION.—Nothing in this sub-
20 section shall limit the authority of the Secretary to
21 extend the stay of the alien under any other provi-
22 sion of this Act.

23 “(e) ABANDONMENT OF EMPLOYMENT.—

24 “(1) IN GENERAL.—An alien admitted or pro-
25 vided status under section 101(a)(15)(H)(ii)(a) who

1 abandons the employment which was the basis for
2 such admission or status shall be considered to have
3 failed to maintain nonimmigrant status as an H-2A
4 worker and shall depart the United States or be sub-
5 ject to removal under section 237(a)(1)(C)(i).

6 “(2) REPORT BY EMPLOYER.—The employer, or
7 association acting as agent for the employer, shall
8 notify the Secretary not later than 7 days after an
9 H-2A worker prematurely abandons employment.

10 “(3) REMOVAL BY THE SECRETARY.—The Sec-
11 retary shall promptly remove from the United States
12 any H-2A worker who violates any term or condi-
13 tion of the worker’s nonimmigrant status.

14 “(4) VOLUNTARY TERMINATION.—Notwith-
15 standing paragraph (1), an alien may voluntarily
16 terminate his or her employment if the alien prompt-
17 ly departs the United States upon termination of
18 such employment.

19 “(f) REPLACEMENT OF ALIEN.—

20 “(1) IN GENERAL.—Upon presentation of the
21 notice to the Secretary required by subsection (e)(2),
22 the Secretary of State shall promptly issue a visa to,
23 and the Secretary shall admit into the United
24 States, an eligible alien designated by the employer
25 to replace an H-2A worker—

1 “(A) who abandons or prematurely termi-
2 nates employment; or

3 “(B) whose employment is terminated
4 after a United States worker is employed pur-
5 suant to section 218(b)(2)(H)(iii), if the United
6 States worker voluntarily departs before the
7 end of the period of intended employment or if
8 the employment termination is for a lawful job-
9 related reason.

10 “(2) CONSTRUCTION.—Nothing in this sub-
11 section is intended to limit any preference required
12 to be accorded United States workers under any
13 other provision of this Act.

14 “(g) IDENTIFICATION DOCUMENT.—

15 “(1) IN GENERAL.—Each alien authorized to be
16 admitted under section 101(a)(15)(H)(ii)(a) shall be
17 provided an identification and employment eligibility
18 document to verify eligibility for employment in the
19 United States and verify such person’s proper iden-
20 tity.

21 “(2) REQUIREMENTS.—No identification and
22 employment eligibility document may be issued
23 which does not meet the following requirements:

24 “(A) The document shall be capable of re-
25 liably determining whether—

1 “(i) the individual with the identifica-
2 tion and employment eligibility document
3 whose eligibility is being verified is in fact
4 eligible for employment;

5 “(ii) the individual whose eligibility is
6 being verified is claiming the identity of
7 another person; and

8 “(iii) the individual whose eligibility is
9 being verified is authorized to be admitted
10 into, and employed in, the United States
11 as an H-2A worker.

12 “(B) The document shall be in a form that
13 is resistant to counterfeiting and to tampering.

14 “(C) The document shall—

15 “(i) be compatible with other data-
16 bases of the Secretary for the purpose of
17 excluding aliens from benefits for which
18 they are not eligible and determining
19 whether the alien is unlawfully present in
20 the United States; and

21 “(ii) be compatible with law enforce-
22 ment databases to determine if the alien
23 has been convicted of criminal offenses.

24 “(h) EXTENSION OF STAY OF H-2A ALIENS IN THE
25 UNITED STATES.—

1 “(1) EXTENSION OF STAY.—If an employer
 2 seeks approval to employ an H-2A alien who is law-
 3 fully present in the United States, the petition filed
 4 by the employer or an association pursuant to sub-
 5 section (a), shall request an extension of the alien’s
 6 stay and a change in the alien’s employment.

7 “(2) LIMITATION ON FILING A PETITION FOR
 8 EXTENSION OF STAY.—A petition may not be filed
 9 for an extension of an alien’s stay—

10 “(A) for a period of more than 10 months;
 11 or

12 “(B) to a date that is more than 3 years
 13 after the date of the alien’s last admission to
 14 the United States under this section.

15 “(3) WORK AUTHORIZATION UPON FILING A
 16 PETITION FOR EXTENSION OF STAY.—

17 “(A) IN GENERAL.—An alien who is law-
 18 fully present in the United States may com-
 19 mence the employment described in a petition
 20 under paragraph (1) on the date on which the
 21 petition is filed.

22 “(B) DEFINITION.—For purposes of sub-
 23 paragraph (A), the term ‘file’ means sending
 24 the petition by certified mail via the United
 25 States Postal Service, return receipt requested,

1 or delivered by guaranteed commercial delivery
2 which will provide the employer with a docu-
3 mented acknowledgment of the date of receipt
4 of the petition.

5 “(C) HANDLING OF PETITION.—The em-
6 ployer shall provide a copy of the employer’s pe-
7 tition to the alien, who shall keep the petition
8 with the alien’s identification and employment
9 eligibility document as evidence that the peti-
10 tion has been filed and that the alien is author-
11 ized to work in the United States.

12 “(D) APPROVAL OF PETITION.—Upon ap-
13 proval of a petition for an extension of stay or
14 change in the alien’s authorized employment,
15 the Secretary shall provide a new or updated
16 employment eligibility document to the alien in-
17 dicating the new validity date, after which the
18 alien is not required to retain a copy of the pe-
19 tition.

20 “(4) LIMITATION ON EMPLOYMENT AUTHORIZA-
21 TION OF ALIENS WITHOUT VALID IDENTIFICATION
22 AND EMPLOYMENT ELIGIBILITY DOCUMENT.—An ex-
23 pired identification and employment eligibility docu-
24 ment, together with a copy of a petition for exten-
25 sion of stay or change in the alien’s authorized em-

1 ployment that complies with the requirements of
2 paragraph (1), shall constitute a valid work author-
3 ization document for a period of not more than 60
4 days beginning on the date on which such petition
5 is filed, after which time only a currently valid iden-
6 tification and employment eligibility document shall
7 be acceptable.

8 “(5) LIMITATION ON AN INDIVIDUAL’S STAY IN
9 STATUS.—

10 “(A) MAXIMUM PERIOD.—The maximum
11 continuous period of authorized status as an
12 H-2A worker (including any extensions) is 3
13 years.

14 “(B) REQUIREMENT TO REMAIN OUTSIDE
15 THE UNITED STATES.—

16 “(i) IN GENERAL.—Subject to clause
17 (ii), in the case of an alien outside the
18 United States whose period of authorized
19 status as an H-2A worker (including any
20 extensions) has expired, the alien may not
21 again apply for admission to the United
22 States as an H-2A worker unless the alien
23 has remained outside the United States for
24 a continuous period equal to at least $\frac{1}{5}$
25 the duration of the alien’s previous period

1 of authorized status as an H-2A worker
 2 (including any extensions).

3 “(ii) EXCEPTION.—Clause (i) shall
 4 not apply in the case of an alien if the
 5 alien’s period of authorized status as an
 6 H-2A worker (including any extensions)
 7 was for a period of not more than 10
 8 months and such alien has been outside
 9 the United States for at least 2 months
 10 during the 12 months preceding the date
 11 the alien again is applying for admission to
 12 the United States as an H-2A worker.

13 “(i) SPECIAL RULES FOR ALIENS EMPLOYED AS
 14 SHEEPHERDERS, GOAT HERDERS, OR DAIRY WORK-
 15 ERS.—Notwithstanding any provision of the Agricultural
 16 Job Opportunities, Benefits, and Security Act of 2006, an
 17 alien admitted under section 101(a)(15)(H)(ii)(a) for em-
 18 ployment as a shepherd, goat herder, or dairy worker—

19 “(1) may be admitted for an initial period of 12
 20 months;

21 “(2) subject to subsection (j)(5), may have such
 22 initial period of admission extended for a period of
 23 up to 3 years; and

1 “(3) shall not be subject to the requirements of
 2 subsection (h)(5) (relating to periods of absence
 3 from the United States).

4 “(j) ADJUSTMENT TO LAWFUL PERMANENT RESI-
 5 DENT STATUS FOR ALIENS EMPLOYED AS SHEEP-
 6 HERDERS, GOAT HERDERS, OR DAIRY WORKERS.—

7 “(1) ELIGIBLE ALIEN.—For purposes of this
 8 subsection, the term ‘eligible alien’ means an alien—

9 “(A) having nonimmigrant status under
 10 section 101(a)(15)(H)(ii)(a) based on employ-
 11 ment as a shepherd, goat herder, or dairy
 12 worker;

13 “(B) who has maintained such non-
 14 immigrant status in the United States for a cu-
 15 mulative total of 36 months (excluding any pe-
 16 riod of absence from the United States); and

17 “(C) who is seeking to receive an immi-
 18 grant visa under section 203(b)(3)(A)(iii).

19 “(2) CLASSIFICATION PETITION.—In the case
 20 of an eligible alien, the petition under section 204
 21 for classification under section 203(b)(3)(A)(iii) may
 22 be filed by—

23 “(A) the alien’s employer on behalf of an
 24 eligible alien; or

25 “(B) the eligible alien.

1 “(3) NO LABOR CERTIFICATION REQUIRED.—
 2 Notwithstanding section 203(b)((3)(C), no deter-
 3 mination under section 212(a)(5)(A) is required with
 4 respect to an immigrant visa described in paragraph
 5 (1)(C) for an eligible alien.

6 “(4) EFFECT OF PETITION.—The filing of a pe-
 7 tition described in paragraph (2) or an application
 8 for adjustment of status based on the approval of
 9 such a petition, shall not constitute evidence of an
 10 alien’s ineligibility for nonimmigrant status under
 11 section 101(a)(15)(H)(ii)(a).

12 “(5) EXTENSION OF STAY.—The Secretary of
 13 Homeland Security shall extend the stay of an eligi-
 14 ble alien having a pending or approved classification
 15 petition described in paragraph (2) in 1-year incre-
 16 ments until a final determination is made on the
 17 alien’s eligibility for adjustment of status to that of
 18 an alien lawfully admitted for permanent residence.

19 “(6) CONSTRUCTION.—Nothing in this sub-
 20 section shall be construed to prevent an eligible alien
 21 from seeking adjustment of status in accordance
 22 with any other provision of law.

23 **“SEC. 218G. WORKER PROTECTIONS AND LABOR STAND-**
 24 **ARDS ENFORCEMENT.**

25 “(a) ENFORCEMENT AUTHORITY.—

1 “(1) INVESTIGATION OF COMPLAINTS.—

2 “(A) AGGRIEVED PERSON OR THIRD-PARTY
3 COMPLAINTS.—The Secretary of Labor shall es-
4 tablish a process for the receipt, investigation,
5 and disposition of complaints respecting a peti-
6 tioner’s failure to meet a condition specified in
7 section 218(b), or an employer’s misrepresenta-
8 tion of material facts in an application under
9 section 218(a). Complaints may be filed by any
10 aggrieved person or organization (including bar-
11 gaining representatives). No investigation or
12 hearing shall be conducted on a complaint con-
13 cerning such a failure or misrepresentation un-
14 less the complaint was filed not later than 12
15 months after the date of the failure, or mis-
16 representation, respectively. The Secretary of
17 Labor shall conduct an investigation under this
18 subparagraph if there is reasonable cause to be-
19 lieve that such a failure or misrepresentation
20 has occurred.

21 “(B) DETERMINATION ON COMPLAINT.—
22 Under such process, the Secretary of Labor
23 shall provide, within 30 days after the date
24 such a complaint is filed, for a determination as
25 to whether or not a reasonable basis exists to

1 make a finding described in subparagraph (C),
2 (D), (E), or (H). If the Secretary of Labor de-
3 termines that such a reasonable basis exists,
4 the Secretary of Labor shall provide for notice
5 of such determination to the interested parties
6 and an opportunity for a hearing on the com-
7 plaint, in accordance with section 556 of title 5,
8 United States Code, within 60 days after the
9 date of the determination. If such a hearing is
10 requested, the Secretary of Labor shall make a
11 finding concerning the matter not later than 60
12 days after the date of the hearing. In the case
13 of similar complaints respecting the same appli-
14 cant, the Secretary of Labor may consolidate
15 the hearings under this subparagraph on such
16 complaints.

17 “(C) FAILURES TO MEET CONDITIONS.—If
18 the Secretary of Labor finds, after notice and
19 opportunity for a hearing, a failure to meet a
20 condition of paragraph (1)(A), (1)(B), (1)(D),
21 (1)(F), (2)(A), (2)(B), or (2)(G) of section
22 218(b), a substantial failure to meet a condition
23 of paragraph (1)(C), (1)(E), (2)(C), (2)(D),
24 (2)(E), or (2)(H) of section 218(b), or a mate-

1 rial misrepresentation of fact in an application
2 under section 218(a)—

3 “(i) the Secretary of Labor shall no-
4 tify the Secretary of such finding and may,
5 in addition, impose such other administra-
6 tive remedies (including civil money pen-
7 alties in an amount not to exceed \$1,000
8 per violation) as the Secretary of Labor
9 determines to be appropriate; and

10 “(ii) the Secretary may disqualify the
11 employer from the employment of aliens
12 described in section 101(a)(15)(H)(ii)(a)
13 for a period of 1 year.

14 “(D) WILLFUL FAILURES AND WILLFUL
15 MISREPRESENTATIONS.—If the Secretary of
16 Labor finds, after notice and opportunity for
17 hearing, a willful failure to meet a condition of
18 section 218(b), a willful misrepresentation of a
19 material fact in an application under section
20 218(a), or a violation of subsection (d)(1)—

21 “(i) the Secretary of Labor shall no-
22 tify the Secretary of such finding and may,
23 in addition, impose such other administra-
24 tive remedies (including civil money pen-
25 alties in an amount not to exceed \$5,000

per violation) as the Secretary of Labor determines to be appropriate;

“(ii) the Secretary of Labor may seek appropriate legal or equitable relief to effectuate the purposes of subsection (d)(1); and

“(iii) the Secretary may disqualify the employer from the employment of H-2A workers for a period of 2 years.

“(E) DISPLACEMENT OF UNITED STATES WORKERS.—If the Secretary of Labor finds, after notice and opportunity for hearing, a willful failure to meet a condition of section 218(b) or a willful misrepresentation of a material fact in an application under section 218(a), in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer during the period of employment on the employer’s application under section 218(a) or during the period of 30 days preceding such period of employment—

“(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money pen-

alties in an amount not to exceed \$15,000 per violation) as the Secretary of Labor determines to be appropriate; and

“(ii) the Secretary may disqualify the employer from the employment of H-2A workers for a period of 3 years.

“(F) LIMITATIONS ON CIVIL MONEY PENALTIES.—The Secretary of Labor shall not impose total civil money penalties with respect to an application under section 218(a) in excess of \$90,000.

“(G) FAILURES TO PAY WAGES OR REQUIRED BENEFITS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, that the employer has failed to pay the wages, or provide the housing allowance, transportation, subsistence reimbursement, or guarantee of employment, required under section 218E(b), the Secretary of Labor shall assess payment of back wages, or other required benefits, due any United States worker or H-2A worker employed by the employer in the specific employment in question. The back wages or other required benefits under section 218E(b) shall be equal to the difference between the

1 amount that should have been paid and the
2 amount that actually was paid to such worker.

3 “(2) STATUTORY CONSTRUCTION.—Nothing in
4 this section shall be construed as limiting the au-
5 thority of the Secretary of Labor to conduct any
6 compliance investigation under any other labor law,
7 including any law affecting migrant and seasonal ag-
8 ricultural workers, or, in the absence of a complaint
9 under this section, under section 218 or 218E.

10 “(b) RIGHTS ENFORCEABLE BY PRIVATE RIGHT OF
11 ACTION.—H-2A workers may enforce the following rights
12 through the private right of action provided in subsection
13 (c), and no other right of action shall exist under Federal
14 or State law to enforce such rights:

15 “(1) The providing of housing or a housing al-
16 lowance as required under section 218E(b)(1).

17 “(2) The reimbursement of transportation as
18 required under section 218E(b)(2).

19 “(3) The payment of wages required under sec-
20 tion 218E(b)(3) when due.

21 “(4) The benefits and material terms and con-
22 ditions of employment expressly provided in the job
23 offer described in section 218(a)(2), not including
24 the assurance to comply with other Federal, State,
25 and local labor laws described in section 218E(c),

1 compliance with which shall be governed by the pro-
 2 visions of such laws.

3 “(5) The guarantee of employment required
 4 under section 218E(b)(4).

5 “(6) The motor vehicle safety requirements
 6 under section 218E(b)(5).

7 “(7) The prohibition of discrimination under
 8 subsection (d)(2).

9 “(c) PRIVATE RIGHT OF ACTION.—

10 “(1) MEDIATION.—Upon the filing of a com-
 11 plaint by an H-2A worker aggrieved by a violation
 12 of rights enforceable under subsection (b), and with-
 13 in 60 days of the filing of proof of service of the
 14 complaint, a party to the action may file a request
 15 with the Federal Mediation and Conciliation Service
 16 to assist the parties in reaching a satisfactory reso-
 17 lution of all issues involving all parties to the dis-
 18 pute. Upon a filing of such request and giving of no-
 19 tice to the parties, the parties shall attempt medi-
 20 ation within the period specified in subparagraph
 21 (B).

22 “(A) MEDIATION SERVICES.—The Federal
 23 Mediation and Conciliation Service shall be
 24 available to assist in resolving disputes arising
 25 under subsection (b) between H-2A workers

1 and agricultural employers without charge to
2 the parties.

3 “(B) 90-DAY LIMIT.—The Federal Medi-
4 ation and Conciliation Service may conduct me-
5 diation or other non-binding dispute resolution
6 activities for a period not to exceed 90 days be-
7 ginning on the date on which the Federal Medi-
8 ation and Conciliation Service receives the re-
9 quest for assistance unless the parties agree to
10 an extension of this period of time.

11 “(C) AUTHORIZATION.—

12 “(i) IN GENERAL.—Subject to clause
13 (ii), there are authorized to be appro-
14 priated to the Federal Mediation and Con-
15 ciliation Service \$500,000 for each fiscal
16 year to carry out this section.

17 “(ii) MEDIATION.—Notwithstanding
18 any other provision of law, the Director of
19 the Federal Mediation and Conciliation
20 Service is authorized to conduct the medi-
21 ation or other dispute resolution activities
22 from any other appropriated funds avail-
23 able to the Director and to reimburse such
24 appropriated funds when the funds are ap-
25 propriated pursuant to this authorization,

1 such reimbursement to be credited to ap-
2 propriations currently available at the time
3 of receipt.

4 “(2) MAINTENANCE OF CIVIL ACTION IN DIS-
5 TRICT COURT BY AGGRIEVED PERSON.—An H-2A
6 worker aggrieved by a violation of rights enforceable
7 under subsection (b) by an agricultural employer or
8 other person may file suit in any district court of the
9 United States having jurisdiction of the parties,
10 without regard to the amount in controversy, with-
11 out regard to the citizenship of the parties, and
12 without regard to the exhaustion of any alternative
13 administrative remedies under this Act, not later
14 than 3 years after the date the violation occurs.

15 “(3) ELECTION.—An H-2A worker who has
16 filed an administrative complaint with the Secretary
17 of Labor may not maintain a civil action under
18 paragraph (2) unless a complaint based on the same
19 violation filed with the Secretary of Labor under
20 subsection (a)(1) is withdrawn before the filing of
21 such action, in which case the rights and remedies
22 available under this subsection shall be exclusive.

23 “(4) PREEMPTION OF STATE CONTRACT
24 RIGHTS.—Nothing in this Act shall be construed to
25 diminish the rights and remedies of an H-2A worker

1 under any other Federal or State law or regulation
 2 or under any collective bargaining agreement, except
 3 that no court or administrative action shall be avail-
 4 able under any State contract law to enforce the
 5 rights created by this Act.

6 “(5) WAIVER OF RIGHTS PROHIBITED.—Agree-
 7 ments by employees purporting to waive or modify
 8 their rights under this Act shall be void as contrary
 9 to public policy, except that a waiver or modification
 10 of the rights or obligations in favor of the Secretary
 11 of Labor shall be valid for purposes of the enforce-
 12 ment of this Act. The preceding sentence may not
 13 be construed to prohibit agreements to settle private
 14 disputes or litigation.

15 “(6) AWARD OF DAMAGES OR OTHER EQUI-
 16 TABLE RELIEF.—

17 “(A) If the court finds that the respondent
 18 has intentionally violated any of the rights en-
 19 forceable under subsection (b), it shall award
 20 actual damages, if any, or equitable relief.

21 “(B) Any civil action brought under this
 22 section shall be subject to appeal as provided in
 23 chapter 83 of title 28, United States Code.

24 “(7) WORKERS’ COMPENSATION BENEFITS; EX-
 25 CLUSIVE REMEDY.—

1 “(A) Notwithstanding any other provision
 2 of this section, where a State’s workers’ com-
 3 pensation law is applicable and coverage is pro-
 4 vided for an H-2A worker, the workers’ com-
 5 pensation benefits shall be the exclusive remedy
 6 for the loss of such worker under this section
 7 in the case of bodily injury or death in accord-
 8 ance with such State’s workers’ compensation
 9 law.

10 “(B) The exclusive remedy prescribed in
 11 subparagraph (A) precludes the recovery under
 12 paragraph (6) of actual damages for loss from
 13 an injury or death but does not preclude other
 14 equitable relief, except that such relief shall not
 15 include back or front pay or in any manner, di-
 16 rectly or indirectly, expand or otherwise alter or
 17 affect—

18 “(i) a recovery under a State workers’
 19 compensation law; or

20 “(ii) rights conferred under a State
 21 workers’ compensation law.

22 “(8) TOLLING OF STATUTE OF LIMITATIONS.—

23 If it is determined under a State workers’ compensa-
 24 tion law that the workers’ compensation law is not
 25 applicable to a claim for bodily injury or death of an

1 H-2A worker, the statute of limitations for bringing
2 an action for actual damages for such injury or
3 death under subsection (c) shall be tolled for the pe-
4 riod during which the claim for such injury or death
5 under such State workers' compensation law was
6 pending. The statute of limitations for an action for
7 actual damages or other equitable relief arising out
8 of the same transaction or occurrence as the injury
9 or death of the H-2A worker shall be tolled for the
10 period during which the claim for such injury or
11 death was pending under the State workers' com-
12 pensation law.

13 “(9) PRECLUSIVE EFFECT.—Any settlement by
14 an H-2A worker and an H-2A employer or any per-
15 son reached through the mediation process required
16 under subsection (c)(1) shall preclude any right of
17 action arising out of the same facts between the par-
18 ties in any Federal or State court or administrative
19 proceeding, unless specifically provided otherwise in
20 the settlement agreement.

21 “(10) SETTLEMENTS.—Any settlement by the
22 Secretary of Labor with an H-2A employer on be-
23 half of an H-2A worker of a complaint filed with the
24 Secretary of Labor under this section or any finding
25 by the Secretary of Labor under subsection

1 (a)(1)(B) shall preclude any right of action arising
2 out of the same facts between the parties under any
3 Federal or State court or administrative proceeding,
4 unless specifically provided otherwise in the settle-
5 ment agreement.

6 “(d) DISCRIMINATION PROHIBITED.—

7 “(1) IN GENERAL.—It is a violation of this sub-
8 section for any person who has filed an application
9 under section 218(a), to intimidate, threaten, re-
10 strain, coerce, blacklist, discharge, or in any other
11 manner discriminate against an employee (which
12 term, for purposes of this subsection, includes a
13 former employee and an applicant for employment)
14 because the employee has disclosed information to
15 the employer, or to any other person, that the em-
16 ployee reasonably believes evidences a violation of
17 section 218 or 218E or any rule or regulation per-
18 taining to section 218 or 218E, or because the em-
19 ployee cooperates or seeks to cooperate in an inves-
20 tigation or other proceeding concerning the employ-
21 er’s compliance with the requirements of section 218
22 or 218E or any rule or regulation pertaining to ei-
23 ther of such sections.

24 “(2) DISCRIMINATION AGAINST H-2A WORK-
25 ERS.—It is a violation of this subsection for any per-

1 son who has filed an application under section
 2 218(a), to intimidate, threaten, restrain, coerce,
 3 blacklist, discharge, or in any manner discriminate
 4 against an H-2A employee because such worker has,
 5 with just cause, filed a complaint with the Secretary
 6 of Labor regarding a denial of the rights enumer-
 7 ated and enforceable under subsection (b) or insti-
 8 tuted, or caused to be instituted, a private right of
 9 action under subsection (c) regarding the denial of
 10 the rights enumerated under subsection (b), or has
 11 testified or is about to testify in any court pro-
 12 ceeding brought under subsection (c).

13 “(e) AUTHORIZATION TO SEEK OTHER APPRO-
 14 PRIATE EMPLOYMENT.—The Secretary of Labor and the
 15 Secretary shall establish a process under which an H-2A
 16 worker who files a complaint regarding a violation of sub-
 17 section (d) and is otherwise eligible to remain and work
 18 in the United States may be allowed to seek other appro-
 19 priate employment in the United States for a period not
 20 to exceed the maximum period of stay authorized for such
 21 nonimmigrant classification.

22 “(f) ROLE OF ASSOCIATIONS.—

23 “(1) VIOLATION BY A MEMBER OF AN ASSOCIA-
 24 TION.—An employer on whose behalf an application
 25 is filed by an association acting as its agent is fully

1 responsible for such application, and for complying
 2 with the terms and conditions of sections 218 and
 3 218E, as though the employer had filed the applica-
 4 tion itself. If such an employer is determined, under
 5 this section, to have committed a violation, the pen-
 6 alty for such violation shall apply only to that mem-
 7 ber of the association unless the Secretary of Labor
 8 determines that the association or other member
 9 participated in, had knowledge, or reason to know,
 10 of the violation, in which case the penalty shall be
 11 invoked against the association or other association
 12 member as well.

13 “(2) VIOLATIONS BY AN ASSOCIATION ACTING
 14 AS AN EMPLOYER.—If an association filing an appli-
 15 cation as a sole or joint employer is determined to
 16 have committed a violation under this section, the
 17 penalty for such violation shall apply only to the as-
 18 sociation unless the Secretary of Labor determines
 19 that an association member or members participated
 20 in or had knowledge, or reason to know of the viola-
 21 tion, in which case the penalty shall be invoked
 22 against the association member or members as well.

23 **“SEC. 218H. DEFINITIONS.**

24 “For purposes of this section, section 218, and sec-
 25 tions 218E through 218G:

1 “(1) AGRICULTURAL EMPLOYMENT.—The term
2 ‘agricultural employment’ means any service or ac-
3 tivity that is considered to be agricultural under sec-
4 tion 3(f) of the Fair Labor Standards Act of 1938
5 (29 U.S.C. 203(f)) or agricultural labor under sec-
6 tion 3121(g) of the Internal Revenue Code of 1986
7 (26 U.S.C. 3121(g)). For purposes of this para-
8 graph, agricultural employment includes employment
9 under section 101(a)(15)(H)(ii)(a).

10 “(2) BONA FIDE UNION.—The term ‘bona fide
11 union’ means any organization in which employees
12 participate and which exists for the purpose of deal-
13 ing with employers concerning grievances, labor dis-
14 putes, wages, rates of pay, hours of employment, or
15 other terms and conditions of work for agricultural
16 employees. Such term does not include an organiza-
17 tion formed, created, administered, supported, domi-
18 nated, financed, or controlled by an employer or em-
19 ployer association or its agents or representatives.

20 “(3) DISPLACE.—The term ‘displace’, in the
21 case of an application with respect to 1 or more H–
22 2A workers by an employer, means laying off a
23 United States worker from a job for which the H–
24 2A worker or workers is or are sought.

1 “(4) ELIGIBLE.—The term ‘eligible’, when used
2 with respect to an individual, means an individual
3 who is not an unauthorized alien (as defined in sec-
4 tion 274A).

5 “(5) EMPLOYER.—The term ‘employer’ means
6 any person or entity, including any farm labor con-
7 tractor and any agricultural association, that em-
8 ploys workers in agricultural employment.

9 “(6) H-2A EMPLOYER.—The term ‘H-2A em-
10 ployer’ means an employer who seeks to hire 1 or
11 more nonimmigrant aliens described in section
12 101(a)(15)(H)(ii)(a).

13 “(7) H-2A WORKER.—The term ‘H-2A worker’
14 means a nonimmigrant described in section
15 101(a)(15)(H)(ii)(a).

16 “(8) JOB OPPORTUNITY.—The term ‘job oppor-
17 tunity’ means a job opening for temporary full-time
18 employment at a place in the United States to which
19 United States workers can be referred.

20 “(9) LAYS OFF.—

21 “(A) IN GENERAL.—The term ‘lays off’,
22 with respect to a worker—

23 “(i) means to cause the worker’s loss
24 of employment, other than through a dis-
25 charge for inadequate performance, viola-

tion of workplace rules, cause, voluntary departure, voluntary retirement, contract impossibility (as described in section 218E(b)(4)(D)), or temporary layoffs due to weather, markets, or other temporary conditions; but

“(ii) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer (or, in the case of a placement of a worker with another employer under section 218(b)(2)(E), with either employer described in such section) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

“(B) STATUTORY CONSTRUCTION.—Nothing in this paragraph is intended to limit an employee’s rights under a collective bargaining agreement or other employment contract.

“(10) REGULATORY DROUGHT.—The term ‘regulatory drought’ means a decision subsequent to the filing of the application under section 218 by an en-

1 tity not under the control of the employer making
 2 such filing which restricts the employer's access to
 3 water for irrigation purposes and reduces or limits
 4 the employer's ability to produce an agricultural
 5 commodity, thereby reducing the need for labor.

6 “(11) SEASONAL.—Labor is performed on a
 7 ‘seasonal’ basis if—

8 “(A) ordinarily, it pertains to or is of the
 9 kind exclusively performed at certain seasons or
 10 periods of the year; and

11 “(B) from its nature, it may not be contin-
 12 uous or carried on throughout the year.

13 “(12) SECRETARY.—The term ‘Secretary’
 14 means the Secretary of Homeland Security.

15 “(13) TEMPORARY.—A worker is employed on a
 16 ‘temporary’ basis where the employment is intended
 17 not to exceed 10 months.

18 “(14) UNITED STATES WORKER.—The term
 19 ‘United States worker’ means any worker, whether
 20 a United States citizen or national, a lawfully admit-
 21 ted permanent resident alien, or any other alien,
 22 who is authorized to work in the job opportunity
 23 within the United States, except an alien admitted
 24 or otherwise provided status under section
 25 101(a)(15)(H)(ii)(a).”.

1 (b) TABLE OF CONTENTS.—The table of contents (8
2 U.S.C. 1101 et seq.) is amended—

3 (1) by striking the item relating to section 218
4 and inserting the following:

“Sec. 218. H-2A employer applications.”

5 and

6 (2) by inserting after the item relating to sec-
7 tion 218D, as added by section 601 of this Act, the
8 following:

“Sec. 218E. H-2A employment requirements.

“Sec. 218F. Procedure for admission and extension of stay of H-2A workers.

“Sec. 218G. Worker protections and labor standards enforcement.

“Sec. 218H. Definitions.”.

9 **CHAPTER 3—MISCELLANEOUS** 10 **PROVISIONS**

11 **SEC. 616. DETERMINATION AND USE OF USER FEES.**

12 (a) SCHEDULE OF FEES.—The Secretary shall estab-
13 lish and periodically adjust a schedule of fees for the em-
14 ployment of aliens under this subtitle and the amendments
15 made by this subtitle, and a collection process for such
16 fees from employers participating in the program provided
17 under this subtitle. Such fees shall be the only fees charge-
18 able to employers for services provided under this subtitle.

19 (b) DETERMINATION OF SCHEDULE.—

20 (1) IN GENERAL.—The schedule under sub-
21 section (a) shall reflect a fee rate based on the num-
22 ber of job opportunities indicated in the employer’s

1 application under section 218 of the Immigration
2 and Nationality Act, as added by section 615 of this
3 Act, and sufficient to provide for the direct costs of
4 providing services related to an employer's author-
5 ization to employ eligible aliens pursuant to this sub-
6 title, to include the certification of eligible employ-
7 ers, the issuance of documentation, and the admis-
8 sion of eligible aliens.

9 (2) PROCEDURE.—

10 (A) IN GENERAL.—In establishing and ad-
11 justing such a schedule, the Secretary shall
12 comply with Federal cost accounting and fee
13 setting standards.

14 (B) PUBLICATION AND COMMENT.—The
15 Secretary shall publish in the Federal Register
16 an initial fee schedule and associated collection
17 process and the cost data or estimates upon
18 which such fee schedule is based, and any sub-
19 sequent amendments thereto, pursuant to which
20 public comment shall be sought and a final rule
21 issued.

22 (c) USE OF PROCEEDS.—Notwithstanding any other
23 provision of law, all proceeds resulting from the payment
24 of the alien employment user fees shall be available with-
25 out further appropriation and shall remain available with-

1 out fiscal year limitation to reimburse the Secretary, the
2 Secretary of State, and the Secretary of Labor for the
3 costs of carrying out sections 218 and 218F of the Immi-
4 gration and Nationality Act, as added by section 615 of
5 this Act, and the provisions of this subtitle.

6 **SEC. 617. REGULATIONS.**

7 (a) REGULATIONS OF THE SECRETARY.—The Sec-
8 retary shall consult with the Secretary of Labor and the
9 Secretary of Agriculture on all regulations to implement
10 the duties of the Secretary under this subtitle and the
11 amendments made by this subtitle.

12 (b) REGULATIONS OF THE SECRETARY OF STATE.—
13 The Secretary of State shall consult with the Secretary,
14 the Secretary of Labor, and the Secretary of Agriculture
15 on all regulations to implement the duties of the Secretary
16 of State under this subtitle and the amendments made by
17 this subtitle.

18 (c) REGULATIONS OF THE SECRETARY OF LABOR.—
19 The Secretary of Labor shall consult with the Secretary
20 of Agriculture and the Secretary on all regulations to im-
21 plement the duties of the Secretary of Labor under this
22 subtitle and the amendments made by this subtitle.

23 (d) DEADLINE FOR ISSUANCE OF REGULATIONS.—
24 All regulations to implement the duties of the Secretary,
25 the Secretary of State, and the Secretary of Labor created

1 under sections 218, 218E, 218F, and 218G of the Immi-
2 gration and Nationality Act, as added by section 615 of
3 this Act, shall take effect on the effective date of section
4 615 and shall be issued not later than 1 year after the
5 date of enactment of this Act.

6 **SEC. 618. REPORT TO CONGRESS.**

7 Not later than September 30 of each year, the Sec-
8 retary shall submit a report to Congress that identifies,
9 for the previous year—

10 (1) the number of job opportunities approved
11 for employment of aliens admitted under section
12 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
13 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), and the
14 number of workers actually admitted, by State and
15 by occupation;

16 (2) the number of such aliens reported to have
17 abandoned employment pursuant to subsection
18 218F(e)(2) of such Act;

19 (3) the number of such aliens who departed the
20 United States within the period specified in sub-
21 section 218F(d) of such Act;

22 (4) the number of aliens who applied for adjust-
23 ment of status pursuant to section 613(a);

24 (5) the number of such aliens whose status was
25 adjusted under section 613(a);

1 (6) the number of aliens who applied for perma-
2 nent residence pursuant to section 613(c); and

3 (7) the number of such aliens who were ap-
4 proved for permanent residence pursuant section
5 613(c).

6 **SEC. 619. EFFECTIVE DATE.**

7 (a) IN GENERAL.—Except as otherwise provided, sec-
8 tions 615 and 616 shall take effect 1 year after the date
9 of the enactment of this Act.

10 (b) REPORT.—Not later than 180 days after the date
11 of the enactment of this Act, the Secretary shall prepare
12 and submit to the appropriate committees of Congress a
13 report that describes the measures being taken and the
14 progress made in implementing this subtitle.

15 **Subtitle C—DREAM Act**

16 **SEC. 621. SHORT TITLE.**

17 This subtitle may be cited as the “Development, Re-
18 lief, and Education for Alien Minors Act of 2006” or the
19 “DREAM Act of 2006”.

20 **SEC. 622. DEFINITIONS.**

21 In this subtitle:

22 (1) INSTITUTION OF HIGHER EDUCATION.—The
23 term “institution of higher education” has the
24 meaning given that term in section 101 of the High-
25 er Education Act of 1965 (20 U.S.C. 1001).

1 (2) UNIFORMED SERVICES.—The term “uni-
 2 formed services” has the meaning given that term in
 3 section 101(a) of title 10, United States Code.

4 **SEC. 623. RESTORATION OF STATE OPTION TO DETERMINE**
 5 **RESIDENCY FOR PURPOSES OF HIGHER EDU-**
 6 **CATION BENEFITS.**

7 (a) IN GENERAL.—Section 505 of the Illegal Immi-
 8 gration Reform and Immigrant Responsibility Act of 1996
 9 (8 U.S.C. 1623) is repealed.

10 (b) EFFECTIVE DATE.—The repeal under subsection
 11 (a) shall take effect as if included in the enactment of the
 12 Illegal Immigration Reform and Immigrant Responsibility
 13 Act of 1996.

14 **SEC. 624. CANCELLATION OF REMOVAL AND ADJUSTMENT**
 15 **OF STATUS OF CERTAIN LONG-TERM RESI-**
 16 **DENTS WHO ENTERED THE UNITED STATES**
 17 **AS CHILDREN.**

18 (a) SPECIAL RULE FOR CERTAIN LONG-TERM RESI-
 19 DENTS WHO ENTERED THE UNITED STATES AS CHIL-
 20 DREN.—

21 (1) IN GENERAL.—Notwithstanding any other
 22 provision of law and except as otherwise provided in
 23 this subtitle, the Secretary may cancel removal of,
 24 and adjust to the status of an alien lawfully admit-
 25 ted for permanent residence, subject to the condi-

1 tional basis described in section 625, an alien who
2 is inadmissible or deportable from the United States,
3 if the alien demonstrates that—

4 (A) the alien has been physically present in
5 the United States for a continuous period of
6 not less than 5 years immediately preceding the
7 date of enactment of this Act, and had not yet
8 reached the age of 16 years at the time of ini-
9 tial entry;

10 (B) the alien has been a person of good
11 moral character since the time of application;

12 (C) the alien—

13 (i) is not inadmissible under para-
14 graph (2), (3), (6)(B), (6)(C), (6)(E),
15 (6)(F), or (6)(G) of section 212(a) of the
16 Immigration and Nationality Act (8 U.S.C.
17 1182(a)), or, if inadmissible solely under
18 subparagraph (C) or (F) of paragraph (6)
19 of such subsection, the alien was under the
20 age of 16 years at the time the violation
21 was committed; and

22 (ii) is not deportable under paragraph
23 (1)(E), (1)(G), (2), (3)(B), (3)(C), (3)(D),
24 (4), or (6) of section 237(a) of the Immi-
25 gration and Nationality Act (8 U.S.C.

1 1227(a)), or, if deportable solely under
2 subparagraphs (C) or (D) of paragraph (3)
3 of such subsection, the alien was under the
4 age of 16 years at the time the violation
5 was committed;

6 (D) the alien, at the time of application,
7 has been admitted to an institution of higher
8 education in the United States, or has earned
9 a high school diploma or obtained a general
10 education development certificate in the United
11 States; and

12 (E) the alien has never been under a final
13 administrative or judicial order of exclusion, de-
14 portation, or removal, unless the alien has re-
15 mained in the United States under color of law
16 or received the order before attaining the age of
17 16 years.

18 (2) WAIVER.—The Secretary may waive the
19 grounds of ineligibility under section 212(a)(6) of
20 the Immigration and Nationality Act and the
21 grounds of deportability under paragraphs (1), (3),
22 and (6) of section 237(a) of that Act for humani-
23 tarian purposes or family unity or when it is other-
24 wise in the public interest.

1 (3) PROCEDURES.—The Secretary shall provide
 2 a procedure by regulation allowing eligible individ-
 3 uals to apply affirmatively for the relief available
 4 under this subsection without being placed in re-
 5 moval proceedings.

6 (b) TERMINATION OF CONTINUOUS PERIOD.—For
 7 purposes of this section, any period of continuous resi-
 8 dence or continuous physical presence in the United States
 9 of an alien who applies for cancellation of removal under
 10 this section shall not terminate when the alien is served
 11 a notice to appear under section 239(a) of the Immigra-
 12 tion and Nationality Act (8 U.S.C. 1229(a)).

13 (c) TREATMENT OF CERTAIN BREAKS IN PRES-
 14 ENCE.—

15 (1) IN GENERAL.—An alien shall be considered
 16 to have failed to maintain continuous physical pres-
 17 ence in the United States under subsection (a) if the
 18 alien has departed from the United States for any
 19 period in excess of 90 days or for any periods in the
 20 aggregate exceeding 180 days.

21 (2) EXTENSIONS FOR EXCEPTIONAL CIR-
 22 CUMSTANCES.—The Secretary may extend the time
 23 periods described in paragraph (1) if the alien dem-
 24 onstrates that the failure to timely return to the
 25 United States was due to exceptional circumstances.

1 The exceptional circumstances determined sufficient
2 to justify an extension should be no less compelling
3 than serious illness of the alien, or death or serious
4 illness of a parent, grandparent, sibling, or child.

5 (d) EXEMPTION FROM NUMERICAL LIMITATIONS.—

6 Nothing in this section may be construed to apply a nu-
7 merical limitation on the number of aliens who may be
8 eligible for cancellation of removal or adjustment of status
9 under this section.

10 (e) REGULATIONS.—

11 (1) PROPOSED REGULATIONS.—Not later than
12 180 days after the date of enactment of this Act, the
13 Secretary shall publish proposed regulations imple-
14 menting this section. Such regulations shall be effec-
15 tive immediately on an interim basis, but are subject
16 to change and revision after public notice and oppor-
17 tunity for a period for public comment.

18 (2) INTERIM, FINAL REGULATIONS.—Within a
19 reasonable time after publication of the interim reg-
20 ulations in accordance with paragraph (1), the Sec-
21 retary shall publish final regulations implementing
22 this section.

23 (f) REMOVAL OF ALIEN.—The Secretary may not re-
24 move any alien who has a pending application for condi-
25 tional status under this subtitle.

1 **SEC. 625. CONDITIONAL PERMANENT RESIDENT STATUS.**

2 (a) IN GENERAL.—

3 (1) CONDITIONAL BASIS FOR STATUS.—Not-
4 withstanding any other provision of law, and except
5 as provided in section 626, an alien whose status has
6 been adjusted under section 624 to that of an alien
7 lawfully admitted for permanent residence shall be
8 considered to have obtained such status on a condi-
9 tional basis subject to the provisions of this section.
10 Such conditional permanent resident status shall be
11 valid for a period of 6 years, subject to termination
12 under subsection (b).

13 (2) NOTICE OF REQUIREMENTS.—

14 (A) AT TIME OF OBTAINING PERMANENT
15 RESIDENCE.—At the time an alien obtains per-
16 manent resident status on a conditional basis
17 under paragraph (1), the Secretary shall pro-
18 vide for notice to the alien regarding the provi-
19 sions of this section and the requirements of
20 subsection (c) to have the conditional basis of
21 such status removed.

22 (B) EFFECT OF FAILURE TO PROVIDE NO-
23 TICE.—The failure of the Secretary to provide
24 a notice under this paragraph—

1 (i) shall not affect the enforcement of
 2 the provisions of this subtitle with respect
 3 to the alien; and

4 (ii) shall not give rise to any private
 5 right of action by the alien.

6 (b) TERMINATION OF STATUS.—

7 (1) IN GENERAL.—The Secretary shall termi-
 8 nate the conditional permanent resident status of
 9 any alien who obtained such status under this sub-
 10 title, if the Secretary determines that the alien—

11 (A) ceases to meet the requirements of
 12 subparagraph (B) or (C) of section 624(a)(1);

13 (B) has become a public charge; or

14 (C) has received a dishonorable or other
 15 than honorable discharge from the uniformed
 16 services.

17 (2) RETURN TO PREVIOUS IMMIGRATION STA-
 18 TUS.—Any alien whose conditional permanent resi-
 19 dent status is terminated under paragraph (1) shall
 20 return to the immigration status the alien had im-
 21 mediately prior to receiving conditional permanent
 22 resident status under this subtitle.

23 (c) REQUIREMENTS OF TIMELY PETITION FOR RE-
 24 MOVAL OF CONDITION.—

1 (1) IN GENERAL.—In order for the conditional
2 basis of permanent resident status obtained by an
3 alien under subsection (a) to be removed, the alien
4 must file with the Secretary, in accordance with
5 paragraph (3), a petition which requests the removal
6 of such conditional basis and which provides, under
7 penalty of perjury, the facts and information so that
8 the Secretary may make the determination described
9 in paragraph (2)(A).

10 (2) ADJUDICATION OF PETITION TO REMOVE
11 CONDITION.—

12 (A) IN GENERAL.—If a petition is filed in
13 accordance with paragraph (1) for an alien, the
14 Secretary shall make a determination as to
15 whether the alien meets the requirements set
16 out in subparagraphs (A) through (E) of sub-
17 section (d)(1).

18 (B) REMOVAL OF CONDITIONAL BASIS IF
19 FAVORABLE DETERMINATION.—If the Secretary
20 determines that the alien meets such require-
21 ments, the Secretary shall notify the alien of
22 such determination and immediately remove the
23 conditional basis of the status of the alien.

24 (C) TERMINATION IF ADVERSE DETER-
25 MINATION.—If the Secretary determines that

1 the alien does not meet such requirements, the
2 Secretary shall notify the alien of such deter-
3 mination and terminate the conditional perma-
4 nent resident status of the alien as of the date
5 of the determination.

6 (3) TIME TO FILE PETITION.—An alien may pe-
7 tition to remove the conditional basis to lawful resi-
8 dent status during the period beginning 180 days
9 before and ending 2 years after either the date that
10 is 6 years after the date of the granting of condi-
11 tional permanent resident status or any other expi-
12 ration date of the conditional permanent resident
13 status as extended by the Secretary in accordance
14 with this subtitle. The alien shall be deemed in con-
15 ditional permanent resident status in the United
16 States during the period in which the petition is
17 pending.

18 (d) DETAILS OF PETITION.—

19 (1) CONTENTS OF PETITION.—Each petition
20 for an alien under subsection (c)(1) shall contain in-
21 formation to permit the Secretary to determine
22 whether each of the following requirements is met:

23 (A) The alien has demonstrated good
24 moral character during the entire period the

1 alien has been a conditional permanent resi-
2 dent.

3 (B) The alien is in compliance with section
4 624(a)(1)(C).

5 (C) The alien has not abandoned the
6 alien's residence in the United States. The Sec-
7 retary shall presume that the alien has aban-
8 doned such residence if the alien is absent from
9 the United States for more than 365 days, in
10 the aggregate, during the period of conditional
11 residence, unless the alien demonstrates that
12 alien has not abandoned the alien's residence.
13 An alien who is absent from the United States
14 due to active service in the uniformed services
15 has not abandoned the alien's residence in the
16 United States during the period of such service.

17 (D) The alien has completed at least 1 of
18 the following:

19 (i) The alien has acquired a degree
20 from an institution of higher education in
21 the United States or has completed at
22 least 2 years, in good standing, in a pro-
23 gram for a bachelor's degree or higher de-
24 gree in the United States.

1 (ii) The alien has served in the uni-
2 formed services for at least 2 years and, if
3 discharged, has received an honorable dis-
4 charge.

5 (E) The alien has provided a list of all of
6 the secondary educational institutions that the
7 alien attended in the United States.

8 (2) HARDSHIP EXCEPTION.—

9 (A) IN GENERAL.—The Secretary may, in
10 the Secretary’s discretion, remove the condi-
11 tional status of an alien if the alien—

12 (i) satisfies the requirements of sub-
13 paragraphs (A), (B), and (C) of paragraph
14 (1);

15 (ii) demonstrates compelling cir-
16 cumstances for the inability to complete
17 the requirements described in paragraph
18 (1)(D); and

19 (iii) demonstrates that the alien’s re-
20 moval from the United States would result
21 in exceptional and extremely unusual hard-
22 ship to the alien or the alien’s spouse, par-
23 ent, or child who is a citizen or a lawful
24 permanent resident of the United States.

1 (B) EXTENSION.—Upon a showing of good
2 cause, the Secretary may extend the period of
3 the conditional resident status for the purpose
4 of completing the requirements described in
5 paragraph (1)(D).

6 (e) TREATMENT OF PERIOD FOR PURPOSES OF NAT-
7 URALIZATION.—For purposes of title III of the Immigra-
8 tion and Nationality Act (8 U.S.C. 1401 et seq.), in the
9 case of an alien who is in the United States as a lawful
10 permanent resident on a conditional basis under this sec-
11 tion, the alien shall be considered to have been admitted
12 as an alien lawfully admitted for permanent residence and
13 to be in the United States as an alien lawfully admitted
14 to the United States for permanent residence. However,
15 the conditional basis must be removed before the alien
16 may apply for naturalization.

17 **SEC. 626. RETROACTIVE BENEFITS.**

18 If, on the date of enactment of this Act, an alien has
19 satisfied all the requirements of subparagraphs (A)
20 through (E) of section 624(a)(1) and section
21 625(d)(1)(D), the Secretary may adjust the status of the
22 alien to that of a conditional resident in accordance with
23 section 624. The alien may petition for removal of such
24 condition at the end of the conditional residence period
25 in accordance with section 625(c) if the alien has met the

1 requirements of subparagraphs (A), (B), and (C) of sec-
2 tion 625(d)(1) during the entire period of conditional resi-
3 dence.

4 **SEC. 627. EXCLUSIVE JURISDICTION.**

5 (a) IN GENERAL.—The Secretary shall have exclusive
6 jurisdiction to determine eligibility for relief under this
7 subtitle, except where the alien has been placed into depor-
8 tation, exclusion, or removal proceedings either prior to
9 or after filing an application for relief under this subtitle,
10 in which case the Attorney General shall have exclusive
11 jurisdiction and shall assume all the powers and duties
12 of the Secretary until proceedings are terminated, or if
13 a final order of deportation, exclusion, or removal is en-
14 tered the Secretary shall resume all powers and duties del-
15 egated to the Secretary under this subtitle.

16 (b) STAY OF REMOVAL OF CERTAIN ALIENS EN-
17 ROLLED IN PRIMARY OR SECONDARY SCHOOL.—The At-
18 torney General shall stay the removal proceedings of any
19 alien who—

20 (1) meets all the requirements of subpara-
21 graphs (A), (B), (C), and (E) of section 624(a)(1);

22 (2) is at least 12 years of age; and

23 (3) is enrolled full time in a primary or sec-
24 ondary school.

1 (c) EMPLOYMENT.—An alien whose removal is stayed
 2 pursuant to subsection (b) may be engaged in employment
 3 in the United States, consistent with the Fair Labor
 4 Standards Act (29 U.S.C. 201 et seq.), and State and
 5 local laws governing minimum age for employment.

6 (d) LIFT OF STAY.—The Attorney General shall lift
 7 the stay granted pursuant to subsection (b) if the alien—

8 (1) is no longer enrolled in a primary or sec-
 9 ondary school; or

10 (2) ceases to meet the requirements of sub-
 11 section (b)(1).

12 **SEC. 628. PENALTIES FOR FALSE STATEMENTS IN APPLICA-**
 13 **TION.**

14 Whoever files an application for relief under this sub-
 15 title and willfully and knowingly falsifies, misrepresents,
 16 or conceals a material fact or makes any false or fraudu-
 17 lent statement or representation, or makes or uses any
 18 false writing or document knowing the same to contain
 19 any false or fraudulent statement or entry, shall be fined
 20 in accordance with title 18, United States Code, or impris-
 21 oned not more than 5 years, or both.

22 **SEC. 629. CONFIDENTIALITY OF INFORMATION.**

23 (a) PROHIBITION.—No officer or employee of the
 24 United States may—

1 (1) use the information furnished by the appli-
2 cant pursuant to an application filed under this sub-
3 title to initiate removal proceedings against any per-
4 sons identified in the application;

5 (2) make any publication whereby the informa-
6 tion furnished by any particular individual pursuant
7 to an application under this subtitle can be identi-
8 fied; or

9 (3) permit anyone other than an officer or em-
10 ployee of the United States Government or, in the
11 case of applications filed under this subtitle with a
12 designated entity, that designated entity, to examine
13 applications filed under this subtitle.

14 (b) REQUIRED DISCLOSURE.—The Attorney General
15 or the Secretary shall provide the information furnished
16 under this section, and any other information derived from
17 such furnished information, to—

18 (1) a duly recognized law enforcement entity in
19 connection with an investigation or prosecution of an
20 offense described in paragraph (2) or (3) of section
21 212(a) of the Immigration and Nationality Act (8
22 U.S.C. 1182(a)), when such information is requested
23 in writing by such entity; or

24 (2) an official coroner for purposes of affirma-
25 tively identifying a deceased individual (whether or

1 not such individual is deceased as a result of a
2 crime).

3 (c) PENALTY.—Whoever knowingly uses, publishes,
4 or permits information to be examined in violation of this
5 section shall be fined not more than \$10,000.

6 **SEC. 630. EXPEDITED PROCESSING OF APPLICATIONS; PRO-**
7 **HIBITION ON FEES.**

8 Regulations promulgated under this subtitle shall
9 provide that applications under this subtitle will be consid-
10 ered on an expedited basis and without a requirement for
11 the payment by the applicant of any additional fee for
12 such expedited processing.

13 **SEC. 631. HIGHER EDUCATION ASSISTANCE.**

14 Notwithstanding any provision of the Higher Edu-
15 cation Act of 1965 (20 U.S.C. 1001 et seq.), with respect
16 to assistance provided under title IV of the Higher Edu-
17 cation Act of 1965 (20 U.S.C. 1070 et seq.), an alien who
18 adjusts status to that of a lawful permanent resident
19 under this subtitle shall be eligible only for the following
20 assistance under such title IV:

21 (1) Student loans under parts B, D, and E of
22 such title IV (20 U.S.C. 1071 et seq., 1087a et seq.,
23 1087aa et seq.), subject to the requirements of such
24 parts.

1 (2) Federal work-study programs under part C
2 of such title IV (42 U.S.C. 2751 et seq.), subject to
3 the requirements of such part.

4 (3) Services under such title IV (20 U.S.C.
5 1070 et seq.), subject to the requirements for such
6 services.

7 **SEC. 632. GAO REPORT.**

8 Seven years after the date of enactment of this Act,
9 the Comptroller General of the United States shall submit
10 a report to the Committee on the Judiciary of the Senate
11 and the Committee on the Judiciary of the House of Rep-
12 resentatives, which sets forth—

13 (1) the number of aliens who were eligible for
14 cancellation of removal and adjustment of status
15 under section 624(a);

16 (2) the number of aliens who applied for adjust-
17 ment of status under section 624(a);

18 (3) the number of aliens who were granted ad-
19 justment of status under section 624(a); and

20 (4) the number of aliens whose conditional per-
21 manent resident status was removed under section
22 625.

**Subtitle D—Programs To Assist
Nonimmigrant Workers**

**SEC. 641. INELIGIBILITY AND REMOVAL PRIOR TO APPLI-
CATION PERIOD.**

(a) LIMITATIONS ON INELIGIBILITY.—

(1) IN GENERAL.—An alien is not ineligible for any immigration benefit under any provision of this title, or any amendment made by this title, solely on the basis that the alien violated section 1543, 1544, or 1546 of chapter 75 of title 18, United States Code, during the period beginning on the date of the enactment of this Act and ending on the date that the Department of Homeland Security begins accepting applications for benefits under title VI.

(2) PROSECUTION.—An alien who commits a violation of such section 1543, 1544, or 1546 during the period beginning on the date the enactment of this Act and ending on the date that the alien applies for eligibility for such benefit may be prosecuted for the violation if the alien's application for such benefit is denied.

(b) LIMITATION ON REMOVAL.—If an alien who is apprehended prior to the beginning of the applicable application period described in a provision of this title, or an amendment made by this title, is able to establish prima

1 facie eligibility for an adjustment of status under such a
2 provision, the alien may not be removed from the United
3 States for any reason until the date that is 180 days after
4 the first day of such applicable application period unless
5 the alien has engaged in criminal conduct or is a threat
6 to the national security of the United States.

7 **SEC. 642. GRANTS TO SUPPORT PUBLIC EDUCATION AND**
8 **COMMUNITY TRAINING.**

9 (a) GRANTS AUTHORIZED.—The Assistant Attorney
10 General, Office of Justice Programs, may award grants
11 to qualified non-profit community organizations to edu-
12 cate, train, and support non-profit agencies, immigrant
13 communities, and other interested entities regarding the
14 provisions of this Act and the amendments made by this
15 Act.

16 (b) USE OF FUNDS.—

17 (1) IN GENERAL.—Grants awarded under this
18 section shall be used—

19 (A) for public education, training, technical
20 assistance, government liaison, and all related
21 costs (including personnel and equipment) in-
22 curred by the grantee in providing services re-
23 lated to this Act; and

24 (B) to educate, train, and support non-
25 profit organizations, immigrant communities,

1 and other interested parties regarding this Act
2 and the amendments made by this Act and on
3 matters related to its implementation.

4 (2) EDUCATION.—In addition to the purposes
5 described in paragraph (1), grants awarded under
6 this section shall be used to—

7 (A) educate immigrant communities and
8 other interested entities regarding—

9 (i) the individuals and organizations
10 that can provide authorized legal represen-
11 tation in immigration matters under regu-
12 lations prescribed by the Secretary; and

13 (ii) the dangers of securing legal ad-
14 vice and assistance from those who are not
15 authorized to provide legal representation
16 in immigration matters;

17 (B) educate interested entities regarding
18 the requirements for obtaining nonprofit rec-
19 ognition and accreditation to represent immi-
20 grants under regulations prescribed by the Sec-
21 retary;

22 (C) provide nonprofit agencies with train-
23 ing and technical assistance on the recognition
24 and accreditation process; and

1 (D) educate nonprofit community organi-
 2 zations, immigrant communities, and other in-
 3 terested entities regarding—

4 (i) the process for obtaining benefits
 5 under this Act or under an amendment
 6 made by this Act; and

7 (ii) the availability of authorized legal
 8 representation for low-income persons who
 9 may qualify for benefits under this Act or
 10 under an amendment made by this Act.

11 (c) DIVERSITY.—The Assistant Attorney General
 12 shall ensure, to the extent possible, that the nonprofit
 13 community organizations receiving grants under this sec-
 14 tion serve geographically diverse locations and ethnically
 15 diverse populations who may qualify for benefits under the
 16 Act.

17 (d) AUTHORIZATION OF APPROPRIATIONS.—There
 18 are authorized to be appropriated to the Office of Justice
 19 Programs of the Department of Justice such sums as may
 20 be necessary for each of the fiscal years 2007 through
 21 2009 to carry out this section.

22 **SEC. 643. STRENGTHENING AMERICAN CITIZENSHIP.**

23 (a) SHORT TITLE.—This section may be cited as the
 24 “Strengthening American Citizenship Act of 2006”.

1 (b) DEFINITION.—In this section, the term “Oath of
2 Allegiance” means the binding oath (or affirmation) of al-
3 legiance required to be naturalized as a citizen of the
4 United States, as prescribed in section 337(e) of the Im-
5 migration and Nationality Act, as added by subsection
6 (h)(1)(B).

7 (c) ENGLISH FLUENCY.—

8 (1) EDUCATION GRANTS.—

9 (A) ESTABLISHMENT.—The Chief of the
10 Office of Citizenship of the Department (re-
11 ferred to in this paragraph as the “Chief”)
12 shall establish a grant program to provide
13 grants in an amount not to exceed \$500 to as-
14 sist legal residents of the United States who de-
15 clare an intent to apply for citizenship in the
16 United States to meet the requirements under
17 section 312 of the Immigration and Nationality
18 Act (8 U.S.C. 1423).

19 (B) USE OF FUNDS.—Grant funds award-
20 ed under this paragraph shall be paid directly
21 to an accredited institution of higher education
22 or other qualified educational institution (as de-
23 termined by the Chief) for tuition, fees, books,
24 and other educational resources required by a

1 course on the English language in which the
2 legal resident is enrolled.

3 (C) APPLICATION.—A legal resident desir-
4 ing a grant under this paragraph shall submit
5 an application to the Chief at such time, in
6 such manner, and accompanied by such infor-
7 mation as the Chief may reasonably require.

8 (D) PRIORITY.—If insufficient funds are
9 available to award grants to all qualified appli-
10 cants, the Chief shall give priority based on the
11 financial need of the applicants.

12 (E) NOTICE.—The Secretary, upon rel-
13 evant registration of a legal resident with the
14 Department, shall notify such legal resident of
15 the availability of grants under this paragraph
16 for legal residents who declare an intent to
17 apply for United States citizenship.

18 (F) DEFINITION.—For purposes of this
19 subsection, the term “legal resident” means a
20 lawful permanent resident or a lawfully admit-
21 ted alien who, in order to adjust status to that
22 of a lawful permanent resident must dem-
23 onstrate a knowledge of the English language
24 or satisfactory pursuit of a course of study to

1 acquire such knowledge of the English lan-
2 guage.

3 (2) FASTER CITIZENSHIP FOR ENGLISH FLU-
4 ENCY.—Section 316 (8 U.S.C. 1427) is amended by
5 adding at the end the following:

6 “(g) A lawful permanent resident of the United
7 States who demonstrates English fluency, in accordance
8 with regulations prescribed by the Secretary of Homeland
9 Security, in consultation with the Secretary of State, will
10 satisfy the residency requirement under subsection (a)
11 upon the completion of 4 years of continuous legal resi-
12 dency in the United States.”.

13 (3) SAVINGS PROVISION.—Nothing in this sub-
14 section shall be construed to—

15 (A) modify the English language require-
16 ments for naturalization under section
17 312(a)(1) of the Immigration and Nationality
18 Act (8 U.S.C. 1423(a)(1)); or

19 (B) influence the naturalization test rede-
20 sign process of the Office of Citizenship (except
21 for the requirement under subsection (h)(2)).

22 (d) AMERICAN CITIZENSHIP GRANT PROGRAM.—

23 (1) IN GENERAL.—The Secretary shall establish
24 a competitive grant program to provide financial as-
25 sistance for—

1 (A) efforts by entities (including veterans
2 and patriotic organizations) certified by the Of-
3 fice of Citizenship to promote the patriotic inte-
4 gration of prospective citizens into the Amer-
5 ican way of life by providing civics, history, and
6 English as a second language courses, with a
7 specific emphasis on attachment to principles of
8 the Constitution of the United States, the he-
9 roes of American history (including military he-
10 roes), and the meaning of the Oath of Alle-
11 giance; and

12 (B) other activities approved by the Sec-
13 retary to promote the patriotic integration of
14 prospective citizens and the implementation of
15 the Immigration and Nationality Act (8 U.S.C.
16 1101 et seq.), including grants—

17 (i) to promote an understanding of
18 the form of government and history of the
19 United States; and

20 (ii) to promote an attachment to the
21 principles of the Constitution of the United
22 States and the well being and happiness of
23 the people of the United States.

24 (2) ACCEPTANCE OF GIFTS.—The Secretary
25 may accept and use gifts from the United States

1 Citizenship Foundation, if the foundation is estab-
 2 lished under subsection (e), for grants under this
 3 subsection.

4 (3) AUTHORIZATION OF APPROPRIATIONS.—
 5 There are authorized to be appropriated such sums
 6 as may be necessary to carry out this subsection.

7 (e) FUNDING FOR THE OFFICE OF CITIZENSHIP.—

8 (1) AUTHORIZATION.—The Secretary, acting
 9 through the Director of the Bureau of Citizenship
 10 and Immigration Services, is authorized to establish
 11 the United States Citizenship Foundation (referred
 12 to in this subsection as the “Foundation”), an orga-
 13 nization duly incorporated in the District of Colum-
 14 bia, exclusively for charitable and educational pur-
 15 poses to support the functions of the Office of Citi-
 16 zenship.

17 (2) DEDICATED FUNDING.—

18 (A) IN GENERAL.—Not less than 1.5 per-
 19 cent of the funds made available to the Bureau
 20 of Citizenship and Immigration Services from
 21 fees shall be dedicated to the functions of the
 22 Office of Citizenship, which shall include the
 23 patriotic integration of prospective citizens
 24 into—

(i) American common values and traditions, including an understanding of American history and the principles of the Constitution of the United States; and

(ii) civic traditions of the United States, including the Pledge of Allegiance, respect for the flag of the United States, and voting in public elections.

(B) SENSE OF CONGRESS.—It is the sense of Congress that dedicating increased funds to the Office of Citizenship should not result in an increase in fees charged by the Bureau of Citizenship and Immigration Services.

(3) GIFTS.—

(A) TO FOUNDATION.—The Foundation may solicit, accept, and make gifts of money and other property in accordance with section 501(c)(3) of the Internal Revenue Code of 1986.

(B) FROM FOUNDATION.—The Office of Citizenship may accept gifts from the Foundation to support the functions of the Office.

(4) AUTHORIZATION OF APPROPRIATIONS.—

There are authorized to be appropriated such sums as may be necessary to carry out the mission of the

1 Office of Citizenship, including the functions de-
 2 scribed in paragraph (2)(A).

3 (f) RESTRICTION ON USE OF FUNDS.—No funds ap-
 4 propriated to carry out a program under this subsection
 5 (d) or (e) may be used to organize individuals for the pur-
 6 pose of political activism or advocacy.

7 (g) REPORTING REQUIREMENT.—

8 (1) IN GENERAL.—The Chief of the Office of
 9 Citizenship shall submit an annual report to the
 10 Committee on Health, Education, Labor, and Pen-
 11 sions of the Senate, the Committee on the Judiciary
 12 of the Senate, the Committee on Education and the
 13 Workforce of the House of Representatives, and the
 14 Committee on the Judiciary of the House of Rep-
 15 resentatives.

16 (2) CONTENTS.—The report submitted under
 17 paragraph (1) shall include—

18 (A) a list of the entities that have received
 19 funds from the Office of Citizenship during the
 20 reporting period under this section and the
 21 amount of funding received by each such entity;

22 (B) an evaluation of the extent to which
 23 grants received under this section successfully
 24 promoted an understanding of—

25 (i) the English language; and

1 (ii) American history and government,
 2 including the heroes of American history,
 3 the meaning of the Oath of Allegiance, and
 4 an attachment to the principles of the Con-
 5 stitution of the United States; and

6 (C) information about the number of legal
 7 residents who were able to achieve the knowl-
 8 edge described under paragraph (2) as a result
 9 of the grants provided under this section.

10 (h) OATH OR AFFIRMATION OF RENUNCIATION AND
 11 ALLEGIANCE.—

12 (1) REVISION OF OATH.—Section 337 (8 U.S.C.
 13 1448) is amended—

14 (A) in subsection (a), by striking “under
 15 section 310(b) an oath” and all that follows
 16 through “personal moral code.” and inserting
 17 “under section 310(b), the oath (or affirmation)
 18 of allegiance prescribed in subsection (e).”; and

19 (B) by adding at the end the following:
 20 “(e)(1) Subject to paragraphs (2) and (3), the oath
 21 (or affirmation) of allegiance prescribed in this subsection
 22 is as follows: ‘I take this oath solemnly, freely, and without
 23 any mental reservation. I absolutely and entirely renounce
 24 all allegiance to any foreign state or power of which I have
 25 been a subject or citizen. My fidelity and allegiance from

1 this day forward are to the United States of America. I
 2 will bear true faith and allegiance to the Constitution and
 3 laws of the United States, and will support and defend
 4 them against all enemies, foreign and domestic. I will bear
 5 arms, or perform noncombatant military or civilian serv-
 6 ice, on behalf of the United States when required by law.
 7 This I do solemnly swear, so help me God.’.

8 “(2) If a person, by reason of religious training and
 9 belief (or individual interpretation thereof) or for other
 10 reasons of good conscience, cannot take the oath pre-
 11 scribed in paragraph (1)—

12 “(A) with the term ‘oath’ included, the term
 13 ‘affirmation’ shall be substituted for the term ‘oath’;
 14 and

15 “(B) with the phrase ‘so help me God’ included,
 16 the phrase ‘so help me God’ shall be omitted.

17 “(3) If a person shows by clear and convincing evi-
 18 dence to the satisfaction of the Attorney General that such
 19 person, by reason of religious training and belief, cannot
 20 take the oath prescribed in paragraph (1)—

21 “(A) because such person is opposed to the
 22 bearing of arms in the Armed Forces of the United
 23 States, the words ‘bear arms, or’ shall be omitted;
 24 and

1 “(B) because such person is opposed to any
2 type of service in the Armed Forces of the United
3 States, the words ‘bear arms, or’ and ‘noncombatant
4 military or’ shall be omitted.

5 “(4) As used in this subsection, the term ‘religious
6 training and belief”—

7 “(A) means a belief of an individual in relation
8 to a Supreme Being involving duties superior to
9 those arising from any human relation; and

10 “(B) does not include essentially political, socio-
11 logical, or philosophical views or a merely personal
12 moral code.

13 “(5) Any reference in this title to ‘oath’ or ‘oath of
14 allegiance’ under this section shall be deemed to refer to
15 the oath (or affirmation) of allegiance prescribed under
16 this subsection.”.

17 (2) HISTORY AND GOVERNMENT TEST.—The
18 Secretary shall incorporate a knowledge and under-
19 standing of the meaning of the Oath of Allegiance
20 into the history and government test given to appli-
21 cants for citizenship.

22 (3) NOTICE TO FOREIGN EMBASSIES.—Upon
23 the naturalization of a new citizen, the Secretary, in
24 cooperation with the Secretary of State, shall notify

1 the embassy of the country of which the new citizen
 2 was a citizen or subject that such citizen has—

3 (A) renounced allegiance to that foreign
 4 country; and

5 (B) sworn allegiance to the United States.

6 (4) EFFECTIVE DATE.—The amendments made
 7 by paragraph (1) shall take effect on the date that
 8 is 6 months after the date of enactment of this Act.

9 (i) ESTABLISHMENT OF NEW CITIZENS AWARD PRO-
 10 GRAM.—

11 (1) ESTABLISHMENT.—There is established a
 12 new citizens award program to recognize citizens
 13 who—

14 (A) have made an outstanding contribution
 15 to the United States; and

16 (B) were naturalized during the 10-year
 17 period ending on the date of such recognition.

18 (2) PRESENTATION AUTHORIZED.—

19 (A) IN GENERAL.—The President is au-
 20 thorized to present a medal, in recognition of
 21 outstanding contributions to the United States,
 22 to citizens described in paragraph (1).

23 (B) MAXIMUM NUMBER OF AWARDS.—Not
 24 more than 10 citizens may receive a medal
 25 under this subsection in any calendar year.

1 (3) DESIGN AND STRIKING.—The Secretary of
2 the Treasury shall strike a medal with suitable em-
3 blems, devices, and inscriptions, to be determined by
4 the President.

5 (4) NATIONAL MEDALS.—The medals struck
6 pursuant to this subsection are national medals for
7 purposes of chapter 51 of title 31, United States
8 Code.

9 (j) NATURALIZATION CEREMONIES.—

10 (1) IN GENERAL.—The Secretary, in consulta-
11 tion with the Director of the National Park Service,
12 the Archivist of the United States, and other appro-
13 priate Federal officials, shall develop and implement
14 a strategy to enhance the public awareness of natu-
15 ralization ceremonies.

16 (2) VENUES.—In developing the strategy under
17 this subsection, the Secretary shall consider the use
18 of outstanding and historic locations as venues for
19 select naturalization ceremonies.

20 (3) REPORTING REQUIREMENT.—The Secretary
21 shall submit an annual report to Congress that
22 includes—

23 (A) the content of the strategy developed
24 under this subsection; and

1 (B) the progress made towards the imple-
2 mentation of such strategy.

3 **SEC. 644. SUPPLEMENTAL IMMIGRATION FEE.**

4 (a) AUTHORIZATION OF FEE.—

5 (1) IN GENERAL.—Subject to paragraph (2),
6 any alien who receives any immigration benefit
7 under this title, or the amendments made by this
8 title, shall, before receiving such benefit, pay a fee
9 to the Secretary in an amount equal to \$500, in ad-
10 dition to other applicable fees and penalties imposed
11 under this title, or the amendments made by this
12 title.

13 (2) FEES CONTINGENT ON APPROPRIATIONS.—

14 No fee may be collected under this section except to
15 the extent that the expenditure of the fee to pay the
16 costs of activities and services for which the fee is
17 imposed, as described in subsection (b), is provided
18 for in advance in an appropriations Act.

19 (b) DEPOSIT AND EXPENDITURE OF FEES.—

20 (1) DEPOSIT.—Amounts collected under sub-
21 section (a) shall be deposited as an offsetting collec-
22 tion in, and credited to, the accounts providing
23 appropriations—

1 (A) to carry out the apprehension and de-
2 tention of any alien who is inadmissible by rea-
3 son of any offense described in section 212(a);

4 (B) to carry out the apprehension and de-
5 tention of any alien who is deportable for any
6 offense under section 237(a);

7 (C) to acquire border sensor and surveil-
8 lance technology;

9 (D) for air and marine interdiction, oper-
10 ations, maintenance, and procurement;

11 (E) for construction projects in support of
12 the United States Customs and Border Protec-
13 tion;

14 (F) to train Federal law enforcement per-
15 sonnel; and

16 (G) for maritime security activities.

17 (2) AVAILABILITY OF FEES.—Amounts depos-
18 ited under paragraph (1) shall remain available until
19 expended for the activities and services described in
20 paragraph (1).

21 **SEC. 645. ADDRESSING POVERTY IN MEXICO.**

22 (a) FINDINGS.—Congress finds the following:

23 (1) There is a strong correlation between eco-
24 nomic freedom and economic prosperity.

1 (2) Trade policy, fiscal burden of government,
2 government intervention in the economy, monetary
3 policy, capital flows and foreign investment, banking
4 and finance, wages and prices, property rights, regu-
5 lation, and informal market activity are key factors
6 in economic freedom.

7 (3) Poverty in Mexico, including rural poverty,
8 can be mitigated through strengthened economic
9 freedom within Mexico.

10 (4) Strengthened economic freedom in Mexico
11 can be a major influence in mitigating illegal immi-
12 gration.

13 (5) Advancing economic freedom within Mexico
14 is an important part of any comprehensive plan to
15 understanding the sources of poverty and the path
16 to economic prosperity.

17 (b) GRANT AUTHORIZED.—The Secretary of State
18 may award a grant to a land grant university in the
19 United States to establish a national program for a broad,
20 university-based Mexican rural poverty mitigation pro-
21 gram.

22 (c) FUNCTIONS OF MEXICAN RURAL POVERTY MITI-
23 GATION PROGRAM.—The program established pursuant to
24 subsection (b) shall—

(1) match a land grant university in the United States with the lead Mexican public university in each of Mexico's 31 states to provide state-level coordination of rural poverty programs in Mexico;

(2) establish relationships and coordinate programmatic ties between universities in the United States and universities in Mexico to address the issue of rural poverty in Mexico;

(3) establish and coordinate relationships with key leaders in the United States and Mexico to explore the effect of rural poverty on illegal immigration of Mexicans into the United States; and

(4) address immigration and border security concerns through a university-based, binational approach for long-term institutional change.

(d) USE OF FUNDS.—

(1) AUTHORIZED USES.—Grant funds awarded under this section may be used—

(A) for education, training, technical assistance, and any related expenses (including personnel and equipment) incurred by the grantee in implementing a program described in subsection (a); and

(B) to establish an administrative structure for such program in the United States.

1 (2) LIMITATIONS.—Grant funds awarded under
 2 this section may not be used for activities, respon-
 3 sibilities, or related costs incurred by entities in
 4 Mexico.

5 (e) AUTHORIZATION OF APPROPRIATIONS.—There
 6 are authorized to be appropriated such funds as may be
 7 necessary to carry out this section.

8 **TITLE VII—MISCELLANEOUS**
 9 **Subtitle A—Immigration Litigation**
 10 **Reduction**

11 **CHAPTER 1—APPEALS AND REVIEW**

12 **SEC. 701. ADDITIONAL IMMIGRATION PERSONNEL.**

13 (a) DEPARTMENT OF HOMELAND SECURITY.—

14 (1) TRIAL ATTORNEYS.—In each of fiscal years
 15 2007 through 2011, the Secretary shall, subject to
 16 the availability of appropriations for such purpose,
 17 increase the number of positions for attorneys in the
 18 Office of General Counsel of the Department who
 19 represent the Department in immigration matters by
 20 not less than 100 above the number of such posi-
 21 tions for which funds were made available during
 22 each preceding fiscal year.

23 (2) AUTHORIZATION OF APPROPRIATIONS.—
 24 There are authorized to be appropriated to the Sec-
 25 retary for each of fiscal years 2007 through 2011

1 such sums as may be necessary to carry out this
2 subsection.

3 (b) DEPARTMENT OF JUSTICE.—

4 (1) LITIGATION ATTORNEYS.—In each of fiscal
5 years 2007 through 2011, the Attorney General
6 shall, subject to the availability of appropriations for
7 such purpose, increase by not less than 50 the num-
8 ber of positions for attorneys in the Office of Immi-
9 gration Litigation of the Department of Justice.

10 (2) UNITED STATES ATTORNEYS.—In each of
11 fiscal years 2007 through 2011, the Attorney Gen-
12 eral shall, subject to the availability of appropria-
13 tions for such purpose, increase by not less than 50
14 the number of attorneys in the United States Attor-
15 neys' office to litigate immigration cases in the Fed-
16 eral courts.

17 (3) IMMIGRATION JUDGES.—In each of fiscal
18 years 2007 through 2011, the Attorney General
19 shall, subject to the availability of appropriations for
20 such purpose—

21 (A) increase by not less than 20 the num-
22 ber of full-time immigration judges compared to
23 the number of such positions for which funds
24 were made available during the preceding fiscal
25 year; and

1 (B) increase by not less than 80 the num-
2 ber of positions for personnel to support the im-
3 migration judges described in subparagraph (A)
4 compared to the number of such positions for
5 which funds were made available during the
6 preceding fiscal year.

7 (4) STAFF ATTORNEYS.—In each of fiscal years
8 2007 through 2011, the Attorney General shall, sub-
9 ject to the availability of appropriations for such
10 purpose—

11 (A) increase by not less than 10 the num-
12 ber of positions for full-time staff attorneys in
13 the Board of Immigration Appeals compared to
14 the number of such positions for which funds
15 were made available during the preceding fiscal
16 year; and

17 (B) increase by not less than 10 the num-
18 ber of positions for personnel to support the
19 staff attorneys described in subparagraph (A)
20 compared to the number of such positions for
21 which funds were made available during the
22 preceding fiscal year

23 (5) AUTHORIZATION OF APPROPRIATIONS.—

24 There are authorized to be appropriated to the At-
25 torney General for each of the fiscal years 2007

1 through 2011 such sums as may be necessary to
 2 carry out this subsection, including the hiring of
 3 necessary support staff.

4 (c) ADMINISTRATIVE OFFICE OF THE UNITED
 5 STATES COURTS.—In each of the fiscal years 2007
 6 through 2011, the Director of the Administrative Office
 7 of the United States Courts shall, subject to the avail-
 8 ability of appropriations, increase by not less than 50 the
 9 number of attorneys in the Federal Defenders Program
 10 who litigate criminal immigration cases in the Federal
 11 courts.

12 **CHAPTER 2—IMMIGRATION REVIEW**

13 **REFORM**

14 **SEC. 702. BOARD OF IMMIGRATION APPEALS.**

15 (a) COMPOSITION AND APPOINTMENT.—Notwith-
 16 standing any other provision of law, the Board of Immi-
 17 gration Appeals of the Department of Justice (referred to
 18 in this section as the “Board”), shall be composed of a
 19 Chair and 22 other immigration appeals judges, who shall
 20 be appointed by the Attorney General. Upon the expiration
 21 of a term of office, a Board member may continue to act
 22 until a successor has been appointed and qualified.

23 (b) QUALIFICATIONS.—Each member of the Board,
 24 including the Chair, shall—

1 (1) be an attorney in good standing of a bar of
2 a State or the District of Columbia;

3 (2) have at least—

4 (A) 7 years of professional, legal expertise;

5 or

6 (B) 5 years of professional, legal expertise
7 in immigration and nationality law; and

8 (3) meet the minimum appointment require-
9 ments of an administrative law judge under title 5,
10 United States Code.

11 (c) DUTIES OF THE CHAIR.—The Chair of the Board,
12 subject to the supervision of the Director of the Executive
13 Office for Immigration Review, shall—

14 (1) be responsible, on behalf of the Board, for
15 the administrative operations of the Board and shall
16 have the power to appoint such administrative as-
17 sistants, attorneys, clerks, and other personnel as
18 may be needed for that purpose;

19 (2) direct, supervise, and establish internal op-
20 erating procedures and policies of the Board;

21 (3) designate a member of the Board to act as
22 Chair if the Chair is absent or unavailable;

23 (4) adjudicate cases as a member of the Board;

24 (5) form 3-member panels as provided by sub-
25 section (g);

1 (6) direct that a case be heard en banc as pro-
2 vided by subsection (h); and

3 (7) exercise such other authorities as the Direc-
4 tor may provide.

5 (d) BOARD MEMBERS DUTIES.—In deciding a case
6 before the Board, the Board—

7 (1) shall exercise independent judgment and
8 discretion; and

9 (2) may take any action that is appropriate and
10 necessary for the disposition of such case that is
11 consistent with the authority provided in this section
12 and any regulations established in accordance with
13 this section.

14 (e) JURISDICTION.—

15 (1) IN GENERAL.—The Board shall have juris-
16 diction to hear appeals described in section
17 1003.1(b) of title 8, Code of Federal Regulations (or
18 any corresponding similar regulation).

19 (2) LIMITATION.—The Board shall not have ju-
20 risdiction to hear an appeal of a decision of an im-
21 migration judge for an order of removal entered in
22 absentia.

23 (f) SCOPE OF REVIEW.—

24 (1) FINDINGS OR FACT.—The Board shall—

1 (A) accept findings of fact determined by
2 an immigration judge, including findings as to
3 the credibility of testimony, unless the findings
4 are clearly erroneous; and

5 (B) give due deference to an immigration
6 judge's application of the law to the facts.

7 (2) QUESTIONS OF LAW.—The Board shall re-
8 view de novo questions of law, discretion, and judg-
9 ment, and all other issues in appeals from decisions
10 of immigration judges.

11 (3) APPEALS FROM OFFICERS' DECISIONS.—

12 (A) STANDARD OF REVIEW.—The Board
13 shall review de novo all questions arising in ap-
14 peals from decisions issued by officers of the
15 Department.

16 (B) PROHIBITION OF FACT FINDING.—Ex-
17 cept for taking administrative notice of com-
18 monly known facts such as current events or
19 the contents of official documents, the Board
20 may not engage in fact-finding in the course of
21 deciding appeals.

22 (C) REMAND.—A party asserting that the
23 Board cannot properly resolve an appeal with-
24 out further fact-finding shall file a motion for
25 remand. If further fact-finding is needed in a

1 case, the Board shall remand the proceeding to
2 the immigration judge or, as appropriate, to the
3 Secretary.

4 (g) PANELS.—

5 (1) IN GENERAL.—Except as provided in para-
6 graph (5) all cases shall be subject to review by a
7 3-member panel. The Chair shall divide the Board
8 into 3-member panels and designate a presiding
9 member.

10 (2) AUTHORITY.—Each panel may exercise the
11 appropriate authority of the Board that is necessary
12 for the adjudication of cases before the Board.

13 (3) QUORUM.—Two members appointed to a
14 panel shall constitute a quorum for such panel.

15 (4) CHANGES IN COMPOSITION.—The Chair
16 may from time to time make changes in the com-
17 position of a panel and of the presiding member of
18 a panel.

19 (5) PRESIDING MEMBER DECISIONS.—The pre-
20 siding member of a panel may act alone on any mo-
21 tion as provided in paragraphs (2) and (3) of sub-
22 section (i) and may not otherwise dismiss or deter-
23 mine an appeal as a single Board member.

24 (h) EN BANC PROCESS.—

1 (1) IN GENERAL.—The Board may on its own
 2 motion, by a majority vote of the Board members,
 3 or by direction of the Chair—

4 (A) consider any case as the full Board en
 5 banc; or

6 (B) reconsider as the full Board en banc
 7 any case that has been considered or decided by
 8 a 3-member panel or by a limited en banc
 9 panel.

10 (2) QUORUM.—A majority of the Board mem-
 11 bers shall constitute a quorum of the Board sitting
 12 en banc.

13 (i) DECISIONS OF THE BOARD.—

14 (1) AFFIRMANCE WITHOUT OPINION.—Upon in-
 15 dividualized review of a case, the Board may affirm
 16 the decision of an immigration judge without opinion
 17 only if—

18 (A) the decision of the immigration judge
 19 resolved all issues in the case;

20 (B) the issue on appeal is squarely con-
 21 trolled by existing Board or Federal court
 22 precedent and does not involve the application
 23 of precedent to a novel fact situation;

24 (C) the factual and legal questions raised
 25 on appeal are so insubstantial that the case

1 does not warrant the issuance of a written opin-
2 ion in the case; and

3 (D) the Board approves both the result
4 reached in the decision below and all of the rea-
5 soning of that decision.

6 (2) SUMMARY DISMISSAL OF APPEALS.—The 3-
7 member panel or the presiding member acting alone
8 may summarily dismiss any appeal or portion of any
9 appeal in any case which—

10 (A) the party seeking the appeal fails to
11 specify the reasons for the appeal;

12 (B) the only reason for the appeal specified
13 by such party involves a finding of fact or a
14 conclusion of law that was conceded by that
15 party at a prior proceeding;

16 (C) the appeal is from an order that grant-
17 ed such party the relief that had been re-
18 quested;

19 (D) the appeal is determined to be filed for
20 an improper purpose, such as to cause unneces-
21 sary delay; or

22 (E) the appeal lacks an arguable basis in
23 fact or in law and is not supported by a good
24 faith argument for extension, modification, or
25 reversal of existing law.

1 (3) UNOPPOSED DISPOSITIONS.—The 3-member
2 panel or the presiding member acting alone may—

3 (A) grant an unopposed motion or a mo-
4 tion to withdraw an appeal pending before the
5 Board; or

6 (B) adjudicate a motion to remand any
7 appeal—

8 (i) from the decision of an officer of
9 the Department if the appropriate official
10 of the Department requests that the mat-
11 ter be remanded back for further consider-
12 ation;

13 (ii) if remand is required because of a
14 defective or missing transcript; or

15 (iii) if remand is required for any
16 other procedural or ministerial issue.

17 (4) NOTICE OF RIGHT TO APPEAL.—The deci-
18 sion by the Board shall include notice to the alien
19 of the alien’s right to file a petition for review in a
20 United States Court of Appeals not later than 30
21 days after the date of the decision.

22 **SEC. 703. IMMIGRATION JUDGES.**

23 (a) APPOINTMENT OF IMMIGRATION JUDGES.—

24 (1) IN GENERAL.—The Chief Immigration
25 Judge (as described in section 1003.9 of title 8,

1 Code of Federal Regulations, or any corresponding
2 similar regulation) and other immigration judges
3 shall be appointed by the Attorney General. Upon
4 the expiration of a term of office, the immigration
5 judge may continue to act until a successor has been
6 appointed and qualified.

7 (2) QUALIFICATIONS.—Each immigration
8 judge, including the Chief Immigration Judge, shall
9 be an attorney in good standing of a bar of a State
10 or the District of Columbia and shall have at least
11 5 years of professional, legal expertise or at least 3
12 years professional or legal expertise in immigration
13 and nationality law.

14 (b) JURISDICTION.—An Immigration judge shall
15 have the authority to hear matters related to any removal
16 proceeding pursuant to section 240 of the Immigration
17 and Nationality Act (8 U.S.C. 1229a) described in section
18 1240.1(a) of title 8, Code of Federal Regulations (or any
19 corresponding similar regulation).

20 (c) DUTIES OF IMMIGRATION JUDGES.—In deciding
21 a case, an immigration judge—

22 (1) shall exercise independent judgment and
23 discretion; and

24 (2) may take any action that is appropriate and
25 necessary for the disposition of such case that is

1 consistent with their authorities under this section
2 and regulations established in accordance with this
3 section.

4 (d) REVIEW.—Decisions of immigration judges are
5 subject to review by the Board of Immigration Appeals
6 in any case in which the Board has jurisdiction.

7 **SEC. 704. REMOVAL AND REVIEW OF JUDGES.**

8 No immigration judge or member of the Board may
9 be removed or otherwise subject to disciplinary or adverse
10 action for their exercise of independent judgment and dis-
11 cretion as prescribed by this chapter.

12 **SEC. 705. LEGAL ORIENTATION PROGRAM.**

13 (a) CONTINUED OPERATION.—The Director of the
14 Executive Office for Immigration Review shall continue to
15 operate a legal orientation program to provide basic infor-
16 mation about immigration court procedures for immigra-
17 tion detainees and shall expand the legal orientation pro-
18 gram to provide such information on a nationwide basis.

19 (b) AUTHORIZATION OF APPROPRIATIONS.—There
20 are authorized to be appropriated such sums as may be
21 necessary to carry out such legal orientation program.

22 **SEC. 706. REGULATIONS.**

23 Not later than 180 days after the date of the enact-
24 ment of this Act, the Attorney General shall issue regula-
25 tions to implement this subtitle.

1 **SEC. 707. GAO STUDY ON THE APPELLATE PROCESS FOR**
2 **IMMIGRATION APPEALS.**

3 (a) IN GENERAL.—The Comptroller General of the
4 United States shall, not later than 180 days after enact-
5 ment of this Act, conduct a study on the appellate process
6 for immigration appeals.

7 (b) REQUIREMENTS.—In conducting the study under
8 subsection (a), the Comptroller General shall consider the
9 possibility of consolidating all appeals from the Board of
10 Immigration Appeals and habeas corpus petitions in immi-
11 gration cases into 1 United States Court of Appeals, by—

12 (1) consolidating all such appeals into an exist-
13 ing circuit court, such as the United States Court of
14 Appeals for the Federal Circuit;

15 (2) consolidating all such appeals into a central-
16 ized appellate court consisting of active circuit court
17 judges temporarily assigned from the various cir-
18 cuits, in a manner similar to the Foreign Intel-
19 ligence Surveillance Court or the Temporary Emer-
20 gency Court of Appeals; or

21 (3) implementing a mechanism by which a
22 panel of active circuit court judges shall have the au-
23 thority to reassign such appeals from circuits with
24 relatively high caseloads to circuits with relatively
25 low caseloads.

1 (c) FACTORS TO CONSIDER.—In conducting the
2 study under subsection (a), the Comptroller General, in
3 consultation with the Attorney General, the Secretary, and
4 the Judicial Conference of the United States, shall
5 consider—

6 (1) the resources needed for each alternative,
7 including judges, attorneys and other support staff,
8 case management techniques including technological
9 requirements, physical infrastructure, and other pro-
10 cedural and logistical issues as appropriate;

11 (2) the impact of each plan on various circuits,
12 including their caseload in general and caseload per
13 panel;

14 (3) the possibility of utilizing case management
15 techniques to reduce the impact of any consolidation
16 option, such as requiring certificates of reviewability,
17 similar to procedures for habeas and existing sum-
18 mary dismissal procedures in local rules of the
19 courts of appeals;

20 (4) the effect of reforms in this Act on the abil-
21 ity of the circuit courts to adjudicate such appeals;

22 (5) potential impact, if any, on litigants; and

23 (6) other reforms to improve adjudication of
24 immigration matters, including appellate review of
25 motions to reopen and reconsider, and attorney fee

1 awards with respect to review of final orders of re-
2 moval.

3 **SEC. 708. SENIOR JUDGE PARTICIPATION IN THE SELEC-**
4 **TION OF MAGISTRATES.**

5 Section 631(a) of title 28, United States Code, is
6 amended by striking “Northern Mariana Islands” the first
7 place it appears and inserting “Northern Mariana Islands,
8 including any judge in regular active service and any judge
9 who has retired from regular active service under section
10 371(b) of this title,”.

11 **Subtitle B—Citizenship Assistance**
12 **for Members of the Armed Services**

13 **SEC. 711. SHORT TITLE.**

14 This subtitle may be cited as the “Kendell Frederick
15 Citizenship Assistance Act”.

16 **SEC. 712. WAIVER OF REQUIREMENT FOR FINGERPRINTS**
17 **FOR MEMBERS OF THE ARMED FORCES.**

18 Notwithstanding any other provision of law or any
19 regulation, the Secretary shall use the fingerprints pro-
20 vided by an individual at the time the individual enlists
21 in the Armed Forces to satisfy any requirement for finger-
22 prints as part of an application for naturalization if the
23 individual—

(1) may be naturalized pursuant to section 328 or 329 of the Immigration and Nationality Act (8 U.S.C. 1439 or 1440);

(2) was fingerprinted in accordance with the requirements of the Department of Defense at the time the individual enlisted in the Armed Forces; and

(3) submits an application for naturalization not later than 12 months after the date the individual enlisted in the Armed Forces.

SEC. 713. PROVISION OF INFORMATION ON NATURALIZATION TO MEMBERS OF THE ARMED FORCES.

The Secretary shall—

(1) establish a dedicated toll-free telephone service available only to members of the Armed Forces and the families of such members to provide information related to naturalization pursuant to section 328 or 329 of the Immigration and Nationality Act (8 U.S.C. 1439 or 1440), including the status of an application for such naturalization;

(2) ensure that the telephone service required by paragraph (1) is operated by employees of the Department who—

(A) have received specialized training on the naturalization process for members of the

1 Armed Forces and the families of such mem-
2 bers; and

3 (B) are physically located in the same unit
4 as the military processing unit that adjudicates
5 applications for naturalization pursuant to such
6 section 328 or 329; and

7 (3) implement a quality control program to
8 monitor, on a regular basis, the accuracy and quality
9 of information provided by the employees who oper-
10 ate the telephone service required by paragraph (1),
11 including the breadth of the knowledge related to the
12 naturalization process of such employees.

13 **SEC. 714. PROVISION OF INFORMATION ON NATURALIZA-**
14 **TION TO THE PUBLIC.**

15 Not later than 30 days after the date that a modifica-
16 tion to any law or regulation related to the naturalization
17 process becomes effective, the Secretary shall update the
18 appropriate application form for naturalization, the in-
19 structions and guidebook for obtaining naturalization, and
20 the Internet website maintained by the Secretary to reflect
21 such modification.

22 **SEC. 715. REPORTS.**

23 (a) ADJUDICATION PROCESS.—Not later than 120
24 days after the date of the enactment of this Act, the
25 Comptroller General of the United States shall submit to

1 the appropriate congressional committees a report on the
2 entire process for the adjudication of an application for
3 naturalization filed pursuant to section 328 or 329 of the
4 Immigration and Nationality Act (8 U.S.C. 1439 or
5 1440), including the process that begins at the time the
6 application is mailed to, or received by, the Secretary, re-
7 gardless of whether the Secretary determines that such
8 application is complete, through the final disposition of
9 such application. Such report shall include a description
10 of—

11 (1) the methods of the Secretary to prepare,
12 handle, and adjudicate such applications;

13 (2) the effectiveness of the chain of authority,
14 supervision, and training of employees of the Gov-
15 ernment or of other entities, including contract em-
16 ployees, who have any role in the such process or ad-
17 judication; and

18 (3) the ability of the Secretary to use tech-
19 nology to facilitate or accomplish any aspect of such
20 process or adjudication.

21 (b) IMPLEMENTATION.—

22 (1) STUDY.—The Comptroller General of the
23 United States shall conduct a study on the imple-
24 mentation of this subtitle by the Secretary, including
25 studying any technology that may be used to im-

1 prove the efficiency of the naturalization process for
2 members of the Armed Forces.

3 (2) REPORT.—Not later than 180 days after
4 the date that the Comptroller General submits the
5 report required by subsection (a), the Comptroller
6 General shall submit to the appropriate congres-
7 sional committees a report on the study required by
8 paragraph (1). The report shall include any rec-
9 ommendations of the Comptroller General for im-
10 proving the implementation of this subtitle by the
11 Secretary.

12 (c) APPROPRIATE CONGRESSIONAL COMMITTEES DE-
13 FINED.—In this section, the term “appropriate congres-
14 sional committees” means—

15 (1) the Committee on Armed Services and the
16 Committee on the Judiciary of the Senate; and

17 (2) the Committee on Armed Services and the
18 Committee on the Judiciary of the House of Rep-
19 resentatives.

20 **Subtitle C—State Court Interpreter** 21 **Grant Program**

22 **SEC. 721. SHORT TITLE.**

23 This subtitle may be cited as the “State Court Inter-
24 preter Grant Program Act”.

1 **SEC. 722. FINDINGS.**

2 Congress finds that—

3 (1) the fair administration of justice depends on
4 the ability of all participants in a courtroom pro-
5 ceeding to understand that proceeding, regardless of
6 their English proficiency;

7 (2) 19 percent of the population of the United
8 States over 5 years of age speaks a language other
9 than English at home;

10 (3) only qualified court interpreters can ensure
11 that persons with limited English proficiency com-
12 prehend judicial proceedings in which they are a
13 party;

14 (4) the knowledge and skills required of a quali-
15 fied court interpreter differ substantially from those
16 required in other interpretation settings, such as so-
17 cial service, medical, diplomatic, and conference in-
18 terpreting;

19 (5) the Federal Government has demonstrated
20 its commitment to equal administration of justice re-
21 gardless of English proficiency;

22 (6) regulations implementing title VI of the
23 Civil Rights Act of 1964, as well as the guidance
24 issued by the Department of Justice pursuant to Ex-
25 ecutive Order 13166, issued August 11, 2000, clar-
26 ify that all recipients of Federal financial assistance,

1 including State courts, are required to take reason-
2 able steps to provide meaningful access to their pro-
3 ceedings for persons with limited English pro-
4 ficiency;

5 (7) 34 States have developed, or are developing,
6 court interpreting programs;

7 (8) robust, effective court interpreter
8 programs—

9 (A) actively recruit skilled individuals to be
10 court interpreters;

11 (B) train those individuals in the interpre-
12 tation of court proceedings;

13 (C) develop and use a thorough, systematic
14 certification process for court interpreters; and

15 (D) have sufficient funding to ensure that
16 a qualified interpreter will be available to the
17 court whenever necessary; and

18 (9) Federal funding is necessary to—

19 (A) encourage State courts that do not
20 have court interpreter programs to develop
21 them;

22 (B) assist State courts with nascent court
23 interpreter programs to implement them;

24 (C) assist State courts with limited court
25 interpreter programs to enhance them; and

1 (D) assist State courts with robust court
2 interpreter programs to make further improve-
3 ments and share successful programs with other
4 States.

5 **SEC. 723. STATE COURT INTERPRETER PROGRAM.**

6 (a) GRANTS AUTHORIZED.—

7 (1) IN GENERAL.—The Administrator of the
8 Office of Justice Programs of the Department of
9 Justice (referred to in this section as the “Adminis-
10 trator”) shall make grants, in accordance with such
11 regulations as the Attorney General may prescribe,
12 to State courts to develop and implement programs
13 to assist individuals with limited English proficiency
14 to access and understand State court proceedings in
15 which they are a party.

16 (2) TECHNICAL ASSISTANCE.—The Adminis-
17 trator shall allocate, for each fiscal year, \$500,000
18 of the amount appropriated pursuant to section 724
19 to be used to establish a court interpreter technical
20 assistance program to assist State courts receiving
21 grants under this subtitle.

22 (b) USE OF GRANTS.—Grants awarded under sub-
23 section (a) may be used by State courts to—

24 (1) assess regional language demands;

1 (2) develop a court interpreter program for the
2 State courts;

3 (3) develop, institute, and administer language
4 certification examinations;

5 (4) recruit, train, and certify qualified court in-
6 terpreters;

7 (5) pay for salaries, transportation, and tech-
8 nology necessary to implement the court interpreter
9 program developed under paragraph (2); and

10 (6) engage in other related activities, as pre-
11 scribed by the Attorney General.

12 (c) APPLICATION.—

13 (1) IN GENERAL.—The highest State court of
14 each State desiring a grant under this section shall
15 submit an application to the Administrator at such
16 time, in such manner, and accompanied by such in-
17 formation as the Administrator may reasonably re-
18 quire.

19 (2) STATE COURTS.—The highest State court
20 of each State submitting an application under para-
21 graph (1) shall include in the application—

22 (A) an identification of each State court in
23 that State which would receive funds from the
24 grant;

1 (B) the amount of funds each State court
 2 identified under subparagraph (A) would re-
 3 ceive from the grant; and

4 (C) the procedures the highest State court
 5 would use to directly distribute grant funds to
 6 State courts identified under subparagraph (A).

7 (d) STATE COURT ALLOTMENTS.—

8 (1) BASE ALLOTMENT.—From amounts appro-
 9 priated for each fiscal year pursuant to section 724,
 10 the Administrator shall allocate \$100,000 to each of
 11 the highest State court of each State, which has an
 12 application approved under subsection (c).

13 (2) DISCRETIONARY ALLOTMENT.—From
 14 amounts appropriated for each fiscal year pursuant
 15 to section 724, the Administrator shall allocate a
 16 total of \$5,000,000 to the highest State court of
 17 States that have extraordinary needs that must be
 18 addressed in order to develop, implement, or expand
 19 a State court interpreter program.

20 (3) ADDITIONAL ALLOTMENT.—In addition to
 21 the allocations made under paragraphs (1) and (2),
 22 the Administrator shall allocate to each of the high-
 23 est State court of each State, which has an applica-
 24 tion approved under subsection (c), an amount equal
 25 to the product reached by multiplying—

1 (A) the unallocated balance of the amount
 2 appropriated for each fiscal year pursuant to
 3 section 724; and

4 (B) the ratio between the number of people
 5 over 5 years of age who speak a language other
 6 than English at home in the State and the
 7 number of people over 5 years of age who speak
 8 a language other than English at home in all
 9 the States that receive an allocation under
 10 paragraph (1), as those numbers are deter-
 11 mined by the Bureau of the Census.

12 **SEC. 724. AUTHORIZATION OF APPROPRIATIONS.**

13 There are authorized to be appropriated \$15,000,000
 14 for each of the fiscal years 2007 through 2010 to carry
 15 out this subtitle.

16 **Subtitle D—Border Infrastructure**
 17 **and Technology Modernization**

18 **SEC. 731. SHORT TITLE.**

19 This subtitle may be cited as the “Border Infrastruc-
 20 ture and Technology Modernization Act”.

21 **SEC. 732. DEFINITIONS.**

22 In this subtitle:

23 (1) COMMISSIONER.—The term “Commis-
 24 sioner” means the Commissioner of the Bureau of

1 Customs and Border Protection of the Department
2 of Homeland Security.

3 (2) MAQUILADORA.—The term “maquiladora”
4 means an entity located in Mexico that assembles
5 and produces goods from imported parts for export
6 to the United States.

7 (3) NORTHERN BORDER.—The term “northern
8 border” means the international border between the
9 United States and Canada.

10 (4) SOUTHERN BORDER.—The term “southern
11 border” means the international border between the
12 United States and Mexico.

13 **SEC. 733. PORT OF ENTRY INFRASTRUCTURE ASSESSMENT**
14 **STUDY.**

15 (a) REQUIREMENT TO UPDATE.—Not later than
16 January 31 of each year, the Administrator of General
17 Services shall update the Port of Entry Infrastructure As-
18 sessment Study prepared by the Bureau of Customs and
19 Border Protection in accordance with the matter relating
20 to the ports of entry infrastructure assessment that is set
21 out in the joint explanatory statement in the conference
22 report accompanying H.R. 2490 of the 106th Congress,
23 1st session (House of Representatives Rep. No. 106–319,
24 on page 67) and submit such updated study to Congress.

1 (b) CONSULTATION.—In preparing the updated stud-
2 ies required in subsection (a), the Administrator of Gen-
3 eral Services shall consult with the Director of the Office
4 of Management and Budget, the Secretary, and the Com-
5 missioner.

6 (c) CONTENT.—Each updated study required in sub-
7 section (a) shall—

8 (1) identify port of entry infrastructure and
9 technology improvement projects that would enhance
10 border security and facilitate the flow of legitimate
11 commerce if implemented;

12 (2) include the projects identified in the Na-
13 tional Land Border Security Plan required by sec-
14 tion 734; and

15 (3) prioritize the projects described in para-
16 graphs (1) and (2) based on the ability of a project
17 to—

18 (A) fulfill immediate security requirements;
19 and

20 (B) facilitate trade across the borders of
21 the United States.

22 (d) PROJECT IMPLEMENTATION.—The Commissioner
23 shall implement the infrastructure and technology im-
24 provement projects described in subsection (c) in the order

1 of priority assigned to each project under subsection
2 (c)(3).

3 (e) DIVERGENCE FROM PRIORITIES.—The Commis-
4 sioner may diverge from the priority order if the Commis-
5 sioner determines that significantly changed cir-
6 cumstances, such as immediate security needs or changes
7 in infrastructure in Mexico or Canada, compellingly alter
8 the need for a project in the United States.

9 **SEC. 734. NATIONAL LAND BORDER SECURITY PLAN.**

10 (a) IN GENERAL.—Not later than 1 year after the
11 date of the enactment of this Act, an annually thereafter,
12 the Secretary, after consultation with representatives of
13 Federal, State, and local law enforcement agencies and
14 private entities that are involved in international trade
15 across the northern border or the southern border, shall
16 submit a National Land Border Security Plan to Con-
17 gress.

18 (b) VULNERABILITY ASSESSMENT.—

19 (1) IN GENERAL.—The plan required in sub-
20 section (a) shall include a vulnerability assessment
21 of each port of entry located on the northern border
22 or the southern border.

23 (2) PORT SECURITY COORDINATORS.—The Sec-
24 retary may establish 1 or more port security coordi-

1 nators at each port of entry located on the northern
2 border or the southern border—

3 (A) to assist in conducting a vulnerability
4 assessment at such port; and

5 (B) to provide other assistance with the
6 preparation of the plan required in subsection
7 (a).

8 **SEC. 735. EXPANSION OF COMMERCE SECURITY PRO-**
9 **GRAMS.**

10 (a) CUSTOMS-TRADE PARTNERSHIP AGAINST TER-
11 RORISM.—

12 (1) IN GENERAL.—Not later than 180 days
13 after the date of enactment of this Act, the Commis-
14 sioner, in consultation with the Secretary, shall de-
15 velop a plan to expand the size and scope, including
16 personnel, of the Customs–Trade Partnership
17 Against Terrorism programs along the northern bor-
18 der and southern border, including—

19 (A) the Business Anti-Smuggling Coali-
20 tion;

21 (B) the Carrier Initiative Program;

22 (C) the Americas Counter Smuggling Ini-
23 tiative;

24 (D) the Container Security Initiative;

1 (E) the Free and Secure Trade Initiative;
2 and

3 (F) other Industry Partnership Programs
4 administered by the Commissioner.

5 (2) SOUTHERN BORDER DEMONSTRATION PRO-
6 GRAM.—Not later than 180 days after the date of
7 enactment of this Act, the Commissioner shall imple-
8 ment, on a demonstration basis, at least 1 Customs–
9 Trade Partnership Against Terrorism program,
10 which has been successfully implemented along the
11 northern border, along the southern border.

12 (b) MAQUILADORA DEMONSTRATION PROGRAM.—
13 Not later than 180 days after the date of enactment of
14 this Act, the Commissioner shall establish a demonstration
15 program to develop a cooperative trade security system to
16 improve supply chain security.

17 **SEC. 736. PORT OF ENTRY TECHNOLOGY DEMONSTRATION**
18 **PROGRAM.**

19 (a) ESTABLISHMENT.—The Secretary shall carry out
20 a technology demonstration program to—

21 (1) test and evaluate new port of entry tech-
22 nologies;

23 (2) refine port of entry technologies and oper-
24 ational concepts; and

25 (3) train personnel under realistic conditions.

1 (b) TECHNOLOGY AND FACILITIES.—

2 (1) TECHNOLOGY TESTING.—Under the tech-
3 nology demonstration program, the Secretary shall
4 test technologies that enhance port of entry oper-
5 ations, including operations related to—

6 (A) inspections;

7 (B) communications;

8 (C) port tracking;

9 (D) identification of persons and cargo;

10 (E) sensory devices;

11 (F) personal detection;

12 (G) decision support; and

13 (H) the detection and identification of
14 weapons of mass destruction.

15 (2) DEVELOPMENT OF FACILITIES.—At a dem-
16 onstration site selected pursuant to subsection
17 (c)(2), the Secretary shall develop facilities to pro-
18 vide appropriate training to law enforcement per-
19 sonnel who have responsibility for border security,
20 including—

21 (A) cross-training among agencies;

22 (B) advanced law enforcement training;

23 and

24 (C) equipment orientation.

25 (c) DEMONSTRATION SITES.—

1 (1) NUMBER.—The Secretary shall carry out
2 the demonstration program at not less than 3 sites
3 and not more than 5 sites.

4 (2) SELECTION CRITERIA.—To ensure that at
5 least 1 of the facilities selected as a port of entry
6 demonstration site for the demonstration program
7 has the most up-to-date design, contains sufficient
8 space to conduct the demonstration program, has a
9 traffic volume low enough to easily incorporate new
10 technologies without interrupting normal processing
11 activity, and can efficiently carry out demonstration
12 and port of entry operations, at least 1 port of entry
13 selected as a demonstration site shall—

14 (A) have been established not more than
15 15 years before the date of the enactment of
16 this Act;

17 (B) consist of not less than 65 acres, with
18 the possibility of expansion to not less than 25
19 adjacent acres; and

20 (C) have serviced an average of not more
21 than 50,000 vehicles per month during the 1-
22 year period ending on the date of the enactment
23 of this Act.

24 (d) RELATIONSHIP WITH OTHER AGENCIES.—The
25 Secretary shall permit personnel from an appropriate Fed-

1 eral or State agency to utilize a demonstration site de-
 2 scribed in subsection (c) to test technologies that enhance
 3 port of entry operations, including technologies described
 4 in subparagraphs (A) through (H) of subsection (b)(1).

5 (e) REPORT.—

6 (1) REQUIREMENT.—Not later than 1 year
 7 after the date of the enactment of this Act, and an-
 8 nually thereafter, the Secretary shall submit to Con-
 9 gress a report on the activities carried out at each
 10 demonstration site under the technology demonstra-
 11 tion program established under this section.

12 (2) CONTENT.—The report submitted under
 13 paragraph (1) shall include an assessment by the
 14 Secretary of the feasibility of incorporating any dem-
 15 onstrated technology for use throughout the Bureau
 16 of Customs and Border Protection.

17 **SEC. 737. AUTHORIZATION OF APPROPRIATIONS.**

18 (a) IN GENERAL.—In addition to any funds other-
 19 wise available, there are authorized to be appropriated—

20 (1) such sums as may be necessary for the fis-
 21 cal years 2007 through 2011 to carry out the provi-
 22 sions of section 733(a);

23 (2) to carry out section 733(d)—

24 (A) \$100,000,000 for each of the fiscal
 25 years 2007 through 2011; and

1 (B) such sums as may be necessary in any
 2 succeeding fiscal year;

3 (3) to carry out section 735(a)—

4 (A) \$30,000,000 for fiscal year 2007, of
 5 which \$5,000,000 shall be made available to
 6 fund the demonstration project established in
 7 section 736(a)(2); and

8 (B) such sums as may be necessary for the
 9 fiscal years 2008 through 2011;

10 (4) to carry out section 735(b)—

11 (A) \$5,000,000 for fiscal year 2007; and

12 (B) such sums as may be necessary for the
 13 fiscal years 2008 through 2011; and

14 (5) to carry out section 736, provided that not
 15 more than \$10,000,000 may be expended for tech-
 16 nology demonstration program activities at any 1
 17 port of entry demonstration site in any fiscal year—

18 (A) \$50,000,000 for fiscal year 2007; and

19 (B) such sums as may be necessary for
 20 each of the fiscal years 2008 through 2011.

21 (b) INTERNATIONAL AGREEMENTS.—Amounts au-
 22 thorized to be appropriated under this subtitle may be
 23 used for the implementation of projects described in the
 24 Declaration on Embracing Technology and Cooperation to
 25 Promote the Secure and Efficient Flow of People and

1 Commerce across our Shared Border between the United
 2 States and Mexico, agreed to March 22, 2002, Monterrey,
 3 Mexico (commonly known as the Border Partnership Ac-
 4 tion Plan) or the Smart Border Declaration between the
 5 United States and Canada, agreed to December 12, 2001,
 6 Ottawa, Canada that are consistent with the provisions of
 7 this subtitle.

8 **Subtitle E—Family Humanitarian** 9 **Relief**

10 **SEC. 741. SHORT TITLE.**

11 This subtitle may be cited as the “September 11
 12 Family Humanitarian Relief and Patriotism Act”.

13 **SEC. 742. ADJUSTMENT OF STATUS FOR CERTAIN NON-** 14 **IMMIGRANT VICTIMS OF TERRORISM.**

15 (a) ADJUSTMENT OF STATUS.—

16 (1) IN GENERAL.—The status of any alien de-
 17 scribed in subsection (b) shall be adjusted by the
 18 Secretary to that of an alien lawfully admitted for
 19 permanent residence, if the alien—

20 (A) applies for such adjustment not later
 21 than 2 years after the date on which the Sec-
 22 retary promulgates final regulations to imple-
 23 ment this section; and

24 (B) is otherwise admissible to the United
 25 States for permanent residence, except in deter-

mining such admissibility the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(2) RULES IN APPLYING CERTAIN PROVISIONS.—

(A) IN GENERAL.—In the case of an alien described in subsection (b) who is applying for adjustment of status under this section—

(i) the provisions of section 241(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(a)(5)) shall not apply; and

(ii) the Secretary may grant the alien a waiver on the grounds of inadmissibility under subparagraphs (A) and (C) of section 212(a)(9) of such Act (8 U.S.C. 1182(a)(9)).

(B) STANDARDS.—In granting waivers under subparagraph (A)(ii), the Secretary shall use standards used in granting consent under subparagraphs (A)(iii) and (C)(ii) of such section 212(a)(9).

(3) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS.—

1 (A) APPLICATION PERMITTED.—An alien
 2 present in the United States who has been or-
 3 dered excluded, deported, removed, or ordered
 4 to depart voluntarily from the United States
 5 under any provision of the Immigration and
 6 Nationality Act (8 U.S.C. 1101 et seq.) may,
 7 notwithstanding such order, apply for adjust-
 8 ment of status under paragraph (1).

9 (B) MOTION NOT REQUIRED.—An alien
 10 described in subparagraph (A) may not be re-
 11 quired, as a condition of submitting or granting
 12 such application, to file a separate motion to re-
 13 open, reconsider, or vacate such order.

14 (C) EFFECT OF DECISION.—If the Sec-
 15 retary grants a request under subparagraph
 16 (A), the Secretary shall cancel the order. If the
 17 Secretary renders a final administrative deci-
 18 sion to deny the request, the order shall be ef-
 19 fective and enforceable to the same extent as if
 20 the application had not been made.

21 (b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STA-
 22 TUS.—The benefits provided by subsection (a) shall apply
 23 to any alien who—

24 (1) was lawfully present in the United States as
 25 a nonimmigrant alien described in section

1 101(a)(15) of the Immigration and Nationality Act
2 (8 U.S.C. 1101(a)(15)) on September 10, 2001;

3 (2) was, on such date, the spouse, child, de-
4 pendent son, or dependent daughter of an alien
5 who—

6 (A) was lawfully present in the United
7 States as a nonimmigrant alien described in
8 section 101(a)(15) of the Immigration and Na-
9 tionality Act (8 U.S.C. 1101(a)(15)) on such
10 date; and

11 (B) died as a direct result of a specified
12 terrorist activity; and

13 (3) was deemed to be a beneficiary of, and by,
14 the September 11th Victim Compensation Fund of
15 2001 (49 U.S.C. 40101 note).

16 (c) STAY OF REMOVAL; WORK AUTHORIZATION.—

17 (1) IN GENERAL.—The Secretary shall estab-
18 lish, by regulation, a process by which an alien sub-
19 ject to a final order of removal may seek a stay of
20 such order based on the filing of an application
21 under subsection (a).

22 (2) DURING CERTAIN PROCEEDINGS.—Notwith-
23 standing any provision of the Immigration and Na-
24 tionality Act (8 U.S.C. 1101 et seq.), the Secretary
25 shall not order any alien to be removed from the

1 United States, if the alien is in removal proceedings
 2 under any provision of such Act and has applied for
 3 adjustment of status under subsection (a), except
 4 where the Secretary has rendered a final administra-
 5 tive determination to deny the application.

6 (3) WORK AUTHORIZATION.—The Secretary
 7 shall authorize an alien who has applied for adjust-
 8 ment of status under subsection (a) to engage in
 9 employment in the United States during the pend-
 10 ency of such application.

11 (d) AVAILABILITY OF ADMINISTRATIVE REVIEW.—
 12 The Secretary shall provide to applicants for adjustment
 13 of status under subsection (a) the same right to, and pro-
 14 cedures for, administrative review as are provided to—

15 (1) applicants for adjustment of status under
 16 section 245 of the Immigration and Nationality Act
 17 (8 U.S.C. 1255); or

18 (2) aliens subject to removal proceedings under
 19 section 240 of such Act (8 U.S.C. 1229a).

20 **SEC. 743. CANCELLATION OF REMOVAL FOR CERTAIN IMMI-**
 21 **GRANT VICTIMS OF TERRORISM.**

22 (a) IN GENERAL.—Subject to the provisions of the
 23 Immigration and Nationality Act (8 U.S.C. 1101 et seq.),
 24 other than subsections (b)(1), (d)(1), and (e) of section
 25 240A of such Act (8 U.S.C. 1229b), the Secretary shall,

1 under such section 240A, cancel the removal of, and ad-
2 just to the status of an alien lawfully admitted for perma-
3 nent residence, an alien described in subsection (b), if the
4 alien applies for such relief.

5 (b) ALIENS ELIGIBLE FOR CANCELLATION OF RE-
6 MOVAL.—The benefits provided by subsection (a) shall
7 apply to any alien who—

8 (1) was, on September 10, 2001, the spouse,
9 child, dependent son, or dependent daughter of an
10 alien who died as a direct result of a specified ter-
11 rorist activity; and

12 (2) was deemed to be a beneficiary of, and by,
13 the September 11th Victim Compensation Fund of
14 2001 (49 U.S.C. 40101 note).

15 (c) STAY OF REMOVAL; WORK AUTHORIZATION.—

16 (1) IN GENERAL.—The Secretary shall provide
17 by regulation for an alien subject to a final order of
18 removal to seek a stay of such order based on the
19 filing of an application under subsection (a).

20 (2) WORK AUTHORIZATION.—The Secretary
21 shall authorize an alien who has applied for cancella-
22 tion of removal under subsection (a) to engage in
23 employment in the United States during the pend-
24 ency of such application.

1 (d) MOTIONS TO REOPEN REMOVAL PRO-
2 CEEDINGS.—

3 (1) IN GENERAL.—Notwithstanding any limita-
4 tion imposed by law on motions to reopen removal
5 proceedings (except limitations premised on an
6 alien’s conviction of an aggravated felony (as defined
7 in section 101(a)(43) of the Immigration and Na-
8 tionality Act (8 U.S.C. 1101(a)(43))), any alien who
9 has become eligible for cancellation of removal as a
10 result of the enactment of this section may file 1
11 motion to reopen removal proceedings to apply for
12 such relief.

13 (2) FILING PERIOD.—The Secretary shall des-
14 ignate a specific time period in which all such mo-
15 tions to reopen are required to be filed. The period
16 shall begin not later than 60 days after the date of
17 enactment of this Act and shall extend for a period
18 not to exceed 240 days.

19 **SEC. 744. EXCEPTIONS.**

20 Notwithstanding any other provision of this subtitle,
21 an alien may not be provided relief under this subtitle if
22 the alien is—

23 (1) inadmissible under paragraph (2) or (3) of
24 section 212(a) of the Immigration and Nationality
25 Act (8 U.S.C. 1182(a)), or deportable under para-

graph (2) or (4) of section 237(a) of such Act (8 U.S.C. 1227(a)), including any individual culpable for a specified terrorist activity; or

(2) a family member of an alien described in paragraph (1).

SEC. 745. EVIDENCE OF DEATH.

For purposes of this subtitle, the Secretary shall use the standards established under section 426 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (115 Stat. 362) in determining whether death occurred as a direct result of a specified terrorist activity.

SEC. 746. DEFINITIONS.

(a) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—Except as otherwise specifically provided in this subtitle, the definitions used in the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), other than the definitions applicable exclusively to title III of such Act, shall apply in the administration of this subtitle.

(b) SPECIFIED TERRORIST ACTIVITY.—For purposes of this subtitle, the term “specified terrorist activity” means any terrorist activity conducted against the Government or the people of the United States on September 11, 2001.

Subtitle F—Other Matters

SEC. 751. NONCITIZEN MEMBERSHIP IN THE ARMED FORCES.

Section 329 of the Immigration and Nationality Act (8 U.S.C. 1440) is amended—

(1) in subsection (b), by striking “subsection (a)” and inserting “subsection (a) and (d)”; and

(2) by adding at the end the following:

“(d) Notwithstanding any other provision of law, except for provisions relating to revocation of citizenship under subsection (c), individuals who are not United States citizens shall not be denied the opportunity to apply for membership in the United States Armed Forces. Such individuals who become active duty members of the United States Armed Forces shall, consistent with subsections (a) through (e) and with the approval of their chain of command, be granted United States citizenship after performing at least 2 years of honorable and satisfactory service on active duty. Not later than 90 days after such requirements are met with respect to an individual, such individual shall be granted United States citizenship.

“(e) An alien described in subsection (d) shall be naturalized without regard to the requirements of title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.) and any other requirements, processes, or procedures

1 of the Immigration and Naturalization Service, if the
2 alien—

3 “(1) filed an application for naturalization in
4 accordance with such procedures to carry out this
5 section as may be established by regulation by the
6 Secretary of Homeland Security or the Secretary of
7 Defense;

8 “(2) demonstrates to his or her military chain
9 of command, proficiency in the English language,
10 good moral character, and knowledge of the Federal
11 Government and United States history, consistent
12 with the requirements contained in the Immigration
13 and Nationality Act; and

14 “(3) takes the oath required under section 337
15 of such Act (8 U.S.C. 1448 et seq.) and participates
16 in an oath administration ceremony in accordance
17 with such Act.”.

18 **SEC. 752. NONIMMIGRANT ALIEN STATUS FOR CERTAIN**
19 **ATHLETES.**

20 (a) IN GENERAL.—Section 214(c)(4)(A) (8 U.S.C.
21 1184(c)(4)(A)) is amended by striking clauses (i) and (ii)
22 and inserting the following:

23 “(i)(I) performs as an athlete, individually or as
24 part of a group or team, at an internationally recog-
25 nized level of performance,

1 “(II) is a professional athlete, as defined in sec-
2 tion 204(i)(2),

3 “(III) performs as an athlete, or as a coach, as
4 part of a team or franchise that is located in the
5 United States and a member of a foreign league or
6 association of 15 or more amateur sports teams, if—

7 “(aa) the foreign league or association is
8 the highest level of amateur performance of
9 that sport in the relevant foreign country,

10 “(bb) participation in such league or asso-
11 ciation renders players ineligible, whether on a
12 temporary or permanent basis, to earn a schol-
13 arship in, or participate in, that sport at a col-
14 lege or university in the United States under
15 the rules of the National Collegiate Athletic As-
16 sociation (NCAA), and

17 “(cc) a significant number of the individ-
18 uals who play in such league or association are
19 drafted by a major sports league or a minor
20 league affiliate of such a sports league, or

21 “(IV) is a professional athlete or amateur ath-
22 lete who performs individually or as part of a group
23 in a theatrical ice skating production, and

24 “(ii) seeks to enter the United States tempo-
25 rarily and solely for the purpose of performing—

1 “(I) as such an athlete with respect to a
2 specific athletic competition, or

3 “(II) in the case of an individual described
4 in clause (i)(IV), in a specific theatrical ice
5 skating production or tour.”.

6 (b) PETITIONS FOR MULTIPLE ALIENS.—Section
7 214(c)(4) (8 U.S.C. 1184(c)(4)) is amended by adding at
8 the end the following new paragraph:

9 “(F) The Secretary of Homeland Security shall per-
10 mit a petition under this subsection to seek classification
11 of more than one alien as a nonimmigrant under section
12 101(a)(15)(P)(i)(a). The fee charged for such a petition
13 may not be more than the fee charged for a petition seek-
14 ing classification of one such alien.”.

15 (c) RELATIONSHIP TO OTHER PROVISIONS OF THE
16 IMMIGRATION AND NATIONALITY ACT.—Section
17 214(c)(4) (8 U.S.C. 1184(c)(4)), as amended by sub-
18 section (c), is further amended by adding at the end the
19 following new paragraph:

20 “(G) Notwithstanding any other provision of this
21 title, the Secretary of Homeland Security shall permit an
22 athlete, or the employer of an athlete, to seek admission
23 to the United States for such athlete under a provision
24 of this Act other than section 101(a)(15)(P)(i).”.

1 **SEC. 753. EXTENSION OF RETURNING WORKER EXEMPTION.**

2 Section 402(b)(1) of the Save Our Small and Sea-
3 sonal Businesses Act of 2005 (title IV of division B of
4 Public Law 109–13; 8 U.S.C. 1184 note) is amended by
5 striking “2006” and inserting “2009”.

6 **SEC. 754. SURVEILLANCE TECHNOLOGIES PROGRAMS.**

7 (a) **AERIAL SURVEILLANCE PROGRAM.**—

8 (1) **IN GENERAL.**—In conjunction with the bor-
9 der surveillance plan developed under section 5201
10 of the Intelligence Reform and Terrorism Prevention
11 Act of 2004 (Public Law 108–458; 8 U.S.C. 1701
12 note), the Secretary, not later than 90 days after the
13 date of enactment of this Act, shall develop and im-
14 plement a program to fully integrate and utilize aer-
15 ial surveillance technologies, including unmanned
16 aerial vehicles, to enhance the security of the inter-
17 national border between the United States and Can-
18 ada and the international border between the United
19 States and Mexico. The goal of the program shall be
20 to ensure continuous monitoring of each mile of each
21 such border.

22 (2) **ASSESSMENT AND CONSULTATION REQUIRE-**
23 **MENTS.**—In developing the program under this sub-
24 section, the Secretary shall—

25 (A) consider current and proposed aerial
26 surveillance technologies;

1 (B) assess the feasibility and advisability
2 of utilizing such technologies to address border
3 threats, including an assessment of the tech-
4 nologies considered best suited to address re-
5 spective threats;

6 (C) consult with the Secretary of Defense
7 regarding any technologies or equipment, which
8 the Secretary may deploy along an international
9 border of the United States; and

10 (D) consult with the Administrator of the
11 Federal Aviation Administration regarding safe-
12 ty, airspace coordination and regulation, and
13 any other issues necessary for implementation
14 of the program.

15 (3) ADDITIONAL REQUIREMENTS.—

16 (A) IN GENERAL.—The program developed
17 under this subsection shall include the use of a
18 variety of aerial surveillance technologies in a
19 variety of topographies and areas, including
20 populated and unpopulated areas located on or
21 near an international border of the United
22 States, in order to evaluate, for a range of
23 circumstances—

1 (i) the significance of previous experi-
2 ences with such technologies in border se-
3 curity or critical infrastructure protection;

4 (ii) the cost and effectiveness of var-
5 ious technologies for border security, in-
6 cluding varying levels of technical com-
7 plexity; and

8 (iii) liability, safety, and privacy con-
9 cerns relating to the utilization of such
10 technologies for border security.

11 (4) CONTINUED USE OF AERIAL SURVEILLANCE
12 TECHNOLOGIES.—The Secretary may continue the
13 operation of aerial surveillance technologies while as-
14 sessing the effectiveness of the utilization of such
15 technologies.

16 (5) REPORT TO CONGRESS.—Not later than
17 180 days after implementing the program under this
18 subsection, the Secretary shall submit a report to
19 Congress regarding the program developed under
20 this subsection. The Secretary shall include in the
21 report a description of the program together with
22 such recommendations as the Secretary finds appro-
23 priate for enhancing the program.

1 (6) AUTHORIZATION OF APPROPRIATIONS.—

2 There are authorized to be appropriated such sums
3 as may be necessary to carry out this subsection.

4 (b) INTEGRATED AND AUTOMATED SURVEILLANCE
5 PROGRAM.—

6 (1) REQUIREMENT FOR PROGRAM.—Subject to
7 the availability of appropriations, the Secretary shall
8 establish a program to procure additional unmanned
9 aerial vehicles, cameras, poles, sensors, satellites,
10 radar coverage, and other technologies necessary to
11 achieve operational control of the international bor-
12 ders of the United States and to establish a security
13 perimeter known as a “virtual fence” along such
14 international borders to provide a barrier to illegal
15 immigration. Such program shall be known as the
16 Integrated and Automated Surveillance Program.

17 (2) PROGRAM COMPONENTS.—The Secretary
18 shall ensure, to the maximum extent feasible, the In-
19 tegrated and Automated Surveillance Program is
20 carried out in a manner that—

21 (A) the technologies utilized in the Pro-
22 gram are integrated and function cohesively in
23 an automated fashion, including the integration
24 of motion sensor alerts and cameras, whereby a
25 sensor alert automatically activates a cor-

1 responding camera to pan and tilt in the direc-
2 tion of the triggered sensor;

3 (B) cameras utilized in the Program do
4 not have to be manually operated;

5 (C) such camera views and positions are
6 not fixed;

7 (D) surveillance video taken by such cam-
8 eras can be viewed at multiple designated com-
9 munications centers;

10 (E) a standard process is used to collect,
11 catalog, and report intrusion and response data
12 collected under the Program;

13 (F) future remote surveillance technology
14 investments and upgrades for the Program can
15 be integrated with existing systems;

16 (G) performance measures are developed
17 and applied that can evaluate whether the Pro-
18 gram is providing desired results and increasing
19 response effectiveness in monitoring and detect-
20 ing illegal intrusions along the international
21 borders of the United States;

22 (H) plans are developed under the Pro-
23 gram to streamline site selection, site valida-
24 tion, and environmental assessment processes to

1 minimize delays of installing surveillance tech-
2 nology infrastructure;

3 (I) standards are developed under the Pro-
4 gram to expand the shared use of existing pri-
5 vate and governmental structures to install re-
6 mote surveillance technology infrastructure
7 where possible; and

8 (J) standards are developed under the Pro-
9 gram to identify and deploy the use of non-
10 permanent or mobile surveillance platforms that
11 will increase the Secretary's mobility and ability
12 to identify illegal border intrusions.

13 (3) REPORT TO CONGRESS.—Not later than 1
14 year after the initial implementation of the Inte-
15 grated and Automated Surveillance Program, the
16 Secretary shall submit to Congress a report regard-
17 ing the Program. The Secretary shall include in the
18 report a description of the Program together with
19 any recommendation that the Secretary finds appro-
20 priate for enhancing the program.

21 (4) EVALUATION OF CONTRACTORS.—

22 (A) REQUIREMENT FOR STANDARDS.—The
23 Secretary shall develop appropriate standards
24 to evaluate the performance of any contractor

1 providing goods or services to carry out the In-
2 tegrated and Automated Surveillance Program.

3 (B) REVIEW BY THE INSPECTOR GEN-
4 ERAL.—The Inspector General of the Depart-
5 ment shall timely review each new contract re-
6 lated to the Program that has a value of more
7 than \$5,000,000, to determine whether such
8 contract fully complies with applicable cost re-
9 quirements, performance objectives, program
10 milestones, and schedules. The Inspector Gen-
11 eral shall report the findings of such review to
12 the Secretary in a timely manner. Not later
13 than 30 days after the date the Secretary re-
14 ceives a report of findings from the Inspector
15 General, the Secretary shall submit to the Com-
16 mittee on Homeland Security and Govern-
17 mental Affairs of the Senate and the Committee
18 on Homeland Security of the House of Rep-
19 resentatives a report of such findings and a de-
20 scription of any the steps that the Secretary
21 has taken or plans to take in response to such
22 findings.

23 (5) AUTHORIZATION OF APPROPRIATIONS.—

24 There are authorized to be appropriated such sums
25 as may be necessary to carry out this subsection.

1 **SEC. 755. COMPREHENSIVE IMMIGRATION EFFICIENCY RE-**
2 **VIEW.**

3 (a) REVIEW.—The Secretary, in consultation with the
4 Secretary of State, shall conduct a comprehensive review
5 of the immigration procedures in existence as of the date
6 of the enactment of this Act.

7 (b) REPORT.—Not later than 90 days after the date
8 of the enactment of this Act, the Secretary shall submit
9 to Congress a report, in classified form, if necessary,
10 that—

11 (1) identifies inefficient immigration proce-
12 dures; and

13 (2) outlines a plan to improve the efficiency and
14 responsiveness of the immigration process.

15 **SEC. 756. NORTHERN BORDER PROSECUTION INITIATIVE.**

16 (a) INITIATIVE REQUIRED.—

17 (1) IN GENERAL.—From amounts made avail-
18 able to carry out this section, the Attorney General,
19 acting through the Director of the Bureau of Justice
20 Assistance of the Office of Justice Programs, shall
21 establish and carry out a program, to be known as
22 the Northern Border Prosecution Initiative, to pro-
23 vide funds to reimburse eligible northern border en-
24 tities for costs incurred by those entities for han-
25 dling case dispositions of criminal cases that are fed-
26 erally initiated but federally declined-referred.

1 (2) RELATION WITH SOUTHWESTERN BORDER
2 PROSECUTION INITIATIVE.—The program estab-
3 lished in paragraph (1) shall—

4 (A) be modeled after the Southwestern
5 Border Prosecution Initiative; and

6 (B) serve as a partner program to that ini-
7 tiative to reimburse local jurisdictions for proc-
8 essing Federal cases.

9 (b) PROVISION AND ALLOCATION OF FUNDS.—
10 Funds provided under the program established in sub-
11 section (a) shall be—

12 (1) provided in the form of direct reimburse-
13 ments; and

14 (2) allocated in a manner consistent with the
15 manner under which funds are allocated under the
16 Southwestern Border Prosecution Initiative.

17 (c) USE OF FUNDS.—Funds provided to an eligible
18 northern border entity under this section may be used by
19 the entity for any lawful purpose, including:

20 (1) Prosecution and related costs;

21 (2) Court costs;

22 (3) Costs of courtroom technology;

23 (4) Costs of constructing holding spaces;

24 (5) Costs of administrative staff;

1 (6) Costs of defense counsel for indigent de-
2 fendants; and

3 (7) Detention costs, including pre-trial and
4 post-trial detention.

5 (d) DEFINITIONS.—In this section:

6 (1) CASE DISPOSITION.—The term “case
7 disposition”—

8 (A) for purposes of the Northern Border
9 Prosecution Initiative, refers to the time be-
10 tween the arrest of a suspect and the resolution
11 of the criminal charges through a county or
12 State judicial or prosecutorial process; and

13 (B) does not include incarceration time for
14 sentenced offenders, or time spent by prosecu-
15 tors on judicial appeals.

16 (2) ELIGIBLE NORTHERN BORDER ENTITY.—
17 The term “eligible northern border entity” means—

18 (A) the States of Alaska, Idaho, Maine,
19 Michigan, Minnesota, Montana, New Hamp-
20 shire, New York, North Dakota, Ohio, Pennsylv-
21 vania, Vermont, Washington, and Wisconsin; or

22 (B) any unit of local government within a
23 State referred to in subparagraph (A).

24 (3) FEDERALLY DECLINED-REFERRED.—The
25 term “federally declined-referred”—

1 (A) means, with respect to a criminal case,
2 that a decision has been made in that case by
3 a United States Attorney or a Federal law en-
4 forcement agency during a Federal investiga-
5 tion to no longer pursue Federal criminal
6 charges against a defendant and to refer such
7 investigation to a State or local jurisdiction for
8 possible prosecution; and

9 (B) includes a decision made on an individ-
10 ualized case-by-case basis as well as a decision
11 made pursuant to a general policy or practice
12 or pursuant to prosecutorial discretion.

13 (4) **FEDERALLY INITIATED.**—The term “feder-
14 ally initiated” means, with respect to a criminal
15 case, that the case results from a criminal investiga-
16 tion or an arrest involving Federal law enforcement
17 authorities for a potential violation of Federal crimi-
18 nal law, including investigations resulting from
19 multi-jurisdictional task forces.

20 (e) **AUTHORIZATION OF APPROPRIATIONS.**—There
21 are authorized to be appropriated to carry out this section
22 \$28,000,000 for fiscal year 2006 and such sums as may
23 be necessary for fiscal years thereafter.

1 **SEC. 757. SOUTHWEST BORDER PROSECUTION INITIATIVE.**

2 (a) REIMBURSEMENT TO STATE AND LOCAL PROS-
3 ECUTORS FOR PROSECUTING FEDERALLY INITIATED
4 DRUG CASES.—The Attorney General shall, subject to the
5 availability of appropriations, reimburse Southern Border
6 State and county prosecutors for prosecuting federally ini-
7 tiated and referred drug cases.

8 (b) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated \$50,000,000 for each
10 of the fiscal years 2007 through 2012 to carry out sub-
11 section (a).

12 **SEC. 758. GRANT PROGRAM TO ASSIST ELIGIBLE APPLI-**
13 **CANTS.**

14 (a) SHORT TITLE.—This section may be cited as the
15 “Initial Entry, Adjustment, and Citizenship Assistance
16 Grant Act of 2006”.

17 (b) PURPOSE.—The purpose of this section is to es-
18 tablish a grant program within the Bureau of Citizenship
19 and Immigration Services that provides funding to com-
20 munity-based organizations, including community-based
21 legal service organizations, as appropriate, to develop and
22 implement programs to assist eligible applicants for the
23 conditional nonimmigrant worker program established
24 under this Act by providing them with the services de-
25 scribed in subsection (d)(2).

26 (c) DEFINITIONS.—In this section:

1 (1) COMMUNITY-BASED ORGANIZATION.—The
 2 term “community-based organization” means a non-
 3 profit, tax-exempt organization, including a faith-
 4 based organization, whose staff has experience and
 5 expertise in meeting the legal, social, educational,
 6 cultural educational, or cultural needs of immi-
 7 grants, refugees, persons granted asylum, or persons
 8 applying for such statuses.

9 (2) IEACA GRANT.—The term “IEACA grant”
 10 means an Initial Entry, Adjustment, and Citizenship
 11 Assistance Grant authorized under subsection (d).

12 (d) ESTABLISHMENT OF INITIAL ENTRY, ADJUST-
 13 MENT, AND CITIZENSHIP ASSISTANCE GRANT PRO-
 14 GRAM.—

15 (1) GRANTS AUTHORIZED.—The Secretary,
 16 working through the Director of the Bureau of Citi-
 17 zenship and Immigration Services, may award
 18 IEACA grants to community-based organizations.

19 (2) USE OF FUNDS.—Grants awarded under
 20 this section may be used for the design and imple-
 21 mentation of programs to provide the following serv-
 22 ices:

23 (A) INITIAL APPLICATION.—Assistance
 24 and instruction, including legal assistance, to
 25 aliens making initial application for treatment

1 under the program established by section 218D
2 of the Immigration and Nationality Act, as
3 added by section 601. Such assistance may in-
4 clude assisting applicants in—

5 (i) screening to assess prospective ap-
6 plicants' potential eligibility or lack of eli-
7 gibility;

8 (ii) filling out applications;

9 (iii) gathering proof of identification,
10 employment, residence, and tax payment;

11 (iv) gathering proof of relationships of
12 eligible family members;

13 (v) applying for any waivers for which
14 applicants and qualifying family members
15 may be eligible; and

16 (vi) any other assistance that the Sec-
17 retary or grantee considers useful to aliens
18 who are interested in filing applications for
19 treatment under such section 218D.

20 (B) ADJUSTMENT OF STATUS.—Assistance
21 and instruction, including legal assistance, to
22 aliens seeking to adjust their status in accord-
23 ance with section 245 or 245B of the Immigra-
24 tion and Nationality Act.

1 (C) CITIZENSHIP.—Assistance and instruc-
2 tion to applicants on—

3 (i) the rights and responsibilities of
4 United States Citizenship;

5 (ii) English as a second language;

6 (iii) civics; or

7 (iv) applying for United States citi-
8 zenship.

9 (3) DURATION AND RENEWAL.—

10 (A) DURATION.—Each grant awarded
11 under this section shall be awarded for a period
12 of not more than 3 years.

13 (B) RENEWAL.—The Secretary may renew
14 any grant awarded under this section in 1-year
15 increments.

16 (4) APPLICATION FOR GRANTS.—Each entity
17 desiring an IEACA grant under this section shall
18 submit an application to the Secretary at such time,
19 in such manner, and accompanied by such informa-
20 tion as the Secretary may require.

21 (5) ELIGIBLE ORGANIZATIONS.—A community-
22 based organization applying for a grant under this
23 section to provide services described in subparagraph
24 (A), (B), or (C)(iv) of paragraph (2) may not receive
25 such a grant unless the organization is—

1 (A) recognized by the Board of Immigra-
2 tion Appeals under section 292.2 of title 8,
3 Code of Federal Regulations; or

4 (B) otherwise directed by an attorney.

5 (6) SELECTION OF GRANTEES.—Grants award-
6 ed under this section shall be awarded on a competi-
7 tive basis.

8 (7) GEOGRAPHIC DISTRIBUTION OF GRANTS.—
9 The Secretary shall approve applications under this
10 section in a manner that ensures, to greatest extent
11 practicable, that—

12 (A) not less than 50 percent of the funding
13 for grants under this section are awarded to
14 programs located in the 10 States with the
15 highest percentage of foreign-born residents;
16 and

17 (B) not less than 20 percent of the funding
18 for grants under this section are awarded to
19 programs located in States that are not de-
20 scribed in subparagraph (A).

21 (8) ETHNIC DIVERSITY.—The Secretary shall
22 ensure that community-based organizations receiving
23 grants under this section provide services to an eth-
24 nically diverse population, to the greatest extent pos-
25 sible.

1 (e) LIAISON BETWEEN USCIS AND GRANTEES.—

2 The Secretary shall establish a liaison between the Bureau
3 of Citizenship and Immigration Services and the commu-
4 nity of providers of services under this section to assure
5 quality control, efficiency, and greater client willingness
6 to come forward.

7 (f) REPORTS TO CONGRESS.—Not later than 180
8 days after the date of the enactment of this Act, and each
9 subsequent July 1, the Secretary shall submit a report to
10 Congress that includes information regarding—

11 (1) the status of the implementation of this sec-
12 tion;

13 (2) the grants issued pursuant to this section;
14 and

15 (3) the results of those grants.

16 (g) SOURCE OF GRANT FUNDS.—

17 (1) APPLICATION FEES.—The Secretary may
18 use funds made available under sections 218A(l)(2)
19 and 218D(f)(4)(B) of the Immigration and Nation-
20 ality Act, as added by this Act, to carry out this sec-
21 tion.

22 (2) AUTHORIZATION OF APPROPRIATIONS.—

23 (A) AMOUNTS AUTHORIZED.—In addition
24 to the amounts made available under paragraph
25 (1), there are authorized to be appropriated

1 such additional sums as may be necessary for
 2 each of the fiscal years 2007 through 2011 to
 3 carry out this section.

4 (B) AVAILABILITY.—Any amounts appro-
 5 priated pursuant to subparagraph (A) shall re-
 6 main available until expended.

7 (h) DISTRIBUTION OF FEES AND FINES.—

8 (1) H-2C VISA FEES.—Notwithstanding section
 9 218A(l) of the Immigration and Nationality Act, as
 10 added by section 403, 2 percent of the fees collected
 11 under section 218A of such Act shall be made avail-
 12 able for grants under the Initial Entry, Adjustment,
 13 and Citizenship Assistance Grant Program estab-
 14 lished under this section.

15 (2) CONDITIONAL NONIMMIGRANT VISA FEES
 16 AND FINES.—Notwithstanding section 218D(f)(4) of
 17 the Immigration and Nationality Act, as added by
 18 section 601, 2 percent of the fees and fines collected
 19 under section 218D of such Act shall be made avail-
 20 able for grants under the Initial Entry, Adjustment,
 21 and Citizenship Assistance Grant Program estab-
 22 lished under this section.

23 **SEC. 759. SCREENING OF MUNICIPAL SOLID WASTE.**

24 (a) DEFINITIONS.—In this section:

1 (1) BUREAU.—The term “ Bureau” means the
2 Bureau of Customs and Border Protection.

3 (2) COMMERCIAL MOTOR VEHICLE.—The term
4 “commercial motor vehicle” has the meaning given
5 the term in section 31101 of title 49, United States
6 Code.

7 (3) COMMISSIONER.—The term “Commis-
8 sioner” means the Commissioner of the Bureau.

9 (4) MUNICIPAL SOLID WASTE.—The term “mu-
10 nicipal solid waste” includes sludge (as defined in
11 section 1004 of the Solid Waste Disposal Act (42
12 U.S.C. 6903)).

13 (b) REPORTS TO CONGRESS.—Not later than 90 days
14 after the date of enactment of this Act, the Commissioner
15 shall submit to Congress a report that—

16 (1) indicates whether the methodologies and
17 technologies used by the Bureau to screen for and
18 detect the presence of chemical, nuclear, biological,
19 and radiological weapons in municipal solid waste
20 are as effective as the methodologies and tech-
21 nologies used by the Bureau to screen for those ma-
22 terials in other items of commerce entering the
23 United States through commercial motor vehicle
24 transport; and

1 (2) if the report indicates that the methodolo-
2 gies and technologies used to screen municipal solid
3 waste are less effective than those used to screen
4 other items of commerce, identifies the actions that
5 the Bureau will take to achieve the same level of ef-
6 fectiveness in the screening of municipal solid waste,
7 including actions necessary to meet the need for ad-
8 ditional screening technologies.

9 (c) IMPACT ON COMMERCIAL MOTOR VEHICLES.—If
10 the Commissioner fails to fully implement an action identi-
11 fied under subsection (b)(2) before the earlier of the date
12 that is 180 days after the date on which the report under
13 subsection (b) is required to be submitted or the date that
14 is 180 days after the date on which the report is sub-
15 mitted, the Secretary shall deny entry into the United
16 States of any commercial motor vehicle carrying municipal
17 solid waste until the Secretary certifies to Congress that
18 the methodologies and technologies used by the Bureau
19 to screen for and detect the presence of chemical, nuclear,
20 biological, and radiological weapons in municipal solid
21 waste are as effective as the methodologies and tech-
22 nologies used by the Bureau to screen for those materials
23 in other items of commerce entering into the United
24 States through commercial motor vehicle transport.

1 **SEC. 760. ACCESS TO IMMIGRATION SERVICES IN AREAS**
2 **THAT ARE NOT ACCESSIBLE BY ROAD.**

3 Notwithstanding any other provision of law, the Sec-
4 retary shall permit an employee of Customs and Border
5 Protection or Immigration and Customs Enforcement who
6 carries out the functions of Customs and Border Protec-
7 tion or Immigration and Customs Enforcement in a geo-
8 graphic area that is not accessible by road to carry out
9 any function that was performed by an employee of the
10 Immigration and Naturalization Service in such area prior
11 to the date of the enactment of the Homeland Security
12 Act of 2002 (6 U.S.C. 101 et seq.).

13 **SEC. 761. BORDER SECURITY ON CERTAIN FEDERAL LAND.**

14 (a) DEFINITIONS.—In this section:

15 (1) PROTECTED LAND.—The term “protected
16 land” means land under the jurisdiction of the Sec-
17 retary concerned.

18 (2) SECRETARY CONCERNED.—The term “Sec-
19 retary concerned” means—

20 (A) with respect to land under the jurisdic-
21 tion of the Secretary of Agriculture, the Sec-
22 retary of Agriculture; and

23 (B) with respect to land under the jurisdic-
24 tion of the Secretary of the Interior, the Sec-
25 retary of the Interior.

26 (b) SUPPORT FOR BORDER SECURITY NEEDS.—

1 (1) IN GENERAL.—To gain operational control
2 over the international land borders of the United
3 States and to prevent the entry of terrorists, unlaw-
4 ful aliens, narcotics, and other contraband into the
5 United States, the Secretary, in cooperation with the
6 Secretary concerned, shall provide—

7 (A) increased Customs and Border Protec-
8 tion personnel to secure protected land along
9 the international land borders of the United
10 States;

11 (B) Federal land resource training for
12 Customs and Border Protection agents dedi-
13 cated to protected land; and

14 (C) Unmanned Aerial Vehicles, aerial as-
15 sets, Remote Video Surveillance camera sys-
16 tems, and sensors on protected land that is di-
17 rectly adjacent to the international land border
18 of the United States, with priority given to
19 units of the National Park System.

20 (2) COORDINATION.—In providing training for
21 Customs and Border Protection agents under para-
22 graph (1)(B), the Secretary shall coordinate with the
23 Secretary concerned to ensure that the training is
24 appropriate to the mission of the National Park
25 Service, the United States Fish and Wildlife Service,

1 the Forest Service, or the relevant agency of the De-
2 partment of the Interior or the Department of Agri-
3 culture to minimize the adverse impact on natural
4 and cultural resources from border protection activi-
5 ties.

6 (c) INVENTORY OF COSTS AND ACTIVITIES.—The
7 Secretary concerned shall develop and submit to the Sec-
8 retary an inventory of costs incurred by the Secretary con-
9 cerned relating to illegal border activity, including the cost
10 of equipment, training, recurring maintenance, construc-
11 tion of facilities, restoration of natural and cultural re-
12 sources, recapitalization of facilities, and operations.

13 (d) RECOMMENDATIONS.—The Secretary shall—

14 (1) develop joint recommendations with the Na-
15 tional Park Service, the United States Fish and
16 Wildlife Service, and the Forest Service for an ap-
17 propriate cost recovery mechanism relating to items
18 identified in subsection (c); and

19 (2) not later than March 31, 2007, submit to
20 the appropriate congressional committees (as defined
21 in section 2 of the Homeland Security Act of 2002
22 (6 U.S.C. 101)), including the Subcommittee on Na-
23 tional Parks of the Senate and the Subcommittee on
24 National Parks, Recreation and Public Lands of the

1 House of Representatives, the recommendations de-
 2 veloped under paragraph (1).

3 (e) BORDER PROTECTION STRATEGY.—The Sec-
 4 retary, the Secretary of the Interior, and the Secretary
 5 of Agriculture shall jointly develop a border protection
 6 strategy that supports the border security needs of the
 7 United States in the manner that best protects—

8 (1) units of the National Park System;

9 (2) National Forest System land;

10 (3) land under the jurisdiction of the United
 11 States Fish and Wildlife Service; and

12 (4) other relevant land under the jurisdiction of
 13 the Department of the Interior or the Department
 14 of Agriculture.

15 **SEC. 762. UNMANNED AERIAL VEHICLES.**

16 (a) UNMANNED AERIAL VEHICLES AND ASSOCIATED
 17 INFRASTRUCTURE.—The Secretary shall acquire and
 18 maintain MQ–9 unmanned aerial vehicles for use on the
 19 border, including related equipment such as—

20 (1) additional sensors;

21 (2) critical spares;

22 (3) satellite command and control; and

23 (4) other necessary equipment for operational
 24 support.

25 (b) AUTHORIZATION OF APPROPRIATIONS.—

1 (1) IN GENERAL.—There are authorized to be
 2 appropriated to the Secretary to carry out sub-
 3 section (a)—

4 (A) \$178,400,000 for fiscal year 2007; and

5 (B) \$276,000,000 for fiscal year 2008.

6 (2) AVAILABILITY OF FUNDS.—Amounts appro-
 7 priated pursuant to paragraph (1) shall remain
 8 available until expended.

9 **SEC. 763. RELIEF FOR WIDOWS AND ORPHANS.**

10 (a) IN GENERAL.—

11 (1) IN GENERAL.—In applying clause (iii) of
 12 section 201(b)(2)(A) of the Immigration and Na-
 13 tionality Act, as added by section 504(a), to an alien
 14 whose citizen relative died before the date of the en-
 15 actment of this Act, the alien relative may (notwith-
 16 standing the deadlines specified in such clause) file
 17 the classification petition under section
 18 204(a)(1)(A)(ii) of such Act not later than 2 years
 19 after the date of the enactment of this Act.

20 (2) ELIGIBILITY FOR PAROLE.—If an alien was
 21 excluded, deported, removed or departed voluntarily
 22 before the date of the enactment of this Act based
 23 solely upon the alien's lack of classification as an
 24 immediate relative (as defined by 201(b)(2)(A)(ii) of

1 the Immigration and Nationality Act) due to the
2 citizen's death—

3 (A) such alien shall be eligible for parole
4 into the United States pursuant to the Attorney
5 General's discretionary authority under section
6 212(d)(5) of such Act; and

7 (B) such alien's application for adjustment
8 of status shall be considered notwithstanding
9 section 212(a)(9) of such Act.

10 (b) ADJUSTMENT OF STATUS.—Section 245 (8
11 U.S.C. 1255), as amended by section 408(h) of this Act,
12 is further amended by adding at the end the following:

13 “(o) APPLICATION FOR ADJUSTMENT OF STATUS BY
14 SURVIVING SPOUSES, PARENTS, AND CHILDREN.—

15 “(1) IN GENERAL.—Any alien described in
16 paragraph (2) who applies for adjustment of status
17 before the death of the qualifying relative, may have
18 such application adjudicated as if such death had
19 not occurred.

20 “(2) ALIEN DESCRIBED.—An alien is described
21 in this paragraph is an alien who—

22 “(A) is an immediate relative (as described
23 in section 201(b)(2)(A));

1 “(B) is a family-sponsored immigrant (as
 2 described in subsection (a) or (d) of section
 3 203);

4 “(C) is a derivative beneficiary of an em-
 5 ployment-based immigrant under section 203(b)
 6 (as described in section 203(d)); or

7 “(D) is a derivative beneficiary of a diver-
 8 sity immigrant (as described in section
 9 203(c)).”.

10 (c) TRANSITION PERIOD.—

11 (1) IN GENERAL.—Notwithstanding a denial of
 12 an application for adjustment of status for an alien
 13 whose qualifying relative died before the date of the
 14 enactment of this Act, such application may be re-
 15 newed by the alien through a motion to reopen,
 16 without fee, if such motion is filed not later than 2
 17 years after such date of enactment.

18 (2) ELIGIBILITY FOR PAROLE.—If an alien was
 19 excluded, deported, removed or departed voluntarily
 20 before the date of the enactment of this Act—

21 (A) such alien shall be eligible for parole
 22 into the United States pursuant to the Attorney
 23 General’s discretionary authority under section
 24 212(d)(5) of the Immigration and Nationality
 25 Act; and

1 (B) such alien's application for adjustment
 2 of status shall be considered notwithstanding
 3 section 212(a)(9) of such Act.

4 (d) PROCESSING OF IMMIGRANT VISAS.—Section
 5 204(b) (8 U.S.C. 1154), as amended by section 204(b)
 6 of this Act, is further amended—

7 (1) by striking “After an investigation” and in-
 8 serting the following:

9 “(1) IN GENERAL.—After an investigation”;
 10 and

11 (2) by adding at the end the following:

12 “(2) DEATH OF QUALIFYING RELATIVE.—

13 “(A) IN GENERAL.—Any alien described in
 14 paragraph (2) whose qualifying relative died be-
 15 fore the completion of immigrant visa proc-
 16 essing may have an immigrant visa application
 17 adjudicated as if such death had not occurred.
 18 An immigrant visa issued before the death of
 19 the qualifying relative shall remain valid after
 20 such death.

21 “(B) ALIEN DESCRIBED.—An alien is de-
 22 scribed in this paragraph is an alien who—

23 “(i) is an immediate relative (as de-
 24 scribed in section 201(b)(2)(A));

1 “(ii) is a family-sponsored immigrant
 2 (as described in subsection (a) or (d) of
 3 section 203);

4 “(iii) is a derivative beneficiary of an
 5 employment-based immigrant under section
 6 203(b) (as described in section 203(d)); or

7 “(iv) is a derivative beneficiary of a
 8 diversity immigrant (as described in sec-
 9 tion 203(c)).”.

10 (e) NATURALIZATION.—Section 319(a) (8 U.S.C.
 11 1429(a)) is amended by inserting “(or, if the spouse is
 12 deceased, the spouse was a citizen of the United States)”
 13 after “citizen of the United States”.

14 **SEC. 764. TERRORIST ACTIVITIES.**

15 Section 212(a)(3)(B)(i) (8 U.S.C. 1182(a)(3)(B)(i))
 16 is amended—

17 (1) in subclause (III), by striking “, under cir-
 18 cumstances indicating an intention to cause death or
 19 serious bodily harm, incited” and inserting “incited
 20 or advocated”; and

21 (2) in subclause (VII), by striking “or espouses
 22 terrorist activity or persuades others to endorse or
 23 espouse” and inserting “espouses, or advocates ter-
 24 rorist activity or persuades others to endorse,
 25 espouse, or advocate”.

1 **SEC. 765. FAMILY UNITY.**

2 Section 212(a)(9) (8 U.S.C. 1182(a)(9)), as amended
3 by section 212(a) of this Act, is further amended—

4 (1) in subparagraph (C)(ii), by striking “be-
5 tween—” and all that follows and inserting the fol-
6 lowing: “between—

7 “(I) the alien having been bat-
8 tered or subjected to extreme cruelty;
9 and

10 “(II) the alien’s removal, depar-
11 ture from the United States, reentry
12 or reentries into the United States, or
13 attempted reentry into the United
14 States.”; and

15 (2) by adding at the end the following:

16 “(D) WAIVER.—

17 “(i) IN GENERAL.—The Secretary
18 may waive the application of subpara-
19 graphs (B) and (C) for an alien who is a
20 beneficiary of a petition filed under section
21 201 or 203 if such petition was filed not
22 later than the date of the enactment of the
23 Comprehensive Immigration Reform Act of
24 2006.

1 “(ii) FINE.—An alien who is granted
 2 a waiver under clause (i) shall pay a
 3 \$2,000 fine.”.

4 **SEC. 766. TRAVEL DOCUMENT PLAN.**

5 Section 7209 (b)(1) of the Intelligence Reform and
 6 Terrorism Prevention Act of 2004 (8 U.S.C. 1185 note)
 7 is amended by striking “January 1, 2008” and inserting
 8 “June 1, 2009”.

9 **SEC. 767. ENGLISH AS NATIONAL LANGUAGE.**

10 (a) IN GENERAL.—Title 4, United States Code, is
 11 amended by adding at the end the following:

12 **“CHAPTER 6—LANGUAGE OF THE**
 13 **GOVERNMENT**

“Sec.

“161. Declaration of national language.

“162. Preserving and enhancing the role of the national language.

14 **“§ 161. Declaration of national language**

15 “English is the national language of the United
 16 States.

17 **“§ 162. Preserving and enhancing the role of the na-**
 18 **tional language**

19 “The Government of the United States shall preserve
 20 and enhance the role of English as the national language
 21 of the United States of America. Unless otherwise author-
 22 ized or provided by law, no person has a right, entitlement,
 23 or claim to have the Government of the United States or

1 any of its officials or representatives act, communicate,
 2 perform or provide services, or provide materials in any
 3 language other than English. If exceptions are made, that
 4 does not create a legal entitlement to additional services
 5 in that language or any language other than English. If
 6 any forms are issued by the Federal Government in a lan-
 7 guage other than English (or such forms are completed
 8 in a language other than English), the English language
 9 version of the form is the sole authority for all legal pur-
 10 poses.”.

11 (b) CONFORMING AMENDMENT.—The table of chap-
 12 ters for title 4, United States Code, is amended by adding
 13 at the end the following:

“6. Language of the Government 161”.

14 **SEC. 768. REQUIREMENTS FOR NATURALIZATION.**

15 (a) FINDINGS.—The Senate makes the following
 16 findings:

17 (1) Under United States law (8 U.S.C. 1423
 18 (a)), lawful permanent residents of the United
 19 States who have immigrated from foreign countries
 20 must, among other requirements, demonstrate an
 21 understanding of the English language, United
 22 States history and Government, to become citizens
 23 of the United States.

24 (2) The Department of Homeland Security is
 25 currently conducting a review of the testing process

1 used to ensure prospective United States citizens
 2 demonstrate said knowledge of the English language
 3 and United States history and Government for the
 4 purpose of redesigning said test.

5 (b) DEFINITIONS.—For purposes of this section only,
 6 the following words are defined:

7 (1) KEY DOCUMENTS.—The term “key docu-
 8 ments” means the documents that established or ex-
 9 plained the foundational principles of democracy in
 10 the United States, including the United States Con-
 11 stitution and the amendments to the Constitution
 12 (particularly the Bill of Rights), the Declaration of
 13 Independence, the Federalist Papers, and the Eman-
 14 cipation Proclamation.

15 (2) KEY EVENTS.—The term “key events”
 16 means the critical turning points in the history of
 17 the United States (including the American Revolu-
 18 tion, the Civil War, the world wars of the twentieth
 19 century, the civil rights movement, and the major
 20 court decisions and legislation) that contributed to
 21 extending the promise of democracy in American
 22 life.

23 (3) KEY IDEAS.—The term “key ideas” means
 24 the ideas that shaped the democratic institutions
 25 and heritage of the United States, including the no-

1 tion of equal justice under the law, freedom, individ-
2 ualism, human rights, and a belief in progress.

3 (4) KEY PERSONS.—The term “key persons”
4 means the men and women who led the United
5 States as founding fathers, elected officials, sci-
6 entists, inventors, pioneers, advocates of equal
7 rights, entrepreneurs, and artists.

8 (c) GOALS FOR CITIZENSHIP TEST REDESIGN.—The
9 Department of Homeland Security shall establish as goals
10 of the testing process designed to comply with provisions
11 of (8 U.S.C. 1423 (a)) that prospective citizens—

12 (1) demonstrate a sufficient understanding of
13 the English language for usage in everyday life;

14 (2) demonstrate an understanding of American
15 common values and traditions, including the prin-
16 ciples of the Constitution of the United States, the
17 Pledge of Allegiance, respect for the flag of the
18 United States, the National Anthem, and voting in
19 public elections;

20 (3) demonstrate an understanding of the his-
21 tory of the United States, including the key events,
22 key persons, key ideas, and key documents that
23 shaped the institutions and democratic heritage of
24 the United States;

1 (4) demonstrate an attachment to the principles
2 of the Constitution of the United States and the well
3 being and happiness of the people of the United
4 States; and

5 (5) demonstrate an understanding of the rights
6 and responsibilities of citizenship in the United
7 States.

8 (d) IMPLEMENTATION.—The Secretary of Homeland
9 Security shall implement changes to the testing process
10 designed to ensure compliance with (8 U.S.C. 1423 (a))
11 not later than January 1, 2008.

12 **SEC. 769. DECLARATION OF ENGLISH.**

13 English is the common and unifying language of the
14 United States that helps provide unity for the people of
15 the United States.

16 **SEC. 770. PRESERVING AND ENHANCING THE ROLE OF THE**
17 **ENGLISH LANGUAGE.**

18 The Government of the United States shall preserve
19 and enhance the role of English as the common and uni-
20 fying language of America. Nothing herein shall diminish
21 or expand any existing rights under the law of the United
22 States relative to services or materials provided by the
23 Government of the United States in any language other
24 than English.

1 For the purposes of this section, law is defined as
2 including provisions of the United States Code and the
3 United States Constitution, controlling judicial decisions,
4 regulations, and controlling Presidential Executive Orders.

5 (a) CONFORMING AMENDMENT.—The table of chap-
6 ters for title 4, United States Code, is amended by adding
7 at the end Language of Government of the United States.

8 **SEC. 771. EXCLUSION OF ILLEGAL ALIENS FROM CONGRES-**
9 **SIONAL APPORTIONMENT TABULATIONS.**

10 In addition to any report under this Act the Director
11 of the Bureau of the Census shall submit to Congress a
12 report on the impact of illegal immigration on the appor-
13 tionment of Representatives of Congress among the sev-
14 eral States, and any methods and procedures that the Di-
15 rector determines to be feasible and appropriate, to ensure
16 that individuals who are found by an authorized Federal
17 agency to be unlawfully present in the United States are
18 not counted in tabulating population for purposes of ap-
19 portionment of Representatives in Congress among the
20 several States.

21 **SEC. 772. OFFICE OF INTERNAL CORRUPTION INVESTIGA-**
22 **TION.**

23 (a) INTERNAL CORRUPTION; BENEFITS FRAUD.—
24 Section 453 of the Homeland Security Act of 2002 (6
25 U.S.C. 273) is amended—

1 (1) by striking “the Bureau of” each place it
2 appears and inserting “United States”;

3 (2) in subsection (a)—

4 (A) by striking paragraph (1) and insert-
5 ing the following:

6 “(1) establishing the Office of Internal Corrup-
7 tion Investigation, which shall—

8 “(A) receive, process, administer, and in-
9 vestigate criminal and noncriminal allegations
10 of misconduct, corruption, and fraud involving
11 any employee or contract worker of United
12 States Citizenship and Immigration Services
13 that are not subject to investigation by the In-
14 spector General for the Department;

15 “(B) ensure that all complaints alleging
16 any violation described in subparagraph (A) are
17 handled and stored in a manner appropriate to
18 their sensitivity;

19 “(C) have access to all records, reports,
20 audits, reviews, documents, papers, rec-
21 ommendations, or other material available to
22 United States Citizenship and Immigration
23 Services, which relate to programs and oper-
24 ations for which the Director is responsible
25 under this Act;

1 “(D) request such information or assist-
2 ance from any Federal, State, or local govern-
3 ment agency as may be necessary for carrying
4 out the duties and responsibilities under this
5 section;

6 “(E) require the production of all informa-
7 tion, documents, reports, answers, records, ac-
8 counts, papers, and other data and documen-
9 tary evidence necessary to carry out the func-
10 tions under this section—

11 “(i) by subpoena, which shall be en-
12 forceable, in the case of contumacy or re-
13 fusal to obey, by order of any appropriate
14 United States district court; or

15 “(ii) through procedures other than
16 subpoenas if obtaining documents or infor-
17 mation from Federal agencies;

18 “(F) administer to, or take from, any per-
19 son an oath, affirmation, or affidavit, as nec-
20 essary to carry out the functions under this sec-
21 tion, which oath, affirmation, or affidavit, if ad-
22 ministered or taken by or before an agent of
23 the Office of Internal Corruption Investigation
24 shall have the same force and effect as if ad-

1 ministered or taken by or before an officer hav-
2 ing a seal;

3 “(G) investigate criminal allegations and
4 noncriminal misconduct;

5 “(H) acquire adequate office space, equip-
6 ment, and supplies as necessary to carry out
7 the functions and responsibilities under this
8 section; and

9 “(I) be under the direct supervision of the
10 Director.”;

11 (B) in paragraph (2), by striking “and” at
12 the end;

13 (C) in paragraph (3), by striking the pe-
14 riod at the end and inserting “; and”; and

15 (D) by adding at the end the following:

16 “(4) establishing the Office of Immigration
17 Benefits Fraud Investigation, which shall—

18 “(A) conduct administrative investigations,
19 including site visits, to address immigration
20 benefit fraud;

21 “(B) assist United States Citizenship and
22 Immigration Services provide the right benefit
23 to the right person at the right time;

1 “(C) track, measure, assess, conduct pat-
 2 tern analysis, and report fraud-related data to
 3 the Director; and

4 “(D) work with counterparts in other Fed-
 5 eral agencies on matters of mutual interest or
 6 information-sharing relating to immigration
 7 benefit fraud.”; and

8 (3) by adding at the end the following:

9 “(c) ANNUAL REPORT.—The Director, in consulta-
 10 tion with the Office of Internal Corruption Investigations,
 11 shall submit an annual report to the Committee on the
 12 Judiciary of the Senate and the Committee on the Judici-
 13 ary of the House of Representatives that describes—

14 “(1) the activities of the Office, including the
 15 number of investigations began, completed, pending,
 16 turned over to the Inspector General for criminal in-
 17 vestigations, and turned over to a United States At-
 18 torney for prosecution; and

19 “(2) the types of allegations investigated by the
 20 Office during the 12-month period immediately pre-
 21 ceding the submission of the report that relate to the
 22 misconduct, corruption, and fraud described in sub-
 23 section (a)(1).”.

24 (b) USE OF IMMIGRATION FEES TO COMBAT
 25 FRAUD.—Section 286(v)(2)(B) (8 U.S.C. 1356(v)(2)(B))

1 is amended by adding at the end the following: “Not less
 2 than 20 percent of the funds made available under this
 3 subparagraph shall be used for activities and functions de-
 4 scribed in paragraphs (1) and (4) of section 453(a) of the
 5 Homeland Security Act of 2002 (6 U.S.C. 273(a)).”.

6 **SEC. 773. ADJUSTMENT OF STATUS FOR CERTAIN PER-**
 7 **SECUTED RELIGIOUS MINORITIES.**

8 (a) IN GENERAL.—The Secretary shall adjust the
 9 status of an alien to that of an alien lawfully admitted
 10 for permanent residence if the alien—

- 11 (1) is a persecuted religious minority;
- 12 (2) is admissible to the United States as an im-
- 13 migrant, except as provided under subsection (b);
- 14 (3) had an application for asylum pending on
- 15 May 1, 2003;
- 16 (4) applies for such adjustment of status;
- 17 (5) was physically present in the United States
- 18 on the date the application for such adjustment is
- 19 filed; and
- 20 (6) pays a fee, in an amount determined by the
- 21 Secretary, for the processing of such application.

22 (b) WAIVER OF CERTAIN GROUNDS FOR INADMIS-

23 SIBILITY.—

24 (1) INAPPLICABLE PROVISION.—Section

25 212(a)(7) of the Immigration and Nationality Act (8

1 U.S.C. 1182(a)(7)) shall not apply to any adjust-
 2 ment of status under this section.

3 (2) WAIVER.—The Secretary may waive any
 4 other provision of section 212(a) of such Act (except
 5 for paragraphs (2) and (3)) if extraordinary and
 6 compelling circumstances warrant such an adjust-
 7 ment for humanitarian purposes, to ensure family
 8 unity, or if it is otherwise in the public interest.

9 **SEC. 774. ELIGIBILITY OF AGRICULTURAL AND FORESTRY**
 10 **WORKERS FOR CERTAIN LEGAL ASSISTANCE.**

11 Section 305 of the Immigration Reform and Control
 12 Act of 1986 (8 U.S.C. 1101 note; Public Law 99–603)
 13 is amended—

14 (1) by striking “section 101(a)(15)(H)(ii)(a) of
 15 the Immigration and Nationality Act (8 U.S.C.
 16 1101(a)(15)(H)(ii)(a))” and inserting “item (a) or
 17 (b) of section 101(a)(15)(H)(ii) of the Immigration
 18 and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii))”;
 19 and

20 (2) by inserting “or forestry” after “agricul-
 21 tural”.

22 **SEC. 775. DESIGNATION OF PROGRAM COUNTRIES.**

23 Section 217(c)(1) (8 U.S.C. 1187(c)(1)) is amended
 24 to read as follows:

1 “(1) IN GENERAL.—As soon as any country
 2 fully meets the requirements under paragraph (2),
 3 the Secretary of Homeland Security, in consultation
 4 with the Secretary of State, shall designate such
 5 country as a program country.”.

6 **SEC. 776. GLOBAL HEALTHCARE COOPERATION.**

7 (a) GLOBAL HEALTHCARE COOPERATION.—Title III
 8 (8 U.S.C. 1401 et seq.) is amended by inserting after sec-
 9 tion 317 the following:

10 **“SEC. 317A. TEMPORARY ABSENCE OF ALIENS PROVIDING**
 11 **HEALTHCARE IN DEVELOPING COUNTRIES.**

12 “(a) IN GENERAL.—Notwithstanding any other pro-
 13 vision of this Act, the Secretary of Homeland Security
 14 shall allow an eligible alien and the spouse or child of such
 15 alien to reside in a candidate country during the period
 16 that the eligible alien is working as a physician or other
 17 healthcare worker in a candidate country. During such pe-
 18 riod the eligible alien and such spouse or child shall be
 19 considered—

20 “(1) to be physically present and residing in the
 21 United States for purposes of naturalization under
 22 section 316(a); and

23 “(2) to meet the continuous residency require-
 24 ments under section 316(b).

25 “(b) DEFINITIONS.—In this section:

1 “(1) CANDIDATE COUNTRY.—The term ‘can-
 2 didate country’ means a country that the Secretary
 3 of State determines is—

4 “(A) eligible for assistance from the Inter-
 5 national Development Association, in which the
 6 per capita income of the country is equal to or
 7 less than the historical ceiling of the Inter-
 8 national Development Association for the appli-
 9 cable fiscal year, as defined by the International
 10 Bank for Reconstruction and Development;

11 “(B) classified as a lower middle income
 12 country in the then most recent edition of the
 13 World Development Report for Reconstruction
 14 and Development published by the International
 15 Bank for Reconstruction and Development and
 16 having an income greater than the historical
 17 ceiling for International Development Associa-
 18 tion eligibility for the applicable fiscal year; or

19 “(C) qualifies to be a candidate country
 20 due to special circumstances, including natural
 21 disasters or public health emergencies.

22 “(2) ELIGIBLE ALIEN.—The term ‘eligible
 23 alien’ means an alien who—

24 “(A) has been lawfully admitted to the
 25 United States for permanent residence; and

1 “(B) is a physician or other healthcare
2 worker.

3 “(c) CONSULTATION.—The Secretary of Homeland
4 Security shall consult with the Secretary of State in car-
5 rying out this subsection.

6 “(d) PUBLICATION.—The Secretary of State shall
7 publish—

8 “(1) not later than 6 months after the date of
9 the enactment of the Comprehensive Immigration
10 Reform Act of 2006, and annually thereafter, a list
11 of candidate countries; and

12 “(2) an immediate amendment to such list at
13 any time to include any country that qualifies as a
14 candidate country due to special circumstances
15 under subsection (b)(1)(C).”.

16 (b) RULEMAKING.—

17 (1) REQUIREMENT.—Not later than 6 months
18 after the date of the enactment of this Act, the Sec-
19 retary shall promulgate regulations to carry out the
20 amendments made by this section.

21 (2) CONTENT.—The regulations required by
22 paragraph (1) shall—

23 (A) permit an eligible alien (as defined in
24 section 317A of the Immigration and Nation-
25 ality Act, as added by subsection (a)) and the

1 spouse or child of the eligible alien to reside in
2 a foreign country to work as a physician or
3 other healthcare worker as described in sub-
4 section (a) of such section 317A for not less
5 than a 12-month period and not more than a
6 24-month period, and shall permit the Sec-
7 retary to extend such period for an additional
8 period not to exceed 12 months, if the Sec-
9 retary determines that such country has a con-
10 tinuing need for such a physician or other
11 healthcare worker;

12 (B) provide for the issuance of documents
13 by the Secretary to such eligible alien, and such
14 spouse or child, if appropriate, to demonstrate
15 that such eligible alien, and such spouse or
16 child, if appropriate, is authorized to reside in
17 such country under such section 317A; and

18 (C) provide for an expedited process
19 through which the Secretary shall review appli-
20 cations for such an eligible alien to reside in a
21 foreign country pursuant to subsection (a) of
22 such section 317A if the Secretary of State de-
23 termines a country is a candidate country pur-
24 suant to subsection (b)(1)(C) of such section
25 317A.

1 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

2 The Immigration and Nationality Act is amended as fol-
3 lows:

4 (1) Section 101(a)(13)(C)(ii) (8 U.S.C.
5 1101(a)(13)(C)(ii)) is amended by adding at the end
6 “except in the case of an eligible alien, or the spouse
7 or child of such alien, authorized to be absent from
8 the United States pursuant to section 317A,”.

9 (2) Section 211(b) (8 U.S.C. 1181(b)) is
10 amended by inserting “, including an eligible alien
11 authorized to reside in a foreign country pursuant to
12 section 317A and the spouse or child of such eligible
13 alien, if appropriate,” after “101(a)(27)(A),”.

14 (3) Section 212(a)(7)(A)(i)(I) (8 U.S.C.
15 1182(a)(7)(A)(i)(I)) is amended by inserting “other
16 than an eligible alien authorized to reside in a for-
17 eign country pursuant to section 317A and the
18 spouse or child of such eligible alien, if appropriate,”
19 after “Act,”.

20 (4) Section 319(b)(1)(B) (8 U.S.C.
21 1430(b)(1)(B)) is amended by inserting “an eligible
22 alien who is residing or has resided in a foreign
23 country pursuant to section 317A” before “and” at
24 the end.

1 (5) The table of contents is amended by insert-
 2 ing after the item relating to section 317 the fol-
 3 lowing:

“Sec. 317A. Temporary absence of aliens providing healthcare in developing
 countries.”.

4 (d) AUTHORIZATION OF APPROPRIATIONS.—There
 5 are authorized to be appropriated to the Bureau of Citi-
 6 zenship and Immigration Services such sums as may be
 7 necessary to carry out this section and the amendments
 8 made by this section.

9 **SEC. 777. ATTESTATION BY HEALTHCARE WORKERS.**

10 (a) REQUIREMENT FOR ATTESTATION.—Section
 11 212(a)(5) (8 U.S.C. 1182(a)(5)) is amended by adding at
 12 the end the following new subparagraph:

13 “(E) HEALTHCARE WORKERS WITH OTHER
 14 OBLIGATIONS.—

15 “(i) IN GENERAL.—An alien who
 16 seeks to enter the United States for the
 17 purpose of performing labor as a physician
 18 or other healthcare worker is inadmissible
 19 unless the alien submits to the Secretary of
 20 Homeland Security or the Secretary of
 21 State, as appropriate, an attestation that
 22 the alien is not seeking to enter the United
 23 States for such purpose during any period
 24 in which the alien has an outstanding obli-

gation to the government of the alien's country of origin or the alien's country of residence.

“(ii) OBLIGATION DEFINED.—In this subparagraph, the term ‘obligation’ means an obligation incurred as part of a valid, voluntary individual agreement in which the alien received financial assistance to defray the costs of education or training to qualify as a physician or other healthcare worker in consideration for a commitment to work as a physician or other healthcare worker in the alien's country of origin or the alien's country of residence.

“(iii) WAIVER.—The Secretary of Homeland Security may waive a finding of inadmissibility under clause (i) if the Secretary determines that—

“(I) the obligation was incurred by coercion or other improper means;

“(II) the alien and the government of the country to which the alien has an outstanding obligation have reached a valid, voluntary agreement, pursuant to which the alien's obliga-

tion has been deemed satisfied, or the alien has shown to the satisfaction of the Secretary that the alien has been unable to reach such an agreement because of coercion or other improper means; or

“(III) the obligation should not be enforced due to other extraordinary circumstances, including undue hardship that would be suffered by the alien in the absence of a waiver.”.

(b) EFFECTIVE DATE AND APPLICATION.—

(1) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective 180 days after the date of the enactment of this Act.

(2) APPLICATION BY THE SECRETARY.—The Secretary shall begin to carry out the subparagraph (E) of section 212(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)), as added by subsection (a), not later than the effective date described in paragraph (1), including the requirement for the attestation and the granting of a waiver described in such subparagraph, regardless of whether regulations to implement such subparagraph have been promulgated.

1 **SEC. 778. PUBLIC ACCESS TO THE STATUE OF LIBERTY.**

2 Not later than 60 days after the date of the enact-
 3 ment of this Act, the Secretary of the Interior shall ensure
 4 that all persons who satisfy reasonable and appropriate
 5 security measures shall have full access to the public areas
 6 of the Statue of Liberty, including the crown and the
 7 stairs leading thereto.

8 **SEC. 779. NATIONAL SECURITY DETERMINATION.**

9 Notwithstanding any other provision of this Act, the
 10 President shall ensure that no provision of title IV or title
 11 VI of this Act, or any amendment made by either such
 12 title, is carried out until after the date on which the Presi-
 13 dent makes a determination that the implementation of
 14 such title IV and title VI, and the amendments made by
 15 either such title, will strengthen the national security of
 16 the United States.

17 **TITLE VIII—INTERCOUNTRY**
 18 **ADOPTION REFORM**

19 **SEC. 801. SHORT TITLE.**

20 This title may be cited as the “Intercountry Adoption
 21 Reform Act of 2006” or the “ICARE Act”.

22 **SEC. 802. FINDINGS; PURPOSES.**

23 (a) FINDINGS.—Congress finds the following:

24 (1) That a child, for the full and harmonious
 25 development of his or her personality, should grow

1 up in a family environment, in an atmosphere of
2 happiness, love, and understanding.

3 (2) That intercountry adoption may offer the
4 advantage of a permanent family to a child for
5 whom a suitable family cannot be found in his or her
6 country of origin.

7 (3) There has been a significant growth in
8 intercountry adoptions. In 1990, Americans adopted
9 7,093 children from abroad. In 2004, they adopted
10 23,460 children from abroad.

11 (4) Americans increasingly seek to create or en-
12 large their families through intercountry adoptions.

13 (5) There are many children worldwide that are
14 without permanent homes.

15 (6) In the interest of children without a perma-
16 nent family and the United States citizens who are
17 waiting to bring them into their families, reforms
18 are needed in the intercountry adoption process used
19 by United States citizens.

20 (7) Before adoption, each child should have the
21 benefit of measures taken to ensure that inter-
22 country adoption is in his or her best interest and
23 that prevents the abduction, selling, or trafficking of
24 children.

1 (8) In addition, Congress recognizes that for-
2 eign-born adopted children do not make the decision
3 whether to immigrate to the United States. They are
4 being chosen by Americans to become part of their
5 immediate families.

6 (9) As such these children should not be classi-
7 fied as immigrants in the traditional sense. Once
8 fully and finally adopted, they should be treated as
9 children of United States citizens.

10 (10) Since a child who is fully and finally
11 adopted is entitled to the same rights, duties, and
12 responsibilities as a biological child, the law should
13 reflect such equality.

14 (11) Therefore, foreign-born adopted children of
15 United States citizens should be accorded the same
16 procedural treatment as biological children born
17 abroad to a United States citizen.

18 (12) If a United States citizen can confer citi-
19 zenship to a biological child born abroad, then the
20 same citizen is entitled to confer such citizenship to
21 their legally and fully adopted foreign-born child im-
22 mediately upon final adoption.

23 (13) If a United States citizen cannot confer
24 citizenship to a biological child born abroad, then
25 such citizen cannot confer citizenship to their legally

1 and fully adopted foreign-born child, except through
2 the naturalization process.

3 (b) PURPOSES.—The purposes of this title are—

4 (1) to ensure the any adoption of a foreign-born
5 child by parents in the United States is carried out
6 in the manner that is in the best interest of the
7 child;

8 (2) to ensure that foreign-born children adopted
9 by United States citizens will be treated identically
10 to a biological child born abroad to the same citizen
11 parent; and

12 (3) to improve the intercountry adoption proc-
13 ess to make it more citizen friendly and focused on
14 the protection of the child.

15 **SEC. 803. DEFINITIONS.**

16 In this title:

17 (1) ADOPTABLE CHILD.—The term “adoptable
18 child” has the same meaning given such term in sec-
19 tion 101(c)(3) of the Immigration and Nationality
20 Act (8 U.S.C. 1101(c)(3)), as added by section
21 824(a) of this Act.

22 (2) AMBASSADOR AT LARGE.—The term “Am-
23 bassador at Large” means the Ambassador at Large
24 for Intercountry Adoptions appointed to head the
25 Office pursuant to section 811(b).

1 (3) COMPETENT AUTHORITY.—The term “com-
 2 petent authority” means the entity or entities au-
 3 thorized by the law of the child’s country of resi-
 4 dence to engage in permanent placement of children
 5 who are no longer in the legal or physical custody
 6 of their biological parents.

7 (4) CONVENTION.—The term “Convention”
 8 means the Convention on Protection of Children and
 9 Co-operation in Respect of Intercountry Adoption,
 10 done at The Hague on May 29, 1993.

11 (5) FULL AND FINAL ADOPTION.—The term
 12 “full and final adoption” means an adoption—

13 (A) that is completed according to the laws
 14 of the child’s country of residence or the State
 15 law of the parent’s residence;

16 (B) under which a person is granted full
 17 and legal custody of the adopted child;

18 (C) that has the force and effect of sev-
 19 ering the child’s legal ties to the child’s biologi-
 20 cal parents;

21 (D) under which the adoptive parents meet
 22 the requirements of section 825; and

23 (E) under which the child has been adju-
 24 dicated to be an adoptable child in accordance
 25 with section 826.

1 (6) OFFICE.—The term “Office” means the Of-
 2 fice of Intercountry Adoptions established under sec-
 3 tion 811(a).

4 (7) READILY APPROVABLE.—A petition or cer-
 5 tification is “readily approvable” if the documentary
 6 support provided along with such petition or certifi-
 7 cation demonstrates that the petitioner satisfies the
 8 eligibility requirements and no additional informa-
 9 tion or investigation is necessary.

10 **Subtitle A—ADMINISTRATION OF** 11 **INTERCOUNTRY ADOPTIONS**

12 **SEC. 811. OFFICE OF INTERCOUNTRY ADOPTIONS.**

13 (a) ESTABLISHMENT.—Not later than 180 days after
 14 the date of enactment of this Act, there shall be estab-
 15 lished within the Department of State, an Office of Inter-
 16 country Adoptions which shall be headed by the Ambas-
 17 sador at Large for Intercountry Adoptions.

18 (b) AMBASSADOR AT LARGE.—

19 (1) APPOINTMENT.—The Ambassador at Large
 20 shall be appointed by the President, by and with the
 21 advice and consent of the Senate, from among indi-
 22 viduals who have background, experience, and train-
 23 ing in intercountry adoptions.

24 (2) CONFLICTS OF INTEREST.—The individual
 25 appointed to be the Ambassador at Large shall be

1 free from any conflict of interest that could impede
2 such individual's ability to serve as the Ambassador.

3 (3) AUTHORITY.—The Ambassador at Large
4 shall report directly to the Secretary of State, in
5 consultation with the Assistant Secretary for Con-
6 sular Affairs.

7 (4) REGULATIONS.—The Ambassador at Large
8 may not issue rules or regulations unless such rules
9 or regulations have been approved by the Secretary
10 of State.

11 (5) DUTIES OF THE AMBASSADOR AT LARGE.—
12 The Ambassador at Large shall have the following
13 responsibilities:

14 (A) IN GENERAL.—The primary respon-
15 sibilities of the Ambassador at Large shall be—

16 (i) to ensure that any adoption of a
17 foreign-born child by parents in the United
18 States is carried out in the manner that is
19 in the best interest of the child; and

20 (ii) to assist the Secretary of State in
21 fulfilling the responsibilities designated to
22 the central authority under title I of the
23 Intercountry Adoption Act of 2000 (42
24 U.S.C. 14911 et seq.).

1 (B) ADVISORY ROLE.—The Ambassador at
2 Large shall be a principal advisor to the Presi-
3 dent and the Secretary of State regarding mat-
4 ters affecting intercountry adoption and the
5 general welfare of children abroad and shall
6 make recommendations regarding—

7 (i) the policies of the United States
8 with respect to the establishment of a sys-
9 tem of cooperation among the parties to
10 the Convention;

11 (ii) the policies to prevent abandon-
12 ment, to strengthen families, and to ad-
13 vance the placement of children in perma-
14 nent families; and

15 (iii) policies that promote the protec-
16 tion and well-being of children.

17 (C) DIPLOMATIC REPRESENTATION.—Sub-
18 ject to the direction of the President and the
19 Secretary of State, the Ambassador at Large
20 may represent the United States in matters and
21 cases relevant to international adoption in—

22 (i) fulfillment of the responsibilities
23 designated to the central authority under
24 title I of the Intercountry Adoption Act of
25 2000 (42 U.S.C. 14911 et seq.);

(ii) contacts with foreign governments, intergovernmental organizations, and specialized agencies of the United Nations and other international organizations of which the United States is a member; and

(iii) multilateral conferences and meetings relevant to international adoption.

(D) INTERNATIONAL POLICY DEVELOPMENT.—The Ambassador at Large shall advise and support the Secretary of State and other relevant Bureaus of the Department of State in the development of sound policy regarding child protection and intercountry adoption.

(E) REPORTING RESPONSIBILITIES.—The Ambassador at Large shall have the following reporting responsibilities:

(i) IN GENERAL.—The Ambassador at Large shall assist the Secretary of State and other relevant Bureaus in preparing those portions of the Human Rights Reports that relate to the abduction, sale, and trafficking of children.

(ii) ANNUAL REPORT ON INTERCOUNTRY ADOPTION.—Not later than Sep-

1 tember 1 of each year, the Secretary of
2 State shall prepare and submit to Congress
3 an annual report on intercountry adoption.
4 Each annual report shall include—

5 (I) a description of the status of
6 child protection and adoption in each
7 foreign country, including—

8 (aa) trends toward improve-
9 ment in the welfare and protec-
10 tion of children and families;

11 (bb) trends in family reunifi-
12 cation, domestic adoption, and
13 intercountry adoption;

14 (cc) movement toward ratifi-
15 cation and implementation of the
16 Convention; and

17 (dd) census information on
18 the number of children in or-
19 phanages, foster homes, and
20 other types of nonpermanent res-
21 idential care as reported by the
22 foreign country;

23 (II) the number of intercountry
24 adoptions by United States citizens,
25 including the country from which each

1 child emigrated, the State in which
2 each child resides, and the country in
3 which the adoption was finalized;

4 (III) the number of intercountry
5 adoptions involving emigration from
6 the United States, including the coun-
7 try where each child now resides and
8 the State from which each child emi-
9 grated;

10 (IV) the number of placements
11 for adoption in the United States that
12 were disrupted, including the country
13 from which the child emigrated, the
14 age of the child, the date of the place-
15 ment for adoption, the reasons for the
16 disruption, the resolution of the dis-
17 ruption, the agencies that handled the
18 placement for adoption, and the plans
19 for the child, and in addition, any in-
20 formation regarding disruption or dis-
21 solution of adoptions of children from
22 other countries received pursuant to
23 section 422(b)(14) of the Social Secu-
24 rity Act (42 U.S.C. 622(b)(14));

1 (V) the average time required for
2 completion of an adoption, set forth
3 by the country from which the child
4 emigrated;

5 (VI) the current list of agencies
6 accredited and persons approved
7 under the Intercountry Adoption Act
8 of 2000 (42 U.S.C. 14901 et seq.) to
9 provide adoption services;

10 (VII) the names of the agencies
11 and persons temporarily or perma-
12 nently debarred under the Inter-
13 country Adoption Act of 2000 (42
14 U.S.C. 14901 et seq.), and the rea-
15 sons for the debarment;

16 (VIII) the range of adoption fees
17 involving adoptions by United States
18 citizens and the median of such fees
19 set forth by the country of origin;

20 (IX) the range of fees charged
21 for accreditation of agencies and the
22 approval of persons in the United
23 States engaged in providing adoption
24 services under the Convention; and

1 (X) recommendations of ways the
2 United States might act to improve
3 the welfare and protection of children
4 and families in each foreign country.

5 (c) FUNCTIONS OF OFFICE.—The Office shall have
6 the following 7 functions:

7 (1) APPROVAL OF A FAMILY TO ADOPT.—To
8 approve or disapprove the eligibility of a United
9 States citizen to adopt a child born in a foreign
10 country.

11 (2) CHILD ADJUDICATION.—To investigate and
12 adjudicate the status of a child born in a foreign
13 country to determine whether that child is an adopt-
14 able child.

15 (3) FAMILY SERVICES.—To provide assistance
16 to United States citizens engaged in the intercountry
17 adoption process in resolving problems with respect
18 to that process and to track intercountry adoption
19 cases so as to ensure that all such adoptions are
20 processed in a timely manner.

21 (4) INTERNATIONAL POLICY DEVELOPMENT.—
22 To advise and support the Ambassador at Large and
23 other relevant Bureaus of the Department of State
24 in the development of sound policy regarding child
25 protection and intercountry adoption.

1 (5) CENTRAL AUTHORITY.—To assist the Sec-
2 retary of State in carrying out duties of the central
3 authority as defined in section 3 of the Intercountry
4 Adoption Act of 2000 (42 U.S.C. 14902).

5 (6) ENFORCEMENT.—To investigate, either di-
6 rectly or in cooperation with other appropriate inter-
7 national, Federal, State, or local entities, impropri-
8 eties relating to intercountry adoption, including
9 issues of child protection, birth family protection,
10 and consumer fraud.

11 (7) ADMINISTRATION.—To perform administra-
12 tive functions related to the functions performed
13 under paragraphs (1) through (6), including legal
14 functions and congressional liaison and public affairs
15 functions.

16 (d) ORGANIZATION.—

17 (1) IN GENERAL.—All functions of the Office
18 shall be performed by officers employed in a central
19 office located in Washington, D.C. Within that of-
20 fice, there shall be 7 divisions corresponding to the
21 7 functions of the Office. The director of each such
22 division shall report directly to the Ambassador at
23 Large.

1 (2) APPROVAL TO ADOPT.—The division re-
2 sponsible for approving parents to adopt shall be di-
3 vided into regions of the United States as follows:

4 (A) Northwest.

5 (B) Northeast.

6 (C) Southwest.

7 (D) Southeast.

8 (E) Midwest.

9 (F) West.

10 (3) CHILD ADJUDICATION.—To the extent prac-
11 ticable, the division responsible for the adjudication
12 of foreign-born children as adoptable shall be divided
13 by world regions which correspond to the world re-
14 gions used by other divisions within the Department
15 of State.

16 (4) USE OF INTERNATIONAL FIELD OFFI-
17 CERS.—Nothing in this section shall be construed to
18 prohibit the use of international field officers posted
19 abroad, as necessary, to fulfill the requirements of
20 this Act.

21 (5) COORDINATION.—The Ambassador at
22 Large shall coordinate with appropriate employees of
23 other agencies and departments of the United
24 States, whenever appropriate, in carrying out the
25 duties of the Ambassador.

1 (e) QUALIFICATIONS AND TRAINING.—In addition to
 2 meeting the employment requirements of the Department
 3 of State, officers employed in any of the 7 divisions of
 4 the Office shall undergo extensive and specialized training
 5 in the laws and processes of intercountry adoption as well
 6 as understanding the cultural, medical, emotional, and so-
 7 cial issues surrounding intercountry adoption and adoptive
 8 families. The Ambassador at Large shall, whenever pos-
 9 sible, recruit and hire individuals with background and ex-
 10 perience in intercountry adoptions, taking care to ensure
 11 that such individuals do not have any conflicts of interest
 12 that might inhibit their ability to serve.

13 (f) USE OF ELECTRONIC DATABASES AND FILING.—
 14 To the extent possible, the Office shall make use of cen-
 15 tralized, electronic databases and electronic form filing.

16 **SEC. 812. RECOGNITION OF CONVENTION ADOPTIONS IN**
 17 **THE UNITED STATES.**

18 Section 505(a)(1) of the Intercountry Adoption Act
 19 of 2000 (42 U.S.C. 14901 note) is amended by inserting
 20 “301, 302,” after “205,”.

21 **SEC. 813. TECHNICAL AND CONFORMING AMENDMENT.**

22 Section 104 of the Intercountry Adoption Act of 2000
 23 (42 U.S.C. 14914) is repealed.

1 **SEC. 814. TRANSFER OF FUNCTIONS.**

2 (a) IN GENERAL.—Subject to subsection (c), all func-
3 tions under the immigration laws of the United States
4 with respect to the adoption of foreign-born children by
5 United States citizens and their admission to the United
6 States that have been vested by statute in, or exercised
7 by, the Secretary of Homeland Security immediately prior
8 to the effective date of this Act, are transferred to the
9 Secretary of State on the effective date of this Act and
10 shall be carried out by the Ambassador at Large, under
11 the supervision of the Secretary of State, in accordance
12 with applicable laws and this Act.

13 (b) EXERCISE OF AUTHORITIES.—Except as other-
14 wise provided by law, the Ambassador at Large may, for
15 purposes of performing any function transferred to the
16 Ambassador at Large under subsection (a), exercise all
17 authorities under any other provision of law that were
18 available with respect to the performance of that function
19 to the official responsible for the performance of the func-
20 tion immediately before the effective date of the transfer
21 of the function pursuant to this subtitle.

22 (c) LIMITATION ON TRANSFER OF PENDING ADOP-
23 TIONS.—If an individual has filed a petition with the Im-
24 migration and Naturalization Service or the Department
25 of Homeland Security with respect to the adoption of a
26 foreign-born child prior to the date of enactment of this

1 Act, the Secretary of Homeland Security shall have the
2 authority to make the final determination on such petition
3 and such petition shall not be transferred to the Office.

4 **SEC. 815. TRANSFER OF RESOURCES.**

5 Subject to section 1531 of title 31, United States
6 Code, upon the effective date of this Act, there are trans-
7 ferred to the Ambassador at Large for appropriate alloca-
8 tion in accordance with this Act, the assets, liabilities, con-
9 tracts, property, records, and unexpended balance of ap-
10 propriations, authorizations, allocations, and other funds
11 employed, held, used, arising from, available to, or to be
12 made available to the Department of Homeland Security
13 in connection with the functions transferred pursuant to
14 this subtitle.

15 **SEC. 816. INCIDENTAL TRANSFERS.**

16 The Ambassador at Large may make such additional
17 incidental dispositions of personnel, assets, liabilities,
18 grants, contracts, property, records, and unexpended bal-
19 ances of appropriations, authorizations, allocations, and
20 other funds held, used, arising from, available to, or to
21 be made available in connection with such functions, as
22 may be necessary to carry out this subtitle. The Amba-
23 sador at Large shall provide for such further measures
24 and dispositions as may be necessary to effectuate the pur-
25 poses of this subtitle.

1 **SEC. 817. SAVINGS PROVISIONS.**

2 (a) **LEGAL DOCUMENTS.**—All orders, determinations,
3 rules, regulations, permits, grants, loans, contracts, agree-
4 ments, including collective bargaining agreements, certifi-
5 cates, licenses, and privileges—

6 (1) that have been issued, made, granted, or al-
7 lowed to become effective by the President, the Am-
8 bassador at Large, the former Commissioner of the
9 Immigration and Naturalization Service, or the Sec-
10 retary of Homeland Security, or their delegates, or
11 any other Government official, or by a court of com-
12 petent jurisdiction, in the performance of any func-
13 tion that is transferred pursuant to this subtitle; and

14 (2) that are in effect on the effective date of
15 such transfer (or become effective after such date
16 pursuant to their terms as in effect on such effective
17 date);

18 shall continue in effect according to their terms until
19 modified, terminated, superseded, set aside, or revoked in
20 accordance with law by the President, any other author-
21 ized official, a court of competent jurisdiction, or operation
22 of law, except that any collective bargaining agreement
23 shall remain in effect until the date of termination speci-
24 fied in the agreement.

25 (b) **PROCEEDINGS.**—

1 (1) PENDING.—The transfer of functions under
2 section 814 shall not affect any proceeding or any
3 application for any benefit, service, license, permit,
4 certificate, or financial assistance pending on the ef-
5 fective date of this subtitle before an office whose
6 functions are transferred pursuant to this subtitle,
7 but such proceedings and applications shall be con-
8 tinued.

9 (2) ORDERS.—Orders shall be issued in such
10 proceedings, appeals shall be taken therefrom, and
11 payments shall be made pursuant to such orders, as
12 if this Act had not been enacted, and orders issued
13 in any such proceeding shall continue in effect until
14 modified, terminated, superseded, or revoked by a
15 duly authorized official, by a court of competent ju-
16 risdiction, or by operation of law.

17 (3) DISCONTINUANCE OR MODIFICATION.—
18 Nothing in this section shall be considered to pro-
19 hibit the discontinuance or modification of any such
20 proceeding under the same terms and conditions and
21 to the same extent that such proceeding could have
22 been discontinued or modified if this section had not
23 been enacted.

24 (c) SUITS.—This subtitle shall not affect suits com-
25 menced before the effective date of this subtitle, and in

1 all such suits, proceeding shall be had, appeals taken, and
2 judgments rendered in the same manner and with the
3 same effect as if this Act had not been enacted.

4 (d) NONABATEMENT OF ACTIONS.—No suit, action,
5 or other proceeding commenced by or against the Depart-
6 ment of State, the Immigration and Naturalization Serv-
7 ice, or the Department of Homeland Security, or by or
8 against any individual in the official capacity of such indi-
9 vidual as an officer or employee in connection with a func-
10 tion transferred pursuant to this section, shall abate by
11 reason of the enactment of this Act.

12 (e) CONTINUANCE OF SUIT WITH SUBSTITUTION OF
13 PARTIES.—If any Government officer in the official capac-
14 ity of such officer is party to a suit with respect to a func-
15 tion of the officer, and pursuant to this subtitle such func-
16 tion is transferred to any other officer or office, then such
17 suit shall be continued with the other officer or the head
18 of such other office, as applicable, substituted or added
19 as a party.

20 (f) ADMINISTRATIVE PROCEDURE AND JUDICIAL RE-
21 VIEW.—Except as otherwise provided by this subtitle, any
22 statutory requirements relating to notice, hearings, action
23 upon the record, or administrative or judicial review that
24 apply to any function transferred pursuant to any provi-
25 sion of this subtitle shall apply to the exercise of such

1 function by the head of the office, and other officers of
 2 the office, to which such function is transferred pursuant
 3 to such provision.

4 **Subtitle B—Reform of United**
 5 **States Laws Governing Inter-**
 6 **country Adoptions**

7 **SEC. 821. AUTOMATIC ACQUISITION OF CITIZENSHIP FOR**
 8 **ADOPTED CHILDREN BORN OUTSIDE THE**
 9 **UNITED STATES.**

10 (a) AUTOMATIC CITIZENSHIP PROVISIONS.—

11 (1) AMENDMENT OF THE INA.—Section 320 of
 12 the Immigration and Nationality Act (8 U.S.C.
 13 1431) is amended to read as follows:

14 **“SEC. 320. CONDITIONS FOR AUTOMATIC CITIZENSHIP FOR**
 15 **CHILDREN BORN OUTSIDE THE UNITED**
 16 **STATES.**

17 “(a) IN GENERAL.—A child born outside of the
 18 United States automatically becomes a citizen of the
 19 United States—

20 “(1) if the child is not an adopted child—

21 “(A) at least 1 parent of the child is a cit-
 22 izen of the United States, whether by birth or
 23 naturalization, who has been physically present
 24 (as determined under subsection (b)) in the
 25 United States or its outlying possessions for a

1 period or periods totaling not less than 5 years,
 2 at least 2 of which were after attaining the age
 3 of 14 years; and

4 “(B) the child is under the age of 18
 5 years; or

6 “(2) if the child is an adopted child, on the date
 7 of the full and final adoption of the child—

8 “(A) at least 1 parent of the child is a cit-
 9 izen of the United States, whether by birth or
 10 naturalization, who has been physically present
 11 (as determined under subsection (b)) in the
 12 United States or its outlying possessions for a
 13 period or periods totaling not less than 5 years,
 14 at least 2 of which were after attaining the age
 15 of 14 years;

16 “(B) the child is an adoptable child;

17 “(C) the child is the beneficiary of a full
 18 and final adoption decree entered by a foreign
 19 government or a court in the United States;
 20 and

21 “(D) the child is under the age of 16
 22 years.

23 “(b) PHYSICAL PRESENCE.—For the purposes of
 24 subsection (a)(2)(A), the requirement for physical pres-

1 ence in the United States or its outlying possessions may
 2 be satisfied by the following:

3 “(1) Any periods of honorable service in the
 4 Armed Forces of the United States.

5 “(2) Any periods of employment with the
 6 United States Government or with an international
 7 organization as that term is defined in section 1 of
 8 the International Organizations Immunities Act (22
 9 U.S.C. 288) by such citizen parent.

10 “(3) Any periods during which such citizen par-
 11 ent is physically present outside the United States or
 12 its outlying possessions as the dependent unmarried
 13 son or daughter and a member of the household of
 14 a person—

15 “(A) honorably serving with the Armed
 16 Forces of the United States; or

17 “(B) employed by the United States Gov-
 18 ernment or an international organization as de-
 19 fined in section 1 of the International Organiza-
 20 tions Immunities Act (22 U.S.C. 288).

21 “(c) FULL AND FINAL ADOPTION.—In this section,
 22 the term ‘full and final adoption’ means an adoption—

23 “(1) that is completed under the laws of the
 24 child’s country of residence or the State law of the
 25 parent’s residence;

1 “(2) under which a person is granted full and
2 legal custody of the adopted child;

3 “(3) that has the force and effect of severing
4 the child’s legal ties to the child’s biological parents;

5 “(4) under which the adoptive parents meet the
6 requirements of section 825 of the Intercountry
7 Adoption Reform Act of 2006; and

8 “(5) under which the child has been adjudicated
9 to be an adoptable child in accordance with section
10 826 of the Intercountry Adoption Reform Act of
11 2006.”.

12 (b) CONFORMING AMENDMENT.—The table of con-
13 tents in the first section of the Immigration and Nation-
14 ality Act (66 Stat. 163) is amended by striking the item
15 relating to section 320 and inserting the following:

“Sec. 320. Conditions for automatic citizenship for children born outside the
United States.”.

16 (c) EFFECTIVE DATE.—This section shall take effect
17 as if enacted on June 27, 1952.

18 **SEC. 822. REVISED PROCEDURES.**

19 Notwithstanding any other provision of law, the fol-
20 lowing requirements shall apply with respect to the adop-
21 tion of foreign born children by United States citizens:

22 (1) Upon completion of a full and final adop-
23 tion, the Secretary shall issue a United States pass-
24 port and a Consular Report of Birth for a child who

1 satisfies the requirements of section 320(a)(2) of the
2 Immigration and Nationality Act (8 U.S.C.
3 1431(a)(2)), as amended by section 821 of this Act,
4 upon application by a United States citizen parent.

5 (2) An adopted child described in paragraph (1)
6 shall not require the issuance of a visa for travel and
7 admission to the United States but shall be admitted
8 to the United States upon presentation of a valid,
9 unexpired United States passport.

10 (3) No affidavit of support under section 213A
11 of the Immigration and Nationality Act (8 U.S.C.
12 1183a) shall be required in the case of any adopt-
13 able child.

14 (4) The Secretary of State, acting through the
15 Ambassador at Large, shall require that agencies
16 provide prospective adoptive parents an opportunity
17 to conduct an independent medical exam and a copy
18 of any medical records of the child known to exist
19 (to the greatest extent practicable, these documents
20 shall include an English translation) on a date that
21 is not later than the earlier of the date that is 2
22 weeks before the adoption, or the date on which pro-
23 spective adoptive parents travel to such a foreign
24 country to complete all procedures in such country
25 relating to adoption.

1 (5) The Secretary of State, acting through the
2 Ambassador at Large, shall take necessary measures
3 to ensure that all prospective adoptive parents
4 adopting internationally are provided with training
5 that includes counseling and guidance for the pur-
6 pose of promoting a successful intercountry adoption
7 before such parents travel to adopt the child or the
8 child is placed with such parents for adoption.

9 (6) The Secretary of State, acting through the
10 Ambassador at Large, shall take necessary measures
11 to ensure that—

12 (A) prospective adoptive parents are given
13 full disclosure of all direct and indirect costs of
14 intercountry adoption before the parents are
15 matched with a child for adoption;

16 (B) fees charged in relation to the inter-
17 country adoption be on a fee-for-service basis
18 not on a contingent fee basis; and

19 (C) that the transmission of fees between
20 the adoption agency, the country of origin, and
21 the prospective adoptive parents is carried out
22 in a transparent and efficient manner.

23 (7) The Secretary of State, acting through the
24 Ambassador at Large, shall take all measures nec-
25 essary to ensure that all documents provided to a

1 country of origin on behalf of a prospective adoptive
 2 parent are truthful and accurate.

3 **SEC. 823. NONIMMIGRANT VISAS FOR CHILDREN TRAV-**
 4 **ELING TO THE UNITED STATES TO BE ADOPT-**
 5 **ED BY A UNITED STATES CITIZEN.**

6 (a) NONIMMIGRANT CLASSIFICATION.—

7 (1) IN GENERAL.—Section 101(a)(15) of the
 8 Immigration and Nationality Act (8 U.S.C.
 9 1101(a)(15)) is amended by adding at the end the
 10 following:

11 “(W) an adoptable child who is coming into the
 12 United States for adoption by a United States cit-
 13 izen and a spouse jointly or by an unmarried United
 14 States citizen at least 25 years of age, who has been
 15 approved to adopt by the Office of International
 16 Adoption of the Department of State.”.

17 (2) TECHNICAL AND CONFORMING AMEND-
 18 MENTS.—Such section 101(a)(15) is further
 19 amended—

20 (A) by striking “or” at the end of subpara-
 21 graph (U); and

22 (B) by striking the period at the end of
 23 subparagraph (V) and inserting “; or”.

24 (b) TERMINATION OF PERIOD OF AUTHORIZED AD-
 25 MISSION.—Section 214 of the Immigration and Nation-

1 ality Act (8 U.S.C. 1184) is amended by adding at the
2 end the following:

3 “(s) In the case of a nonimmigrant described in sec-
4 tion 101(a)(15)(W), the period of authorized admission
5 shall terminate on the earlier of—

6 “(1) the date on which the adoption of the non-
7 immigrant is completed by the courts of the State
8 where the parents reside; or

9 “(2) the date that is 4 years after the date of
10 admission of the nonimmigrant into the United
11 States, unless a petitioner is able to show cause as
12 to why the adoption could not be completed prior to
13 such date and the Secretary of State extends such
14 period for the period necessary to complete the adop-
15 tion.”.

16 (c) TEMPORARY TREATMENT AS LEGAL PERMANENT
17 RESIDENT.—Notwithstanding any other law, all benefits
18 and protections that apply to a legal permanent resident
19 shall apply to a nonimmigrant described in section
20 101(a)(15)(W) of the Immigration and Nationality Act,
21 as added by subsection (a), pending a full and final adop-
22 tion.

23 (d) EXCEPTION FROM IMMUNIZATION REQUIREMENT
24 FOR CERTAIN ADOPTED CHILDREN.—Section

1 212(a)(1)(C) of the Immigration and Nationality Act (8
2 U.S.C. 1182(a)(1)(C)) is amended—

3 (1) in the heading by striking “**10 YEARS**” and
4 inserting “**18 YEARS**”; and

5 (2) in clause (i), by striking “10 years” and in-
6 serting “18 years”.

7 (e) REGULATIONS.—Not later than 90 days after the
8 date of enactment of this Act, the Secretary of State shall
9 prescribe such regulations as may be necessary to carry
10 out this section.

11 **SEC. 824. DEFINITION OF ADOPTABLE CHILD.**

12 (a) IN GENERAL.—Section 101(c) of the Immigration
13 and Nationality Act (8 U.S.C. 1101(c)) is amended by
14 adding at the end the following:

15 “(3) The term ‘adoptable child’ means an unmarried
16 person under the age of 18—

17 “(A)(i) whose biological parents (or parent, in
18 the case of a child who has one sole or surviving
19 parent) or other persons or institutions that retain
20 legal custody of the child—

21 “(I) have freely given their written irrev-
22 ovable consent to the termination of their legal
23 relationship with the child, and to the child’s
24 emigration and adoption and that such consent
25 has not been induced by payment or compensa-

1 tion of any kind and has not been given prior
2 to the birth of the child;

3 “(II) are unable to provide proper care for
4 the child, as determined by the competent au-
5 thority of the child’s residence; or

6 “(III) have voluntarily relinquished the
7 child to the competent authorities pursuant to
8 the law of the child’s residence; or

9 “(ii) who, as determined by the competent au-
10 thority of the child’s residence—

11 “(I) has been abandoned or deserted by
12 their biological parent, parents, or legal guard-
13 ians; or

14 “(II) has been orphaned due to the death
15 or disappearance of their biological parent, par-
16 ents, or legal guardians;

17 “(B) with respect to whom the Secretary of
18 State is satisfied that the proper care will be fur-
19 nished the child if admitted to the United States;

20 “(C) with respect to whom the Secretary of
21 State is satisfied that the purpose of the adoption is
22 to form a bona fide parent-child relationship and
23 that the parent-child relationship of the child and
24 the biological parents has been terminated (and in
25 carrying out both obligations under this subpara-

1 graph the Secretary of State, in consultation with
2 the Secretary of Homeland Security, may consider
3 whether there is a petition pending to confer immi-
4 grant status on one or both of the biological par-
5 ents);

6 “(D) with respect to whom the Secretary of
7 State, is satisfied that there has been no induce-
8 ment, financial or otherwise, offered to obtain the
9 consent nor was it given before the birth of the
10 child;

11 “(E) with respect to whom the Secretary of
12 State, in consultation with the Secretary of Home-
13 land Security, is satisfied that the person is not a
14 security risk; and

15 “(F) whose eligibility for adoption and emigra-
16 tion to the United States has been certified by the
17 competent authority of the country of the child’s
18 place of birth or residence.”.

19 (b) CONFORMING AMENDMENT.—Section 204(d) of
20 the Immigration and Nationality Act (8 U.S.C. 1154(d))
21 is amended by inserting “and an adoptable child as de-
22 fined in section 101(c)(3)” before “unless a valid home-
23 study”.

1 **SEC. 825. APPROVAL TO ADOPT.**

2 (a) IN GENERAL.—Prior to the issuance of a visa
3 under section 101(a)(15)(W) of the Immigration and Na-
4 tionality Act, as added by section 823(a) of this Act, or
5 the issuance of a full and final adoption decree, the United
6 States citizen adoptive parent shall have approved by the
7 Office a petition to adopt. Such petition shall be subject
8 to the same terms and conditions as are applicable to peti-
9 tions for classification under section 204.3 of title 8 of
10 the Code of Federal Regulations, as in effect on the day
11 before the date of enactment of this Act.

12 (b) EXPIRATION OF APPROVAL.—Approval to adopt
13 under this Act is valid for 24 months from the date of
14 approval. Nothing in this section may prevent the Sec-
15 retary of Homeland Security from periodically updating
16 the fingerprints of an individual who has filed a petition
17 for adoption.

18 (c) EXPEDITED REAPPROVAL PROCESS OF FAMILIES
19 PREVIOUSLY APPROVED TO ADOPT.—The Secretary of
20 State shall prescribe such regulations as may be necessary
21 to provide for an expedited and streamlined process for
22 families who have been previously approved to adopt and
23 whose approval has expired, so long as not more than 4
24 years have lapsed since the original application.

25 (d) DENIAL OF PETITION.—

1 (1) NOTICE OF INTENT.—If the officer adjudi-
2 cating the petition to adopt finds that it is not read-
3 ily approvable, the officer shall notify the petitioner,
4 in writing, of the officer’s intent to deny the peti-
5 tion. Such notice shall include the specific reasons
6 why the petition is not readily approvable.

7 (2) PETITIONER’S RIGHT TO RESPOND.—Upon
8 receiving a notice of intent to deny, the petitioner
9 has 30 days to respond to such notice.

10 (3) DECISION.—Within 30 days of receipt of
11 the petitioner’s response the Office must reach a
12 final decision regarding the eligibility of the peti-
13 tioner to adopt. Notice of a formal decision must be
14 delivered in writing.

15 (4) RIGHT TO AN APPEAL.—Unfavorable deci-
16 sions may be appealed to the Department of State
17 and, after the exhaustion of the appropriate appeals
18 process of the Department, to a United States dis-
19 trict court.

20 (5) REGULATIONS REGARDING APPEALS.—Not
21 later than 6 months after the date of enactment of
22 this Act, the Secretary of State shall promulgate for-
23 mal regulations regarding the process for appealing
24 the denial of a petition.

1 **SEC. 826. ADJUDICATION OF CHILD STATUS.**

2 (a) IN GENERAL.—Prior to the issuance of a full and
3 final adoption decree or a visa under section
4 101(a)(15)(W) of the Immigration and Nationality Act,
5 as added by section 823(a) of this Act—

6 (1) the Ambassador at Large shall obtain from
7 the competent authority of the country of the child's
8 residence a certification, together with documentary
9 support, that the child sought to be adopted meets
10 the definition of an adoptable child; and

11 (2) not later than 15 days after the date of the
12 receipt of the certification referred to in paragraph
13 (1), the Secretary of State shall make a final deter-
14 mination on whether the certification and the docu-
15 mentary support are sufficient to meet the require-
16 ments of this section or whether additional investiga-
17 tion or information is required.

18 (b) PROCESS FOR DETERMINATION.—

19 (1) IN GENERAL.—The Ambassador at Large
20 shall work with the competent authorities of the
21 child's country of residence to establish a uniform,
22 transparent, and efficient process for the exchange
23 and approval of the certification and documentary
24 support required under subsection (a).

25 (2) NOTICE OF INTENT.—If the Secretary of
26 State determines that a certification submitted by

1 the competent authority of the child's country of ori-
2 gin is not readily approvable, the Ambassador at
3 Large shall—

4 (A) notify the competent authority and the
5 prospective adoptive parents, in writing, of the
6 specific reasons why the certification is not suf-
7 ficient; and

8 (B) provide the competent authority and
9 the prospective adoptive parents the oppor-
10 tunity to address the stated insufficiencies.

11 (3) PETITIONERS RIGHT TO RESPOND.—Upon
12 receiving a notice of intent to find that a certifi-
13 cation is not readily approvable, the prospective
14 adoptive parents shall have 30 days to respond to
15 such notice.

16 (4) DECISION.—Not later than 30 days after
17 the date of receipt of a response submitted under
18 paragraph (3), the Secretary of State shall reach a
19 final decision regarding the child's eligibility as an
20 adoptable child. Notice of such decision must be in
21 writing.

22 (5) RIGHT TO AN APPEAL.—Unfavorable deci-
23 sions on a certification may be appealed through the
24 appropriate process of the Department of State and,

1 after the exhaustion of such process, to a United
 2 States district court.

3 **SEC. 827. FUNDS.**

4 The Secretary of State shall provide the Ambassador
 5 at Large with such funds as may be necessary for—

- 6 (1) the hiring of staff for the Office;
- 7 (2) investigations conducted by such staff; and
- 8 (3) travel and other expenses necessary to carry
 9 out this title.

10 **Subtitle C—Enforcement**

11 **SEC. 831. CIVIL PENALTIES AND ENFORCEMENT.**

12 (a) CIVIL PENALTIES.—A person shall be subject, in
 13 addition to any other penalty that may be prescribed by
 14 law, to a civil money penalty of not more than \$50,000
 15 for a first violation, and not more than \$100,000 for each
 16 succeeding violation if such person—

17 (1) violates a provision of this title or an
 18 amendment made by this title;

19 (2) makes a false or fraudulent statement, or
 20 misrepresentation, with respect to a material fact, or
 21 offers, gives, solicits, or accepts inducement by way
 22 of compensation, intended to influence or affect in
 23 the United States or a foreign country—

24 (A) a decision for an approval under title
 25 II;

1 (B) the relinquishment of parental rights
 2 or the giving of parental consent relating to the
 3 adoption of a child; or

4 (C) a decision or action of any entity per-
 5 forming a central authority function; or

6 (3) engages another person as an agent, wheth-
 7 er in the United States or in a foreign country, who
 8 in the course of that agency takes any of the actions
 9 described in paragraph (1) or (2).

10 (b) CIVIL ENFORCEMENT.—

11 (1) AUTHORITY OF ATTORNEY GENERAL.—The
 12 Attorney General may bring a civil action to enforce
 13 subsection (a) against any person in any United
 14 States district court.

15 (2) FACTORS TO BE CONSIDERED IN IMPOSING
 16 PENALTIES.—In imposing penalties the court shall
 17 consider the gravity of the violation, the degree of
 18 culpability of the defendant, and any history of prior
 19 violations by the defendant.

20 **SEC. 832. CRIMINAL PENALTIES.**

21 Whoever knowingly and willfully commits a violation
 22 described in paragraph (1) or (2) of section 831(a) shall

- 1 be subject to a fine of not more than \$250,000, imprison-
- 2 ment for not more than 5 years, or both.

Passed the Senate May 25, 2006.

Attest:

Secretary.

109TH CONGRESS
2D SESSION

S. 2611

AN ACT

To provide for comprehensive immigration reform
and for other purposes.