

## Calendar No. 144

110TH CONGRESS  
1ST SESSION**S. 1348**

To provide for comprehensive immigration reform and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 9, 2007

Mr. REID (for himself, Mr. LEAHY, Mr. KENNEDY, Mr. MENENDEZ, and Mr. SALAZAR) introduced the following bill; which was read the first time

MAY 10, 2007

Read the second time and placed on the calendar

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**A BILL**

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 2007”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 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 United States Customs and Border Protection.
- Sec. 135. Western Hemisphere Travel Initiative.

### Subtitle D—Border Law Enforcement Relief Act

- Sec. 141. Short title.
- Sec. 142. Findings.
- Sec. 143. Border relief grant program.
- Sec. 144. Enforcement of Federal immigration law.

### Subtitle E—Rapid Response Measures

- Sec. 151. Deployment of Border Patrol agents.

- Sec. 152. Border Patrol major assets.
- Sec. 153. Electronic equipment.
- Sec. 154. Personal equipment.
- Sec. 155. 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

##### Subtitle A—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 of 2007

- 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 of 2007

- 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 before 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. Rulemaking.
- 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 grants.
- 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. Surveillance technologies programs.
- Sec. 753. Comprehensive immigration efficiency review.
- Sec. 754. Northern Border Prosecution Initiative.
- Sec. 755. Southwest Border Prosecution Initiative.
- Sec. 756. Grant program to assist eligible applicants.
- Sec. 757. Screening of municipal solid waste.
- Sec. 758. Access to immigration services in areas that are not accessible by road.
- Sec. 759. Border security on certain Federal land.
- Sec. 760. Unmanned aerial vehicles.
- Sec. 761. Relief for widows and orphans.
- Sec. 762. Terrorist activities.
- Sec. 763. Family unity.
- Sec. 764. Travel document plan.
- Sec. 765. English as national language.
- Sec. 766. Requirements for naturalization.
- Sec. 767. Declaration of English.
- Sec. 768. Preserving and enhancing the role of the English language.
- Sec. 769. Exclusion of illegal aliens from congressional apportionment tabulations.
- Sec. 770. Office of Internal Corruption Investigation.
- Sec. 771. Adjustment of status for certain persecuted religious minorities.
- Sec. 772. Eligibility of agricultural and forestry workers for certain legal assistance.
- Sec. 773. Designation of program countries.
- Sec. 774. Global healthcare cooperation.
- Sec. 775. Attestation by healthcare workers.
- Sec. 776. Public access to the Statue of Liberty.
- Sec. 777. 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  
 7 section or other provision of the Immigration and Nation-  
 8 ality Act (8 U.S.C. 1101 et seq.).

9 **SEC. 3. DEFINITIONS.**

10 In this Act:

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



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

4 **SEC. 4. SEVERABILITY.**

5           If any provision of this Act, any amendment made  
6 by this Act, or the application of such provision or amend-  
7 ment to any person or circumstance is held to be invalid  
8 for any reason, the remainder of this Act, the amendments  
9 made by this Act, and the application of the provisions  
10 of such to any other person or circumstance shall not be  
11 affected by such holding.

12                           **TITLE I—BORDER**  
13                           **ENFORCEMENT**  
14           **Subtitle A—Assets for Controlling**  
15           **United States Borders**

16 **SEC. 101. ENFORCEMENT PERSONNEL.**

17           (a) ADDITIONAL PERSONNEL.—

18           (1) PORT OF ENTRY INSPECTORS.—In each of  
19           the fiscal years 2008 through 2012, the Secretary  
20           shall, subject to the availability of appropriations, in-  
21           crease by not less than 500 the number of positions  
22           for full-time active duty port of entry inspectors and  
23           provide appropriate training, equipment, and sup-  
24           port to such additional inspectors.

25           (2) INVESTIGATIVE PERSONNEL.—

1 (A) IMMIGRATION AND CUSTOMS EN-  
2 FORCEMENT INVESTIGATORS.—Section 5203 of  
3 the Intelligence Reform and Terrorism Preven-  
4 tion Act of 2004 (Public Law 108–458; 118  
5 Stat. 3734) is amended by striking “800” and  
6 inserting “1000”.

7 (B) ADDITIONAL PERSONNEL.—In addi-  
8 tion to the positions authorized under section  
9 5203 of the Intelligence Reform and Terrorism  
10 Prevention Act of 2004, as amended by sub-  
11 paragraph (A), during each of the fiscal years  
12 2008 through 2012, the Secretary shall, subject  
13 to the availability of appropriations, increase by  
14 not less than 200 the number of positions for  
15 personnel within the Department assigned to  
16 investigate alien smuggling.

17 (3) DEPUTY UNITED STATES MARSHALS.—In  
18 each of the fiscal years 2008 through 2012, the At-  
19 torney General shall, subject to the availability of  
20 appropriations, increase by not less than 50 the  
21 number of positions for full-time active duty Deputy  
22 United States Marshals that investigate criminal  
23 matters related to immigration.

24 (4) RECRUITMENT OF FORMER MILITARY PER-  
25 SONNEL.—

1 (A) IN GENERAL.—The Commissioner of  
2 United States Customs and Border Protection,  
3 in conjunction with the Secretary of Defense or  
4 a designee of the Secretary of Defense, shall es-  
5 tablish a program to actively recruit members  
6 of the Army, Navy, Air Force, Marine Corps,  
7 and Coast Guard who have elected to separate  
8 from active duty.

9 (B) REPORT.—Not later than 180 days  
10 after the date of the enactment of this Act, the  
11 Commissioner shall submit a report on the im-  
12 plementation of the recruitment program estab-  
13 lished pursuant to subparagraph (A) to the  
14 Committee on the Judiciary of the Senate and  
15 the Committee on the Judiciary of the House of  
16 Representatives.

17 (b) AUTHORIZATION OF APPROPRIATIONS.—

18 (1) PORT OF ENTRY INSPECTORS.—There are  
19 authorized to be appropriated to the Secretary such  
20 sums as may be necessary for each of the fiscal  
21 years 2008 through 2012 to carry out paragraph (1)  
22 of subsection (a).

23 (2) DEPUTY UNITED STATES MARSHALS.—  
24 There are authorized to be appropriated to the At-  
25 torney General such sums as may be necessary for

1 each of the fiscal years 2008 through 2012 to carry  
2 out subsection (a)(3).

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

7 **“SEC. 5202. INCREASE IN FULL-TIME BORDER PATROL**  
8 **AGENTS.**

9 “(a) ANNUAL INCREASES.—The Secretary of Home-  
10 land Security shall, subject to the availability of appropria-  
11 tions for such purpose, increase the number of positions  
12 for full-time active-duty border patrol agents within the  
13 Department of Homeland Security (above the number of  
14 such positions for which funds were appropriated for the  
15 preceding fiscal year), by—

16 “(1) 2,000 in fiscal year 2008;

17 “(2) 2,400 in fiscal year 2009;

18 “(3) 2,400 in fiscal year 2010;

19 “(4) 2,400 in fiscal year 2011; and

20 “(5) 2,400 in fiscal year 2012.

21 “(b) NORTHERN BORDER.—In each of the fiscal  
22 years 2008 through 2012, in addition to the border patrol  
23 agents assigned along the northern border of the United  
24 States during the previous fiscal year, the Secretary shall  
25 assign a number of border patrol agents equal to not less

1 than 20 percent of the net increase in border patrol agents  
2 during each such fiscal year.

3 “(c) AUTHORIZATION OF APPROPRIATIONS.—There  
4 are authorized to be appropriated such sums as may be  
5 necessary for each of fiscal years 2008 through 2012 to  
6 carry out this section.”.

7 **SEC. 102. TECHNOLOGICAL ASSETS.**

8 (a) ACQUISITION.—Subject to the availability of ap-  
9 propriations, the Secretary shall procure additional un-  
10 manned aerial vehicles, cameras, poles, sensors, and other  
11 technologies necessary to achieve operational control of the  
12 international borders of the United States and to establish  
13 a security perimeter known as a “virtual fence” along such  
14 international borders to provide a barrier to illegal immi-  
15 gration.

16 (b) INCREASED AVAILABILITY OF EQUIPMENT.—The  
17 Secretary and the Secretary of Defense shall develop and  
18 implement a plan to use authorities provided to the Sec-  
19 retary of Defense under chapter 18 of title 10, United  
20 States Code, to increase the availability and use of Depart-  
21 ment of Defense equipment, including unmanned aerial  
22 vehicles, tethered aerostat radars, and other surveillance  
23 equipment, to assist the Secretary in carrying out surveil-  
24 lance activities conducted at or near the international land

1 borders of the United States to prevent illegal immigra-  
2 tion.

3 (c) REPORT.—Not later than 6 months after the date  
4 of enactment of this Act, the Secretary and the Secretary  
5 of Defense shall submit to Congress a report that con-  
6 tains—

7 (1) a description of the current use of Depart-  
8 ment of Defense equipment to assist the Secretary  
9 in carrying out surveillance of the international land  
10 borders of the United States and assessment of the  
11 risks to citizens of the United States and foreign  
12 policy interests associated with the use of such  
13 equipment;

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

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

21 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
22 are authorized to be appropriated to the Secretary such  
23 sums as may be necessary for each of the fiscal years 2008  
24 through 2012 to carry out subsection (a).

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

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

12 **SEC. 103. INFRASTRUCTURE.**

13 (a) CONSTRUCTION OF BORDER CONTROL FACILI-  
14 TIES.—Subject to the availability of appropriations, the  
15 Secretary shall construct all-weather roads and acquire  
16 additional vehicle barriers and facilities necessary to  
17 achieve operational control of the international borders of  
18 the United States.

19 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
20 are authorized to be appropriated to the Secretary such  
21 sums as may be necessary for each of the fiscal years 2008  
22 through 2012 to carry out subsection (a).

23 **SEC. 104. BORDER PATROL CHECKPOINTS.**

24 The Secretary may maintain temporary or permanent  
25 checkpoints on roadways in border patrol sectors that are

1 located in proximity to the international border between  
2 the United States and Mexico.

3 **SEC. 105. PORTS OF ENTRY.**

4 The Secretary is authorized to—

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

8 (2) make necessary improvements to the ports  
9 of entry in existence on the date of the enactment  
10 of this Act.

11 **SEC. 106. CONSTRUCTION OF STRATEGIC BORDER FENC-**  
12 **ING AND VEHICLE BARRIERS.**

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

14 (1) replace all aged, deteriorating, or damaged  
15 primary fencing in the Tucson Sector located proximate to population centers in Douglas, Nogales,  
16 Naco, and Lukeville, Arizona with double- or triple-layered fencing running parallel to the international  
17 border between the United States and Mexico;

18 (2) extend the double- or triple-layered fencing  
19 for a distance of not less than 2 miles beyond urban  
20 areas, except that the double- or triple-layered fence  
21 shall extend west of Naco, Arizona, for a distance of  
22 10 miles; and  
23  
24



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

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

7           (1) replace all aged, deteriorating, or damaged  
8 primary fencing in the Yuma Sector located proximate  
9 to population centers in Yuma, Somerton, and  
10 San Luis, Arizona with double- or triple-layered  
11 fencing running parallel to the international border  
12 between the United States and Mexico;

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

16           (3) construct not less than 50 miles of vehicle  
17 barriers and all-weather roads in the Yuma Sector  
18 running parallel to the international border between  
19 the United States and Mexico in areas that are  
20 known transit points for illegal cross-border traffic.

21           (c) OTHER HIGH TRAFFICKED AREAS.—The Sec-  
22 retary shall construct not less than 370 miles of triple-  
23 layered fencing which may include portions already con-  
24 structed in San Diego Tucson and Yuma Sectors, and 500  
25 miles of vehicle barriers in other areas along the southwest

1 border that the Secretary determines are areas that are  
2 most often used by smugglers and illegal aliens attempting  
3 to gain illegal entry into the United States.

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

9 (e) REPORT.—Not later than 1 year after the date  
10 of the enactment of this Act, the Secretary shall submit  
11 a report to the Committee on the Judiciary of the Senate  
12 and the Committee on the Judiciary of the House of Rep-  
13 resentatives that describes the progress that has been  
14 made in constructing the fencing, barriers, and roads de-  
15 scribed in subsections (a), (b), and (c).

16 (f) AUTHORIZATION OF APPROPRIATIONS.—There  
17 are authorized to be appropriated such sums as may be  
18 necessary to carry out this section.

19 **Subtitle B—Border Security Plans,**  
20 **Strategies, and Reports**

21 **SEC. 111. SURVEILLANCE PLAN.**

22 (a) REQUIREMENT FOR PLAN.—The Secretary shall  
23 develop a comprehensive plan for the systematic surveil-  
24 lance of the international land and maritime borders of  
25 the United States.

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

3 (1) An assessment of existing technologies em-  
4 ployed on the international land and maritime bor-  
5 ders of the United States.

6 (2) A description of the compatibility of new  
7 surveillance technologies with surveillance tech-  
8 nologies in use by the Secretary on the date of the  
9 enactment of this Act.

10 (3) A description of how the Commissioner of  
11 the United States Customs and Border Protection of  
12 the Department is working, or is expected to work,  
13 with the Under Secretary for Science and Tech-  
14 nology of the Department to identify and test sur-  
15 veillance technology.

16 (4) A description of the specific surveillance  
17 technology to be deployed.

18 (5) Identification of any obstacles that may im-  
19 pede such deployment.

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

23 (7) A description of how the Secretary is work-  
24 ing with the Administrator of the Federal Aviation

1 Administration on safety and airspace control issues  
2 associated with the use of unmanned aerial vehicles.

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

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

8 (a) REQUIREMENT FOR STRATEGY.—The Secretary,  
9 in consultation with the heads of other appropriate Fed-  
10 eral agencies, shall develop a National Strategy for Border  
11 Security that describes actions to be carried out to achieve  
12 operational control over all ports of entry into the United  
13 States and the international land and maritime borders  
14 of the United States.

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

17 (1) The implementation schedule for the com-  
18 prehensive plan for systematic surveillance described  
19 in section 111.

20 (2) An assessment of the threat posed by ter-  
21 rorists and terrorist groups that may try to infiltrate  
22 the United States at locations along the inter-  
23 national land and maritime borders of the United  
24 States.

1           (3) A risk assessment for all United States  
2 ports of entry and all portions of the international  
3 land and maritime borders of the United States that  
4 includes a description of activities being under-  
5 taken—

6                   (A) to prevent the entry of terrorists, other  
7 unlawful aliens, instruments of terrorism, nar-  
8 cotics, and other contraband into the United  
9 States; and

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

12           (4) An assessment of the legal requirements  
13 that prevent achieving and maintaining operational  
14 control over the entire international land and mari-  
15 time borders of the United States.

16           (5) An assessment of the most appropriate,  
17 practical, and cost-effective means of defending the  
18 international land and maritime borders of the  
19 United States against threats to security and illegal  
20 transit, including intelligence capacities, technology,  
21 equipment, personnel, and training needed to ad-  
22 dress security vulnerabilities.

23           (6) An assessment of staffing needs for all bor-  
24 der security functions, taking into account threat  
25 and vulnerability information pertaining to the bor-

1        ders and the impact of new security programs, poli-  
2        cies, and technologies.

3            (7) A description of the border security roles  
4        and missions of Federal, State, regional, local, and  
5        tribal authorities, and recommendations regarding  
6        actions the Secretary can carry out to improve co-  
7        ordination with such authorities to enable border se-  
8        curity and enforcement activities to be carried out in  
9        a more efficient and effective manner.

10           (8) An assessment of existing efforts and tech-  
11        nologies used for border security and the effect of  
12        the use of such efforts and technologies on civil  
13        rights, personal property rights, privacy rights, and  
14        civil liberties, including an assessment of efforts to  
15        take into account asylum seekers, trafficking vic-  
16        tims, unaccompanied minor aliens, and other vulner-  
17        able populations.

18           (9) A prioritized list of research and develop-  
19        ment objectives to enhance the security of the inter-  
20        national land and maritime borders of the United  
21        States.

22           (10) A description of ways to ensure that the  
23        free flow of travel and commerce is not diminished  
24        by efforts, activities, and programs aimed at secur-

1       ing the international land and maritime borders of  
2       the United States.

3           (11) An assessment of additional detention fa-  
4       cilities and beds that are needed to detain unlawful  
5       aliens apprehended at United States ports of entry  
6       or along the international land borders of the United  
7       States.

8           (12) A description of the performance metrics  
9       to be used to ensure accountability by the bureaus  
10      of the Department in implementing such Strategy.

11          (13) A schedule for the implementation of the  
12      security measures described in such Strategy, includ-  
13      ing a prioritization of security measures, realistic  
14      deadlines for addressing the security and enforce-  
15      ment needs, an estimate of the resources needed to  
16      carry out such measures, and a description of how  
17      such resources should be allocated.

18      (c) CONSULTATION.—In developing the National  
19      Strategy for Border Security, the Secretary shall consult  
20      with representatives of—

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

24           (2) appropriate private sector entities, non-  
25      governmental organizations, and affected commu-

1 nities that have expertise in areas related to border  
2 security.

3 (d) COORDINATION.—The National Strategy for Bor-  
4 der Security shall be consistent with the National Strategy  
5 for Maritime Security developed pursuant to Homeland  
6 Security Presidential Directive 13, dated December 21,  
7 2004.

8 (e) SUBMISSION TO CONGRESS.—

9 (1) STRATEGY.—Not later than 1 year after the  
10 date of the enactment of this Act, the Secretary  
11 shall submit to Congress the National Strategy for  
12 Border Security.

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

17 (f) IMMEDIATE ACTION.—Nothing in this section or  
18 section 111 may be construed to relieve the Secretary of  
19 the responsibility to take all actions necessary and appro-  
20 priate to achieve and maintain operational control over the  
21 entire international land and maritime borders of the  
22 United States.



1 **SEC. 113. REPORTS ON IMPROVING THE EXCHANGE OF IN-**  
2 **FORMATION ON NORTH AMERICAN SECU-**  
3 **RITY.**

4 (a) **REQUIREMENT FOR REPORTS.**—Not later than 1  
5 year after the date of the enactment of this Act, and annu-  
6 ally thereafter, the Secretary of State, in coordination with  
7 the Secretary and the heads of other appropriate Federal  
8 agencies, shall submit to Congress a report on improving  
9 the exchange of information related to the security of  
10 North America.

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

13 (1) **SECURITY CLEARANCES AND DOCUMENT IN-**  
14 **TEGRITY.**—The progress made toward the develop-  
15 ment of common enrollment, security, technical, and  
16 biometric standards for the issuance, authentication,  
17 validation, and repudiation of secure documents, in-  
18 cluding—

19 (A) technical and biometric standards  
20 based on best practices and consistent with  
21 international standards for the issuance, au-  
22 thentication, validation, and repudiation of trav-  
23 el documents, including—

24 (i) passports;

25 (ii) visas; and

26 (iii) permanent resident cards;

1 (B) working with Canada and Mexico to  
2 encourage foreign governments to enact laws to  
3 combat alien smuggling and trafficking, and  
4 laws to forbid the use and manufacture of  
5 fraudulent travel documents and to promote in-  
6 formation sharing;

7 (C) applying the necessary pressures and  
8 support to ensure that other countries meet  
9 proper travel document standards and are com-  
10 mitted to travel document verification before  
11 the citizens of such countries travel internation-  
12 ally, including travel by such citizens to the  
13 United States; and

14 (D) providing technical assistance for the  
15 development and maintenance of a national  
16 database built upon identified best practices for  
17 biometrics associated with visa and travel docu-  
18 ments.

19 (2) IMMIGRATION AND VISA MANAGEMENT.—  
20 The progress of efforts to share information regard-  
21 ing high-risk individuals who may attempt to enter  
22 Canada, Mexico, or the United States, including the  
23 progress made—

24 (A) in implementing the Statement of Mu-  
25 tual Understanding on Information Sharing,

1 signed by Canada and the United States in  
2 February 2003; and

3 (B) in identifying trends related to immi-  
4 gration fraud, including asylum and document  
5 fraud, and to analyze such trends.

6 (3) VISA POLICY COORDINATION AND IMMIGRA-  
7 TION SECURITY.—The progress made by Canada,  
8 Mexico, and the United States to enhance the secu-  
9 rity of North America by cooperating on visa policy  
10 and identifying best practices regarding immigration  
11 security, including the progress made—

12 (A) in enhancing consultation among offi-  
13 cials who issue visas at the consulates or em-  
14 bassies of Canada, Mexico, or the United States  
15 throughout the world to share information,  
16 trends, and best practices on visa flows;

17 (B) in comparing the procedures and poli-  
18 cies of Canada and the United States related to  
19 visitor visa processing, including—

- 20 (i) application process;
- 21 (ii) interview policy;
- 22 (iii) general screening procedures;
- 23 (iv) visa validity;
- 24 (v) quality control measures; and
- 25 (vi) access to appeal or review;

1 (C) in exploring methods for Canada, Mex-  
2 ico, and the United States to waive visa re-  
3 quirements for nationals and citizens of the  
4 same foreign countries;

5 (D) in providing technical assistance for  
6 the development and maintenance of a national  
7 database built upon identified best practices for  
8 biometrics associated with immigration viola-  
9 tors;

10 (E) in developing and implementing an im-  
11 migration security strategy for North America  
12 that works toward the development of a com-  
13 mon security perimeter by enhancing technical  
14 assistance for programs and systems to support  
15 advance automated reporting and risk targeting  
16 of international passengers;

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

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

23 (4) NORTH AMERICAN VISITOR OVERSTAY PRO-  
24 GRAM.—The progress made by Canada and the  
25 United States in implementing parallel entry-exit

1 tracking systems that, while respecting the privacy  
2 laws of both countries, share information regarding  
3 third country nationals who have overstayed their  
4 period of authorized admission in either Canada or  
5 the United States.

6 (5) TERRORIST WATCH LISTS.—The progress  
7 made in enhancing the capacity of the United States  
8 to combat terrorism through the coordination of  
9 counterterrorism efforts, including the progress  
10 made—

11 (A) in developing and implementing bilat-  
12 eral agreements between Canada and the  
13 United States and between Mexico and the  
14 United States to govern the sharing of terrorist  
15 watch list data and to comprehensively enu-  
16 merate the uses of such data by the govern-  
17 ments of each country;

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

21 (C) in exploring with foreign governments  
22 the establishment of a multilateral watch list  
23 mechanism that would facilitate direct coordina-  
24 tion between the country that identifies an indi-  
25 vidual as an individual included on a watch list,

1           and the country that owns such list, including  
2           procedures that satisfy the security concerns  
3           and are consistent with the privacy and other  
4           laws of each participating country.

5           (6) MONEY LAUNDERING, CURRENCY SMUG-  
6           GLING, AND ALIEN SMUGGLING.—The progress made  
7           in improving information sharing and law enforce-  
8           ment cooperation in combating organized crime, in-  
9           cluding the progress made—

10                   (A) in combating currency smuggling,  
11                   money laundering, alien smuggling, and traf-  
12                   ficking in alcohol, firearms, and explosives;

13                   (B) in implementing the agreement be-  
14                   tween Canada and the United States known as  
15                   the Firearms Trafficking Action Plan;

16                   (C) in determining the feasibility of formu-  
17                   lating a firearms trafficking action plan be-  
18                   tween Mexico and the United States;

19                   (D) in developing a joint threat assessment  
20                   on organized crime between Canada and the  
21                   United States;

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

1 (F) in developing mechanisms to exchange  
2 information on findings, seizures, and capture  
3 of individuals transporting undeclared currency;  
4 and

5 (G) in developing and implementing a plan  
6 to combat the transnational threat of illegal  
7 drug trafficking.

8 (7) LAW ENFORCEMENT COOPERATION.—The  
9 progress made in enhancing law enforcement co-  
10 operation among Canada, Mexico, and the United  
11 States through enhanced technical assistance for the  
12 development and maintenance of a national database  
13 built upon identified best practices for biometrics as-  
14 sociated with known and suspected criminals or ter-  
15 rorists, including exploring the formation of law en-  
16 forcement teams that include personnel from the  
17 United States and Mexico, and appropriate proce-  
18 dures for such teams.

19 **SEC. 114. IMPROVING THE SECURITY OF MEXICO'S SOUTH-**  
20 **ERN BORDER.**

21 (a) TECHNICAL ASSISTANCE.—The Secretary of  
22 State, in coordination with the Secretary, shall work to  
23 cooperate with the head of Foreign Affairs Canada and  
24 the appropriate officials of the Government of Mexico to  
25 establish a program—

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

4           (2) to use the assessment made under para-  
5 graph (1) to determine the financial and technical  
6 support needed by Guatemala and Belize from Can-  
7 ada, Mexico, and the United States to meet such  
8 needs;

9           (3) to provide technical assistance to Guatemala  
10 and Belize to promote issuance of secure passports  
11 and travel documents by such countries; and

12           (4) to encourage Guatemala and Belize—

13                 (A) to control alien smuggling and traf-  
14 ficking;

15                 (B) to prevent the use and manufacture of  
16 fraudulent travel documents; and

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

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

22           (1) with the appropriate officials of the Govern-  
23 ment of Guatemala and the Government of Belize to  
24 provide law enforcement assistance to Guatemala  
25 and Belize that specifically addresses immigration



1 issues to increase the ability of the Government of  
2 Guatemala to dismantle human smuggling organiza-  
3 tions and gain additional control over the inter-  
4 national border between Guatemala and Belize; and

5 (2) with the appropriate officials of the Govern-  
6 ment of Belize, the Government of Guatemala, the  
7 Government of Mexico, and the governments of  
8 neighboring contiguous countries to establish a pro-  
9 gram to provide needed equipment, technical assist-  
10 ance, and vehicles to manage, regulate, and patrol  
11 the international borders between Mexico and Guate-  
12 mala and between Mexico and Belize.

13 (c) TRACKING CENTRAL AMERICAN GANGS.—The  
14 Secretary of State, in coordination with the Secretary and  
15 the Director of the Federal Bureau of Investigation, shall  
16 work to cooperate with the appropriate officials of the  
17 Government of Mexico, the Government of Guatemala, the  
18 Government of Belize, and the governments of other Cen-  
19 tral American countries—

20 (1) to assess the direct and indirect impact on  
21 the United States and Central America of deporting  
22 violent criminal aliens;

23 (2) to establish a program and database to  
24 track individuals involved in Central American gang  
25 activities;

1           (3) to develop a mechanism that is acceptable  
2           to the governments of Belize, Guatemala, Mexico,  
3           the United States, and other appropriate countries  
4           to notify such a government if an individual sus-  
5           pected of gang activity will be deported to that coun-  
6           try prior to the deportation and to provide support  
7           for the reintegration of such deportees into that  
8           country; and

9           (4) to develop an agreement to share all rel-  
10          evant information related to individuals connected  
11          with Central American gangs.

12          (d) LIMITATIONS ON ASSISTANCE.—Any funds made  
13          available to carry out this section shall be subject to the  
14          limitations contained in section 551 of the Foreign Oper-  
15          ations, Export Financing, and Related Programs Appro-  
16          priations Act of 2006 (Public Law 109–102; 119 Stat.  
17          2218).

18          **SEC. 115. COMBATING HUMAN SMUGGLING.**

19          (a) REQUIREMENT FOR PLAN.—The Secretary shall  
20          develop and implement a plan to improve coordination be-  
21          tween the Bureau of Immigration and Customs Enforce-  
22          ment and the Bureau of Customs and Border Protection  
23          of the Department and any other Federal, State, local,  
24          or tribal authorities, as determined appropriate by the

1 Secretary, to improve coordination efforts to combat  
2 human smuggling.

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

5 (1) the interoperability of databases utilized to  
6 prevent human smuggling;

7 (2) adequate and effective personnel training;

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

10 (4) effective utilization of—

11 (A) visas for victims of trafficking and  
12 other crimes; and

13 (B) investigatory techniques, equipment,  
14 and procedures that prevent, detect, and pros-  
15 ecute international money laundering and other  
16 operations that are utilized in smuggling;

17 (5) joint measures, with the Secretary of State,  
18 to enhance intelligence sharing and cooperation with  
19 foreign governments whose citizens are preyed on by  
20 human smugglers; and

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

23 (c) REPORT.—Not later than 1 year after imple-  
24 menting the plan described in subsection (a), the Sec-  
25 retary shall submit to Congress a report on such plan, in-

1 cluding any recommendations for legislative action to im-  
2 prove efforts to combating human smuggling.

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

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

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

11 (1) the causes of the deaths; and

12 (2) the total number of deaths.

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

17 (1) analyzes trends with respect to the statistics  
18 collected under subsection (a) during the preceding  
19 year; and

20 (2) recommends actions to reduce the deaths  
21 described in subsection (a).

22 **SEC. 117. COOPERATION WITH THE GOVERNMENT OF MEX-**  
23 **ICO.**

24 (a) COOPERATION REGARDING BORDER SECUR-  
25 ITY.—The Secretary of State, in cooperation with the

1 Secretary and representatives of Federal, State, and local  
2 law enforcement agencies that are involved in border secu-  
3 rity and immigration enforcement efforts, shall work with  
4 the appropriate officials from the Government of Mexico  
5 to improve coordination between the United States and  
6 Mexico regarding—

7 (1) improved border security along the inter-  
8 national border between the United States and Mex-  
9 ico;

10 (2) the reduction of human trafficking and  
11 smuggling between the United States and Mexico;

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

14 (4) the reduction of gang membership in the  
15 United States and Mexico;

16 (5) the reduction of violence against women in  
17 the United States and Mexico; and

18 (6) the reduction of other violence and criminal  
19 activity.

20 (b) COOPERATION REGARDING EDUCATION ON IMMI-  
21 GRATION LAWS.—The Secretary of State, in cooperation  
22 with other appropriate Federal officials, shall work with  
23 the appropriate officials from the Government of Mexico  
24 to carry out activities to educate citizens and nationals  
25 of Mexico regarding eligibility for status as a non-

1 immigrant under Federal law to ensure that the citizens  
2 and nationals are not exploited while working in the  
3 United States.

4 (c) COOPERATION REGARDING CIRCULAR MIGRA-  
5 TION.—The Secretary of State, in cooperation with the  
6 Secretary of Labor and other appropriate Federal offi-  
7 cials, shall work with the appropriate officials from the  
8 Government of Mexico to improve coordination between  
9 the United States and Mexico to encourage circular migra-  
10 tion, including assisting in the development of economic  
11 opportunities and providing job training for citizens and  
12 nationals in Mexico.

13 (d) CONSULTATION REQUIREMENT.—Federal, State,  
14 and local representatives in the United States shall consult  
15 with their counterparts in Mexico concerning the construc-  
16 tion of additional fencing and related border security  
17 structures along the international border between the  
18 United States and Mexico, as authorized by this title, be-  
19 fore the commencement of any such construction in order  
20 to—

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

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

6 **Subtitle C—Other Border Security**  
7 **Initiatives**

8 **SEC. 121. BIOMETRIC DATA ENHANCEMENTS.**

9 Not later than October 1, 2008, the Secretary shall—

10 (1) in consultation with the Attorney General,  
11 enhance connectivity between the Automated Bio-  
12 metric Fingerprint Identification System (IDENT)  
13 of the Department and the Integrated Automated  
14 Fingerprint Identification System (IAFIS) of the  
15 Federal Bureau of Investigation to ensure more ex-  
16 peditious data searches; and

17 (2) in consultation with the Secretary of State,  
18 collect all fingerprints from each alien required to  
19 provide fingerprints during the alien’s initial enroll-  
20 ment in the integrated entry and exit data system  
21 described in section 110 of the Illegal Immigration  
22 Reform and Immigrant Responsibility Act of 1996  
23 (8 U.S.C. 1365a).

1 **SEC. 122. SECURE COMMUNICATION.**

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

6 (1) among all Border Patrol agents conducting  
7 operations between ports of entry;

8 (2) between Border Patrol agents and their re-  
9 spective Border Patrol stations;

10 (3) between Border Patrol agents and residents  
11 in remote areas along the international land borders  
12 of the United States; and

13 (4) between all appropriate border security  
14 agencies of the Department and State, local, and  
15 tribal law enforcement agencies.

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

17 (a) IN GENERAL.—The Comptroller General of the  
18 United States shall conduct a review of the basic training  
19 provided to Border Patrol agents by the Secretary to en-  
20 sure that such training is provided as efficiently and cost-  
21 effectively as possible.

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

24 (1) An evaluation of the length and content of  
25 the basic training curriculum provided to new Bor-  
26 der Patrol agents by the Federal Law Enforcement



1 Training Center, including a description of how such  
2 curriculum has changed since September 11, 2001,  
3 and an evaluation of language and cultural diversity  
4 training programs provided within such curriculum.

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

9 (3) A comparison, based on the review and  
10 breakdown under paragraph (2), of the costs, effec-  
11 tiveness, scope, and quality, including geographic  
12 characteristics, with other similar training programs  
13 provided by State and local agencies, nonprofit orga-  
14 nizations, universities, and the private sector.

15 (4) An evaluation of whether utilizing com-  
16 parable non-Federal training programs, proficiency  
17 testing, and long-distance learning programs may af-  
18 fect—

19 (A) the cost-effectiveness of increasing the  
20 number of Border Patrol agents trained per  
21 year;

22 (B) the per agent costs of basic training;  
23 and

1 (C) the scope and quality of basic training  
2 needed to fulfill the mission and duties of a  
3 Border Patrol agent.

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

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

9 (1) equipping all land border ports of entry of  
10 the United States with the U.S.-Visitor and Immigrant  
11 Status Indicator Technology (US-VISIT) system  
12 implemented under section 110 of the Illegal  
13 Immigration Reform and Immigrant Responsibility  
14 Act of 1996 (8 U.S.C. 1365a);

15 (2) developing and deploying at such ports of  
16 entry the exit component of the US-VISIT system;  
17 and

18 (3) making interoperable all immigration  
19 screening systems operated by the Secretary.

20 **SEC. 125. DOCUMENT FRAUD DETECTION.**

21 (a) TRAINING.—Subject to the availability of appro-  
22 priations, the Secretary shall provide all Customs and  
23 Border Protection officers with training in identifying and  
24 detecting fraudulent travel documents. Such training shall  
25 be developed in consultation with the head of the Forensic

1 Document Laboratory of the Bureau of Immigration and  
2 Customs Enforcement.

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

6 (c) ASSESSMENT.—

7 (1) REQUIREMENT FOR ASSESSMENT.—The In-  
8 spector General of the Department shall conduct an  
9 independent assessment of the accuracy and reli-  
10 ability of the Forensic Document Laboratory.

11 (2) REPORT TO CONGRESS.—Not later than 6  
12 months after the date of the enactment of this Act,  
13 the Inspector General shall submit to Congress the  
14 findings of the assessment required by paragraph  
15 (1).

16 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
17 are authorized to be appropriated to the Secretary such  
18 sums as may be necessary for each of fiscal years 2008  
19 through 2012 to carry out this section.

20 **SEC. 126. IMPROVED DOCUMENT INTEGRITY.**

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

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

4           (2) in the heading, by striking “**ENTRY AND**  
5 **EXIT DOCUMENTS**” and inserting “**TRAVEL AND**  
6 **ENTRY DOCUMENTS AND EVIDENCE OF STA-**  
7 **TUS**”;

8           (3) in subsection (b)(1)—

9                 (A) by striking “Not later than October  
10 26, 2004, the” and inserting “The”; and

11                 (B) by striking “visas and” both places it  
12 appears and inserting “visas, evidence of status,  
13 and”;

14           (4) by redesignating subsection (d) as sub-  
15 section (e); and

16           (5) by inserting after subsection (c) the fol-  
17 lowing:

18           “(d) **OTHER DOCUMENTS.**—Not later than October  
19 26, 2008, every document, other than an interim docu-  
20 ment, issued by the Secretary of Homeland Security,  
21 which may be used as evidence of an alien’s status as an  
22 immigrant, nonimmigrant, parolee, asylee, or refugee,  
23 shall be machine-readable and tamper-resistant, and shall  
24 incorporate a biometric identifier to allow the Secretary

1 of Homeland Security to verify electronically the identity  
2 and status of the alien.”.

3 **SEC. 127. CANCELLATION OF VISAS.**

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

5 (1) in paragraph (1)—

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

8 (B) by inserting “and any other non-  
9 immigrant visa issued by the United States that  
10 is in the possession of the alien” after “such  
11 visa”; and

12 (2) in paragraph (2)(A), by striking “(other  
13 than the visa described in paragraph (1)) issued in  
14 a consular office located in the country of the alien’s  
15 nationality” and inserting “(other than a visa de-  
16 scribed in paragraph (1)) issued in a consular office  
17 located in the country of the alien’s nationality or  
18 foreign residence”.

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

20 (a) COLLECTION OF BIOMETRIC DATA FROM ALIENS

21 DEPARTING THE UNITED STATES.—Section 215 (8

22 U.S.C. 1185) is amended—

23 (1) by redesignating subsection (c) as sub-  
24 section (g);

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

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

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

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

12                 “(5) AUTHORITY TO COLLECT BIOMETRIC  
13                 DATA.—In conducting inspections under subsection  
14                 (b), immigration officers are authorized to collect bi-  
15                 ometric data from—

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

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

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

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

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

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

8 “(C) WITHHOLDERS OF BIOMETRIC  
9 DATA.—Any alien who knowingly fails to com-  
10 ply with a lawful request for biometric data  
11 under section 215(e) or 235(d) is inadmis-  
12 sible.”; and

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

15 “(2) The Secretary of Homeland Security shall  
16 determine whether a ground for inadmissibility ex-  
17 ists with respect to an alien described in subpara-  
18 graph (C) of subsection (a)(7) and may waive the  
19 application of such subparagraph for an individual  
20 alien or a class of aliens, at the discretion of the  
21 Secretary.”.

22 (e) IMPLEMENTATION.—Section 7208 of the 9/11  
23 Commission Implementation Act of 2004 (8 U.S.C.  
24 1365b) is amended—

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

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

11           (2) in subsection (l)—

12           (A) by striking “There are authorized”  
13 and inserting the following:

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

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

16           “(2) IMPLEMENTATION AT ALL LAND BORDER  
17 PORTS OF ENTRY.—There are authorized to be ap-  
18 propriated such sums as may be necessary for each  
19 of the fiscal years 2008 and 2009 to implement the  
20 automated biometric entry and exit data system at  
21 all land border ports of entry.”.

22 **SEC. 129. BORDER STUDY.**

23           (a) SOUTHERN BORDER STUDY.—The Secretary, in  
24 consultation with the Attorney General, the Secretary of  
25 the Interior, the Secretary of Agriculture, the Secretary



1 of Defense, the Secretary of Commerce, and the Adminis-  
2 trator of the Environmental Protection Agency, shall con-  
3 duct a study on the construction of a system of physical  
4 barriers along the southern international land and mari-  
5 time border of the United States. The study shall in-  
6 clude—

7           (1) an assessment of the necessity of con-  
8           structing such a system, including the identification  
9           of areas of high priority for the construction of such  
10          a system determined after consideration of factors  
11          including the amount of narcotics trafficking and  
12          the number of illegal immigrants apprehended in  
13          such areas;

14          (2) an assessment of the feasibility of con-  
15          structing such a system;

16          (3) an assessment of the international, national,  
17          and regional environmental impact of such a system,  
18          including the impact on zoning, global climate  
19          change, ozone depletion, biodiversity loss, and  
20          transboundary pollution;

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

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

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

4           (7) an estimate of the costs associated with  
5           building a barrier system, including costs associated  
6           with excavation, construction, and maintenance;

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

10          (9) an assessment of the necessity of con-  
11          structing such a system after the implementation of  
12          provisions of this Act relating to guest workers, visa  
13          reform, and interior and worksite enforcement, and  
14          the likely effect of such provisions on undocumented  
15          immigration and the flow of illegal immigrants  
16          across the international border of the United States;

17          (10) an assessment of the impact of such a sys-  
18          tem on diplomatic relations between the United  
19          States and Mexico, Central America, and South  
20          America, including the likely impact of such a sys-  
21          tem on existing and potential areas of bilateral and  
22          multilateral cooperative enforcement efforts;

23          (11) an assessment of the impact of such a sys-  
24          tem on the quality of life within border communities  
25          in the United States and Mexico, including its im-

1 pact on noise and light pollution, housing, transpor-  
2 tation, security, and environmental health;

3 (12) an assessment of the likelihood that such  
4 a system would lead to increased violations of the  
5 human rights, health, safety, or civil rights of indi-  
6 viduals in the region near the southern international  
7 border of the United States, regardless of the immi-  
8 gration status of such individuals;

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

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

16 (b) REPORT.—Not later than 9 months after the date  
17 of the enactment of this Act, the Secretary shall submit  
18 to Congress a report on the study described in subsection  
19 (a).

20 **SEC. 130. SECURE BORDER INITIATIVE FINANCIAL AC-**  
21 **COUNTABILITY.**

22 (a) IN GENERAL.—The Inspector General of the De-  
23 partment shall review each contract action relating to the  
24 Secure Border Initiative having a value of more than  
25 \$20,000,000, to determine whether each such action fully

1 complies with applicable cost requirements, performance  
2 objectives, program milestones, inclusion of small, minor-  
3 ity, and women-owned business, and time lines. The In-  
4 spector General shall complete a review under this sub-  
5 section with respect to each contract action—

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

8           (2) upon the conclusion of the performance of  
9           the contract.

10       (b) INSPECTOR GENERAL.—

11           (1) ACTION.—If the Inspector General becomes  
12           aware of any improper conduct or wrongdoing in the  
13           course of conducting a contract review under sub-  
14           section (a), the Inspector General shall, as expedi-  
15           tiously as practicable, refer information relating to  
16           such improper conduct or wrongdoing to the Sec-  
17           retary, or to another appropriate official of the De-  
18           partment, who shall determine whether to tempo-  
19           rarily suspend the contractor from further participa-  
20           tion in the Secure Border Initiative.

21           (2) REPORT.—Upon the completion of each re-  
22           view described in subsection (a), the Inspector Gen-  
23           eral shall submit to the Secretary a report con-  
24           taining the findings of the review, including findings  
25           regarding—

1 (A) cost overruns;

2 (B) significant delays in contract execu-  
3 tion;

4 (C) lack of rigorous departmental contract  
5 management;

6 (D) insufficient departmental financial  
7 oversight;

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

10 (F) other high risk business practices.

11 (c) REPORTS BY THE SECRETARY.—

12 (1) IN GENERAL.—Not later than 30 days after  
13 the receipt of each report required under subsection  
14 (b)(2), the Secretary shall submit a report, to the  
15 Committee on the Judiciary of the Senate and the  
16 Committee on the Judiciary of the House of Rep-  
17 resentatives, that describes—

18 (A) the findings of the report received  
19 from the Inspector General; and

20 (B) the steps the Secretary has taken, or  
21 plans to take, to address the problems identified  
22 in such report.

23 (2) CONTRACTS WITH FOREIGN COMPANIES.—

24 Not later than 60 days after the initiation of each  
25 contract action with a company whose headquarters

1 is not based in the United States, the Secretary  
2 shall submit a report to the Committee on the Judi-  
3 ciary of the Senate and the Committee on the Judi-  
4 ciary of the House of Representatives, regarding the  
5 Secure Border Initiative.

6 (d) REPORTS ON UNITED STATES PORTS.—Not later  
7 than 30 days after receiving information regarding a pro-  
8 posed purchase of a contract to manage the operations of  
9 a United States port by a foreign entity, the Committee  
10 on Foreign Investment in the United States shall submit  
11 a report to Congress that describes—

12 (1) the proposed purchase;

13 (2) any security concerns related to the pro-  
14 posed purchase; and

15 (3) the manner in which such security concerns  
16 have been addressed.

17 (e) AUTHORIZATION OF APPROPRIATIONS.—In addi-  
18 tion to amounts that are otherwise authorized to be appro-  
19 priated to the Office of the Inspector General of the De-  
20 partment, there are authorized to be appropriated to the  
21 Office, to enable the Office to carry out this section—

22 (1) for fiscal year 2008, not less than 5 percent  
23 of the overall budget of the Office for such fiscal  
24 year;

1           (2) for fiscal year 2009, not less than 6 percent  
2 of the overall budget of the Office for such fiscal  
3 year; and

4           (3) for fiscal year 2010, not less than 7 percent  
5 of the overall budget of the Office for such fiscal  
6 year.

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

9           (a) IN GENERAL.—Beginning on October 1, 2008, an  
10 alien (other than a national of Mexico) who is attempting  
11 to illegally enter the United States and who is appre-  
12 hended at a United States port of entry or along the inter-  
13 national land and maritime border of the United States  
14 shall be detained until removed or a final decision granting  
15 admission has been determined, unless the alien—

16           (1) is permitted to withdraw an application for  
17 admission under section 235(a)(4) of the Immigra-  
18 tion and Nationality Act (8 U.S.C. 1225(a)(4)) and  
19 immediately departs from the United States pursu-  
20 ant to such section; or

21           (2) is paroled into the United States by the  
22 Secretary for urgent humanitarian reasons or sig-  
23 nificant public benefit in accordance with section  
24 212(d)(5)(A) of such Act (8 U.S.C. 1182(d)(5)(A)).

1 (b) REQUIREMENTS DURING INTERIM PERIOD.—Be-  
2 ginning 60 days after the date of the enactment of this  
3 Act and before October 1, 2008, an alien described in sub-  
4 section (a) may be released with a notice to appear only  
5 if—

6 (1) the Secretary determines, after conducting  
7 all appropriate background and security checks on  
8 the alien, that the alien does not pose a national se-  
9 curity risk; and

10 (2) the alien provides a bond of not less than  
11 \$5,000.

12 (c) RULES OF CONSTRUCTION.—

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

17 (2) TREATMENT OF CERTAIN ALIENS.—The  
18 mandatory detention requirement in subsection (a)  
19 does not apply to any alien who is a native or citizen  
20 of a country in the Western Hemisphere with whose  
21 government the United States does not have full dip-  
22 lomatic relations.

23 (3) DISCRETION.—Nothing in this section shall  
24 be construed as limiting the authority of the Sec-  
25 retary, in the Secretary's sole unreviewable discre-



1       tion, to determine whether an alien described in  
2       clause (ii) of section 235(b)(1)(B) of the Immigra-  
3       tion and Nationality Act shall be detained or re-  
4       leased after a finding of a credible fear of persecu-  
5       tion (as defined in clause (v) of such section).

6       **SEC. 132. EVASION OF INSPECTION OR VIOLATION OF AR-**  
7                   **RIVAL, REPORTING, ENTRY, OR CLEARANCE**  
8                   **REQUIREMENTS.**

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

12      **“§ 556. Evasion of inspection or during violation of**  
13                   **arrival, reporting, entry, or clearance re-**  
14                   **quirements**

15      “(a) PROHIBITION.—A person shall be punished as  
16      described in subsection (b) if such person attempts to  
17      elude or eludes customs, immigration, or agriculture in-  
18      spection or fails to stop at the command of an officer or  
19      employee of the United States charged with enforcing the  
20      immigration, customs, or other laws of the United States  
21      at a port of entry or customs or immigration checkpoint.

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

24                   “(1) fined under this title;

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

3           “(B) imprisoned for not more than 10 years, or  
4           both, if in commission of this violation, attempts to  
5           inflict or inflicts bodily injury (as defined in section  
6           1365(g) of this title); or

7           “(C) imprisoned for any term of years or for  
8           life, or both, if death results, and may be sentenced  
9           to death; or

10           “(3) both fined and imprisoned under this sub-  
11           section.

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

17           “(d) PRIMA FACIE EVIDENCE.—For the purposes of  
18           seizure and forfeiture under applicable law, in the case of  
19           use of a vehicle or other conveyance in the commission  
20           of this offense, or in the case of disregarding or disobeying  
21           the lawful authority or command of any officer or em-  
22           ployee of the United States under section 111(b) of this  
23           title, such conduct shall constitute prima facie evidence of  
24           smuggling aliens or merchandise.”.

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

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

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

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

15 (d) TECHNICAL AMENDMENTS.—

16 (1) IN GENERAL.—Chapter 27 of title 18,  
17 United States Code, is amended by redesignating  
18 section 554 (as added by section 551(a) of the De-  
19 partment of Homeland Security Appropriations Act,  
20 2007 (Public Law 109–295; 120 Stat. 1389)) as  
21 section 555.

22 (2) TABLE OF SECTIONS.—The table of sections  
23 for chapter 27 of title 18, United States Code, is  
24 amended—

1 (A) by striking the following:

“Sec. 554. Border tunnels and passages.”;

2 and

3 (B) by inserting the following:

“Sec. 555. Border tunnels and passages.”.

4 (3) CRIMINAL FORFEITURE.—Section 982(a)(6)  
5 of title 18, United States Code, is amended by strik-  
6 ing “554” and inserting “555”.

7 (4) DIRECTIVE TO UNITED STATES SEN-  
8 TENCING COMMISSION.—Paragraphs (1) and (2)(A)  
9 of section 551(d) of the Department of Homeland  
10 Security Appropriations Act, 2007 is amended by  
11 striking “554” and inserting “555”.

12 **SEC. 133. TEMPORARY NATIONAL GUARD SUPPORT FOR SE-**  
13 **CURING THE SOUTHERN LAND BORDER OF**  
14 **THE UNITED STATES.**

15 (a) AUTHORITY TO PROVIDE ASSISTANCE.—

16 (1) IN GENERAL.—With the approval of the  
17 Secretary of Defense, the Governor of a State may  
18 order any units or personnel of the National Guard  
19 of such State to perform annual training duty under  
20 section 502(a) of title 32, United States Code, to  
21 carry out in any State along the southern land bor-  
22 der of the United States the activities authorized in  
23 subsection (b), for the purpose of securing such bor-  
24 der. Such duty shall not exceed 21 days in any year.

1           (2) SUPPORT.—With the approval of the Sec-  
2           retary of Defense, the Governor of a State may  
3           order any units or personnel of the National Guard  
4           of such State to perform duty under section 502(f)  
5           of title 32, United States Code, to provide command,  
6           control, and continuity of support for units or per-  
7           sonnel performing annual training duty under para-  
8           graph (1).

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

- 11           (1) Ground reconnaissance activities;
- 12           (2) Airborne reconnaissance activities;
- 13           (3) Logistical support;
- 14           (4) Provision of translation services and train-  
15          ing;
- 16           (5) Administrative support services;
- 17           (6) Technical training services;
- 18           (7) Emergency medical assistance and services;
- 19           (8) Communications services;
- 20           (9) Rescue of aliens in peril;
- 21           (10) Construction of roadways, patrol roads,  
22          fences, barriers, and other facilities to secure the  
23          southern land border of the United States; and  
24           (11) Ground and air transportation.

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

9           (d) COORDINATION OF ASSISTANCE.—The Secretary  
10  of Homeland Security shall, in consultation with the Sec-  
11  retary of Defense and the Governors of the States con-  
12  cerned, coordinate the performance of activities under this  
13  section by units and personnel of the National Guard.

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

20          (f) DEFINITIONS.—In this section:

21               (1) The term “Governor of a State” means, in  
22   the case of the District of Columbia, the Com-  
23   manding General of the National Guard of the Dis-  
24   trict of Columbia.

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

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

6                   (A) The State of Arizona.

7                   (B) The State of California.

8                   (C) The State of New Mexico.

9                   (D) The State of Texas.

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

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

17 **SEC. 134. REPORT ON INCENTIVES TO ENCOURAGE CER-**  
18 **TAIN MEMBERS AND FORMER MEMBERS OF**  
19 **THE ARMED FORCES TO SERVE IN UNITED**  
20 **STATES CUSTOMS AND BORDER PROTEC-**  
21 **TION.**

22          (a) REPORT REQUIRED.—Not later than 60 days  
23 after the date of the enactment of this Act, the Secretary  
24 of Homeland Security and the Secretary of Defense shall  
25 jointly submit to the appropriate committees of Congress

1 a report assessing the desirability and feasibility of offer-  
2 ing incentives to covered members and former members  
3 of the Armed Forces for the purpose of encouraging such  
4 members to serve in the Bureau of Customs and Border  
5 Protection.

6 (b) COVERED MEMBERS AND FORMER MEMBERS OF  
7 THE ARMED FORCES.—For purposes of this section, cov-  
8 ered members and former members of the Armed Forces  
9 are the following:

10 (1) Members of the reserve components of the  
11 Armed Forces.

12 (2) Former members of the Armed Forces with-  
13 in two years of separation from service in the Armed  
14 Forces.

15 (c) REQUIREMENTS AND LIMITATIONS.—

16 (1) NATURE OF INCENTIVES.—In considering  
17 incentives for purposes of the report required by  
18 subsection (a), the Secretaries shall consider such  
19 incentives, whether monetary or otherwise and  
20 whether or not authorized by current law or regula-  
21 tions, as the Secretaries jointly consider appropriate.

22 (2) TARGETING OF INCENTIVES.—In assessing  
23 any incentive for purposes of the report, the Secre-  
24 taries shall give particular attention to the utility of  
25 such incentive in—



1 (A) encouraging service in the Bureau of  
2 Customs and Border Protection after service in  
3 the Armed Forces by covered members and  
4 former of the Armed Forces who have provided  
5 border patrol or border security assistance to  
6 the Bureau as part of their duties as members  
7 of the Armed Forces; and

8 (B) leveraging military training and expe-  
9 rience by accelerating training, or allowing  
10 credit to be applied to related areas of training,  
11 required for service with the Bureau of Cus-  
12 toms and Border Protection.

13 (3) PAYMENT.—In assessing incentives for pur-  
14 poses of the report, the Secretaries shall assume  
15 that any costs of such incentives shall be borne by  
16 the Department of Homeland Security.

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

19 (1) A description of various monetary and non-  
20 monetary incentives considered for purposes of the  
21 report.

22 (2) An assessment of the desirability and feasi-  
23 bility of utilizing any such incentive for the purpose  
24 specified in subsection (a), including an assessment  
25 of the particular utility of such incentive in encour-

1 aging service in the Bureau of Customs and Border  
2 Protection after service in the Armed Forces by cov-  
3 ered members and former members of the Armed  
4 Forces described in subsection (c)(2).

5 (3) Any other matters that the Secretaries  
6 jointly consider appropriate.

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

10 (1) the Committees on Armed Services, Home-  
11 land Security and Governmental Affairs, and Appro-  
12 priations of the Senate; and

13 (2) the Committees on Armed Services, Home-  
14 land Security, and Appropriations of the House of  
15 Representatives.

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

17 (a) FINDINGS.—Congress makes the following find-  
18 ings:

19 (1) United States citizens make approximately  
20 130,000,000 land border crossings each year be-  
21 tween the United States and Canada and the United  
22 States and Mexico, with approximately 23,000,000  
23 individual United States citizens crossing the border  
24 annually.

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

3           (3) In fiscal year 2005, the Secretary of State  
4 issued an estimated 10,100,000 passports, rep-  
5 resenting an increase of 15 percent from fiscal year  
6 2004.

7           (4) The Secretary of State estimates that  
8 16,000,000 passports will be issued in fiscal year  
9 2007 and 17,000,000 passports will be issued in fis-  
10 cal year 2008.

11       (b) EXTENSION OF WESTERN HEMISPHERE TRAVEL  
12 INITIATIVE IMPLEMENTATION DEADLINE.—Section  
13 7209(b)(1) of the Intelligence Reform and Terrorism Pre-  
14 vention Act of 2004 (Public Law 108–458; 8 U.S.C. 1185  
15 note) is amended by striking “January 1, 2008” and in-  
16 serting “the later of June 1, 2009, or 3 months after the  
17 Secretary of State and the Secretary of Homeland Secu-  
18 rity make the certification required in subsection (i) of sec-  
19 tion 133 of the Comprehensive Immigration Reform Act  
20 of 2007.”.

21       (c) PASSPORT CARDS.—

22           (1) AUTHORITY TO ISSUE.—In order to facili-  
23 tate travel of United States citizens to Canada, Mex-  
24 ico, the countries located in the Caribbean, and Ber-  
25 muda, the Secretary of State, in consultation with

1 the Secretary, is authorized to develop a travel docu-  
2 ment known as a Passport Card.

3 (2) ISSUANCE.—In accordance with the West-  
4 ern Hemisphere Travel Initiative carried out pursu-  
5 ant to section 7209 of the Intelligence Reform and  
6 Terrorism Prevention Act of 2004 (Public Law 108–  
7 458; 8 U.S.C. 1185 note), the Secretary of State, in  
8 consultation with the Secretary, shall be authorized  
9 to issue to a citizen of the United States who sub-  
10 mits an application in accordance with paragraph  
11 (5) a travel document that will serve as a Passport  
12 Card.

13 (3) APPLICABILITY.—A Passport Card shall be  
14 deemed to be a United States passport for the pur-  
15 pose of United States laws and regulations relating  
16 to United States passports.

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

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

23 (A) the United States and Canada;

24 (B) the United States and Mexico; and

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

3           (6) APPLICATION FOR ISSUANCE.—To be issued  
4           a Passport Card, a United States citizen shall sub-  
5           mit an application to the Secretary of State. The  
6           Secretary of State shall require that such application  
7           shall contain the same information as is required to  
8           determine citizenship, identity, and eligibility for  
9           issuance of a United States passport.

10          (7) TECHNOLOGY.—

11           (A) EXPEDITED TRAVELER PROGRAMS.—  
12           To the maximum extent practicable, a Passport  
13           Card shall be designed and produced to provide  
14           a platform on which the expedited traveler pro-  
15           grams carried out by the Secretary, such as  
16           NEXUS, NEXUS AIR, SENTRI, FAST, and  
17           Register Traveler may be added. The Secretary  
18           of State and the Secretary shall notify Congress  
19           not later than July 1, 2007, if the technology  
20           to add expedited travel features to the Passport  
21           Card is not developed by that date.

22           (B) TECHNOLOGY.—The Secretary and the  
23           Secretary of State shall establish a technology  
24           implementation plan that accommodates desired  
25           technology requirements of the Department of

1 State and the Department, allows for future  
2 technological innovations, and ensures maximum  
3 facilitation at the northern and southern  
4 borders.

5 (8) SPECIFICATIONS FOR CARD.—A Passport  
6 Card shall be easily portable and durable. The Secretary of State and the Secretary shall consult regarding the other technical specifications of the  
7 Card, including whether the security features of the  
8 Card could be combined with other existing identity  
9 documentation.  
10  
11

12 (9) FEE.—

13 (A) IN GENERAL.—An applicant for a  
14 Passport Card shall submit an application  
15 under paragraph (6) together with a nonrefundable  
16 fee in an amount to be determined by the  
17 Secretary of State. Passport Card fees shall be  
18 deposited as an offsetting collection to the appropriate  
19 Department of State appropriation, to  
20 remain available until expended.

21 (B) LIMITATION ON FEES.—

22 (i) IN GENERAL.—The Secretary of  
23 State shall seek to make the application  
24 fee under this paragraph as low as possible.  
25

1 (ii) MAXIMUM FEE WITHOUT CERTIFI-  
2 CATION.—Except as provided in clause  
3 (iii), the application fee may not exceed  
4 \$24.

5 (iii) MAXIMUM FEE WITH CERTIFI-  
6 CATION.—The application fee may be not  
7 more than \$34 if the Secretary of State,  
8 the Secretary, and the Postmaster Gen-  
9 eral—

10 (I) jointly certify to Congress  
11 that the cost to produce and issue a  
12 Passport Card significantly exceeds  
13 \$24; and

14 (II) provide a detailed cost anal-  
15 ysis for such fee.

16 (C) REDUCTION OF FEE.—The Secretary  
17 of State shall reduce the fee for a Passport  
18 Card for an individual who submits an applica-  
19 tion for a Passport Card together with an appli-  
20 cation for a United States passport.

21 (D) WAIVER OF FEE FOR CHILDREN.—  
22 The Secretary of State shall waive the fee for  
23 a Passport Card for a child under 18 years of  
24 age.

1           (E) AUDIT.—In the event that the fee for  
2           a Passport Card exceeds \$24, the Comptroller  
3           General of the United States shall conduct an  
4           audit to determine whether Passport Cards are  
5           issued at the lowest possible cost.

6           (10) ACCESSIBILITY.—In order to make the  
7           Passport Card easily obtainable, an application for a  
8           Passport Card shall be accepted in the same manner  
9           and at the same locations as an application for a  
10          United States passport.

11          (11) RULE OF CONSTRUCTION.—Nothing in  
12          this section shall be construed as limiting, altering,  
13          modifying, or otherwise affecting the validity of a  
14          United States passport. A United States citizen may  
15          possess a United States passport and a Passport  
16          Card.

17          (d) STATE ENROLLMENT DEMONSTRATION PRO-  
18          GRAM.—

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

24                        (A) A State may include an individual's  
25                        United States citizenship status on a driver's li-



1           cense which meets the requirements of section  
2           202 of the REAL ID Act of 2005 (division B  
3           of Public Law 109–13; 49 U.S.C. 30301 note).

4           (B) The Secretary of State shall develop a  
5           mechanism to communicate with a participating  
6           State to verify the United States citizenship  
7           status of an applicant who voluntarily seeks to  
8           have the applicant’s United States citizenship  
9           status included on a driver’s license.

10          (C) All information collected about the in-  
11          dividual shall be managed exclusively in the  
12          same manner as information collected through  
13          a passport application and no further distribu-  
14          tion of such information shall be permitted.

15          (D) A State may not require an individual  
16          to include the individual’s citizenship status on  
17          a driver’s license.

18          (E) Notwithstanding any other provision of  
19          law, a driver’s license which meets the require-  
20          ments of this paragraph shall be deemed to be  
21          sufficient documentation to permit the bearer to  
22          enter the United States from Canada or Mexico  
23          through not less than at least 1 designated  
24          international border crossing in each State par-  
25          ticipating in the demonstration program.

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

4           (3) AUTHORITY TO EXPAND.—The Secretary of  
5 State and the Secretary may expand the demonstra-  
6 tion program under this subsection so that such pro-  
7 gram is carried out in additional States, through ad-  
8 ditional ports of entry, for additional foreign coun-  
9 tries, and in a manner that permits the use of addi-  
10 tional types of identification documents to prove  
11 identity under the program.

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

16                   (A) the cost of the production and issuance  
17 of documents that meet the requirements of the  
18 program compared with other travel documents;

19                   (B) the impact of the program on the flow  
20 of cross-border traffic and the economic impact  
21 of the program; and

22                   (C) the security of travel documents that  
23 meet the requirements of the program com-  
24 pared with other travel documents.

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

15           (6) ADDITIONAL PILOT PROGRAMS.—To the  
16 maximum extent possible, the Secretary shall seek to  
17 conduct pilot programs related to Passport Cards  
18 and the State Enrollment Demonstration Program  
19 described in this subsection on the international bor-  
20 der between the United States and Canada and the  
21 international border between the United States and  
22 Mexico.

23           (e) EXPEDITED PROCESSING FOR REPEAT TRAV-  
24 ELERS.—

1           (1) LAND CROSSINGS.—To the maximum extent  
2           practicable at the United States border with Canada  
3           and the United States border with Mexico, the Sec-  
4           retary shall expand expedited traveler programs car-  
5           ried out by the Secretary to all ports of entry and  
6           should encourage citizens of the United States to  
7           participate in the preenrollment programs, as such  
8           programs assist border control officers of the United  
9           States in the fight against terrorism by increasing  
10          the number of known travelers crossing the border.  
11          The identities of such expedited travelers should be  
12          entered into a database of known travelers who have  
13          been subjected to in-depth background and watch-  
14          list checks to permit border control officers to focus  
15          more attention on unknown travelers, potential  
16          criminals, and terrorists. The Secretary, in consulta-  
17          tion with the appropriate officials of the Government  
18          of Canada, shall equip at least 6 additional northern  
19          border crossings with NEXUS technology and 6 ad-  
20          ditional southern ports of entry with SENTRI tech-  
21          nology.

22          (2) SEA CROSSINGS.—The Commissioner of  
23          Customs and Border Patrol shall conduct and ex-  
24          pand trusted traveler programs and pilot programs  
25          to facilitate expedited processing of United States

1 citizens returning from pleasure craft trips in Can-  
2 ada, Mexico, the Caribbean, or Bermuda. One such  
3 program shall be conducted in Florida and modeled  
4 on the I-68 program.

5 (f) PROCESS FOR INDIVIDUALS LACKING APPRO-  
6 PRIATE DOCUMENTS.—

7 (1) IN GENERAL.—The Secretary shall establish  
8 a program that satisfies section 7209 of the Intel-  
9 ligence Reform and Terrorism Prevention Act of  
10 2004 (Public Law 108-458; 8 U.S.C. 1185 note)—

11 (A) to permit a citizen of the United  
12 States who has not been issued a United States  
13 passport or other appropriate travel document  
14 to cross the international border and return to  
15 the United States for a time period of not more  
16 than 72 hours, on a limited basis, and at no ad-  
17 ditional fee; or

18 (B) to establish a process to ascertain the  
19 identity of, and make admissibility determina-  
20 tions for, a citizen described in paragraph (A)  
21 upon the arrival of such citizen at an inter-  
22 national border of the United States.

23 (2) GRACE PERIOD.—During a time period de-  
24 termined by the Secretary, officers of the United  
25 States Customs and Border Patrol may permit citi-

1       zens of the United States and Canada who are un-  
2       aware of the requirements of section 7209 of the In-  
3       telligence Reform and Terrorism Prevention Act of  
4       2004 (Public Law 108–458; 8 U.S.C. 1185 note), or  
5       otherwise lacking appropriate documentation, to  
6       enter the United States upon a demonstration of  
7       citizenship satisfactory to the officer. Officers of the  
8       United States Customs and Border Patrol shall edu-  
9       cate such individuals about documentary require-  
10      ments.

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

17      (h) PUBLIC PROMOTION.—The Secretary of State, in  
18      consultation with the Secretary, shall develop and imple-  
19      ment an outreach plan to inform United States citizens  
20      about the Western Hemisphere Travel Initiative and the  
21      provisions of this Act, to facilitate the acquisition of ap-  
22      propriate documentation to travel to Canada, Mexico, the  
23      countries located in the Caribbean, and Bermuda, and to  
24      educate United States citizens who are unaware of the re-

1 requirements for such travel. Such outreach plan should in-  
2 clude—

3           (1) written notifications posted at or near pub-  
4 lic facilities, including border crossings, schools, li-  
5 braries, Amtrak stations, and United States Post  
6 Offices located within 50 miles of the international  
7 border between the United States and Canada or the  
8 international border between the United States and  
9 Mexico and other ports of entry;

10           (2) provisions to seek consent to post such noti-  
11 fications on commercial property, such as offices of  
12 State departments of motor vehicles, gas stations,  
13 supermarkets, convenience stores, hotels, and travel  
14 agencies;

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

17           (4) additional measures as appropriate.

18           (i) CERTIFICATION.—Notwithstanding any other pro-  
19 vision of law, the Secretary may not implement the plan  
20 described in section 7209(b) of the Intelligence Reform  
21 and Terrorism Prevention Act of 2004 (Public Law 108–  
22 458; 8 U.S.C. 1185 note) until the later of June 1, 2009,  
23 or the date that is 3 months after the Secretary of State  
24 and the Secretary certify to Congress that—

1           (1)(A) if the Secretary and the Secretary of  
2 State develop and issue Passport Cards under this  
3 section—

4           (i) such cards have been distributed to at  
5 least 90 percent of the eligible United States  
6 citizens who applied for such cards during the  
7 6-month period beginning not earlier than the  
8 date the Secretary of State began accepting ap-  
9 plications for such cards and ending not earlier  
10 than 10 days prior to the date of certification;

11           (ii) Passport Cards are provided to appli-  
12 cants, on average, within 4 weeks of application  
13 or within the same period of time required to  
14 adjudicate a passport; and

15           (iii) a successful pilot has demonstrated  
16 the effectiveness of the Passport Card; or

17           (B) if the Secretary and the Secretary of State  
18 do not develop and issue Passport Cards under this  
19 section and develop a program to issue an alter-  
20 native document that satisfies the requirements of  
21 section 7209 of the Intelligence Reform and Ter-  
22 rorism Prevention Act of 2004, in addition to the  
23 NEXUS, SENTRI, FAST and Border Crossing  
24 Card programs, such alternative document is widely  
25 available and well publicized;



1           (2) United States border crossings have been  
2 equipped with sufficient document readers and other  
3 technologies to ensure that implementation will not  
4 substantially slow the flow of traffic and persons  
5 across international borders;

6           (3) officers of the Bureau of Customs and Bor-  
7 der Protection have received training and been pro-  
8 vided the infrastructure necessary to accept Pass-  
9 port Cards and all alternative identity documents at  
10 all United States border crossings; and

11           (4) the outreach plan described in subsection  
12 (g) has been implemented and the Secretary deter-  
13 mines such plan has been successful in providing in-  
14 formation to United States citizens.

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

## 19                   **Subtitle D—Border Law** 20                   **Enforcement Relief Act**

### 21   **SEC. 141. SHORT TITLE.**

22           This subtitle may be cited as the “Border Law En-  
23 forcement Relief Act of 2007”.

### 24   **SEC. 142. FINDINGS.**

25           Congress finds the following:

1           (1) It is the obligation of the Federal Govern-  
2           ment of the United States to adequately secure the  
3           Nation's borders and prevent the flow of undocu-  
4           mented persons and illegal drugs into the United  
5           States.

6           (2) Despite the fact that the United States  
7           Border Patrol apprehends over 1,000,000 people  
8           each year trying to illegally enter the United States,  
9           according to the Congressional Research Service, the  
10          net growth in the number of unauthorized aliens has  
11          increased by approximately 500,000 each year. The  
12          Southwest border accounts for approximately 94  
13          percent of all migrant apprehensions each year. Cur-  
14          rently, there are an estimated 11,000,000 unauthor-  
15          ized aliens in the United States.

16          (3) The border region is also a major corridor  
17          for the shipment of drugs. According to the El Paso  
18          Intelligence Center, 65 percent of the narcotics that  
19          are sold in the markets of the United States enter  
20          the country through the Southwest Border.

21          (4) Border communities continue to incur sig-  
22          nificant costs due to the lack of adequate border se-  
23          curity. A 2001 study by the United States-Mexico  
24          Border Counties Coalition found that law enforce-  
25          ment and criminal justice expenses associated with

1 illegal immigration exceed \$89,000,000 annually for  
2 the Southwest border counties.

3 (5) In August 2005, the States of New Mexico  
4 and Arizona declared states of emergency in order to  
5 provide local law enforcement immediate assistance  
6 in addressing criminal activity along the Southwest  
7 border.

8 (6) While the Federal Government provides  
9 States and localities assistance in covering costs re-  
10 lated to the detention of certain criminal aliens and  
11 the prosecution of Federal drug cases, local law en-  
12 forcement along the border are provided no assist-  
13 ance in covering such expenses and must use their  
14 limited resources to combat drug trafficking, human  
15 smuggling, kidnappings, the destruction of private  
16 property, and other border-related crimes.

17 (7) The United States shares 5,525 miles of  
18 border with Canada and 1,989 miles with Mexico.  
19 Many of the local law enforcement agencies located  
20 along the border are small, rural departments  
21 charged with patrolling large areas of land. Counties  
22 along the Southwest United States-Mexico border  
23 are some of the poorest in the country and lack the  
24 financial resources to cover the additional costs asso-

1       ciated with illegal immigration, drug trafficking, and  
2       other border-related crimes.

3               (8) Federal assistance is required to help local  
4       law enforcement operating along the border address  
5       the unique challenges that arise as a result of their  
6       proximity to an international border and the lack of  
7       overall border security in the region

8       **SEC. 143. BORDER RELIEF GRANT PROGRAM.**

9       (a) GRANTS AUTHORIZED.—

10               (1) IN GENERAL.—The Secretary is authorized  
11       to award grants, subject to the availability of appro-  
12       priations, to an eligible law enforcement agency to  
13       provide assistance to such agency to address—

14               (A) criminal activity that occurs in the ju-  
15       risdiction of such agency by virtue of such  
16       agency’s proximity to the United States border;  
17       and

18               (B) the impact of any lack of security  
19       along the United States border.

20               (2) DURATION.—Grants may be awarded under  
21       this subsection during fiscal years 2008 through  
22       2012.

23               (3) COMPETITIVE BASIS.—The Secretary shall  
24       award grants under this subsection on a competitive  
25       basis, except that the Secretary shall give priority to

1 applications from any eligible law enforcement agen-  
2 cy serving a community—

3 (A) with a population of less than 50,000;

4 and

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

7 (i) Canada; or

8 (ii) Mexico.

9 (b) USE OF FUNDS.—Grants awarded pursuant to  
10 subsection (a) may only be used to provide additional re-  
11 sources for an eligible law enforcement agency to address  
12 criminal activity occurring along any such border, includ-  
13 ing—

14 (1) to obtain equipment;

15 (2) to hire additional personnel;

16 (3) to upgrade and maintain law enforcement  
17 technology;

18 (4) to cover operational costs, including over-  
19 time and transportation costs; and

20 (5) such other resources as are available to as-  
21 sist that agency.

22 (c) APPLICATION.—

23 (1) IN GENERAL.—Each eligible law enforce-  
24 ment agency seeking a grant under this section shall  
25 submit an application to the Secretary at such time,

1 in such manner, and accompanied by such informa-  
2 tion as the Secretary may reasonably require.

3 (2) CONTENTS.—Each application submitted  
4 pursuant to paragraph (1) shall—

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

7 (B) provide such additional assurances as  
8 the Secretary determines to be essential to en-  
9 sure compliance with the requirements of this  
10 section.

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

12 (1) ELIGIBLE LAW ENFORCEMENT AGENCY.—  
13 The term “eligible law enforcement agency” means  
14 a tribal, State, or local law enforcement agency—

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

17 (i) Canada; or

18 (ii) Mexico; or

19 (B) located in a county more than 100  
20 miles from any such border, but where such  
21 county has been certified by the Secretary as a  
22 High Impact Area.

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

1 (A) whether local law enforcement agencies  
2 in that county have the resources to protect the  
3 lives, property, safety, or welfare of the resi-  
4 dents of that county;

5 (B) the relationship between any lack of  
6 security along the United States border and the  
7 rise, if any, of criminal activity in that county;  
8 and

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

12 (e) AUTHORIZATION OF APPROPRIATIONS.—

13 (1) IN GENERAL.—There are authorized to be  
14 appropriated \$50,000,000 for each of fiscal years  
15 2008 through 2012 to carry out the provisions of  
16 this section.

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

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

23 (B)  $\frac{1}{3}$  shall be set aside for areas des-  
24 ignated as a High Impact Area under sub-  
25 section (d).

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

5 **SEC. 144. ENFORCEMENT OF FEDERAL IMMIGRATION LAW.**

6 Nothing in this subtitle shall be construed to author-  
 7 ize State or local law enforcement agencies or their officers  
 8 to exercise Federal immigration law enforcement author-  
 9 ity.

10 **Subtitle E—Rapid Response**  
 11 **Measures**

12 **SEC. 151. DEPLOYMENT OF BORDER PATROL AGENTS.**

13 (a) EMERGENCY DEPLOYMENT OF BORDER PATROL  
 14 AGENTS.—

15 (1) IN GENERAL.—If the Governor of a State  
 16 on an international border of the United States de-  
 17 clares an international border security emergency  
 18 and requests additional United States Border Patrol  
 19 agents (referred to in this subtitle as “agents”) from  
 20 the Secretary, the Secretary, subject to paragraphs  
 21 (1) and (2), may provide the State with not more  
 22 than 1,000 additional agents for the purpose of pa-  
 23 trolling and defending the international border, in  
 24 order to prevent individuals from crossing the inter-



1 national border into the United States at any loca-  
2 tion other than an authorized port of entry.

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

9 (3) COLLECTIVE BARGAINING.—Emergency de-  
10 ployments under this subsection shall be made in ac-  
11 cordance with all applicable collective bargaining  
12 agreements and obligations.

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

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

1 **SEC. 152. BORDER PATROL MAJOR ASSETS.**

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

8 (b) HELICOPTERS AND POWER BOATS.—

9 (1) HELICOPTERS.—The Secretary shall in-  
10 crease, by not less than 100, the number of heli-  
11 copters under the control of the United States Bor-  
12 der Patrol. The Secretary shall ensure that appro-  
13 priate types of helicopters are procured for the var-  
14 ious missions being performed.

15 (2) POWER BOATS.—The Secretary shall in-  
16 crease, by not less than 250, the number of power  
17 boats under the control of the United States Border  
18 Patrol. The Secretary shall ensure that the types of  
19 power boats that are procured are appropriate for  
20 both the waterways in which they are used and the  
21 mission requirements.

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

23 (A) establish an overall policy on how the  
24 helicopters and power boats procured under this  
25 subsection will be used; and

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

4 (c) MOTOR VEHICLES.—

5 (1) QUANTITY.—The Secretary shall establish a  
6 fleet of motor vehicles appropriate for use by the  
7 United States Border Patrol that will permit a ratio  
8 of not less than 1 police-type vehicle for every 3  
9 agents. These police-type vehicles shall be replaced  
10 not less than every 3 years. The Secretary shall en-  
11 sure that there are sufficient numbers and types of  
12 other motor vehicles to support the mission of the  
13 United States Border Patrol.

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

16 (A) be appropriate for the mission of the  
17 United States Border Patrol; and

18 (B) have a panic button and a global posi-  
19 tioning system device that is activated solely in  
20 emergency situations to track the location of  
21 agents in distress.

22 **SEC. 153. ELECTRONIC EQUIPMENT.**

23 (a) PORTABLE COMPUTERS.—The Secretary shall en-  
24 sure that each police-type motor vehicle in the fleet of the  
25 United States Border Patrol is equipped with a portable

1 computer with access to all necessary law enforcement  
2 databases and otherwise suited to the unique operational  
3 requirements of the United States Border Patrol.

4 (b) RADIO COMMUNICATIONS.—The Secretary shall  
5 augment the existing radio communications system so that  
6 all law enforcement personnel working in each area where  
7 United States Border Patrol operations are conducted  
8 have clear and encrypted 2-way radio communication ca-  
9 pabilities at all times. Each portable communications de-  
10 vice shall be equipped with a panic button and a global  
11 positioning system device that is activated solely in emer-  
12 gency situations to track the location of agents in distress.

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

18 (d) NIGHT VISION EQUIPMENT.—The Secretary shall  
19 ensure that sufficient quantities of state-of-the-art night  
20 vision equipment are procured and maintained to enable  
21 each United States Border Patrol agent working during  
22 the hours of darkness to be equipped with a portable night  
23 vision device.

1 **SEC. 154. PERSONAL EQUIPMENT.**

2 (a) **BORDER ARMOR.**—The Secretary shall ensure  
3 that every agent is issued high-quality body armor that  
4 is appropriate for the climate and risks faced by the agent.  
5 Each agent shall be permitted to select from among a vari-  
6 ety of approved brands and styles. Agents shall be strongly  
7 encouraged, but not required, to wear such body armor  
8 whenever practicable. All body armor shall be replaced not  
9 less than every 5 years.

10 (b) **WEAPONS.**—The Secretary shall ensure that  
11 agents are equipped with weapons that are reliable and  
12 effective to protect themselves, their fellow agents, and in-  
13 nocent third parties from the threats posed by armed  
14 criminals. The Secretary shall ensure that the policies of  
15 the Department authorize all agents to carry weapons that  
16 are suited to the potential threats that they face.

17 (c) **UNIFORMS.**—The Secretary shall ensure that all  
18 agents are provided with all necessary uniform items, in-  
19 cluding outerwear suited to the climate, footwear, belts,  
20 holsters, and personal protective equipment, at no cost to  
21 such agents. Such items shall be replaced at no cost to  
22 such agents as they become worn, unserviceable, or no  
23 longer fit properly.

1 **SEC. 155. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated to the Sec-  
3 retary such sums as may be necessary for each of the fis-  
4 cal years 2008 through 2012 to carry out this subtitle.

5 **TITLE II—INTERIOR**  
6 **ENFORCEMENT**

7 **SEC. 201. REMOVAL AND DENIAL OF BENEFITS TO TER-**  
8 **RORIST ALIENS.**

9 (a) ASYLUM.—Section 208(b)(2)(A)(v) (8 U.S.C.  
10 1158(b)(2)(A)(v)) is amended by striking “or (VI)” and  
11 inserting “(V), (VI), (VII), or (VIII)”.

12 (b) CANCELLATION OF REMOVAL.—Section  
13 240A(c)(4) (8 U.S.C. 1229b(c)(4)) is amended—

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

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

18 (c) VOLUNTARY DEPARTURE.—Section  
19 240B(b)(1)(C) (8 U.S.C. 1229c(b)(1)(C)) is amended by  
20 striking “deportable under section 237(a)(2)(A)(iii) or  
21 section 237(a)(4)” and inserting “described in paragraph  
22 (2)(A)(iii) or (4) of section 237(a)”.

23 (d) RESTRICTION ON REMOVAL.—Section  
24 241(b)(3)(B) (8 U.S.C. 1231(b)(3)(B)) is amended—

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

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

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

4                   “(v) the alien is described in section  
5                   237(a)(4)(B) (other than an alien de-  
6                   scribed in section 212(a)(3)(B)(i)(IV) if  
7                   the Secretary of Homeland Security deter-  
8                   mines that there are not reasonable  
9                   grounds for regarding the alien as a dan-  
10                  ger to the security of the United States).”;

11                  and

12           (4) in the undesignated paragraph, by striking  
13 “For purposes of clause (iv), an alien who is de-  
14 scribed in section 237(a)(4)(B) shall be considered  
15 to be an alien with respect to whom there are rea-  
16 sonable grounds for regarding as a danger to the se-  
17 curity of the United States.”.

18           (e) RECORD OF ADMISSION.—Section 249 (8 U.S.C.  
19 1259) is amended to read as follows:

20 **“SEC. 249. RECORD OF ADMISSION FOR PERMANENT RESI-**  
21 **DENCE IN THE CASE OF CERTAIN ALIENS**  
22 **WHO ENTERED THE UNITED STATES PRIOR**  
23 **TO JANUARY 1, 1972.**

24           “A record of lawful admission for permanent resi-  
25 dence may be made, in the discretion of the Secretary of

1 Homeland Security and under such regulations as the Sec-  
 2 retary may prescribe, for any alien, as of the date of the  
 3 approval of the alien’s application or, if entry occurred be-  
 4 fore July 1, 1924, as of the date of such entry if no such  
 5 record is otherwise available, if the alien establishes that  
 6 the alien—

7 “(1) is not described in section 212(a)(3)(E) or  
 8 in section 212(a) (insofar as it relates to criminals,  
 9 procurers, other immoral persons, subversives, viola-  
 10 tors of the narcotics laws, or smugglers of aliens);

11 “(2) entered the United States before January  
 12 1, 1972;

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

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

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

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

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

20 (1) take effect on the date of the enactment of  
 21 this Act; and

22 (2) apply to any act or condition constituting a  
 23 ground for inadmissibility, excludability, or removal  
 24 occurring or existing on or after the date of the en-  
 25 actment of this Act.



1 **SEC. 202. DETENTION AND REMOVAL OF ALIENS ORDERED**  
2 **REMOVED.**

3 (a) IN GENERAL.—

4 (1) AMENDMENTS.—Section 241(a) (8 U.S.C.  
5 1231(a)) is amended—

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

9 (B) by striking “Attorney General” any  
10 other place it appears and inserting “Sec-  
11 retary”;

12 (C) in paragraph (1)—

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

15 “(ii) If a court, the Board of Immi-  
16 gration Appeals, or an immigration judge  
17 orders a stay of the removal of the alien,  
18 the expiration date of the stay of re-  
19 moval.”;

20 (ii) by amending subparagraph (C) to  
21 read as follows:

22 “(C) EXTENSION OF PERIOD.—The re-  
23 moval period shall be extended beyond a period  
24 of 90 days and the alien may remain in deten-  
25 tion during such extended period if the alien  
26 fails or refuses to—

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

3           “(ii) fully cooperate with the Sec-  
4           retary’s efforts to establish the alien’s  
5           identity and carry out the removal order,  
6           including failing to make timely application  
7           in good faith for travel or other documents  
8           necessary to the alien’s departure, or con-  
9           spiring or acting to prevent the alien’s re-  
10          moval.”; and

11          (iii) by adding at the end the fol-  
12          lowing:

13          “(D) TOLLING OF PERIOD.—If, at the  
14          time described in subparagraph (B), the alien is  
15          not in the custody of the Secretary under the  
16          authority of this Act, the removal period shall  
17          not begin until the alien is taken into such cus-  
18          tody. If the Secretary lawfully transfers custody  
19          of the alien during the removal period to an-  
20          other Federal agency or to a State or local gov-  
21          ernment agency in connection with the official  
22          duties of such agency, the removal period shall  
23          be tolled, and shall recommence on the date on  
24          which the alien is returned to the custody of the  
25          Secretary.”;

1 (D) in paragraph (2), by adding at the end  
2 the following: “If a court, the Board of Immi-  
3 gration Appeals, or an immigration judge or-  
4 ders a stay of removal of an alien who is sub-  
5 ject to an administrative final order of removal,  
6 the Secretary, in the exercise of discretion, may  
7 detain the alien during the pendency of such  
8 stay of removal.”;

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

11 “(D) to obey reasonable restrictions on the  
12 alien’s conduct or activities, or to perform af-  
13 firmative acts, that the Secretary prescribes for  
14 the alien—

15 “(i) to prevent the alien from ab-  
16 scending;

17 “(ii) for the protection of the commu-  
18 nity; or

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

21 (F) in paragraph (6), by striking “removal  
22 period and, if released,” and inserting “removal  
23 period, in the discretion of the Secretary, with-  
24 out any limitations other than those specified in

1           this section, until the alien is removed. If an  
2           alien is released, the alien”;

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

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

7                   “(7) PAROLE.—If an alien detained pursuant to  
8           paragraph (6) is an applicant for admission, the  
9           Secretary of Homeland Security, in the Secretary’s  
10          discretion, may parole the alien under section  
11          212(d)(5) and may provide, notwithstanding section  
12          212(d)(5), that the alien shall not be returned to  
13          custody unless either the alien violates the conditions  
14          of the alien’s parole or the alien’s removal becomes  
15          reasonably foreseeable, provided that in no cir-  
16          cumstance shall such alien be considered admitted.

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

20                           “(A) DETENTION REVIEW PROCESS FOR  
21                   ALIENS WHO HAVE EFFECTED AN ENTRY AND  
22                   FULLY COOPERATE WITH REMOVAL.—The Sec-  
23                   retary of Homeland Security shall establish an  
24                   administrative review process to determine  
25                   whether an alien described in subparagraph (B)

1 should be detained or released after the removal  
2 period in accordance with this paragraph.

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

5 “(i) has effected an entry into the  
6 United States;

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

9 “(iii) has cooperated fully with the  
10 Secretary’s efforts to establish the alien’s  
11 identity and to carry out the removal  
12 order, including making timely application  
13 in good faith for travel or other documents  
14 necessary for the alien’s departure; and

15 “(iv) has not conspired or acted to  
16 prevent removal.

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

19 “(i) shall consider any evidence sub-  
20 mitted by the alien;

21 “(ii) may consider any other evidence,  
22 including—

23 “(I) any information or assist-  
24 ance provided by the Department of  
25 State or other Federal agency; and

1                   “(II) any other information avail-  
2                   able to the Secretary pertaining to the  
3                   ability to remove the alien.

4                   “(D) AUTHORITY TO DETAIN FOR 90 DAYS  
5                   BEYOND REMOVAL PERIOD.—The Secretary, in  
6                   the exercise of the Secretary’s discretion and  
7                   without any limitations other than those speci-  
8                   fied in this section, may detain an alien for 90  
9                   days beyond the removal period (including any  
10                  extension of the removal period under para-  
11                  graph (1)(C)).

12                  “(E) AUTHORITY TO DETAIN FOR ADDI-  
13                  TIONAL PERIOD.—The Secretary, in the exer-  
14                  cise of the Secretary’s discretion and without  
15                  any limitations other than those specified in  
16                  this section, may detain an alien beyond the 90-  
17                  day period authorized under subparagraph (D)  
18                  until the alien is removed, if the Secretary—

19                         “(i) determines that there is a signifi-  
20                         cant likelihood that the alien will be re-  
21                         moved in the reasonably foreseeable future;  
22                         or

23                         “(ii) certifies in writing—

24                                 “(I) in consultation with the Sec-  
25                                 retary of Health and Human Services,

1 that the alien has a highly contagious  
2 disease that poses a threat to public  
3 safety;

4 “(II) after receipt of a written  
5 recommendation from the Secretary of  
6 State, that the release of the alien  
7 would likely have serious adverse for-  
8 eign policy consequences for the  
9 United States;

10 “(III) based on information avail-  
11 able to the Secretary (including classi-  
12 fied, sensitive, or national security in-  
13 formation, and regardless of the  
14 grounds upon which the alien was or-  
15 dered removed), that there is reason  
16 to believe that the release of the alien  
17 would threaten the national security  
18 of the United States;

19 “(IV) that—

20 “(aa) the release of the alien  
21 would threaten the safety of the  
22 community or any person, and  
23 conditions of release cannot rea-  
24 sonably be expected to ensure the

1 safety of the community or any  
2 person; and

3 “(bb) the alien—

4 “(AA) has been con-  
5 victed of 1 or more aggra-  
6 vated felonies (as defined in  
7 section 101(a)(43)(A)), or of  
8 1 or more attempts or con-  
9 spiracies to commit any such  
10 aggravated felonies for an  
11 aggregate term of imprison-  
12 ment of at least 5 years; or

13 “(BB) has committed a  
14 crime of violence (as defined  
15 in section 16 of title 18,  
16 United States Code, but not  
17 including a purely political  
18 offense) and, because of a  
19 mental condition or person-  
20 ality disorder and behavior  
21 associated with that condi-  
22 tion or disorder, is likely to  
23 engage in acts of violence in  
24 the future; or

25 “(V) that—



1                   “(aa) the release of the alien  
2                   would threaten the safety of the  
3                   community or any person, not-  
4                   withstanding conditions of release  
5                   designed to ensure the safety of  
6                   the community or any person;  
7                   and

8                   “(bb) the alien has been  
9                   convicted of 1 or more aggra-  
10                  vated felonies (as defined in sec-  
11                  tion 101(a)(43)) for which the  
12                  alien was sentenced to an aggre-  
13                  gate term of imprisonment of not  
14                  less than 1 year.

15                  “(F) ADMINISTRATIVE REVIEW PROC-  
16                  ESS.—The Secretary, without any limitations  
17                  other than those specified in this section, may  
18                  detain an alien pending a determination under  
19                  subparagraph (E)(ii), if the Secretary has initi-  
20                  ated the administrative review process identified  
21                  in subparagraph (A) not later than 30 days  
22                  after the expiration of the removal period (in-  
23                  cluding any extension of the removal period  
24                  under paragraph (1)(C)).

1                   “(G) RENEWAL AND DELEGATION OF CER-  
2                   TIFICATION.—

3                   “(i) RENEWAL.—The Secretary may  
4                   renew a certification under subparagraph  
5                   (E)(ii) every 6 months, without limitation,  
6                   after providing the alien with an oppor-  
7                   tunity to request reconsideration of the  
8                   certification and to submit documents or  
9                   other evidence in support of that request.  
10                  If the Secretary does not renew such cer-  
11                  tification, the Secretary shall release the  
12                  alien, pursuant to subparagraph (H).

13                  “(ii) DELEGATION.—Notwithstanding  
14                  any other provision of law, the Secretary  
15                  may not delegate the authority to make or  
16                  renew a certification described in subclause  
17                  (II), (III), or (V) of subparagraph (E)(ii)  
18                  to any employee reporting to the Assistant  
19                  Secretary for Immigration and Customs  
20                  Enforcement.

21                  “(iii) HEARING.—The Secretary may  
22                  request that the Attorney General, or a  
23                  designee of the Attorney General, provide  
24                  for a hearing to make the determination

1           described           in           subparagraph  
2           (E)(ii)(IV)(bb)(BB).

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

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

14                 “(i) the alien fails to comply with the  
15                 conditions of release;

16                 “(ii) the alien fails to continue to sat-  
17                 isfy the conditions described in subpara-  
18                 graph (B); or

19                 “(iii) upon reconsideration, the Sec-  
20                 retary determines that the alien can be de-  
21                 tained under subparagraph (E).

22          “(J) APPLICABILITY.—This paragraph and  
23          paragraphs (6) and (7) shall apply to any alien  
24          returned to custody under subparagraph (I) as

1 if the removal period terminated on the day of  
2 the redetention.

3 “(K) DETENTION REVIEW PROCESS FOR  
4 ALIENS WHO HAVE EFFECTED AN ENTRY AND  
5 FAIL TO COOPERATE WITH REMOVAL.—The  
6 Secretary shall detain an alien until the alien  
7 makes all reasonable efforts to comply with a  
8 removal order and to cooperate fully with the  
9 Secretary’s efforts, if the alien—

10 “(i) has effected an entry into the  
11 United States; and

12 “(ii)(I) and the alien faces a signifi-  
13 cant likelihood that the alien will be re-  
14 moved in the reasonably foreseeable future,  
15 or would have been removed if the alien  
16 had not—

17 “(aa) failed or refused to make  
18 all reasonable efforts to comply with a  
19 removal order;

20 “(bb) failed or refused to fully  
21 cooperate with the Secretary’s efforts  
22 to establish the alien’s identity and  
23 carry out the removal order, including  
24 the failure to make timely application  
25 in good faith for travel or other docu-

1                   ments necessary to the alien’s depar-  
2                   ture; or

3                   “*(cc)* conspired or acted to pre-  
4                   vent removal; or

5                   “*(II)* the Secretary makes a certifi-  
6                   cation as specified in subparagraph *(E)*, or  
7                   the renewal of a certification specified in  
8                   subparagraph *(G)*.

9                   “*(L)* DETENTION REVIEW PROCESS FOR  
10                  ALIENS WHO HAVE NOT EFFECTED AN  
11                  ENTRY.—Except as otherwise provided in this  
12                  subparagraph, the Secretary shall follow the  
13                  guidelines established in section 241.4 of title 8,  
14                  Code of Federal Regulations, when detaining  
15                  aliens who have not effected an entry. The Sec-  
16                  retary may decide to apply the review process  
17                  outlined in this paragraph.

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

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

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

5                   (B) shall apply to—

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

10                           (ii) any act or condition occurring or  
11                           existing before, on, or after the date of the  
12                           enactment of this Act.

13           (b) CRIMINAL DETENTION OF ALIENS.—Section  
14           3142 of title 18, United States Code, is amended—

15                   (1) in subsection (e)—

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

19                           (B) by inserting “(1)” before “If, after a  
20                           hearing”;

21                           (C) in subparagraphs (B) and (C), as re-  
22                           designated, by striking “paragraph (1)” and in-  
23                           serting “subparagraph (A)”; and

24                           (D) by adding after subparagraph (C), as  
25                           redesignated, the following:

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

6               “(A) is an alien; and

7               “(B)(i) has no lawful immigration status in the  
 8       United States;

9               “(ii) is the subject of a final order of removal;

10       or

11               “(iii) has committed a felony offense under sec-  
 12       tion 911, 922(g)(5), 1015, 1028, 1425, or 1426 of  
 13       this title, chapter 75 or 77 of this title, or section  
 14       243, 274, 275, 276, 277, or 278 of the Immigration  
 15       and Nationality Act (8 U.S.C. 1253, 1324, 1325,  
 16       1326, 2327, and 1328).”; and

17               (2) in subsection (g)(3)—

18               (A) in subparagraph (A), by striking

19               “and” at the end; and

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

21               “(C) the person’s immigration status;

22               and”.

23 **SEC. 203. AGGRAVATED FELONY.**

24       (a) **DEFINITION OF AGGRAVATED FELONY.**—Section

25 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended—

1           (1) by striking “The term ‘aggravated felony’  
2 means—” and inserting “Notwithstanding any other  
3 provision of law (except for the provision providing  
4 an effective date for section 203 of the Comprehen-  
5 sive Immigration Reform Act of 2007), the term ‘ag-  
6 gravated felony’ applies to an offense described in  
7 this paragraph, whether in violation of Federal or  
8 State law and to such an offense in violation of the  
9 law of a foreign country, for which the term of im-  
10 prisonment was completed within the previous 15  
11 years, even if the length of the term of imprisonment  
12 is based on recidivist or other enhancements and re-  
13 gardless of whether the conviction was entered be-  
14 fore, on, or after September 30, 1996, and  
15 means—”;

16           (2) in subparagraph (A), by striking “murder,  
17 rape, or sexual abuse of a minor;” and inserting  
18 “murder, rape, or sexual abuse of a minor, whether  
19 or not the minority of the victim is established by  
20 evidence contained in the record of conviction or by  
21 evidence extrinsic to the record of conviction;”;

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

24           (4) in subparagraph (O), by striking “section  
25 275(a) or 276 committed by an alien who was pre-



1 viously deported on the basis of a conviction for an  
2 offense described in another subparagraph of this  
3 paragraph” and inserting “section 275 or 276 for  
4 which the term of imprisonment is at least 1 year”;

5 (5) in subparagraph (U), by striking “an at-  
6 tempt or conspiracy to commit an offense described  
7 in this paragraph” and inserting “aiding or abetting  
8 an offense described in this paragraph, or soliciting,  
9 counseling, procuring, commanding, or inducing an-  
10 other, attempting, or conspiring to commit such an  
11 offense”; and

12 (6) by striking the undesignated matter fol-  
13 lowing subparagraph (U).

14 (b) EFFECTIVE DATE AND APPLICATION.—

15 (1) IN GENERAL.—The amendments made by  
16 subsection (a) shall—

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

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

21 (2) APPLICATION OF HIRAIRA AMENDMENTS.—

22 The amendments to section 101(a)(43) of the Immi-  
23 gration and Nationality Act made by section 321 of  
24 the Illegal Immigration Reform and Immigrant Re-  
25 sponsibility Act of 1996 (division C of Public Law

1 104–208; 110 Stat. 3009–627) shall continue to  
2 apply, whether the conviction was entered before, on,  
3 or after September 30, 1996.

4 **SEC. 204. TERRORIST BARS.**

5 (a) DEFINITION OF GOOD MORAL CHARACTER.—  
6 Section 101(f) (8 U.S.C. 1101(f)) is amended—

7 (1) by inserting after paragraph (1) the fol-  
8 lowing:

9 “(2) an alien described in section 212(a)(3) or  
10 237(a)(4), as determined by the Secretary of Home-  
11 land Security or Attorney General based upon any  
12 relevant information or evidence, including classified,  
13 sensitive, or national security information;”;

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

19 “(A) the person completed the term of im-  
20 prisonment and sentence not later than 10  
21 years before the date of application; and

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

1           (3) in the undesignated matter following para-  
2           graph (9), by striking “a finding that for other rea-  
3           sons such person is or was not of good moral char-  
4           acter” and inserting the following: “a discretionary  
5           finding for other reasons that such a person is or  
6           was not of good moral character. In determining an  
7           applicant’s moral character, the Secretary of Home-  
8           land Security and the Attorney General may take  
9           into consideration the applicant’s conduct and acts  
10          at any time and are not limited to the period during  
11          which good moral character is required.”.

12          (b) PENDING PROCEEDINGS.—Section 204(b) (8  
13 U.S.C. 1154(b)) is amended by adding at the end the fol-  
14 lowing: “A petition may not be approved under this section  
15 if there is any administrative or judicial proceeding  
16 (whether civil or criminal) pending against the petitioner  
17 that could directly or indirectly result in the petitioner’s  
18 denaturalization or the loss of the petitioner’s lawful per-  
19 manent resident status.”.

20          (c) CONDITIONAL PERMANENT RESIDENT STATUS.—

21           (1) IN GENERAL.—Section 216(e) (8 U.S.C.  
22           1186a(e)) is amended by inserting “if the alien has  
23           had the conditional basis removed pursuant to this  
24           section” before the period at the end.

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

6           (d) JUDICIAL REVIEW OF NATURALIZATION APPLI-  
7           CATIONS.—Section 310(c) (8 U.S.C. 1421(c)) is amend-  
8           ed—

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

12           (2) by adding at the end the following: “Except  
13           that in any proceeding, other than a proceeding  
14           under section 340, the court shall review for sub-  
15           stantial evidence the administrative record and find-  
16           ings of the Secretary of Homeland Security regard-  
17           ing whether an alien is a person of good moral char-  
18           acter, understands and is attached to the principles  
19           of the Constitution of the United States, or is well  
20           disposed to the good order and happiness of the  
21           United States. The petitioner shall have the burden  
22           of showing that the Secretary’s denial of the applica-  
23           tion was contrary to law.”.

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

4 “(g) PERSONS ENDANGERING THE NATIONAL SECUR-  
5 RITY.—A person may not be naturalized if the Secretary  
6 of Homeland Security determines, based upon any rel-  
7 evant information or evidence, including classified, sen-  
8 sitive, or national security information, that the person  
9 was once an alien described in section 212(a)(3) or  
10 237(a)(4).”.

11 (f) CONCURRENT NATURALIZATION AND REMOVAL  
12 PROCEEDINGS.—Section 318 (8 U.S.C. 1429) is amended  
13 by striking “the Attorney General if” and all that follows  
14 and inserting: “the Secretary of Homeland Security or any  
15 court if there is pending against the applicant any removal  
16 proceeding or other proceeding to determine the appli-  
17 cant’s inadmissibility or deportability, or to determine  
18 whether the applicant’s lawful permanent resident status  
19 should be rescinded, regardless of when such proceeding  
20 was commenced. The findings of the Attorney General in  
21 terminating removal proceedings or canceling the removal  
22 of an alien under this Act shall not be deemed binding  
23 in any way upon the Secretary of Homeland Security with  
24 respect to the question of whether such person has estab-

1 lished eligibility for naturalization in accordance with this  
2 title.”.

3 (g) DISTRICT COURT JURISDICTION.—Section  
4 336(b) (8 U.S.C. 1447(b)) is amended to read as follows:

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

19 (h) EFFECTIVE DATE.—The amendments made by  
20 this section—

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

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

1 **SEC. 205. INCREASED CRIMINAL PENALTIES RELATED TO**  
2 **GANG VIOLENCE, REMOVAL, AND ALIEN**  
3 **SMUGGLING.**

4 (a) CRIMINAL STREET GANGS.—

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

7 (A) by redesignating subparagraph (F) as  
8 subparagraph (J); and

9 (B) by inserting after subparagraph (E)  
10 the following:

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

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

21 “(ii) has participated in the activities  
22 of a criminal street gang, knowing or hav-  
23 ing reason to know that such activities pro-  
24 moted, furthered, aided, or supported the  
25 illegal activity of the criminal gang,

26 is inadmissible.”.

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

4           “(F) MEMBERS OF CRIMINAL STREET  
5 GANGS.—Unless the Secretary of Homeland Se-  
6 curity or the Attorney General waives the appli-  
7 cation of this subparagraph, any alien who the  
8 Secretary of Homeland Security or the Attorney  
9 General knows or has reason to believe—

10           “(i) is, or at any time after admission  
11 has been, a member of a criminal street  
12 gang (as defined in section 521(a) of title  
13 18, United States Code); or

14           “(ii) has participated in the activities  
15 of a criminal street gang, knowing or hav-  
16 ing reason to know that such activities pro-  
17 moted, furthered, aided, or supported the  
18 illegal activity of the criminal gang,

19 is deportable.”.

20           (3) TEMPORARY PROTECTED STATUS.—Section  
21 244 (8 U.S.C. 1254a) is amended—

22           (A) by striking “Attorney General” each  
23 place it appears and inserting “Secretary of  
24 Homeland Security”;

25           (B) in subsection (b)(3)—



1 (i) in subparagraph (B), by striking  
2 the last sentence and inserting the fol-  
3 lowing: “Notwithstanding any other provi-  
4 sion of this section, the Secretary of  
5 Homeland Security may, for any reason  
6 (including national security), terminate or  
7 modify any designation under this section.  
8 Such termination or modification is effec-  
9 tive upon publication in the Federal Reg-  
10 ister, or after such time as the Secretary  
11 may designate in the Federal Register.”;

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

16 (C) in subsection (c)—

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

20 (ii) in paragraph (2)(B)—

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

23 (II) in clause (ii), by striking the  
24 period at the end and inserting “; or”;

25 and

1 (III) by adding at the end the  
2 following:

3 “(iii) the alien is, or at any time after  
4 admission has been, a member of a crimi-  
5 nal street gang (as defined in section  
6 521(a) of title 18, United States Code).”;  
7 and

8 (D) in subsection (d)—

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

10 (ii) in paragraph (4), by adding at the  
11 end the following: “The Secretary of  
12 Homeland Security may detain an alien  
13 provided temporary protected status under  
14 this section whenever appropriate under  
15 any other provision of law.”.

16 (b) PENALTIES RELATED TO REMOVAL.—Section  
17 243 (8 U.S.C. 1253) is amended—

18 (1) in subsection (a)(1)—

19 (A) in the matter preceding subparagraph  
20 (A), by inserting “212(a) or” after “section”;  
21 and

22 (B) in the matter following subparagraph  
23 (D)—

24 (i) by striking “or imprisoned not  
25 more than four years” and inserting “and

1                   imprisoned for not less than 6 months or  
2                   more than 5 years”; and

3                   (ii) by striking “, or both”;

4                   (2) in subsection (b), by striking “not more  
5                   than \$1000 or imprisoned for not more than one  
6                   year, or both” and inserting “under title 18, United  
7                   States Code, and imprisoned for not less than 6  
8                   months or more than 5 years (or for not more than  
9                   10 years if the alien is a member of any of the class-  
10                  es described in paragraphs (1)(E), (2), (3), and (4)  
11                  of section 237(a)).”; and

12                  (3) by amending subsection (d) to read as fol-  
13                  lows:

14                  “(d) DENYING VISAS TO NATIONALS OF COUNTRY  
15                  DENYING OR DELAYING ACCEPTING ALIEN.—The Sec-  
16                  retary of Homeland Security, after making a determina-  
17                  tion that the government of a foreign country has denied  
18                  or unreasonably delayed accepting an alien who is a cit-  
19                  izen, subject, national, or resident of that country after  
20                  the alien has been ordered removed, and after consultation  
21                  with the Secretary of State, may instruct the Secretary  
22                  of State to deny a visa to any citizen, subject, national,  
23                  or resident of that country until the country accepts the  
24                  alien that was ordered removed.”.

25                  (c) ALIEN SMUGGLING AND RELATED OFFENSES.—

1           (1) IN GENERAL.—Section 274 (8 U.S.C.  
2           1324), is amended to read as follows:

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

4           “(a) CRIMINAL OFFENSES AND PENALTIES.—

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

8                   “(A) facilitates, encourages, directs, or in-  
9                   duces a person to come to or enter the United  
10                   States, or to cross the border to the United  
11                   States, knowing or in reckless disregard of the  
12                   fact that such person is an alien who lacks law-  
13                   ful authority to come to, enter, or cross the bor-  
14                   der to the United States;

15                   “(B) facilitates, encourages, directs, or in-  
16                   duces a person to come to or enter the United  
17                   States, or to cross the border to the United  
18                   States, at a place other than a designated port  
19                   of entry or place other than as designated by  
20                   the Secretary of Homeland Security, knowing  
21                   or in reckless disregard of the fact that such  
22                   person is an alien and regardless of whether  
23                   such alien has official permission or lawful au-  
24                   thority to be in the United States;

1           “(C) transports, moves, harbors, conceals,  
2 or shields from detection a person outside of  
3 the United States knowing or in reckless dis-  
4 regard of the fact that such person is an alien  
5 in unlawful transit from 1 country to another  
6 or on the high seas, under circumstances in  
7 which the alien is seeking to enter the United  
8 States without official permission or legal au-  
9 thority;

10           “(D) encourages or induces a person to re-  
11 side in the United States, knowing or in reck-  
12 less disregard of the fact that such person is an  
13 alien who lacks lawful authority to reside in the  
14 United States;

15           “(E) transports or moves a person in the  
16 United States, knowing or in reckless disregard  
17 of the fact that such person is an alien who  
18 lacks lawful authority to enter or be in the  
19 United States, if the transportation or move-  
20 ment will further the alien’s illegal entry into or  
21 illegal presence in the United States;

22           “(F) harbors, conceals, or shields from de-  
23 tection a person in the United States, knowing  
24 or in reckless disregard of the fact that such

1 person is an alien who lacks lawful authority to  
2 be in the United States; or

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

6 “(2) CRIMINAL PENALTIES.—A person who vio-  
7 lates any provision under paragraph (1)—

8 “(A) except as provided in subparagraphs  
9 (C) through (G), if the offense was not com-  
10 mitted for commercial advantage, profit, or pri-  
11 vate financial gain, shall be fined under title 18,  
12 United States Code, imprisoned for not more  
13 than 5 years, or both;

14 “(B) except as provided in subparagraphs  
15 (C) through (G), if the offense was committed  
16 for commercial advantage, profit, or private fi-  
17 nancial gain—

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

22 “(ii) if the violation is the offender’s  
23 second or subsequent violation of this sub-  
24 paragraph, shall be fined under such title,

1           imprisoned for not less than 3 years or  
2           more than 20 years, or both;

3           “(C) if the offense furthered or aided the  
4           commission of any other offense against the  
5           United States or any State that is punishable  
6           by imprisonment for more than 1 year, shall be  
7           fined under such title, imprisoned for not less  
8           than 5 years or more than 20 years, or both;

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

17                 “(i) transporting the person in an en-  
18                 gine compartment, storage compartment,  
19                 or other confined space;

20                 “(ii) transporting the person at an ex-  
21                 cessive speed or in excess of the rated ca-  
22                 pacity of the means of transportation; or

23                 “(iii) transporting the person in, har-  
24                 boring the person in, or otherwise sub-

1           jecting the person to crowded or dangerous  
2           conditions;

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

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

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

15                 “(ii) intending to engage in terrorist  
16                 activity;

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

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

24                 “(A) for a religious denomination having a  
25                 bona fide nonprofit, religious organization in



1 the United States, or the agents or officers of  
2 such denomination or organization, to encour-  
3 age, invite, call, allow, or enable an alien who  
4 is present in the United States to perform the  
5 vocation of a minister or missionary for the de-  
6 nomination or organization in the United States  
7 as a volunteer who is not compensated as an  
8 employee, notwithstanding the provision of  
9 room, board, travel, medical assistance, and  
10 other basic living expenses, provided the min-  
11 ister or missionary has been a member of the  
12 denomination for at least 1 year; or

13 “(B) for an individual or organization, not  
14 previously convicted of a violation of this sec-  
15 tion, to provide an alien who is present in the  
16 United States with humanitarian assistance, in-  
17 cluding medical care, housing, counseling, vic-  
18 tim services, and food, or to transport the alien  
19 to a location where such assistance can be ren-  
20 dered.

21 “(4) EXTRATERRITORIAL JURISDICTION.—  
22 There is extraterritorial Federal jurisdiction over the  
23 offenses described in this subsection.

24 “(b) EMPLOYMENT OF UNAUTHORIZED ALIENS.—

1           “(1) CRIMINAL OFFENSE AND PENALTIES.—  
2           Any person who, during any 12-month period, know-  
3           ingly employs 10 or more individuals with actual  
4           knowledge or in reckless disregard of the fact that  
5           the individuals are aliens described in paragraph (2),  
6           shall be fined under title 18, United States Code,  
7           imprisoned for not more than 10 years, or both.

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

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

12                   “(B) is present in the United States with-  
13                   out lawful authority; and

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

16           “(c) SEIZURE AND FORFEITURE.—

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

22                   “(2) APPLICABLE PROCEDURES.—Seizures and  
23                   forfeitures under this subsection shall be governed  
24                   by the provisions of chapter 46 of title 18, United  
25                   States Code, relating to civil forfeitures, except that

1 such duties as are imposed upon the Secretary of  
2 the Treasury under the customs laws described in  
3 section 981(d) shall be performed by such officers,  
4 agents, and other persons as may be designated for  
5 that purpose by the Secretary of Homeland Security.

6 “(3) PRIMA FACIE EVIDENCE IN DETERMINA-  
7 TIONS OF VIOLATIONS.—In determining whether a  
8 violation of subsection (a) has occurred, prima facie  
9 evidence that an alien involved in the alleged viola-  
10 tion lacks lawful authority to come to, enter, reside  
11 in, remain in, or be in the United States or that  
12 such alien had come to, entered, resided in, re-  
13 mained in, or been present in the United States in  
14 violation of law shall include—

15 “(A) any order, finding, or determination  
16 concerning the alien’s status or lack of status  
17 made by a Federal judge or administrative ad-  
18 judicator (including an immigration judge or  
19 immigration officer) during any judicial or ad-  
20 ministrative proceeding authorized under Fed-  
21 eral immigration law;

22 “(B) official records of the Department of  
23 Homeland Security, the Department of Justice,  
24 or the Department of State concerning the  
25 alien’s status or lack of status; and

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

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

7           “(1) officers and employees designated by the  
8           Secretary of Homeland Security, either individually  
9           or as a member of a class; and

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

12           “(e) ADMISSIBILITY OF VIDEOTAPED WITNESS TES-  
13 TIMONY.—Notwithstanding any provision of the Federal  
14 Rules of Evidence, the videotaped or otherwise audio-  
15 visually preserved deposition of a witness to a violation  
16 of subsection (a) who has been deported or otherwise ex-  
17 pelled from the United States, or is otherwise unavailable  
18 to testify, may be admitted into evidence in an action  
19 brought for that violation if—

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

23           “(2) the deposition otherwise complies with the  
24           Federal Rules of Evidence.

25           “(f) OUTREACH PROGRAM.—

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

4           “(A) develop and implement an outreach  
5 program to educate people in and out of the  
6 United States about the penalties for bringing  
7 in and harboring aliens in violation of this sec-  
8 tion; and

9           “(B) establish the American Local and In-  
10 terior Enforcement Needs (ALIEN) Task Force  
11 to identify and respond to the use of Federal,  
12 State, and local transportation infrastructure to  
13 further the trafficking of unlawful aliens within  
14 the United States.

15           “(2) FIELD OFFICES.—The Secretary of Home-  
16 land Security, after consulting with State and local  
17 government officials, shall establish such field offices  
18 as may be necessary to carry out this subsection.

19           “(3) AUTHORIZATION OF APPROPRIATIONS.—  
20 There are authorized to be appropriated such sums  
21 are necessary for the fiscal years 2008 through 2012  
22 to carry out this subsection.

23           “(g) DEFINITIONS.—In this section:

24           “(1) CROSSED THE BORDER INTO THE UNITED  
25 STATES.—An alien is deemed to have crossed the

1 border into the United States regardless of whether  
2 the alien is free from official restraint.

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

15 “(3) **PROCEEDS.**—The term ‘proceeds’ includes  
16 any property or interest in property obtained or re-  
17 tained as a consequence of an act or omission in vio-  
18 lation of this section.

19 “(4) **UNLAWFUL TRANSIT.**—The term ‘unlawful  
20 transit’ means travel, movement, or temporary pres-  
21 ence that violates the laws of any country in which  
22 the alien is present or any country from which the  
23 alien is traveling or moving.”.

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

“Sec. 274. Alien smuggling and related offenses.”.

4           (d) PROHIBITING CARRYING OR USING A FIREARM  
5 DURING AND IN RELATION TO AN ALIEN SMUGGLING  
6 CRIME.—Section 924(c) of title 18, United States Code,  
7 is amended—

8           (1) in paragraph (1)—

9                   (A) in subparagraph (A), by inserting “,  
10                   alien smuggling crime,” after “any crime of vio-  
11                   lence”;

12                   (B) in subparagraph (A), by inserting “,  
13                   alien smuggling crime,” after “such crime of vi-  
14                   olence”;

15                   (C) in subparagraph (D)(ii), by inserting  
16                   “,  
17                   alien smuggling crime,” after “crime of vio-  
18                   lence”; and

18           (2) by adding at the end the following:

19           “(6) For purposes of this subsection, the term ‘alien  
20           smuggling crime’ means any felony punishable under sec-  
21           tion 274(a), 277, or 278 of the Immigration and Nation-  
22           ality Act (8 U.S.C. 1324(a), 1327, and 1328).”.

23 **SEC. 206. ILLEGAL ENTRY.**

24           (a) IN GENERAL.—Section 275 (8 U.S.C. 1325) is  
25           amended to read as follows:

1 **“SEC. 275. ILLEGAL ENTRY.**

2 “(a) IN GENERAL.—

3 “(1) CRIMINAL OFFENSES.—An alien shall be  
4 subject to the penalties set forth in paragraph (2) if  
5 the alien—

6 “(A) knowingly enters or crosses the bor-  
7 der into the United States at any time or place  
8 other than as designated by the Secretary of  
9 Homeland Security;

10 “(B) knowingly eludes examination or in-  
11 spection by an immigration officer (including  
12 failing to stop at the command of such officer),  
13 or a customs or agriculture inspection at a port  
14 of entry; or

15 “(C) knowingly enters or crosses the bor-  
16 der to the United States by means of a know-  
17 ingly false or misleading representation or the  
18 knowing concealment of a material fact (includ-  
19 ing such representation or concealment in the  
20 context of arrival, reporting, entry, or clearance  
21 requirements of the customs laws, immigration  
22 laws, agriculture laws, or shipping laws).

23 “(2) CRIMINAL PENALTIES.—Any alien who  
24 violates any provision under paragraph (1)—



1           “(A) shall, for the first violation, be fined  
2 under title 18, United States Code, imprisoned  
3 not more than 6 months, or both;

4           “(B) shall, for a second or subsequent vio-  
5 lation, or following an order of voluntary depar-  
6 ture, be fined under such title, imprisoned not  
7 more than 2 years, or both;

8           “(C) if the violation occurred after the  
9 alien had been convicted of 3 or more mis-  
10 demeanors or for a felony, shall be fined under  
11 such title, imprisoned not more than 10 years,  
12 or both;

13           “(D) if the violation occurred after the  
14 alien had been convicted of a felony for which  
15 the alien received a term of imprisonment of  
16 not less than 30 months, shall be fined under  
17 such title, imprisoned not more than 15 years,  
18 or both; and

19           “(E) 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 60 months, such alien shall be  
23 fined under such title, imprisoned not more  
24 than 20 years, or both.

1           “(3) PRIOR CONVICTIONS.—The prior convic-  
2           tions described in subparagraphs (C) through (E) of  
3           paragraph (2) are elements of the offenses described  
4           in that paragraph and the penalties in such subpara-  
5           graphs shall apply only in cases in which the convic-  
6           tion or convictions that form the basis for the addi-  
7           tional penalty are—

8                   “(A) alleged in the indictment or informa-  
9                   tion; and

10                   “(B) proven beyond a reasonable doubt at  
11                   trial or admitted by the defendant.

12           “(4) DURATION OF OFFENSE.—An offense  
13           under this subsection continues until the alien is dis-  
14           covered within the United States by an immigration  
15           officer.

16           “(5) ATTEMPT.—Whoever attempts to commit  
17           any offense under this section shall be punished in  
18           the same manner as for a completion of such of-  
19           fense.

20           “(b) IMPROPER TIME OR PLACE; CIVIL PEN-  
21           ALTIES.—

22                   “(1) IN GENERAL.—Any alien who is appre-  
23                   hended while entering, attempting to enter, or know-  
24                   ingly crossing or attempting to cross the border to  
25                   the United States at a time or place other than as

1 designated by immigration officers shall be subject  
 2 to a civil penalty, in addition to any criminal or  
 3 other civil penalties that may be imposed under any  
 4 other provision of law, in an amount equal to—

5 “(A) not less than \$50 or more than \$250  
 6 for each such entry, crossing, attempted entry,  
 7 or attempted crossing; or

8 “(B) twice the amount specified in para-  
 9 graph (1) if the alien had previously been sub-  
 10 ject to a civil penalty under this subsection.

11 “(2) **CROSSED THE BORDER DEFINED.**—In this  
 12 section, an alien is deemed to have crossed the bor-  
 13 der if the act was voluntary, regardless of whether  
 14 the alien was under observation at the time of the  
 15 crossing.”.

16 (b) **CLERICAL AMENDMENT.**—The table of contents  
 17 is amended by striking the item relating to section 275  
 18 and inserting the following:

“Sec. 275. Illegal entry.”.

19 **SEC. 207. ILLEGAL REENTRY.**

20 Section 276 (8 U.S.C. 1326) is amended to read as  
 21 follows:

22 **“SEC. 276. REENTRY OF REMOVED ALIENS.**

23 “(a) **REENTRY AFTER REMOVAL.**—Any alien who  
 24 has been denied admission, excluded, deported, or re-  
 25 moved, or who has departed the United States while an

1 order of exclusion, deportation, or removal is outstanding,  
2 and subsequently enters, attempts to enter, crosses the  
3 border to, attempts to cross the border to, or is at any  
4 time found in the United States, shall be fined under title  
5 18, United States Code, imprisoned not more than 2  
6 years, or both.

7 “(b) REENTRY OF CRIMINAL OFFENDERS.—Not-  
8 withstanding the penalty provided in subsection (a), if an  
9 alien described in that subsection—

10 “(1) was convicted for 3 or more misdemeanors  
11 or a felony before such removal or departure, the  
12 alien shall be fined under title 18, United States  
13 Code, imprisoned not more than 10 years, or both;

14 “(2) was convicted for a felony before such re-  
15 moval or departure for which the alien was sen-  
16 tenced to a term of imprisonment of not less than  
17 30 months, the alien shall be fined under such title,  
18 imprisoned not more than 15 years, or both;

19 “(3) was convicted for a felony before such re-  
20 moval or departure for which the alien was sen-  
21 tenced to a term of imprisonment of not less than  
22 60 months, the alien shall be fined under such title,  
23 imprisoned not more than 20 years, or both;

24 “(4) was convicted for 3 felonies before such re-  
25 moval or departure, the alien shall be fined under

1 such title, imprisoned not more than 20 years, or  
2 both; or

3 “(5) was convicted, before such removal or de-  
4 parture, for murder, rape, kidnaping, or a felony of-  
5 fense described in chapter 77 (relating to peonage  
6 and slavery) or 113B (relating to terrorism) of such  
7 title, the alien shall be fined under such title, impris-  
8 oned not more than 20 years, or both.

9 “(c) REENTRY AFTER REPEATED REMOVAL.—Any  
10 alien who has been denied admission, excluded, deported,  
11 or removed 3 or more times and thereafter enters, at-  
12 tempts to enter, crosses the border to, attempts to cross  
13 the border to, or is at any time found in the United States,  
14 shall be fined under title 18, United States Code, impris-  
15 oned not more than 10 years, or both.

16 “(d) PROOF OF PRIOR CONVICTIONS.—The prior  
17 convictions described in subsection (b) are elements of the  
18 crimes described in that subsection, and the penalties in  
19 that subsection shall apply only in cases in which the con-  
20 viction or convictions that form the basis for the additional  
21 penalty are—

22 “(1) alleged in the indictment or information;  
23 and

24 “(2) proven beyond a reasonable doubt at trial  
25 or admitted by the defendant.

1       “(e) AFFIRMATIVE DEFENSES.—It shall be an af-  
2 firmative defense to a violation of this section that—

3               “(1) prior to the alleged violation, the alien had  
4 sought and received the express consent of the Sec-  
5 retary of Homeland Security to reapply for admis-  
6 sion into the United States; or

7               “(2) with respect to an alien previously denied  
8 admission and removed, the alien—

9                       “(A) was not required to obtain such ad-  
10 vance consent under the Immigration and Na-  
11 tionality Act or any prior Act; and

12                      “(B) had complied with all other laws and  
13 regulations governing the alien’s admission into  
14 the United States.

15       “(f) LIMITATION ON COLLATERAL ATTACK ON UN-  
16 DERLYING REMOVAL ORDER.—In a criminal proceeding  
17 under this section, an alien may not challenge the validity  
18 of any prior removal order concerning the alien unless the  
19 alien demonstrates by clear and convincing evidence  
20 that—

21               “(1) the alien exhausted all administrative rem-  
22 edies that may have been available to seek relief  
23 against the order;

1           “(2) the removal proceedings at which the order  
2           was issued improperly deprived the alien of the op-  
3           portunity for judicial review; and

4           “(3) the entry of the order was fundamentally  
5           unfair.

6           “(g) REENTRY OF ALIEN REMOVED PRIOR TO COM-  
7           PLETION OF TERM OF IMPRISONMENT.—Any alien re-  
8           moved pursuant to section 241(a)(4) who enters, attempts  
9           to enter, crosses the border to, attempts to cross the bor-  
10          der to, or is at any time found in, the United States shall  
11          be incarcerated for the remainder of the sentence of im-  
12          prisonment which was pending at the time of deportation  
13          without any reduction for parole or supervised release un-  
14          less the alien affirmatively demonstrates that the Sec-  
15          retary of Homeland Security has expressly consented to  
16          the alien’s reentry. Such alien shall be subject to such  
17          other penalties relating to the reentry of removed aliens  
18          as may be available under this section or any other provi-  
19          sion of law.

20          “(h) LIMITATION.—It is not aiding and abetting a  
21          violation of this section for an individual to provide an  
22          alien with emergency humanitarian assistance, including  
23          emergency medical care and food, or to transport the alien  
24          to a location where such assistance can be rendered with-  
25          out compensation or the expectation of compensation.

1 “(i) DEFINITIONS.—In this section:

2 “(1) CROSSES THE BORDER.—The term  
3 ‘crosses the border’ applies if an alien acts volun-  
4 tarily, regardless of whether the alien was under ob-  
5 servation at the time of the crossing.

6 “(2) FELONY.—Term ‘felony’ means any crimi-  
7 nal offense punishable by a term of imprisonment of  
8 more than 1 year under the laws of the United  
9 States, any State, or a foreign government.

10 “(3) MISDEMEANOR.—The term ‘misdemeanor’  
11 means any criminal offense punishable by a term of  
12 imprisonment of not more than 1 year under the ap-  
13 plicable laws of the United States, any State, or a  
14 foreign government.

15 “(4) REMOVAL.—The term ‘removal’ includes  
16 any denial of admission, exclusion, deportation, or  
17 removal, or any agreement by which an alien stipu-  
18 lates or agrees to exclusion, deportation, or removal.

19 “(5) STATE.—The term ‘State’ means a State  
20 of the United States, the District of Columbia, and  
21 any commonwealth, territory, or possession of the  
22 United States.”.

23 **SEC. 208. REFORM OF PASSPORT, VISA, AND IMMIGRATION**  
24 **FRAUD OFFENSES.**

25 (a) PASSPORT, VISA, AND IMMIGRATION FRAUD.—



1           (1) IN GENERAL.—Chapter 75 of title 18,  
2           United States Code, is amended to read as follows:

3           **“CHAPTER 75—PASSPORT, VISA, AND**  
4           **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.

5           **“§ 1541. Trafficking in passports**

6           “(a) MULTIPLE PASSPORTS.—Any person who, dur-  
7           ing any 3-year period, knowingly—

8           “(1) and without lawful authority produces,  
9           issues, or transfers 10 or more passports;

10           “(2) forges, counterfeits, alters, or falsely  
11           makes 10 or more passports;

12           “(3) secures, possesses, uses, receives, buys,  
13           sells, or distributes 10 or more passports, knowing  
14           the passports to be forged, counterfeited, altered,  
15           falsely made, stolen, procured by fraud, or produced  
16           or issued without lawful authority; or

17           “(4) completes, mails, prepares, presents, signs,  
18           or submits 10 or more applications for a United

1 States passport (including any supporting docu-  
2 mentation), knowing the applications to contain any  
3 false statement or representation,  
4 shall be fined under this title, imprisoned not more than  
5 20 years, or both.

6 “(b) PASSPORT MATERIALS.—Any person who know-  
7 ingly and without lawful authority produces, counterfeits,  
8 secures, possesses, or uses any official paper, seal,  
9 hologram, image, text, symbol, stamp, engraving, plate, or  
10 other material used to make a passport shall be fined  
11 under this title, imprisoned not more than 20 years, or  
12 both.

13 **“§ 1542. False statement in an application for a pass-  
14 port**

15 “Any person who knowingly—

16 “(1) makes any false statement or representa-  
17 tion in an application for a United States passport  
18 (including any supporting documentation);

19 “(2) completes, mails, prepares, presents, signs,  
20 or submits an application for a United States pass-  
21 port (including any supporting documentation)  
22 knowing the application to contain any false state-  
23 ment or representation; or

24 “(3) causes or attempts to cause the production  
25 of a passport by means of any fraud or false applica-

1       tion for a United States passport (including any  
2       supporting documentation), if such production oc-  
3       curs or would occur at a facility authorized by the  
4       Secretary of State for the production of passports,  
5 shall be fined under this title, imprisoned not more than  
6 15 years, or both.

7 **“§ 1543. Forgery and unlawful production of a pass-**  
8 **port**

9       “(a) FORGERY.—Any person who—

10           “(1) knowingly forges, counterfeits, alters, or  
11       falsely makes any passport; or

12           “(2) knowingly transfers any passport knowing  
13       it to be forged, counterfeited, altered, falsely made,  
14       stolen, or to have been produced or issued without  
15       lawful authority,

16 shall be fined under this title, imprisoned not more than  
17 15 years, or both.

18       “(b) UNLAWFUL PRODUCTION.—Any person who  
19 knowingly and without lawful authority—

20           “(1) produces, issues, authorizes, or verifies a  
21       passport in violation of the laws, regulations, or  
22       rules governing the issuance of the passport;

23           “(2) produces, issues, authorizes, or verifies a  
24       United States passport for or to any person not  
25       owing allegiance to the United States; or

1           “(3) transfers or furnishes a passport to a per-  
2           son for use when such person is not the person for  
3           whom the passport was issued or designed,  
4 shall be fined under this title, imprisoned not more than  
5 15 years, or both.

6 **“§ 1544. Misuse of a passport**

7           “(a) IN GENERAL.—Any person who knowingly—

8           “(1) uses any passport issued or designed for  
9           the use of another;

10           “(2) uses any passport in violation of the condi-  
11           tions or restrictions therein contained, or in violation  
12           of the laws, regulations, or rules governing the  
13           issuance and use of the passport;

14           “(3) secures, possesses, uses, receives, buys,  
15           sells, or distributes any passport knowing it to be  
16           forged, counterfeited, altered, falsely made, procured  
17           by fraud, or produced or issued without lawful au-  
18           thority; or

19           “(4) violates the terms and conditions of any  
20           safe conduct duly obtained and issued under the au-  
21           thority of the United States,

22 shall be fined under this title, imprisoned not more than  
23 15 years, or both.

24           “(b) ENTRY; FRAUD.—Any person who knowingly  
25 uses any passport, knowing the passport to be forged,

1 counterfeited, altered, falsely made, procured by fraud,  
2 produced or issued without lawful authority, or issued or  
3 designed for the use of another—

4           “(1) to enter or to attempt to enter the United  
5 States; or

6           “(2) to defraud the United States, a State, or  
7 a political subdivision of a State,

8 shall be fined under this title, imprisoned not more than  
9 15 years, or both.

10 **“§ 1545. Schemes to defraud aliens**

11           “(a) IN GENERAL.—Any person who knowingly exe-  
12 cutes a scheme or artifice, in connection with any matter  
13 that is authorized by or arises under Federal immigration  
14 laws, or any matter the offender claims or represents is  
15 authorized by or arises under Federal immigration laws—

16           “(1) to defraud any person; or

17           “(2) to obtain or receive from any person, by  
18 means of false or fraudulent pretenses, representa-  
19 tions, promises, money or anything else of value,

20 shall be fined under this title, imprisoned not more than  
21 15 years, or both.

22           “(b) MISREPRESENTATION.—Any person who know-  
23 ingly and falsely represents himself to be an attorney in  
24 any matter arising under Federal immigration laws shall

1 be fined under this title, imprisoned not more than 15  
2 years, or both.

3 **“§ 1546. Immigration and visa fraud**

4 “(a) IN GENERAL.—Any person who knowingly—

5 “(1) uses any immigration document issued or  
6 designed for the use of another;

7 “(2) forges, counterfeits, alters, or falsely  
8 makes any immigration document;

9 “(3) completes, mails, prepares, presents, signs,  
10 or submits any immigration document knowing it to  
11 contain any materially false statement or representa-  
12 tion;

13 “(4) secures, possesses, uses, transfers, re-  
14 ceives, buys, sells, or distributes any immigration  
15 document knowing it to be forged, counterfeited, al-  
16 tered, falsely made, stolen, procured by fraud, or  
17 produced or issued without lawful authority;

18 “(5) adopts or uses a false or fictitious name to  
19 evade or to attempt to evade the immigration laws;  
20 or

21 “(6) transfers or furnishes an immigration doc-  
22 ument to a person without lawful authority for use  
23 if such person is not the person for whom the immi-  
24 gration document was issued or designed,

1 shall be fined under this title, imprisoned not more than  
2 15 years, or both.

3 “(b) MULTIPLE VIOLATIONS.—Any person who, dur-  
4 ing any 3-year period, knowingly—

5 “(1) and without lawful authority produces,  
6 issues, or transfers 10 or more immigration docu-  
7 ments;

8 “(2) forges, counterfeits, alters, or falsely  
9 makes 10 or more immigration documents;

10 “(3) secures, possesses, uses, buys, sells, or dis-  
11 tributes 10 or more immigration documents, know-  
12 ing the immigration documents to be forged, coun-  
13 terfeited, altered, stolen, falsely made, procured by  
14 fraud, or produced or issued without lawful author-  
15 ity; or

16 “(4) completes, mails, prepares, presents, signs,  
17 or submits 10 or more immigration documents  
18 knowing the documents to contain any materially  
19 false statement or representation,

20 shall be fined under this title, imprisoned not more than  
21 20 years, or both.

22 “(c) IMMIGRATION DOCUMENT MATERIALS.—Any  
23 person who knowingly and without lawful authority pro-  
24 duces, counterfeits, secures, possesses, or uses any official  
25 paper, seal, hologram, image, text, symbol, stamp, engrav-

1 ing, plate, or other material, used to make an immigration  
2 document shall be fined under this title, imprisoned not  
3 more than 20 years, or both.

4 **“§ 1547. Marriage fraud**

5 “(a) EVASION OR MISREPRESENTATION.—Any per-  
6 son who—

7 “(1) knowingly enters into a marriage for the  
8 purpose of evading any provision of the immigration  
9 laws; or

10 “(2) knowingly misrepresents the existence or  
11 circumstances of a marriage—

12 “(A) in an application or document author-  
13 ized by the immigration laws; or

14 “(B) during any immigration proceeding  
15 conducted by an administrative adjudicator (in-  
16 cluding an immigration officer or examiner, a  
17 consular officer, an immigration judge, or a  
18 member of the Board of Immigration Appeals),

19 shall be fined under this title, imprisoned not more than  
20 10 years, or both.

21 “(b) MULTIPLE MARRIAGES.—Any person who—

22 “(1) knowingly enters into 2 or more marriages  
23 for the purpose of evading any immigration law; or



1           “(2) knowingly arranges, supports, or facilitates  
2           2 or more marriages designed or intended to evade  
3           any immigration law,  
4 shall be fined under this title, imprisoned not more than  
5 20 years, or both.

6           “(c) COMMERCIAL ENTERPRISE.—Any person who  
7 knowingly establishes a commercial enterprise for the pur-  
8 pose of evading any provision of the immigration laws  
9 shall be fined under this title, imprisoned for not more  
10 than 10 years, or both.

11          “(d) DURATION OF OFFENSE.—

12           “(1) IN GENERAL.—An offense under sub-  
13 section (a) or (b) continues until the fraudulent na-  
14 ture of the marriage or marriages is discovered by  
15 an immigration officer.

16           “(2) COMMERCIAL ENTERPRISE.—An offense  
17 under subsection (c) continues until the fraudulent  
18 nature of commercial enterprise is discovered by an  
19 immigration officer or other law enforcement officer.

20 **“§ 1548. Attempts and conspiracies**

21          “Any person who attempts or conspires to violate any  
22 section of this chapter shall be punished in the same man-  
23 ner as a person who completed a violation of that section.

1 **“§ 1549. Alternative penalties for certain offenses**

2 “(a) **TERRORISM.**—Any person who violates any sec-  
3 tion of this chapter—

4 “(1) knowing that such violation will facilitate  
5 an act of international terrorism or domestic ter-  
6 rorism (as those terms are defined in section 2331);

7 or

8 “(2) with the intent to facilitate an act of inter-  
9 national terrorism or domestic terrorism,

10 shall be fined under this title, imprisoned not more than  
11 25 years, or both.

12 “(b) **OFFENSE AGAINST GOVERNMENT.**—Any person  
13 who violates any section of this chapter—

14 “(1) knowing that such violation will facilitate  
15 the commission of any offense against the United  
16 States (other than an offense in this chapter) or  
17 against any State, which offense is punishable by  
18 imprisonment for more than 1 year; or

19 “(2) with the intent to facilitate the commission  
20 of any offense against the United States (other than  
21 an offense in this chapter) or against any State,  
22 which offense is punishable by imprisonment for  
23 more than 1 year,

24 shall be fined under this title, imprisoned not more than  
25 20 years, or both.

1 **“§ 1550. Seizure and forfeiture**

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

7       “(b) APPLICABLE LAW.—Seizures and forfeitures  
8 under this section shall be governed by the provisions of  
9 chapter 46 relating to civil forfeitures, except that such  
10 duties as are imposed upon the Secretary of the Treasury  
11 under the customs laws described in section 981(d) shall  
12 be performed by such officers, agents, and other persons  
13 as may be designated for that purpose by the Secretary  
14 of Homeland Security, the Secretary of State, or the At-  
15 torney General.

16 **“§ 1551. Additional jurisdiction**

17       “(a) IN GENERAL.—Any person who commits an of-  
18 fense under this chapter within the special maritime and  
19 territorial jurisdiction of the United States shall be pun-  
20 ished as provided under this chapter.

21       “(b) EXTRATERRITORIAL JURISDICTION.—Any per-  
22 son who commits an offense under this chapter outside  
23 the United States shall be punished as provided under this  
24 chapter if—

25               “(1) the offense involves a United States immi-  
26 gration document (or any document purporting to be

1 such a document) or any matter, right, or benefit  
2 arising under or authorized by Federal immigration  
3 laws;

4 “(2) the offense is in or affects foreign com-  
5 merce;

6 “(3) the offense affects, jeopardizes, or poses a  
7 significant risk to the lawful administration of Fed-  
8 eral immigration laws, or the national security of the  
9 United States;

10 “(4) the offense is committed to facilitate an  
11 act of international terrorism (as defined in section  
12 2331) or a drug trafficking crime (as defined in sec-  
13 tion 929(a)(2)) that affects or would affect the na-  
14 tional security of the United States;

15 “(5) the offender is a national of the United  
16 States (as defined in section 101(a)(22) of the Im-  
17 migration and Nationality Act (8 U.S.C.  
18 1101(a)(22))) or an alien lawfully admitted for per-  
19 manent residence in the United States (as defined in  
20 section 101(a)(20) of such Act); or

21 “(6) the offender is a stateless person whose  
22 habitual residence is in the United States.

23 **“§ 1552. Additional venue**

24 “(a) IN GENERAL.—An offense under section 1542  
25 may be prosecuted in—

1           “(1) any district in which the false statement or  
2 representation was made;

3           “(2) any district in which the passport applica-  
4 tion was prepared, submitted, mailed, received, proc-  
5 essed, or adjudicated; or

6           “(3) in the case of an application prepared and  
7 adjudicated outside the United States, in the district  
8 in which the resultant passport was produced.

9           “(b) SAVINGS CLAUSE.—Nothing in this section lim-  
10 its the venue otherwise available under sections 3237 and  
11 3238.

12 **“§ 1553. Definitions**

13           “As used in this chapter:

14           “(1) The term ‘falsely make’ means to prepare  
15 or complete an immigration document with knowl-  
16 edge or in reckless disregard of the fact that the  
17 document—

18                   “(A) contains a statement or representa-  
19 tion that is false, fictitious, or fraudulent;

20                   “(B) has no basis in fact or law; or

21                   “(C) otherwise fails to state a fact which  
22 is material to the purpose for which the docu-  
23 ment was created, designed, or submitted.

24           “(2) The term a ‘false statement or representa-  
25 tion’ includes a personation or an omission.

1           “(3) The term ‘felony’ means any criminal of-  
2           fense punishable by a term of imprisonment of more  
3           than 1 year under the laws of the United States, any  
4           State, or a foreign government.

5           “(4) The term ‘immigration document’—

6           “(A) means—

7           “(i) any passport or visa; or

8           “(ii) any application, petition, affi-  
9           davit, declaration, attestation, form, identi-  
10          fication card, alien registration document,  
11          employment authorization document, bor-  
12          der crossing card, certificate, permit,  
13          order, license, stamp, authorization, grant  
14          of authority, or other evidentiary docu-  
15          ment, arising under or authorized by the  
16          immigration laws of the United States; and

17          “(B) includes any document, photograph,  
18          or other piece of evidence attached to or sub-  
19          mitted in support of an immigration document.

20          “(5) The term ‘immigration laws’ includes—

21          “(A) the laws described in section  
22          101(a)(17) of the Immigration and Nationality  
23          Act (8 U.S.C. 1101(a)(17));

24          “(B) the laws relating to the issuance and  
25          use of passports; and

1           “(C) the regulations prescribed under the  
2           authority of any law described in subparagraph  
3           (A) or (B).

4           “(6) The term ‘immigration proceeding’ in-  
5           cludes an adjudication, interview, hearing, or review.

6           “(7) A person does not exercise ‘lawful author-  
7           ity’ if the person abuses or improperly exercises law-  
8           ful authority the person otherwise holds.

9           “(8) The term ‘passport’ means a travel docu-  
10          ment attesting to the identity and nationality of the  
11          bearer that is issued under the authority of the Sec-  
12          retary of State, a foreign government, or an inter-  
13          national organization; or any instrument purporting  
14          to be the same.

15          “(9) The term ‘produce’ means to make, pre-  
16          pare, assemble, issue, print, authenticate, or alter.

17          “(10) The term ‘State’ means a State of the  
18          United States, the District of Columbia, or any com-  
19          monwealth, territory, or possession of the United  
20          States.

21       **“§ 1554. Authorized law enforcement activities**

22          “Nothing in this chapter shall prohibit any lawfully  
23          authorized investigative, protective, or intelligence activity  
24          of a law enforcement agency of the United States, a State,  
25          or a political subdivision of a State, or an intelligence

1 agency of the United States, or any activity authorized  
2 under title V of the Organized Crime Control Act of 1970  
3 (84 Stat. 933).

4 **“§ 1555. Exception for refugees, asylees, and other**  
5 **vulnerable persons**

6 “(a) IN GENERAL.—If a person believed to have vio-  
7 lated section 1542, 1544, 1546, or 1548 while attempting  
8 to enter the United States, without delay, indicates an in-  
9 tention to apply for asylum under section 208 or 241(b)(3)  
10 of the Immigration and Nationality Act (8 U.S.C. 1158  
11 and 1231), or for relief under the Convention Against Tor-  
12 ture and Other Cruel, Inhuman or Degrading Treatment  
13 or Punishment (in accordance with section 208.17 of title  
14 8, Code of Federal Regulations), or under section  
15 101(a)(15)(T), 101(a)(15)(U), 101(a)(27)(J),  
16 101(a)(51), 216(e)(4)(C), 240A(b)(2), or 244(a)(3) (as in  
17 effect prior to March 31, 1997) of such Act, or a credible  
18 fear of persecution or torture—

19 “(1) the person shall be referred to an appro-  
20 priate Federal immigration official to review such  
21 claim and make a determination if such claim is  
22 warranted;

23 “(2) if the Federal immigration official deter-  
24 mines that the person qualifies for the claimed relief,



1 the person shall not be considered to have violated  
 2 any such section; and

3 “(3) if the Federal immigration official deter-  
 4 mines that the person does not qualify for the  
 5 claimed relief, the person shall be referred to an ap-  
 6 propriate Federal official for prosecution under this  
 7 chapter.

8 “(b) SAVINGS PROVISION.—Nothing in this section  
 9 shall be construed to diminish, increase, or alter the obli-  
 10 gations of refugees or the United States under article  
 11 31(1) of the Convention Relating to the Status of Refu-  
 12 gees, done at Geneva July 28, 1951 (as made applicable  
 13 by the Protocol Relating to the Status of Refugees, done  
 14 at New York January 31, 1967 (19 UST 6223)).”.

15 (2) CLERICAL AMENDMENT.—The table of  
 16 chapters in title 18, United States Code, is amended  
 17 by striking the item relating to chapter 75 and in-  
 18 serting the following:

“75. **Passport, visa, and immigration fraud** ..... **1541**”.

19 (b) PROTECTION FOR LEGITIMATE REFUGEES AND  
 20 ASYLUM SEEKERS.—Section 208 (8 U.S.C. 1158) is  
 21 amended by adding at the end the following:

22 “(e) PROTECTION FOR LEGITIMATE REFUGEES AND  
 23 ASYLUM SEEKERS.—The Attorney General, in consulta-  
 24 tion with the Secretary of Homeland Security, shall de-  
 25 velop binding prosecution guidelines for Federal prosecu-

1 tors to ensure that any prosecution of an alien seeking  
 2 entry into the United States by fraud is consistent with  
 3 the written terms and limitations of Article 31(1) of the  
 4 Convention Relating to the Status of Refugees, done at  
 5 Geneva July 28, 1951 (as made applicable by the Protocol  
 6 Relating to the Status of Refugees, done at New York  
 7 January 31, 1967 (19 UST 6223)).”.

8 **SEC. 209. INADMISSIBILITY AND REMOVAL FOR PASSPORT**  
 9 **AND IMMIGRATION FRAUD OFFENSES.**

10 (a) INADMISSIBILITY.—Section 212(a)(2)(A)(i) (8  
 11 U.S.C. 1182(a)(2)(A)(i)) is amended—

12 (1) in subclause (I), by striking “, or” at the  
 13 end and inserting a semicolon;

14 (2) in subclause (II), by striking the comma at  
 15 the end and inserting “; or”; and

16 (3) by inserting after subclause (II) the fol-  
 17 lowing:

18 “(III) a violation of (or a con-  
 19 spiracy or attempt to violate) any pro-  
 20 vision of chapter 75 of title 18,  
 21 United States Code,”.

22 (b) REMOVAL.—Section 237(a)(3)(B)(iii) (8 U.S.C.  
 23 1227(a)(3)(B)(iii)) is amended to read as follows:

1                   “(iii) of a violation of any provision of  
2                   chapter 75 of title 18, United States  
3                   Code,”.

4           (c) EFFECTIVE DATE.—The amendments made by  
5 subsections (a) and (b) shall apply to proceedings pending  
6 on or after the date of the enactment of this Act, with  
7 respect to conduct occurring on or after that date.

8 **SEC. 210. INCARCERATION OF CRIMINAL ALIENS.**

9           (a) INSTITUTIONAL REMOVAL PROGRAM.—

10                   (1) CONTINUATION.—The Secretary shall con-  
11                   tinue to operate the Institutional Removal Program  
12                   (referred to in this section as the “Program”) or  
13                   shall develop and implement another program to—

14                           (A) identify removable criminal aliens in  
15                           Federal and State correctional facilities;

16                           (B) ensure that such aliens are not re-  
17                           leased into the community; and

18                           (C) remove such aliens from the United  
19                           States after the completion of their sentences.

20                   (2) EXPANSION.—The Secretary may extend  
21                   the scope of the Program to all States.

22           (b) AUTHORIZATION FOR DETENTION AFTER COM-  
23 PLETION OF STATE OR LOCAL PRISON SENTENCE.—Law  
24 enforcement officers of a State or political subdivision of  
25 a State may—

1           (1) hold an illegal alien for a period not to ex-  
2           ceed 14 days after the completion of the alien's  
3           State prison sentence to effectuate the transfer of  
4           the alien to Federal custody if the alien is removable  
5           or not lawfully present in the United States; or

6           (2) issue a detainer that would allow aliens who  
7           have served a State prison sentence to be detained  
8           by the State prison until authorized employees of the  
9           Bureau of Immigration and Customs Enforcement  
10          can take the alien into custody.

11          (c) TECHNOLOGY USAGE.—Technology, such as  
12          videoconferencing, shall be used to the maximum extent  
13          practicable to make the Program available in remote loca-  
14          tions. Mobile access to Federal databases of aliens, such  
15          as IDENT, and live scan technology shall be used to the  
16          maximum extent practicable to make these resources  
17          available to State and local law enforcement agencies in  
18          remote locations.

19          (d) REPORT TO CONGRESS.—Not later than 6  
20          months after the date of the enactment of this Act, and  
21          annually thereafter, the Secretary shall submit a report  
22          to Congress on the participation of States in the Program  
23          and in any other program authorized under subsection (a).

24          (e) AUTHORIZATION OF APPROPRIATIONS.—There  
25          are authorized to be appropriated such sums as may be

1 necessary in each of the fiscal years 2008 through 2012  
2 to carry out the Program.

3 **SEC. 211. ENCOURAGING ALIENS TO DEPART VOLUN-**  
4 **TARILY.**

5 (a) IN GENERAL.—Section 240B (8 U.S.C. 1229c)  
6 is amended—

7 (1) in subsection (a)—

8 (A) by amending paragraph (1) to read as  
9 follows:

10 “(1) INSTEAD OF REMOVAL PROCEEDINGS.—If  
11 an alien is not described in paragraph (2)(A)(iii) or  
12 (4) of section 237(a), the Secretary of Homeland Se-  
13 curity may permit the alien to voluntarily depart the  
14 United States at the alien’s own expense under this  
15 subsection instead of being subject to proceedings  
16 under section 240.”;

17 (B) by striking paragraph (3);

18 (C) by redesignating paragraph (2) as  
19 paragraph (3);

20 (D) by adding after paragraph (1) the fol-  
21 lowing:

22 “(2) BEFORE THE CONCLUSION OF REMOVAL  
23 PROCEEDINGS.—If an alien is not described in para-  
24 graph (2)(A)(iii) or (4) of section 237(a), the Attor-  
25 ney General may permit the alien to voluntarily de-

1 part the United States at the alien’s own expense  
2 under this subsection after the initiation of removal  
3 proceedings under section 240 and before the con-  
4 clusion of such proceedings before an immigration  
5 judge.”;

6 (E) in paragraph (3), as redesignated—

7 (i) by amending subparagraph (A) to  
8 read as follows:

9 “(A) INSTEAD OF REMOVAL.—Subject to  
10 subparagraph (C), permission to voluntarily de-  
11 part under paragraph (1) shall not be valid for  
12 any period in excess of 120 days. The Secretary  
13 may require an alien permitted to voluntarily  
14 depart under paragraph (1) to post a voluntary  
15 departure bond, to be surrendered upon proof  
16 that the alien has departed the United States  
17 within the time specified.”;

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

21 (iii) by adding after subparagraph (A)  
22 the following:

23 “(B) BEFORE THE CONCLUSION OF RE-  
24 MOVAL PROCEEDINGS.—Permission to volun-  
25 tarily depart under paragraph (2) shall not be

1 valid for any period in excess of 60 days, and  
2 may be granted only after a finding that the  
3 alien has the means to depart the United States  
4 and intends to do so. An alien permitted to vol-  
5 untarily depart under paragraph (2) shall post  
6 a voluntary departure bond, in an amount nec-  
7 essary to ensure that the alien will depart, to be  
8 surrendered upon proof that the alien has de-  
9 parted the United States within the time speci-  
10 fied. An immigration judge may waive the re-  
11 quirement to post a voluntary departure bond  
12 in individual cases upon a finding that the alien  
13 has presented compelling evidence that the  
14 posting of a bond will pose a serious financial  
15 hardship and the alien has presented credible  
16 evidence that such a bond is unnecessary to  
17 guarantee timely departure.”;

18 (iv) in subparagraph (C), as redesign-  
19 nated, by striking “subparagraphs (C)  
20 and(D)(ii)” and inserting “subparagraphs  
21 (D) and (E)(ii)”;

22 (v) in subparagraph (D), as redesign-  
23 nated, by striking “subparagraph (B)”  
24 each place that term appears and inserting  
25 “subparagraph (C)”;

1 (vi) in subparagraph (E), as redesignated,  
2 nated, by striking “subparagraph (B)”  
3 each place that term appears and inserting  
4 “subparagraph (C)”; and

5 (F) in paragraph (4), by striking “para-  
6 graph (1)” and inserting “paragraphs (1) and  
7 (2)”;

8 (2) in subsection (b)(2), by striking “a period  
9 exceeding 60 days” and inserting “any period in ex-  
10 cess of 45 days”;

11 (3) by amending subsection (c) to read as fol-  
12 lows:

13 “(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

14 “(1) VOLUNTARY DEPARTURE AGREEMENT.—

15 Voluntary departure may only be granted as part of  
16 an affirmative agreement by the alien. A voluntary  
17 departure agreement under subsection (b) shall in-  
18 clude a waiver of the right to any further motion,  
19 appeal, application, petition, or petition for review  
20 relating to removal or relief or protection from re-  
21 moval.

22 “(2) CONCESSIONS BY THE SECRETARY.—In  
23 connection with the alien’s agreement to depart vol-  
24 untarily under paragraph (1), the Secretary of  
25 Homeland Security may agree to a reduction in the



1 period of inadmissibility under subparagraph (A) or  
2 (B)(i) of section 212(a)(9).

3 “(3) ADVISALS.—Agreements relating to vol-  
4 untary departure granted during removal pro-  
5 ceedings under section 240, or at the conclusion of  
6 such proceedings, shall be presented on the record  
7 before the immigration judge. The immigration  
8 judge shall advise the alien of the consequences of  
9 a voluntary departure agreement before accepting  
10 such agreement.

11 “(4) FAILURE TO COMPLY WITH AGREE-  
12 MENT.—

13 “(A) IN GENERAL.—If an alien agrees to  
14 voluntary departure under this section and fails  
15 to depart the United States within the time al-  
16 lowed for voluntary departure or fails to comply  
17 with any other terms of the agreement (includ-  
18 ing failure to timely post any required bond),  
19 the alien is—

20 “(i) ineligible for the benefits of the  
21 agreement;

22 “(ii) subject to the penalties described  
23 in subsection (d); and

1           “(iii) subject to an alternate order of  
2           removal if voluntary departure was granted  
3           under subsection (a)(2) or (b).

4           “(B) EFFECT OF FILING TIMELY AP-  
5           PEAL.—If, after agreeing to voluntary depart-  
6           ure, the alien files a timely appeal of the immi-  
7           gration judge’s decision granting voluntary de-  
8           parture, the alien may pursue the appeal in-  
9           stead of the voluntary departure agreement.  
10          Such appeal operates to void the alien’s vol-  
11          untary departure agreement and the con-  
12          sequences of such agreement, but precludes the  
13          alien from another grant of voluntary departure  
14          while the alien remains in the United States.

15          “(5) VOLUNTARY DEPARTURE PERIOD NOT AF-  
16          FECTED.—Except as expressly agreed to by the Sec-  
17          retary in writing in the exercise of the Secretary’s  
18          discretion before the expiration of the period allowed  
19          for voluntary departure, no motion, appeal, applica-  
20          tion, petition, or petition for review shall affect, rein-  
21          state, enjoin, delay, stay, or toll the alien’s obligation  
22          to depart from the United States during the period  
23          agreed to by the alien and the Secretary.”;

24               (4) by amending subsection (d) to read as fol-  
25          lows:

1       “(d) PENALTIES FOR FAILURE TO DEPART.—If an  
2 alien is permitted to voluntarily depart under this section  
3 and fails to voluntarily depart from the United States  
4 within the time period specified or otherwise violates the  
5 terms of a voluntary departure agreement, the alien will  
6 be subject to the following penalties:

7           “(1) CIVIL PENALTY.—The alien shall be liable  
8 for a civil penalty of \$3,000. The order allowing vol-  
9 untary departure shall specify the amount of the  
10 penalty, which shall be acknowledged by the alien on  
11 the record. If the Secretary thereafter establishes  
12 that the alien failed to depart voluntarily within the  
13 time allowed, no further procedure will be necessary  
14 to establish the amount of the penalty, and the Sec-  
15 retary may collect the civil penalty at any time  
16 thereafter and by whatever means provided by law.  
17 An alien will be ineligible for any benefits under this  
18 chapter until this civil penalty is paid.

19           “(2) INELIGIBILITY FOR RELIEF.—The alien  
20 shall be ineligible during the time the alien remains  
21 in the United States and for a period of 10 years  
22 after the alien’s departure for any further relief  
23 under this section and sections 240A, 245, 248, and  
24 249. The order permitting the alien to depart volun-

1       tarily shall inform the alien of the penalties under  
2       this subsection.

3               “(3) REOPENING.—The alien shall be ineligible  
4       to reopen the final order of removal that took effect  
5       upon the alien’s failure to depart, or upon the alien’s  
6       other violations of the conditions for voluntary de-  
7       parture, during the period described in paragraph  
8       (2). This paragraph does not preclude a motion to  
9       reopen to seek withholding of removal under section  
10      241(b)(3) or protection against torture, if the mo-  
11      tion—

12               “(A) presents material evidence of changed  
13      country conditions arising after the date of the  
14      order granting voluntary departure in the coun-  
15      try to which the alien would be removed; and

16               “(B) makes a sufficient showing to the sat-  
17      isfaction of the Attorney General that the alien  
18      is otherwise eligible for such protection.”; and

19      (5) by amending subsection (e) to read as fol-  
20      lows:

21      “(e) ELIGIBILITY.—

22               “(1) PRIOR GRANT OF VOLUNTARY DEPAR-  
23      TURE.—An alien shall not be permitted to volun-  
24      tarily depart under this section if the Secretary of

1 Homeland Security or the Attorney General pre-  
2 viously permitted the alien to depart voluntarily.

3 “(2) RULEMAKING.—The Secretary may pro-  
4 mulgate regulations to limit eligibility or impose ad-  
5 ditional conditions for voluntary departure under  
6 subsection (a)(1) for any class of aliens. The Sec-  
7 retary or Attorney General may by regulation limit  
8 eligibility or impose additional conditions for vol-  
9 untary departure under subsections (a)(2) or (b) of  
10 this section for any class or classes of aliens.”; and

11 (6) in subsection (f), by adding at the end the  
12 following: “Notwithstanding section 242(a)(2)(D) of  
13 this Act, sections 1361, 1651, and 2241 of title 28,  
14 United States Code, any other habeas corpus provi-  
15 sion, and any other provision of law, no court shall  
16 have jurisdiction to affect, reinstate, enjoin, delay,  
17 stay, or toll the period allowed for voluntary depart-  
18 ure under this section.”.

19 (b) RULEMAKING.—The Secretary shall promulgate  
20 regulations to provide for the imposition and collection of  
21 penalties for failure to depart under section 240B(d) of  
22 the Immigration and Nationality Act (8 U.S.C. 1229c(d)).

23 (c) EFFECTIVE DATES.—

24 (1) IN GENERAL.—Except as provided in para-  
25 graph (2), the amendments made by this section

1 shall apply with respect to all orders granting vol-  
2 untary departure under section 240B of the Immi-  
3 gration and Nationality Act (8 U.S.C. 1229c) made  
4 on or after the date that is 180 days after the enact-  
5 ment of this Act.

6 (2) EXCEPTION.—The amendment made by  
7 subsection (a)(6) shall take effect on the date of the  
8 enactment of this Act and shall apply with respect  
9 to any petition for review which is filed on or after  
10 such date.

11 **SEC. 212. DETERRING ALIENS ORDERED REMOVED FROM**  
12 **REMAINING IN THE UNITED STATES UNLAW-**  
13 **FULLY.**

14 (a) INADMISSIBLE ALIENS.—Section 212(a)(9)(A) (8  
15 U.S.C. 1182(a)(9)(A)) is amended—

16 (1) in clause (i), by striking “seeks admission  
17 within 5 years of the date of such removal (or within  
18 20 years” and inserting “seeks admission not later  
19 than 5 years after the date of the alien’s removal (or  
20 not later than 20 years after the alien’s removal”;  
21 and

22 (2) in clause (ii), by striking “seeks admission  
23 within 10 years of the date of such alien’s departure  
24 or removal (or within 20 years of” and inserting  
25 “seeks admission not later than 10 years after the

1 date of the alien’s departure or removal (or not later  
2 than 20 years after”.

3 (b) BAR ON DISCRETIONARY RELIEF.—Section 274D  
4 (9 U.S.C. 324d) is amended—

5 (1) in subsection (a), by striking “Commis-  
6 sioner” and inserting “Secretary of Homeland Secu-  
7 rity”; and

8 (2) by adding at the end the following:

9 “(c) INELIGIBILITY FOR RELIEF.—

10 “(1) IN GENERAL.—Unless a timely motion to  
11 reopen is granted under section 240(c)(6), an alien  
12 described in subsection (a) shall be ineligible for any  
13 discretionary relief from removal (including cancella-  
14 tion of removal and adjustment of status) during the  
15 time the alien remains in the United States and for  
16 a period of 10 years after the alien’s departure from  
17 the United States.

18 “(2) SAVINGS PROVISION.—Nothing in para-  
19 graph (1) shall preclude a motion to reopen to seek  
20 withholding of removal under section 241(b)(3) or  
21 protection against torture, if the motion—

22 “(A) presents material evidence of changed  
23 country conditions arising after the date of the  
24 final order of removal in the country to which  
25 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.”.

4           (c) EFFECTIVE DATES.—The amendments made by  
5 this section shall take effect on the date of the enactment  
6 of this Act with respect to aliens who are subject to a final  
7 order of removal entered on or after such date.

8 **SEC. 213. PROHIBITION OF THE SALE OF FIREARMS TO, OR**  
9           **THE POSSESSION OF FIREARMS BY CERTAIN**  
10           **ALIENS.**

11           Section 922 of title 18, United States Code, is  
12 amended—

13           (1) in subsection (d)(5)—

14                 (A) in subparagraph (A), by striking “or”  
15                 at the end;

16                 (B) in subparagraph (B), by striking  
17                 “(y)(2)” and all that follows and inserting “(y),  
18                 is in a nonimmigrant classification; or”; and

19                 (C) by adding at the end the following:

20                         “(C) has been paroled into the United  
21                         States under section 212(d)(5) of the Immigra-  
22                         tion and Nationality Act (8 U.S.C.  
23                         1182(d)(5));”;

24           (2) in subsection (g)(5)—



1 (A) in subparagraph (A), by striking “or”  
2 at the end;

3 (B) in subparagraph (B), by striking  
4 “(y)(2)” and all that follows and inserting “(y),  
5 is in a nonimmigrant classification; or”; and

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

7 “(C) has been paroled into the United  
8 States under section 212(d)(5) of the Immigra-  
9 tion and Nationality Act (8 U.S.C.  
10 1182(d)(5));” and

11 (3) in subsection (y)—

12 (A) in the header, by striking “**ADMITTED**  
13 **UNDER NONIMMIGRANT VISAS**” and insert-  
14 ing “**IN A NONIMMIGRANT CLASSIFICA-**  
15 **TION**”;

16 (B) in paragraph (1), by amending sub-  
17 paragraph (B) to read as follows:

18 “(B) the term ‘nonimmigrant classifica-  
19 tion’ includes all classes of nonimmigrant aliens  
20 described in section 101(a)(15) of the Immigra-  
21 tion and Nationality Act (8 U.S.C.  
22 1101(a)(15)), or otherwise described in the im-  
23 migration laws (as defined in section  
24 101(a)(17) of such Act).”;

1 (C) in paragraph (2), by striking “has  
 2 been lawfully admitted to the United States  
 3 under a nonimmigrant visa” and inserting “is  
 4 in a nonimmigrant classification”; and

5 (D) in paragraph (3)(A), by striking “Any  
 6 individual who has been admitted to the United  
 7 States under a nonimmigrant visa may receive  
 8 a waiver from the requirements of subsection  
 9 (g)(5)” and inserting “Any alien in a non-  
 10 immigrant classification may receive a waiver  
 11 from the requirements of subsection (g)(5)(B)”.

12 **SEC. 214. UNIFORM STATUTE OF LIMITATIONS FOR CER-**  
 13 **TAIN IMMIGRATION, NATURALIZATION, AND**  
 14 **PEONAGE OFFENSES.**

15 (a) IN GENERAL.—Section 3291 of title 18, United  
 16 States Code, is amended to read as follows:

17 **“§ 3291. Immigration, naturalization, and peonage of-**  
 18 **fenses**

19 “No person shall be prosecuted, tried, or punished  
 20 for a violation of any section of chapters 69 (relating to  
 21 nationality and citizenship offenses), 75 (relating to pass-  
 22 port, visa, and immigration offenses), or 77 (relating to  
 23 peonage, slavery, and trafficking in persons), for an at-  
 24 tempt or conspiracy to violate any such section, for a viola-  
 25 tion of any criminal provision under section 243, 266, 274,

1 275, 276, 277, or 278 of the Immigration and Nationality  
 2 Act (8 U.S.C. 1253, 1306, 1324, 1325, 1326, 1327, and  
 3 1328), or for an attempt or conspiracy to violate any such  
 4 section, unless the indictment is returned or the informa-  
 5 tion filed not later than 10 years after the commission  
 6 of the offense.”.

7 (b) CLERICAL AMENDMENT.—The table of sections  
 8 for chapter 213 of title 18, United States Code, is amend-  
 9 ed by striking the item relating to section 3291 and insert-  
 10 ing the following:

“3291. Immigration, naturalization, and peonage offenses.”.

11 **SEC. 215. DIPLOMATIC SECURITY SERVICE.**

12 Paragraph (1) of section 37(a) of the State Depart-  
 13 ment Basic Authorities Act of 1956 (22 U.S.C. 2709(a))  
 14 is amended to read as follows:

15 “(1) conduct investigations concerning—

16 “(A) illegal passport or visa issuance or  
 17 use;

18 “(B) identity theft or document fraud af-  
 19 fecting or relating to the programs, functions,  
 20 and authorities of the Department of State;

21 “(C) violations of chapter 77 of title 18,  
 22 United States Code; and

23 “(D) Federal offenses committed within  
 24 the special maritime and territorial jurisdiction

1 of the United States (as defined in section 7(9)  
2 of title 18, United States Code);”.

3 **SEC. 216. FIELD AGENT ALLOCATION AND BACKGROUND**

4 **CHECKS.**

5 (a) IN GENERAL.—Section 103 (8 U.S.C. 1103) is  
6 amended—

7 (1) by amending subsection (f) to read as fol-  
8 lows:

9 “(f) MINIMUM NUMBER OF AGENTS IN STATES.—

10 “(1) IN GENERAL.—The Secretary of Homeland  
11 Security shall allocate to each State—

12 “(A) not fewer than 40 full-time active  
13 duty agents of the Bureau of Immigration and  
14 Customs Enforcement to—

15 “(i) investigate immigration viola-  
16 tions; and

17 “(ii) ensure the departure of all re-  
18 movable aliens; and

19 “(B) not fewer than 15 full-time active  
20 duty agents of the Bureau of Citizenship and  
21 Immigration Services to carry out immigration  
22 and naturalization adjudication functions.

23 “(2) WAIVER.—The Secretary may waive the  
24 application of paragraph (1) for any State with a

1 population of less than 2,000,000, as most recently  
2 reported by the Bureau of the Census”; and

3 (2) by adding at the end the following:

4 “(i) Notwithstanding any other provision of law, ap-  
5 propriate background and security checks, as determined  
6 by the Secretary of Homeland Security, shall be completed  
7 and assessed and any suspected or alleged fraud relating  
8 to the granting of any status (including the granting of  
9 adjustment of status), relief, protection from removal, or  
10 other benefit under this Act shall be investigated and re-  
11 solved before the Secretary or the Attorney General may—

12 “(1) grant or order the grant of adjustment of  
13 status of an alien to that of an alien lawfully admit-  
14 ted for permanent residence;

15 “(2) grant or order the grant of any other sta-  
16 tus, relief, protection from removal, or other benefit  
17 under the immigration laws; or

18 “(3) issue any documentation evidencing or re-  
19 lated to such grant by the Secretary, the Attorney  
20 General, or any court.”.

21 (b) EFFECTIVE DATE.—The amendment made by  
22 subsection (a)(1) shall take effect on the date that is 90  
23 days after the date of the enactment of this Act.

24 (c) AUTHORIZATION OF APPROPRIATIONS.—There is  
25 authorized to be appropriated to the Director of the Fed-

1 eral Bureau of Investigations \$3,125,000 for each of the  
2 fiscal years 2008 through 2012 for improving the speed  
3 and accuracy of background and security checks con-  
4 ducted by the Federal Bureau of Investigations on behalf  
5 of the Bureau of Citizenship and Immigrations Services.

6 (d) REPORT ON BACKGROUND AND SECURITY  
7 CHECKS.—

8 (1) IN GENERAL.—Not later than 180 days  
9 after the date of the enactment of this Act, the Di-  
10 rector of the Federal Bureau of Investigations shall  
11 submit to the Committee on the Judiciary of the  
12 Senate and the Committee on the Judiciary of the  
13 House of Representatives a report on the back-  
14 ground and security checks conducted by the Fed-  
15 eral Bureau of Investigations on behalf of the Bu-  
16 reau of Citizenship and Immigrations Services

17 (2) CONTENT.—The report required under  
18 paragraph (1) shall include—

19 (A) a description of the background and  
20 security check program;

21 (B) a statistical breakdown of the back-  
22 ground and security check delays associated  
23 with different types of immigration applications;

1 (C) a statistical breakdown of the back-  
2 ground and security check delays by applicant  
3 country of origin; and

4 (D) the steps the Federal Bureau of Inves-  
5 tigation is taking to expedite background and  
6 security checks that have been pending for  
7 more than 60 days.

8 **SEC. 217. CONSTRUCTION.**

9 (a) IN GENERAL.—Chapter 4 of title III (8 U.S.C.  
10 1501 et seq.) is amended by adding at the end the fol-  
11 lowing:

12 **“SEC. 362. CONSTRUCTION.**

13 “(a) IN GENERAL.—Nothing in this Act or in any  
14 other provision of law shall be construed to require the  
15 Secretary of Homeland Security, the Attorney General,  
16 the Secretary of State, the Secretary of Labor, or any  
17 other authorized head of any Federal agency to grant any  
18 application, approve any petition, or grant or continue any  
19 status or benefit under the immigration laws by, to, or  
20 on behalf of—

21 “(1) any alien described in subparagraph (A)(i),  
22 (A)(iii), (B), or (F) of section 212(a)(3) or subpara-  
23 graph (A)(i), (A)(iii), or (B) of section 237(a)(4);

24 “(2) any alien with respect to whom a criminal  
25 or other investigation or case is pending that is ma-

1       terial to the alien’s inadmissibility, deportability, or  
2       eligibility for the status or benefit sought; or

3               “(3) any alien for whom all law enforcement  
4       checks, as deemed appropriate by such authorized  
5       official, have not been conducted and resolved.

6       “(b) DENIAL; WITHHOLDING.—An official described  
7       in subsection (a) may deny or withhold (with respect to  
8       an alien described in subsection (a)(1)) or withhold pend-  
9       ing resolution of the investigation, case, or law enforce-  
10      ment checks (with respect to an alien described in para-  
11      graph (2) or (3) of subsection (a)) any such application,  
12      petition, status, or benefit on such basis.”.

13       (b) CLERICAL AMENDMENT.—The table of contents  
14      is amended by inserting after the item relating to section  
15      361 the following:

      “Sec. 362. Construction.”.

16      **SEC. 218. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM.**

17       (a) REIMBURSEMENT FOR COSTS ASSOCIATED WITH  
18      PROCESSING CRIMINAL ILLEGAL ALIENS.—The Secretary  
19      shall reimburse States and units of local government for  
20      costs associated with processing undocumented criminal  
21      aliens through the criminal justice system, including—

- 22               (1) indigent defense;
- 23               (2) criminal prosecution;
- 24               (3) autopsies;
- 25               (4) translators and interpreters; and



1           (5) courts costs.

2           (b) AUTHORIZATION OF APPROPRIATIONS.—

3           (1) PROCESSING CRIMINAL ILLEGAL ALIENS.—

4           There are authorized to be appropriated  
5           \$400,000,000 for each of the fiscal years 2008  
6           through 2012 to carry out subsection (a).

7           (2) COMPENSATION UPON REQUEST.—Section  
8           241(i)(5) (8 U.S.C. 1231(i)) is amended to read as  
9           follows:

10           “(5) There are authorized to be appropriated to  
11           carry this subsection—

12                   “(A) such sums as may be necessary for  
13                   fiscal year 2008;

14                   “(B) \$750,000,000 for fiscal year 2009;

15                   “(C) \$850,000,000 for fiscal year 2010;

16                   and

17                   “(D) \$950,000,000 for each of the fiscal  
18                   years 2011 and 2012.”.

19           (c) TECHNICAL AMENDMENT.—Section 501 of the  
20           Immigration Reform and Control Act of 1986 (8 U.S.C.  
21           1365) is amended by striking “Attorney General” each  
22           place it appears and inserting “Secretary of Homeland Se-  
23           curity”.

1 **SEC. 219. TRANSPORTATION AND PROCESSING OF ILLEGAL**  
2 **ALIENS APPREHENDED BY STATE AND LOCAL**  
3 **LAW ENFORCEMENT OFFICERS.**

4 (a) **IN GENERAL.**—The Secretary shall provide suffi-  
5 cient transportation and officers to take illegal aliens ap-  
6 prehended by State and local law enforcement officers into  
7 custody for processing at a detention facility operated by  
8 the Department.

9 (b) **AUTHORIZATION OF APPROPRIATIONS.**—There  
10 are authorized to be appropriated such sums as may be  
11 necessary for each of the fiscal years 2008 through 2012  
12 to carry out this section.

13 **SEC. 220. REDUCING ILLEGAL IMMIGRATION AND ALIEN**  
14 **SMUGGLING ON TRIBAL LANDS.**

15 (a) **GRANTS AUTHORIZED.**—The Secretary may  
16 award grants to Indian tribes with lands adjacent to an  
17 international border of the United States that have been  
18 adversely affected by illegal immigration.

19 (b) **USE OF FUNDS.**—Grants awarded under sub-  
20 section (a) may be used for—

- 21 (1) law enforcement activities;
- 22 (2) health care services;
- 23 (3) environmental restoration; and
- 24 (4) the preservation of cultural resources.

25 (c) **REPORT.**—Not later than 180 days after the date  
26 of the enactment of this Act, the Secretary shall submit

1 a report to the Committee on the Judiciary of the Senate  
2 and the Committee on the Judiciary of the House of Rep-  
3 resentatives that—

4 (1) describes the level of access of Border Pa-  
5 trol agents on tribal lands;

6 (2) describes the extent to which enforcement of  
7 immigration laws may be improved by enhanced ac-  
8 cess to tribal lands;

9 (3) contains a strategy for improving such ac-  
10 cess through cooperation with tribal authorities; and

11 (4) identifies grants provided by the Depart-  
12 ment for Indian tribes, either directly or through  
13 State or local grants, relating to border security ex-  
14 penses.

15 (d) **AUTHORIZATION OF APPROPRIATIONS.**—There  
16 are authorized to be appropriated such sums as may be  
17 necessary for each of the fiscal years 2008 through 2012  
18 to carry out this section.

19 **SEC. 221. ALTERNATIVES TO DETENTION.**

20 The Secretary shall conduct a study of—

21 (1) the effectiveness of alternatives to detention,  
22 including electronic monitoring devices and intensive  
23 supervision programs, in ensuring alien appearance  
24 at court and compliance with removal orders;

1           (2) the effectiveness of the Intensive Super-  
2 vision Appearance Program and the costs and bene-  
3 fits of expanding that program to all States; and

4           (3) other alternatives to detention, including—

5                 (A) release on an order of recognizance;

6                 (B) appearance bonds; and

7                 (C) electronic monitoring devices.

8 **SEC. 222. CONFORMING AMENDMENT.**

9           Section 101(a)(43)(P) (8 U.S.C. 1101(a)(43)(P)) is  
10 amended—

11           (1) by striking “(i) which either is falsely mak-  
12 ing, forging, counterfeiting, mutilating, or altering a  
13 passport or instrument in violation of section 1543  
14 of title 18, United States Code, or is described in  
15 section 1546(a) of such title (relating to document  
16 fraud) and (ii)” and inserting “which is described in  
17 chapter 75 of title 18, United States Code, and”;  
18 and

19           (2) by inserting the following: “that is not de-  
20 scribed in section 1548 of such title (relating to in-  
21 creased penalties), and” after “first offense”.

22 **SEC. 223. REPORTING REQUIREMENTS.**

23           (a) CLARIFYING ADDRESS REPORTING REQUIRE-  
24 MENTS.—Section 265 (8 U.S.C. 1305) is amended—

25           (1) in subsection (a)—

1 (A) by striking “notify the Attorney Gen-  
2 eral in writing” and inserting “submit written  
3 or electronic notification to the Secretary of  
4 Homeland Security, in a manner approved by  
5 the Secretary,”;

6 (B) by striking “the Attorney General may  
7 require by regulation” and inserting “the Sec-  
8 retary may require”; and

9 (C) by adding at the end the following: “If  
10 the alien is involved in proceedings before an  
11 immigration judge or in an administrative ap-  
12 peal of such proceedings, the alien shall submit  
13 to the Attorney General the alien’s current ad-  
14 dress and a telephone number, if any, at which  
15 the alien may be contacted.”;

16 (2) in subsection (b), by striking “Attorney  
17 General” each place such term appears and inserting  
18 “Secretary of Homeland Security”;

19 (3) in subsection (c), by striking “given to such  
20 parent” and inserting “given by such parent”; and

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

22 “(d) ADDRESS TO BE PROVIDED.—

23 “(1) IN GENERAL.—Except as otherwise pro-  
24 vided by the Secretary under paragraph (2), an ad-  
25 dress provided by an alien under this section shall

1 be the alien's current residential mailing address,  
2 and shall not be a post office box or other non-resi-  
3 dential mailing address or the address of an attor-  
4 ney, representative, labor organization, or employer.

5 “(2) SPECIFIC REQUIREMENTS.—The Secretary  
6 may provide specific requirements with respect to—

7 “(A) designated classes of aliens and spe-  
8 cial circumstances, including aliens who are em-  
9 ployed at a remote location; and

10 “(B) the reporting of address information  
11 by aliens who are incarcerated in a Federal,  
12 State, or local correctional facility.

13 “(3) DETENTION.—An alien who is being de-  
14 tained by the Secretary under this Act is not re-  
15 quired to report the alien's current address under  
16 this section during the time the alien remains in de-  
17 tention, but shall be required to notify the Secretary  
18 of the alien's address under this section at the time  
19 of the alien's release from detention.

20 “(e) USE OF MOST RECENT ADDRESS PROVIDED BY  
21 THE ALIEN.—

22 “(1) IN GENERAL.—Notwithstanding any other  
23 provision of law, the Secretary may provide for the  
24 appropriate coordination and cross referencing of  
25 address information provided by an alien under this

1 section with other information relating to the alien’s  
2 address under other Federal programs, including—

3 “(A) any information pertaining to the  
4 alien, which is submitted in any application, pe-  
5 tition, or motion filed under this Act with the  
6 Secretary of Homeland Security, the Secretary  
7 of State, or the Secretary of Labor;

8 “(B) any information available to the At-  
9 torney General with respect to an alien in a  
10 proceeding before an immigration judge or an  
11 administrative appeal or judicial review of such  
12 proceeding;

13 “(C) any information collected with respect  
14 to nonimmigrant foreign students or exchange  
15 program participants under section 641 of the  
16 Illegal Immigration Reform and Immigrant Re-  
17 sponsibility Act of 1996 (8 U.S.C. 1372); and

18 “(D) any information collected from State  
19 or local correctional agencies pursuant to the  
20 State Criminal Alien Assistance Program.

21 “(2) RELIANCE.—The Secretary may rely on  
22 the most recent address provided by the alien under  
23 this section or section 264 to send to the alien any  
24 notice, form, document, or other matter pertaining  
25 to Federal immigration laws, including service of a

1 notice to appear. The Attorney General and the Sec-  
2 retary may rely on the most recent address provided  
3 by the alien under section 239(a)(1)(F) to contact  
4 the alien about pending removal proceedings.

5 “(3) OBLIGATION.—The alien’s provision of an  
6 address for any other purpose under the Federal im-  
7 migration laws does not excuse the alien’s obligation  
8 to submit timely notice of the alien’s address to the  
9 Secretary under this section (or to the Attorney  
10 General under section 239(a)(1)(F) with respect to  
11 an alien in a proceeding before an immigration judge  
12 or an administrative appeal of such proceeding).”.

13 (b) CONFORMING CHANGES WITH RESPECT TO REG-  
14 ISTRATION REQUIREMENTS.—Chapter 7 of title II (8  
15 U.S.C. 1301 et seq.) is amended—

16 (1) in section 262(c), by striking “Attorney  
17 General” and inserting “Secretary of Homeland Se-  
18 curity”;

19 (2) in section 263(a), by striking “Attorney  
20 General” and inserting “Secretary of Homeland Se-  
21 curity”; and

22 (3) in section 264—

23 (A) in subsections (a), (b), (c), and (d), by  
24 striking “Attorney General” each place it ap-



1           pears and inserting “Secretary of Homeland  
2           Security”; and

3                   (B) in subsection (f)—

4                           (i) by striking “Attorney General is  
5                           authorized” and inserting “Secretary of  
6                           Homeland Security and Attorney General  
7                           are authorized”; and

8                           (ii) by striking “Attorney General or  
9                           the Service” and inserting “Secretary or  
10                          the Attorney General”.

11          (c) PENALTIES.—Section 266 (8 U.S.C. 1306) is  
12 amended—

13                   (1) by amending subsection (b) to read as fol-  
14                   lows:

15                   “(b) FAILURE TO PROVIDE NOTICE OF ALIEN’S  
16 CURRENT ADDRESS.—

17                           “(1) CRIMINAL PENALTIES.—Any alien or any  
18                           parent or legal guardian in the United States of any  
19                           minor alien who fails to notify the Secretary of  
20                           Homeland Security of the alien’s current address in  
21                           accordance with section 265 shall be fined under  
22                           title 18, United States Code, imprisoned for not  
23                           more than 6 months, or both.

24                           “(2) EFFECT ON IMMIGRATION STATUS.—Any  
25                           alien who violates section 265 (regardless of whether

1 the alien is punished under paragraph (1)) and does  
2 not establish to the satisfaction of the Secretary that  
3 such failure was reasonably excusable or was not  
4 willful shall be taken into custody in connection with  
5 removal of the alien. If the alien has not been in-  
6 spected or admitted, or if the alien has failed on  
7 more than 1 occasion to submit notice of the alien's  
8 current address as required under section 265, the  
9 alien may be presumed to be a flight risk. The Sec-  
10 retary or the Attorney General, in considering any  
11 form of relief from removal which may be granted  
12 in the discretion of the Secretary or the Attorney  
13 General, may take into consideration the alien's fail-  
14 ure to comply with section 265 as a separate nega-  
15 tive factor. If the alien failed to comply with the re-  
16 quirements of section 265 after becoming subject to  
17 a final order of removal, deportation, or exclusion,  
18 the alien's failure shall be considered as a strongly  
19 negative factor with respect to any discretionary mo-  
20 tion for reopening or reconsideration filed by the  
21 alien.”;

22 (2) in subsection (c), by inserting “or a notice  
23 of current address” before “containing statements”;  
24 and

1           (3) in subsections (c) and (d), by striking “At-  
2           torney General” each place it appears and inserting  
3           “Secretary”.

4           (d) EFFECTIVE DATES.—

5           (1) IN GENERAL.—Except as provided in para-  
6           graph (2), the amendments made by this section  
7           shall apply to proceedings initiated on or after the  
8           date of the enactment of this Act.

9           (2) CONFORMING AND TECHNICAL AMEND-  
10          MENTS.—The amendments made by paragraphs  
11          (1)(A), (1)(B), (2) and (3) of subsection (a) are ef-  
12          fective as if enacted on March 1, 2003.

13   **SEC. 224. STATE AND LOCAL ENFORCEMENT OF FEDERAL**  
14                           **IMMIGRATION LAWS.**

15          (a) IN GENERAL.—Section 287(g) (8 U.S.C.  
16   1357(g)) is amended—

17           (1) in paragraph (2), by adding at the end the  
18           following: “If such training is provided by a State or  
19           political subdivision of a State to an officer or em-  
20           ployee of such State or political subdivision of a  
21           State, the cost of such training (including applicable  
22           overtime costs) shall be reimbursed by the Secretary  
23           of Homeland Security.”; and

24           (2) in paragraph (4), by adding at the end the  
25           following: “The cost of any equipment required to be

1 purchased under such written agreement and nec-  
2 essary to perform the functions under this sub-  
3 section shall be reimbursed by the Secretary of  
4 Homeland Security.”.

5 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
6 are authorized to be appropriated to the Secretary such  
7 sums as may be necessary to carry out this section and  
8 the amendments made by this section.

9 **SEC. 225. REMOVAL OF DRUNK DRIVERS.**

10 (a) IN GENERAL.—Section 101(a)(43)(F) (8 U.S.C.  
11 1101(a)(43)(F)) is amended by inserting “, including a  
12 third drunk driving conviction, regardless of the States in  
13 which the convictions occurred or whether the offenses are  
14 classified as misdemeanors or felonies under State law,”  
15 after “offense)”.

16 (b) EFFECTIVE DATE.—The amendment made by  
17 subsection (a) shall—

18 (1) take effect on the date of the enactment of  
19 this Act; and

20 (2) apply to convictions entered on or after  
21 such date.

22 **SEC. 226. MEDICAL SERVICES IN UNDERSERVED AREAS.**

23 Section 220(c) of the Immigration and Nationality  
24 Technical Corrections Act of 1994 (8 U.S.C. 1182 note)  
25 is amended by striking “and before June 1, 2006”.

1 **SEC. 227. EXPEDITED REMOVAL.**

2 (a) IN GENERAL.—Section 238 (8 U.S.C. 1228) is  
3 amended—

4 (1) by striking the section heading and insert-  
5 ing “**EXPEDITED REMOVAL OF CRIMINAL**  
6 **ALIENS**”;

7 (2) in subsection (a), by striking the subsection  
8 heading and inserting: “**EXPEDITED REMOVAL**  
9 **FROM CORRECTIONAL FACILITIES.—**”;

10 (3) in subsection (b), by striking the subsection  
11 heading and inserting: “**REMOVAL OF CRIMINAL**  
12 **ALIENS.—**”;

13 (4) in subsection (b), by striking paragraphs  
14 (1) and (2) and inserting the following:

15 “(1) IN GENERAL.—The Secretary of Homeland  
16 Security may, in the case of an alien described in  
17 paragraph (2), determine the deportability of such  
18 alien and issue an order of removal pursuant to the  
19 procedures set forth in this subsection or section  
20 240.

21 “(2) ALIENS DESCRIBED.—An alien is de-  
22 scribed in this paragraph if the alien—

23 “(A) has not been lawfully admitted to the  
24 United States for permanent residence; and

1           “(B) was convicted of any criminal offense  
2           described in subparagraph (A)(iii), (C), or (D)  
3           of section 237(a)(2).”;

4           (5) in the subsection (c) that relates to pre-  
5           sumption of deportability, by striking “convicted of  
6           an aggravated felony” and inserting “described in  
7           subsection (b)(2)”;

8           (6) by redesignating the subsection (c) that re-  
9           lates to judicial removal as subsection (d); and

10          (7) in subsection (d)(5) (as so redesignated), by  
11          striking “, who is deportable under this Act,”.

12          (b) APPLICATION TO CERTAIN ALIENS.—

13           (1) IN GENERAL.—Section 235(b)(1)(A)(iii) (8  
14           U.S.C. 1225(b)(1)(A)(iii)) is amended—

15           (A) in subclause (I), by striking “Attorney  
16           General” and inserting “Secretary of Homeland  
17           Security” each place it appears; and

18           (B) by adding at the end the following new  
19           subclause:

20                   “(III)     EXCEPTION.—Notwith-  
21                   standing subclauses (I) and (II), the  
22                   Secretary of Homeland Security shall  
23                   apply clauses (i) and (ii) of this sub-  
24                   paragraph to any alien (other than an  
25                   alien described in subparagraph (F))

1           who is not a national of a country  
2           contiguous to the United States, who  
3           has not been admitted or paroled into  
4           the United States, and who is appre-  
5           hended within 100 miles of an inter-  
6           national land border of the United  
7           States and within 14 days of entry.”.

8           (2) EXCEPTIONS.—Section 235(b)(1)(F) of the  
9           Immigration and Nationality Act (8 U.S.C.  
10          1225(b)(1)(F)) is amended—

11           (A) by striking “and who arrives by air-  
12          craft at a port of entry” and inserting  
13          “and—”; and

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

15           “(i) who arrives by aircraft at a port  
16          of entry; or

17           “(ii) who is present in the United  
18          States and arrived in any manner at or be-  
19          tween a port of entry.”.

20          (c) EFFECTIVE DATE.—The amendments made by  
21          this section shall take effect on the date of the enactment  
22          of this Act and shall apply to all aliens apprehended or  
23          convicted on or after such date.

1 **SEC. 228. PROTECTING IMMIGRANTS FROM CONVICTED**  
2 **SEX OFFENDERS.**

3 (a) IMMIGRANTS.—Section 204(a)(1) (8 U.S.C.  
4 1154(a)(1)), is amended—

5 (1) in subparagraph (A)(i), by striking “Any”  
6 and inserting “Except as provided in clause (vii),  
7 any”;

8 (2) in subparagraph (A), by inserting after  
9 clause (vi) the following:

10 “(vii) Clause (i) shall not apply to a citizen of the  
11 United States who has been convicted of an offense de-  
12 scribed in subparagraph (A), (I), or (K) of section  
13 101(a)(43), unless the Secretary of Homeland Security,  
14 in the Secretary’s sole and unreviewable discretion, deter-  
15 mines that the citizen poses no risk to the alien with re-  
16 spect to whom a petition described in clause (i) is filed.”;  
17 and

18 (3) in subparagraph (B)(i)—

19 (A) by striking “Any alien” and inserting  
20 the following: “(I) Except as provided in sub-  
21 clause (II), any alien”; and

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

23 “(II) Subclause (I) shall not apply in the case of an  
24 alien admitted for permanent residence who has been con-  
25 victed of an offense described in subparagraph (A), (I),  
26 or (K) of section 101(a)(43), unless the Secretary of



1 Homeland Security, in the Secretary's sole and  
2 unreviewable discretion, determines that the alien lawfully  
3 admitted for permanent residence poses no risk to the  
4 alien with respect to whom a petition described in sub-  
5 clause (I) is filed.”.

6 (b) NONIMMIGRANTS.—Section 101(a)(15)(K) (8  
7 U.S.C. 1101(a)(15)(K)), is amended by inserting “(other  
8 than a citizen described in section 204(a)(1)(A)(vii))”  
9 after “citizen of the United States” each place that phrase  
10 appears.

11 **SEC. 229. LAW ENFORCEMENT AUTHORITY OF STATES AND**  
12 **POLITICAL SUBDIVISIONS AND TRANSFER TO**  
13 **FEDERAL CUSTODY.**

14 (a) IN GENERAL.—Title II (8 U.S.C. 1151 et. seq.)  
15 is amended by adding after section 240C the following new  
16 section:

17 **“SEC. 240D. LAW ENFORCEMENT AUTHORITY OF STATES**  
18 **AND POLITICAL SUBDIVISIONS AND TRANS-**  
19 **FER OF ALIENS TO FEDERAL CUSTODY.**

20 “(a) AUTHORITY.—Notwithstanding any other provi-  
21 sion of law, law enforcement personnel of a State, or a  
22 political subdivision of a State, have the inherent authority  
23 of a sovereign entity to investigate, apprehend, arrest, de-  
24 tain, or transfer to Federal custody (including the trans-  
25 portation across State lines to detention centers) an alien

1 for the purpose of assisting in the enforcement of the  
2 criminal provisions of the immigration laws of the United  
3 States in the normal course of carrying out the law en-  
4 forcement duties of such personnel. This State authority  
5 has never been displaced or preempted by a Federal law.

6 “(b) CONSTRUCTION.—Nothing in this section shall  
7 be construed to require law enforcement personnel of a  
8 State or a political subdivision to assist in the enforcement  
9 of the immigration laws of the United States.

10 “(c) TRANSFER.—If the head of a law enforcement  
11 entity of a State (or, if appropriate, a political subdivision  
12 of the State) exercising authority with respect to the ap-  
13 prehension or arrest of an alien submits a request to the  
14 Secretary of Homeland Security that the alien be taken  
15 into Federal custody, the Secretary of Homeland Secu-  
16 rity—

17 “(1) shall—

18 “(A) deem the request to include the in-  
19 quiry to verify immigration status described in  
20 section 642(c) of the Illegal Immigration Re-  
21 form and Immigrant Responsibility Act of 1996  
22 (8 U.S.C. 1373(c)), and expeditiously inform  
23 the requesting entity whether such individual is  
24 an alien lawfully admitted to the United States

1 or is otherwise lawfully present in the United  
2 States; and

3 “(B) if the individual is an alien who is not  
4 lawfully admitted to the United States or other-  
5 wise is not lawfully present in the United  
6 States—

7 “(i) take the illegal alien into the cus-  
8 tody of the Federal Government not later  
9 than 72 hours after—

10 “(I) the conclusion of the State  
11 charging process or dismissal process;  
12 or

13 “(II) the illegal alien is appre-  
14 hended, if no State charging or dis-  
15 missal process is required; or

16 “(ii) request that the relevant State or  
17 local law enforcement agency temporarily  
18 detain or transport the alien to a location  
19 for transfer to Federal custody; and

20 “(2) shall designate at least 1 Federal, State,  
21 or local prison or jail or a private contracted prison  
22 or detention facility within each State as the central  
23 facility for that State to transfer custody of aliens  
24 to the Department of Homeland Security.

25 “(d) REIMBURSEMENT.—

1           “(1) IN GENERAL.—The Secretary of Homeland  
2 Security shall reimburse a State, or a political sub-  
3 division of a State, for expenses, as verified by the  
4 Secretary, incurred by the State or political subdivi-  
5 sion in the detention and transportation of an alien  
6 as described in subparagraphs (A) and (B) of sub-  
7 section (c)(1).

8           “(2) COST COMPUTATION.—Compensation pro-  
9 vided for costs incurred under subparagraphs (A)  
10 and (B) of subsection (c)(1) shall be—

11                   “(A) the product of—

12                           “(i) the average daily cost of incarcer-  
13 ation of a prisoner in the relevant State, as  
14 determined by the chief executive officer of  
15 a State (or, as appropriate, a political sub-  
16 division of the State); multiplied by

17                           “(ii) the number of days that the alien  
18 was in the custody of the State or political  
19 subdivision; plus

20                   “(B) the cost of transporting the alien  
21 from the point of apprehension or arrest to the  
22 location of detention, and if the location of de-  
23 tention and of custody transfer are different, to  
24 the custody transfer point; plus

1           “(C) the cost of uncompensated emergency  
2           medical care provided to a detained alien during  
3           the period between the time of transmittal of  
4           the request described in subsection (c) and the  
5           time of transfer into Federal custody.

6           “(e) REQUIREMENT FOR APPROPRIATE SECURITY.—

7           The Secretary of Homeland Security shall ensure that—

8           “(1) aliens incarcerated in a Federal facility  
9           pursuant to this section are held in facilities which  
10          provide an appropriate level of security; and

11          “(2) if practicable, aliens detained solely for  
12          civil violations of Federal immigration law are sepa-  
13          rated within a facility or facilities.

14          “(f) REQUIREMENT FOR SCHEDULE.—In carrying  
15          out this section, the Secretary of Homeland Security shall  
16          establish a regular circuit and schedule for the prompt  
17          transportation of apprehended aliens from the custody of  
18          those States, and political subdivisions of States, which  
19          routinely submit requests described in subsection (c), into  
20          Federal custody.

21          “(g) AUTHORITY FOR CONTRACTS.—

22          “(1) IN GENERAL.—The Secretary of Homeland  
23          Security may enter into contracts or cooperative  
24          agreements with appropriate State and local law en-

1       forcement and detention agencies to implement this  
2       section.

3               “(2) DETERMINATION BY SECRETARY.—Prior  
4       to entering into a contract or cooperative agreement  
5       with a State or political subdivision of a State under  
6       paragraph (1), the Secretary shall determine wheth-  
7       er the State, or if appropriate, the political subdivi-  
8       sion in which the agencies are located, has in place  
9       any formal or informal policy that violates section  
10      642 of the Illegal Immigration Reform and Immig-  
11      grant Responsibility Act of 1996 (8 U.S.C. 1373).  
12      The Secretary shall not allocate any of the funds  
13      made available under this section to any State or po-  
14      litical subdivision that has in place a policy that vio-  
15      lates such section.”.

16      (b) AUTHORIZATION OF APPROPRIATIONS FOR THE  
17      DETENTION AND TRANSPORTATION TO FEDERAL CUS-  
18      TODY OF ALIENS NOT LAWFULLY PRESENT.—There are  
19      authorized to be appropriated \$850,000,000 for fiscal year  
20      2008 and for each subsequent fiscal year for the detention  
21      and removal of aliens not lawfully present in the United  
22      States under the Immigration and Nationality Act (8  
23      U.S.C. 1101 et. seq.).

1 **SEC. 230. LAUNDERING OF MONETARY INSTRUMENTS.**

2 Section 1956(c)(7)(D) of title 18, United States  
3 Code, is amended—

4 (1) by inserting “section 1590 (relating to traf-  
5 ficking with respect to peonage, slavery, involuntary  
6 servitude, or forced labor),” after “section 1363 (re-  
7 lating to destruction of property within the special  
8 maritime and territorial jurisdiction),”; and

9 (2) by inserting “section 274(a) of the Immi-  
10 gration and Nationality Act (8 U.S.C.1324(a)) (re-  
11 lating to bringing in and harboring certain aliens),”  
12 after “section 590 of the Tariff Act of 1930 (19  
13 U.S.C. 1590) (relating to aviation smuggling),”.

14 **SEC. 231. LISTING OF IMMIGRATION VIOLATORS IN THE NA-**  
15 **TIONAL CRIME INFORMATION CENTER DATA-**  
16 **BASE.**

17 (a) PROVISION OF INFORMATION TO THE NATIONAL  
18 CRIME INFORMATION CENTER.—

19 (1) IN GENERAL.—Except as provided in para-  
20 graph (3), not later than 180 days after the date of  
21 the enactment of this Act, the Secretary shall pro-  
22 vide to the head of the National Crime Information  
23 Center of the Department of Justice the information  
24 that the Secretary has or maintains related to any  
25 alien—

1 (A) against whom a final order of removal  
2 has been issued;

3 (B) who enters into a voluntary departure  
4 agreement, or is granted voluntary departure by  
5 an immigration judge, whose period for depart-  
6 ure has expired under subsection (a)(3) of sec-  
7 tion 240B of the Immigration and Nationality  
8 Act (8 U.S.C. 1229e) (as amended by section  
9 211(a)(1)(C)), subsection (b)(2) of such section  
10 240B, or who has violated a condition of a vol-  
11 untary departure agreement under such section  
12 240B;

13 (C) whom a Federal immigration officer  
14 has confirmed to be unlawfully present in the  
15 United States; and

16 (D) whose visa has been revoked.

17 (2) REMOVAL OF INFORMATION.—The head of  
18 the National Crime Information Center should  
19 promptly remove any information provided by the  
20 Secretary under paragraph (1) related to an alien  
21 who is granted lawful authority to enter or remain  
22 legally in the United States.

23 (3) PROCEDURE FOR REMOVAL OF ERRONEOUS  
24 INFORMATION.—The Secretary, in consultation with  
25 the head of the National Crime Information Center



1 of the Department of Justice, shall develop and im-  
2 plement a procedure by which an alien may petition  
3 the Secretary or head of the National Crime Infor-  
4 mation Center, as appropriate, to remove any erro-  
5 neous information provided by the Secretary under  
6 paragraph (1) related to such alien. Under such pro-  
7 cedures, failure by the alien to receive notice of a  
8 violation of the immigration laws shall not constitute  
9 cause for removing information provided by the Sec-  
10 retary under paragraph (1) related to such alien, un-  
11 less such information is erroneous. Notwithstanding  
12 the 180-day time period set forth in paragraph (1),  
13 the Secretary shall not provide the information re-  
14 quired under paragraph (1) until the procedures re-  
15 quired by this paragraph are developed and imple-  
16 mented.

17 (b) INCLUSION OF INFORMATION IN THE NATIONAL  
18 CRIME INFORMATION CENTER DATABASE.—Section  
19 534(a) of title 28, United States Code, is amended—

20 (1) in paragraph (3), by striking “and” at the  
21 end;

22 (2) by redesignating paragraph (4) as para-  
23 graph (5); and

24 (3) by inserting after paragraph (3) the fol-  
25 lowing new paragraph:

1           “(4) acquire, collect, classify, and preserve  
2           records of violations of the immigration laws of the  
3           United States; and”.

4   **SEC. 232. COOPERATIVE ENFORCEMENT PROGRAMS.**

5           Not later than 2 years after the date of the enact-  
6           ment of this Act, the Secretary shall negotiate and exe-  
7           cute, where practicable, a cooperative enforcement agree-  
8           ment described in section 287(g) of the Immigration and  
9           Nationality Act (8 U.S.C. 1357(g)) with at least 1 law  
10          enforcement agency in each State, to train law enforce-  
11          ment officers in the detection and apprehension of individ-  
12          uals engaged in transporting, harboring, sheltering, or en-  
13          couraging aliens in violation of section 274 of such Act  
14          (8 U.S.C. 1324).

15   **SEC. 233. INCREASE OF FEDERAL DETENTION SPACE AND**  
16                               **THE UTILIZATION OF FACILITIES IDENTIFIED**  
17                               **FOR CLOSURES AS A RESULT OF THE DE-**  
18                               **FENSE BASE CLOSURE REALIGNMENT ACT**  
19                               **OF 1990.**

20          (a) CONSTRUCTION OR ACQUISITION OF DETENTION  
21          FACILITIES.—

22               (1) IN GENERAL.—The Secretary shall con-  
23               struct or acquire, in addition to existing facilities for  
24               the detention of aliens, at least 20 detention facili-  
25               ties in the United States that have the capacity to

1 detain a combined total of not less than 20,000 indi-  
2 viduals at any time for aliens detained pending re-  
3 moval or a decision on removal of such aliens from  
4 the United States subject to available appropria-  
5 tions.

6 (b) CONSTRUCTION OF OR ACQUISITION OF DETEN-  
7 TION FACILITIES.—

8 (1) REQUIREMENT TO CONSTRUCT OR AC-  
9 QUIRE.—The Secretary shall construct or acquire  
10 additional detention facilities in the United States to  
11 accommodate the detention beds required by section  
12 5204(a) of the Intelligence Reform and Terrorism  
13 Protection Act of 2004, as amended by subsection  
14 (a), subject to available appropriations.

15 (2) USE OF ALTERNATE DETENTION FACILI-  
16 TIES.—Subject to the availability of appropriations,  
17 the Secretary shall fully utilize all possible options to  
18 cost effectively increase available detention capaci-  
19 ties, and shall utilize detention facilities that are  
20 owned and operated by the Federal Government if  
21 the use of such facilities is cost effective.

22 (3) USE OF INSTALLATIONS UNDER BASE CLO-  
23 SURE LAWS.—In acquiring additional detention fa-  
24 cilities under this subsection, the Secretary shall  
25 consider the transfer of appropriate portions of mili-

1 tary installations approved for closure or realign-  
2 ment under the Defense Base Closure and Realign-  
3 ment Act of 1990 (part A of title XXIX of Public  
4 Law 101–510; 10 U.S.C. 2687 note) for use in ac-  
5 cordance with subsection (a).

6 (4) DETERMINATION OF LOCATION.—The loca-  
7 tion of any detention facility constructed or acquired  
8 in accordance with this subsection shall be deter-  
9 mined, with the concurrence of the Secretary, by the  
10 senior officer responsible for Detention and Removal  
11 Operations in the Department. The detention facili-  
12 ties shall be located so as to enable the officers and  
13 employees of the Department to increase to the max-  
14 imum extent practicable the annual rate and level of  
15 removals of illegal aliens from the United States.

16 (c) ANNUAL REPORT TO CONGRESS.—Not later than  
17 1 year after the date of the enactment of this Act, and  
18 annually thereafter, in consultation with the heads of  
19 other appropriate Federal agencies, the Secretary shall  
20 submit to Congress an assessment of the additional deten-  
21 tion facilities and bed space needed to detain unlawful  
22 aliens apprehended at the United States ports of entry or  
23 along the international land borders of the United States.

1 (d) TECHNICAL AND CONFORMING AMENDMENT.—  
2 Section 241(g)(1) (8 U.S.C. 1231(g)(1)) is amended by  
3 striking “may expend” and inserting “shall expend”.

4 (e) AUTHORIZATION OF APPROPRIATIONS.—There  
5 are authorized to be appropriated such sums as may be  
6 necessary to carry out this section.

7 **SEC. 234. DETERMINATION OF IMMIGRATION STATUS OF**  
8 **INDIVIDUALS CHARGED WITH FEDERAL OF-**  
9 **FENSES.**

10 (a) RESPONSIBILITY OF UNITED STATES ATTOR-  
11 NEYS.—Beginning not later than 2 years after the date  
12 of the enactment of this Act, the office of the United  
13 States Attorney that is prosecuting a criminal case in a  
14 Federal court—

15 (1) shall determine, not later than 30 days  
16 after filing the initial pleadings in the case, whether  
17 each defendant in the case is lawfully present in the  
18 United States (subject to subsequent legal pro-  
19 ceedings to determine otherwise);

20 (2)(A) if the defendant is determined to be an  
21 alien lawfully present in the United States, shall no-  
22 tify the court in writing of the determination and  
23 the current status of the alien under the Immigra-  
24 tion and Nationality Act (8 U.S.C. 1101 et seq.);  
25 and

1           (B) if the defendant is determined not to be  
2 lawfully present in the United States, shall notify  
3 the court in writing of the determination, the de-  
4 fendant's alien status, and, to the extent possible,  
5 the country of origin or legal residence of the de-  
6 fendant; and

7           (3) ensure that the information described in  
8 paragraph (2) is included in the case file and the  
9 criminal records system of the office of the United  
10 States attorney.

11       (b) GUIDELINES.—A determination made under sub-  
12 section (a)(1) shall be made in accordance with guidelines  
13 of the Executive Office for Immigration Review of the De-  
14 partment of Justice.

15       (c) RESPONSIBILITIES OF FEDERAL COURTS.—

16           (1) MODIFICATIONS OF RECORDS AND CASE  
17 MANAGERMENTS SYSTEMS.—Not later than 2 years  
18 after the date of the enactment of this Act, all Fed-  
19 eral courts that hear criminal cases, or appeals of  
20 criminal cases, shall modify their criminal records  
21 and case management systems, in accordance with  
22 guidelines which the Director of the Administrative  
23 Office of the United States Courts shall establish, so  
24 as to enable accurate reporting of information de-  
25 scribed in subsection (a)(2).

1           (2) DATA ENTRIES.—Beginning not later than  
2           2 years after the date of the enactment of this Act,  
3           each Federal court described in paragraph (1) shall  
4           enter into its electronic records the information con-  
5           tained in each notification to the court under sub-  
6           section (a)(2).

7           (d) CONSTRUCTION.—Nothing in this section may be  
8           construed to provide a basis for admitting evidence to a  
9           jury or releasing information to the public regarding an  
10          alien’s immigration status.

11          (e) ANNUAL REPORT TO CONGRESS.—The Director  
12          of the Administrative Office of the United States Courts  
13          shall include, in the annual report filed with Congress  
14          under section 604 of title 28, United States Code—

15               (1) statistical information on criminal trials of  
16               aliens in the courts and criminal convictions of  
17               aliens in the lower courts and upheld on appeal, in-  
18               cluding the type of crime in each case and including  
19               information on the legal status of the aliens; and

20               (2) recommendations on whether additional  
21               court resources are needed to accommodate the vol-  
22               ume of criminal cases brought against aliens in the  
23               Federal courts.

24          (f) AUTHORIZATION OF APPROPRIATIONS.—There  
25          are authorized to be appropriated for each of the fiscal

1 years 2008 through 2012, such sums as may be necessary  
2 to carry out this Act. Funds appropriated pursuant to this  
3 subsection in any fiscal year shall remain available until  
4 expended.

5 **SEC. 235. EXPANSION OF THE JUSTICE PRISONER AND**  
6 **ALIEN TRANSFER SYSTEM.**

7 Not later than 60 days after the date of enactment  
8 of this Act, the Attorney General shall issue a directive  
9 to expand the Justice Prisoner and Alien Transfer System  
10 to provide additional services with respect to aliens who  
11 are illegally present in the United States. Such expansion  
12 should include—

13 (1) increasing the daily operations of such Sys-  
14 tem with buses and air hubs in 3 geographic regions;

15 (2) allocating a set number of seats for such  
16 aliens for each metropolitan area;

17 (3) allowing metropolitan areas to trade or give  
18 some of seats allocated to them under the System  
19 for such aliens to other areas in their region based  
20 on the transportation needs of each area; and

21 (4) requiring an annual report that analyzes of  
22 the number of seats that each metropolitan area is  
23 allocated under this System for such aliens and  
24 modifies such allocation if necessary.



1                   **TITLE III—UNLAWFUL**  
2                   **EMPLOYMENT OF ALIENS**

3   **SEC. 301. UNLAWFUL EMPLOYMENT OF ALIENS.**

4           (a) IN GENERAL.—Section 274A (8 U.S.C. 1324a)  
5 is amended to read as follows:

6   **“SEC. 274A. UNLAWFUL EMPLOYMENT OF ALIENS.**

7           “(a) MAKING EMPLOYMENT OF UNAUTHORIZED  
8 ALIENS UNLAWFUL.—

9                   “(1) IN GENERAL.—It is unlawful for an em-  
10           ployer—

11                           “(A) to hire, or to recruit or refer for a  
12                           fee, an alien for employment in the United  
13                           States knowing, or with reckless disregard, that  
14                           the alien is an unauthorized alien with respect  
15                           to such employment; or

16                           “(B) to hire, or to recruit or refer for a  
17                           fee, for employment in the United States an in-  
18                           dividual unless such employer meets the re-  
19                           quirements of subsections (c) and (d).

20                   “(2) CONTINUING EMPLOYMENT.—It is unlaw-  
21           ful for an employer, after lawfully hiring an alien for  
22           employment, to continue to employ the alien in the  
23           United States knowing that the alien is (or has be-  
24           come) an unauthorized alien with respect to such  
25           employment.

1           “(3) USE OF LABOR THROUGH CONTRACT.—

2                   “(A) IN GENERAL.—An employer who uses  
3 a contract, subcontract, or exchange to obtain  
4 the labor of an alien in the United States know-  
5 ing, or with reckless disregard—

6                           “(i) that the alien is an unauthorized  
7 alien with respect to performing such  
8 labor, shall be considered to have hired the  
9 alien in violation of paragraph (1)(A); or

10                           “(ii) that the person hiring such alien  
11 failed to comply with the requirements of  
12 subsections (c) and (d) shall be considered  
13 to have hired the alien in violation of para-  
14 graph (1)(B).

15                   “(B) INFORMATION SHARING.—The person  
16 hiring the alien shall provide to the employer,  
17 who obtains the labor of the alien, the employer  
18 identification number assigned to such person  
19 by the Commissioner of Internal Revenue. Fail-  
20 ure to provide such number shall be considered  
21 a recordkeeping violation under subsection  
22 (e)(4)(B).

23                   “(C) REPORTING REQUIREMENT.—The  
24 employer shall submit to the Electronic  
25 Verification System established under sub-

1 section (d), in a manner prescribed by the Sec-  
2 retary, the employer identification number pro-  
3 vided by the person hiring the alien. Failure to  
4 submit such number shall be considered a rec-  
5 ordkeeping violation under subsection (e)(4)(B).

6 “(D) ENFORCEMENT.—The Secretary shall  
7 implement procedures to utilize the information  
8 obtained under subparagraphs (B) and (C) to  
9 identify employers who use a contract, sub-  
10 contract, or exchange to obtain the labor of an  
11 alien from another person, where such person  
12 hiring such alien fails to comply with the re-  
13 quirements of subsections (c) and (d).

14 “(4) DEFENSE.—

15 “(A) IN GENERAL.—Subject to subpara-  
16 graph (B), an employer that establishes that  
17 the employer has complied in good faith with  
18 the requirements of subsections (c) and (d) has  
19 established an affirmative defense that the em-  
20 ployer has not violated paragraph (1)(A) with  
21 respect to such hiring, recruiting, or referral.

22 “(B) EXCEPTION.—Until the date that an  
23 employer is required to participate in the Elec-  
24 tronic Employment Verification System under  
25 subsection (d) or is participating in such Sys-

1           tem on a voluntary basis, the employer may es-  
2           tablish an affirmative defense under subpara-  
3           graph (A) by complying with the requirements  
4           of subsection (c).

5           “(b) ORDER OF INTERNAL REVIEW AND CERTIFI-  
6           CATION OF COMPLIANCE.—

7           “(1) AUTHORITY TO REQUIRE CERTIFI-  
8           CATION.—If the Secretary has reasonable cause to  
9           believe that an employer has failed to comply with  
10          this section, the Secretary is authorized, at any time,  
11          to require that the employer certify that the em-  
12          ployer is in compliance with this section, or has in-  
13          stituted a program to come into compliance.

14          “(2) CONTENT OF CERTIFICATION.—Not later  
15          than 60 days after the date an employer receives a  
16          request for a certification under paragraph (1) the  
17          employer shall certify under penalty of perjury  
18          that—

19                  “(A) the employer is in compliance with  
20                  the requirements of subsections (c) and (d); or

21                  “(B) that the employer has instituted a  
22                  program to come into compliance with such re-  
23                  quirements.

24          “(3) EXTENSION.—The 60-day period referred  
25          to in paragraph (2), may be extended by the Sec-

1       retary for good cause, at the request of the em-  
2       ployer.

3               “(4) PUBLICATION.—The Secretary is author-  
4       ized to publish in the Federal Register standards or  
5       methods for certification under paragraph (1) and  
6       for specific recordkeeping practices with respect to  
7       such certification, and procedures for the audit of  
8       any records related to such certification.

9               “(c) DOCUMENT VERIFICATION REQUIREMENTS.—  
10      An employer hiring, or recruiting or referring for a fee,  
11      an individual for employment in the United States shall  
12      verify that the individual is eligible for such employment  
13      by meeting the following requirements:

14              “(1) ATTESTATION BY EMPLOYER.—

15                      “(A) REQUIREMENTS.—

16                              “(i) IN GENERAL.—The employer  
17                              shall attest, under penalty of perjury and  
18                              on a form prescribed by the Secretary, that  
19                              the employer has verified the identity and  
20                              eligibility for employment of the individual  
21                              by examining a document described in sub-  
22                              paragraph (B).

23                              “(ii) SIGNATURE REQUIREMENTS.—

24                              An attestation required by clause (i) may

1 be manifested by a handwritten or elec-  
2 tronic signature.

3 “(iii) STANDARDS FOR EXAMINA-  
4 TION.—The employer has complied with  
5 the requirement of this paragraph with re-  
6 spect to examination of documentation if a  
7 reasonable person would conclude that the  
8 document examined is genuine and relates  
9 to the individual whose identity and eligi-  
10 bility for employment in the United States  
11 is being verified. If the individual provides  
12 a document sufficient to meet the require-  
13 ments of this paragraph, nothing in this  
14 paragraph shall be construed as requiring  
15 an employer to solicit any other document  
16 or as requiring the individual to produce  
17 any other document.

18 “(B) IDENTIFICATION DOCUMENTS.—A  
19 document described in this subparagraph is—

20 “(i) in the case of an individual who  
21 is a national of the United States—

22 “(I) a United States passport; or

23 “(II) a driver’s license or identity  
24 card issued by a State, the Common-  
25 wealth of the Northern Mariana Is-

1 lands, or an outlying possession of the  
2 United States that satisfies the re-  
3 quirements of division B of Public  
4 Law 109–13 (119 Stat. 302);

5 “(ii) in the case of an alien lawfully  
6 admitted for permanent residence in the  
7 United States, a permanent resident card,  
8 as specified by the Secretary;

9 “(iii) in the case of an alien who is  
10 authorized under this Act or by the Sec-  
11 retary to be employed in the United States,  
12 an employment authorization card, as  
13 specified by the Secretary that—

14 “(I) contains a photograph of the  
15 individual or other identifying infor-  
16 mation, including name, date of birth,  
17 gender, and address; and

18 “(II) contains security features  
19 to make the document resistant to  
20 tampering, counterfeiting, and fraudu-  
21 lent use;

22 “(iv) in the case of an individual who  
23 is unable to obtain a document described  
24 in clause (i), (ii), or (iii), a document des-  
25 ignated 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; or

9           “(v) until the date that an employer is  
10          required to participate in the Electronic  
11          Employment Verification System under  
12          subsection (d) or is participating in such  
13          System on a voluntary basis, a document,  
14          or a combination of documents, of such  
15          type that, as of the date of the enactment  
16          of the Comprehensive Immigration Reform  
17          Act of 2007, the Secretary had established  
18          by regulation were sufficient for purposes  
19          of this section.

20          “(C) AUTHORITY TO PROHIBIT USE OF  
21          CERTAIN DOCUMENTS.—

22          “(i) AUTHORITY.—If the Secretary  
23          finds that a document or class of docu-  
24          ments described in subparagraph (B) is  
25          not reliable to establish identity or is being



1 used fraudulently to an unacceptable de-  
2 gree, the Secretary shall prohibit, or im-  
3 pose conditions, on the use of such docu-  
4 ment or class of documents for purposes of  
5 this subsection.

6 “(ii) REQUIREMENT FOR PUBLICA-  
7 TION.—The Secretary shall publish notice  
8 of any findings under clause (i) in the Fed-  
9 eral Register.

10 “(2) ATTESTATION OF EMPLOYEE.—

11 “(A) REQUIREMENTS.—

12 “(i) IN GENERAL.—The individual  
13 shall attest, under penalty of perjury on  
14 the form described in paragraph (1)(A)(i),  
15 that the individual is a national of the  
16 United States, an alien lawfully admitted  
17 for permanent residence, or an alien who is  
18 authorized under this Act or by the Sec-  
19 retary to be hired, or to be recruited or re-  
20 ferred for a fee, in the United States.

21 “(ii) SIGNATURE FOR EXAMINA-  
22 TION.—An attestation required by clause  
23 (i) may be manifested by a handwritten or  
24 electronic signature.

1           “(B) PENALTIES.—An individual who  
2           falsely represents that the individual is eligible  
3           for employment in the United States in an at-  
4           testation required by subparagraph (A) shall,  
5           for each such violation, be subject to a fine of  
6           not more than \$5,000, a term of imprisonment  
7           not to exceed 3 years, or both.

8           “(3) RETENTION OF ATTESTATION.—The em-  
9           ployer shall retain a paper, microfiche, microfilm, or  
10          electronic version of the attestations made under  
11          paragraph (1) and (2) and make such attestations  
12          available for inspection by an officer of the Depart-  
13          ment of Homeland Security, any other person des-  
14          ignated by the Secretary, the Special Counsel for  
15          Immigration-Related Unfair Employment Practices  
16          of the Department of Justice, or the Secretary of  
17          Labor during a period beginning on the date of the  
18          hiring, or recruiting or referring for a fee, of the in-  
19          dividual and ending—

20                 “(A) in the case of the recruiting or refer-  
21                 ral for a fee (without hiring) of an individual,  
22                 5 years after the date of the recruiting or refer-  
23                 ral; or

24                 “(B) in the case of the hiring of an indi-  
25                 vidual the later of—

1           “(i) 5 years after the date of such hir-  
2           ing;

3           “(ii) 1 year after the date the individ-  
4           ual’s employment is terminated; or

5           “(iii) in the case of an employer or  
6           class of employers, a period that is less  
7           than the applicable period described in  
8           clause (i) or (ii) if the Secretary reduces  
9           such period for such employer or class of  
10          employers.

11          “(4) DOCUMENT RETENTION AND RECORD-  
12          KEEPING REQUIREMENTS.—

13           “(A) RETENTION OF DOCUMENTS.—Not-  
14          withstanding any other provision of law, an em-  
15          ployer shall retain, for the applicable period de-  
16          scribed in paragraph (3), the following docu-  
17          ments:

18           “(i) IN GENERAL.—The employer  
19          shall copy all documents presented by an  
20          individual described in paragraph (1)(B)  
21          and shall retain paper, microfiche, micro-  
22          film, or electronic copies of such docu-  
23          ments. Such copies shall be designated as  
24          copied documents.

1                   “(ii) OTHER DOCUMENTS.—The em-  
2                   ployer shall maintain records of any action  
3                   taken and copies of any correspondence  
4                   written or received with respect to the  
5                   verification of an individual’s identity or  
6                   eligibility for employment in the United  
7                   States.

8                   “(B) USE OF RETAINED DOCUMENTS.—An  
9                   employer shall use copies retained under clause  
10                  (i) or (ii) of subparagraph (A) only for the pur-  
11                  poses of complying with the requirements of  
12                  this subsection, except as otherwise permitted  
13                  under law.

14                  “(5) PENALTIES.—An employer that fails to  
15                  comply with the recordkeeping requirements of this  
16                  subsection shall be subject to the penalties described  
17                  in subsection (e)(4)(B).

18                  “(6) NO AUTHORIZATION OF NATIONAL IDENTI-  
19                  FICATION CARDS.—Nothing in this section may be  
20                  construed to authorize, directly or indirectly, the  
21                  issuance, use, or establishment of a national identi-  
22                  fication card.

23                  “(d) ELECTRONIC EMPLOYMENT VERIFICATION SYS-  
24                  TEM.—

1           “(1) REQUIREMENT FOR SYSTEM.—The Sec-  
2           retary, in cooperation with the Commissioner of So-  
3           cial Security, shall implement an Electronic Employ-  
4           ment Verification System (referred to in this sub-  
5           section as the ‘System’) to determine whether—

6                   “(A) the identifying information submitted  
7                   by an individual is consistent with the informa-  
8                   tion maintained by the Secretary or the Com-  
9                   missioner of Social Security; and

10                   “(B) such individual is eligible for employ-  
11                   ment in the United States.

12           “(2) REQUIREMENT FOR PARTICIPATION.—The  
13           Secretary shall require all employers in the United  
14           States to participate in the System, with respect to  
15           all employees hired by the employer on or after the  
16           date that is 18 months after the date that not less  
17           than \$400,000,000 have been appropriated and  
18           made available to implement this subsection.

19           “(3) OTHER PARTICIPATION IN SYSTEM.—Not-  
20           withstanding paragraph (2), the Secretary has the  
21           authority—

22                   “(A) to permit any employer that is not re-  
23                   quired to participate in the System under para-  
24                   graph (2) to participate in the System on a vol-  
25                   untary basis; and

1           “(B) to require any employer or class of  
2 employers to participate on a priority basis in  
3 the System with respect to individuals employed  
4 as of, or hired after, the date of enactment of  
5 the Comprehensive Immigration Reform Act of  
6 2007—

7           “(i) if the Secretary designates such  
8 employer or class of employers as a critical  
9 employer based on an assessment of home-  
10 land security or national security needs; or

11           “(ii) if the Secretary has reasonable  
12 cause to believe that the employer has en-  
13 gaged in material violations of paragraph  
14 (1), (2), or (3) of subsection (a).

15           “(4) REQUIREMENT TO NOTIFY.—The Sec-  
16 retary shall notify the employer or class of employers  
17 in writing regarding the requirement for participa-  
18 tion in the System under paragraph (3)(B) not less  
19 than 60 days prior to the effective date of such re-  
20 quirement. Such notice shall include the training  
21 materials described in paragraph (8)(E)(v).

22           “(5) REGISTRATION OF EMPLOYERS.—An em-  
23 ployer shall register the employer’s participation in  
24 the System in the manner prescribed by the Sec-  
25 retary prior to the date the employer is required or

1 permitted to submit information with respect to an  
2 employee under this subsection.

3 “(6) ADDITIONAL GUIDANCE.—A registered em-  
4 ployer shall be permitted to utilize any technology  
5 that is consistent with this section and with any reg-  
6 ulation or guidance from the Secretary to streamline  
7 the procedures to facilitate compliance with—

8 “(A) the attestation requirement in sub-  
9 section (c); and

10 “(B) the employment eligibility verification  
11 requirements in this subsection.

12 “(7) CONSEQUENCE OF FAILURE TO PARTICI-  
13 PATE.—If an employer is required to participate in  
14 the System and fails to comply with the require-  
15 ments of the System with respect to an employee—

16 “(A) such failure shall be treated as a vio-  
17 lation of subsection (a)(1)(B); and

18 “(B) a rebuttable presumption is created  
19 that the employer has violated subsection  
20 (a)(1)(A), however, such presumption may not  
21 apply to a prosecution under subsection (f)(1).

22 “(8) DESIGN AND OPERATION OF SYSTEM.—

23 “(A) IN GENERAL.—The Secretary shall,  
24 through the System—

1           “(i) respond to each inquiry made by  
2 a registered employer through the Internet  
3 or other electronic media, or over a toll-  
4 free telephone line regarding an individ-  
5 ual’s identity and eligibility for employ-  
6 ment in the United States; and

7           “(ii) maintain a record of each such  
8 inquiry and the information provided in re-  
9 sponse to such inquiry.

10       “(B) INITIAL INQUIRY.—

11           “(i) INFORMATION REQUIRED.—A  
12 registered employer shall, with respect to  
13 the hiring, or recruiting or referring for a  
14 fee, any individual for employment in the  
15 United States, obtain from the individual  
16 and record on the form described in sub-  
17 section (c)(1)(A)(i)—

18           “(I) the individual’s name and  
19 date of birth and, if the individual  
20 was born in the United States, the  
21 State in which such individual was  
22 born;

23           “(II) the individual’s social secu-  
24 rity account number;



1           “(III) the employment identifica-  
2           tion number of the individual’s em-  
3           ployer during any one of the 5 most  
4           recently completed calendar years;  
5           and

6           “(IV) in the case of an individual  
7           who does not attest that the indi-  
8           vidual is a national of the United  
9           States under subsection (c)(1)(A)(i),  
10          such alien identification or authoriza-  
11          tion number that the Secretary shall  
12          require.

13          “(ii) SUBMISSION TO SYSTEM.—A reg-  
14          istered employer shall submit an inquiry  
15          through the System to seek confirmation of  
16          the individual’s identity and eligibility for  
17          employment in the United States—

18                 “(I) not later than 3 days after  
19                 the date of the hiring, or recruiting or  
20                 referring for a fee, of the individual  
21                 (as the case may be); or

22                 “(II) in the case of an employee  
23                 hired by a critical employer des-  
24                 ignated by the Secretary under para-

1 graph (3)(B) at such time as the Sec-  
2 retary shall specify.

3 “(iii) EMPLOYER IDENTIFICATION  
4 NUMBER REQUIREMENTS.—

5 “(I) REQUIREMENT TO PRO-  
6 VIDE.—An employer shall provide the  
7 employer identification number issued  
8 to such employer to the individual,  
9 upon request, for purposes of pro-  
10 viding the information under clause  
11 (i)(III).

12 “(II) REQUIREMENT TO AFFIRM-  
13 ATIVELY STATE A LACK OF RECENT  
14 EMPLOYMENT.—An individual pro-  
15 viding information under clause  
16 (i)(III) who was not employed in the  
17 United States during any of the 5  
18 most recently completed calendar  
19 years shall affirmatively state on the  
20 form described in subsection  
21 (c)(1)(A)(i) that no employer identi-  
22 fication number is provided because  
23 the individual was not employed in the  
24 United States during such period.

1           “(C) INITIAL RESPONSE.—Not later than  
2           10 days after an employer submits an inquiry  
3           to the System regarding an individual, the Sec-  
4           retary shall provide, through the System, to the  
5           employer—

6                   “(i) if the System is able to confirm  
7                   the individual’s identity and eligibility for  
8                   employment in the United States, a con-  
9                   firmation notice, including the appropriate  
10                  codes on such confirmation notice; or

11                  “(ii) if the System is unable to con-  
12                  firm the individual’s identity or eligibility  
13                  for employment in the United States, and  
14                  after a secondary manual verification has  
15                  been conducted, a tentative nonconfirma-  
16                  tion notice, including the appropriate codes  
17                  on such tentative nonconfirmation notice.

18           “(D) CONFIRMATION OR NONCONFIRMA-  
19           TION.—

20                   “(i) CONFIRMATION UPON INITIAL IN-  
21                   QUIRY.—If an employer receives a con-  
22                   firmation notice under paragraph (C)(i) for  
23                   an individual, the employer shall record, on  
24                   the form described in subsection

1 (c)(1)(A)(i), the appropriate code provided  
2 in such notice.

3 “(ii) TENTATIVE NONCONFIRMA-  
4 TION.—If an employer receives a tentative  
5 nonconfirmation notice under paragraph  
6 (C)(ii) for an individual, the employer shall  
7 inform such individual of the issuance of  
8 such notice in writing, on a form pre-  
9 scribed by the Secretary not later than 3  
10 days after receiving such notice. Such indi-  
11 vidual shall acknowledge receipt of such  
12 notice in writing on the form described in  
13 subsection (c)(1)(A)(i).

14 “(iii) NO CONTEST.—If the individual  
15 does not contest the tentative nonconfirma-  
16 tion notice within 10 days of receiving no-  
17 tice from the individual’s employer, the no-  
18 tice shall become final and the employer  
19 shall record on the form described in sub-  
20 section (1)(A)(i), the appropriate code pro-  
21 vided through the System to indicate the  
22 individual did not contest the tentative  
23 nonconfirmation. An individual’s failure to  
24 contest a tentative nonconfirmation shall  
25 not be considered an admission of guilt

1 with respect to any violation of this Act or  
2 any other provision of law.

3 “(iv) CONTEST.—If the individual  
4 contests the tentative nonconfirmation no-  
5 tice, the individual shall submit appro-  
6 priate information to contest such notice  
7 under the procedures established in sub-  
8 paragraph (E)(iii) not later than 10 days  
9 after receiving the notice from the individ-  
10 ual’s employer.

11 “(v) EFFECTIVE PERIOD OF TEN-  
12 TATIVE NONCONFIRMATION NOTICE.—A  
13 tentative nonconfirmation notice shall re-  
14 main in effect until such notice becomes  
15 final under clause (iii), or the earlier of—

16 “(I) a final confirmation notice  
17 or final nonconfirmation notice is  
18 issued through the System; or

19 “(II) 30 days after the individual  
20 contests a tentative nonconfirmation  
21 under clause (iv).

22 “(vi) AUTOMATIC FINAL NOTICE.—

23 “(I) IN GENERAL.—If a final no-  
24 tice is not issued within the 30-day  
25 period described in clause (v)(II), the

1 Secretary shall automatically provide  
2 to the employer, through the System,  
3 the appropriate code indicating a final  
4 notice.

5 “(II) PERIOD PRIOR TO INITIAL  
6 CERTIFICATION.—During the period  
7 beginning on the date of the enact-  
8 ment of the Comprehensive Immigra-  
9 tion Reform Act of 2007 and ending  
10 on the date the Secretary submits the  
11 initial report described in subpara-  
12 graph (E)(ii), an automatic notice  
13 issued under subclause (I) shall be a  
14 final confirmation notice.

15 “(III) PERIOD AFTER INITIAL  
16 CERTIFICATION.—After the date that  
17 the Secretary submits the initial re-  
18 port described in subparagraph  
19 (E)(ii), an automatic notice issued  
20 under subclause (I) shall be a final  
21 confirmation notice unless the most  
22 recent such report includes a certifi-  
23 cation that the System is able to cor-  
24 rectly issue, within the period begin-  
25 ning on the date an employer submits

1 an inquiry to the System and ending  
2 on the date an automatic default no-  
3 tice would be issued by the System, a  
4 final notice in at least 99 percent of  
5 the cases in which the notice relates  
6 to an individual who is eligible for em-  
7 ployment in the United States. If the  
8 most recent such report includes such  
9 a certification, the automatic notice  
10 issued under subclause (I) shall be a  
11 final nonconfirmation notice.

12 “(IV) ADDITIONAL AUTHOR-  
13 ITY.—Notwithstanding the second  
14 sentence of subclause (III), the Sec-  
15 retary shall have the authority to  
16 issue a final confirmation notice for  
17 an individual who would be subject to  
18 a final nonconfirmation notice under  
19 such sentence. In such a case, the  
20 Secretary shall determine the individ-  
21 ual’s eligibility for employment in the  
22 United States and record the results  
23 of such determination in the System  
24 within 12 months.

1           “(vii) EFFECTIVE PERIOD OF FINAL  
2 NOTICE.—A final confirmation notice  
3 issued under this paragraph for an indi-  
4 vidual shall remain in effect—

5           “(I) during any continuous pe-  
6 riod of employment of such individual  
7 by such employer, unless the Sec-  
8 retary determines the final confirma-  
9 tion was the result of identity fraud;  
10 or

11           “(II) in the case of an alien au-  
12 thorized to be employed in the United  
13 States for a temporary period, during  
14 such period.

15           “(viii) PROHIBITION ON TERMI-  
16 NATION.—An employer may not terminate  
17 the employment of an individual based on  
18 a tentative nonconfirmation notice until  
19 such notice becomes final under clause (iii)  
20 or a final nonconfirmation notice is issued  
21 for the individual by the System. Nothing  
22 in this clause shall prohibit the termination  
23 of employment for any reason other than  
24 such tentative nonconfirmation.



1           “(ix) RECORDING OF CONTEST RESO-  
2           LUTION.—The employer shall record on  
3           the form described in subsection  
4           (c)(1)(A)(i) the appropriate code that is  
5           provided through the System to indicate a  
6           final confirmation notice or final noncon-  
7           firmation notice.

8           “(x) CONSEQUENCES OF NONCON-  
9           FIRMATION.—If the employer has received  
10          a final nonconfirmation regarding an indi-  
11          vidual, the employer shall terminate the  
12          employment, recruitment, or referral of the  
13          individual. Such employer shall provide to  
14          the Secretary any information relating to  
15          the individual that the Secretary deter-  
16          mines would assist the Secretary in enforce-  
17          ing or administering the immigration laws.  
18          If the employer continues to employ, re-  
19          cruit, or refer the individual after receiving  
20          final nonconfirmation, a rebuttable pre-  
21          sumption is created that the employer has  
22          violated subsections (a)(1)(A) and (a)(2).  
23          Such presumption may not apply to a  
24          prosecution under subsection (f)(1).

1                   “(E) RESPONSIBILITIES OF THE SEC-  
2                   RETARY.—

3                   “(i) IN GENERAL.—The Secretary  
4                   shall establish a reliable, secure method to  
5                   provide through the System, within the  
6                   time periods required by this subsection—

7                                 “(I) a determination of whether  
8                                 the name and alien identification or  
9                                 authorization number provided in an  
10                                inquiry by an employer is consistent  
11                                with such information maintained by  
12                                the Secretary in order to confirm the  
13                                validity of the information provided;  
14                                and

15                               “(II) a determination of whether  
16                                the individual is authorized to be em-  
17                                ployed in the United States.

18                               “(ii) ANNUAL REPORT AND CERTIFI-  
19                                CATION.—Not later than the date that is  
20                                24 months after the date that not less  
21                                than \$400,000,000 have been appropriated  
22                                and made available to the Secretary to im-  
23                                plement this subsection, and annually  
24                                thereafter, the Secretary shall submit to  
25                                Congress a report that includes—

1           “(I) an assessment of whether  
2           the System is able to correctly issue,  
3           within the period described in sub-  
4           paragraph (D)(v)(II), a final notice in  
5           at least 99 percent of the cases in  
6           which the final notice relates to an in-  
7           dividual who is eligible for employ-  
8           ment in the United States (excluding  
9           an individual who fails to contest a  
10          tentative nonconfirmation notice); and

11          “(II) if the assessment under  
12          subclause (I) is that the System is  
13          able to correctly issue within the spec-  
14          ified time period a final notice in at  
15          least 99 percent of the cases described  
16          in such subclause, a certification of  
17          such assessment.

18          “(iii)     CONTEST     AND     SELF-  
19          VERIFICATION.—The Secretary in con-  
20          sultation with the Commissioner of Social  
21          Security, shall establish procedures to per-  
22          mit an individual who contests a tentative  
23          or final nonconfirmation notice, or seeks to  
24          verify the individual’s own employment eli-  
25          gibility prior to obtaining or changing em-

1           employment, to contact the appropriate agen-  
2           cy and, in a timely manner, correct or up-  
3           date the information used by the System.

4           “(iv) INFORMATION TO EMPLOYEE.—

5           The Secretary shall develop a written form  
6           for employers to provide to individuals who  
7           receive a tentative or final nonconfirmation  
8           notice. Such form shall be made available  
9           in a language other than English, as nec-  
10          essary and reasonable, and shall include—

11           “(I) information about the reason  
12          for such notice;

13           “(II) the right to contest such  
14          notice;

15           “(III) contact information for the  
16          appropriate agency and instructions  
17          for initiating such contest; and

18           “(IV) a 24-hour toll-free tele-  
19          phone number to respond to inquiries  
20          related to such notice.

21           “(v) TRAINING MATERIALS.—The Sec-  
22          retary shall make available or provide to  
23          the employer, upon request, not later than  
24          60 days prior to such employer’s participa-  
25          tion in the System, appropriate training

1 materials to facilitate compliance with this  
2 subsection, and sections 274B(a)(7) and  
3 274C(a).

4 “(F) RESPONSIBILITIES OF THE COMMIS-  
5 SIONER OF SOCIAL SECURITY.—The responsibil-  
6 ities of the Commissioner of Social Security  
7 with respect to the System are set out in sec-  
8 tion 205(c)(2) of the Social Security Act.

9 “(9) PROTECTION FROM LIABILITY.—No em-  
10 ployer that participates in the System shall be liable  
11 under any law for any employment-related action  
12 taken with respect to an individual in good faith reli-  
13 ance on information provided by the System.

14 “(10) ADMINISTRATIVE REVIEW.—

15 “(A) IN GENERAL.—An individual who is  
16 terminated from employment as a result of a  
17 final nonconfirmation notice may, not later than  
18 60 days after the date of such termination, file  
19 an appeal of such notice.

20 “(B) PROCEDURES.—The Secretary and  
21 Commissioner of Social Security shall develop  
22 procedures to review appeals filed under sub-  
23 paragraph (A) and to make final determina-  
24 tions on such appeals.

1           “(C) REVIEW FOR ERRORS.—If a final de-  
2           termination on an appeal filed under subpara-  
3           graph (A) results in a confirmation of an indi-  
4           vidual’s eligibility to work in the United States,  
5           the administrative review process shall require  
6           the Secretary to determine if the final noncon-  
7           firmation notice issued for the individual was  
8           the result of—

9                   “(i) an error or negligence on the part  
10                   of an employee or official operating or re-  
11                   sponsible for the System;

12                   “(ii) the decision rules, processes, or  
13                   procedures utilized by the System; or

14                   “(iii) erroneous system information  
15                   that was not the result of acts or omissions  
16                   of the individual.

17           “(D) COMPENSATION FOR ERROR.—

18                   “(i) IN GENERAL.—If the Secretary  
19                   makes a determination under subpara-  
20                   graph (C) that the final nonconfirmation  
21                   notice issued for an individual was not  
22                   caused by an act or omission of the indi-  
23                   vidual, the Secretary shall compensate the  
24                   individual for lost wages.

1                   “(ii) CALCULATION OF LOST  
2                   WAGES.—Lost wages shall be calculated  
3                   based on the wage rate and work schedule  
4                   that prevailed prior to termination. The in-  
5                   dividual shall be compensated for wages  
6                   lost beginning on the first scheduled work  
7                   day after employment was terminated and  
8                   ending 180 days after completion of the  
9                   administrative review process described in  
10                  this paragraph or the day after the indi-  
11                  vidual is reinstated or obtains employment  
12                  elsewhere, whichever occurs first.

13                  “(E) LIMITATION ON COMPENSATION.—  
14                  For purposes of determining an individual’s  
15                  compensation for the loss of employment, such  
16                  compensation shall not include any period in  
17                  which the individual was ineligible for employ-  
18                  ment in the United States.

19                  “(F) SOURCE OF FUNDS.—Compensation  
20                  or reimbursement provided under this para-  
21                  graph shall not be provided from funds appro-  
22                  priated in annual appropriations Acts to the  
23                  Secretary for the Department of Homeland Se-  
24                  curity.

25                  “(11) JUDICIAL REVIEW.—

1           “(A) IN GENERAL.—After the Secretary  
2 makes a final determination on an appeal filed  
3 by an individual under the administrative re-  
4 view process described in paragraph (10), the  
5 individual may obtain judicial review of such  
6 determination by a civil action commenced not  
7 later than 60 days after the date of such deci-  
8 sion, or such further time as the Secretary may  
9 allow.

10           “(B) JURISDICTION.—A civil action for  
11 such judicial review shall be brought in the dis-  
12 trict court of the United States for the judicial  
13 district in which the plaintiff resides, or has a  
14 principal place of business, or, if the plaintiff  
15 does not reside or have a principal place of  
16 business within any such judicial district, in the  
17 District Court of the United States for the Dis-  
18 trict of Columbia.

19           “(C) ANSWER.—As part of the Secretary’s  
20 answer to a complaint for such judicial review,  
21 the Secretary shall file a certified copy of the  
22 administrative record compiled during the ad-  
23 ministrative review under paragraph (10), in-  
24 cluding the evidence upon which the findings  
25 and decision complained of are based. The court



1 shall have power to enter, upon the pleadings  
2 and transcript of the record, a judgment affirm-  
3 ing or reversing the result of that administra-  
4 tive review, with or without remanding the  
5 cause for a rehearing.

6 “(D) COMPENSATION FOR ERROR.—

7 “(i) IN GENERAL.—In cases in which  
8 such judicial review reverses the final de-  
9 termination of the Secretary made under  
10 paragraph (10), the court shall compensate  
11 the individual for lost wages.

12 “(ii) CALCULATION OF LOST  
13 WAGES.—Lost wages shall be calculated  
14 based on the wage rate and work scheduled  
15 that prevailed prior to termination. The in-  
16 dividual shall be compensated for wages  
17 lost beginning on the first scheduled work  
18 day after employment was terminated and  
19 ending 180 days after completion of the ju-  
20 dicial review described in this paragraph or  
21 the day after the individual is reinstated or  
22 obtains employment elsewhere, whichever  
23 occurs first.

24 “(12) LIMITATION ON COLLECTION AND USE  
25 OF DATA.—

1           “(A) LIMITATION ON COLLECTION OF  
2 DATA.—

3           “(i) IN GENERAL.—The System shall  
4 collect and maintain only the minimum  
5 data necessary to facilitate the successful  
6 operation of the System, and in no case  
7 shall the data be other than—

8                   “(I) information necessary to  
9 register employers under paragraph  
10 (5);

11                   “(II) information necessary to  
12 initiate and respond to inquiries or  
13 contests under paragraph (8);

14                   “(III) information necessary to  
15 establish and enforce compliance with  
16 paragraphs (5) and (8);

17                   “(IV) information necessary to  
18 detect and prevent employment re-  
19 lated identity fraud; and

20                   “(V) such other information the  
21 Secretary determines is necessary,  
22 subject to a 180 day notice and com-  
23 ment period in the Federal Register.

24           “(ii) PENALTIES.—Any officer, em-  
25 ployee, or contractor who willfully and

1 knowingly collects and maintains data in  
2 the System other than data described in  
3 clause (i) shall be guilty of a misdemeanor  
4 and fined not more than \$1,000 for each  
5 violation.

6 “(B) LIMITATION ON USE OF DATA.—

7 Whoever willfully and knowingly accesses, dis-  
8 closes, or uses any information obtained or  
9 maintained by the System—

10 “(i) for the purpose of committing  
11 identity fraud, or assisting another person  
12 in committing identity fraud, as defined in  
13 section 1028 of title 18, United States  
14 Code;

15 “(ii) for the purpose of unlawfully ob-  
16 taining employment in the United States  
17 or unlawfully obtaining employment in the  
18 United States for any other person; or

19 “(iii) for any purpose other than as  
20 provided for under any provision of law;

21 shall be guilty of a felony and upon conviction  
22 shall be fined under title 18, United States  
23 Code, or imprisoned for not more than 5 years,  
24 or both.

1           “(C) EXCEPTIONS.—Nothing in subpara-  
2 graph (A) or (B) may be construed to limit the  
3 collection, maintenance, or use of data by the  
4 Commissioner of Internal Revenue or the Com-  
5 missioner of Social Security as provided by law.

6           “(13) MODIFICATION AUTHORITY.—The Sec-  
7 retary, after notice is submitted to Congress and  
8 provided to the public in the Federal Register, is au-  
9 thorized to modify the requirements of this sub-  
10 section with respect to completion of forms, method  
11 of storage, attestations, copying of documents, sig-  
12 natures, methods of transmitting information, and  
13 other operational and technical aspects to improve  
14 the efficiency, accuracy, and security of the System.

15           “(14) ANNUAL GAO STUDY AND REPORT.—

16           “(A) REQUIREMENT.—The Comptroller  
17 General of the United States shall conduct an  
18 annual study of the System.

19           “(B) PURPOSE.—The study shall evaluate  
20 the accuracy, efficiency, integrity, and impact of  
21 the System.

22           “(C) REPORT.—Not later than the date  
23 that is 24 months after the date that not less  
24 than \$400,000,000 have been appropriated and  
25 made available to the Secretary to implement

1 this subsection, and annually thereafter, the  
2 Comptroller General shall submit to Congress a  
3 report containing the findings of the study car-  
4 ried out under this paragraph. Each such re-  
5 port shall include, at a minimum, the following:

6 “(i) An assessment of the annual re-  
7 port and certification described in para-  
8 graph (8)(E)(ii).

9 “(ii) An assessment of System per-  
10 formance with respect to the rate at which  
11 individuals who are eligible for employment  
12 in the United States are correctly approved  
13 within each of the periods specified in  
14 paragraph (8), including a separate assess-  
15 ment of such rate for nationals and aliens.

16 “(iii) An assessment of the privacy  
17 and security of the System and its effects  
18 on identity fraud or the misuse of personal  
19 data.

20 “(iv) An assessment of the effects of  
21 the System on the employment of unau-  
22 thorized aliens.

23 “(v) An assessment of the effects of  
24 the System, including the effects of ten-  
25 tative confirmations, on unfair immigra-

1           tion-related employment practices and em-  
2           ployment discrimination based on national  
3           origin or citizenship status.

4           “(vi) An assessment of whether the  
5           Secretary and the Commissioner of Social  
6           Security have adequate resources to carry  
7           out the duties and responsibilities of this  
8           section.

9           “(e) COMPLIANCE.—

10           “(1) COMPLAINTS AND INVESTIGATIONS.—The  
11           Secretary shall establish procedures—

12           “(A) for individuals and entities to file  
13           complaints regarding potential violations of sub-  
14           section (a);

15           “(B) for the investigation of such com-  
16           plaints that the Secretary determines are ap-  
17           propriate to investigate; and

18           “(C) for the investigation of other viola-  
19           tions of subsection (a) that the Secretary deter-  
20           mines is appropriate.

21           “(2) AUTHORITY IN INVESTIGATIONS.—

22           “(A) IN GENERAL.—In conducting inves-  
23           tigations and hearings under this subsection, of-  
24           ficers and employees of the Department of  
25           Homeland Security—

1           “(i) shall have reasonable access to  
2           examine evidence regarding any employer  
3           being investigated; and

4           “(ii) if designated by the Secretary,  
5           may compel by subpoena the attendance of  
6           witnesses and the production of evidence at  
7           any designated place in an investigation or  
8           case under this subsection.

9           “(B) FAILURE TO COOPERATE.—In case of  
10          refusal to obey a subpoena lawfully issued  
11          under subparagraph (A)(ii), the Secretary may  
12          request that the Attorney General apply in an  
13          appropriate district court of the United States  
14          for an order requiring compliance with such  
15          subpoena, and any failure to obey such order  
16          may be punished by such court as contempt.

17          “(C) DEPARTMENT OF LABOR.—The Sec-  
18          retary of Labor shall have the investigative au-  
19          thority provided under section 11(a) of the Fair  
20          Labor Standards Act of 1938 (29 U.S.C.  
21          211(a)) to ensure compliance with the provi-  
22          sions of this section.

23          “(3) COMPLIANCE PROCEDURES.—

24                 “(A) PREPENALTY NOTICE.—If the Sec-  
25          retary has reasonable cause to believe that

1           there has been a violation of a requirement of  
2           this section and determines that further pro-  
3           ceedings related to such violation are war-  
4           ranted, the Secretary shall issue to the em-  
5           ployer concerned a written notice of the Sec-  
6           retary's intention to issue a claim for a fine or  
7           other penalty. Such notice shall—

8                   “(i) describe the violation;

9                   “(ii) specify the laws and regulations  
10                  allegedly violated;

11                  “(iii) specify the amount of fines or  
12                  other penalties to be imposed;

13                  “(iv) disclose the material facts which  
14                  establish the alleged violation; and

15                  “(v) inform such employer that the  
16                  employer shall have a reasonable oppor-  
17                  tunity to make representations as to why a  
18                  claim for a monetary or other penalty  
19                  should not be imposed.

20                  “(B) REMISSION OR MITIGATION OF PEN-  
21                  ALTIES.—

22                   “(i) REVIEW BY SECRETARY.—If the  
23                  Secretary determines that such fine or  
24                  other penalty was incurred erroneously, or  
25                  determines the existence of such mitigating



1           circumstances as to justify the remission  
2           or mitigation of such fine or penalty, the  
3           Secretary may remit or mitigate such fine  
4           or other penalty on the terms and condi-  
5           tions as the Secretary determines are rea-  
6           sonable and just, or order termination of  
7           any proceedings related to the notice.

8           “(ii) APPLICABILITY.—This subpara-  
9           graph may not apply to an employer that  
10          has or is engaged in a pattern or practice  
11          of violations of paragraph (1), (2), or (3)  
12          of subsection (a) or of any other require-  
13          ments of this section.

14          “(C) PENALTY CLAIM.—After considering  
15          evidence and representations offered by the em-  
16          ployer, the Secretary shall determine whether  
17          there was a violation and promptly issue a writ-  
18          ten final determination setting forth the find-  
19          ings of fact and conclusions of law on which the  
20          determination is based and the appropriate pen-  
21          alty.

22          “(4) CIVIL PENALTIES.—

23                  “(A) HIRING OR CONTINUING TO EMPLOY  
24                  UNAUTHORIZED ALIENS.—Any employer that  
25                  violates any provision of paragraph (1), (2), or

1 (3) of subsection (a) shall pay civil penalties as  
2 follows:

3 “(i) Pay a civil penalty of not less  
4 than \$500 and not more than \$4,000 for  
5 each unauthorized alien with respect to  
6 each such violation.

7 “(ii) If the employer has previously  
8 been fined 1 time during the 12-month pe-  
9 riod preceding the violation under this sub-  
10 paragraph, pay a civil penalty of not less  
11 than \$4,000 and not more than \$10,000  
12 for each unauthorized alien with respect to  
13 each such violation.

14 “(iii) If the employer has previously  
15 been fined more than 1 time during the  
16 24-month period preceding the violation  
17 under this subparagraph or has failed to  
18 comply with a previously issued and final  
19 order related to any such provision, pay a  
20 civil penalty of not less than \$6,000 and  
21 not more than \$20,000 for each unauthor-  
22 ized alien with respect to each such viola-  
23 tion.

24 “(B) RECORDKEEPING OR VERIFICATION  
25 PRACTICES.—Any employer that violates or fails

1 to comply with the recordkeeping requirements  
2 of subsections (a), (c), and (d), shall pay a civil  
3 penalty as follows:

4 “(i) Pay a civil penalty of not less  
5 than \$200 and not more than \$2,000 for  
6 each such violation.

7 “(ii) If the employer has previously  
8 been fined 1 time during the 12-month pe-  
9 riod preceding the violation under this sub-  
10 paragraph, pay a civil penalty of not less  
11 than \$400 and not more than \$4,000 for  
12 each such violation.

13 “(iii) If the employer has previously  
14 been fined more than 1 time during the  
15 24-month period preceding the violation  
16 under this subparagraph or has failed to  
17 comply with a previously issued and final  
18 order related to such requirements, pay a  
19 civil penalty of not less than \$600 and not  
20 more than \$6,000 for each such violation.

21 “(C) OTHER PENALTIES.—Notwith-  
22 standing subparagraphs (A) and (B), the Sec-  
23 retary may impose additional penalties for vio-  
24 lations, including violations of cease and desist  
25 orders, specially designed compliance plans to

1           prevent further violations, suspended fines to  
2           take effect in the event of a further violation,  
3           and in appropriate cases, the criminal penalty  
4           described in subsection (f).

5           “(5) JUDICIAL REVIEW.—An employer ad-  
6           versely affected by a final determination may, within  
7           45 days after the date the final determination is  
8           issued, file a petition in any appropriate district  
9           court of the United States. The filing of a petition  
10          as provided in this paragraph shall stay the Sec-  
11          retary’s determination until entry of judgment by  
12          the court. The burden shall be on the employer to  
13          show that the final determination was not supported  
14          by substantial evidence. The Secretary is authorized  
15          to require that the petitioner provide, prior to filing  
16          for review, security for payment of fines and pen-  
17          alties through bond or other guarantee of payment  
18          acceptable to the Secretary.

19          “(6) ENFORCEMENT OF ORDERS.—If an em-  
20          ployer fails to comply with a final determination  
21          issued against that employer under this subsection,  
22          and the final determination is not subject to review  
23          as provided in paragraph (5), the Attorney General  
24          may file suit to enforce compliance with the final de-  
25          termination, not earlier than 46 days and not later

1 than 180 days after the date the final determination  
2 is issued, in any appropriate district court of the  
3 United States. In any such suit, the validity and ap-  
4 propriateness of the final determination shall not be  
5 subject to review.

6 “(7) RECOVERY OF COSTS AND ATTORNEY’S  
7 FEES.—In any appeal brought under paragraph (5)  
8 or suit brought under paragraph (6) of this section  
9 the employer shall be entitled to recover from the  
10 Secretary reasonable costs and attorney’s fees if  
11 such employer substantially prevails on the merits of  
12 the case. Such an award of attorney’s fees may not  
13 exceed \$25,000. Any such costs and attorney’s fees  
14 assessed against the Secretary shall be charged  
15 against the operating expenses of the Department  
16 for the fiscal year in which the assessment is made,  
17 and may not be reimbursed from any other source.

18 “(f) CRIMINAL PENALTIES AND INJUNCTIONS FOR  
19 PATTERN OR PRACTICE VIOLATIONS.—

20 “(1) CRIMINAL PENALTY.—An employer that  
21 engages in a pattern or practice of knowing viola-  
22 tions of subsection (a)(1)(A) or (a)(2) shall be fined  
23 not more than \$20,000 for each unauthorized alien  
24 with respect to whom such a violation occurs, im-

1       prisoned for not more than 3 years for the entire  
2       pattern or practice, or both.

3               “(2) ENJOINING OF PATTERN OR PRACTICE  
4       VIOLATIONS.—If the Secretary or the Attorney Gen-  
5       eral has reasonable cause to believe that an employer  
6       is engaged in a pattern or practice of employment,  
7       recruitment, or referral in violation of paragraph  
8       (1)(A) or (2) of subsection (a), the Attorney General  
9       may bring a civil action in the appropriate district  
10      court of the United States requesting a permanent  
11      or temporary injunction, restraining order, or other  
12      order against the employer, as the Secretary deems  
13      necessary.

14             “(g) ADJUSTMENT FOR INFLATION.—All penalties  
15      and limitations on the recovery of costs and attorney’s fees  
16      in this section shall be increased every 4 years beginning  
17      January 2010 to reflect the percentage increase in the  
18      consumer price index for all urban consumers (all items;  
19      U.S. city average) for the 48-month period ending with  
20      September of the year preceding the year such adjustment  
21      is made. Any adjustment under this subparagraph shall  
22      be rounded to the nearest dollar.

23             “(h) PROHIBITION OF INDEMNITY BONDS.—

24               “(1) PROHIBITION.—It is unlawful for an em-  
25      ployer, in the hiring, recruiting, or referring for a

1 fee, of an individual, to require the individual to post  
2 a bond or security, to pay or agree to pay an  
3 amount, or otherwise to provide a financial guar-  
4 antee or indemnity, against any potential liability  
5 arising under this section relating to such hiring, re-  
6 cruiting, or referring of the individual.

7 “(2) CIVIL PENALTY.—Any employer which is  
8 determined, after notice and opportunity for mitiga-  
9 tion of the monetary penalty under subsection (e), to  
10 have violated paragraph (1) of this subsection shall  
11 be subject to a civil penalty of \$10,000 for each vio-  
12 lation and to an administrative order requiring the  
13 return of any amounts received in violation of such  
14 paragraph to the employee or, if the employee can-  
15 not be located, to the Employer Compliance Fund  
16 established under section 286(w).

17 “(i) PROHIBITION ON AWARD OF GOVERNMENT CON-  
18 TRACTS, GRANTS, AND AGREEMENTS.—

19 “(1) EMPLOYERS WITH NO CONTRACTS,  
20 GRANTS, OR AGREEMENTS.—

21 “(A) IN GENERAL.—If an employer who  
22 does not hold a Federal contract, grant, or co-  
23 operative agreement is determined by the Sec-  
24 retary to be a repeat violator of this section or  
25 is convicted of a crime under this section, the

1 employer shall be debarred from the receipt of  
2 a Federal contract, grant, or cooperative agree-  
3 ment for a period of 5 years. The Secretary or  
4 the Attorney General shall advise the Adminis-  
5 trator of General Services of such a debarment,  
6 and the Administrator of General Services shall  
7 list the employer on the List of Parties Ex-  
8 cluded from Federal Procurement and Non-  
9 procurement Programs for a period of 5 years.

10 “(B) WAIVER.—The Administrator of Gen-  
11 eral Services, in consultation with the Secretary  
12 and the Attorney General, may waive operation  
13 of this subsection or may limit the duration or  
14 scope of the debarment.

15 “(2) EMPLOYERS WITH CONTRACTS, GRANTS,  
16 OR AGREEMENTS.—

17 “(A) IN GENERAL.—An employer who  
18 holds a Federal contract, grant, or cooperative  
19 agreement and is determined by the Secretary  
20 to be a repeat violator of this section or is con-  
21 victed of a crime under this section, shall be  
22 debarred from the receipt of new Federal con-  
23 tracts, grants, or cooperative agreements for a  
24 period of 5 years.



1           “(B) NOTICE TO AGENCIES.—Prior to de-  
2           barring the employer under subparagraph (A),  
3           the Secretary, in cooperation with the Adminis-  
4           trator of General Services, shall advise any  
5           agency or department holding a contract, grant,  
6           or cooperative agreement with the employer of  
7           the Government’s intention to debar the em-  
8           ployer from the receipt of new Federal con-  
9           tracts, grants, or cooperative agreements for a  
10          period of 5 years.

11          “(C) WAIVER.—After consideration of the  
12          views of any agency or department that holds  
13          a contract, grant, or cooperative agreement  
14          with the employer, the Secretary may, in lieu of  
15          debarring the employer from the receipt of new  
16          Federal contracts, grants, or cooperative agree-  
17          ments for a period of 5 years, waive operation  
18          of this subsection, limit the duration or scope of  
19          the debarment, or may refer to an appropriate  
20          lead agency the decision of whether to debar the  
21          employer, for what duration, and under what  
22          scope in accordance with the procedures and  
23          standards prescribed by the Federal Acquisition  
24          Regulation. However, any proposed debarment  
25          predicated on an administrative determination

1 of liability for civil penalty by the Secretary or  
2 the Attorney General shall not be reviewable in  
3 any debarment proceeding. The decision of  
4 whether to debar or take alternate action under  
5 this subparagraph shall not be judicially re-  
6 viewed.

7 “(3) SUSPENSION.—Indictments for violations  
8 of this section or adequate evidence of actions that  
9 could form the basis for debarment under this sub-  
10 section shall be considered a cause for suspension  
11 under the procedures and standards for suspension  
12 prescribed by the Federal Acquisition Regulation.

13 “(j) MISCELLANEOUS PROVISIONS.—

14 “(1) DOCUMENTATION.—In providing docu-  
15 mentation or endorsement of authorization of aliens  
16 eligible to be employed in the United States, the  
17 Secretary shall provide that any limitations with re-  
18 spect to the period or type of employment or em-  
19 ployer shall be conspicuously stated on the docu-  
20 mentation or endorsement (other than aliens law-  
21 fully admitted for permanent residence).

22 “(2) PREEMPTION.—The provisions of this sec-  
23 tion preempt any State or local law imposing civil or  
24 criminal sanctions (other than through licensing and

1 similar laws) upon those who employ, or recruit or  
2 refer for a fee for employment, unauthorized aliens.

3 “(k) DEPOSIT OF AMOUNTS RECEIVED.—Except as  
4 otherwise specified, civil penalties collected under this sec-  
5 tion shall be deposited by the Secretary into the Employer  
6 Compliance Fund established under section 286(w).

7 “(l) DEFINITIONS.—In this section:

8 “(1) EMPLOYER.—The term ‘employer’ means  
9 any person or entity, including any entity of the  
10 Government of the United States, hiring, recruiting,  
11 or referring an individual for employment in the  
12 United States.

13 “(2) SECRETARY.—Except as otherwise pro-  
14 vided, the term ‘Secretary’ means the Secretary of  
15 Homeland Security.

16 “(3) UNAUTHORIZED ALIEN.—The term ‘unau-  
17 thorized alien’ means, with respect to the employ-  
18 ment of an alien at a particular time, that the alien  
19 is not at that time either—

20 “(A) an alien lawfully admitted for perma-  
21 nent residence; or

22 “(B) authorized to be so employed by this  
23 Act or by the Secretary.”.

24 (b) CONFORMING AMENDMENTS.—

25 (1) AMENDMENTS.—

1 (A) REPEAL OF BASIC PILOT.—Sections  
2 401, 402, 403, 404, and 405 of the Illegal Im-  
3 migration Reform and Immigrant Responsibility  
4 Act of 1996 (division C of Public Law 104–  
5 208; 8 U.S.C. 1324a note) are repealed.

6 (B) REPEAL OF REPORTING REQUIRE-  
7 MENTS.—

8 (i) REPORT ON EARNINGS OF ALIENS  
9 NOT AUTHORIZED TO WORK.—Subsection  
10 (c) of section 290 (8 U.S.C. 1360) is re-  
11 pealed.

12 (ii) REPORT ON FRAUDULENT USE OF  
13 SOCIAL SECURITY ACCOUNT NUMBERS.—  
14 Subsection (b) of section 414 of the Illegal  
15 Immigration Reform and Immigrant Re-  
16 sponsibility Act of 1996 (division C of  
17 Public Law 104–208; 8 U.S.C. 1360 note)  
18 is repealed.

19 (2) CONSTRUCTION.—Nothing in this sub-  
20 section or in subsection (d) of section 274A, as  
21 amended by subsection (a), may be construed to  
22 limit the authority of the Secretary to allow or con-  
23 tinue to allow the participation of employers who  
24 participated in the basic pilot program under sec-  
25 tions 401, 402, 403, 404, and 405 of the Illegal Im-

1 migration Reform and Immigrant Responsibility Act  
2 of 1996 (division C of Public Law 104–208; 8  
3 U.S.C. 1324a note) in the Electronic Employment  
4 Verification System established pursuant to such  
5 subsection (d).

6 (c) TECHNICAL AMENDMENTS.—

7 (1) DEFINITION OF UNAUTHORIZED ALIEN.—  
8 Sections 218(i)(1) (8 U.S.C. 1188(i)(1)), 245(c)(8)  
9 (8 U.S.C. 1255(c)(8)), 274(a)(3)(B)(i) (8 U.S.C.  
10 1324(a)(3)(B)(i)), and 274B(a)(1) (8 U.S.C.  
11 1324b(a)(1)) are amended by striking “274A(h)(3)”  
12 and inserting “274A”.

13 (2) DOCUMENT REQUIREMENTS.—Section 274B  
14 (8 U.S.C. 1324b) is amended—

15 (A) in subsections (a)(6) and (g)(2)(B), by  
16 striking “274A(b)” and inserting “274A(c) and  
17 (d)”; and

18 (B) in subsection (g)(2)(B)(ii), by striking  
19 “274A(b)(5)” and inserting “274A(c)”.

20 (d) AMENDMENTS TO THE SOCIAL SECURITY ACT.—

21 Section 205(c)(2) of the Social Security Act (42 U.S.C.  
22 405(c)(2)) is amended by adding at the end the following:

23 “(I)(i) The Commissioner of Social Security shall,  
24 subject to the provisions of section 301(f)(2) of the Com-  
25 prehensive Immigration Reform Act of 2007, establish a

1 reliable, secure method to provide through the Electronic  
2 Employment Verification System established pursuant to  
3 subsection (d) of section 274A of the Immigration and Na-  
4 tionality Act (referred to in this subparagraph as the ‘Sys-  
5 tem’), within the time periods required by paragraph (8)  
6 of such subsection—

7           “(I) a determination of whether the name, date  
8           of birth, employer identification number, and social  
9           security account number of an individual provided in  
10          an inquiry made to the System by an employer is  
11          consistent with such information maintained by the  
12          Commissioner in order to confirm the validity of the  
13          information provided;

14          “(II) a determination of the citizenship status  
15          associated with such name and social security ac-  
16          count number, according to the records maintained  
17          by the Commissioner;

18          “(III) a determination of whether the name and  
19          number belongs to an individual who is deceased, ac-  
20          cording to the records maintained by the Commis-  
21          sioner;

22          “(IV) a determination of whether the name and  
23          number is blocked in accordance with clause (ii); and

24          “(V) a confirmation notice or a nonconfirma-  
25          tion notice described in such paragraph (8), in a

1 manner that ensures that other information main-  
2 tained by the Commissioner is not disclosed or re-  
3 leased to employers through the System.

4 “(ii) The Commissioner of Social Security shall pre-  
5 vent the fraudulent or other misuse of a social security  
6 account number by establishing procedures under which  
7 an individual who has been assigned a social security ac-  
8 count number may block the use of such number under  
9 the System and remove such block.

10 “(J) In assigning social security account numbers to  
11 aliens who are authorized to work in the United States  
12 under section 218A of the Immigration and Nationality  
13 Act, the Commissioner of Social Security shall, to the  
14 maximum extent practicable, assign such numbers by em-  
15 ploying the enumeration procedure administered jointly by  
16 the Commissioner, the Secretary of State, and the Sec-  
17 retary.”.

18 (e) DISCLOSURE OF CERTAIN TAXPAYER IDENTITY  
19 INFORMATION.—

20 (1) IN GENERAL.—Section 6103(l) of the Inter-  
21 nal Revenue Code of 1986 is amended by adding at  
22 the end the following new paragraph:

23 “(21) DISCLOSURE OF CERTAIN TAXPAYER  
24 IDENTITY INFORMATION BY SOCIAL SECURITY AD-

1       MINISTRATION TO DEPARTMENT OF HOMELAND SE-  
2       CURITY.—

3               “(A) IN GENERAL.—From taxpayer iden-  
4               tity information which has been disclosed to the  
5               Social Security Administration and upon writ-  
6               ten request by the Secretary of Homeland Secu-  
7               rity, the Commissioner of Social Security shall  
8               disclose directly to officers, employees, and con-  
9               tractors of the Department of Homeland Secu-  
10              rity the following information:

11              “(i) DISCLOSURE OF EMPLOYER NO-  
12              MATCH NOTICES.—Taxpayer identity infor-  
13              mation of each person who has filed an in-  
14              formation return required by reason of sec-  
15              tion 6051 during calendar year 2006,  
16              2007, or 2008 which contains—

17              “(I) more than 100 names and  
18              taxpayer identifying numbers of em-  
19              ployees (within the meaning of such  
20              section) that did not match the  
21              records maintained by the Commis-  
22              sioner of Social Security, or

23              “(II) more than 10 names of em-  
24              ployees (within the meaning of such



1 section) with the same taxpayer iden-  
2 tifying number.

3 “(ii) DISCLOSURE OF INFORMATION  
4 REGARDING USE OF DUPLICATE EMPLOYEE  
5 TAXPAYER IDENTIFYING INFORMATION.—

6 Taxpayer identity information of each per-  
7 son who has filed an information return re-  
8 quired by reason of section 6051 which the  
9 Commissioner of Social Security has rea-  
10 son to believe, based on a comparison with  
11 information submitted by the Secretary of  
12 Homeland Security, contains evidence of  
13 identity fraud due to the multiple use of  
14 the same taxpayer identifying number (as-  
15 signed under section 6109) of an employee  
16 (within the meaning of section 6051).

17 “(iii) DISCLOSURE OF INFORMATION  
18 REGARDING NONPARTICIPATING EMPLOY-  
19 ERS.—Taxpayer identity information of  
20 each person who has filed an information  
21 return required by reason of section 6051  
22 which the Commissioner of Social Security  
23 has reason to believe, based on a compari-  
24 son with information submitted by the Sec-  
25 retary of Homeland Security, contains evi-

1           dence of such person’s failure to register  
2           and participate in the Electronic Employ-  
3           ment Verification System authorized under  
4           section 274A(d) of the Immigration and  
5           Nationality Act (hereafter in this para-  
6           graph referred to as the ‘System’).

7           “(iv) DISCLOSURE OF INFORMATION  
8           REGARDING NEW EMPLOYEES OF NON-  
9           PARTICIPATING EMPLOYERS.—Taxpayer  
10          identity information of all employees (with-  
11          in the meaning of section 6051) hired after  
12          the date a person identified in clause (iii)  
13          is required to participate in the System  
14          under section 274A(d)(2) or section  
15          274A(d)(3)(B) of the Immigration and Na-  
16          tionality Act.

17          “(v) DISCLOSURE OF INFORMATION  
18          REGARDING EMPLOYEES OF CERTAIN DES-  
19          IGNATED EMPLOYERS.—Taxpayer identity  
20          information of all employees (within the  
21          meaning of section 6051) of each person  
22          who is required to participate in the Sys-  
23          tem under section 274A(d)(3)(B) of the  
24          Immigration and Nationality Act.

1           “(vi) DISCLOSURE OF NEW HIRE TAX-  
2           PAYER IDENTITY INFORMATION.—Tax-  
3           payer identity information of each person  
4           participating in the System and taxpayer  
5           identity information of all employees (with-  
6           in the meaning of section 6051) of such  
7           person hired during the period beginning  
8           with the later of—

9                       “(I) the date such person begins  
10                      to participate in the System, or

11                     “(II) the date of the request im-  
12                     mediately preceding the most recent  
13                     request under this clause,

14                     ending with the date of the most recent re-  
15                     quest under this clause.

16           “(B) RESTRICTION ON DISCLOSURE.—The  
17           Commissioner of Social Security shall disclose  
18           taxpayer identity information under subpara-  
19           graph (A) only for purposes of, and to the ex-  
20           tent necessary in—

21                     “(i) establishing and enforcing em-  
22                     ployer participation in the System,

23                     “(ii) carrying out, including through  
24                     civil administrative and civil judicial pro-  
25                     ceedings, of sections 212, 217, 235, 237,

1                   238, 274A, 274B, and 274C of the Immi-  
2                   gration and Nationality Act, and

3                   “(iii) the civil operation of the Alien  
4                   Terrorist Removal Court.

5                   “(C) REIMBURSEMENT.—The Commis-  
6                   sioner of Social Security shall prescribe a rea-  
7                   sonable fee schedule for furnishing taxpayer  
8                   identity information under this paragraph and  
9                   collect such fees in advance from the Secretary  
10                  of Homeland Security.

11                  “(D) TERMINATION.—This paragraph  
12                  shall not apply to any request made after the  
13                  date which is 3 years after the date of the en-  
14                  actment of this paragraph.”.

15                  (2) COMPLIANCE BY DHS CONTRACTORS WITH  
16                  CONFIDENTIALITY SAFEGUARDS.—

17                  (A) IN GENERAL.—Section 6103(p) of  
18                  such Code is amended by adding at the end the  
19                  following new paragraph:

20                  “(9) DISCLOSURE TO DHS CONTRACTORS.—  
21                  Notwithstanding any other provision of this section,  
22                  no return or return information shall be disclosed to  
23                  any contractor of the Department of Homeland Se-  
24                  curity unless such Department, to the satisfaction of  
25                  the Secretary—

1           “(A) has requirements in effect which re-  
2           quire each such contractor which would have  
3           access to returns or return information to pro-  
4           vide safeguards (within the meaning of para-  
5           graph (4)) to protect the confidentiality of such  
6           returns or return information,

7           “(B) agrees to conduct an on-site review  
8           every 3 years (mid-point review in the case of  
9           contracts or agreements of less than 1 year in  
10          duration) of each contractor to determine com-  
11          pliance with such requirements,

12          “(C) submits the findings of the most re-  
13          cent review conducted under subparagraph (B)  
14          to the Secretary as part of the report required  
15          by paragraph (4)(E), and

16          “(D) certifies to the Secretary for the most  
17          recent annual period that such contractor is in  
18          compliance with all such requirements.

19          “The certification required by subparagraph  
20          (D) shall include the name and address of each con-  
21          tractor, a description of the contract or agreement  
22          with such contractor, and the duration of such con-  
23          tract or agreement.”.

24               (3) CONFORMING AMENDMENTS.—

1 (A) Section 6103(a)(3) of such Code is  
2 amended by striking “or (20)” and inserting  
3 “(20), or (21)”.

4 (B) Section 6103(p)(3)(A) of such Code is  
5 amended by adding at the end the following  
6 new sentence: “The Commissioner of Social Se-  
7 curity shall provide to the Secretary such infor-  
8 mation as the Secretary may require in carrying  
9 out this paragraph with respect to return infor-  
10 mation inspected or disclosed under the author-  
11 ity of subsection (l)(21).”.

12 (C) Section 6103(p)(4) of such Code is  
13 amended—

14 (i) by striking “or (17)” both places it  
15 appears and inserting “(17), or (21)”, and

16 (ii) by striking “or (20)” each place it  
17 appears and inserting “(20), or (21)”.

18 (D) Section 6103(p)(8)(B) of such Code is  
19 amended by inserting “or paragraph (9)” after  
20 “subparagraph (A)”.

21 (E) Section 7213(a)(2) of such Code is  
22 amended by striking “or (20)” and inserting  
23 “(20), or (21)”.

24 (f) AUTHORIZATION OF APPROPRIATIONS.—

1           (1) IN GENERAL.—There are authorized to be  
2           appropriated to the Secretary such sums as are nec-  
3           essary to carry out the amendments made by this  
4           section.

5           (2) LIMITATION ON VERIFICATION RESPON-  
6           SIBILITIES OF COMMISSIONER OF SOCIAL SECUR-  
7           ITY.—The Commissioner of Social Security is au-  
8           thorized to perform activities with respect to car-  
9           rying out the Commissioner’s responsibilities in this  
10          title or the amendments made by this title, but only  
11          to the extent the Secretary has provided, in advance,  
12          funds to cover the Commissioner’s full costs in car-  
13          rying out such responsibilities. In no case shall  
14          funds from the Federal Old-Age and Survivors In-  
15          surance Trust Fund or the Federal Disability Insur-  
16          ance Trust Fund be used to carry out such respon-  
17          sibilities.

18          (g) EFFECTIVE DATES.—

19               (1) IN GENERAL.—The amendments made by  
20               subsections (a), (b), (c), and (d) shall take effect on  
21               the date that is 180 days after the date of the enact-  
22               ment of this Act.

23               (2) SUBSECTION (e).—

24                       (A) IN GENERAL.—The amendments made  
25               by subsection (e) shall apply to disclosures

1           made after the date of the enactment of this  
2           Act.

3                   (B) CERTIFICATIONS.—The first certifi-  
4           cation under section 6103(p)(9)(D) of the In-  
5           ternal Revenue Code of 1986, as added by sub-  
6           section (e)(2), shall be made with respect to cal-  
7           endar year 2007.

8   **SEC. 302. EMPLOYER COMPLIANCE FUND.**

9           Section 286 (8 U.S.C. 1356) is amended by adding  
10          at the end the following new subsection:

11          “(w) EMPLOYER COMPLIANCE FUND.—

12                   “(1) IN GENERAL.—There is established in the  
13          general fund of the Treasury, a separate account,  
14          which shall be known as the ‘Employer Compliance  
15          Fund’ (referred to in this subsection as the ‘Fund’).

16                   “(2) DEPOSITS.—There shall be deposited as  
17          offsetting receipts into the Fund all civil monetary  
18          penalties collected by the Secretary of Homeland Se-  
19          curity under section 274A.

20                   “(3) PURPOSE.—Amounts refunded to the Sec-  
21          retary from the Fund shall be used for the purposes  
22          of enhancing and enforcing employer compliance  
23          with section 274A.

24                   “(4) AVAILABILITY OF FUNDS.—Amounts de-  
25          posited into the Fund shall remain available until



1 expended and shall be refunded out of the Fund by  
2 the Secretary of the Treasury, at least on a quar-  
3 terly basis, to the Secretary of Homeland Security.”.

4 **SEC. 303. ADDITIONAL WORKSITE ENFORCEMENT AND**  
5 **FRAUD DETECTION AGENTS.**

6 (a) INCREASE IN NUMBER OF PERSONNEL.—The  
7 Secretary shall, subject to the availability of appropria-  
8 tions for such purpose, annually increase, by not less than  
9 2,200, the number of personnel of the Bureau of Immigra-  
10 tion and Customs Enforcement during the 5-year period  
11 beginning on the date of the enactment of this Act.

12 (b) USE OF PERSONNEL.—The Secretary shall en-  
13 sure that not less than 25 percent of all the hours ex-  
14 pended by personnel of the Bureau of Immigration and  
15 Customs Enforcement shall be used to enforce compliance  
16 with sections 274A and 274C of the Immigration and Na-  
17 tionality Act (8 U.S.C. 1324a and 1324c).

18 (c) AUTHORIZATION OF APPROPRIATIONS.—There  
19 are authorized to be appropriated to the Secretary for  
20 each of the fiscal years 2008 through 2012 such sums as  
21 may be necessary to carry out this section.

1 **SEC. 304. CLARIFICATION OF INELIGIBILITY FOR MIS-**  
2 **REPRESENTATION.**

3 Section 212(a)(6)(C)(ii)(I) (8 U.S.C.  
4 1182(a)(6)(C)(ii)(I)), is amended by striking “citizen”  
5 and inserting “national”.

6 **SEC. 305. ANTIDISCRIMINATION PROTECTIONS.**

7 (a) APPLICATION OF PROHIBITION OF DISCRIMINA-  
8 TION TO VERIFICATION SYSTEM.—Section 274B(a)(1) (8  
9 U.S.C. 1324b(a)(1)) is amended by inserting “, the  
10 verification of the individual’s work authorization through  
11 the Electronic Employment Verification System described  
12 in section 274A(d),” after “the individual for employ-  
13 ment”.

14 (b) CLASSES OF ALIENS AS PROTECTED INDIVID-  
15 UALS.—Section 274B(a)(3)(B) (8 U.S.C. 1324b(a)(3)(B))  
16 is amended to read as follows:

17 “(B) is an alien who is—

18 “(i) lawfully admitted for permanent  
19 residence;

20 “(ii) granted the status of an alien  
21 lawfully admitted for temporary residence  
22 under section 210(a) or 245(a)(1);

23 “(iii) admitted as a refugee under sec-  
24 tion 207;

25 “(iv) granted asylum under section  
26 208;

1                   “(v) granted the status of a non-  
2                   immigrant                   under                   section  
3                   101(a)(15)(H)(ii)(c);

4                   “(vi) granted temporary protected sta-  
5                   tus under section 244; or

6                   “(vii) granted parole under section  
7                   212(d)(5).”.

8                   (c) REQUIREMENTS FOR ELECTRONIC EMPLOYMENT  
9                   VERIFICATION.—Section 274B(a) (8 U.S.C. 1324b(a)) is  
10                  amended by adding at the end the following:

11                  “(7) ANTIDISCRIMINATION REQUIREMENTS OF  
12                  THE ELECTRONIC EMPLOYMENT VERIFICATION SYS-  
13                  TEM.—It is an unfair immigration-related employ-  
14                  ment practice for a person or other entity, in the  
15                  course of the electronic verification process described  
16                  in section 274A(d)—

17                  “(A) to terminate or undertake any ad-  
18                  verse employment action due to a tentative non-  
19                  confirmation;

20                  “(B) to use the verification system for  
21                  screening of an applicant prior to an offer of  
22                  employment;

23                  “(C) except as described in section  
24                  274A(d)(3)(B), to use the verification system  
25                  for a current employee after the first 3 days of

1 employment, or for the reverification of an em-  
2 ployee after the employee has satisfied the proc-  
3 ess described in section 274A(d); or

4 “(D) to require an individual to make an  
5 inquiry under the self-verification procedures  
6 established in section 274A(d)(8)(E)(iii).”.

7 (d) INCREASE IN CIVIL MONEY PENALTIES.—Section  
8 274B(g)(2) (8 U.S.C. 1324b(g)(2)) is amended—

9 (1) in subparagraph (B)(iv)—

10 (A) in subclause (I), by striking “\$250 and  
11 not more than \$2,000” and inserting “\$1,000  
12 and not more than \$4,000”;

13 (B) in subclause (II), by striking “\$2,000  
14 and not more than \$5,000” and inserting  
15 “\$4,000 and not more than \$10,000”;

16 (C) in subclause (III), by striking “\$3,000  
17 and not more than \$10,000” and inserting  
18 “\$6,000 and not more than \$20,000”; and

19 (D) in subclause (IV), by striking “\$100  
20 and not more than \$1,000” and inserting  
21 “\$500 and not more than \$5,000”.

22 (e) INCREASED FUNDING OF INFORMATION CAM-  
23 PAIGN.—Section 274B(l)(3) (8 U.S.C. 1324b(l)(3)) is  
24 amended by inserting “and an additional \$40,000,000 for

1 each of the fiscal years 2008 through 2010” before the  
2 period at the end.

3 (f) EFFECTIVE DATE.—The amendments made by  
4 this section shall take effect on the date that is 180 days  
5 after the date of the enactment of this Act and shall apply  
6 to violations occurring on or after such date.

7 **TITLE IV—NONIMMIGRANT AND**  
8 **IMMIGRANT VISA REFORM**  
9 **Subtitle A—Temporary Guest**  
10 **Workers**

11 **SEC. 401. IMMIGRATION IMPACT STUDY.**

12 (a) EFFECTIVE DATE.—Any regulation that would  
13 increase the number of aliens who are eligible for legal  
14 status may not take effect before 90 days after the date  
15 on which the Director of the Bureau of the Census sub-  
16 mits a report to Congress under subsection (c).

17 (b) STUDY.—The Director of the Bureau of the Cen-  
18 sus, jointly with the Secretary, the Secretary of Agri-  
19 culture, the Secretary of Education, the Secretary of En-  
20 ergy, the Secretary of Health and Human Services, the  
21 Secretary of Housing and Urban Development, the Sec-  
22 retary of the Interior, the Secretary of Labor, the Sec-  
23 retary of Transportation, the Secretary of the Treasury,  
24 the Attorney General, and the Administrator of the Envi-  
25 ronmental Protection Agency, shall undertake a study ex-

1 amining the impacts of the current and proposed annual  
2 grants of legal status, including immigrant and non-  
3 immigrant status, along with the current level of illegal  
4 immigration, on the infrastructure of and quality of life  
5 in the United States.

6 (c) REPORT.—Not later than 90 days after the date  
7 of the enactment of this Act, the Director of the Bureau  
8 of the Census shall submit to Congress a report on the  
9 findings of the study required by subsection (b), including  
10 the following information:

11 (1) An estimate of the total legal and illegal im-  
12 migrant populations of the United States, as they  
13 relate to the total population.

14 (2) The projected impact of legal and illegal im-  
15 migration on the size of the population of the United  
16 States over the next 50 years, which regions of the  
17 country are likely to experience the largest increases,  
18 which small towns and rural counties are likely to  
19 lose their character as a result of such growth, and  
20 how the proposed regulations would affect these pro-  
21 jections.

22 (3) The impact of the current and projected  
23 foreign-born populations on the natural environment,  
24 including the consumption of nonrenewable re-  
25 sources, waste production and disposal, the emission

1 of pollutants, and the loss of habitat and productive  
2 farmland, an estimate of the public expenditures re-  
3 quired to maintain current standards in each of  
4 these areas, the degree to which current standards  
5 will deteriorate if such expenditures are not forth-  
6 coming, and the additional effects the proposed reg-  
7 ulations would have.

8 (4) The impact of the current and projected  
9 foreign-born populations on employment and wage  
10 rates, particularly in industries such as agriculture  
11 and services in which the foreign born are con-  
12 centrated, an estimate of the associated public costs,  
13 and the additional effects the proposed regulations  
14 would have.

15 (5) The impact of the current and projected  
16 foreign-born populations on the need for additions  
17 and improvements to the transportation infrastruc-  
18 ture of the United States, an estimate of the public  
19 expenditures required to meet this need, the impact  
20 on Americans' mobility if such expenditures are not  
21 forthcoming, and the additional effect the proposed  
22 regulations would have.

23 (6) The impact of the current and projected  
24 foreign-born populations on enrollment, class size,  
25 teacher-student ratios, and the quality of education

1 in public schools, an estimate of the public expendi-  
2 tures required to maintain current median stand-  
3 ards, the degree to those standards will deteriorate  
4 if such expenditures are not forthcoming, and the  
5 additional effect the proposed regulations would  
6 have.

7 (7) The impact of the current and projected  
8 foreign-born populations on home ownership rates,  
9 housing prices, and the demand for low-income and  
10 subsidized housing, the public expenditures required  
11 to maintain current median standards in these  
12 areas, the degree to which those standards will dete-  
13 riorate if such expenditures are not forthcoming, and  
14 the additional effect the proposed regulations would  
15 have.

16 (8) The impact of the current and projected  
17 foreign-born populations on access to quality health  
18 care and on the cost of health care and health insur-  
19 ance, an estimate of the public expenditures required  
20 to maintain current median standards, the degree to  
21 which those standards will deteriorate if such ex-  
22 penditures are not forthcoming, and the additional  
23 effect the proposed regulations would have.

24 (9) The impact of the current and projected  
25 foreign-born populations on the criminal justice sys-



1       tem in the United States, an estimate of the associ-  
2       ated public costs, and the additional effect the pro-  
3       posed regulations would have.

4 **SEC. 402. NONIMMIGRANT TEMPORARY WORKER.**

5       (a) TEMPORARY WORKER CATEGORY.—Section  
6 101(a)(15)(H) (8 U.S.C. 1101(a)(15)(H)) is amended to  
7 read as follows:

8               “(H) an alien—

9                       “(i)(b) subject to section 212(j)(2)—

10                               “(aa) who is coming temporarily  
11                               to the United States to perform serv-  
12                               ices (other than services described in  
13                               clause (ii)(a) or subparagraph (O) or  
14                               (P)) in a specialty occupation de-  
15                               scribed in section 214(i)(1) or as a  
16                               fashion model;

17                               “(bb) who meets the require-  
18                               ments for the occupation specified in  
19                               section 214(i)(2) or, in the case of a  
20                               fashion model, is of distinguished  
21                               merit and ability; and

22                               “(cc) with respect to whom the  
23                               Secretary of Labor determines and  
24                               certifies to the Secretary of Homeland  
25                               Security that the intending employer

1 has filed an application with the Sec-  
2 retary in accordance with section  
3 212(n)(1);

4 “(b1)(aa) who is entitled to enter the  
5 United States under the provisions of an  
6 agreement listed in section 214(g)(8)(A);

7 “(bb) who is engaged in a specialty  
8 occupation described in section 214(i)(3);  
9 and

10 “(cc) with respect to whom the Sec-  
11 retary of Labor determines and certifies to  
12 the Secretary of Homeland Security and  
13 the Secretary of State that the intending  
14 employer has filed an attestation with the  
15 Secretary of Labor in accordance with sec-  
16 tion 212(t)(1); or

17 “(c)(aa) who is coming temporarily to  
18 the United States to perform services as a  
19 registered nurse;

20 “(bb) who meets the qualifications de-  
21 scribed in section 212(m)(1); and

22 “(cc) with respect to whom the Sec-  
23 retary of Labor determines and certifies to  
24 the Secretary of Homeland Security that  
25 an unexpired attestation is on file and in

1 effect under section 212(m)(2) for the fa-  
2 cility (as defined in section 212(m)(6)) for  
3 which the alien will perform the services;  
4 or

5 “(ii)(a) who—

6 “(aa) has a residence in a foreign  
7 country which the alien has no inten-  
8 tion of abandoning; and

9 “(bb) is coming temporarily to  
10 the United States to perform agricul-  
11 tural labor or services (as defined by  
12 the Secretary of Labor), including ag-  
13 ricultural labor (as defined in section  
14 3121(g) of the Internal Revenue Code  
15 of 1986), agriculture (as defined in  
16 section 3(f) of the Fair Labor Stand-  
17 ards Act of 1938 (29 U.S.C. 203(f)),  
18 and the pressing of apples for cider on  
19 a farm, of a temporary or seasonal  
20 nature;

21 “(b) 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 non-  
3           agricultural work or services of a tem-  
4           porary or seasonal nature (if unem-  
5           ployed persons capable of performing  
6           such work or services cannot be found  
7           in the United States), excluding med-  
8           ical school graduates coming to the  
9           United States to perform services as  
10          members of the medical profession; or  
11          “(c) who—

12           “(aa) has a residence in a foreign  
13          country which the alien has no inten-  
14          tion of abandoning;

15           “(bb) is coming temporarily to  
16          the United States to perform tem-  
17          porary labor or services other than the  
18          labor or services described in clause  
19          (i)(b), (i)(c), (ii)(a), or (iii), or sub-  
20          paragraph (L), (O), (P), or (R) (if  
21          unemployed persons capable of per-  
22          forming such labor or services cannot  
23          be found in the United States); and

24           “(cc) meets the requirements  
25          under section 218A, including the fil-

1                   ing of a petition under such section on  
2                   behalf of the alien;

3                   “(iii) who—

4                         “(a) has a residence in a foreign  
5                         country which the alien has no inten-  
6                         tion of abandoning; and

7                         “(b) is coming temporarily to the  
8                         United States as a trainee (other than  
9                         to receive graduate medical education  
10                        or training) in a training program  
11                        that is not designed primarily to pro-  
12                        vide productive employment; or

13                   “(iv) who—

14                         “(a) is the spouse or a minor  
15                         child of an alien described in this sub-  
16                         paragraph; and

17                         “(b) is accompanying or following  
18                         to join such alien.”.

19           (b) EFFECTIVE DATE AND APPLICATION.—The  
20 amendment made by subsection (a) shall take effect on  
21 the date that is 18 months after the date that not less  
22 than \$400,000,000 have been appropriated and made  
23 available to the Secretary to implement the Electronic  
24 Employment Verification System established under  
25 274A(d) of the Immigration and Nationality Act, as

1 amended by section 301(a), with respect to aliens, who,  
2 on such effective date, are outside of the United States.

3 **SEC. 403. ADMISSION OF NONIMMIGRANT TEMPORARY**  
4 **GUEST WORKERS.**

5 (a) TEMPORARY GUEST WORKERS.—

6 (1) IN GENERAL.—Chapter 2 of title II (8  
7 U.S.C. 1181 et seq.) is amended by inserting after  
8 section 218 the following:

9 **“SEC. 218A. ADMISSION OF H-2C NONIMMIGRANTS.**

10 “(a) AUTHORIZATION.—The Secretary of State may  
11 grant a temporary visa to an H-2C nonimmigrant who  
12 demonstrates an intent to perform labor or services in the  
13 United States (other than the labor or services described  
14 in clause (i)(b) or (ii)(a) of section 101(a)(15)(H) or sub-  
15 paragraph (L), (O), (P), or (R)) of section 101(a)(15).

16 “(b) REQUIREMENTS FOR ADMISSION.—An alien  
17 shall be eligible for H-2C nonimmigrant status if the alien  
18 meets the following requirements:

19 “(1) ELIGIBILITY TO WORK.—The alien shall  
20 establish that the alien is capable of performing the  
21 labor or services required for an occupation under  
22 section 101(a)(15)(H)(ii)(c).

23 “(2) EVIDENCE OF EMPLOYMENT.—The alien  
24 shall establish that the alien has received a job offer

1 from an employer who has complied with the re-  
2 quirements of 218B.

3 “(3) FEE.—The alien shall pay a \$500 visa  
4 issuance fee in addition to the cost of processing and  
5 adjudicating such application. Nothing in this para-  
6 graph shall be construed to affect consular proce-  
7 dures for charging reciprocal fees.

8 “(4) MEDICAL EXAMINATION.—The alien shall  
9 undergo a medical examination (including a deter-  
10 mination of immunization status), at the alien’s ex-  
11 pense, that conforms to generally accepted standards  
12 of medical practice.

13 “(5) APPLICATION CONTENT AND WAIVER.—

14 “(A) APPLICATION FORM.—The alien shall  
15 submit to the Secretary a completed applica-  
16 tion, on a form designed by the Secretary of  
17 Homeland Security, including proof of evidence  
18 of the requirements under paragraphs (1) and  
19 (2).

20 “(B) CONTENT.—In addition to any other  
21 information that the Secretary requires to de-  
22 termine an alien’s eligibility for H-2C non-  
23 immigrant status, the Secretary shall require an  
24 alien to provide information concerning the  
25 alien’s—

1                   “(i) physical and mental health;

2                   “(ii) criminal history and gang mem-  
3                   bership;

4                   “(iii) immigration history; and

5                   “(iv) involvement with groups or indi-  
6                   viduals that have engaged in terrorism,  
7                   genocide, persecution, or who seek the  
8                   overthrow of the United States Govern-  
9                   ment.

10                  “(C) KNOWLEDGE.—The alien shall in-  
11                  clude with the application submitted under this  
12                  paragraph a signed certification in which the  
13                  alien certifies that—

14                         “(i) the alien has read and under-  
15                         stands all of the questions and statements  
16                         on the application form;

17                         “(ii) the alien certifies under penalty  
18                         of perjury under the laws of the United  
19                         States that the application, and any evi-  
20                         dence submitted with it, are all true and  
21                         correct; and

22                         “(iii) the applicant authorizes the re-  
23                         lease of any information contained in the  
24                         application and any attached evidence for  
25                         law enforcement purposes.



1 “(c) GROUNDS OF INADMISSIBILITY.—

2 “(1) IN GENERAL.—In determining an alien’s  
3 admissibility as an H-2C nonimmigrant—

4 “(A) paragraphs (5), (6)(A), (7), (9)(B),  
5 and (9)(C) of section 212(a) may be waived for  
6 conduct that occurred before the effective date  
7 of the Comprehensive Immigration Reform Act  
8 of 2007;

9 “(B) the Secretary of Homeland Security  
10 may not waive the application of—

11 “(i) subparagraph (A), (B), (C), (E),  
12 (G), (H), or (I) of section 212(a)(2) (relat-  
13 ing to criminals);

14 “(ii) section 212(a)(3) (relating to se-  
15 curity and related grounds); or

16 “(iii) subparagraph (A), (C) or (D) of  
17 section 212(a)(10) (relating to polygamists  
18 and child abductors); and

19 “(C) for conduct that occurred before the  
20 date of the enactment of the Comprehensive  
21 Immigration Reform Act of 2007, the Secretary  
22 of Homeland Security may waive the applica-  
23 tion of any provision of section 212(a) not list-  
24 ed in subparagraph (B) on behalf of an indi-  
25 vidual alien—

1                   “(i) for humanitarian purposes;  
2                   “(ii) to ensure family unity; or  
3                   “(iii) if such a waiver is otherwise in  
4                   the public interest.

5                   “(2) RENEWAL OF AUTHORIZED ADMISSION  
6                   AND SUBSEQUENT ADMISSIONS.—An alien seeking  
7                   renewal of authorized admission or subsequent ad-  
8                   mission as an H-2C nonimmigrant shall establish  
9                   that the alien is not inadmissible under section  
10                  212(a).

11                  “(d) BACKGROUND CHECKS.—The Secretary of  
12                  Homeland Security shall not admit, and the Secretary of  
13                  State shall not issue a visa to, an alien seeking H-2C non-  
14                  immigrant status unless all appropriate background  
15                  checks have been completed.

16                  “(e) INELIGIBLE TO CHANGE NONIMMIGRANT CLAS-  
17                  SIFICATION.—An H-2C nonimmigrant may not change  
18                  nonimmigrant classification under section 248.

19                  “(f) PERIOD OF AUTHORIZED ADMISSION.—

20                  “(1) AUTHORIZED PERIOD AND RENEWAL.—  
21                  The initial period of authorized admission as an H-  
22                  2C nonimmigrant shall be 3 years, and the alien  
23                  may seek 1 extension for an additional 3-year pe-  
24                  riod.

1           “(2) INTERNATIONAL COMMUTERS.—An alien  
2 who resides outside the United States and commutes  
3 into the United States to work as an H-2C non-  
4 immigrant, is not subject to the time limitations  
5 under paragraph (1).

6           “(3) LOSS OF EMPLOYMENT.—

7           “(A) IN GENERAL.—

8           “(i) PERIOD OF UNEMPLOYMENT.—  
9 Subject to clause (ii) and subsection (c),  
10 the period of authorized admission of an  
11 H-2C nonimmigrant shall terminate if the  
12 alien is unemployed for 60 or more con-  
13 secutive days.

14           “(ii) EXCEPTION.—The period of au-  
15 thorized admission of an H-2C non-  
16 immigrant shall not terminate if the alien  
17 is unemployed for 60 or more consecutive  
18 days if such unemployment is caused by—

19           “(I) a period of physical or men-  
20 tal disability of the alien or the  
21 spouse, son, daughter, or parent (as  
22 defined in section 101 of the Family  
23 and Medical Leave Act of 1993 (29  
24 U.S.C. 2611)) of the alien;

1                   “(II) a period of vacation, med-  
2                   ical leave, maternity leave, or similar  
3                   leave from employment authorized by  
4                   employer policy, State law, or Federal  
5                   law; or

6                   “(III) any other period of tem-  
7                   porary unemployment caused by cir-  
8                   cumstances beyond the control of the  
9                   alien.

10                   “(B) RETURN TO FOREIGN RESIDENCE.—  
11                   Any alien whose period of authorized admission  
12                   terminates under subparagraph (A) shall be re-  
13                   quired to leave the United States.

14                   “(C) PERIOD OF VISA VALIDITY.—Any  
15                   alien, whose period of authorized admission ter-  
16                   minates under subparagraph (A), who leaves  
17                   the United States under subparagraph (B),  
18                   may reenter the United States as an H-2C  
19                   nonimmigrant to work for an employer, if the  
20                   alien has complied with the requirements of  
21                   subsection (b). The Secretary may, in the Sec-  
22                   retary’s sole and unreviewable discretion, reau-  
23                   thorize such alien for admission as an H-2C  
24                   nonimmigrant without requiring the alien’s de-  
25                   parture from the United States.

1 “(4) VISITS OUTSIDE UNITED STATES.—

2 “(A) IN GENERAL.—Under regulations es-  
3 tablished by the Secretary of Homeland Secu-  
4 rity, an H-2C nonimmigrant—

5 “(i) may travel outside of the United  
6 States; and

7 “(ii) may be readmitted without hav-  
8 ing to obtain a new visa if the period of  
9 authorized admission has not expired.

10 “(B) EFFECT ON PERIOD OF AUTHORIZED  
11 ADMISSION.—Time spent outside the United  
12 States under subparagraph (A) shall not extend  
13 the period of authorized admission in the  
14 United States.

15 “(5) BARS TO EXTENSION OR ADMISSION.—An  
16 alien may not be granted H-2C nonimmigrant sta-  
17 tus, or an extension of such status, if—

18 “(A) the alien has violated any material  
19 term or condition of such status granted pre-  
20 viously, including failure to comply with the  
21 change of address reporting requirements under  
22 section 265;

23 “(B) the alien is inadmissible as a non-  
24 immigrant; or

1           “(C) the granting of such status or exten-  
2           sion of such status would allow the alien to ex-  
3           ceed 6 years as an H-2C nonimmigrant, unless  
4           the alien has resided and been physically  
5           present outside the United States for at least 1  
6           year after the expiration of such H-2C non-  
7           immigrant status.

8           “(g) EVIDENCE OF NONIMMIGRANT STATUS.—Each  
9           H-2C nonimmigrant shall be issued documentary evidence  
10          of nonimmigrant status, which—

11           “(1) shall be machine-readable, tamper-resist-  
12          ant, and allow for biometric authentication;

13           “(2) shall be designed in consultation with the  
14          Forensic Document Laboratory of the Bureau of  
15          Immigration and Customs Enforcement;

16           “(3) shall, during the alien’s authorized period  
17          of admission under subsection (f), serve as a valid  
18          entry document for the purpose of applying for ad-  
19          mission to the United States—

20           “(A) instead of a passport and visa if the  
21          alien—

22           “(i) is a national of a foreign territory  
23          contiguous to the United States; and

24           “(ii) is applying for admission at a  
25          land border port of entry; and

1           “(B) in conjunction with a valid passport,  
2           if the alien is applying for admission at an air  
3           or sea port of entry;

4           “(4) may be accepted during the period of its  
5           validity by an employer as evidence of employment  
6           authorization and identity under section  
7           274A(b)(1)(B); and

8           “(5) shall be issued to the H-2C nonimmigrant  
9           by the Secretary of Homeland Security promptly  
10          after the final adjudication of such alien’s applica-  
11          tion for H-2C nonimmigrant status.

12          “(h) PENALTY FOR FAILURE TO DEPART.—If an H-  
13          2C nonimmigrant fails to depart the United States before  
14          the date which is 10 days after the date that the alien’s  
15          authorized period of admission as an H-2C nonimmigrant  
16          terminates, the H-2C nonimmigrant may not apply for  
17          or receive any immigration relief or benefit under this Act  
18          or any other law, except for relief under sections 208 and  
19          241(b)(3) and relief under the Convention Against Tor-  
20          ture and Other Cruel, Inhuman or Degrading Treatment  
21          or Punishment, for an alien who indicates either an inten-  
22          tion to apply for asylum under section 208 or a fear of  
23          persecution or torture.

24          “(i) PENALTY FOR ILLEGAL ENTRY OR OVERSTAY.—  
25          Any alien who enters, attempts to enter, or crosses the

1 border after the date of the enactment of this section, and  
2 is physically present in the United States after such date  
3 in violation of this Act or of any other Federal law, may  
4 not receive, for a period of 10 years—

5           “(1) any relief under section 240A(a),  
6           240A(b)(1), or 240B; or

7           “(2) nonimmigrant status under section  
8           101(a)(15) (except subparagraphs (T) and (U)).

9           “(j) PORTABILITY.—A nonimmigrant alien described  
10 in this section, who was previously issued a visa or other-  
11 wise provided H-2C nonimmigrant status, may accept a  
12 new offer of employment with a subsequent employer, if—

13           “(1) the employer complies with section 218B;  
14           and

15           “(2) the alien, after lawful admission to the  
16           United States, did not work without authorization.

17           “(k) CHANGE OF ADDRESS.—An H-2C non-  
18 immigrant shall comply with the change of address report-  
19 ing requirements under section 265 through either elec-  
20 tronic or paper notification.

21           “(l) COLLECTION OF FEES.—All fees collected under  
22 this section shall be deposited in the Treasury in accord-  
23 ance with section 286(e).

24           “(m) ISSUANCE OF H-4 NONIMMIGRANT VISAS FOR  
25 SPOUSE AND CHILDREN.—



1           “(1) IN GENERAL.—The alien spouse and chil-  
2           dren of an H-2C nonimmigrant (referred to in this  
3           section as ‘dependent aliens’) who are accompanying  
4           or following to join the H-2C nonimmigrant may be  
5           issued nonimmigrant visas under section  
6           101(a)(15)(H)(iv).

7           “(2) REQUIREMENTS FOR ADMISSION.—A de-  
8           pendent alien is eligible for nonimmigrant status  
9           under 101(a)(15)(H)(iv) if the dependent alien  
10          meets the following requirements:

11           “(A) ELIGIBILITY.—The dependent alien is  
12           admissible as a nonimmigrant and does not fall  
13           within a class of aliens ineligible for H-4A non-  
14           immigrant status listed under subsection (c).

15           “(B) MEDICAL EXAMINATION.—Before a  
16           nonimmigrant visa is issued to a dependent  
17           alien under this subsection, the dependent alien  
18           shall submit to a medical examination (includ-  
19           ing a determination of immunization status) at  
20           the alien’s expense, that conforms to generally  
21           accepted standards of medical practice.

22           “(C) BACKGROUND CHECKS.—Before a  
23           nonimmigrant visa is issued to a dependent  
24           alien under this section, the consular officer  
25           shall conduct such background checks as the

1 Secretary of State, in consultation with the Sec-  
2 retary of Homeland Security, considers appro-  
3 priate.

4 “(n) DEFINITIONS.—In this section and sections  
5 218B, 218C, and 218D:

6 “(1) AGGRIEVED PERSON.—term ‘aggrieved  
7 person’ means a person adversely affected by an al-  
8 leged violation of this section, including—

9 “(A) a worker whose job, wages, or work-  
10 ing conditions are adversely affected by the vio-  
11 lation; and

12 “(B) a representative for workers whose  
13 jobs, wages, or working conditions are adversely  
14 affected by the violation who brings a complaint  
15 on behalf of such worker.

16 “(2) AREA OF EMPLOYMENT.—The terms ‘area  
17 of employment’ and ‘area of intended employment’  
18 mean the area within normal commuting distance of  
19 the worksite or physical location at which the work  
20 of the temporary worker is or will be performed. If  
21 such worksite or location is within a Metropolitan  
22 Statistical Area, any place within such area is  
23 deemed to be within the area of employment.

24 “(3) ELIGIBLE INDIVIDUAL.—The term ‘eligible  
25 individual’ means, with respect to employment, an

1 individual who is not an unauthorized alien (as de-  
2 fined in section 274A) with respect to that employ-  
3 ment.

4 “(4) EMPLOY; EMPLOYEE; EMPLOYER.—The  
5 terms ‘employ’, ‘employee’, and ‘employer’ have the  
6 meanings given such terms in section 3 of the Fair  
7 Labor Standards Act of 1938 (29 U.S.C. 203).

8 “(5) FOREIGN LABOR CONTRACTOR.—The term  
9 ‘foreign labor contractor’ means any person who for  
10 any compensation or other valuable consideration  
11 paid or promised to be paid, performs any foreign  
12 labor contracting activity.

13 “(6) FOREIGN LABOR CONTRACTING ACTIV-  
14 ITY.—The term ‘foreign labor contracting activity’  
15 means recruiting, soliciting, hiring, employing, or  
16 furnishing, an individual who resides outside of the  
17 United States for employment in the United States  
18 as a nonimmigrant alien described in section  
19 101(a)(15)(H)(ii)(c).

20 “(7) H-2C NONIMMIGRANT.—The term ‘H-2C  
21 nonimmigrant’ means a nonimmigrant described in  
22 section 101(a)(15)(H)(ii)(c).

23 “(8) SEPARATION FROM EMPLOYMENT.—The  
24 term ‘separation from employment’ means the work-  
25 er’s loss of employment, other than through a dis-

1 charge for inadequate performance, violation of  
2 workplace rules, cause, voluntary departure, vol-  
3 untary retirement, or the expiration of a grant or  
4 contract. The term does not include any situation in  
5 which the worker is offered, as an alternative to  
6 such loss of employment, a similar employment op-  
7 portunity with the same employer at equivalent or  
8 higher compensation and benefits than the position  
9 from which the employee was discharged, regardless  
10 of whether the employee accepts the offer. Nothing  
11 in this paragraph shall limit an employee's rights  
12 under a collective bargaining agreement or other em-  
13 ployment contract.

14 “(9) UNITED STATES WORKER.—The term  
15 ‘United States worker’ means an employee who is—

16 “(A) a citizen or national of the United  
17 States; or

18 “(B) an alien who is—

19 “(i) lawfully admitted for permanent  
20 residence;

21 “(ii) admitted as a refugee under sec-  
22 tion 207;

23 “(iii) granted asylum under section  
24 208; or

1                   “(iv) otherwise authorized, under this  
2                   Act or by the Secretary of Homeland Secu-  
3                   rity, to be employed in the United States.”.

4                   (2) CLERICAL AMENDMENT.—The table of con-  
5                   tents for the Immigration and Nationality Act (8  
6                   U.S.C. 1101 et seq.) is amended by inserting after  
7                   the item relating to section 218 the following:

“Sec. 218A. Admission of temporary H-2C workers.”.

8   **SEC. 404. EMPLOYER OBLIGATIONS.**

9                   (a) IN GENERAL.—Title II (8 U.S.C. 1201 et seq.)  
10 is amended by inserting after section 218A, as added by  
11 section 403, the following:

12   **“SEC. 218B. EMPLOYER OBLIGATIONS.**

13                   “(a) GENERAL REQUIREMENTS.—Each employer  
14 who employs an H-2C nonimmigrant shall—

15                   “(1) file a petition in accordance with sub-  
16                   section (b); and

17                   “(2) pay the appropriate fee, as determined by  
18                   the Secretary of Labor.

19                   “(b) REQUIRED PROCEDURE.—Except where the  
20 Secretary of Labor has determined that there is a shortage  
21 of United States workers in the occupation and area of  
22 intended employment to which the H-2C nonimmigrant  
23 is sought—

24                   “(1) EFFORTS TO RECRUIT UNITED STATES  
25                   WORKERS.—During the period beginning not later

1 than 90 days prior to the date on which a petition  
2 is filed under subsection (a)(1), and ending on the  
3 date that is 14 days prior to the date on which the  
4 petition is filed, the employer involved shall take the  
5 following steps to recruit United States workers for  
6 the position for which the H-2C nonimmigrant is  
7 sought under the petition:

8 “(A) Submit a copy of the job opportunity,  
9 including a description of the wages and other  
10 terms and conditions of employment and the  
11 minimum education, training, experience and  
12 other requirements of the job, to the State Em-  
13 ployment Service Agency that serves the area of  
14 employment in the State in which the employer  
15 is located.

16 “(B) Authorize the State Employment  
17 Service Agency to post the job opportunity on  
18 the Internet through the website for America’s  
19 Job Bank, with local job banks, and with unem-  
20 ployment agencies and other labor referral and  
21 recruitment sources pertinent to the job in-  
22 volved.

23 “(C) Authorize the State Employment  
24 Service Agency to notify labor organizations in  
25 the State in which the job is located, and if ap-

1           plicable, the office of the local union which rep-  
2           resents the employees in the same or substan-  
3           tially equivalent job classification of the job op-  
4           portunity.

5           “(D) Post the availability of the job oppor-  
6           tunity for which the employer is seeking a  
7           worker in conspicuous locations at the place of  
8           employment for all employees to see.

9           “(2) EFFORTS TO EMPLOY UNITED STATES  
10          WORKERS.—An employer that seeks to employ an  
11          H-2C nonimmigrant shall—

12                 “(A) first offer the job to any eligible  
13                 United States worker who applies, is qualified  
14                 for the job and is available at the time of need,  
15                 notwithstanding any other valid employment  
16                 criteria.

17          “(c) PETITION.—A petition to hire an H-2C non-  
18          immigrant under this section shall include an attestation  
19          by the employer of the following:

20                 “(1) PROTECTION OF UNITED STATES WORK-  
21                 ERS.—The employment of an H-2C non-  
22                 immigrant—

23                         “(A) will not adversely affect the wages  
24                         and working conditions of workers in the  
25                         United States similarly employed; and

1           “(B) did not and will not cause the separa-  
2           tion from employment of a United States work-  
3           er employed by the employer within the 180-day  
4           period beginning 90 days before the date on  
5           which the petition is filed.

6           “(2) WAGES.—

7           “(A) IN GENERAL.—The H-2C non-  
8           immigrant will be paid not less than the greater  
9           of—

10           “(i) the actual wage level paid by the  
11           employer to all other individuals with simi-  
12           lar experience and qualifications for the  
13           specific employment in question; or

14           “(ii) the prevailing wage level for the  
15           occupational classification in the area of  
16           employment, taking into account experi-  
17           ence and skill levels of employees.

18           “(B) CALCULATION.—The wage levels  
19           under subparagraph (A) shall be calculated  
20           based on the best information available at the  
21           time of the filing of the application.

22           “(C) PREVAILING WAGE LEVEL.—For pur-  
23           poses of subparagraph (A)(ii), the prevailing  
24           wage level shall be determined in accordance as  
25           follows:



1           “(i) If the job opportunity is covered  
2           by a collective bargaining agreement be-  
3           tween a union and the employer, the pre-  
4           vailing wage shall be the wage rate set  
5           forth in the collective bargaining agree-  
6           ment.

7           “(ii) If the job opportunity is not cov-  
8           ered by such an agreement and it is in an  
9           occupation that is covered by a wage deter-  
10          mination under a provision of subchapter  
11          IV of chapter 31 of title 40, United States  
12          Code, or the Service Contract Act of 1965  
13          (41 U.S.C. 351 et seq.), the prevailing  
14          wage level shall be the appropriate statu-  
15          tory wage.

16          “(iii)(I) If the job opportunity is not  
17          covered by such an agreement and it is in  
18          an occupation that is not covered by a  
19          wage determination under a provision of  
20          subchapter IV of chapter 31 of title 40,  
21          United States Code, or the Service Con-  
22          tract Act of 1965 (41 U.S.C. 351 et seq.),  
23          the prevailing wage level shall be based on  
24          published wage data for the occupation  
25          from the Bureau of Labor Statistics, in-

1 including the Occupational Employment Sta-  
2 tistics survey, Current Employment Statis-  
3 tics data, National Compensation Survey,  
4 and Occupational Employment Projections  
5 program. If the Bureau of Labor Statistics  
6 does not have wage data applicable to such  
7 occupation, the employer may base the pre-  
8 vailing wage level on another wage survey  
9 approved by the Secretary of Labor.

10 “(II) The Secretary shall promulgate  
11 regulations applicable to approval of such  
12 other wage surveys that require, among  
13 other things, that the Bureau of Labor  
14 Statistics determine such surveys are sta-  
15 tistically viable.

16 “(3) WORKING CONDITIONS.—All workers in  
17 the occupation at the place of employment at which  
18 the H-2C nonimmigrant will be employed will be  
19 provided the working conditions and benefits that  
20 are normal to workers similarly employed in the area  
21 of intended employment.

22 “(4) LABOR DISPUTE.—There is not a strike,  
23 lockout, or work stoppage in the course of a labor  
24 dispute in the occupation at the place of employment  
25 at which the H-2C nonimmigrant will be employed.

1 If such strike, lockout, or work stoppage occurs fol-  
2 lowing submission of the petition, the employer will  
3 provide notification in accordance with regulations  
4 promulgated by the Secretary of Labor.

5 “(5) PROVISION OF INSURANCE.—If the posi-  
6 tion for which the H-2C nonimmigrant is sought is  
7 not covered by the State workers’ compensation law,  
8 the employer will provide, at no cost to the H-2C  
9 nonimmigrant, insurance covering injury and disease  
10 arising out of, and in the course of, the worker’s em-  
11 ployment, which will provide benefits at least equal  
12 to those provided under the State workers’ com-  
13 pensation law for comparable employment.

14 “(6) NOTICE TO EMPLOYEES.—

15 “(A) IN GENERAL.—The employer has pro-  
16 vided notice of the filing of the petition to the  
17 bargaining representative of the employer’s em-  
18 ployees in the occupational classification and  
19 area of employment for which the H-2C non-  
20 immigrant is sought.

21 “(B) NO BARGAINING REPRESENTATIVE.—  
22 If there is no such bargaining representative,  
23 the employer has—

24 “(i) posted a notice of the filing of the  
25 petition in a conspicuous location at the

1 place or places of employment for which  
2 the H-2C nonimmigrant is sought; or

3 “(ii) electronically disseminated such  
4 a notice to the employer’s employees in the  
5 occupational classification for which the  
6 H-2C nonimmigrant is sought.

7 “(7) RECRUITMENT.—Except where the Sec-  
8 retary of Labor has determined that there is a  
9 shortage of United States workers in the occupation  
10 and area of intended employment for which the H-  
11 2C nonimmigrant is sought—

12 “(A) there are not sufficient workers who  
13 are able, willing, and qualified, and who will be  
14 available at the time and place needed, to per-  
15 form the labor or services involved in the peti-  
16 tion; and

17 “(B) good faith efforts have been taken to  
18 recruit United States workers, in accordance  
19 with regulations promulgated by the Secretary  
20 of Labor, which efforts included—

21 “(i) the completion of recruitment  
22 during the period beginning on the date  
23 that is 90 days before the date on which  
24 the petition was filed with the Department  
25 of Homeland Security and ending on the

1 date that is 14 days before such filing  
2 date; and

3 “(ii) the actual wage paid by the em-  
4 ployer for the occupation in the areas of  
5 intended employment was used in con-  
6 ducting recruitment.

7 “(8) INELIGIBILITY.—The employer is not cur-  
8 rently ineligible from using the H-2C nonimmigrant  
9 program described in this section.

10 “(9) BONAFIDE OFFER OF EMPLOYMENT.—The  
11 job for which the H-2C nonimmigrant is sought is  
12 a bona fide job—

13 “(A) for which the employer needs labor or  
14 services;

15 “(B) which has been and is clearly open to  
16 any United States worker; and

17 “(C) for which the employer will be able to  
18 place the H-2C nonimmigrant on the payroll.

19 “(10) PUBLIC AVAILABILITY AND RECORDS RE-  
20 TENTION.—A copy of each petition filed under this  
21 section and documentation supporting each attesta-  
22 tion, in accordance with regulations promulgated by  
23 the Secretary of Labor, will—

24 “(A) be provided to every H-2C non-  
25 immigrant employed under the petition;

1           “(B) be made available for public examina-  
2           tion at the employer’s place of business or work  
3           site;

4           “(C) be made available to the Secretary of  
5           Labor during any audit; and

6           “(D) remain available for examination for  
7           5 years after the date on which the petition is  
8           filed.

9           “(11) NOTIFICATION UPON SEPARATION FROM  
10          OR TRANSFER OF EMPLOYMENT.—The employer will  
11          notify the Secretary of Labor and the Secretary of  
12          Homeland Security of an H–2C nonimmigrant’s sep-  
13          aration from employment or transfer to another em-  
14          ployer not more than 3 business days after the date  
15          of such separation or transfer, in accordance with  
16          regulations promulgated by the Secretary of Home-  
17          land Security.

18          “(12) ACTUAL NEED FOR LABOR OR SERV-  
19          ICES.—The petition was filed not more than 60 days  
20          before the date on which the employer needed labor  
21          or services for which the H–2C nonimmigrant is  
22          sought.

23          “(d) AUDIT OF ATTESTATIONS.—

24          “(1) REFERRALS BY SECRETARY OF HOMELAND  
25          SECURITY.—The Secretary of Homeland Security

1 shall refer all approved petitions for H-2C non-  
2 immigrants to the Secretary of Labor for potential  
3 audit.

4 “(2) AUDITS AUTHORIZED.—The Secretary of  
5 Labor may audit any approved petition referred pur-  
6 suant to paragraph (1), in accordance with regula-  
7 tions promulgated by the Secretary of Labor.

8 “(e) INELIGIBLE EMPLOYERS.—

9 “(1) IN GENERAL.—The Secretary of Homeland  
10 Security shall not approve an employer’s petitions,  
11 applications, certifications, or attestations under any  
12 immigrant or nonimmigrant program if the Sec-  
13 retary of Labor determines, after notice and an op-  
14 portunity for a hearing, that the employer submit-  
15 ting such documents—

16 “(A) has, with respect to the attestations  
17 required under subsection (b)—

18 “(i) misrepresented a material fact;

19 “(ii) made a fraudulent statement; or

20 “(iii) failed to comply with the terms  
21 of such attestations; or

22 “(B) failed to cooperate in the audit proc-  
23 ess in accordance with regulations promulgated  
24 by the Secretary of Labor.

1           “(2) LENGTH OF INELIGIBILITY.—An employer  
2 described in paragraph (1) shall be ineligible to par-  
3 ticipate in the labor certification programs of the  
4 Secretary of Labor for not less than the time period  
5 determined by the Secretary, not to exceed 3 years.

6           “(3) EMPLOYERS IN HIGH UNEMPLOYMENT  
7 AREAS.—Beginning on the date that is 1 year after  
8 the date of the enactment of the Initial Entry, Ad-  
9 justment, and Citizenship Assistance Grant Act of  
10 2007, the Secretary of Homeland Security may not  
11 approve any employer’s petition under subsection (b)  
12 if the work to be performed by the H–2C non-  
13 immigrant is not agriculture based and is located in  
14 a metropolitan or micropolitan statistical area (as  
15 defined by the Office of Management and Budget)  
16 in which the unemployment rate for workers who  
17 have not completed any education beyond a high  
18 school diploma during the most recently completed  
19 6-month period averaged more than 9.0 percent.

20           “(f) REGULATION OF FOREIGN LABOR CONTRAC-  
21 TORS.—

22           “(1) COVERAGE.—Notwithstanding any other  
23 provision of law, an H–2C nonimmigrant may not be  
24 treated as an independent contractor.



1           “(2) APPLICABILITY OF LAWS.—An H–2C non-  
2 immigrant shall not be denied any right or any reme-  
3 dy under Federal, State, or local labor or employ-  
4 ment law that would be applicable to a United  
5 States worker employed in a similar position with  
6 the employer because of the alien’s status as a non-  
7 immigrant worker.

8           “(3) TAX RESPONSIBILITIES.—With respect to  
9 each employed H–2C nonimmigrant, an employer  
10 shall comply with all applicable Federal, State, and  
11 local tax and revenue laws.

12          “(g) WHISTLEBLOWER PROTECTION.—It shall be un-  
13 lawful for an employer or a labor contractor of an H–2C  
14 nonimmigrant to intimidate, threaten, restrain, coerce, re-  
15 taliate, discharge, or in any other manner, discriminate  
16 against an employee or former employee because the em-  
17 ployee or former employee—

18           “(1) discloses information to the employer or  
19 any other person that the employee or former em-  
20 ployee reasonably believes demonstrates a violation  
21 of this Act; or

22           “(2) cooperates or seeks to cooperate in an in-  
23 vestigation or other proceeding concerning compli-  
24 ance with the requirements of this Act.

25          “(h) LABOR RECRUITERS.—

1           “(1) IN GENERAL.—Each employer that en-  
2 engages in foreign labor contracting activity and each  
3 foreign labor contractor shall ascertain and disclose,  
4 to each such worker who is recruited for employment  
5 at the time of the worker’s recruitment—

6                   “(A) the place of employment;

7                   “(B) the compensation for the employ-  
8 ment;

9                   “(C) a description of employment activi-  
10 ties;

11                   “(D) the period of employment;

12                   “(E) any other employee benefit to be pro-  
13 vided and any costs to be charged for each ben-  
14 efit;

15                   “(F) any travel or transportation expenses  
16 to be assessed;

17                   “(G) the existence of any labor organizing  
18 effort, strike, lockout, or other labor dispute at  
19 the place of employment;

20                   “(H) the existence of any arrangement  
21 with any owner, employer, foreign contractor,  
22 or its agent where such person receives a com-  
23 mission from the provision of items or services  
24 to workers;

1           “(I) the extent to which workers will be  
2 compensated through workers’ compensation,  
3 private insurance, or otherwise for injuries or  
4 death, including—

5           “(i) work related injuries and death  
6 during the period of employment;

7           “(ii) the name of the State workers’  
8 compensation insurance carrier or the  
9 name of the policyholder of the private in-  
10 surance;

11           “(iii) the name and the telephone  
12 number of each person who must be noti-  
13 fied of an injury or death; and

14           “(iv) the time period within which  
15 such notice must be given;

16           “(J) any education or training to be pro-  
17 vided or required, including—

18           “(i) the nature and cost of such train-  
19 ing;

20           “(ii) the entity that will pay such  
21 costs; and

22           “(iii) whether the training is a condi-  
23 tion of employment, continued employ-  
24 ment, or future employment; and

1           “(K) a statement, in a form specified by  
2           the Secretary of Labor, describing the protec-  
3           tions of this Act for workers recruited abroad.

4           “(2) FALSE OR MISLEADING INFORMATION.—  
5           No foreign labor contractor or employer who en-  
6           gages in foreign labor contracting activity shall  
7           knowingly provide material false or misleading infor-  
8           mation to any worker concerning any matter re-  
9           quired to be disclosed in paragraph (1).

10           “(3) LANGUAGES.—The information required to  
11           be disclosed under paragraph (1) shall be provided  
12           in writing in English or, as necessary and reason-  
13           able, in the language of the worker being recruited.  
14           The Secretary of Labor shall make forms available  
15           in English, Spanish, and other languages, as nec-  
16           essary, which may be used in providing workers with  
17           information required under this section.

18           “(4) FEES.—A person conducting a foreign  
19           labor contracting activity shall not assess any fee to  
20           a worker for such foreign labor contracting activity.

21           “(5) TERMS.—No employer or foreign labor  
22           contractor shall, without justification, violate the  
23           terms of any agreement made by that contractor or  
24           employer regarding employment under this program.

1           “(6) TRAVEL COSTS.—If the foreign labor con-  
2 tractor or employer charges the employee for trans-  
3 portation such transportation costs shall be reason-  
4 able.

5           “(7) OTHER WORKER PROTECTIONS.—

6           “(A) NOTIFICATION.—Not less frequently  
7 than once every 2 years, each employer shall  
8 notify the Secretary of Labor of the identity of  
9 any foreign labor contractor engaged by the em-  
10 ployer in any foreign labor contractor activity  
11 for, or on behalf of, the employer.

12           “(B) REGISTRATION OF FOREIGN LABOR  
13 CONTRACTORS.—

14           “(i) IN GENERAL.—No person shall  
15 engage in foreign labor recruiting activity  
16 unless such person has a certificate of reg-  
17 istration from the Secretary of Labor  
18 specifying the activities that such person is  
19 authorized to perform. An employer who  
20 retains the services of a foreign labor con-  
21 tractor shall only use those foreign labor  
22 contractors who are registered under this  
23 subparagraph.

24           “(ii) ISSUANCE.—The Secretary shall  
25 promulgate regulations to establish an effi-

1           cient electronic process for the investiga-  
2           tion and approval of an application for a  
3           certificate of registration of foreign labor  
4           contractors not later than 14 days after  
5           such application is filed, including—

6                   “(I) requirements under para-  
7                   graphs (1), (4), and (5) of section 102  
8                   of the Migrant and Seasonal Agricul-  
9                   tural Worker Protection Act (29  
10                  U.S.C. 1812);

11                  “(II) an expeditious means to up-  
12                  date registrations and renew certifi-  
13                  cates; and

14                  “(III) any other requirements  
15                  that the Secretary may prescribe.

16                  “(iii) TERM.—Unless suspended or re-  
17                  voked, a certificate under this subpara-  
18                  graph shall be valid for 2 years.

19                  “(iv) REFUSAL TO ISSUE; REVOCA-  
20                  TION; SUSPENSION.—In accordance with  
21                  regulations promulgated by the Secretary  
22                  of Labor, the Secretary may refuse to issue  
23                  or renew, or may suspend or revoke, a cer-  
24                  tificate of registration under this subpara-  
25                  graph if—

1           “(I) the application or holder of  
2           the certification has knowingly made a  
3           material misrepresentation in the ap-  
4           plication for such certificate;

5           “(II) the applicant for, or holder  
6           of, the certification is not the real  
7           party in interest in the application or  
8           certificate of registration and the real  
9           party in interest—

10           “(aa) is a person who has  
11           been refused issuance or renewal  
12           of a certificate;

13           “(bb) has had a certificate  
14           suspended or revoked; or

15           “(cc) does not qualify for a  
16           certificate under this paragraph;  
17           or

18           “(III) the applicant for or holder  
19           of the certification has failed to com-  
20           ply with this Act.

21           “(C) REMEDY FOR VIOLATIONS.—An em-  
22           ployer engaging in foreign labor contracting ac-  
23           tivity and a foreign labor contractor that vio-  
24           lates the provisions of this subsection shall be  
25           subject to remedies for foreign labor contractor

1 violations under subsections (h) and (i). If a  
2 foreign labor contractor acting as an agent of  
3 an employer violates any provision of this sub-  
4 section, the employer shall also be subject to  
5 remedies under subsections (h) and (i). An em-  
6 ployer that violates a provision of this sub-  
7 section relating to employer obligations shall be  
8 subject to remedies under subsections (h) and  
9 (i).

10 “(D) EMPLOYER NOTIFICATION.—An em-  
11 ployer shall notify the Secretary of Labor if the  
12 employer becomes aware of a violation of this  
13 subsection by a foreign labor recruiter.

14 “(E) WRITTEN AGREEMENTS.—A foreign  
15 labor contractor may not violate the terms of  
16 any written agreements made with an employer  
17 relating to any contracting activity or worker  
18 protection under this subsection.

19 “(F) BONDING REQUIREMENT.—The Sec-  
20 retary of Labor may require a foreign labor  
21 contractor to post a bond in an amount suffi-  
22 cient to ensure the protection of individuals re-  
23 cruited by the foreign labor contractor. The  
24 Secretary may consider the extent to which the  
25 foreign labor contractor has sufficient ties to



1           the United States to adequately enforce this  
2           subsection.

3           “(i) ENFORCEMENT.—

4           “(1) IN GENERAL.—The Secretary of Labor  
5           shall promulgate regulations for the receipt, inves-  
6           tigation, and disposition of complaints by an ag-  
7           grieved person respecting a violation of this section.

8           “(2) FILING DEADLINE.—No investigation or  
9           hearing shall be conducted on a complaint con-  
10          cerning a violation under this section unless the  
11          complaint was filed not later than 12 months after  
12          the date of such violation.

13          “(3) REASONABLE CAUSE.—The Secretary of  
14          Labor shall conduct an investigation under this sub-  
15          section if there is reasonable cause to believe that a  
16          violation of this section has occurred. The process  
17          established under this subsection shall provide that,  
18          not later than 30 days after a complaint is filed, the  
19          Secretary shall determine if there is reasonable  
20          cause to find such a violation.

21          “(4) NOTICE AND HEARING.—

22                  “(A) IN GENERAL.—Not later than 60  
23                  days after the Secretary of Labor makes a de-  
24                  termination of reasonable cause under para-  
25                  graph (4), the Secretary shall issue a notice to

1 the interested parties and offer an opportunity  
2 for a hearing on the complaint, in accordance  
3 with section 556 of title 5, United States Code.

4 “(B) COMPLAINT.—If the Secretary of  
5 Labor, after receiving a complaint under this  
6 subsection, does not offer the aggrieved party  
7 or organization an opportunity for a hearing  
8 under subparagraph (A), the Secretary shall no-  
9 tify the aggrieved party or organization of such  
10 determination and the aggrieved party or orga-  
11 nization may seek a hearing on the complaint  
12 in accordance with such section 556.

13 “(C) HEARING DEADLINE.—Not later than  
14 60 days after the date of a hearing under this  
15 paragraph, the Secretary of Labor shall make a  
16 finding on the matter in accordance with para-  
17 graph (5).

18 “(5) ATTORNEYS’ FEES.—A complainant who  
19 prevails with respect to a claim under this sub-  
20 section shall be entitled to an award of reasonable  
21 attorneys’ fees and costs.

22 “(6) POWER OF THE SECRETARY.—The Sec-  
23 retary may bring an action in any court of com-  
24 petent jurisdiction—

1           “(A) to seek remedial action, including in-  
2           junctive relief;

3           “(B) to recover the damages described in  
4           subsection (i); or

5           “(C) to ensure compliance with terms and  
6           conditions described in subsection (g).

7           “(7) SOLICITOR OF LABOR.—Except as pro-  
8           vided in section 518(a) of title 28, United States  
9           Code, the Solicitor of Labor may appear for and rep-  
10          resent the Secretary of Labor in any civil litigation  
11          brought under this subsection. All such litigation  
12          shall be subject to the direction and control of the  
13          Attorney General.

14          “(8) PROCEDURES IN ADDITION TO OTHER  
15          RIGHTS OF EMPLOYEES.—The rights and remedies  
16          provided to workers under this section are in addi-  
17          tion to any other contractual or statutory rights and  
18          remedies of the workers, and are not intended to  
19          alter or affect such rights and remedies.

20          “(j) PENALTIES.—

21                 “(1) IN GENERAL.—If, after notice and an op-  
22                 portunity for a hearing, the Secretary of Labor finds  
23                 a violation of subsection (b), (e), (f), or (g), the Sec-  
24                 retary may impose administrative remedies and pen-  
25                 alties, including—

1           “(A) back wages;

2           “(B) benefits; and

3           “(C) civil monetary penalties.

4           “(2) CIVIL PENALTIES.—The Secretary of  
5 Labor may impose, as a civil penalty—

6           “(A) for a violation of subsection (e) or  
7 (f)—

8           “(i) a fine in an amount not to exceed  
9 \$2,000 per violation per affected worker;

10           “(ii) if the violation was willful viola-  
11 tion, a fine in an amount not to exceed  
12 \$5,000 per violation per affected worker;

13           “(iii) if the violation was willful and if  
14 in the course of such violation a United  
15 States worker was harmed, a fine in an  
16 amount not to exceed \$25,000 per viola-  
17 tion per affected worker; and

18           “(B) for a violation of subsection (g)—

19           “(i) a fine in an amount not less than  
20 \$500 and not more than \$4,000 per viola-  
21 tion per affected worker;

22           “(ii) if the violation was willful, a fine  
23 in an amount not less than \$2,000 and not  
24 more than \$5,000 per violation per af-  
25 fected worker; and

1                   “(iii) if the violation was willful and if  
 2                   in the course of such violation a United  
 3                   States worker was harmed, a fine in an  
 4                   amount not less than \$6,000 and not more  
 5                   than \$35,000 per violation per affected  
 6                   worker.

7                   “(3) USE OF CIVIL PENALTIES.—All penalties  
 8                   collected under this subsection shall be deposited in  
 9                   the Treasury in accordance with section 286(w).

10                   “(4) CRIMINAL PENALTIES.—If a willful and  
 11                   knowing violation of subsection (g) causes extreme  
 12                   physical or financial harm to an individual, the per-  
 13                   son in violation of such subsection may be impris-  
 14                   oned for not more than 6 months, fined in an  
 15                   amount not more than \$35,000, or both.”.

16                   (b) CLERICAL AMENDMENT.—The table of contents  
 17                   is amended by inserting after the item relating to section  
 18                   218A, as added by section 403, the following:

“Sec. 218B. Employer obligations.”.

19 **SEC. 405. ALIEN EMPLOYMENT MANAGEMENT SYSTEM.**

20                   (a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.)  
 21                   is amended by inserting after section 218B, as added by  
 22                   section 404, the following:

23 **“SEC. 218C. ALIEN EMPLOYMENT MANAGEMENT SYSTEM.**

24                   “(a) ESTABLISHMENT.—The Secretary of Homeland  
 25                   Security, in consultation with the Secretary of Labor, the

1 Secretary of State, and the Commission of Social Security,  
2 shall develop and implement a program (referred to in this  
3 section as the ‘alien employment management system’) to  
4 manage and track the employment of aliens described in  
5 sections 218A and 218D.

6 “(b) REQUIREMENTS.—The alien employment man-  
7 agement system shall—

8 “(1) provide employers who seek employees with  
9 an opportunity to recruit and advertise employment  
10 opportunities available to United States workers be-  
11 fore hiring an H–2C nonimmigrant;

12 “(2) collect sufficient information from employ-  
13 ers to enable the Secretary of Homeland Security to  
14 determine—

15 “(A) if the nonimmigrant is employed;

16 “(B) which employers have hired an H–2C  
17 nonimmigrant;

18 “(C) the number of H–2C nonimmigrants  
19 that an employer is authorized to hire and is  
20 currently employing;

21 “(D) the occupation, industry, and length  
22 of time that an H–2C nonimmigrant has been  
23 employed in the United States;

24 “(3) allow employers to request approval of  
25 multiple H–2C nonimmigrant workers; and

1           “(4) permit employers to submit applications  
2           under this section in an electronic form.”.

3           (b) CLERICAL AMENDMENT.—The table of contents  
4 for the Immigration and Nationality Act (8 U.S.C. 1101  
5 et seq.) is amended by inserting after the item relating  
6 to section 218B, as added by section 404, the following:  
“Sec. 218C. Alien employment management system.”.

7 **SEC. 406. RULEMAKING; EFFECTIVE DATE.**

8           (a) RULEMAKING.—Not later than 6 months after  
9 the date of enactment of this Act, the Secretary of Labor  
10 shall promulgate regulations, in accordance with the notice  
11 and comment provisions of section 553 of title 5, United  
12 States Code, to carry out the provisions of sections 218A,  
13 218B, and 218C, as added by this Act.

14           (b) EFFECTIVE DATE.—The amendments made by  
15 sections 403, 404, and 405 shall take effect on the date  
16 that is 1 year after the date of the enactment of this Act  
17 with regard to aliens, who, on such effective date, are in  
18 the foreign country where they maintain residence.

19 **SEC. 407. RECRUITMENT OF UNITED STATES WORKERS.**

20           (a) ELECTRONIC JOB REGISTRY.—The Secretary of  
21 Labor shall establish a publicly accessible Web page on  
22 the Internet website of the Department of Labor that pro-  
23 vides a single Internet link to each State workforce agen-  
24 cy’s statewide electronic registry of jobs available through-  
25 out the United States to United States workers.

1 (b) RECRUITMENT OF UNITED STATES WORKERS.—

2 (1) POSTING.—An employer shall attest that  
3 the employer has posted an employment opportunity  
4 at a prevailing wage level (as described in section  
5 218B(b)(2)(C) of the Immigration and Nationality  
6 Act).

7 (2) RECORDS.—An employer shall maintain  
8 records for not less than 1 year after the date on  
9 which an H-2C nonimmigrant is hired that describe  
10 the reasons for not hiring any of the United States  
11 workers who may have applied for such position.

12 (c) OVERSIGHT AND MAINTENANCE OF RECORDS.—  
13 The Secretary of Labor shall promulgate regulations re-  
14 garding the maintenance of electronic job registry records  
15 for the purpose of audit or investigation.

16 (d) ACCESS TO ELECTRONIC JOB REGISTRY.—The  
17 Secretary of Labor shall ensure that job opportunities ad-  
18 vertised on an electronic job registry established under  
19 this section are accessible—

20 (1) by the State workforce agencies, which may  
21 further disseminate job opportunity information to  
22 other interested parties; and

23 (2) through the Internet, for access by workers,  
24 employers, labor organizations, and other interested  
25 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)(H)(ii)(c) on the  
10 wages, working conditions, and employment of  
11 United 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)(H)(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 (A)(vii), by striking “or”  
6           at the end;

7           (2) in subparagraph (B), by striking the period  
8           at the end and inserting “; and”; and

9           (3) by adding at the end the following:

10                   “(C) under section 101(a)(15)(H)(ii)(c)  
11                   may not exceed 200,000.”.

12           (h) ADJUSTMENT TO LAWFUL PERMANENT RESI-  
13 DENT STATUS.—Section 245 (8 U.S.C. 1255) is amended  
14 by adding at the end the following:

15           “(n)(1) For purposes of adjustment of status under  
16 subsection (a), employment-based immigrant visas shall be  
17 made available, subject to the numerical limitations set  
18 out in sections 201(d) and 203(b), to an alien having non-  
19 immigrant status described in section 101(a)(15)(H)(ii)(c)  
20 upon the filing of a petition for such a visa—

21                   “(A) by the alien’s employer; or

22                   “(B) by the alien, if—

23                           “(i) the alien has been employed in H-2C  
24                           status for a cumulative period of not less than  
25                           4 years;

1           “(ii) an employer attests that the employer  
2 will employ the alien in the offered job position;

3           “(iii) the Secretary of Labor determines  
4 and certifies that there are not sufficient  
5 United States workers who are able, willing,  
6 qualified, and available to fill the job position;  
7 or

8           “(iv) the Secretary of Labor determines  
9 and certifies that there are not sufficient  
10 United States workers who are able, willing,  
11 qualified, and available to fill the position in  
12 which the alien is, or will be, employed; and

13           “(v) the alien submits at least 2 documents  
14 to establish current employment, as follows:

15                   “(I) Records maintained by the Social  
16 Security Administration.

17                   “(II) Records maintained by the  
18 alien’s employer, such as pay stubs, time  
19 sheets, or employment work verification.

20                   “(III) Records maintained by the In-  
21 ternal Revenue Service.

22                   “(IV) Records maintained by any  
23 other government agency, such as worker  
24 compensation records, disability records, or  
25 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 amend-  
17 ed—

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 sserting “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 amend-  
17 ed—

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 Se-  
16 curity—

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-

1           tion of the first full year of the country’s admis-  
2           sion into the European Union.

3           “(D) FULL COMPLIANCE.—Not later than  
4           2 years after the date of a country’s designation  
5           under subparagraph (B), the country—

6                   “(i) shall be in full compliance with all  
7                   applicable requirements for program coun-  
8                   try status under this section; or

9                   “(ii) shall have its program country  
10                  designation terminated.

11           “(E) EXTENSIONS.—The Secretary of  
12           State may extend, for a period not to exceed 2  
13           years, the probationary designation granted  
14           under subparagraph (B) if the country—

15                   “(i) is making significant progress to-  
16                   wards coming into full compliance with all  
17                   applicable requirements for program coun-  
18                   try status under this section;

19                   “(ii) is likely to achieve full compli-  
20                   ance before the end of such 2-year period;  
21                   and

22                   “(iii) continues to be an ally of the  
23                   United States against terrorist states, or-  
24                   ganizations, 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 2007”.

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 de-  
19 cree”—

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 **Subtitle A—Backlog Reduction**

13 **SEC. 501. ELIMINATION OF EXISTING BACKLOGS.**

14 (a) FAMILY-SPONSORED IMMIGRANTS.—Section  
 15 201(c) (8 U.S.C. 1151(c)) is amended to read as follows:

16 “(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED  
 17 IMMIGRANTS.—The worldwide level of family-sponsored  
 18 immigrants under this subsection for a fiscal year is equal  
 19 to the sum of—

20 “(1) 480,000;

21 “(2) the difference between the maximum num-  
 22 ber of visas authorized to be issued under this sub-  
 23 section during the previous fiscal year and the num-  
 24 ber of visas issued during the previous fiscal year;

25 “(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 2008 through 2017; or

19                         “(ii) 290,000, for fiscal year 2018 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           requirement 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 cit-  
11 izen 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 2007, and ending on  
17                   September 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 2007”.

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

1 ineligible for an adjustment of status under any  
2 provision of the Immigration and Nationality  
3 Act (8 U.S.C. 1101 et seq.) on criminal, secu-  
4 rity, or related grounds.

5 (C) COOPERATION AND SCHEDULE.—The  
6 Secretary and the head of each appropriate  
7 agency or department of the United States shall  
8 work cooperatively to ensure that each database  
9 search required by subparagraph (B) is com-  
10 pleted not later than 180 days after the date on  
11 which the alien enters the United States.

12 (D) ADMINISTRATIVE AND JUDICIAL RE-  
13 VIEW.—

14 (i) IN GENERAL.—There may be no  
15 review of a determination by the Secretary,  
16 after a search required by subparagraph  
17 (B), that an alien is ineligible for an ad-  
18 justment of status, under any provision of  
19 the Immigration and Nationality Act (8  
20 U.S.C. 1101 et seq.) on criminal, security,  
21 or related grounds except as provided in  
22 this subparagraph.

23 (ii) ADMINISTRATIVE REVIEW.—An  
24 alien may appeal a determination described  
25 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



1           “(II) engaged in temporary employment  
2 for optional practical training related to the  
3 alien’s area of study, which practical training  
4 shall be authorized for a period or periods of up  
5 to 24 months;”;

6           (2) in clause (ii)—

7                 (A) by inserting “or (iv)” after “clause  
8 (i)”; and

9                 (B) by striking “, and” and inserting a  
10 semicolon; and

11           (3) by adding at the end the following:

12                         “(iv) an alien described in clause (i)  
13 who has been accepted and plans to attend  
14 an accredited graduate program in mathe-  
15 matics, engineering, technology, or the  
16 sciences in the United States for the pur-  
17 pose of obtaining an advanced degree; and

18                         “(v) an alien who maintains actual  
19 residence and place of abode in the alien’s  
20 country of nationality, who is described in  
21 clause (i), except that the alien’s actual  
22 course of study may involve a distance  
23 learning program, for which the alien is  
24 temporarily visiting the United States for  
25 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                 “(e) 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 amend-  
5 ed—

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, 2006,  
2 and 2007;”; 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 reded-  
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  
20 determination under subsection (c)(2)(B), immigrant  
21 visas shall be issued in a strictly random order es-  
22 tablished by the Secretary for the fiscal year in-  
23 volved.

24 “(B) If the Secretary of State has made a de-  
25 termination under subsection (c)(2)(B) and the

1 number of eligible qualified immigrants who have a  
2 degree selected under such subsection and apply for  
3 an immigrant visa described in subsection (c)(2) is  
4 greater than the worldwide level specified in section  
5 201(e)(2), the Secretary shall issue immigrant visas  
6 only to such immigrants and in a strictly random  
7 order established by the Secretary for the fiscal year  
8 involved.

9 “(C) If the Secretary of State has made a de-  
10 termination under subsection (c)(2)(B) and the  
11 number of eligible qualified immigrants who have de-  
12 grees selected under such subsection and apply for  
13 an immigrant visa described in subsection (c)(2) is  
14 not greater than the worldwide level specified in sec-  
15 tion 201(e)(2), the Secretary shall—

16 “(i) issue immigrant visas to eligible quali-  
17 fied immigrants with degrees selected in sub-  
18 section (c)(2)(B); and

19 “(ii) issue any immigrant visas remaining  
20 thereafter to other eligible qualified immigrants  
21 with degrees described in subsection (c)(2)(A)  
22 in a strictly random order established by the  
23 Secretary for the fiscal year involved.”.

1 (g) EFFECTIVE DATE.—The amendments made by  
2 subsections (e) and (f) shall take effect on October 1,  
3 2007.

4 **SEC. 509. CHILDREN OF FILIPINO WORLD WAR II VET-**  
5 **ERANS.**

6 Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended  
7 by sections 505 and 508, is further amended by adding  
8 at the end the following:

9 “(J) Aliens who are eligible for a visa under  
10 paragraph (1) or (3) of section 203(a) and are the  
11 children of a citizen of the United States who was  
12 naturalized pursuant to section 405 of the Immigra-  
13 tion Act of 1990 (8 U.S.C. 1440 note).”.

14 **SEC. 510. EXPEDITED ADJUDICATION OF EMPLOYER PETI-**  
15 **TIONS FOR ALIENS OF EXTRAORDINARY AR-**  
16 **TISTIC ABILITY.**

17 Section 214(c) (8 U.S.C. 1184(c)) is amended—

18 (1) by striking “Attorney General” each place  
19 it appears and inserting “Secretary of Homeland Se-  
20 curity”; and

21 (2) in paragraph (6)(D)—

22 (A) by Striking “Any person” and insert-  
23 ing “(i) Except as provided in clause (ii), any  
24 person”; and

25 (B) adding at the end the following:

1           “(ii) The Secretary of Homeland Security shall  
2           adjudicate each petition for an alien with extraor-  
3           dinary ability in the arts (as described in section  
4           101(a)(15)(O)(i)), an alien accompanying such an  
5           alien (as described in clauses (ii) and (iii) of section  
6           101(a)(15)(O)), or an alien described in section  
7           101(a)(15)(P) not later than 30 days after—

8                   “(I) the date on which the petitioner sub-  
9                   mits the petition with a written advisory opin-  
10                  ion, letter of no objection, or request for a waiv-  
11                  er; or

12                  “(II) the date on which the 15-day period  
13                  described in clause (i) has expired, if the peti-  
14                  tioner has had an opportunity, as appropriate,  
15                  to supply rebuttal evidence.

16           “(iii) If a petition described in clause (ii) is not  
17           adjudicated before the end of the 30-day period de-  
18           scribed in clause (ii) and the petitioner is a qualified  
19           nonprofit organization or an individual or entity pe-  
20           titioning primarily on behalf of a qualified nonprofit  
21           organization, the Secretary of Homeland Security  
22           shall provide the petitioner with the premium-proc-  
23           essing services referred to in section 286(u), without  
24           a fee.”.

1 **SEC. 511. POWERLINE WORKERS.**

2 Section 214(e) (8 U.S.C. 1184(e)) is amended by  
3 adding at the end the following new paragraph:

4 “(7) A citizen of Canada who is a powerline  
5 worker, who has received significant training, and  
6 who seeks admission to the United States to perform  
7 powerline repair and maintenance services shall be  
8 admitted in the same manner and under the same  
9 authority as a citizen of Canada described in para-  
10 graph (2).”.

11 **SEC. 512. DETERMINATIONS WITH RESPECT TO CHILDREN**  
12 **UNDER THE HAITIAN REFUGEE IMMIGRA-**  
13 **TION FAIRNESS ACT OF 1998.**

14 (a) IN GENERAL.—Section 902(d) of the Haitian  
15 Refugee Immigration Fairness Act of 1998 (8 U.S.C.  
16 1255 note) is amended by adding at the end the following:

17 “(3) DETERMINATIONS WITH RESPECT TO  
18 CHILDREN.—

19 “(A) USE OF APPLICATION FILING  
20 DATE.—Determinations made under this sub-  
21 section as to whether an individual is a child of  
22 a parent shall be made using the age and status  
23 of the individual on October 21, 1998.

24 “(B) APPLICATION SUBMISSION BY PAR-  
25 ENT.—Notwithstanding paragraph (1)(C), an  
26 application under this subsection filed based on

1 status as a child may be filed for the benefit of  
2 such child by a parent or guardian of the child,  
3 if the child is physically present in the United  
4 States on such filing date.”.

5 (b) NEW APPLICATIONS AND MOTIONS TO RE-  
6 OPEN.—

7 (1) NEW APPLICATIONS.—Notwithstanding sec-  
8 tion 902(a)(1)(A) of the Haitian Refugee Immigra-  
9 tion Fairness Act of 1998, an alien who is eligible  
10 for adjustment of status under such Act, as amend-  
11 ed by subsection (a), may submit an application for  
12 adjustment of status under such Act not later than  
13 the later of—

14 (A) 2 years after the date of the enactment  
15 of this Act; or

16 (B) 1 year after the date on which final  
17 regulations implementing this section, and the  
18 amendment made by subsection (a), are pro-  
19 mulgated.

20 (2) MOTIONS TO REOPEN.—The Secretary shall  
21 establish procedures for the reopening and reconsid-  
22 eration of applications for adjustment of status  
23 under the Haitian Refugee Immigration Fairness  
24 Act of 1998 that are affected by the amendment  
25 made by subsection (a).

1           (3) RELATIONSHIP OF APPLICATION TO CER-  
2           TAIN ORDERS.—Section 902(a)(3) of the Haitian  
3           Refugee Immigration Fairness Act of 1998 shall  
4           apply to an alien present in the United States who  
5           has been ordered excluded, deported, removed, or or-  
6           dered to depart voluntarily, and who files an applica-  
7           tion under paragraph (1) or a motion under para-  
8           graph (2), in the same manner as such section  
9           902(a)(3) applied to aliens filing applications for ad-  
10          justment of status under such Act prior to April 1,  
11          2000.

12          (c) INADMISSIBILITY DETERMINATION.—Section 902  
13          of the Haitian Refugee Immigration Fairness Act of 1998  
14          (8 U.S.C. 1255 note) is amended in subsections (a)(1)(B)  
15          and (d)(1)(D) by inserting “(6)(C)(i),” after “(6)(A),”.

## 16           **Subtitle B—SKIL Act of 2007**

### 17          **SEC. 521. SHORT TITLE.**

18           This subtitle may be cited as the “Securing Knowl-  
19          edge, Innovation, and Leadership Act of 2007” or the  
20          “SKIL Act of 2007”

### 21          **SEC. 522. H-1B VISA HOLDERS.**

22           (a) IN GENERAL.—Section 214(g)(5) (8 U.S.C.  
23          1184(g)(5)) is amended—

24                  (1) in subparagraph (B)—

1 (A) by striking “nonprofit research” and  
2 inserting “nonprofit”;

3 (B) by inserting “Federal, State, or local”  
4 before “governmental”; and

5 (C) by striking “or” at the end;

6 (2) in subparagraph (C)—

7 (A) by striking “a United States institu-  
8 tion of higher education (as defined in section  
9 101(a) of the Higher Education Act of 1965  
10 (20 U.S.C. 1001(a)),” and inserting “an insti-  
11 tution of higher education in a foreign coun-  
12 try,”; and

13 (B) by striking the period at the end and  
14 inserting a semicolon;

15 (3) by adding at the end, the following new sub-  
16 paragraphs:

17 “(D) has earned a master’s or higher degree  
18 from a United States institution of higher education  
19 (as defined in section 101(a) of the Higher Edu-  
20 cation Act of 1965 (20 U.S.C. 1001(a)));

21 “(E) has been awarded medical specialty certifi-  
22 cation based on post-doctoral training and experi-  
23 ence in the United States; or”.

24 (b) APPLICABILITY.—The amendments made by sub-  
25 section (a) shall apply to any petition or visa application



1 pending on the date of enactment of this Act and any peti-  
2 tion or visa application filed on or after such date.

3 **SEC. 523. MARKET-BASED VISA LIMITS.**

4 Section 214(g) (8 U.S.C. 1184(g)) is amended—

5 (1) in paragraph (1)—

6 (A) in the matter preceding subparagraph

7 (A), by striking “(beginning with fiscal year  
8 1992)”; and

9 (B) in subparagraph (A)—

10 (i) in clause (vi) by striking “and”;

11 (ii) in clause (vii), by striking “each  
12 succeeding fiscal year; or” and inserting  
13 “each of fiscal years 2004, 2005, 2006,  
14 and 2007;”; and

15 (iii) by adding after clause (vii) the  
16 following:

17 “(viii) 115,000 in the first fiscal year  
18 beginning after the date of the enactment  
19 of the SKIL Act of 2007; and

20 “(ix) the number calculated under  
21 paragraph (9) in each fiscal year after the  
22 year described in clause (viii); or”;

23 (2) in paragraph (8), by striking subparagraphs  
24 (B)(iv) and (D);

1           (3) by redesignating paragraphs (9), (10), and  
2           (11) as paragraphs (10), (11), and (12), respec-  
3           tively; and

4           (4) by inserting after paragraph (8) the fol-  
5           lowing:

6           “(9) If the numerical limitation in paragraph  
7           (1)(A)—

8                   “(A) is reached during a given fiscal year,  
9                   the numerical limitation under paragraph  
10                  (1)(A)(ix) for the subsequent fiscal year shall  
11                  be equal to 120 percent of the numerical limita-  
12                  tion of the given fiscal year; or

13                   “(B) is not reached during a given fiscal  
14                   year, the numerical limitation under paragraph  
15                  (1)(A)(ix) for the subsequent fiscal year shall  
16                  be equal to the numerical limitation of the given  
17                  fiscal year.”.

18 **SEC. 524. UNITED STATES EDUCATED IMMIGRANTS.**

19           (a) **IN GENERAL.**—Section 201(b)(1) (8 U.S.C.  
20 1151(b)(1)) is amended by adding at the end the fol-  
21           lowing:

22                   “(F) Aliens who have earned a master’s or  
23                   higher degree from an accredited United States  
24                   university.

1           “(G) Aliens who have been awarded med-  
2           ical specialty certification based on post-doc-  
3           toral training and experience in the United  
4           States preceding their application for an immi-  
5           grant visa under section 203(b).

6           “(H) Aliens who will perform labor in  
7           shortage occupations designated by the Sec-  
8           retary of Labor for blanket certification under  
9           section 212(a)(5)(A) as lacking sufficient  
10          United States workers able, willing, qualified,  
11          and available for such occupations and for  
12          which the employment of aliens will not ad-  
13          versely affect the terms and conditions of simi-  
14          larly employed United States workers.

15          “(I) Aliens who have earned a master’s de-  
16          gree or higher in science, technology, engineer-  
17          ing, or math and have been working in a re-  
18          lated field in the United States in a non-  
19          immigrant status during the 3-year period pre-  
20          ceding their application for an immigrant visa  
21          under section 203(b).

22          “(J) Aliens described in subparagraph (A)  
23          or (B) of section 203(b)(1) or who have re-  
24          ceived a national interest waiver under section  
25          203(b)(2)(B).

1           “(K) The spouse and minor children of an  
2           alien who is admitted as an employment-based  
3           immigrant under section 203(b).”.

4           (b)           LABOR           CERTIFICATIONS.—Section  
5   212(a)(5)(A)(ii) (8 U.S.C. 1182(a)(5)(A)(ii)) is amend-  
6   ed—

7           (1) by striking “or” at the end of subclause (I);

8           (2) by striking the period at the end of sub-  
9   clause (II) and inserting “; or”; and

10          (3) by adding at the end the following:

11                           “(III) is a member of the profes-  
12                           sions and has a master’s degree or  
13                           higher from an accredited United  
14                           States university or has been awarded  
15                           medical specialty certification based  
16                           on post-doctoral training and experi-  
17                           ence in the United States.”.

18   **SEC. 525. STUDENT VISA REFORM.**

19          (a) IN GENERAL.—

20           (1) NONIMMIGRANT CLASSIFICATION.—Section  
21   101(a)(15)(F) (8 U.S.C. 1101(a)(15)(F)) is amend-  
22   ed to read as follows:

23           “(F) an alien—

24           “(i) who—

1           “(I) is a bona fide student qualified to  
2           pursue a full course of study in mathe-  
3           matics, engineering, technology, or the  
4           sciences leading to a bachelors or graduate  
5           degree and who seeks to enter the United  
6           States for the purpose of pursuing such a  
7           course of study consistent with section  
8           214(m) at an institution of higher edu-  
9           cation (as defined by section 101(a) of the  
10          Higher Education Act of 1965 (20 U.S.C.  
11          1001(a))) in the United States, particu-  
12          larly designated by the alien and approved  
13          by the Secretary of Homeland Security,  
14          after consultation with the Secretary of  
15          Education, which institution or place of  
16          study shall have agreed to report to the  
17          Secretary the termination of attendance of  
18          each nonimmigrant student, and if any  
19          such institution of learning or place of  
20          study fails to make reports promptly the  
21          approval shall be withdrawn; or

22           “(II) is engaged in temporary employ-  
23           ment for optional practical training related  
24           to such alien’s area of study following com-  
25           pletion of the course of study described in

1 subclause (I) for a period or periods of not  
2 more than 24 months;

3 “(ii) who—

4 “(I) has a residence in a foreign coun-  
5 try which the alien has no intention of  
6 abandoning, who is a bona fide student  
7 qualified to pursue a full course of study,  
8 and who seeks to enter the United States  
9 temporarily and solely for the purpose of  
10 pursuing such a course of study consistent  
11 with section 214(m) at an established col-  
12 lege, university, seminary, conservatory,  
13 academic high school, elementary school, or  
14 other academic institution or in a language  
15 training program in the United States,  
16 particularly designated by the alien and  
17 approved by the Secretary of Homeland  
18 Security, after consultation with the Sec-  
19 retary of Education, which institution or  
20 place of study shall have agreed to report  
21 to the Secretary the termination of attend-  
22 ance of each nonimmigrant student, and if  
23 any such institution of learning or place of  
24 study fails to make reports promptly the  
25 approval shall be withdrawn; or

1           “(II) is engaged in temporary employ-  
2           ment for optional practical training related  
3           to such alien’s area of study following com-  
4           pletion of the course of study described in  
5           subclause (I) for a period or periods of not  
6           more than 24 months;

7           “(iii) who is the spouse or minor child of  
8           an alien described in clause (i) or (ii) if accom-  
9           panying or following to join such an alien; or

10          “(iv) who—

11               “(I) is a national of Canada or Mex-  
12               ico, who maintains actual residence and  
13               place of abode in the country of nation-  
14               ality, who is described in clause (i) or (ii)  
15               except that the alien’s qualifications for  
16               and actual course of study may be full or  
17               part-time, and who commutes to the  
18               United States institution or place of study  
19               from Canada or Mexico; or

20               “(II) is engaged in temporary employ-  
21               ment for optional practical training related  
22               to such the student’s area of study fol-  
23               lowing completion of the course of study  
24               described in subclause (I) for a period or  
25               periods of not more than 24 months;”.

1           (2) ADMISSION.—Section 214(b) (8 U.S.C.  
2 1184(b)) is amended by inserting “(F)(i),” before  
3 “(L) or (V)”.

4           (3) CONFORMING AMENDMENT.—Section  
5 214(m)(1) (8 U.S.C. 1184(m)(1)) is amended, in the  
6 matter preceding subparagraph (A), by striking “(i)  
7 or (iii)” and inserting “(i), (ii), or (iv)”.

8           (b) OFF CAMPUS WORK AUTHORIZATION FOR FOR-  
9 EIGN STUDENTS.—

10           (1) IN GENERAL.—Aliens admitted as non-  
11 immigrant students described in section  
12 101(a)(15)(F), as amended by subsection (a), (8  
13 U.S.C. 1101(a)(15)(F)) may be employed in an off-  
14 campus position unrelated to the alien’s field of  
15 study if—

16                   (A) the alien has enrolled full-time at the  
17 educational institution and is maintaining good  
18 academic standing;

19                   (B) the employer provides the educational  
20 institution and the Secretary of Labor with an  
21 attestation that the employer—

22                           (i) has spent at least 21 days recruit-  
23 ing United States citizens to fill the posi-  
24 tion; and



1 (ii) will pay the alien and other simi-  
2 larly situated workers at a rate equal to  
3 not less than the greater of—

4 (I) the actual wage level for the  
5 occupation at the place of employ-  
6 ment; or

7 (II) the prevailing wage level for  
8 the occupation in the area of employ-  
9 ment; and

10 (C) the alien will not be employed more  
11 than—

12 (i) 20 hours per week during the aca-  
13 demic term; or

14 (ii) 40 hours per week during vacation  
15 periods and between academic terms.

16 (2) DISQUALIFICATION.—If the Secretary of  
17 Labor determines that an employer has provided an  
18 attestation under paragraph (1)(B) that is materi-  
19 ally false or has failed to pay wages in accordance  
20 with the attestation, the employer, after notice and  
21 opportunity for a hearing, shall be disqualified from  
22 employing an alien student under paragraph (1).

23 **SEC. 526. L-1 VISA HOLDERS SUBJECT TO VISA BACKLOG.**

24 Section 214(c)(2) (8 U.S.C. 1184(c)(2)) is amended  
25 by adding at the end the following:

1       “(G) The limitations contained in subparagraph (D)  
2 with respect to the duration of authorized stay shall not  
3 apply to any nonimmigrant alien previously issued a visa  
4 or otherwise provided nonimmigrant status under section  
5 101(a)(15)(L) on whose behalf a petition under section  
6 204(b) to accord the alien immigrant status under section  
7 203(b), or an application for labor certification (if such  
8 certification is required for the alien to obtain status  
9 under such section 203(b)) has been filed, if 365 days or  
10 more have elapsed since such filing. The Secretary of  
11 Homeland Security shall extend the stay of an alien who  
12 qualifies for an exemption under this subparagraph until  
13 such time as a final decision is made on the alien’s lawful  
14 permanent residence.”.

15 **SEC. 527. RETAINING WORKERS SUBJECT TO GREEN CARD**

16                   **BACKLOG.**

17       (a) ADJUSTMENT OF STATUS.—

18               (1) IN GENERAL.—Section 245(a) (8 U.S.C.  
19 1255(a)) is amended to read as follows:

20       “(a) ELIGIBILITY.—

21               “(1) IN GENERAL.—The status of an alien who  
22 was inspected and admitted or paroled into the  
23 United States or the status of any other alien having  
24 an approved petition for classification under sub-  
25 paragraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) of sec-

1 tion 204(a)(1) may be adjusted by the Secretary of  
2 Homeland Security or the Attorney General, in the  
3 discretion of the Secretary or the Attorney General  
4 under such regulations as the Secretary or Attorney  
5 General may prescribe, to that of an alien lawfully  
6 admitted for permanent residence if—

7 “(A) the alien makes an application for  
8 such adjustment;

9 “(B) the alien is eligible to receive an im-  
10 migrant visa and is admissible to the United  
11 States for permanent residence; and

12 “(C) an immigrant visa is immediately  
13 available to the alien at the time the application  
14 is filed.

15 “(2) SUPPLEMENTAL FEE.—An application  
16 under paragraph (1) that is based on a petition ap-  
17 proved or approvable under subparagraph (E) or (F)  
18 of section 204(a)(1) may be filed without regard to  
19 the limitation set forth in paragraph (1)(C) if a sup-  
20 plemental fee of \$500 is paid by the principal alien  
21 at the time the application is filed. A supplemental  
22 fee may not be required for any dependent alien ac-  
23 companying or following to join the principal alien.

24 “(3) VISA AVAILABILITY.—An application for  
25 adjustment filed under this paragraph may not be

1 approved until such time as an immigrant visa be-  
2 come available.”.

3 (b) USE OF FEES.—Section 286(v)(1) (8 U.S.C.  
4 1356(v)(1)) is amended by inserting before the period at  
5 the end “and the fees collected under section 245(a)(2).”.

6 **SEC. 528. STREAMLINING THE ADJUDICATION PROCESS**  
7 **FOR ESTABLISHED EMPLOYERS.**

8 Section 214(c) (8. U.S.C. 1184) is amended by add-  
9 ing at the end the following:

10 “(1) Not later than 180 days after the date of the  
11 enactment of the SKIL Act of 2007, the Secretary of  
12 Homeland Security shall establish a pre-certification pro-  
13 cedure for employers who file multiple petitions described  
14 in this subsection or section 203(b). Such precertification  
15 procedure shall enable an employer to avoid repeatedly  
16 submitting documentation that is common to multiple pe-  
17 titions and establish through a single filing criteria relat-  
18 ing to the employer and the offered employment oppor-  
19 tunity.”.

20 **SEC. 529. PROVIDING PREMIUM PROCESSING OF EMPLOY-**  
21 **MENT-BASED VISA PETITIONS.**

22 (a) IN GENERAL.—Pursuant to section 286(u) of the  
23 Immigration and Nationality Act (8 U.S.C. 1356(u)), the  
24 Secretary of Homeland Security shall establish and collect

1 a fee for premium processing of employment-based immi-  
2 grant petitions.

3 (b) APPEALS.—Pursuant to such section 286(u), the  
4 Secretary of Homeland Security shall establish and collect  
5 a fee for premium processing of an administrative appeal  
6 of any decision on a permanent employment-based immi-  
7 grant petition.

8 **SEC. 530. ELIMINATING PROCEDURAL DELAYS IN LABOR**  
9 **CERTIFICATION PROCESS.**

10 (a) PREVAILING WAGE RATE.—

11 (1) REQUIREMENT TO PROVIDE.—The Sec-  
12 retary of Labor shall provide prevailing wage deter-  
13 minations to employers seeking a labor certification  
14 for aliens pursuant to part 656 of title 20, Code of  
15 Federal Regulation (or any successor regulation).  
16 The Secretary of Labor may not delegate this func-  
17 tion to any agency of a State.

18 (2) SCHEDULE FOR DETERMINATION.—Except  
19 as provided in paragraph (3), the Secretary of Labor  
20 shall provide a response to an employer's request for  
21 a prevailing wage determination in no more than 20  
22 calendar days from the date of receipt of such re-  
23 quest. If the Secretary of Labor fails to reply during  
24 such 20-day period, then the wage proposed by the  
25 employer shall be the valid prevailing wage rate.

1           (3) USE OF SURVEYS.—The Secretary of Labor  
2           shall accept an alternative wage survey provided by  
3           the employer unless the Secretary of Labor deter-  
4           mines that the wage component of the Occupational  
5           Employment Statistics Survey is more accurate for  
6           the occupation in the labor market area.

7           (b) PLACEMENT OF JOB ORDER.—The Secretary of  
8           Labor shall maintain a website with links to the official  
9           website of each workforce agency of a State, and such offi-  
10          cial website shall contain instructions on the filing of a  
11          job order in order to satisfy the job order requirements  
12          of section 656.17(e)(1) of title 20, Code of Federal Regu-  
13          lation (or any successor regulation).

14          (c) TECHNICAL CORRECTIONS.—The Secretary of  
15          Labor shall establish a process by which employers seeking  
16          certification under section 212(a)(5) of the Immigration  
17          and Nationality Act (8 U.S.C. 1182(a)(5)), as amended  
18          by section 524(b), may make technical corrections to ap-  
19          plications in order to avoid requiring employers to conduct  
20          additional recruitment to correct an initial technical error.  
21          A technical error shall include any error that would not  
22          have a material effect on the validity of the employer’s  
23          recruitment of able, willing, and qualified United States  
24          workers.

1 (d) ADMINISTRATIVE APPEALS.—Motions to recon-  
2 sider, and administrative appeals of, a denial of a perma-  
3 nent labor certification application, shall be decided by the  
4 Secretary of Labor not later than 60 days after the date  
5 of the filing of such motion or such appeal.

6 (e) APPLICATIONS UNDER PREVIOUS SYSTEM.—Not  
7 later than 180 days after the date of the enactment of  
8 this Act, the Secretary of Labor shall process and issue  
9 decisions on all applications for permanent alien labor cer-  
10 tification that were filed prior to March 28, 2005.

11 (f) EFFECTIVE DATE.—The provisions of this section  
12 shall take effect 90 days after the date of enactment of  
13 this Act, whether or not the Secretary of Labor has  
14 amended the regulations at part 656 of title 20, Code of  
15 Federal Regulation to implement such changes.

16 **SEC. 531. COMPLETION OF BACKGROUND AND SECURITY**  
17 **CHECKS.**

18 Section 103 (8 U.S.C. 1103) is amended by adding  
19 at the end the following:

20 “(i) REQUIREMENT FOR BACKGROUND CHECKS.—  
21 Notwithstanding any other provision of law, until appro-  
22 priate background and security checks, as determined by  
23 the Secretary of Homeland Security, have been completed,  
24 and the information provided to and assessed by the offi-  
25 cial with jurisdiction to grant or issue the benefit or docu-

1 mentation, on an in camera basis as may be necessary  
2 with respect to classified, law enforcement, or other infor-  
3 mation that cannot be disclosed publicly, the Secretary of  
4 Homeland Security, the Attorney General, or any court  
5 may not—

6           “(1) grant or order the grant of adjustment of  
7 status of an alien to that of an alien lawfully admit-  
8 ted for permanent residence;

9           “(2) grant or order the grant of any other sta-  
10 tus, relief, protection from removal, or other benefit  
11 under the immigration laws; or

12           “(3) issue any documentation evidencing or re-  
13 lated to such grant by the Secretary, the Attorney  
14 General, or any court.

15           “(j) REQUIREMENT TO RESOLVE FRAUD ALLEGA-  
16 TIONS.—Notwithstanding any other provision of law, until  
17 any suspected or alleged fraud relating to the granting of  
18 any status (including the granting of adjustment of sta-  
19 tus), relief, protection from removal, or other benefit  
20 under this Act has been investigated and resolved, the Sec-  
21 retary of Homeland Security and the Attorney General  
22 may not be required to—

23           “(1) grant or order the grant of adjustment of  
24 status of an alien to that of an alien lawfully admit-  
25 ted for permanent residence;



1           “(2) grant or order the grant of any other sta-  
2           tus, relief, protection from removal, or other benefit  
3           under the immigration laws; or

4           “(3) issue any documentation evidencing or re-  
5           lated to such grant by the Secretary, the Attorney  
6           General, or any court.

7           “(k) PROHIBITION OF JUDICIAL ENFORCEMENT.—  
8           Notwithstanding any other provision of law, no court may  
9           require any act described in subsection (i) or (j) to be com-  
10          pleted by a certain time or award any relief for the failure  
11          to complete such acts.”.

12       **SEC. 532. VISA REVALIDATION.**

13          (a) IN GENERAL.—Section 222 (8 U.S.C. 1202) is  
14          amended by adding at the end the following:

15          “(i) The Secretary of State shall permit an alien  
16          granted a nonimmigrant visa under subparagraph E, H,  
17          I, L, O, or P of section 101(a)(15) to apply for a renewal  
18          of such visa within the United States if—

19               “(1) such visa expired during the 12-month pe-  
20               riod ending on the date of such application;

21               “(2) the alien is seeking a nonimmigrant visa  
22               under the same subparagraph under which the alien  
23               had previously received a visa; and

24               “(3) the alien has complied with the immigra-  
25               tion laws and regulations of the United States.”.

1 (b) CONFORMING AMENDMENT.—Section 222(h) of  
2 such Act is amended, in the matter preceding subpara-  
3 graph (1), by inserting “and except as provided under sub-  
4 section (i),” after “Act”.

5 **Subtitle C—Preservation of Immig-**  
6 **ration Benefits for Hurricane**  
7 **Katrina Victims**

8 **SEC. 541. SHORT TITLE.**

9 This subtitle may be cited as the “Hurricane Katrina  
10 Victims Immigration Benefits Preservation Act”.

11 **SEC. 542. DEFINITIONS.**

12 In this subtitle:

13 (1) APPLICATION OF DEFINITIONS FROM THE  
14 IMMIGRATION AND NATIONALITY ACT.—Except as  
15 otherwise specifically provided in this subtitle, the  
16 definitions in the Immigration and Nationality Act  
17 shall apply in the administration of this subtitle.

18 (2) DIRECT RESULT OF A SPECIFIED HURRI-  
19 CANE DISASTER.—The term “direct result of a spec-  
20 ified hurricane disaster”—

21 (A) means physical damage, disruption of  
22 communications or transportation, forced or  
23 voluntary evacuation, business closures, or  
24 other circumstances directly caused by Hurri-  
25 cane Katrina (on or after August 26, 2005) or

1 Hurricane Rita (on or after September 21,  
2 2005); and

3 (B) does not include collateral or con-  
4 sequential economic effects in or on the United  
5 States or global economies.

6 **SEC. 543. SPECIAL IMMIGRANT STATUS.**

7 (a) PROVISION OF STATUS.—

8 (1) IN GENERAL.—For purposes of the Immi-  
9 gration and Nationality Act (8 U.S.C. 1101 et seq.),  
10 the Secretary may provide an alien described in sub-  
11 section (b) with the status of a special immigrant  
12 under section 101(a)(27) of such Act (8 U.S.C.  
13 1101(a)(27)), if the alien—

14 (A) files with the Secretary a petition  
15 under section 204 of such Act (8 U.S.C. 1154)  
16 for classification under section 203(b)(4) of  
17 such Act (8 U.S.C. 1153(b)(4));

18 (B) is otherwise eligible to receive an im-  
19 migrant visa; and

20 (C) is otherwise admissible to the United  
21 States for permanent residence.

22 (2) INAPPLICABLE PROVISION.—In determining  
23 admissibility under paragraph (1)(C), the grounds  
24 for inadmissibility specified in section 212(a)(4) of  
25 such Act (8 U.S.C. 1182(a)(4)) shall not apply.

1 (b) ALIENS DESCRIBED.—

2 (1) PRINCIPAL ALIENS.—An alien is described  
3 in this subsection if—

4 (A) the alien was the beneficiary of—

5 (i) a petition that was filed with the  
6 Secretary on or before August 26, 2005—

7 (I) under section 204 of the Im-  
8 migration and Nationality Act (8  
9 U.S.C. 1154) to classify the alien as  
10 a family-sponsored immigrant under  
11 section 203(a) of such Act (8 U.S.C.  
12 1153(a)) or as an employment-based  
13 immigrant under section 203(b) of  
14 such Act (8 U.S.C. 1153(b)); or

15 (II) under section 214(d) of such  
16 Act (8 U.S.C. 1184(d)) to authorize  
17 the issuance of a nonimmigrant visa  
18 to the alien under section  
19 101(a)(15)(K) of such Act (8 U.S.C.  
20 1101(a)(15)(K)); or

21 (ii) an application for labor certifi-  
22 cation under section 212(a)(5)(A) of such  
23 Act (8 U.S.C. 1182(a)(5)(A)) that was  
24 filed under regulations of the Secretary of  
25 Labor on or before such date; and

1 (B) such petition or application was re-  
2 voked or terminated (or otherwise rendered  
3 null), before or after its approval, solely due  
4 to—

5 (i) the death or disability of the peti-  
6 tioner, applicant, or alien beneficiary as a  
7 direct result of a specified hurricane dis-  
8 aster; or

9 (ii) loss of employment as a direct re-  
10 sult of a specified hurricane disaster.

11 (2) SPOUSES AND CHILDREN.—

12 (A) IN GENERAL.—An alien is described in  
13 this subsection if—

14 (i) the alien, as of August 26, 2005,  
15 was the spouse or child of a principal alien  
16 described in paragraph (1); and

17 (ii) the alien—

18 (I) is accompanying such prin-  
19 cipal alien; or

20 (II) is following to join such prin-  
21 cipal alien not later than August 26,  
22 2007.

23 (B) CONSTRUCTION.—In construing the  
24 terms “accompanying” and “following to join”  
25 in subparagraph (A)(ii), the death of a prin-

1            ciproal 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 DEPART-  
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-

1 graph (3) who is included in a petition for classifica-  
2 tion as a family-sponsored immigrant under section  
3 203(a)(2) of the Immigration and Nationality Act (8  
4 U.S.C. 1153(a)(2)) that was filed by such alien be-  
5 fore August 26, 2005, may be considered (if the  
6 spouse, child, son, or daughter has not been admit-  
7 ted or approved for lawful permanent residence by  
8 such date) a valid petitioner for preference status  
9 under such section with the same priority date as  
10 that assigned before the death described in para-  
11 graph (3)(A). No new petition shall be required to  
12 be filed. Such spouse, child, son, or daughter may be  
13 eligible for deferred action and work authorization.

14 (2) SELF-PETITIONS.—Any spouse, child, or  
15 unmarried son or daughter of an alien described in  
16 paragraph (3) who is not a beneficiary of a petition  
17 for classification as a family-sponsored immigrant  
18 under section 203(a)(2) of the Immigration and Na-  
19 tionality Act may file a petition for such classifica-  
20 tion with the Secretary, if the spouse, child, son, or  
21 daughter was present in the United States on Au-  
22 gust 26, 2005. Such spouse, child, son, or daughter  
23 may be eligible for deferred action and work author-  
24 ization.

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, 2007.

8 (b) ISSUANCE.—An agency may not issue identity  
9 documents under this section after January 1, 2007.

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 2007”.

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-



1           ment of status and pay the fine required under  
2           subsection (m) and any additional amounts  
3           owed under that subsection.

4           “(B) CONTINUOUS PHYSICAL PRESENCE.—

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

7           “(I) was physically present in the  
8           United States on or before the date  
9           that is 5 years before April 5, 2006;

10           “(II) was not legally present in  
11           the United States on April 5, 2006,  
12           under any classification set forth in  
13           section 101(a)(15); and

14           “(III) did not depart from the  
15           United States during the 5-year pe-  
16           riod ending on April 5, 2006, except  
17           for brief, casual, and innocent depar-  
18           tures.

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

24           “(C) ADMISSIBLE UNDER IMMIGRATION  
25           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 2007.

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 2007.

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 2007 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 2007.

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’

1 means liability for Federal taxes, including  
2 penalties and interest, owed for any year  
3 during the period of employment required  
4 by subparagraph (D)(i) for which the stat-  
5 utory period for assessment of any defi-  
6 ciency for such taxes has not expired.

7 “(iii) IRS COOPERATION.—The Sec-  
8 retary of the Treasury shall establish rules  
9 and procedures under which the Commis-  
10 sioner of Internal Revenue shall provide  
11 documentation to an alien upon request to  
12 establish the payment of all taxes required  
13 by this subparagraph.

14 “(iv) IN GENERAL.—The alien may  
15 satisfy such requirement by establishing  
16 that—

17 “(I) no such tax liability exists;

18 “(II) all outstanding liabilities  
19 have been met; or

20 “(III) the alien has entered into  
21 an agreement for payment of all out-  
22 standing liabilities with the Internal  
23 Revenue Service and with the depart-  
24 ment of revenue of each State to  
25 which taxes are owed.

1           “(v) LIMITATION.—Provided further  
2           that an alien required to pay taxes under  
3           this subparagraph, or who otherwise satis-  
4           fies the requirements of clause (i), shall  
5           not be allowed to collect any tax refund for  
6           any taxable year before 2006, or to file any  
7           claim for the Earned Income Tax Credit,  
8           or any other tax credit otherwise allowable  
9           under the tax code, prior to such taxable  
10          year.

11          “(F) BASIC CITIZENSHIP SKILLS.—

12           “(i) IN GENERAL.—Except as pro-  
13           vided in clause (ii), the alien shall dem-  
14           onstrate that the alien meets the require-  
15           ments of section 312(a) (relating to  
16           English proficiency and understanding of  
17           United States history and Government).

18           “(ii) EXCEPTIONS.—

19           “(I) MANDATORY.—The require-  
20           ments of clause (i) shall not apply to  
21           any person who is unable to comply  
22           with those requirements because of a  
23           physical or developmental disability or  
24           mental impairment.



1                   “(II) DISCRETIONARY.—The Sec-  
2                   retary of Homeland Security may  
3                   waive all or part of the requirements  
4                   of clause (i) in the case of an alien  
5                   who is 65 years of age or older as of  
6                   the date of the filing of the applica-  
7                   tion for adjustment of status.

8                   “(G) SECURITY AND LAW ENFORCEMENT  
9                   CLEARANCES.—The alien shall submit finger-  
10                  prints in accordance with procedures estab-  
11                  lished by the Secretary of Homeland Security.  
12                  Such fingerprints shall be submitted to relevant  
13                  Federal agencies to be checked against existing  
14                  databases for information relating to criminal,  
15                  national security, or other law enforcement ac-  
16                  tions that would render the alien ineligible for  
17                  adjustment of status under this subsection. The  
18                  relevant Federal agencies shall work to ensure  
19                  that such clearances are completed within 90  
20                  days of the submission of fingerprints. An ap-  
21                  peal of a security clearance determination by  
22                  the Secretary of Homeland Security shall be  
23                  processed through the Department of Home-  
24                  land Security.

1           “(H) MILITARY SELECTIVE SERVICE.—The  
2 alien shall establish that if the alien is within  
3 the age period required under the Military Se-  
4 lective Service Act (50 U.S.C. App. 451 et seq.)  
5 that such alien has registered under that Act.

6           “(I) ADJUSTMENT OF STATUS.—The Sec-  
7 retary may not adjust the status of an alien  
8 under this section to that of lawful permanent  
9 resident until the Secretary determines that the  
10 priority dates have become current for the class  
11 of aliens whose family-based or employment-  
12 based petitions for permanent residence were  
13 pending on the date of the enactment of the  
14 Immigrant Accountability Act of 2007.

15           “(2) SPOUSES AND CHILDREN.—

16           “(A) IN GENERAL.—

17           “(i) ADJUSTMENT OF STATUS.—Not-  
18 withstanding any other provision of law,  
19 the Secretary of Homeland Security shall,  
20 if otherwise eligible under subparagraph  
21 (B), adjust the status to that of a lawful  
22 permanent resident for—

23           “(I) the spouse, or child who was  
24 under 21 years of age on the date of  
25 enactment of the Immigrant Account-

1 ability Act of 2007, of an alien who  
2 adjusts status or is eligible to adjust  
3 status to that of a permanent resident  
4 under paragraph (1); or

5 “(II) an alien who, within 5  
6 years preceding the date of enactment  
7 of the Immigrant Accountability Act  
8 of 2007, was the spouse or child of an  
9 alien who adjusts status to that of a  
10 permanent resident under paragraph  
11 (1), if—

12 “(aa) the termination of the  
13 qualifying relationship was con-  
14 nected to domestic violence; or

15 “(bb) the spouse or child  
16 has been battered or subjected to  
17 extreme cruelty by the spouse or  
18 parent who adjusts status or is  
19 eligible to adjust status to that of  
20 a permanent resident under para-  
21 graph (1).

22 “(ii) APPLICATION OF OTHER LAW.—

23 In acting on applications filed under this  
24 paragraph with respect to aliens who have  
25 been battered or subjected to extreme cru-

1 elty, the Secretary of Homeland Security  
2 shall apply the provisions of section  
3 204(a)(1)(J) and the protections, prohibi-  
4 tions, and penalties under section 384 of  
5 the Illegal Immigration Reform and Immig-  
6 rant Responsibility Act of 1996 (8 U.S.C.  
7 1367).

8 “(B) GROUNDS OF INADMISSIBILITY NOT  
9 APPLICABLE.—In establishing admissibility to  
10 the United States, the spouse or child described  
11 in subparagraph (A) shall establish that they  
12 are not inadmissible under section 212(a), ex-  
13 cept for any provision of that section that is  
14 waived under subsection (b) of this section.

15 “(C) SECURITY AND LAW ENFORCEMENT  
16 CLEARANCE.—The spouse or child, if that child  
17 is 14 years of age or older, described in sub-  
18 paragraph (A) shall submit fingerprints in ac-  
19 cordance with procedures established by the  
20 Secretary of Homeland Security. Such finger-  
21 prints shall be submitted to relevant Federal  
22 agencies to be checked against existing data-  
23 bases for information relating to criminal, na-  
24 tional security, or other law enforcement actions  
25 that would render the alien ineligible for adjust-

1           ment of status under this subsection. The rel-  
2           evant Federal agencies shall work to ensure  
3           that such clearances are completed within 90  
4           days of the submission of fingerprints. An ap-  
5           peal of a denial by the Secretary of Homeland  
6           Security shall be processed through the Depart-  
7           ment of Homeland Security.

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

13          “(b) GROUNDS OF INADMISSIBILITY.—

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

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

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

22                  “(C) Paragraph (3) (relating to security  
23          and related grounds).

1           “(D) Subparagraphs (A) and (C) of para-  
2           graph (10) (relating to polygamists and child  
3           abductors).

4           “(2) GROUNDS OF INADMISSIBILITY NOT APPLI-  
5           CABLE.—The provisions of paragraphs (5), (6)(A),  
6           (6)(B), (6)(C), (6)(F), (6)(G), (7), (9) (other than  
7           subparagraph (C)(i)(II)), and (10)(B) of section  
8           212(a) shall not apply to an alien who is applying  
9           for adjustment of status under subsection (a).

10          “(3) WAIVER OF OTHER GROUNDS.—

11           “(A) IN GENERAL.—Except as provided in  
12           paragraph (1), the Secretary of Homeland Se-  
13           curity may waive any provision of section  
14           212(a) in the case of individual aliens for hu-  
15           manitarian purposes, to ensure family unity, or  
16           when it is otherwise in the public interest.

17           “(B) CONSTRUCTION.—Nothing in this  
18           paragraph shall be construed as affecting the  
19           authority of the Secretary of Homeland Secu-  
20           rity, other than under this subparagraph, to  
21           waive the provisions of section 212(a).

22          “(4) SPECIAL RULE FOR DETERMINATION OF  
23           PUBLIC CHARGE.—An alien is not ineligible for ad-  
24           justment of status under subsection (a) by reason of  
25           a ground of inadmissibility under section 212(a)(4)

1 if the alien establishes a history of employment in  
2 the United States evidencing self-support without  
3 public cash assistance.

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

12 “(6) APPLICABILITY OF OTHER PROVISIONS.—  
13 Section 241(a)(5) and section 240B(d) shall not  
14 apply with respect to an alien who is applying for  
15 adjustment of status under subsection (a).

16 “(7) INELIGIBILITY.—

17 “(A) IN GENERAL.—An alien is ineligible  
18 for adjustment to lawful permanent resident  
19 status under this section if—

20 “(i) the alien has been ordered re-  
21 moved from the United States—

22 “(I) for overstaying the period of  
23 authorized admission under section  
24 217;

1 “(II) under section 235 or 238;

2 or

3 “(III) pursuant to a final order  
4 of removal under section 240;

5 “(ii) the alien failed to depart the  
6 United States during the period of a vol-  
7 untary departure order issued under sec-  
8 tion 240B;

9 “(iii) the alien is subject to section  
10 241(a)(5);

11 “(iv) the Secretary of Homeland Secu-  
12 rity determines that—

13 “(I) the alien, having been con-  
14 victed by a final judgment of a serious  
15 crime, constitutes a danger to the  
16 community of the United States;

17 “(II) there are reasonable  
18 grounds for believing that the alien  
19 has committed a serious crime outside  
20 the United States prior to the arrival  
21 of the alien in the United States; or

22 “(III) there are reasonable  
23 grounds for regarding the alien as a  
24 danger to the security of the United  
25 States; or



1                   “(v) the alien has been convicted of a  
2                   felony or 3 or more misdemeanors.

3                   “(B) EXCEPTION.—Notwithstanding sub-  
4                   paragraph (A), an alien who has not been or-  
5                   dered removed from the United States shall re-  
6                   main eligible for adjustment to lawful perma-  
7                   nent resident status under this section if the  
8                   alien’s ineligibility under subparagraph (A) is  
9                   solely related to the alien’s—

10                   “(i) entry into the United States with-  
11                   out inspection;

12                   “(ii) remaining in the United States  
13                   beyond the period of authorized admission;  
14                   or

15                   “(iii) failure to maintain legal status  
16                   while in the United States.

17                   “(C) WAIVER.—The Secretary may, in the  
18                   Secretary’s sole and unreviewable discretion,  
19                   waive the application of subparagraph (A) if the  
20                   alien was ordered removed on the basis that the  
21                   alien—

22                   “(i)(I) entered without inspection;

23                   “(II) failed to maintain status; or

24                   “(III) was ordered removed under  
25                   212(a)(6)(C)(i) prior to April 7, 2006; and

1           “(ii)(I) demonstrates that the alien  
2           did not receive notice of removal pro-  
3           ceedings in accordance with paragraph (1)  
4           or (2) of section 239(a);

5           “(II) establishes that the alien’s fail-  
6           ure to appear was due to exceptional cir-  
7           cumstances beyond the control of the alien;  
8           or

9           “(III) the alien’s departure from the  
10          United States now would result in extreme  
11          hardship to the alien’s spouse, parent, or  
12          child who is a citizen of the United States  
13          or an alien lawfully admitted for perma-  
14          nent residence.

15       “(c) TREATMENT OF APPLICANTS.—

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

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

23           “(B) shall be granted permission to travel  
24          abroad pursuant to regulation pending final ad-

1           judication of the alien’s application for adjust-  
2           ment of status;

3           “(C) shall not be detained, determined in-  
4           admissible or deportable, or removed pending  
5           final adjudication of the alien’s application for  
6           adjustment of status, unless the alien commits  
7           an act which renders the alien ineligible for  
8           such adjustment of status; and

9           “(D) shall not be considered an unauthor-  
10          ized alien as defined in section 274A(i) until  
11          such time as employment authorization under  
12          subparagraph (A) is denied.

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

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

23                 “(B) reflects the benefits and status set  
24                 forth in paragraph (1).

1           “(3) SECURITY AND LAW ENFORCEMENT  
2 CLEARANCE.—Before an alien is granted employ-  
3 ment authorization or permission to travel under  
4 paragraph (1), the alien shall be required to undergo  
5 a name check against existing databases for infor-  
6 mation relating to criminal, national security, or  
7 other law enforcement actions. The relevant Federal  
8 agencies shall work to ensure that such name checks  
9 are completed not later than 90 days after the date  
10 on which the name check is requested.

11           “(4) TERMINATION OF PROCEEDINGS.—An  
12 alien in removal proceedings who establishes prima  
13 facie eligibility for adjustment of status under sub-  
14 section (a) shall be entitled to termination of the  
15 proceedings pending the outcome of the alien’s appli-  
16 cation, unless the removal proceedings are based on  
17 criminal or national security grounds.

18           “(d) CONFIDENTIALITY OF INFORMATION.—

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

23           “(A) use the information furnished by the  
24 applicant pursuant to an application filed under  
25 paragraph (1) or (2) of subsection (a) for any

1           purpose other than to make a determination on  
2           the application;

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

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

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

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

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

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

5 “(1) CRIMINAL PENALTY.—

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

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

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

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

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

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

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

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

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

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

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

19 “(h) APPLICATION OF OTHER PROVISIONS.—Noth-  
20 ing in this section shall preclude an alien who may be eligi-  
21 ble to be granted adjustment of status under subsection  
22 (a) from seeking such status under any other provision  
23 of law for which the alien may be eligible.

24 “(i) ADMINISTRATIVE AND JUDICIAL REVIEW.—



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

5           “(2) ADMINISTRATIVE REVIEW.—

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

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

20           “(3) JUDICIAL REVIEW.—

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

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

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

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

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

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

24          “(k) EMPLOYER PROTECTIONS.—

1           “(1) IMMIGRATION STATUS OF ALIEN.—Em-  
2           ployers of aliens applying for conditional non-  
3           immigrant or conditional nonimmigrant dependent  
4           classification or adjustment of status under this sec-  
5           tion, the AgJOBS Act of 2007, or the DREAM Act  
6           of 2007 shall not be subject to civil or criminal tax  
7           liability for activities relating directly to the employ-  
8           ment of such alien that occurred before receiving  
9           employment authorization under this section, the  
10          AgJOBS Act of 2007, or the DREAM Act of 2007.

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

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

24          “(1) AUTHORIZATION OF FUNDS; FINES.—

1           “(1) AUTHORIZATION OF APPROPRIATIONS.—

2           There are authorized to be appropriated to the De-  
3           partment of Homeland Security such sums as are  
4           necessary to commence the processing of applica-  
5           tions filed under this section.

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

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

16          “(4) USE OF AMOUNTS COLLECTED.—The Sec-  
17          retary of Homeland Security shall deposit payments  
18          received under paragraphs (2) and (3) in the Immi-  
19          gration Examinations Fee Account, and these pay-  
20          ments in such account shall be available, without fis-  
21          cal year limitation, such that—

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

1           “(B) 10 percent of such funds shall be  
2 available to the Department of Homeland Secu-  
3 rity for implementing and processing applica-  
4 tions under this section; and

5           “(C) 10 percent of such funds shall be  
6 available to the Department of Homeland Secu-  
7 rity and the Department of State to cover ad-  
8 ministrative and other expenses incurred in con-  
9 nection with the review of applications filed by  
10 immediate relatives of aliens applying for ad-  
11 justment of status under this section.

12           “(5) STATE IMPACT ASSISTANCE FEE.—

13           “(A) IN GENERAL.—In addition to any  
14 other amounts required to be paid under this  
15 subsection, an alien shall submit, at the time  
16 the alien files an application under this section,  
17 a State impact assistance fee equal to—

18                   “(i) \$750 for the principal alien; and

19                   “(ii) \$100 for the spouse and each  
20 child described in subsection (a)(2).

21           “(B) USE OF FEE.—The fees collected  
22 under subparagraph (A) shall be deposited in  
23 the State Impact Assistance Account estab-  
24 lished under section 286(x).

1       “(m) MANDATORY DEPARTURE AND REENTRY.—  
2 Any alien who was physically present in the United States  
3 on January 7, 2004, who seeks to adjust status under this  
4 section, but does not satisfy the requirements of subpara-  
5 graph (B) or (D) of subsection (a)(1), shall be eligible to  
6 depart the United States and to seek admission as a non-  
7 immigrant or an immigrant alien described in section  
8 245C.

9       “(n) ISSUANCE OF REGULATIONS.—Not later than  
10 120 days after the date of enactment of the Immigrant  
11 Accountability Act of 2007, the Secretary of Homeland  
12 Security shall issue regulations to implement this sec-  
13 tion.”.

14               (2) TABLE OF CONTENTS.—The table of con-  
15 tents (8 U.S.C. 1101 et seq.) is amended by insert-  
16 ing after the item relating to section 245A the fol-  
17 lowing:

“245B. Access to Earned Adjustment.”.

18       (c) MANDATORY DEPARTURE AND REENTRY.—

19               (1) IN GENERAL.—Chapter 5 of title II (8  
20 U.S.C. 1255 et seq.), as amended by subsection  
21 (b)(1), is further amended by inserting after section  
22 245B the following:

23 **“SEC. 245C. MANDATORY DEPARTURE AND REENTRY.**

24       “(a) IN GENERAL.—The Secretary of Homeland Se-  
25 curity may grant Deferred Mandatory Departure status

1 to aliens who are in the United States illegally to allow  
2 such aliens time to depart the United States and to seek  
3 admission as a nonimmigrant or immigrant alien.

4 “(b) REQUIREMENTS.—Notwithstanding section  
5 244(h), an alien desiring an adjustment of status under  
6 subsection (a) shall meet the following requirements:

7 “(1) PRESENCE.—The alien shall establish that  
8 the alien—

9 “(A) was physically present in the United  
10 States on January 7, 2004;

11 “(B) has been continuously in the United  
12 States since such date, except for brief, casual,  
13 and innocent departures; and

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

17 “(2) EMPLOYMENT.—

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

20 “(i) was employed in the United  
21 States, whether full time, part time, sea-  
22 sonally, or self-employed, before January  
23 7, 2004; and

24 “(ii) has been continuously employed  
25 in the United States since that date, ex-



1           cept for brief periods of unemployment  
2           lasting not longer than 60 days.

3           “(B) EVIDENCE OF EMPLOYMENT.—

4                   “(i) IN GENERAL.—An alien may con-  
5           clusively establish employment status in  
6           compliance with subparagraph (A) by sub-  
7           mitting to the Secretary of Homeland Se-  
8           curity records demonstrating such employ-  
9           ment maintained by—

10                           “(I) the Social Security Adminis-  
11                           tration, Internal Revenue Service, or  
12                           by any other Federal, State, or local  
13                           government agency;

14                           “(II) an employer; or

15                           “(III) a labor union, day labor  
16                           center, or an organization that assists  
17                           workers in matters related to employ-  
18                           ment.

19                   “(ii) OTHER DOCUMENTS.—An alien  
20           who is unable to submit a document de-  
21           scribed in subclauses (I) through (III) of  
22           clause (i) may satisfy the requirement in  
23           subparagraph (A) by submitting to the  
24           Secretary at least 2 other types of reliable

1 documents that provide evidence of em-  
2 ployment, including—

3 “(I) bank records;

4 “(II) business records;

5 “(III) sworn affidavits from non-  
6 relatives who have direct knowledge of  
7 the alien’s work, including the name,  
8 address, and phone number of the af-  
9 fiant, the nature and duration of the  
10 relationship between the affiant and  
11 the alien, and other verification infor-  
12 mation; or

13 “(IV) remittance records.

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

22 “(iv) BURDEN OF PROOF.—An alien  
23 who is applying for adjustment of status  
24 under this section has the burden of prov-  
25 ing by a preponderance of the evidence

1           that the alien has satisfied the require-  
2           ments of this subsection. An alien may  
3           meet such burden of proof by producing  
4           sufficient evidence to demonstrate such  
5           employment as a matter of reasonable in-  
6           ference.

7           “(C) EXEMPTION.—The employment re-  
8           quirement under subparagraph (A) shall not  
9           apply to any individual who is 65 years of age  
10          or older on the date of the enactment of the  
11          Immigrant Accountability Act of 2007.

12          “(3) ADMISSIBILITY.—

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

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

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

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

1           “(C) WAIVER.—The Secretary of Home-  
2 land Security may waive any other provision of  
3 section 212(a), or a ground of ineligibility  
4 under paragraph (4), in the case of individual  
5 aliens for humanitarian purposes, to assure  
6 family unity, or when it is otherwise in the pub-  
7 lic interest.

8           “(4) INELIGIBILITY.—

9           “(A) IN GENERAL.—The alien is ineligible  
10 for Deferred Mandatory Departure status if the  
11 alien—

12                   “(i) has been ordered removed from  
13 the United States—

14                           “(I) for overstaying the period of  
15 authorized admission under section  
16 217;

17                           “(II) under section 235 or 238;

18                           or

19                           “(III) pursuant to a final order  
20 of removal under section 240;

21                           “(ii) the alien failed to depart the  
22 United States during the period of a vol-  
23 untary departure order issued under sec-  
24 tion 240B;

1           “(iii) the alien is subject to section  
2           241(a)(5);

3           “(iv) the Secretary of Homeland Secu-  
4           rity determines that—

5                   “(I) the alien, having been con-  
6                   victed by a final judgment of a serious  
7                   crime, constitutes a danger to the  
8                   community of the United States;

9                   “(II) there are reasonable  
10                  grounds for believing that the alien  
11                  has committed a serious crime outside  
12                  the United States prior to the arrival  
13                  of the alien in the United States; or

14                  “(III) there are reasonable  
15                  grounds for regarding the alien as a  
16                  danger to the security of the United  
17                  States; or

18                  “(v) the alien has been convicted of a  
19                  felony or 3 or more misdemeanors.

20                  “(B) EXCEPTION.—Notwithstanding sub-  
21                  paragraph (A), an alien who has not been or-  
22                  dered removed from the United States shall re-  
23                  main eligible for adjustment to lawful perma-  
24                  nent resident status under this section if the

1 alien's ineligibility under subparagraph (A) is  
2 solely related to the alien's—

3 “(i) entry into the United States with-  
4 out inspection;

5 “(ii) remaining in the United States  
6 beyond the period of authorized admission;  
7 or

8 “(iii) failure to maintain legal status  
9 while in the United States.

10 “(C) WAIVER.—The Secretary may, in the  
11 Secretary's sole and unreviewable discretion,  
12 waive the application of subparagraph (A) if the  
13 alien was ordered removed on the basis that the  
14 alien—

15 “(i)(I) entered without inspection;

16 “(II) failed to maintain status; or

17 “(III) was ordered removed under  
18 212(a)(6)(C)(i) prior to April 7, 2006; and

19 “(ii)(I) demonstrates that the alien  
20 did not receive notice of removal pro-  
21 ceedings in accordance with paragraph (1)  
22 or (2) of section 239(a);

23 “(II) establishes that the alien's fail-  
24 ure to appear was due to exceptional cir-

1           cumstances beyond the control of the alien;  
2           or

3           “(III) the alien’s departure from the  
4           United States now would result in extreme  
5           hardship to the alien’s spouse, parent, or  
6           child who is a citizen of the United States  
7           or an alien lawfully admitted for perma-  
8           nent residence.

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

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

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

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

23          “(7) APPLICATION CONTENT AND WAIVER.—

24                 “(A) APPLICATION FORM.—The Secretary  
25                 of Homeland Security shall create an applica-

1           tion form that an alien shall be required to  
2           complete as a condition of obtaining Deferred  
3           Mandatory Departure status.

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

17          “(C) WAIVER.—The Secretary of Home-  
18          land Security shall require an alien to include  
19          with the application a waiver of rights that ex-  
20          plains to the alien that, in exchange for the dis-  
21          cretionary benefit of obtaining Deferred Manda-  
22          tory Departure status, the alien agrees to waive  
23          any right to judicial review or to contest any re-  
24          moval action, other than on the basis of an ap-  
25          plication for asylum or restriction of removal



1           pursuant to the provisions contained in section  
2           208 or 241(b)(3), or under the Convention  
3           Against Torture and Other Cruel, Inhuman or  
4           Degrading Treatment or Punishment, done at  
5           New York December 10, 1984, or cancellation  
6           of removal pursuant to section 240A(a).

7           “(D) KNOWLEDGE.—The Secretary of  
8           Homeland Security shall require an alien to in-  
9           clude with the application a signed certification  
10          in which the alien certifies that the alien has  
11          read and understood all of the questions and  
12          statements on the application form, and that  
13          the alien certifies under penalty of perjury  
14          under the laws of the United States that the  
15          application, and any evidence submitted with it,  
16          are all true and correct, and that the applicant  
17          authorizes the release of any information con-  
18          tained in the application and any attached evi-  
19          dence for law enforcement purposes.

20          “(c) IMPLEMENTATION AND APPLICATION TIME PE-  
21          RIODS.—

22          “(1) IN GENERAL.—The Secretary of Homeland  
23          Security shall ensure that the application process is  
24          secure and incorporates antifraud protection. The  
25          Secretary of Homeland Security shall interview an

1 alien to determine eligibility for Deferred Mandatory  
2 Departure status and shall utilize biometric authen-  
3 tication at time of document issuance.

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

9 “(3) APPLICATION.—An alien must submit an  
10 initial application for Deferred Mandatory Departure  
11 status not later than 6 months after the date  
12 on which the application form is first made avail-  
13 able. An alien that fails to comply with this require-  
14 ment is ineligible for Deferred Mandatory Departure  
15 status. The provisions under subsections (e) and (f)  
16 of section 245B shall apply to applications filed  
17 under this section.

18 “(4) COMPLETION OF PROCESSING.—The Sec-  
19 retary of Homeland Security shall ensure that all  
20 applications for Deferred Mandatory Departure sta-  
21 tus are processed not later than 12 months after the  
22 date on which the application form is first made  
23 available.

24 “(d) SECURITY AND LAW ENFORCEMENT BACK-  
25 GROUND CHECKS.—An alien may not be granted Deferred

1 Mandatory Departure status unless the alien submits bio-  
2 metric data in accordance with procedures established by  
3 the Secretary of Homeland Security. The Secretary of  
4 Homeland Security may not grant Deferred Mandatory  
5 Departure status until all appropriate background checks  
6 are completed to the satisfaction of the Secretary of  
7 Homeland Security.

8 “(e) ACKNOWLEDGMENT.—

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

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

14 “(i) is unlawfully present in the  
15 United States and subject to removal or  
16 deportation, as appropriate, under this  
17 Act; and

18 “(ii) understands the terms of the  
19 terms of Deferred Mandatory Departure;

20 “(B) any Social Security account number  
21 or card in the possession of the alien or relied  
22 upon by the alien;

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

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

6           “(f) MANDATORY DEPARTURE.—

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

11          “(2) REGISTRATION AT TIME OF DEPARTURE.—An alien granted Deferred Mandatory De-  
12          parture shall—  
13          parture shall—

14                 “(A) depart from the United States before  
15                 the expiration of the period of Deferred Manda-  
16                 tory Departure status;

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

19                 “(C) surrender any evidence of Deferred  
20                 Mandatory Departure status at the time of de-  
21                 parture.

22          “(3) APPLICATION FOR READMISSION.—

23                 “(A) IN GENERAL.—An alien under this  
24                 section may apply for admission to the United  
25                 States as an immigrant or nonimmigrant while

1 in the United States or from any location out-  
2 side of the United States, but may not be  
3 granted admission until the alien has departed  
4 from the United States in accordance with  
5 paragraph (2).

6 “(B) APPROVAL.—The Secretary may ap-  
7 prove an application under subparagraph (A)  
8 during the period in which the alien is present  
9 in the United States under Deferred Mandatory  
10 Departure status.

11 “(C) US-VISIT.—An alien in Deferred  
12 Mandatory Departure status who is seeking ad-  
13 mission as a nonimmigrant or immigrant alien  
14 may exit the United States and immediately re-  
15 enter the United States at any land port of  
16 entry at which the US-VISIT exit and entry  
17 system can process such alien for admission  
18 into the United States.

19 “(D) INTERVIEW REQUIREMENTS.—Not-  
20 withstanding any other provision of law, any  
21 admission requirement involving in-person  
22 interviews at a consulate of the United States  
23 shall be waived for aliens granted Deferred  
24 Mandatory Departure status under this section.

1           “(E) WAIVER OF NUMERICAL LIMITA-  
2           TIONS.—The numerical limitations under sec-  
3           tion 214 shall not apply to any alien who is ad-  
4           mitted as a nonimmigrant under this para-  
5           graph.

6           “(4) EFFECT OF READMISSION ON SPOUSE OR  
7           CHILD.—The spouse or child of an alien granted De-  
8           ferred Mandatory Departure and subsequently  
9           granted an immigrant or nonimmigrant visa before  
10          departing the United States shall be—

11           “(A) deemed to have departed under this  
12          section upon the successful admission of the  
13          principal alien; and

14           “(B) eligible for the derivative benefits as-  
15          sociated with the immigrant or nonimmigrant  
16          visa granted to the principal alien without re-  
17          gard to numerical caps related to such visas.

18          “(5) WAIVERS.—The Secretary of Homeland  
19          Security may waive the departure requirement under  
20          this subsection if the alien—

21           “(A) is granted an immigrant or non-  
22          immigrant visa; and

23           “(B) can demonstrate that the departure  
24          of the alien would create a substantial hardship

1           on the alien or an immediate family member of  
2           the alien.

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

7                   “(A) shall not be subject to section  
8                   212(a)(9)(B);

9                   “(B) if otherwise eligible, may immediately  
10                  seek admission as a nonimmigrant or immi-  
11                  grant; and

12                  “(C) is eligible to be employed by an em-  
13                  ployer in the United States regardless of wheth-  
14                  er the employer has complied with the require-  
15                  ments of section 218B(b)(7).

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

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

3 “(8) PENALTIES FOR DELAYED DEPARTURE.—

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

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

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

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

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



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

6 “(h) TERMS OF STATUS.—

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

10 “(2) TRAVEL.—

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

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

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

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

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

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

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

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

18           “(i) PROHIBITION ON CHANGE OF STATUS OR AD-  
19           JUSTMENT OF STATUS.—

20                   “(1) IN GENERAL.—Before leaving the United  
21                   States, an alien granted Deferred Mandatory Departure  
22                   status may not apply to change status under  
23                   section 248.

1           “(2) ADJUSTMENT OF STATUS.—An alien may  
2 not adjust to an immigrant classification under this  
3 section until after the earlier of—

4                   “(A) the consideration of all applications  
5 filed under section 201, 202, or 203 before the  
6 date of enactment of this section; or

7                   “(B) 8 years after the date of enactment  
8 of this section.

9           “(j) APPLICATION FEE.—

10           “(1) IN GENERAL.—An alien seeking a grant of  
11 Deferred Mandatory Departure status shall submit,  
12 in addition to any other fees authorized by law, an  
13 application fee of \$1,000.

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

18           “(3) STATE IMPACT ASSISTANCE FEE.—

19                   “(A) IN GENERAL.—In addition to any  
20 other amounts required to be paid under this  
21 subsection, an alien seeking Deferred Manda-  
22 tory Departure status shall submit, at the time  
23 the alien files an application under this section,  
24 a State impact assistance fee equal to \$750.

1           “(B) USE OF FEE.—The fees collected  
2           under subparagraph (A) shall be deposited in  
3           the State Impact Assistance Account estab-  
4           lished under section 286(x).

5           “(k) FAMILY MEMBERS.—

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

10          “(2) APPLICATION FEE.—

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

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

20          “(3) STATE IMPACT ASSISTANCE FEE.—

21           “(A) IN GENERAL.—In addition to any  
22           other amounts required to be paid under this  
23           subsection, the spouse and each child of an  
24           alien seeking Deferred Mandatory Departure

1 status shall submit a State impact assistance  
2 fee equal to \$100.

3 “(B) USE OF FEE.—The fees collected  
4 under subparagraph (A) shall be deposited in  
5 the State Impact Assistance Account estab-  
6 lished under section 286(x).

7 “(1) EMPLOYMENT.—

8 “(1) IN GENERAL.—An alien who has applied  
9 for or has been granted Deferred Mandatory Depart-  
10 ure status may be employed in the United States.

11 “(2) CONTINUOUS EMPLOYMENT.—An alien  
12 granted Deferred Mandatory Departure status must  
13 be employed while in the United States. An alien  
14 who fails to be employed for 60 days is ineligible for  
15 hire until the alien has departed the United States  
16 and reentered. The Secretary of Homeland Security  
17 may reauthorize an alien for employment without re-  
18 quiring the alien’s departure from the United States.

19 “(m) ENUMERATION OF SOCIAL SECURITY NUM-  
20 BER.—The Secretary of Homeland Security, in coordina-  
21 tion with the Commissioner of the Social Security system,  
22 shall implement a system to allow for the enumeration of  
23 a Social Security number and production of a Social Secu-  
24 rity card at the time the Secretary of Homeland Security  
25 grants an alien Deferred Mandatory Departure status.

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

3               “(1) CRIMINAL PENALTY.—

4                       “(A) VIOLATION.—It shall be unlawful for  
5                       any person—

6                               “(i) to file or assist in filing an appli-  
7                               cation for adjustment of status under this  
8                               section and knowingly and willfully falsify,  
9                               misrepresent, conceal, or cover up a mate-  
10                              rial fact or make any false, fictitious, or  
11                              fraudulent statements or representations,  
12                              or make or use any false writing or docu-  
13                              ment knowing the same to contain any  
14                              false, fictitious, or fraudulent statement or  
15                              entry; or

16                              “(ii) to create or supply a false writ-  
17                              ing or document for use in making such an  
18                              application.

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

23               “(2) INADMISSIBILITY.—An alien who is con-  
24       victed of a crime under paragraph (1) shall be con-

1       sidered to be inadmissible to the United States on  
2       the ground described in section 212(a)(6)(C)(i).

3       “(o) RELATION TO CANCELLATION OF REMOVAL.—

4 With respect to an alien granted Deferred Mandatory De-  
5 parture status under this section, the period of such status  
6 shall not be counted as a period of physical presence in  
7 the United States for purposes of section 240A(a), unless  
8 the Secretary of Homeland Security determines that ex-  
9 tremе hardship exists.

10       “(p) WAIVER OF RIGHTS.—An alien is not eligible

11 for Deferred Mandatory Departure status, unless the alien  
12 has waived any right under subsection (b)(7)(C), other  
13 than on the basis of an application for asylum, restriction  
14 of removal, or protection under the Convention Against  
15 Torture and Other Cruel, Inhuman or Degrading Treat-  
16 ment or Punishment, done at New York December 10,  
17 1984, or cancellation of removal pursuant to section  
18 240A(a), any action for deportation or removal of the alien  
19 that is instituted against the alien subsequent to a grant  
20 of Deferred Mandatory Departure status.

21       “(q) DENIAL OF DISCRETIONARY RELIEF.—The de-

22 termination of whether an alien is eligible for a grant of  
23 Deferred Mandatory Departure status is solely within the  
24 discretion of the Secretary of Homeland Security. Not-

1 withstanding any other provision of law, no court shall  
2 have jurisdiction to review—

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

5 “(2) any other decision or action of the Sec-  
6 retary of Homeland Security the authority for which  
7 is specified under this section to be in the discretion  
8 of the Secretary, other than the granting of relief  
9 under section 208(a).

10 “(r) JUDICIAL REVIEW.—

11 “(1) LIMITATIONS ON RELIEF.—Without regard  
12 to the nature of the action or claim and without re-  
13 gard to the identity of the party or parties bringing  
14 the action, no court may—

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

17 “(i) an order or notice denying an  
18 alien a grant of Deferred Mandatory De-  
19 parture status or any other benefit arising  
20 from such status; or

21 “(ii) an order of removal, exclusion, or  
22 deportation entered against an alien after  
23 a grant of Deferred Mandatory Departure  
24 status; or



1           “(B) certify a class under Rule 23 of the  
2 Federal Rules of Civil Procedure in any action  
3 for which judicial review is authorized under a  
4 subsequent paragraph of this subsection.

5           “(2) CHALLENGES TO VALIDITY.—

6           “(A) IN GENERAL.—Any right or benefit  
7 not otherwise waived or limited pursuant this  
8 section is available in an action instituted in the  
9 United States District Court for the District of  
10 Columbia, but shall be limited to determina-  
11 tions of—

12           “(i) whether such section, or any reg-  
13 ulation issued to implement such section,  
14 violates the Constitution of the United  
15 States; or

16           “(ii) whether such a regulation, or a  
17 written policy directive, written policy  
18 guideline, or written procedure issued by  
19 or under the authority of the Secretary of  
20 Homeland Security to implement such sec-  
21 tion, is not consistent with applicable pro-  
22 visions of this section or is otherwise in  
23 violation of law.”.

24           “(2) TABLE OF CONTENTS.—The table of con-  
25 tents (8 U.S.C. 1101 et seq.), as amended by this

1 subsection (b)(2), is further amended by inserting  
2 after the item relating to section 245B the following:

“245C. Mandatory Departure and Reentry.”.

3 (3) CONFORMING AMENDMENT.—Section  
4 237(a)(2)(A)(i)(II) (8 U.S.C. 1227(a)(2)(A)(i)(II))  
5 is amended by inserting “(or 6 months in the case  
6 of an alien granted Deferred Mandatory Departure  
7 status under section 245C)” after “imposed”.

8 (4) STATUTORY CONSTRUCTION.—Nothing in  
9 this subsection, or any amendment made by this  
10 subsection, shall be construed to create any sub-  
11 stantive or procedural right or benefit that is legally  
12 enforceable by any party against the United States  
13 or its agencies or officers or any other person.

14 (5) AUTHORIZATION OF APPROPRIATIONS.—  
15 There are authorized to be appropriated such  
16 amounts as may be necessary for facilities, personnel  
17 (including consular officers), training, technology,  
18 and processing necessary to carry out the amend-  
19 ments made by this subsection.

20 (d) CORRECTION OF SOCIAL SECURITY RECORDS.—  
21 Section 208(e)(1) of the Social Security Act (42 U.S.C.  
22 408(e)(1)) is amended—

23 (1) in subparagraph (B)(ii), by striking “or” at  
24 the end;

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

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

5                   “(D) whose status is adjusted to that of  
6 lawful permanent resident under section 245B  
7 of the Immigration and Nationality Act,”; 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 prior  
11 to the date on which the alien became lawfully ad-  
12 mitted for temporary residence.”.

13           (e) STATE IMPACT ASSISTANCE ACCOUNT.—Section  
14 286 (8 U.S.C. 1356) is amended by inserting after sub-  
15 section (w) the following:

16                   “(x) STATE IMPACT ASSISTANCE ACCOUNT.—

17                           “(1) ESTABLISHMENT.—There is established in  
18 the general fund of the Treasury a separate account,  
19 which shall be known as the ‘State Impact Assist-  
20 ance Account’.

21                           “(2) SOURCE OF FUNDS.—Notwithstanding any  
22 other provision under this Act, there shall be depos-  
23 ited as offsetting receipts into the State Impact As-  
24 sistance Account all State impact assistance fees col-

1 lected under section 245B(m)(5) and subsections  
2 (j)(3) and (k)(3) of section 245C.

3 “(3) USE OF FUNDS.—Amounts deposited into  
4 the State Impact Assistance Account may only be  
5 used to carry out the State Impact Assistance Grant  
6 Program established under paragraph (4).

7 “(4) STATE IMPACT ASSISTANCE GRANT PRO-  
8 GRAM.—

9 “(A) ESTABLISHMENT.—The Secretary of  
10 Health and Human Services, in consultation  
11 with the Secretary of Education, shall establish  
12 the State Impact Assistance Grant Program  
13 (referred to in this section as the ‘Program’),  
14 under which the Secretary may award grants to  
15 States to provide health and education services  
16 to noncitizens in accordance with this para-  
17 graph.

18 “(B) STATE ALLOCATIONS.—The Sec-  
19 retary of Health and Human Services shall an-  
20 nually allocate the amounts available in the  
21 State Impact Assistance Account among the  
22 States as follows:

23 “(i) NONCITIZEN POPULATION.—  
24 Eighty percent of such amounts shall be

1 allocated so that each State receives the  
2 greater of—

3 “(I) \$5,000,000; or

4 “(II) after adjusting for alloca-  
5 tions under subclause (I), the percent-  
6 age of the amount to be distributed  
7 under this clause that is equal to the  
8 noncitizen resident population of the  
9 State divided by the noncitizen resi-  
10 dent population of all States, based on  
11 the most recent data available from  
12 the Bureau of the Census.

13 “(ii) HIGH GROWTH RATES.—Twenty  
14 percent of such amounts shall be allocated  
15 among the 20 States with the largest  
16 growth rates in noncitizen resident popu-  
17 lation, as determined by the Secretary of  
18 Health and Human Services, so that each  
19 such State receives the percentage of the  
20 amount distributed under this clause that  
21 is equal to—

22 “(I) the growth rate in the non-  
23 citizen resident population of the  
24 State during the most recent 3-year

1 period for which data is available from  
2 the Bureau of the Census; divided by

3 “(II) the average growth rate in  
4 noncitizen resident population for the  
5 20 States during such 3-year period.

6 “(iii) LEGISLATIVE APPROPRIA-  
7 TIONS.—The use of grant funds allocated  
8 to States under this paragraph shall be  
9 subject to appropriation by the legislature  
10 of each State in accordance with the terms  
11 and conditions under this paragraph.

12 “(C) FUNDING FOR LOCAL GOVERN-  
13 MENT.—

14 “(i) DISTRIBUTION CRITERIA.—Grant  
15 funds received by States under this para-  
16 graph shall be distributed to units of local  
17 government based on need and function.

18 “(ii) MINIMUM DISTRIBUTION.—Ex-  
19 cept as provided in clause (iii), a State  
20 shall distribute not less than 30 percent of  
21 the grant funds received under this para-  
22 graph to units of local government not  
23 later than 180 days after receiving such  
24 funds.

1           “(iii) EXCEPTION.—If an eligible unit  
2 of local government that is available to  
3 carry out the activities described in sub-  
4 paragraph (D) cannot be found in a State,  
5 the State does not need to comply with  
6 clause (ii).

7           “(iv) UNEXPENDED FUNDS.—Any  
8 grant funds distributed by a State to a  
9 unit of local government that remain unex-  
10 pended as of the end of the grant period  
11 shall revert to the State for redistribution  
12 to another unit of local government.

13           “(D) USE OF FUNDS.—States and units of  
14 local government shall use grant funds received  
15 under this paragraph to provide health services,  
16 educational services, and related services to  
17 noncitizens within their jurisdiction directly, or  
18 through contracts with eligible services pro-  
19 viders, including—

20                   “(i) health care providers;

21                   “(ii) local educational agencies; and

22                   “(iii) charitable and religious organi-  
23 zations.

24           “(E) STATE DEFINED.—In this paragraph,  
25 the term ‘State’ means each of the several

1 States of the United States, the District of Co-  
2 lumbia, the Commonwealth of Puerto Rico, the  
3 Virgin Islands, Guam, American Samoa, and  
4 the Commonwealth of the Northern Mariana Is-  
5 lands.

6 “(F) CERTIFICATION.—In order to receive  
7 a payment under this section, the State shall  
8 provide the Secretary of Health and Human  
9 Services with a certification that the State’s  
10 proposed uses of the fund are consistent with  
11 (D).

12 “(G) ANNUAL REPORT.—The Secretary of  
13 Health and Human Services shall inform the  
14 States annually of the amount of funds avail-  
15 able to each State under the Program.”.

16 **Subtitle B—Agricultural Job Op-**  
17 **portunities, Benefits, and Secu-**  
18 **urity**

19 **SEC. 611. SHORT TITLE.**

20 This subtitle may be cited as the “Agricultural Job  
21 Opportunities, Benefits, and Security Act of 2007” or the  
22 “AgJOBS Act of 2007”.

23 **SEC. 612. DEFINITIONS.**

24 In this subtitle:



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) of the Immigra-  
10          tion and Nationality Act (8 U.S.C.  
11          1101(a)(15)(H)(ii)(a)).

12          (2) BLUE CARD STATUS.—The term “blue card  
13          status” means the status of an alien who has been  
14          lawfully admitted into the United States for tem-  
15          porary residence under section 613(a).

16          (3) EMPLOYER.—The term “employer” means  
17          any person or entity, including any farm labor con-  
18          tractor and any agricultural association, that em-  
19          ploys workers in agricultural employment.

20          (4) JOB OPPORTUNITY.—The term “job oppor-  
21          tunity” means a job opening for temporary full-time  
22          employment at a place in the United States to which  
23          United States workers can be referred.

1           (5) TEMPORARY.—A worker is employed on a  
2 “temporary” basis where the employment is in-  
3 tended not to exceed 10 months.

4           (6) UNITED STATES WORKER.—The term  
5 “United States worker” means any worker, whether  
6 a United States citizen or national, a lawfully admit-  
7 ted permanent resident alien, or any other alien,  
8 who is authorized to work in the job opportunity  
9 within the United States, except an alien admitted  
10 or otherwise provided status under section  
11 101(a)(15)(H)(ii)(a) of the Immigration and Nation-  
12 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

13           (7) WORK DAY.—The term “work day” means  
14 any day in which the individual is employed 5.75 or  
15 more hours in agricultural employment.

16 **CHAPTER 1—PILOT PROGRAM FOR**  
17 **EARNED STATUS ADJUSTMENT OF AG-**  
18 **RICULTURAL WORKERS**

19 **SEC. 613. AGRICULTURAL WORKERS.**

20 (a) BLUE CARD PROGRAM.—

21           (1) IN GENERAL.—Notwithstanding any other  
22 provision of law, the Secretary shall confer blue card  
23 status upon an alien who qualifies under this sub-  
24 section if the Secretary determines that the alien—

1 (A) has performed agricultural employment  
2 in the United States for at least 863 hours or  
3 150 work days during the 24-month period end-  
4 ing on December 31, 2005;

5 (B) applied for such status during the 18-  
6 month application period beginning on the first  
7 day of the seventh month that begins after the  
8 date of enactment of this Act; and

9 (C) is otherwise admissible to the United  
10 States under section 212 of the Immigration  
11 and Nationality Act (8 U.S.C. 1182), except as  
12 otherwise provided under subsection (e)(2).

13 (2) AUTHORIZED TRAVEL.—An alien in blue  
14 card status has the right to travel abroad (including  
15 commutation from a residence abroad) in the same  
16 manner as an alien lawfully admitted for permanent  
17 residence.

18 (3) AUTHORIZED EMPLOYMENT.—An alien in  
19 blue card status shall be provided an “employment  
20 authorized” endorsement or other appropriate work  
21 permit, in the same manner as an alien lawfully ad-  
22 mitted for permanent residence.

23 (4) TERMINATION OF BLUE CARD STATUS.—

24 (A) IN GENERAL.—The Secretary may ter-  
25minate blue card status granted under this sub-

1 section only upon a determination under this  
2 subtitle that the alien is deportable.

3 (B) GROUNDS FOR TERMINATION OF BLUE  
4 CARD STATUS.—Before any alien becomes eligi-  
5 ble for adjustment of status under subsection  
6 (c), the Secretary may deny adjustment to per-  
7 manent resident status and provide for termi-  
8 nation of the blue card status granted such  
9 alien under paragraph (1) if—

10 (i) the Secretary finds, by a prepon-  
11 derance of the evidence, that the adjust-  
12 ment to blue card status was the result of  
13 fraud or willful misrepresentation (as de-  
14 scribed in section 212(a)(6)(C)(i) of the  
15 Immigration and Nationality Act (8 U.S.C.  
16 1182(a)(6)(C)(i)); or

17 (ii) the alien—

18 (I) commits an act that makes  
19 the alien inadmissible to the United  
20 States as an immigrant, except as  
21 provided under subsection (e)(2);

22 (II) is convicted of a felony or 3  
23 or more misdemeanors committed in  
24 the United States; or

1 (III) is convicted of an offense,  
2 an element of which involves bodily in-  
3 jury, threat of serious bodily injury,  
4 or harm to property in excess of \$500.

5 (5) RECORD OF EMPLOYMENT.—

6 (A) IN GENERAL.—Each employer of a  
7 worker granted status under this subsection  
8 shall annually—

9 (i) provide a written record of employ-  
10 ment to the alien; and

11 (ii) provide a copy of such record to  
12 the Secretary.

13 (B) SUNSET.—The obligation under sub-  
14 paragraph (A) shall terminate on the date that  
15 is 6 years after the date of the enactment of  
16 this Act.

17 (6) REQUIRED FEATURES OF BLUE CARD.—The  
18 Secretary shall provide each alien granted blue card  
19 status and the spouse and children of each such  
20 alien residing in the United States with a card that  
21 contains—

22 (A) an encrypted, machine-readable, elec-  
23 tronic identification strip that is unique to the  
24 alien to whom the card is issued;

1 (B) biometric identifiers, including finger-  
2 prints and a digital photograph; and

3 (C) physical security features designed to  
4 prevent tampering, counterfeiting, or duplica-  
5 tion of the card for fraudulent purposes.

6 (7) FINE.—An alien granted blue card status  
7 shall pay a fine to the Secretary in an amount equal  
8 to \$100.

9 (8) MAXIMUM NUMBER.—The Secretary may  
10 issue not more than 1,500,000 blue cards during the  
11 5-year period beginning on the date of the enact-  
12 ment of this Act.

13 (b) RIGHTS OF ALIENS GRANTED BLUE CARD STA-  
14 TUS.—

15 (1) IN GENERAL.—Except as otherwise pro-  
16 vided under this subsection, an alien in blue card  
17 status shall be considered to be an alien lawfully ad-  
18 mitted for permanent residence for purposes of any  
19 law other than any provision of the Immigration and  
20 Nationality Act (8 U.S.C. 1101 et seq.).

21 (2) DELAYED ELIGIBILITY FOR CERTAIN FED-  
22 ERAL PUBLIC BENEFITS.—An alien in blue card sta-  
23 tus shall not be eligible, by reason of such status, for  
24 any form of assistance or benefit described in section  
25 403(a) of the Personal Responsibility and Work Op-

1 portunity Reconciliation Act of 1996 (8 U.S.C.  
2 1613(a)) until 5 years after the date on which the  
3 Secretary confers blue card status upon that alien.

4 (3) TERMS OF EMPLOYMENT RESPECTING  
5 ALIENS ADMITTED UNDER THIS SECTION.—

6 (A) PROHIBITION.—No alien granted blue  
7 card status may be terminated from employ-  
8 ment by any employer during the period of blue  
9 card status except for just cause.

10 (B) TREATMENT OF COMPLAINTS.—

11 (i) ESTABLISHMENT OF PROCESS.—

12 The Secretary shall establish a process for  
13 the receipt, initial review, and disposition  
14 of complaints by aliens granted blue card  
15 status who allege that they have been ter-  
16 minated without just cause. No proceeding  
17 shall be conducted under this subpara-  
18 graph with respect to a termination unless  
19 the Secretary determines that the com-  
20 plaint was filed not later than 6 months  
21 after the date of the termination.

22 (ii) INITIATION OF ARBITRATION.—If

23 the Secretary finds that a complaint has  
24 been filed in accordance with clause (i) and  
25 there is reasonable cause to believe that

1 the complainant was terminated without  
2 just cause, the Secretary shall initiate  
3 binding arbitration proceedings by request-  
4 ing the Federal Mediation and Conciliation  
5 Service to appoint a mutually agreeable ar-  
6 bitrator from the roster of arbitrators  
7 maintained by such Service for the geo-  
8 graphical area in which the employer is lo-  
9 cated. The procedures and rules of such  
10 Service shall be applicable to the selection  
11 of such arbitrator and to such arbitration  
12 proceedings. The Secretary shall pay the  
13 fee and expenses of the arbitrator, subject  
14 to the availability of appropriations for  
15 such purpose.

16 (iii) ARBITRATION PROCEEDINGS.—

17 The arbitrator shall conduct the pro-  
18 ceeding in accordance with the policies and  
19 procedures promulgated by the American  
20 Arbitration Association applicable to pri-  
21 vate arbitration of employment disputes.  
22 The arbitrator shall make findings respect-  
23 ing whether the termination was for just  
24 cause. The arbitrator may not find that  
25 the termination was for just cause unless



1 the employer so demonstrates by a prepon-  
2 derance of the evidence. If the arbitrator  
3 finds that the termination was not for just  
4 cause, the arbitrator shall make a specific  
5 finding of the number of days or hours of  
6 work lost by the employee as a result of  
7 the termination. The arbitrator shall have  
8 no authority to order any other remedy, in-  
9 cluding, but not limited to, reinstatement,  
10 back pay, or front pay to the affected em-  
11 ployee. Within 30 days from the conclusion  
12 of the arbitration proceeding, the arbi-  
13 trator shall transmit the findings in the  
14 form of a written opinion to the parties to  
15 the arbitration and the Secretary. Such  
16 findings shall be final and conclusive, and  
17 no official or court of the United States  
18 shall have the power or jurisdiction to re-  
19 view any such findings.

20 (iv) EFFECT OF ARBITRATION FIND-  
21 INGS.—If the Secretary receives a finding  
22 of an arbitrator that an employer has ter-  
23 minated an alien granted blue card status  
24 without just cause, the Secretary shall  
25 credit the alien for the number of days or

1 hours of work lost for purposes of the re-  
2 quirement of subsection (c)(1).

3 (v) TREATMENT OF ATTORNEY'S  
4 FEES.—The parties shall bear the cost of  
5 their own attorney's fees involved in the  
6 litigation of the complaint.

7 (vi) NONEXCLUSIVE REMEDY.—The  
8 complaint process provided for in this sub-  
9 paragraph is in addition to any other  
10 rights an employee may have in accordance  
11 with applicable law.

12 (vii) EFFECT ON OTHER ACTIONS OR  
13 PROCEEDINGS.—Any finding of fact or  
14 law, judgment, conclusion, or final order  
15 made by an arbitrator in the proceeding  
16 before the Secretary shall not be conclusive  
17 or binding in any separate or subsequent  
18 action or proceeding between the employee  
19 and the employee's current or prior em-  
20 ployer brought before an arbitrator, admin-  
21 istrative agency, court, or judge of any  
22 State or the United States, regardless of  
23 whether the prior action was between the  
24 same or related parties or involved the  
25 same facts, except that the arbitrator's

1 specific finding of the number of days or  
2 hours of work lost by the employee as a re-  
3 sult of the employment termination may be  
4 referred to the Secretary pursuant to  
5 clause (iv).

6 (C) CIVIL PENALTIES.—

7 (i) IN GENERAL.—If the Secretary  
8 finds, after notice and opportunity for a  
9 hearing, that an employer of an alien  
10 granted blue card status has failed to pro-  
11 vide the record of employment required  
12 under subsection (a)(5) or has provided a  
13 false statement of material fact in such a  
14 record, the employer shall be subject to a  
15 civil money penalty in an amount not to  
16 exceed \$1,000 per violation.

17 (ii) LIMITATION.—The penalty appli-  
18 cable under clause (i) for failure to provide  
19 records shall not apply unless the alien has  
20 provided the employer with evidence of em-  
21 ployment authorization granted under this  
22 section.

23 (c) ADJUSTMENT TO PERMANENT RESIDENCE.—

24 (1) AGRICULTURAL WORKERS.—

1 (A) IN GENERAL.—Except as provided in  
2 subparagraph (B), the Secretary shall adjust  
3 the status of an alien granted blue card status  
4 to that of an alien lawfully admitted for perma-  
5 nent residence if the Secretary determines that  
6 the following requirements are satisfied:

7 (i) QUALIFYING EMPLOYMENT.—The  
8 alien has performed at least—

9 (I) 5 years of agricultural em-  
10 ployment in the United States, for at  
11 least 100 work days or 575 hours, but  
12 in no case less than 575 hours per  
13 year, during the 5-year period begin-  
14 ning on the date of the enactment of  
15 this Act; or

16 (II) 3 years of agricultural em-  
17 ployment in the United States, for at  
18 least 150 work days or 863 hours, but  
19 in no case less than 863 hours per  
20 year, during the 5-year period begin-  
21 ning on the date of the enactment of  
22 this Act.

23 (ii) PROOF.—An alien may dem-  
24 onstrate compliance with the requirement  
25 under clause (i) by submitting—

1 (I) the record of employment de-  
2 scribed in subsection (a)(5); or

3 (II) such documentation as may  
4 be submitted under subsection (d)(3).

5 (iii) EXTRAORDINARY CIR-  
6 CUMSTANCES.—In determining whether an  
7 alien has met the requirement under clause  
8 (i)(I), the Secretary may credit the alien  
9 with not more than 12 additional months  
10 to meet the requirement under clause (i) if  
11 the alien was unable to work in agricul-  
12 tural employment due to—

13 (I) pregnancy, injury, or disease,  
14 if the alien can establish such preg-  
15 nancy, disabling injury, or disease  
16 through medical records;

17 (II) illness, disease, or other spe-  
18 cial needs of a minor child, if the alien  
19 can establish such illness, disease, or  
20 special needs through medical records;  
21 or

22 (III) severe weather conditions  
23 that prevented the alien from engag-  
24 ing in agricultural employment for a  
25 significant period of time.

1 (iv) APPLICATION PERIOD.—The alien  
2 applies for adjustment of status not later  
3 than 7 years after the date of the enact-  
4 ment of this Act.

5 (v) FINE.—The alien pays a fine to  
6 the Secretary in an amount equal to \$400.

7 (B) GROUNDS FOR DENIAL OF ADJUST-  
8 MENT OF STATUS.—The Secretary may deny an  
9 alien adjustment to permanent resident status,  
10 and provide for termination of the blue card  
11 status granted such alien, if—

12 (i) the Secretary finds by a prepon-  
13 derance of the evidence that the adjust-  
14 ment to blue card status was the result of  
15 fraud or willful misrepresentation, as de-  
16 scribed in section 212(a)(6)(C)(i) of the  
17 Immigration and Nationality Act (8 U.S.C.  
18 1182(a)(6)(C)(i)); or

19 (ii) the alien—

20 (I) commits an act that makes  
21 the alien inadmissible to the United  
22 States under section 212 of the Immi-  
23 gration and Nationality Act (8 U.S.C.  
24 1182), except as provided under sub-  
25 section (e)(2);

1 (II) is convicted of a felony or 3  
2 or more misdemeanors committed in  
3 the United States; or

4 (III) is convicted of a single mis-  
5 demeanor for which the actual sen-  
6 tence served is 6 months or longer.

7 (C) GROUNDS FOR REMOVAL.—Any alien  
8 granted blue card status who does not apply for  
9 adjustment of status under this subsection be-  
10 fore the expiration of the application period de-  
11 scribed in subparagraph (A)(iv), or who fails to  
12 meet the other requirements of subparagraph  
13 (A) by the end of the applicable period, is de-  
14 portable and may be removed under section 240  
15 of the Immigration and Nationality Act (8  
16 U.S.C. 1229a).

17 (D) PAYMENT OF TAXES.—

18 (i) IN GENERAL.—Not later than the  
19 date on which an alien’s status is adjusted  
20 under this subsection, the alien shall estab-  
21 lish the payment of any applicable Federal  
22 tax liability by establishing that—

23 (I) no such tax liability exists;

24 (II) all outstanding liabilities  
25 have been paid; or

1 (III) the alien has entered into  
2 an agreement for payment of all out-  
3 standing liabilities with the Internal  
4 Revenue Service.

5 (ii) APPLICABLE FEDERAL TAX LI-  
6 ABILITY.—For purposes of clause (i), the  
7 term “applicable Federal tax liability”  
8 means liability for Federal taxes, including  
9 penalties and interest, owed for any year  
10 during the period of employment required  
11 under paragraph (1)(A) for which the stat-  
12 utory period for assessment of any defi-  
13 ciency for such taxes has not expired.

14 (iii) IRS COOPERATION.—The Sec-  
15 retary of the Treasury shall establish rules  
16 and procedures under which the Commis-  
17 sioner of Internal Revenue shall provide  
18 documentation to an alien upon request to  
19 establish the payment of all taxes required  
20 by this subparagraph.

21 (2) SPOUSES AND MINOR CHILDREN.—

22 (A) IN GENERAL.—Notwithstanding any  
23 other provision of law, the Secretary shall con-  
24 fer the status of lawful permanent resident on  
25 the spouse and minor child of an alien granted



1 status under paragraph (1), including any indi-  
2 vidual who was a minor child on the date such  
3 alien was granted blue card status, if the  
4 spouse or minor child applies for such status, or  
5 if the principal alien includes the spouse or  
6 minor child in an application for adjustment of  
7 status to that of a lawful permanent resident.

8 (B) TREATMENT OF SPOUSES AND MINOR  
9 CHILDREN BEFORE ADJUSTMENT OF STATUS.—

10 (i) REMOVAL.—The spouse and any  
11 minor child of an alien granted blue card  
12 status may not be removed while such  
13 alien maintains such status, except as pro-  
14 vided in subparagraph (C).

15 (ii) TRAVEL.—The spouse and any  
16 minor child of an alien granted blue card  
17 status may travel outside the United  
18 States in the same manner as an alien law-  
19 fully admitted for permanent residence.

20 (iii) EMPLOYMENT.—The spouse of an  
21 alien granted blue card status may apply  
22 to the Secretary for a work permit to au-  
23 thorize such spouse to engage in any law-  
24 ful employment in the United States while  
25 such alien maintains blue card status.

1 (C) GROUNDS FOR DENIAL OF ADJUST-  
2 MENT OF STATUS AND REMOVAL.—The Sec-  
3 retary may deny an alien spouse or child ad-  
4 justment of status under subparagraph (A) and  
5 may remove such spouse or child under section  
6 240 of the Immigration and Nationality Act (8  
7 U.S.C. 1229a) if the spouse or child—

8 (i) commits an act that makes the  
9 alien spouse or child inadmissible to the  
10 United States under section 212 of such  
11 Act (8 U.S.C. 1182), except as provided  
12 under subsection (e)(2);

13 (ii) is convicted of a felony or 3 or  
14 more misdemeanors committed in the  
15 United States; or

16 (iii) is convicted of a single mis-  
17 demeanor for which the actual sentence  
18 served is 6 months or longer.

19 (d) APPLICATIONS.—

20 (1) TO WHOM MAY BE MADE.—The Secretary  
21 shall provide that—

22 (A) applications for blue card status may  
23 be filed—

24 (i) with the Secretary, but only if the  
25 applicant is represented by an attorney or

1 a non-profit religious, charitable, social  
 2 service, or similar organization recognized  
 3 by the Board of Immigration Appeals  
 4 under section 292.2 of title 8, Code of  
 5 Federal Regulations; or

6 (ii) with a qualified designated entity  
 7 (designated under paragraph (2)), but only  
 8 if the applicant consents to the forwarding  
 9 of the application to the Secretary; and

10 (B) applications for adjustment of status  
 11 under subsection (c) shall be filed directly with  
 12 the Secretary.

13 (2) DESIGNATION OF ENTITIES TO RECEIVE AP-  
 14 PPLICATIONS.—

15 (A) IN GENERAL.—For purposes of receiv-  
 16 ing applications under subsection (a), the Sec-  
 17 retary—

18 (i) shall designate qualified farm labor  
 19 organizations and associations of employ-  
 20 ers; and

21 (ii) may designate such other persons  
 22 as the Secretary determines are qualified  
 23 and have substantial experience, dem-  
 24 onstrate competence, and have traditional  
 25 long-term involvement in the preparation

1 and submission of applications for adjust-  
2 ment of status under section 209, 210, or  
3 245 of the Immigration and Nationality  
4 Act, Public Law 89-732, Public Law 95-  
5 145, or the Immigration Reform and Con-  
6 trol Act of 1986.

7 (B) REFERENCES.—Organizations, asso-  
8 ciations, and persons designated under subpara-  
9 graph (A) are referred to in this subtitle as  
10 “qualified designated entities”.

11 (3) PROOF OF ELIGIBILITY.—

12 (A) IN GENERAL.—An alien may establish  
13 that the alien meets the requirement of sub-  
14 section (a)(1)(A) or (c)(1)(A) through govern-  
15 ment employment records or records supplied  
16 by employers or collective bargaining organiza-  
17 tions, and other reliable documentation as the  
18 alien may provide. The Secretary shall establish  
19 special procedures to properly credit work in  
20 cases in which an alien was employed under an  
21 assumed name.

22 (B) DOCUMENTATION OF WORK HIS-  
23 TORY.—

24 (i) BURDEN OF PROOF.—An alien ap-  
25 plying for status under subsection (a)(1)

1 or (c)(1) has the burden of proving by a  
2 preponderance of the evidence that the  
3 alien has worked the requisite number of  
4 hours or days (as required under sub-  
5 section (a)(1)(A) or (c)(1)(A)).

6 (ii) TIMELY PRODUCTION OF  
7 RECORDS.—If an employer or farm labor  
8 contractor employing such an alien has  
9 kept proper and adequate records respect-  
10 ing such employment, the alien's burden of  
11 proof under clause (i) may be met by se-  
12 curing timely production of those records  
13 under regulations to be promulgated by the  
14 Secretary.

15 (iii) SUFFICIENT EVIDENCE.—An  
16 alien can meet the burden of proof under  
17 clause (i) to establish that the alien has  
18 performed the work described in subsection  
19 (a)(1)(A) or (c)(1)(A) by producing suffi-  
20 cient evidence to show the extent of that  
21 employment as a matter of just and rea-  
22 sonable inference.

23 (4) TREATMENT OF APPLICATIONS BY QUALI-  
24 FIED DESIGNATED ENTITIES.—Each qualified des-  
25 ignated entity shall agree to forward to the Sec-

1       retary applications filed with it in accordance with  
2       paragraph (1)(A)(ii) but shall not forward to the  
3       Secretary applications filed with it unless the appli-  
4       cant has consented to such forwarding. No such en-  
5       tity may make a determination required by this sec-  
6       tion to be made by the Secretary. Upon the request  
7       of the alien, a qualified designated entity shall assist  
8       the alien in obtaining documentation of the work  
9       history of the alien.

10           (5) LIMITATION ON ACCESS TO INFORMA-  
11       TION.—Files and records prepared for purposes of  
12       this subsection by qualified designated entities oper-  
13       ating under this subsection are confidential and the  
14       Secretary shall not have access to such files or  
15       records relating to an alien without the consent of  
16       the alien, except as allowed by a court order issued  
17       pursuant to paragraph (6).

18           (6) CONFIDENTIALITY OF INFORMATION.—

19           (A) IN GENERAL.—Except as otherwise  
20       provided in this subsection, neither the Sec-  
21       retary, nor any other official or employee of the  
22       Department, or a bureau or agency of the De-  
23       partment, may—

24                   (i) use the information furnished by  
25       the applicant pursuant to an application

1 filed under this section, the information  
2 provided to the applicant by a person des-  
3 ignated under paragraph (2)(A), or any in-  
4 formation provided by an employer or  
5 former employer, for any purpose other  
6 than to make a determination on the appli-  
7 cation, or for enforcement of paragraph  
8 (7);

9 (ii) make any publication whereby the  
10 information furnished by any particular in-  
11 dividual can be identified; or

12 (iii) permit anyone other than the  
13 sworn officers and employees of the De-  
14 partment, or a bureau or agency of the  
15 Department, or, with respect to applica-  
16 tions filed with a qualified designated enti-  
17 ty, that qualified designated entity, to ex-  
18 amine individual applications.

19 (B) REQUIRED DISCLOSURES.—The Sec-  
20 retary shall provide the information furnished  
21 under this section, or any other information de-  
22 rived from such furnished information, to—

23 (i) a duly recognized law enforcement  
24 entity in connection with a criminal inves-

1           tigation or prosecution, if such information  
2           is requested in writing by such entity; or

3           (ii) an official coroner, for purposes of  
4           affirmatively identifying a deceased indi-  
5           vidual, whether or not the death of such  
6           individual resulted from a crime.

7           (C) CONSTRUCTION.—

8           (i) IN GENERAL.—Nothing in this  
9           paragraph shall be construed to limit the  
10          use, or release, for immigration enforce-  
11          ment purposes or law enforcement pur-  
12          poses of information contained in files or  
13          records of the Department pertaining to an  
14          application filed under this section, other  
15          than information furnished by an applicant  
16          pursuant to the application, or any other  
17          information derived from the application,  
18          that is not available from any other source.

19          (ii) CRIMINAL CONVICTIONS.—Infor-  
20          mation concerning whether the applicant  
21          has at any time been convicted of a crime  
22          may be used or released for immigration  
23          enforcement or law enforcement purposes.

24          (D) CRIME.—Any person who knowingly  
25          uses, publishes, or permits information to be ex-



1           amined in violation of this paragraph shall be  
2           subject to a fine in an amount not to exceed  
3           \$10,000.

4           (7) PENALTIES FOR FALSE STATEMENTS IN AP-  
5           PLICATIONS.—

6                   (A) CRIMINAL PENALTY.—Any person  
7           who—

8                           (i) files an application for status  
9                           under subsection (a) or (c) and knowingly  
10                          and willfully falsifies, conceals, or covers  
11                          up a material fact or makes any false, fic-  
12                          titious, or fraudulent statements or rep-  
13                          resentations, or makes or uses any false  
14                          writing or document knowing the same to  
15                          contain any false, fictitious, or fraudulent  
16                          statement or entry; or

17                           (ii) creates or supplies a false writing  
18                           or document for use in making such an ap-  
19                           plication,

20           shall be fined in accordance with title 18,  
21           United States Code, imprisoned not more than  
22           5 years, or both.

23                   (B) INADMISSIBILITY.—An alien who is  
24           convicted of a crime under subparagraph (A)  
25           shall be considered to be inadmissible to the

1 United States on the ground described in sec-  
2 tion 212(a)(6)(C)(i) of the Immigration and  
3 Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)).

4 (8) ELIGIBILITY FOR LEGAL SERVICES.—Sec-  
5 tion 504(a)(11) of Public Law 104–134 (110 Stat.  
6 1321–53 et seq.) shall not be construed to prevent  
7 a recipient of funds under the Legal Services Cor-  
8 poration Act (42 U.S.C. 2996 et seq.) from pro-  
9 viding legal assistance directly related to an applica-  
10 tion for adjustment of status under this section.

11 (9) APPLICATION FEES.—

12 (A) FEE SCHEDULE.—The Secretary shall  
13 provide for a schedule of fees that—

14 (i) shall be charged for the filing of  
15 applications for status under subsections  
16 (a) and (c); and

17 (ii) may be charged by qualified des-  
18 ignated entities to help defray the costs of  
19 services provided to such applicants.

20 (B) PROHIBITION ON EXCESS FEES BY  
21 QUALIFIED DESIGNATED ENTITIES.—A quali-  
22 fied designated entity may not charge any fee  
23 in excess of, or in addition to, the fees author-  
24 ized under subparagraph (A)(ii) for services  
25 provided to applicants.

1 (C) DISPOSITION OF FEES.—

2 (i) IN GENERAL.—There is established  
3 in the general fund of the Treasury a sepa-  
4 rate account, which shall be known as the  
5 “Agricultural Worker Immigration Status  
6 Adjustment Account”. Notwithstanding  
7 any other provision of law, there shall be  
8 deposited as offsetting receipts into the ac-  
9 count all fees collected under subparagraph  
10 (A)(i).

11 (ii) USE OF FEES FOR APPLICATION  
12 PROCESSING.—Amounts deposited in the  
13 “Agricultural Worker Immigration Status  
14 Adjustment Account” shall remain avail-  
15 able to the Secretary until expended for  
16 processing applications for status under  
17 subsections (a) and (c).

18 (e) WAIVER OF NUMERICAL LIMITATIONS AND CER-  
19 TAIN GROUNDS FOR INADMISSIBILITY.—

20 (1) NUMERICAL LIMITATIONS DO NOT APPLY.—

21 The numerical limitations of sections 201 and 202  
22 of the Immigration and Nationality Act (8 U.S.C.  
23 1151 and 1152) shall not apply to the adjustment  
24 of aliens to lawful permanent resident status under  
25 this section.

1           (2) WAIVER OF CERTAIN GROUNDS OF INAD-  
2           MISSIBILITY.—In the determination of an alien’s eli-  
3           gibility for status under subsection (a)(1)(C) or an  
4           alien’s eligibility for adjustment of status under sub-  
5           section (c)(1)(B)(ii)(I), the following rules shall  
6           apply:

7                   (A) GROUNDS OF EXCLUSION NOT APPLI-  
8                   CABLE.—The provisions of paragraphs (5),  
9                   (6)(A), (7), and (9) of section 212(a) of the Im-  
10                   migration and Nationality Act (8 U.S.C.  
11                   1182(a)) shall not apply.

12                   (B) WAIVER OF OTHER GROUNDS.—

13                           (i) IN GENERAL.—Except as provided  
14                           in clause (ii), the Secretary may waive any  
15                           other provision of such section 212(a) in  
16                           the case of individual aliens for humani-  
17                           tarian purposes, to ensure family unity, or  
18                           if otherwise in the public interest.

19                           (ii) GROUNDS THAT MAY NOT BE  
20                           WAIVED.—Paragraphs (2)(A), (2)(B),  
21                           (2)(C), (3), and (4) of such section 212(a)  
22                           may not be waived by the Secretary under  
23                           clause (i).

24                           (iii) CONSTRUCTION.—Nothing in this  
25                           subparagraph shall be construed as affect-

1           ing the authority of the Secretary other  
2           than under this subparagraph to waive  
3           provisions of such section 212(a).

4           (C) SPECIAL RULE FOR DETERMINATION  
5           OF PUBLIC CHARGE.—An alien is not ineligible  
6           for status under this section by reason of a  
7           ground of inadmissibility under section  
8           212(a)(4) of the Immigration and Nationality  
9           Act (8 U.S.C. 1182(a)(4)) if the alien dem-  
10          onstrates a history of employment in the United  
11          States evidencing self-support without reliance  
12          on public cash assistance.

13          (f) TEMPORARY STAY OF REMOVAL AND WORK AU-  
14          THORIZATION FOR CERTAIN APPLICANTS.—

15           (1) BEFORE APPLICATION PERIOD.—Effective  
16          on the date of enactment of this Act, the Secretary  
17          shall provide that, in the case of an alien who is ap-  
18          prehended before the beginning of the application  
19          period described in subsection (a)(1)(B) and who  
20          can establish a nonfrivolous case of eligibility for  
21          blue card status (but for the fact that the alien may  
22          not apply for such status until the beginning of such  
23          period), until the alien has had the opportunity dur-  
24          ing the first 30 days of the application period to

1 complete the filing of an application for blue card  
2 status, the alien—

3 (A) may not be removed; and

4 (B) shall be granted authorization to en-  
5 gage in employment in the United States and  
6 be provided an “employment authorized” en-  
7 dorsement or other appropriate work permit for  
8 such purpose.

9 (2) DURING APPLICATION PERIOD.—The Sec-  
10 retary shall provide that, in the case of an alien who  
11 presents a nonfrivolous application for blue card sta-  
12 tus during the application period described in sub-  
13 section (a)(1)(B), including an alien who files such  
14 an application within 30 days of the alien’s appre-  
15 hension, and until a final determination on the ap-  
16 plication has been made in accordance with this sec-  
17 tion, the alien—

18 (A) may not be removed; and

19 (B) shall be granted authorization to en-  
20 gage in employment in the United States and  
21 be provided an “employment authorized” en-  
22 dorsement or other appropriate work permit for  
23 such purpose.

24 (g) ADMINISTRATIVE AND JUDICIAL REVIEW.—

1           (1) IN GENERAL.—There shall be no adminis-  
2           trative or judicial review of a determination respect-  
3           ing an application for status under subsection (a) or  
4           (c) except in accordance with this subsection.

5           (2) ADMINISTRATIVE REVIEW.—

6           (A) SINGLE LEVEL OF ADMINISTRATIVE  
7           APPELLATE REVIEW.—The Secretary shall es-  
8           tablish an appellate authority to provide for a  
9           single level of administrative appellate review of  
10          such a determination.

11          (B) STANDARD FOR REVIEW.—Such ad-  
12          ministrative appellate review shall be based  
13          solely upon the administrative record estab-  
14          lished at the time of the determination on the  
15          application and upon such additional or newly  
16          discovered evidence as may not have been avail-  
17          able at the time of the determination.

18          (3) JUDICIAL REVIEW.—

19          (A) LIMITATION TO REVIEW OF RE-  
20          MOVAL.—There shall be judicial review of such  
21          a determination only in the judicial review of an  
22          order of removal under section 242 of the Im-  
23          migration and Nationality Act (8 U.S.C. 1252).

24          (B) STANDARD FOR JUDICIAL REVIEW.—  
25          Such judicial review shall be based solely upon

1           the administrative record established at the  
2           time of the review by the appellate authority  
3           and the findings of fact and determinations  
4           contained in such record shall be conclusive un-  
5           less the applicant can establish abuse of discre-  
6           tion or that the findings are directly contrary to  
7           clear and convincing facts contained in the  
8           record considered as a whole.

9           (h) DISSEMINATION OF INFORMATION ON ADJUST-  
10          MENT PROGRAM.—Beginning not later than the first day  
11          of the application period described in subsection (a)(1)(B),  
12          the Secretary, in cooperation with qualified designated en-  
13          tities, shall broadly disseminate information respecting the  
14          benefits that aliens may receive under this section and the  
15          requirements to be satisfied to obtain such benefits.

16          (i) REGULATIONS.—The Secretary shall issue regula-  
17          tions to implement this section not later than the first day  
18          of the seventh month that begins after the date of enact-  
19          ment of this Act.

20          (j) EFFECTIVE DATE.—This section shall take effect  
21          on the date that regulations are issued implementing this  
22          section on an interim or other basis.

23          (k) AUTHORIZATION OF APPROPRIATIONS.—There  
24          are authorized to be appropriated to the Secretary to carry



1 out this section \$40,000,000 for each of the fiscal years  
2 2008 through 2012.

3 **SEC. 614. CORRECTION OF SOCIAL SECURITY RECORDS.**

4 (a) IN GENERAL.—Section 208(d)(1) of the Social  
5 Security Act (42 U.S.C. 408(d)(1)) is amended—

6 (1) in subparagraph (B)(ii), by striking “or” at  
7 the end;

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

10 (3) by inserting after subparagraph (C) the fol-  
11 lowing:

12 “(D) who is granted blue card status under the  
13 AgJOBS Act of 2007,”; and

14 (4) by striking “1990.” and inserting “1990, or  
15 in the case of an alien described in subparagraph  
16 (D), if such conduct is alleged to have occurred be-  
17 fore the date on which the alien was granted blue  
18 card status.”.

19 (b) EFFECTIVE DATE.—The amendments made by  
20 subsection (a) shall take effect on the first day of the sev-  
21 enth month that begins after the date of the enactment  
22 of this Act.

1     **CHAPTER 2—REFORM OF H-2A WORKER**  
2                                     **PROGRAM**

3     **SEC. 615. AMENDMENT TO THE IMMIGRATION AND NATION-**  
4                                     **ALITY ACT.**

5             (a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.)  
6 is amended—

7                     (1) by striking section 218 and inserting the  
8             following:

9     **“SEC. 218. H-2A EMPLOYER APPLICATIONS.**

10             “(a) APPLICATIONS TO THE SECRETARY OF  
11 LABOR.—

12                     “(1) IN GENERAL.—No alien may be admitted  
13             to the United States as an H-2A worker, or other-  
14             wise provided status as an H-2A worker, unless the  
15             employer has filed with the Secretary of Labor an  
16             application containing—

17                             “(A) the assurances described in sub-  
18             section (b);

19                             “(B) a description of the nature and loca-  
20             tion of the work to be performed;

21                             “(C) the anticipated period (expected be-  
22             ginning and ending dates) for which the work-  
23             ers will be needed; and

1           “(D) the number of job opportunities in  
2           which the employer seeks to employ the work-  
3           ers.

4           “(2) ACCOMPANIED BY JOB OFFER.—Each ap-  
5           plication filed under paragraph (1) shall be accom-  
6           panied by a copy of the job offer describing the  
7           wages and other terms and conditions of employ-  
8           ment and the bona fide occupational qualifications  
9           that shall be possessed by a worker to be employed  
10          in the job opportunity in question.

11          “(b) ASSURANCES FOR INCLUSION IN APPLICA-  
12          TIONS.—The assurances referred to in subsection (a)(1)  
13          are the following:

14                 “(1) JOB OPPORTUNITIES COVERED BY COL-  
15                 LECTIVE BARGAINING AGREEMENTS.—With respect  
16                 to a job opportunity that is covered under a collec-  
17                 tive bargaining agreement:

18                         “(A) UNION CONTRACT DESCRIBED.—The  
19                         job opportunity is covered by a union contract  
20                         which was negotiated at arm’s length between a  
21                         bona fide union and the employer.

22                         “(B) STRIKE OR LOCKOUT.—The specific  
23                         job opportunity for which the employer is re-  
24                         questing an H-2A worker is not vacant because

1 the former occupant is on strike or being locked  
2 out in the course of a labor dispute.

3 “(C) NOTIFICATION OF BARGAINING REP-  
4 REPRESENTATIVES.—The employer, at the time of  
5 filing the application, has provided notice of the  
6 filing under this paragraph to the bargaining  
7 representative of the employer’s employees in  
8 the occupational classification at the place or  
9 places of employment for which aliens are  
10 sought.

11 “(D) TEMPORARY OR SEASONAL JOB OP-  
12 PORTUNITIES.—The job opportunity is tem-  
13 porary or seasonal.

14 “(E) OFFERS TO UNITED STATES WORK-  
15 ERS.—The employer has offered or will offer  
16 the job to any eligible United States worker  
17 who applies and is equally or better qualified  
18 for the job for which the nonimmigrant is, or  
19 the nonimmigrants are, sought and who will be  
20 available at the time and place of need.

21 “(F) PROVISION OF INSURANCE.—If the  
22 job opportunity is not covered by the State  
23 workers’ compensation law, the employer will  
24 provide, at no cost to the worker, insurance cov-  
25 ering injury and disease arising out of, and in

1           the course of, the worker’s employment which  
2           will provide benefits at least equal to those pro-  
3           vided under the State’s workers’ compensation  
4           law for comparable employment.

5           “(2) JOB OPPORTUNITIES NOT COVERED BY  
6           COLLECTIVE BARGAINING AGREEMENTS.—With re-  
7           spect to a job opportunity that is not covered under  
8           a collective bargaining agreement:

9                   “(A) STRIKE OR LOCKOUT.—The specific  
10           job opportunity for which the employer is re-  
11           questing an H-2A worker is not vacant because  
12           the former occupant is on strike or being locked  
13           out in the course of a labor dispute.

14                   “(B) TEMPORARY OR SEASONAL JOB OP-  
15           PORTUNITIES.—The job opportunity is tem-  
16           porary or seasonal.

17                   “(C) BENEFIT, WAGE, AND WORKING CON-  
18           DITIONS.—The employer will provide, at a min-  
19           imum, the benefits, wages, and working condi-  
20           tions required by section 218E to all workers  
21           employed in the job opportunities for which the  
22           employer has applied under subsection (a) and  
23           to all other workers in the same occupation at  
24           the place of employment.

1           “(D) NONDISPLACEMENT OF UNITED  
2 STATES WORKERS.—The employer did not dis-  
3 place and will not displace a United States  
4 worker employed by the employer during the  
5 period of employment and for a period of 30  
6 days preceding the period of employment in the  
7 occupation at the place of employment for  
8 which the employer seeks approval to employ  
9 H-2A workers.

10           “(E) REQUIREMENTS FOR PLACEMENT OF  
11 NONIMMIGRANT WITH OTHER EMPLOYERS.—  
12 The employer will not place the nonimmigrant  
13 with another employer unless—

14           “(i) the nonimmigrant performs du-  
15 ties in whole or in part at 1 or more work  
16 sites owned, operated, or controlled by  
17 such other employer;

18           “(ii) there are indicia of an employ-  
19 ment relationship between the non-  
20 immigrant and such other employer; and

21           “(iii) the employer has inquired of the  
22 other employer as to whether, and has no  
23 actual knowledge or notice that, during the  
24 period of employment and for a period of  
25 30 days preceding the period of employ-

1           ment, the other employer has displaced or  
2           intends to displace a United States worker  
3           employed by the other employer in the oc-  
4           cupation at the place of employment for  
5           which the employer seeks approval to em-  
6           ploy H-2A workers.

7           “(F) STATEMENT OF LIABILITY.—The ap-  
8           plication form shall include a clear statement  
9           explaining the liability under subparagraph (E)  
10          of an employer if the other employer described  
11          in such subparagraph displaces a United States  
12          worker as described in such subparagraph.

13          “(G) PROVISION OF INSURANCE.—If the  
14          job opportunity is not covered by the State  
15          workers’ compensation law, the employer will  
16          provide, at no cost to the worker, insurance cov-  
17          ering injury and disease arising out of and in  
18          the course of the worker’s employment which  
19          will provide benefits at least equal to those pro-  
20          vided under the State’s workers’ compensation  
21          law for comparable employment.

22          “(H) EMPLOYMENT OF UNITED STATES  
23          WORKERS.—

24                 “(i) RECRUITMENT.—The employer  
25                 has taken or will take the following steps

1 to recruit United States workers for the  
2 job opportunities for which the H-2A non-  
3 immigrant is, or H-2A nonimmigrants are,  
4 sought:

5 “(I) CONTACTING FORMER  
6 WORKERS.—The employer shall make  
7 reasonable efforts through the sending  
8 of a letter by United States Postal  
9 Service mail, or otherwise, to contact  
10 any United States worker the em-  
11 ployer employed during the previous  
12 season in the occupation at the place  
13 of intended employment for which the  
14 employer is applying for workers and  
15 has made the availability of the em-  
16 ployer’s job opportunities in the occu-  
17 pation at the place of intended em-  
18 ployment known to such previous  
19 workers, unless the worker was termi-  
20 nated from employment by the em-  
21 ployer for a lawful job-related reason  
22 or abandoned the job before the work-  
23 er completed the period of employ-  
24 ment of the job opportunity for which  
25 the worker was hired.



1                   “(II) FILING A JOB OFFER WITH  
2                   THE LOCAL OFFICE OF THE STATE  
3                   EMPLOYMENT SECURITY AGENCY.—  
4                   Not later than 28 days before the  
5                   date on which the employer desires to  
6                   employ an H-2A worker in a tem-  
7                   porary or seasonal agricultural job op-  
8                   portunity, the employer shall submit a  
9                   copy of the job offer described in sub-  
10                  section (a)(2) to the local office of the  
11                  State employment security agency  
12                  which serves the area of intended em-  
13                  ployment and authorize the posting of  
14                  the job opportunity on ‘America’s Job  
15                  Bank’ or other electronic job registry,  
16                  except that nothing in this subclause  
17                  shall require the employer to file an  
18                  interstate job order under section 653  
19                  of title 20, Code of Federal Regula-  
20                  tions.

21                   “(III) ADVERTISING OF JOB OP-  
22                   PORTUNITIES.—Not later than 14  
23                   days before the date on which the em-  
24                   ployer desires to employ an H-2A  
25                   worker in a temporary or seasonal ag-

1           ricultural job opportunity, the em-  
2           ployer shall advertise the availability  
3           of the job opportunities for which the  
4           employer is seeking workers in a pub-  
5           lication in the local labor market that  
6           is likely to be patronized by potential  
7           farm workers.

8                   “(IV) EMERGENCY PROCE-  
9                   DURES.—The Secretary of Labor  
10                  shall, by regulation, provide a proce-  
11                  dure for acceptance and approval of  
12                  applications in which the employer  
13                  has not complied with the provisions  
14                  of this subparagraph because the em-  
15                  ployer’s need for H-2A workers could  
16                  not reasonably have been foreseen.

17                   “(ii) JOB OFFERS.—The employer has  
18                  offered or will offer the job to any eligible  
19                  United States worker who applies and is  
20                  equally or better qualified for the job for  
21                  which the nonimmigrant is, or non-  
22                  immigrants are, sought and who will be  
23                  available at the time and place of need.

24                   “(iii) PERIOD OF EMPLOYMENT.—The  
25                  employer will provide employment to any

1 qualified United States worker who applies  
2 to the employer during the period begin-  
3 ning on the date on which the foreign  
4 worker departs for the employer's place of  
5 employment and ending on the date on  
6 which 50 percent of the period of employ-  
7 ment for which the foreign worker who is  
8 in the job was hired has elapsed, subject to  
9 the following requirements:

10 “(I) PROHIBITION.—No person  
11 or entity shall willfully and knowingly  
12 withhold United States workers before  
13 the arrival of H-2A workers in order  
14 to force the hiring of United States  
15 workers under this clause.

16 “(II) COMPLAINTS.—Upon re-  
17 ceipt of a complaint by an employer  
18 that a violation of subclause (I) has  
19 occurred, the Secretary of Labor shall  
20 immediately investigate. The Sec-  
21 retary of Labor shall, within 36 hours  
22 of the receipt of the complaint, issue  
23 findings concerning the alleged viola-  
24 tion. If the Secretary of Labor finds  
25 that a violation has occurred, the Sec-

1           retary of Labor shall immediately sus-  
2           pend the application of this clause  
3           with respect to that certification for  
4           that date of need.

5           “(III) PLACEMENT OF UNITED  
6           STATES WORKERS.—Before referring  
7           a United States worker to an em-  
8           ployer during the period described in  
9           the matter preceding subclause (I),  
10          the Secretary of Labor shall make all  
11          reasonable efforts to place the United  
12          States worker in an open job accept-  
13          able to the worker, if there are other  
14          job offers pending with the job service  
15          that offer similar job opportunities in  
16          the area of intended employment.

17          “(iv) STATUTORY CONSTRUCTION.—  
18          Nothing in this subparagraph shall be con-  
19          strued to prohibit an employer from using  
20          such legitimate selection criteria relevant  
21          to the type of job that are normal or cus-  
22          tomary to the type of job involved so long  
23          as such criteria are not applied in a dis-  
24          criminatory manner.

1       “(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF  
2 OF EMPLOYER MEMBERS.—

3           “(1) IN GENERAL.—An agricultural association  
4 may file an application under subsection (a) on be-  
5 half of 1 or more of its employer members that the  
6 association certifies in its application has or have  
7 agreed in writing to comply with the requirements of  
8 this section and sections 218E through 218G.

9           “(2) TREATMENT OF ASSOCIATIONS ACTING AS  
10 EMPLOYERS.—If an association filing an application  
11 under paragraph (1) is a joint or sole employer of  
12 the temporary or seasonal agricultural workers re-  
13 quested on the application, the certifications granted  
14 under subsection (e)(2)(B) to the association may be  
15 used for the certified job opportunities of any of its  
16 producer members named on the application, and  
17 such workers may be transferred among such pro-  
18 ducer members to perform the agricultural services  
19 of a temporary or seasonal nature for which the cer-  
20 tifications were granted.

21       “(d) WITHDRAWAL OF APPLICATIONS.—

22           “(1) IN GENERAL.—An employer may withdraw  
23 an application filed pursuant to subsection (a), ex-  
24 cept that if the employer is an agricultural associa-  
25 tion, the association may withdraw an application

1 filed pursuant to subsection (a) with respect to 1 or  
2 more of its members. To withdraw an application,  
3 the employer or association shall notify the Sec-  
4 retary of Labor in writing, and the Secretary of  
5 Labor shall acknowledge in writing the receipt of  
6 such withdrawal notice. An employer who withdraws  
7 an application under subsection (a), or on whose be-  
8 half an application is withdrawn, is relieved of the  
9 obligations undertaken in the application.

10 “(2) LIMITATION.—An application may not be  
11 withdrawn while any alien provided status under sec-  
12 tion 101(a)(15)(H)(ii)(a) pursuant to such applica-  
13 tion is employed by the employer.

14 “(3) OBLIGATIONS UNDER OTHER STATUTES.—  
15 Any obligation incurred by an employer under any  
16 other law or regulation as a result of the recruit-  
17 ment of United States workers or H-2A workers  
18 under an offer of terms and conditions of employ-  
19 ment required as a result of making an application  
20 under subsection (a) is unaffected by withdrawal of  
21 such application.

22 “(e) REVIEW AND APPROVAL OF APPLICATIONS.—

23 “(1) RESPONSIBILITY OF EMPLOYERS.—The  
24 employer shall make available for public examina-  
25 tion, within 1 working day after the date on which

1 an application under subsection (a) is filed, at the  
2 employer's principal place of business or work site,  
3 a copy of each such application (and such accom-  
4 panying documents as are necessary).

5 “(2) RESPONSIBILITY OF THE SECRETARY OF  
6 LABOR.—

7 “(A) COMPILATION OF LIST.—The Sec-  
8 retary of Labor shall compile, on a current  
9 basis, a list (by employer and by occupational  
10 classification) of the applications filed under  
11 this subsection. Such list shall include the wage  
12 rate, number of workers sought, period of in-  
13 tended employment, and date of need. The Sec-  
14 retary of Labor shall make such list available  
15 for examination in the District of Columbia.

16 “(B) REVIEW OF APPLICATIONS.—The  
17 Secretary of Labor shall review such an applica-  
18 tion only for completeness and obvious inac-  
19 curacies. Unless the Secretary of Labor finds  
20 that the application is incomplete or obviously  
21 inaccurate, the Secretary of Labor shall certify  
22 that the intending employer has filed with the  
23 Secretary of Labor an application as described  
24 in subsection (a). Such certification shall be

1 provided within 7 days of the filing of the appli-  
2 cation.”; and

3 (2) by inserting after section 218D, as added  
4 by section 601 of this Act, the following:

5 **“SEC. 218E. H-2A EMPLOYMENT REQUIREMENTS.**

6 “(a) PREFERENTIAL TREATMENT OF ALIENS PRO-  
7 HIBITED.—Employers seeking to hire United States work-  
8 ers shall offer the United States workers no less than the  
9 same benefits, wages, and working conditions that the em-  
10 ployer is offering, intends to offer, or will provide to H-  
11 2A workers. Conversely, no job offer may impose on  
12 United States workers any restrictions or obligations  
13 which will not be imposed on the employer’s H-2A work-  
14 ers.

15 “(b) MINIMUM BENEFITS, WAGES, AND WORKING  
16 CONDITIONS.—Except in cases where higher benefits,  
17 wages, or working conditions are required by the provi-  
18 sions of subsection (a), in order to protect similarly em-  
19 ployed United States workers from adverse effects with  
20 respect to benefits, wages, and working conditions, every  
21 job offer which shall accompany an application under sec-  
22 tion 218(b)(2) shall include each of the following benefit,  
23 wage, and working condition provisions:

24 “(1) REQUIREMENT TO PROVIDE HOUSING OR A  
25 HOUSING ALLOWANCE.—



1           “(A) IN GENERAL.—An employer applying  
2 under section 218(a) for H-2A workers shall  
3 offer to provide housing at no cost to all work-  
4 ers in job opportunities for which the employer  
5 has applied under that section and to all other  
6 workers in the same occupation at the place of  
7 employment, whose place of residence is beyond  
8 normal commuting distance.

9           “(B) TYPE OF HOUSING.—In complying  
10 with subparagraph (A), an employer may, at  
11 the employer’s election, provide housing that  
12 meets applicable Federal standards for tem-  
13 porary labor camps or secure housing that  
14 meets applicable local standards for rental or  
15 public accommodation housing or other sub-  
16 stantially similar class of habitation, or in the  
17 absence of applicable local standards, State  
18 standards for rental or public accommodation  
19 housing or other substantially similar class of  
20 habitation. In the absence of applicable local or  
21 State standards, Federal temporary labor camp  
22 standards shall apply.

23           “(C) FAMILY HOUSING.—When it is the  
24 prevailing practice in the occupation and area  
25 of intended employment to provide family hous-

1           ing, family housing shall be provided to workers  
2           with families who request it.

3           “(D) WORKERS ENGAGED IN THE RANGE  
4           PRODUCTION OF LIVESTOCK.—The Secretary of  
5           Labor shall issue regulations that address the  
6           specific requirements for the provision of hous-  
7           ing to workers engaged in the range production  
8           of livestock.

9           “(E) LIMITATION.—Nothing in this para-  
10          graph shall be construed to require an employer  
11          to provide or secure housing for persons who  
12          were not entitled to such housing under the  
13          temporary labor certification regulations in ef-  
14          fect on June 1, 1986.

15          “(F) CHARGES FOR HOUSING.—

16               “(i) CHARGES FOR PUBLIC HOUS-  
17               ING.—If public housing provided for mi-  
18               grant agricultural workers under the aus-  
19               pices of a local, county, or State govern-  
20               ment is secured by an employer, and use of  
21               the public housing unit normally requires  
22               charges from migrant workers, such  
23               charges shall be paid by the employer di-  
24               rectly to the appropriate individual or enti-

1 ty affiliated with the housing's manage-  
2 ment.

3 “(ii) DEPOSIT CHARGES.—Charges in  
4 the form of deposits for bedding or other  
5 similar incidentals related to housing shall  
6 not be levied upon workers by employers  
7 who provide housing for their workers. An  
8 employer may require a worker found to  
9 have been responsible for damage to such  
10 housing which is not the result of normal  
11 wear and tear related to habitation to re-  
12 imburse the employer for the reasonable  
13 cost of repair of such damage.

14 “(G) HOUSING ALLOWANCE AS ALTER-  
15 NATIVE.—

16 “(i) IN GENERAL.—If the requirement  
17 under clause (ii) is satisfied, the employer  
18 may provide a reasonable housing allow-  
19 ance instead of offering housing under sub-  
20 paragraph (A). Upon the request of a  
21 worker seeking assistance in locating hous-  
22 ing, the employer shall make a good faith  
23 effort to assist the worker in identifying  
24 and locating housing in the area of in-  
25 tended employment. An employer who of-

1           fers a housing allowance to a worker, or  
2           assists a worker in locating housing which  
3           the worker occupies, pursuant to this  
4           clause shall not be deemed a housing pro-  
5           vider under section 203 of the Migrant and  
6           Seasonal Agricultural Worker Protection  
7           Act (29 U.S.C. 1823) solely by virtue of  
8           providing such housing allowance. No  
9           housing allowance may be used for housing  
10          which is owned or controlled by the em-  
11          ployer.

12           “(ii) CERTIFICATION.—The require-  
13          ment of this clause is satisfied if the Gov-  
14          ernor of the State certifies to the Secretary  
15          of Labor that there is adequate housing  
16          available in the area of intended employ-  
17          ment for migrant farm workers, and H-2A  
18          workers, who are seeking temporary hous-  
19          ing while employed at farm work. Such  
20          certification shall expire after 3 years un-  
21          less renewed by the Governor of the State.

22           “(iii) AMOUNT OF ALLOWANCE.—

23           “(I) NONMETROPOLITAN COUN-  
24          TRIES.—If the place of employment of  
25          the workers provided an allowance

1 under this subparagraph is a non-  
2 metropolitan county, the amount of  
3 the housing allowance under this sub-  
4 paragraph shall be equal to the state-  
5 wide average fair market rental for  
6 existing housing for nonmetropolitan  
7 counties for the State, as established  
8 by the Secretary of Housing and  
9 Urban Development pursuant to sec-  
10 tion 8(c) of the United States Hous-  
11 ing Act of 1937 (42 U.S.C. 1437f(c)),  
12 based on a 2 bedroom dwelling unit  
13 and an assumption of 2 persons per  
14 bedroom.

15 “(II) METROPOLITAN COUN-  
16 TIES.—If the place of employment of  
17 the workers provided an allowance  
18 under this paragraph is in a metro-  
19 politan county, the amount of the  
20 housing allowance under this subpara-  
21 graph shall be equal to the statewide  
22 average fair market rental for existing  
23 housing for metropolitan counties for  
24 the State, as established by the Sec-  
25 retary of Housing and Urban Devel-

1                   opment pursuant to section 8(c) of  
2                   the United States Housing Act of  
3                   1937 (42 U.S.C. 1437f(c)), based on  
4                   a 2-bedroom dwelling unit and an as-  
5                   sumption of 2 persons per bedroom.

6                   “(2) REIMBURSEMENT OF TRANSPORTATION.—

7                   “(A) TO PLACE OF EMPLOYMENT.—A  
8                   worker who completes 50 percent of the period  
9                   of employment of the job opportunity for which  
10                  the worker was hired shall be reimbursed by the  
11                  employer for the cost of the worker’s transpor-  
12                  tation and subsistence from the place from  
13                  which the worker came to work for the em-  
14                  ployer (or place of last employment, if the  
15                  worker traveled from such place) to the place of  
16                  employment.

17                  “(B) FROM PLACE OF EMPLOYMENT.—A  
18                  worker who completes the period of employment  
19                  for the job opportunity involved shall be reim-  
20                  bursed by the employer for the cost of the  
21                  worker’s transportation and subsistence from  
22                  the place of employment to the place from  
23                  which the worker, disregarding intervening em-  
24                  ployment, came to work for the employer, or to  
25                  the place of next employment, if the worker has

1           contracted with a subsequent employer who has  
2           not agreed to provide or pay for the worker's  
3           transportation and subsistence to such subse-  
4           quent employer's place of employment.

5           “(C) LIMITATION.—

6           “(i) AMOUNT OF REIMBURSEMENT.—

7           Except as provided in clause (ii), the  
8           amount of reimbursement provided under  
9           subparagraph (A) or (B) to a worker or  
10          alien shall not exceed the lesser of—

11          “(I) the actual cost to the worker

12          or alien of the transportation and sub-  
13          sistence involved; or

14          “(II) the most economical and

15          reasonable common carrier transpor-  
16          tation charges and subsistence costs  
17          for the distance involved.

18          “(ii) DISTANCE TRAVELED.—No reim-

19          bursement under subparagraph (A) or (B)  
20          shall be required if the distance traveled is  
21          100 miles or less, or the worker is not re-  
22          siding in employer-provided housing or  
23          housing secured through an allowance as  
24          provided in paragraph (1)(G).

1           “(D) EARLY TERMINATION.—If the worker  
2 is laid off or employment is terminated for con-  
3 tract impossibility (as described in paragraph  
4 (4)(D)) before the anticipated ending date of  
5 employment, the employer shall provide the  
6 transportation and subsistence required by sub-  
7 paragraph (B) and, notwithstanding whether  
8 the worker has completed 50 percent of the pe-  
9 riod of employment, shall provide the transpor-  
10 tation reimbursement required by subparagraph  
11 (A).

12           “(E) TRANSPORTATION BETWEEN LIVING  
13 QUARTERS AND WORK SITE.—The employer  
14 shall provide transportation between the work-  
15 er’s living quarters and the employer’s work site  
16 without cost to the worker, and such transpor-  
17 tation will be in accordance with applicable laws  
18 and regulations.

19           “(3) REQUIRED WAGES.—

20           “(A) IN GENERAL.—An employer applying  
21 for workers under section 218(a) shall offer to  
22 pay, and shall pay, all workers in the occupa-  
23 tion for which the employer has applied for  
24 workers, not less (and is not required to pay  
25 more) than the greater of the prevailing wage



1 in the occupation in the area of intended em-  
2 ployment or the adverse effect wage rate. No  
3 worker shall be paid less than the greater of the  
4 hourly wage prescribed under section 6(a)(1) of  
5 the Fair Labor Standards Act of 1938 (29  
6 U.S.C. 206(a)(1)) or the applicable State min-  
7 imum wage.

8 “(B) LIMITATION.—Effective on the date  
9 of the enactment of the AgJOBS Act of 2007,  
10 and continuing for 3 years thereafter, no ad-  
11 verse effect wage rate for a State may be more  
12 than the adverse effect wage rate for that State  
13 in effect on January 1, 2003, as established by  
14 section 655.107 of title 20, Code of Federal  
15 Regulations.

16 “(C) REQUIRED WAGES AFTER 3-YEAR  
17 FREEZE.—

18 “(i) FIRST ADJUSTMENT.—If Con-  
19 gress does not set a new wage standard  
20 applicable to this section before the first  
21 March 1 that is not less than 3 years after  
22 the date of enactment of this section, the  
23 adverse effect wage rate for each State be-  
24 ginning on such March 1 shall be the wage  
25 rate that would have resulted if the ad-

1           verse effect wage rate in effect on January  
2           1, 2003, had been annually adjusted, be-  
3           ginning on March 1, 2006, by the lesser  
4           of—

5                   “(I) the 12-month percentage  
6                   change in the Consumer Price Index  
7                   for All Urban Consumers between De-  
8                   cember of the second preceding year  
9                   and December of the preceding year;  
10                  and

11                   “(II) 4 percent.

12                  “(ii) SUBSEQUENT ANNUAL ADJUST-  
13                  MENTS.—Beginning on the first March 1  
14                  that is not less than 4 years after the date  
15                  of enactment of this section, and each  
16                  March 1 thereafter, the adverse effect  
17                  wage rate then in effect for each State  
18                  shall be adjusted by the lesser of—

19                   “(I) the 12-month percentage  
20                   change in the Consumer Price Index  
21                   for All Urban Consumers between De-  
22                   cember of the second preceding year  
23                   and December of the preceding year;  
24                  and

25                   “(II) 4 percent.

1           “(D) DEDUCTIONS.—The employer shall  
2           make only those deductions from the worker’s  
3           wages that are authorized by law or are reason-  
4           able and customary in the occupation and area  
5           of employment. The job offer shall specify all  
6           deductions not required by law which the em-  
7           ployer will make from the worker’s wages.

8           “(E) FREQUENCY OF PAY.—The employer  
9           shall pay the worker not less frequently than  
10          twice monthly, or in accordance with the pre-  
11          vailing practice in the area of employment,  
12          whichever is more frequent.

13          “(F) HOURS AND EARNINGS STATE-  
14          MENTS.—The employer shall furnish to the  
15          worker, on or before each payday, in 1 or more  
16          written statements—

17                 “(i) the worker’s total earnings for  
18                 the pay period;

19                 “(ii) the worker’s hourly rate of pay,  
20                 piece rate of pay, or both;

21                 “(iii) the hours of employment which  
22                 have been offered to the worker (broken  
23                 out by hours offered in accordance with  
24                 and over and above the three-quarters  
25                 guarantee described in paragraph (4);

1           “(iv) the hours actually worked by the  
2           worker;

3           “(v) an itemization of the deductions  
4           made from the worker’s wages; and

5           “(vi) if piece rates of pay are used,  
6           the units produced daily.

7           “(G) REPORT ON WAGE PROTECTIONS.—  
8           Not later than December 31, 2008, the Comp-  
9           troller General of the United States shall pre-  
10          pare and transmit to the Secretary of Labor,  
11          the Committee on the Judiciary of the Senate,  
12          and Committee on the Judiciary of the House  
13          of Representatives, a report that addresses—

14               “(i) whether the employment of H-2A  
15               or unauthorized aliens in the United States  
16               agricultural work force has depressed  
17               United States farm worker wages below  
18               the levels that would otherwise have pre-  
19               vailed if alien farm workers had not been  
20               employed in the United States;

21               “(ii) whether an adverse effect wage  
22               rate is necessary to prevent wages of  
23               United States farm workers in occupations  
24               in which H-2A workers are employed from  
25               falling below the wage levels that would

1 have prevailed in the absence of the em-  
2 ployment of H-2A workers in those occu-  
3 pations;

4 “(iii) whether alternative wage stand-  
5 ards, such as a prevailing wage standard,  
6 would be sufficient to prevent wages in oc-  
7 cupations in which H-2A workers are em-  
8 ployed from falling below the wage level  
9 that would have prevailed in the absence of  
10 H-2A employment;

11 “(iv) whether any changes are war-  
12 ranted in the current methodologies for  
13 calculating the adverse effect wage rate  
14 and the prevailing wage; and

15 “(v) recommendations for future wage  
16 protection under this section.

17 “(H) COMMISSION ON WAGE STAND-  
18 ARDS.—

19 “(i) ESTABLISHMENT.—There is es-  
20 tablished the Commission on Agricultural  
21 Wage Standards under the H-2A program  
22 (in this subparagraph referred to as the  
23 ‘Commission’).

24 “(ii) COMPOSITION.—The Commission  
25 shall consist of 10 members as follows:

1           “(I) 4 representatives of agricul-  
2           tural employers and 1 representative  
3           of the Department of Agriculture,  
4           each appointed by the Secretary of  
5           Agriculture.

6           “(II) 4 representatives of agricul-  
7           tural workers and 1 representative of  
8           the Department of Labor, each ap-  
9           pointed by the Secretary of Labor.

10          “(iii) FUNCTIONS.—The Commission  
11          shall conduct a study that shall address—

12               “(I) whether the employment of  
13               H-2A or unauthorized aliens in the  
14               United States agricultural workforce  
15               has depressed United States farm  
16               worker wages below the levels that  
17               would otherwise have prevailed if alien  
18               farm workers had not been employed  
19               in the United States;

20               “(II) whether an adverse effect  
21               wage rate is necessary to prevent  
22               wages of United States farm workers  
23               in occupations in which H-2A work-  
24               ers are employed from falling below  
25               the wage levels that would have pre-

1           vailed in the absence of the employ-  
2           ment of H-2A workers in those occu-  
3           pations;

4                   “(III) whether alternative wage  
5           standards, such as a prevailing wage  
6           standard, would be sufficient to pre-  
7           vent wages in occupations in which  
8           H-2A workers are employed from fall-  
9           ing below the wage level that would  
10          have prevailed in the absence of H-2A  
11          employment;

12                   “(IV) whether any changes are  
13          warranted in the current methodolo-  
14          gies for calculating the adverse effect  
15          wage rate and the prevailing wage  
16          rate; and

17                   “(V) recommendations for future  
18          wage protection under this section.

19                   “(iv) FINAL REPORT.—Not later than  
20          December 31, 2008, the Commission shall  
21          submit a report to the Congress setting  
22          forth the findings of the study conducted  
23          under clause (iii).

1                   “(v) TERMINATION DATE.—The Com-  
2                   mission shall terminate upon submitting  
3                   its final report.

4                   “(4) GUARANTEE OF EMPLOYMENT.—

5                   “(A) OFFER TO WORKER.—The employer  
6                   shall guarantee to offer the worker employment  
7                   for the hourly equivalent of at least three-  
8                   fourths of the work days of the total period of  
9                   employment, beginning with the first work day  
10                  after the arrival of the worker at the place of  
11                  employment and ending on the expiration date  
12                  specified in the job offer. For purposes of this  
13                  subparagraph, the hourly equivalent means the  
14                  number of hours in the work days as stated in  
15                  the job offer and shall exclude the worker’s  
16                  Sabbath and Federal holidays. If the employer  
17                  affords the United States or H-2A worker less  
18                  employment than that required under this para-  
19                  graph, the employer shall pay such worker the  
20                  amount which the worker would have earned  
21                  had the worker, in fact, worked for the guaran-  
22                  teed number of hours.

23                  “(B) FAILURE TO WORK.—Any hours  
24                  which the worker fails to work, up to a max-  
25                  imum of the number of hours specified in the



1 job offer for a work day, when the worker has  
2 been offered an opportunity to do so, and all  
3 hours of work actually performed (including vol-  
4 untary work in excess of the number of hours  
5 specified in the job offer in a work day, on the  
6 worker's Sabbath, or on Federal holidays) may  
7 be counted by the employer in calculating  
8 whether the period of guaranteed employment  
9 has been met.

10 “(C) ABANDONMENT OF EMPLOYMENT,  
11 TERMINATION FOR CAUSE.—If the worker vol-  
12 untarily abandons employment before the end  
13 of the contract period, or is terminated for  
14 cause, the worker is not entitled to the ‘three-  
15 fourths guarantee’ described in subparagraph  
16 (A).

17 “(D) CONTRACT IMPOSSIBILITY.—If, be-  
18 fore the expiration of the period of employment  
19 specified in the job offer, the services of the  
20 worker are no longer required for reasons be-  
21 yond the control of the employer due to any  
22 form of natural disaster, including but not lim-  
23 ited to a flood, hurricane, freeze, earthquake,  
24 fire, drought, plant or animal disease or pest in-  
25 festation, or regulatory drought, before the

1           guarantee in subparagraph (A) is fulfilled, the  
2           employer may terminate the worker’s employ-  
3           ment. In the event of such termination, the em-  
4           ployer shall fulfill the employment guarantee in  
5           subparagraph (A) for the work days that have  
6           elapsed from the first work day after the arrival  
7           of the worker to the termination of employ-  
8           ment. In such cases, the employer will make ef-  
9           forts to transfer the United States worker to  
10          other comparable employment acceptable to the  
11          worker. If such transfer is not effected, the em-  
12          ployer shall provide the return transportation  
13          required in paragraph (2)(D).

14          “(5) MOTOR VEHICLE SAFETY.—

15                 “(A) MODE OF TRANSPORTATION SUBJECT  
16                 TO COVERAGE.—

17                         “(i) IN GENERAL.—Except as pro-  
18                         vided in clauses (iii) and (iv), this sub-  
19                         section applies to any H-2A employer that  
20                         uses or causes to be used any vehicle to  
21                         transport an H-2A worker within the  
22                         United States.

23                         “(ii) DEFINED TERM.—In this para-  
24                         graph, the term ‘uses or causes to be  
25                         used’—

1           “(I) applies only to transpor-  
2           tation provided by an H-2A employer  
3           to an H-2A worker, or by a farm  
4           labor contractor to an H-2A worker  
5           at the request or direction of an H-  
6           2A employer; and

7           “(II) does not apply to—

8           “(aa) transportation pro-  
9           vided, or transportation arrange-  
10          ments made, by an H-2A work-  
11          er, unless the employer specifi-  
12          cally requested or arranged such  
13          transportation; or

14          “(bb) car pooling arrange-  
15          ments made by H-2A workers  
16          themselves, using 1 of the work-  
17          ers’ own vehicles, unless specifi-  
18          cally requested by the employer  
19          directly or through a farm labor  
20          contractor.

21          “(iii) CLARIFICATION.—Providing a  
22          job offer to an H-2A worker that causes  
23          the worker to travel to or from the place  
24          of employment, or the payment or reim-  
25          bursement of the transportation costs of

1 an H-2A worker by an H-2A employer,  
2 shall not constitute an arrangement of, or  
3 participation in, such transportation.

4 “(iv) AGRICULTURAL MACHINERY AND  
5 EQUIPMENT EXCLUDED.—This subsection  
6 does not apply to the transportation of an  
7 H-2A worker on a tractor, combine, har-  
8 vester, picker, or other similar machinery  
9 or equipment while such worker is actually  
10 engaged in the planting, cultivating, or  
11 harvesting of agricultural commodities or  
12 the care of livestock or poultry or engaged  
13 in transportation incidental thereto.

14 “(v) COMMON CARRIERS EX-  
15 CLUDED.—This subsection does not apply  
16 to common carrier motor vehicle transpor-  
17 tation in which the provider holds itself out  
18 to the general public as engaging in the  
19 transportation of passengers for hire and  
20 holds a valid certification of authorization  
21 for such purposes from an appropriate  
22 Federal, State, or local agency.

23 “(B) APPLICABILITY OF STANDARDS, LI-  
24 CENSING, AND INSURANCE REQUIREMENTS.—

1           “(i) IN GENERAL.—When using, or  
2 causing to be used, any vehicle for the pur-  
3 pose of providing transportation to which  
4 this subparagraph applies, each employer  
5 shall—

6           “(I) ensure that each such vehi-  
7 cle conforms to the standards pre-  
8 scribed by the Secretary of Labor  
9 under section 401(b) of the Migrant  
10 and Seasonal Agricultural Worker  
11 Protection Act (29 U.S.C. 1841(b))  
12 and other applicable Federal and  
13 State safety standards;

14           “(II) ensure that each driver has  
15 a valid and appropriate license, as  
16 provided by State law, to operate the  
17 vehicle; and

18           “(III) have an insurance policy  
19 or a liability bond that is in effect  
20 which insures the employer against li-  
21 ability for damage to persons or prop-  
22 erty arising from the ownership, oper-  
23 ation, or causing to be operated, of  
24 any vehicle used to transport any H-  
25 2A worker.

1           “(ii) AMOUNT OF INSURANCE RE-  
2           QUIRED.—The level of insurance required  
3           shall be determined by the Secretary of  
4           Labor pursuant to regulations to be issued  
5           under this subsection.

6           “(iii) EFFECT OF WORKERS’ COM-  
7           PENSATION COVERAGE.—If the employer  
8           of any H-2A worker provides workers’  
9           compensation coverage for such worker in  
10          the case of bodily injury or death as pro-  
11          vided by State law, the following adjust-  
12          ments in the requirements of subparagraph  
13          (B)(i)(III) relating to having an insurance  
14          policy or liability bond apply:

15                 “(I) No insurance policy or liabil-  
16                 ity bond shall be required of the em-  
17                 ployer, if such workers are trans-  
18                 ported only under circumstances for  
19                 which there is coverage under such  
20                 State law.

21                 “(II) An insurance policy or li-  
22                 ability bond shall be required of the  
23                 employer for circumstances under  
24                 which coverage for the transportation

1                   of such workers is not provided under  
2                   such State law.

3           “(c) COMPLIANCE WITH LABOR LAWS.—An em-  
4 ployer shall assure that, except as otherwise provided in  
5 this section, the employer will comply with all applicable  
6 Federal, State, and local labor laws, including laws affect-  
7 ing migrant and seasonal agricultural workers, with re-  
8 spect to all United States workers and alien workers em-  
9 ployed by the employer, except that a violation of this as-  
10 surance shall not constitute a violation of the Migrant and  
11 Seasonal Agricultural Worker Protection Act (29 U.S.C.  
12 1801 et seq.).

13           “(d) COPY OF JOB OFFER.—The employer shall pro-  
14 vide to the worker, not later than the day the work com-  
15 mences, a copy of the employer’s application and job offer  
16 described in section 218(a), or, if the employer will require  
17 the worker to enter into a separate employment contract  
18 covering the employment in question, such separate em-  
19 ployment contract.

20           “(e) RANGE PRODUCTION OF LIVESTOCK.—Nothing  
21 in this section, section 218, or section 218F shall preclude  
22 the Secretary of Labor and the Secretary from continuing  
23 to apply special procedures and requirements to the ad-  
24 mission and employment of aliens in occupations involving  
25 the range production of livestock.

1 **“SEC. 218F. PROCEDURE FOR ADMISSION AND EXTENSION**  
2 **OF STAY OF H-2A WORKERS.**

3 “(a) PETITIONING FOR ADMISSION.—An employer,  
4 or an association acting as an agent or joint employer for  
5 its members, that seeks the admission into the United  
6 States of an H-2A worker may file a petition with the  
7 Secretary. The petition shall be accompanied by an accept-  
8 ed and currently valid certification provided by the Sec-  
9 retary of Labor under section 218(e)(2)(B) covering the  
10 petitioner.

11 “(b) EXPEDITED ADJUDICATION BY THE SEC-  
12 RETARY.—The Secretary shall establish a procedure for  
13 expedited adjudication of petitions filed under subsection  
14 (a) and within 7 working days shall, by fax, cable, or other  
15 means assuring expedited delivery, transmit a copy of no-  
16 tice of action on the petition to the petitioner and, in the  
17 case of approved petitions, to the appropriate immigration  
18 officer at the port of entry or United States consulate (as  
19 the case may be) where the petitioner has indicated that  
20 the alien beneficiary (or beneficiaries) will apply for a visa  
21 or admission to the United States.

22 “(c) CRITERIA FOR ADMISSIBILITY.—

23 “(1) IN GENERAL.—An H-2A worker shall be  
24 considered admissible to the United States if the  
25 alien is otherwise admissible under this section, sec-



1 tion 218, and section 218E, and the alien is not in-  
2 eligible under paragraph (2).

3 “(2) DISQUALIFICATION.—An alien shall be  
4 considered inadmissible to the United States and in-  
5 eligible for nonimmigrant status under section  
6 101(a)(15)(H)(ii)(a) if the alien has, at any time  
7 during the past 5 years—

8 “(A) violated a material provision of this  
9 section, including the requirement to promptly  
10 depart the United States when the alien’s au-  
11 thorized period of admission under this section  
12 has expired; or

13 “(B) otherwise violated a term or condition  
14 of admission into the United States as a non-  
15 immigrant, including overstaying the period of  
16 authorized admission as such a nonimmigrant.

17 “(3) WAIVER OF INELIGIBILITY FOR UNLAW-  
18 FUL PRESENCE.—

19 “(A) IN GENERAL.—An alien who has not  
20 previously been admitted into the United States  
21 pursuant to this section, and who is otherwise  
22 eligible for admission in accordance with para-  
23 graphs (1) and (2), shall not be deemed inad-  
24 missible by virtue of section 212(a)(9)(B). If an  
25 alien described in the preceding sentence is

1 present in the United States, the alien may  
2 apply from abroad for H-2A status, but may  
3 not be granted that status in the United States.

4 “(B) MAINTENANCE OF WAIVER.—An  
5 alien provided an initial waiver of ineligibility  
6 pursuant to subparagraph (A) shall remain eli-  
7 gible for such waiver unless the alien violates  
8 the terms of this section or again becomes ineli-  
9 gible under section 212(a)(9)(B) by virtue of  
10 unlawful presence in the United States after  
11 the date of the initial waiver of ineligibility pur-  
12 suant to subparagraph (A).

13 “(d) PERIOD OF ADMISSION.—

14 “(1) IN GENERAL.—The alien shall be admitted  
15 for the period of employment in the application cer-  
16 tified by the Secretary of Labor pursuant to section  
17 218(e)(2)(B), not to exceed 10 months, supple-  
18 mented by a period of not more than 1 week before  
19 the beginning of the period of employment for the  
20 purpose of travel to the work site and a period of  
21 14 days following the period of employment for the  
22 purpose of departure or extension based on a subse-  
23 quent offer of employment, except that—

24 “(A) the alien is not authorized to be em-  
25 ployed during such 14-day period except in the

1 employment for which the alien was previously  
2 authorized; and

3 “(B) the total period of employment, in-  
4 cluding such 14-day period, may not exceed 10  
5 months.

6 “(2) CONSTRUCTION.—Nothing in this sub-  
7 section shall limit the authority of the Secretary to  
8 extend the stay of the alien under any other provi-  
9 sion of this Act.

10 “(e) ABANDONMENT OF EMPLOYMENT.—

11 “(1) IN GENERAL.—An alien admitted or pro-  
12 vided status under section 101(a)(15)(H)(ii)(a) who  
13 abandons the employment which was the basis for  
14 such admission or status shall be considered to have  
15 failed to maintain nonimmigrant status as an H-2A  
16 worker and shall depart the United States or be sub-  
17 ject to removal under section 237(a)(1)(C)(i).

18 “(2) REPORT BY EMPLOYER.—The employer, or  
19 association acting as agent for the employer, shall  
20 notify the Secretary not later than 7 days after an  
21 H-2A worker prematurely abandons employment.

22 “(3) REMOVAL BY THE SECRETARY.—The Sec-  
23 retary shall promptly remove from the United States  
24 any H-2A worker who violates any term or condi-  
25 tion of the worker’s nonimmigrant status.

1           “(4) VOLUNTARY TERMINATION.—Notwith-  
2 standing paragraph (1), an alien may voluntarily  
3 terminate his or her employment if the alien prompt-  
4 ly departs the United States upon termination of  
5 such employment.

6           “(f) REPLACEMENT OF ALIEN.—

7           “(1) IN GENERAL.—Upon presentation of the  
8 notice to the Secretary required by subsection (e)(2),  
9 the Secretary of State shall promptly issue a visa to,  
10 and the Secretary shall admit into the United  
11 States, an eligible alien designated by the employer  
12 to replace an H-2A worker—

13                   “(A) who abandons or prematurely termi-  
14 nates employment; or

15                   “(B) whose employment is terminated  
16 after a United States worker is employed pur-  
17 suant to section 218(b)(2)(H)(iii), if the United  
18 States worker voluntarily departs before the  
19 end of the period of intended employment or if  
20 the employment termination is for a lawful job-  
21 related reason.

22           “(2) CONSTRUCTION.—Nothing in this sub-  
23 section is intended to limit any preference required  
24 to be accorded United States workers under any  
25 other provision of this Act.

1 “(g) IDENTIFICATION DOCUMENT.—

2 “(1) IN GENERAL.—Each alien authorized to be  
3 admitted under section 101(a)(15)(H)(ii)(a) shall be  
4 provided an identification and employment eligibility  
5 document to verify eligibility for employment in the  
6 United States and verify such person’s proper iden-  
7 tity.

8 “(2) REQUIREMENTS.—No identification and  
9 employment eligibility document may be issued  
10 which does not meet the following requirements:

11 “(A) The document shall be capable of re-  
12 liably determining whether—

13 “(i) the individual with the identifica-  
14 tion and employment eligibility document  
15 whose eligibility is being verified is in fact  
16 eligible for employment;

17 “(ii) the individual whose eligibility is  
18 being verified is claiming the identity of  
19 another person; and

20 “(iii) the individual whose eligibility is  
21 being verified is authorized to be admitted  
22 into, and employed in, the United States  
23 as an H-2A worker.

24 “(B) The document shall be in a form that  
25 is resistant to counterfeiting and to tampering.

1           “(C) The document shall—

2                   “(i) be compatible with other data-  
3           bases of the Secretary for the purpose of  
4           excluding aliens from benefits for which  
5           they are not eligible and determining  
6           whether the alien is unlawfully present in  
7           the United States; and

8                   “(ii) be compatible with law enforce-  
9           ment databases to determine if the alien  
10          has been convicted of criminal offenses.

11          “(h) EXTENSION OF STAY OF H-2A ALIENS IN THE  
12   UNITED STATES.—

13               “(1) EXTENSION OF STAY.—If an employer  
14          seeks approval to employ an H-2A alien who is law-  
15          fully present in the United States, the petition filed  
16          by the employer or an association pursuant to sub-  
17          section (a), shall request an extension of the alien’s  
18          stay and a change in the alien’s employment.

19               “(2) LIMITATION ON FILING A PETITION FOR  
20          EXTENSION OF STAY.—A petition may not be filed  
21          for an extension of an alien’s stay—

22                   “(A) for a period of more than 10 months;

23                   or

1           “(B) to a date that is more than 3 years  
2           after the date of the alien’s last admission to  
3           the United States under this section.

4           “(3) WORK AUTHORIZATION UPON FILING A  
5           PETITION FOR EXTENSION OF STAY.—

6           “(A) IN GENERAL.—An alien who is law-  
7           fully present in the United States may com-  
8           mence the employment described in a petition  
9           under paragraph (1) on the date on which the  
10          petition is filed.

11          “(B) DEFINITION.—For purposes of sub-  
12          paragraph (A), the term ‘file’ means sending  
13          the petition by certified mail via the United  
14          States Postal Service, return receipt requested,  
15          or delivered by guaranteed commercial delivery  
16          which will provide the employer with a docu-  
17          mented acknowledgment of the date of receipt  
18          of the petition.

19          “(C) HANDLING OF PETITION.—The em-  
20          ployer shall provide a copy of the employer’s pe-  
21          tition to the alien, who shall keep the petition  
22          with the alien’s identification and employment  
23          eligibility document as evidence that the peti-  
24          tion has been filed and that the alien is author-  
25          ized to work in the United States.

1           “(D) APPROVAL OF PETITION.—Upon ap-  
2           proval of a petition for an extension of stay or  
3           change in the alien’s authorized employment,  
4           the Secretary shall provide a new or updated  
5           employment eligibility document to the alien in-  
6           dicating the new validity date, after which the  
7           alien is not required to retain a copy of the pe-  
8           tition.

9           “(4) LIMITATION ON EMPLOYMENT AUTHORIZA-  
10          TION OF ALIENS WITHOUT VALID IDENTIFICATION  
11          AND EMPLOYMENT ELIGIBILITY DOCUMENT.—An ex-  
12          pired identification and employment eligibility docu-  
13          ment, together with a copy of a petition for exten-  
14          sion of stay or change in the alien’s authorized em-  
15          ployment that complies with the requirements of  
16          paragraph (1), shall constitute a valid work author-  
17          ization document for a period of not more than 60  
18          days beginning on the date on which such petition  
19          is filed, after which time only a currently valid iden-  
20          tification and employment eligibility document shall  
21          be acceptable.

22          “(5) LIMITATION ON AN INDIVIDUAL’S STAY IN  
23          STATUS.—

24                 “(A) MAXIMUM PERIOD.—The maximum  
25                 continuous period of authorized status as an



1 H-2A worker (including any extensions) is 3  
2 years.

3 “(B) REQUIREMENT TO REMAIN OUTSIDE  
4 THE UNITED STATES.—

5 “(i) IN GENERAL.—Subject to clause  
6 (ii), in the case of an alien outside the  
7 United States whose period of authorized  
8 status as an H-2A worker (including any  
9 extensions) has expired, the alien may not  
10 again apply for admission to the United  
11 States as an H-2A worker unless the alien  
12 has remained outside the United States for  
13 a continuous period equal to at least  $\frac{1}{5}$   
14 the duration of the alien’s previous period  
15 of authorized status as an H-2A worker  
16 (including any extensions).

17 “(ii) EXCEPTION.—Clause (i) shall  
18 not apply in the case of an alien if the  
19 alien’s period of authorized status as an  
20 H-2A worker (including any extensions)  
21 was for a period of not more than 10  
22 months and such alien has been outside  
23 the United States for at least 2 months  
24 during the 12 months preceding the date

1           the alien again is applying for admission to  
2           the United States as an H-2A worker.

3           “(i) SPECIAL RULES FOR ALIENS EMPLOYED AS  
4 SHEEPHERDERS, GOAT HERDERS, OR DAIRY WORK-  
5 ERS.—Notwithstanding any provision of the AgJOBS Act  
6 of 2007, an alien admitted under section  
7 101(a)(15)(H)(ii)(a) for employment as a shepherd,  
8 goat herder, or dairy worker—

9           “(1) may be admitted for an initial period of 12  
10          months;

11          “(2) subject to subsection (j)(5), may have such  
12          initial period of admission extended for a period of  
13          up to 3 years; and

14          “(3) shall not be subject to the requirements of  
15          subsection (h)(5) (relating to periods of absence  
16          from the United States).

17          “(j) ADJUSTMENT TO LAWFUL PERMANENT RESI-  
18 DENT STATUS FOR ALIENS EMPLOYED AS SHEEP-  
19 HERDERS, GOAT HERDERS, OR DAIRY WORKERS.—

20          “(1) ELIGIBLE ALIEN.—For purposes of this  
21          subsection, the term ‘eligible alien’ means an alien—

22                  “(A) having nonimmigrant status under  
23                  section 101(a)(15)(H)(ii)(a) based on employ-  
24                  ment as a shepherd, goat herder, or dairy  
25                  worker;

1           “(B) who has maintained such non-  
2           immigrant status in the United States for a cu-  
3           mulative total of 36 months (excluding any pe-  
4           riod of absence from the United States); and

5           “(C) who is seeking to receive an immi-  
6           grant visa under section 203(b)(3)(A)(iii).

7           “(2) CLASSIFICATION PETITION.—In the case  
8           of an eligible alien, the petition under section 204  
9           for classification under section 203(b)(3)(A)(iii) may  
10          be filed by—

11           “(A) the alien’s employer on behalf of an  
12          eligible alien; or

13           “(B) the eligible alien.

14          “(3) NO LABOR CERTIFICATION REQUIRED.—  
15          Notwithstanding section 203(b)(3)(C), no deter-  
16          mination under section 212(a)(5)(A) is required with  
17          respect to an immigrant visa described in paragraph  
18          (1)(C) for an eligible alien.

19          “(4) EFFECT OF PETITION.—The filing of a pe-  
20          tition described in paragraph (2) or an application  
21          for adjustment of status based on the approval of  
22          such a petition, shall not constitute evidence of an  
23          alien’s ineligibility for nonimmigrant status under  
24          section 101(a)(15)(H)(ii)(a).

1           “(5) EXTENSION OF STAY.—The Secretary of  
2 Homeland Security shall extend the stay of an eligi-  
3 ble alien having a pending or approved classification  
4 petition described in paragraph (2) in 1-year incre-  
5 ments until a final determination is made on the  
6 alien’s eligibility for adjustment of status to that of  
7 an alien lawfully admitted for permanent residence.

8           “(6) CONSTRUCTION.—Nothing in this sub-  
9 section shall be construed to prevent an eligible alien  
10 from seeking adjustment of status in accordance  
11 with any other provision of law.

12 **“SEC. 218G. WORKER PROTECTIONS AND LABOR STAND-**  
13 **ARDS ENFORCEMENT.**

14           “(a) ENFORCEMENT AUTHORITY.—

15           “(1) INVESTIGATION OF COMPLAINTS.—

16           “(A) AGGRIEVED PERSON OR THIRD-PARTY  
17 COMPLAINTS.—The Secretary of Labor shall es-  
18 tablish a process for the receipt, investigation,  
19 and disposition of complaints respecting a peti-  
20 tioner’s failure to meet a condition specified in  
21 section 218(b), or an employer’s misrepresenta-  
22 tion of material facts in an application under  
23 section 218(a). Complaints may be filed by any  
24 aggrieved person or organization (including bar-  
25 gaining representatives). No investigation or

1 hearing shall be conducted on a complaint con-  
2 cerning such a failure or misrepresentation un-  
3 less the complaint was filed not later than 12  
4 months after the date of the failure, or mis-  
5 representation, respectively. The Secretary of  
6 Labor shall conduct an investigation under this  
7 subparagraph if there is reasonable cause to be-  
8 lieve that such a failure or misrepresentation  
9 has occurred.

10 “(B) DETERMINATION ON COMPLAINT.—

11 Under such process, the Secretary of Labor  
12 shall provide, within 30 days after the date  
13 such a complaint is filed, for a determination as  
14 to whether or not a reasonable basis exists to  
15 make a finding described in subparagraph (C),  
16 (D), (E), or (H). If the Secretary of Labor de-  
17 termines that such a reasonable basis exists,  
18 the Secretary of Labor shall provide for notice  
19 of such determination to the interested parties  
20 and an opportunity for a hearing on the com-  
21 plaint, in accordance with section 556 of title 5,  
22 United States Code, within 60 days after the  
23 date of the determination. If such a hearing is  
24 requested, the Secretary of Labor shall make a  
25 finding concerning the matter not later than 60

1 days after the date of the hearing. In the case  
2 of similar complaints respecting the same appli-  
3 cant, the Secretary of Labor may consolidate  
4 the hearings under this subparagraph on such  
5 complaints.

6 “(C) FAILURES TO MEET CONDITIONS.—If  
7 the Secretary of Labor finds, after notice and  
8 opportunity for a hearing, a failure to meet a  
9 condition of paragraph (1)(A), (1)(B), (1)(D),  
10 (1)(F), (2)(A), (2)(B), or (2)(G) of section  
11 218(b), a substantial failure to meet a condition  
12 of paragraph (1)(C), (1)(E), (2)(C), (2)(D),  
13 (2)(E), or (2)(H) of section 218(b), or a mate-  
14 rial misrepresentation of fact in an application  
15 under section 218(a)—

16 “(i) the Secretary of Labor shall no-  
17 tify the Secretary of such finding and may,  
18 in addition, impose such other administra-  
19 tive remedies (including civil money pen-  
20 alties in an amount not to exceed \$1,000  
21 per violation) as the Secretary of Labor  
22 determines to be appropriate; and

23 “(ii) the Secretary may disqualify the  
24 employer from the employment of aliens

1 described in section 101(a)(15)(H)(ii)(a)  
2 for a period of 1 year.

3 “(D) WILLFUL FAILURES AND WILLFUL  
4 MISREPRESENTATIONS.—If the Secretary of  
5 Labor finds, after notice and opportunity for  
6 hearing, a willful failure to meet a condition of  
7 section 218(b), a willful misrepresentation of a  
8 material fact in an application under section  
9 218(a), or a violation of subsection (d)(1)—

10 “(i) the Secretary of Labor shall no-  
11 tify the Secretary of such finding and may,  
12 in addition, impose such other administra-  
13 tive remedies (including civil money pen-  
14 alties in an amount not to exceed \$5,000  
15 per violation) as the Secretary of Labor  
16 determines to be appropriate;

17 “(ii) the Secretary of Labor may seek  
18 appropriate legal or equitable relief to ef-  
19 fectuate the purposes of subsection (d)(1);  
20 and

21 “(iii) the Secretary may disqualify the  
22 employer from the employment of H-2A  
23 workers for a period of 2 years.

24 “(E) DISPLACEMENT OF UNITED STATES  
25 WORKERS.—If the Secretary of Labor finds,

1 after notice and opportunity for hearing, a will-  
2 ful failure to meet a condition of section 218(b)  
3 or a willful misrepresentation of a material fact  
4 in an application under section 218(a), in the  
5 course of which failure or misrepresentation the  
6 employer displaced a United States worker em-  
7 ployed by the employer during the period of em-  
8 ployment on the employer's application under  
9 section 218(a) or during the period of 30 days  
10 preceding such period of employment—

11 “(i) the Secretary of Labor shall no-  
12 tify the Secretary of such finding and may,  
13 in addition, impose such other administra-  
14 tive remedies (including civil money pen-  
15 alties in an amount not to exceed \$15,000  
16 per violation) as the Secretary of Labor  
17 determines to be appropriate; and

18 “(ii) the Secretary may disqualify the  
19 employer from the employment of H-2A  
20 workers for a period of 3 years.

21 “(F) LIMITATIONS ON CIVIL MONEY PEN-  
22 ALTIES.—The Secretary of Labor shall not im-  
23 pose total civil money penalties with respect to  
24 an application under section 218(a) in excess of  
25 \$90,000.



1           “(G) FAILURES TO PAY WAGES OR RE-  
2           QUIRED BENEFITS.—If the Secretary of Labor  
3           finds, after notice and opportunity for a hear-  
4           ing, that the employer has failed to pay the  
5           wages, or provide the housing allowance, trans-  
6           portation, subsistence reimbursement, or guar-  
7           antee of employment, required under section  
8           218E(b), the Secretary of Labor shall assess  
9           payment of back wages, or other required bene-  
10          fits, due any United States worker or H–2A  
11          worker employed by the employer in the specific  
12          employment in question. The back wages or  
13          other required benefits under section 218E(b)  
14          shall be equal to the difference between the  
15          amount that should have been paid and the  
16          amount that actually was paid to such worker.

17          “(2) STATUTORY CONSTRUCTION.—Nothing in  
18          this section shall be construed as limiting the au-  
19          thority of the Secretary of Labor to conduct any  
20          compliance investigation under any other labor law,  
21          including any law affecting migrant and seasonal ag-  
22          ricultural workers, or, in the absence of a complaint  
23          under this section, under section 218 or 218E.

24          “(b) RIGHTS ENFORCEABLE BY PRIVATE RIGHT OF  
25          ACTION.—H–2A workers may enforce the following rights

1 through the private right of action provided in subsection  
2 (c), and no other right of action shall exist under Federal  
3 or State law to enforce such rights:

4           “(1) The providing of housing or a housing al-  
5           lowance as required under section 218E(b)(1).

6           “(2) The reimbursement of transportation as  
7           required under section 218E(b)(2).

8           “(3) The payment of wages required under sec-  
9           tion 218E(b)(3) when due.

10           “(4) The benefits and material terms and con-  
11           ditions of employment expressly provided in the job  
12           offer described in section 218(a)(2), not including  
13           the assurance to comply with other Federal, State,  
14           and local labor laws described in section 218E(c),  
15           compliance with which shall be governed by the pro-  
16           visions of such laws.

17           “(5) The guarantee of employment required  
18           under section 218E(b)(4).

19           “(6) The motor vehicle safety requirements  
20           under section 218E(b)(5).

21           “(7) The prohibition of discrimination under  
22           subsection (d)(2).

23           “(c) PRIVATE RIGHT OF ACTION.—

24           “(1) MEDIATION.—Upon the filing of a com-  
25           plaint by an H-2A worker aggrieved by a violation

1 of rights enforceable under subsection (b), and with-  
2 in 60 days of the filing of proof of service of the  
3 complaint, a party to the action may file a request  
4 with the Federal Mediation and Conciliation Service  
5 to assist the parties in reaching a satisfactory reso-  
6 lution of all issues involving all parties to the dis-  
7 pute. Upon a filing of such request and giving of no-  
8 tice to the parties, the parties shall attempt medi-  
9 ation within the period specified in subparagraph  
10 (B).

11 “(A) MEDIATION SERVICES.—The Federal  
12 Mediation and Conciliation Service shall be  
13 available to assist in resolving disputes arising  
14 under subsection (b) between H-2A workers  
15 and agricultural employers without charge to  
16 the parties.

17 “(B) 90-DAY LIMIT.—The Federal Medi-  
18 ation and Conciliation Service may conduct me-  
19 diation or other non-binding dispute resolution  
20 activities for a period not to exceed 90 days be-  
21 ginning on the date on which the Federal Medi-  
22 ation and Conciliation Service receives the re-  
23 quest for assistance unless the parties agree to  
24 an extension of this period of time.

25 “(C) AUTHORIZATION.—

1           “(i) IN GENERAL.—Subject to clause  
2           (ii), there are authorized to be appro-  
3           priated to the Federal Mediation and Con-  
4           ciliation Service \$500,000 for each fiscal  
5           year to carry out this section.

6           “(ii) MEDIATION.—Notwithstanding  
7           any other provision of law, the Director of  
8           the Federal Mediation and Conciliation  
9           Service is authorized to conduct the medi-  
10          ation or other dispute resolution activities  
11          from any other appropriated funds avail-  
12          able to the Director and to reimburse such  
13          appropriated funds when the funds are ap-  
14          propriated pursuant to this authorization,  
15          such reimbursement to be credited to ap-  
16          propriations currently available at the time  
17          of receipt.

18          “(2) MAINTENANCE OF CIVIL ACTION IN DIS-  
19          TRICT COURT BY AGGRIEVED PERSON.—An H-2A  
20          worker aggrieved by a violation of rights enforceable  
21          under subsection (b) by an agricultural employer or  
22          other person may file suit in any district court of the  
23          United States having jurisdiction of the parties,  
24          without regard to the amount in controversy, with-  
25          out regard to the citizenship of the parties, and

1 without regard to the exhaustion of any alternative  
2 administrative remedies under this Act, not later  
3 than 3 years after the date the violation occurs.

4 “(3) ELECTION.—An H-2A worker who has  
5 filed an administrative complaint with the Secretary  
6 of Labor may not maintain a civil action under  
7 paragraph (2) unless a complaint based on the same  
8 violation filed with the Secretary of Labor under  
9 subsection (a)(1) is withdrawn before the filing of  
10 such action, in which case the rights and remedies  
11 available under this subsection shall be exclusive.

12 “(4) PREEMPTION OF STATE CONTRACT  
13 RIGHTS.—Nothing in this Act shall be construed to  
14 diminish the rights and remedies of an H-2A worker  
15 under any other Federal or State law or regulation  
16 or under any collective bargaining agreement, except  
17 that no court or administrative action shall be avail-  
18 able under any State contract law to enforce the  
19 rights created by this Act.

20 “(5) WAIVER OF RIGHTS PROHIBITED.—Agree-  
21 ments by employees purporting to waive or modify  
22 their rights under this Act shall be void as contrary  
23 to public policy, except that a waiver or modification  
24 of the rights or obligations in favor of the Secretary  
25 of Labor shall be valid for purposes of the enforce-

1 ment of this Act. The preceding sentence may not  
2 be construed to prohibit agreements to settle private  
3 disputes or litigation.

4 “(6) AWARD OF DAMAGES OR OTHER EQUI-  
5 TABLE RELIEF.—

6 “(A) If the court finds that the respondent  
7 has intentionally violated any of the rights en-  
8 forceable under subsection (b), it shall award  
9 actual damages, if any, or equitable relief.

10 “(B) Any civil action brought under this  
11 section shall be subject to appeal as provided in  
12 chapter 83 of title 28, United States Code.

13 “(7) WORKERS’ COMPENSATION BENEFITS; EX-  
14 CLUSIVE REMEDY.—

15 “(A) Notwithstanding any other provision  
16 of this section, where a State’s workers’ com-  
17 pensation law is applicable and coverage is pro-  
18 vided for an H-2A worker, the workers’ com-  
19 pensation benefits shall be the exclusive remedy  
20 for the loss of such worker under this section  
21 in the case of bodily injury or death in accord-  
22 ance with such State’s workers’ compensation  
23 law.

24 “(B) The exclusive remedy prescribed in  
25 subparagraph (A) precludes the recovery under

1 paragraph (6) of actual damages for loss from  
2 an injury or death but does not preclude other  
3 equitable relief, except that such relief shall not  
4 include back or front pay or in any manner, di-  
5 rectly or indirectly, expand or otherwise alter or  
6 affect—

7 “(i) a recovery under a State workers’  
8 compensation law; or

9 “(ii) rights conferred under a State  
10 workers’ compensation law.

11 “(8) TOLLING OF STATUTE OF LIMITATIONS.—

12 If it is determined under a State workers’ compensa-  
13 tion law that the workers’ compensation law is not  
14 applicable to a claim for bodily injury or death of an  
15 H-2A worker, the statute of limitations for bringing  
16 an action for actual damages for such injury or  
17 death under subsection (c) shall be tolled for the pe-  
18 riod during which the claim for such injury or death  
19 under such State workers’ compensation law was  
20 pending. The statute of limitations for an action for  
21 actual damages or other equitable relief arising out  
22 of the same transaction or occurrence as the injury  
23 or death of the H-2A worker shall be tolled for the  
24 period during which the claim for such injury or

1 death was pending under the State workers' com-  
2 pensation law.

3 “(9) PRECLUSIVE EFFECT.—Any settlement by  
4 an H-2A worker and an H-2A employer or any per-  
5 son reached through the mediation process required  
6 under subsection (c)(1) shall preclude any right of  
7 action arising out of the same facts between the par-  
8 ties in any Federal or State court or administrative  
9 proceeding, unless specifically provided otherwise in  
10 the settlement agreement.

11 “(10) SETTLEMENTS.—Any settlement by the  
12 Secretary of Labor with an H-2A employer on be-  
13 half of an H-2A worker of a complaint filed with the  
14 Secretary of Labor under this section or any finding  
15 by the Secretary of Labor under subsection  
16 (a)(1)(B) shall preclude any right of action arising  
17 out of the same facts between the parties under any  
18 Federal or State court or administrative proceeding,  
19 unless specifically provided otherwise in the settle-  
20 ment agreement.

21 “(d) DISCRIMINATION PROHIBITED.—

22 “(1) IN GENERAL.—It is a violation of this sub-  
23 section for any person who has filed an application  
24 under section 218(a), to intimidate, threaten, re-  
25 strain, coerce, blacklist, discharge, or in any other



1 manner discriminate against an employee (which  
2 term, for purposes of this subsection, includes a  
3 former employee and an applicant for employment)  
4 because the employee has disclosed information to  
5 the employer, or to any other person, that the em-  
6 ployee reasonably believes evidences a violation of  
7 section 218 or 218E or any rule or regulation per-  
8 taining to section 218 or 218E, or because the em-  
9 ployee cooperates or seeks to cooperate in an inves-  
10 tigation or other proceeding concerning the employ-  
11 er's compliance with the requirements of section 218  
12 or 218E or any rule or regulation pertaining to ei-  
13 ther of such sections.

14           “(2) DISCRIMINATION AGAINST H-2A WORK-  
15 ERS.—It is a violation of this subsection for any per-  
16 son who has filed an application under section  
17 218(a), to intimidate, threaten, restrain, coerce,  
18 blacklist, discharge, or in any manner discriminate  
19 against an H-2A employee because such worker has,  
20 with just cause, filed a complaint with the Secretary  
21 of Labor regarding a denial of the rights enumer-  
22 ated and enforceable under subsection (b) or insti-  
23 tuted, or caused to be instituted, a private right of  
24 action under subsection (c) regarding the denial of  
25 the rights enumerated under subsection (b), or has

1 testified or is about to testify in any court pro-  
2 ceeding brought under subsection (c).

3 “(e) AUTHORIZATION TO SEEK OTHER APPRO-  
4 PRIATE EMPLOYMENT.—The Secretary of Labor and the  
5 Secretary shall establish a process under which an H-2A  
6 worker who files a complaint regarding a violation of sub-  
7 section (d) and is otherwise eligible to remain and work  
8 in the United States may be allowed to seek other appro-  
9 priate employment in the United States for a period not  
10 to exceed the maximum period of stay authorized for such  
11 nonimmigrant classification.

12 “(f) ROLE OF ASSOCIATIONS.—

13 “(1) VIOLATION BY A MEMBER OF AN ASSOCIA-  
14 TION.—An employer on whose behalf an application  
15 is filed by an association acting as its agent is fully  
16 responsible for such application, and for complying  
17 with the terms and conditions of sections 218 and  
18 218E, as though the employer had filed the applica-  
19 tion itself. If such an employer is determined, under  
20 this section, to have committed a violation, the pen-  
21 alty for such violation shall apply only to that mem-  
22 ber of the association unless the Secretary of Labor  
23 determines that the association or other member  
24 participated in, had knowledge, or reason to know,  
25 of the violation, in which case the penalty shall be

1 invoked against the association or other association  
2 member as well.

3 “(2) VIOLATIONS BY AN ASSOCIATION ACTING  
4 AS AN EMPLOYER.—If an association filing an appli-  
5 cation as a sole or joint employer is determined to  
6 have committed a violation under this section, the  
7 penalty for such violation shall apply only to the as-  
8 sociation unless the Secretary of Labor determines  
9 that an association member or members participated  
10 in or had knowledge, or reason to know of the viola-  
11 tion, in which case the penalty shall be invoked  
12 against the association member or members as well.

13 **“SEC. 218H. DEFINITIONS.**

14 “For purposes of this section, section 218, and sec-  
15 tions 218E through 218G:

16 “(1) AGRICULTURAL EMPLOYMENT.—The term  
17 ‘agricultural employment’ means any service or ac-  
18 tivity that is considered to be agricultural under sec-  
19 tion 3(f) of the Fair Labor Standards Act of 1938  
20 (29 U.S.C. 203(f)) or agricultural labor under sec-  
21 tion 3121(g) of the Internal Revenue Code of 1986  
22 (26 U.S.C. 3121(g)). For purposes of this para-  
23 graph, agricultural employment includes employment  
24 under section 101(a)(15)(H)(ii)(a).

1           “(2) BONA FIDE UNION.—The term ‘bona fide  
2 union’ means any organization in which employees  
3 participate and which exists for the purpose of deal-  
4 ing with employers concerning grievances, labor dis-  
5 putes, wages, rates of pay, hours of employment, or  
6 other terms and conditions of work for agricultural  
7 employees. Such term does not include an organiza-  
8 tion formed, created, administered, supported, domi-  
9 nated, financed, or controlled by an employer or em-  
10 ployer association or its agents or representatives.

11           “(3) DISPLACE.—The term ‘displace’, in the  
12 case of an application with respect to 1 or more H-  
13 2A workers by an employer, means laying off a  
14 United States worker from a job for which the H-  
15 2A worker or workers is or are sought.

16           “(4) ELIGIBLE.—The term ‘eligible’, when used  
17 with respect to an individual, means an individual  
18 who is not an unauthorized alien (as defined in sec-  
19 tion 274A).

20           “(5) EMPLOYER.—The term ‘employer’ means  
21 any person or entity, including any farm labor con-  
22 tractor and any agricultural association, that em-  
23 ploys workers in agricultural employment.

24           “(6) H-2A EMPLOYER.—The term ‘H-2A em-  
25 ployer’ means an employer who seeks to hire 1 or

1 more nonimmigrant aliens described in section  
2 101(a)(15)(H)(ii)(a).

3 “(7) H-2A WORKER.—The term ‘H-2A worker’  
4 means a nonimmigrant described in section  
5 101(a)(15)(H)(ii)(a).

6 “(8) JOB OPPORTUNITY.—The term ‘job oppor-  
7 tunity’ means a job opening for temporary full-time  
8 employment at a place in the United States to which  
9 United States workers can be referred.

10 “(9) LAYS OFF.—

11 “(A) IN GENERAL.—The term ‘lays off’,  
12 with respect to a worker—

13 “(i) means to cause the worker’s loss  
14 of employment, other than through a dis-  
15 charge for inadequate performance, viola-  
16 tion of workplace rules, cause, voluntary  
17 departure, voluntary retirement, contract  
18 impossibility (as described in section  
19 218E(b)(4)(D)), or temporary layoffs due  
20 to weather, markets, or other temporary  
21 conditions; but

22 “(ii) does not include any situation in  
23 which the worker is offered, as an alter-  
24 native to such loss of employment, a simi-  
25 lar employment opportunity with the same

1 employer (or, in the case of a placement of  
2 a worker with another employer under sec-  
3 tion 218(b)(2)(E), with either employer de-  
4 scribed in such section) at equivalent or  
5 higher compensation and benefits than the  
6 position from which the employee was dis-  
7 charged, regardless of whether or not the  
8 employee accepts the offer.

9 “(B) STATUTORY CONSTRUCTION.—Noth-  
10 ing in this paragraph is intended to limit an  
11 employee’s rights under a collective bargaining  
12 agreement or other employment contract.

13 “(10) REGULATORY DROUGHT.—The term ‘reg-  
14 ulatory drought’ means a decision subsequent to the  
15 filing of the application under section 218 by an en-  
16 tity not under the control of the employer making  
17 such filing which restricts the employer’s access to  
18 water for irrigation purposes and reduces or limits  
19 the employer’s ability to produce an agricultural  
20 commodity, thereby reducing the need for labor.

21 “(11) SEASONAL.—Labor is performed on a  
22 ‘seasonal’ basis if—

23 “(A) ordinarily, it pertains to or is of the  
24 kind exclusively performed at certain seasons or  
25 periods of the year; and

1           “(B) from its nature, it may not be contin-  
2           uous or carried on throughout the year.

3           “(12) SECRETARY.—The term ‘Secretary’  
4           means the Secretary of Homeland Security.

5           “(13) TEMPORARY.—A worker is employed on a  
6           ‘temporary’ basis where the employment is intended  
7           not to exceed 10 months.

8           “(14) UNITED STATES WORKER.—The term  
9           ‘United States worker’ means any worker, whether  
10          a United States citizen or national, a lawfully admit-  
11          ted permanent resident alien, or any other alien,  
12          who is authorized to work in the job opportunity  
13          within the United States, except an alien admitted  
14          or otherwise provided status under section  
15          101(a)(15)(H)(ii)(a).”.

16          (b) CLERICAL AMENDMENTS.—The table of contents  
17          (8 U.S.C. 1101 et seq.) is amended—

18                 (1) by striking the item relating to section 218  
19                 and inserting the following:

“Sec. 218. H-2A employer applications.”.

20                 and

21                 (2) by inserting after the item relating to sec-  
22                 tion 218D, as added by section 601 of this Act, the  
23                 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.”.

1                   **CHAPTER 3—MISCELLANEOUS**  
2                                   **PROVISIONS**

3   **SEC. 616. DETERMINATION AND USE OF USER FEES.**

4           (a) SCHEDULE OF FEES.—The Secretary shall estab-  
5   lish and periodically adjust a schedule of fees for the em-  
6   ployment of aliens under this subtitle and the amendments  
7   made by this subtitle, and a collection process for such  
8   fees from employers participating in the program provided  
9   under this subtitle. Such fees shall be the only fees charge-  
10   able to employers for services provided under this subtitle.

11          (b) DETERMINATION OF SCHEDULE.—

12               (1) IN GENERAL.—The schedule under sub-  
13   section (a) shall reflect a fee rate based on the num-  
14   ber of job opportunities indicated in the employer’s  
15   application under section 218 of the Immigration  
16   and Nationality Act, as added by section 615 of this  
17   Act, and sufficient to provide for the direct costs of  
18   providing services related to an employer’s author-  
19   ization to employ eligible aliens pursuant to this sub-  
20   title, to include the certification of eligible employ-  
21   ers, the issuance of documentation, and the admis-  
22   sion of eligible aliens.

23               (2) PROCEDURE.—



1           (A) IN GENERAL.—In establishing and ad-  
2           justing such a schedule, the Secretary shall  
3           comply with Federal cost accounting and fee  
4           setting standards.

5           (B) PUBLICATION AND COMMENT.—The  
6           Secretary shall publish in the Federal Register  
7           an initial fee schedule and associated collection  
8           process and the cost data or estimates upon  
9           which such fee schedule is based, and any sub-  
10          sequent amendments thereto, pursuant to which  
11          public comment shall be sought and a final rule  
12          issued.

13          (c) USE OF PROCEEDS.—Notwithstanding any other  
14          provision of law, all proceeds resulting from the payment  
15          of the alien employment user fees shall be available with-  
16          out further appropriation and shall remain available with-  
17          out fiscal year limitation to reimburse the Secretary, the  
18          Secretary of State, and the Secretary of Labor for the  
19          costs of carrying out sections 218 and 218F of the Immi-  
20          gration and Nationality Act, as added by section 615 of  
21          this Act, and the provisions of this subtitle.

22      **SEC. 617. REGULATIONS.**

23          (a) REGULATIONS OF THE SECRETARY.—The Sec-  
24          retary shall consult with the Secretary of Labor and the  
25          Secretary of Agriculture on all regulations to implement

1 the duties of the Secretary under this subtitle and the  
2 amendments made by this subtitle.

3 (b) REGULATIONS OF THE SECRETARY OF STATE.—

4 The Secretary of State shall consult with the Secretary,  
5 the Secretary of Labor, and the Secretary of Agriculture  
6 on all regulations to implement the duties of the Secretary  
7 of State under this subtitle and the amendments made by  
8 this subtitle.

9 (c) REGULATIONS OF THE SECRETARY OF LABOR.—

10 The Secretary of Labor shall consult with the Secretary  
11 of Agriculture and the Secretary on all regulations to im-  
12 plement the duties of the Secretary of Labor under this  
13 subtitle and the amendments made by this subtitle.

14 (d) DEADLINE FOR ISSUANCE OF REGULATIONS.—

15 All regulations to implement the duties of the Secretary,  
16 the Secretary of State, and the Secretary of Labor created  
17 under sections 218, 218E, 218F, and 218G of the Immi-  
18 gration and Nationality Act, as added by section 615 of  
19 this Act, shall take effect on the effective date of section  
20 615 and shall be issued not later than 1 year after the  
21 date of enactment of this Act.

22 **SEC. 618. REPORT TO CONGRESS.**

23 Not later than September 30 of each year, the Sec-  
24 retary shall submit a report to Congress that identifies,  
25 for the previous year—

1           (1) the number of job opportunities approved  
2 for employment of aliens admitted under section  
3 101(a)(15)(H)(ii)(a) of the Immigration and Nation-  
4 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), and the  
5 number of workers actually admitted, by State and  
6 by occupation;

7           (2) the number of such aliens reported to have  
8 abandoned employment pursuant to subsection  
9 218F(e)(2) of such Act;

10           (3) the number of such aliens who departed the  
11 United States within the period specified in sub-  
12 section 218F(d) of such Act;

13           (4) the number of aliens who applied for adjust-  
14 ment of status pursuant to section 613(a);

15           (5) the number of such aliens whose status was  
16 adjusted under section 613(a);

17           (6) the number of aliens who applied for perma-  
18 nent residence pursuant to section 613(c); and

19           (7) the number of such aliens who were ap-  
20 proved for permanent residence pursuant section  
21 613(c).

22 **SEC. 619. EFFECTIVE DATE.**

23           (a) IN GENERAL.—Except as otherwise provided, sec-  
24 tions 615 and 616 shall take effect 1 year after the date  
25 of the enactment of this Act.

1 (b) REPORT.—Not later than 180 days after the date  
2 of the enactment of this Act, the Secretary shall prepare  
3 and submit to the appropriate committees of Congress a  
4 report that describes the measures being taken and the  
5 progress made in implementing this subtitle.

## 6 **Subtitle C—DREAM Act of 2007**

### 7 **SEC. 621. SHORT TITLE.**

8 This subtitle may be cited as the “Development, Re-  
9 lief, and Education for Alien Minors Act of 2007” or the  
10 “DREAM Act of 2007”.

### 11 **SEC. 622. DEFINITIONS.**

12 In this subtitle:

13 (1) INSTITUTION OF HIGHER EDUCATION.—The  
14 term “institution of higher education” has the  
15 meaning given that term in section 101 of the High-  
16 er Education Act of 1965 (20 U.S.C. 1001).

17 (2) UNIFORMED SERVICES.—The term “uni-  
18 formed services” has the meaning given that term in  
19 section 101(a) of title 10, United States Code.

### 20 **SEC. 623. RESTORATION OF STATE OPTION TO DETERMINE** 21 **RESIDENCY FOR PURPOSES OF HIGHER EDU-** 22 **CATION BENEFITS.**

23 (a) IN GENERAL.—Section 505 of the Illegal Immi-  
24 gration Reform and Immigrant Responsibility Act of 1996  
25 (8 U.S.C. 1623) is repealed.

1 (b) EFFECTIVE DATE.—The repeal under subsection  
2 (a) shall take effect as if included in the enactment of the  
3 Illegal Immigration Reform and Immigrant Responsibility  
4 Act of 1996.

5 **SEC. 624. CANCELLATION OF REMOVAL AND ADJUSTMENT**  
6 **OF STATUS OF CERTAIN LONG-TERM RESI-**  
7 **DENTS WHO ENTERED THE UNITED STATES**  
8 **AS CHILDREN.**

9 (a) SPECIAL RULE FOR CERTAIN LONG-TERM RESI-  
10 DENTS WHO ENTERED THE UNITED STATES AS CHIL-  
11 DREN.—

12 (1) IN GENERAL.—Notwithstanding any other  
13 provision of law and except as otherwise provided in  
14 this subtitle, the Secretary may cancel removal of,  
15 and adjust to the status of an alien lawfully admit-  
16 ted for permanent residence, subject to the condi-  
17 tional basis described in section 625, an alien who  
18 is inadmissible or deportable from the United States,  
19 if the alien demonstrates that—

20 (A) the alien has been physically present in  
21 the United States for a continuous period of  
22 not less than 5 years immediately preceding the  
23 date of enactment of this Act, and had not yet  
24 reached the age of 16 years at the time of ini-  
25 tial entry;

1 (B) the alien has been a person of good  
2 moral character since the time of application;

3 (C) the alien—

4 (i) is not inadmissible under para-  
5 graph (2), (3), (6)(B), (6)(C), (6)(E),  
6 (6)(F), or (6)(G) of section 212(a) of the  
7 Immigration and Nationality Act (8 U.S.C.  
8 1182(a)), or, if inadmissible solely under  
9 subparagraph (C) or (F) of paragraph (6)  
10 of such subsection, the alien was under the  
11 age of 16 years at the time the violation  
12 was committed; and

13 (ii) is not deportable under paragraph  
14 (1)(E), (1)(G), (2), (3)(B), (3)(C), (3)(D),  
15 (4), or (6) of section 237(a) of the Immi-  
16 gration and Nationality Act (8 U.S.C.  
17 1227(a)), or, if deportable solely under  
18 subparagraphs (C) or (D) of paragraph (3)  
19 of such subsection, the alien was under the  
20 age of 16 years at the time the violation  
21 was committed;

22 (D) the alien, at the time of application,  
23 has been admitted to an institution of higher  
24 education in the United States, or has earned  
25 a high school diploma or obtained a general

1 education development certificate in the United  
2 States; and

3 (E) the alien has never been under a final  
4 administrative or judicial order of exclusion, de-  
5 portation, or removal, unless the alien has re-  
6 mained in the United States under color of law  
7 or received the order before attaining the age of  
8 16 years.

9 (2) WAIVER.—The Secretary may waive the  
10 grounds of ineligibility under section 212(a)(6) of  
11 the Immigration and Nationality Act and the  
12 grounds of deportability under paragraphs (1), (3),  
13 and (6) of section 237(a) of that Act for humani-  
14 tarian purposes or family unity or when it is other-  
15 wise in the public interest.

16 (3) PROCEDURES.—The Secretary shall provide  
17 a procedure by regulation allowing eligible individ-  
18 uals to apply affirmatively for the relief available  
19 under this subsection without being placed in re-  
20 moval proceedings.

21 (b) TERMINATION OF CONTINUOUS PERIOD.—For  
22 purposes of this section, any period of continuous resi-  
23 dence or continuous physical presence in the United States  
24 of an alien who applies for cancellation of removal under  
25 this section shall not terminate when the alien is served

1 a notice to appear under section 239(a) of the Immigra-  
2 tion and Nationality Act (8 U.S.C. 1229(a)).

3 (c) TREATMENT OF CERTAIN BREAKS IN PRES-  
4 ENCE.—

5 (1) IN GENERAL.—An alien shall be considered  
6 to have failed to maintain continuous physical pres-  
7 ence in the United States under subsection (a) if the  
8 alien has departed from the United States for any  
9 period in excess of 90 days or for any periods in the  
10 aggregate exceeding 180 days.

11 (2) EXTENSIONS FOR EXCEPTIONAL CIR-  
12 CUMSTANCES.—The Secretary may extend the time  
13 periods described in paragraph (1) if the alien dem-  
14 onstrates that the failure to timely return to the  
15 United States was due to exceptional circumstances.  
16 The exceptional circumstances determined sufficient  
17 to justify an extension should be no less compelling  
18 than serious illness of the alien, or death or serious  
19 illness of a parent, grandparent, sibling, or child.

20 (d) EXEMPTION FROM NUMERICAL LIMITATIONS.—  
21 Nothing in this section may be construed to apply a nu-  
22 merical limitation on the number of aliens who may be  
23 eligible for cancellation of removal or adjustment of status  
24 under this section.

25 (e) REGULATIONS.—



1           (1) PROPOSED REGULATIONS.—Not later than  
2           180 days after the date of enactment of this Act, the  
3           Secretary shall publish proposed regulations imple-  
4           menting this section. Such regulations shall be effec-  
5           tive immediately on an interim basis, but are subject  
6           to change and revision after public notice and oppor-  
7           tunity for a period for public comment.

8           (2) INTERIM, FINAL REGULATIONS.—Within a  
9           reasonable time after publication of the interim reg-  
10          ulations in accordance with paragraph (1), the Sec-  
11          retary shall publish final regulations implementing  
12          this section.

13          (f) REMOVAL OF ALIEN.—The Secretary may not re-  
14          move any alien who has a pending application for condi-  
15          tional status under this subtitle.

16   **SEC. 625. CONDITIONAL PERMANENT RESIDENT STATUS.**

17          (a) IN GENERAL.—

18               (1) CONDITIONAL BASIS FOR STATUS.—Not-  
19               withstanding any other provision of law, and except  
20               as provided in section 626, an alien whose status has  
21               been adjusted under section 624 to that of an alien  
22               lawfully admitted for permanent residence shall be  
23               considered to have obtained such status on a condi-  
24               tional basis subject to the provisions of this section.  
25               Such conditional permanent resident status shall be

1 valid for a period of 6 years, subject to termination  
2 under subsection (b).

3 (2) NOTICE OF REQUIREMENTS.—

4 (A) AT TIME OF OBTAINING PERMANENT  
5 RESIDENCE.—At the time an alien obtains per-  
6 manent resident status on a conditional basis  
7 under paragraph (1), the Secretary shall pro-  
8 vide for notice to the alien regarding the provi-  
9 sions of this section and the requirements of  
10 subsection (c) to have the conditional basis of  
11 such status removed.

12 (B) EFFECT OF FAILURE TO PROVIDE NO-  
13 TICE.—The failure of the Secretary to provide  
14 a notice under this paragraph—

15 (i) shall not affect the enforcement of  
16 the provisions of this subtitle with respect  
17 to the alien; and

18 (ii) shall not give rise to any private  
19 right of action by the alien.

20 (b) TERMINATION OF STATUS.—

21 (1) IN GENERAL.—The Secretary shall termi-  
22 nate the conditional permanent resident status of  
23 any alien who obtained such status under this sub-  
24 title, if the Secretary determines that the alien—

1 (A) ceases to meet the requirements of  
2 subparagraph (B) or (C) of section 624(a)(1);

3 (B) has become a public charge; or

4 (C) has received a dishonorable or other  
5 than honorable discharge from the uniformed  
6 services.

7 (2) RETURN TO PREVIOUS IMMIGRATION STA-  
8 TUS.—Any alien whose conditional permanent resi-  
9 dent status is terminated under paragraph (1) shall  
10 return to the immigration status the alien had im-  
11 mediately prior to receiving conditional permanent  
12 resident status under this subtitle.

13 (c) REQUIREMENTS OF TIMELY PETITION FOR RE-  
14 MOVAL OF CONDITION.—

15 (1) IN GENERAL.—In order for the conditional  
16 basis of permanent resident status obtained by an  
17 alien under subsection (a) to be removed, the alien  
18 must file with the Secretary, in accordance with  
19 paragraph (3), a petition which requests the removal  
20 of such conditional basis and which provides, under  
21 penalty of perjury, the facts and information so that  
22 the Secretary may make the determination described  
23 in paragraph (2)(A).

24 (2) ADJUDICATION OF PETITION TO REMOVE  
25 CONDITION.—

1           (A) IN GENERAL.—If a petition is filed in  
2           accordance with paragraph (1) for an alien, the  
3           Secretary shall make a determination as to  
4           whether the alien meets the requirements set  
5           out in subparagraphs (A) through (E) of sub-  
6           section (d)(1).

7           (B) REMOVAL OF CONDITIONAL BASIS IF  
8           FAVORABLE DETERMINATION.—If the Secretary  
9           determines that the alien meets such require-  
10          ments, the Secretary shall notify the alien of  
11          such determination and immediately remove the  
12          conditional basis of the status of the alien.

13          (C) TERMINATION IF ADVERSE DETER-  
14          MINATION.—If the Secretary determines that  
15          the alien does not meet such requirements, the  
16          Secretary shall notify the alien of such deter-  
17          mination and terminate the conditional perma-  
18          nent resident status of the alien as of the date  
19          of the determination.

20          (3) TIME TO FILE PETITION.—An alien may pe-  
21          tition to remove the conditional basis to lawful resi-  
22          dent status during the period beginning 180 days  
23          before and ending 2 years after either the date that  
24          is 6 years after the date of the granting of condi-  
25          tional permanent resident status or any other expi-

1       ration date of the conditional permanent resident  
2       status as extended by the Secretary in accordance  
3       with this subtitle. The alien shall be deemed in con-  
4       ditional permanent resident status in the United  
5       States during the period in which the petition is  
6       pending.

7       (d) DETAILS OF PETITION.—

8             (1) CONTENTS OF PETITION.—Each petition  
9       for an alien under subsection (c)(1) shall contain in-  
10      formation to permit the Secretary to determine  
11      whether each of the following requirements is met:

12            (A) The alien has demonstrated good  
13      moral character during the entire period the  
14      alien has been a conditional permanent resi-  
15      dent.

16            (B) The alien is in compliance with section  
17      624(a)(1)(C).

18            (C) The alien has not abandoned the  
19      alien's residence in the United States. The Sec-  
20      retary shall presume that the alien has aban-  
21      doned such residence if the alien is absent from  
22      the United States for more than 365 days, in  
23      the aggregate, during the period of conditional  
24      residence, unless the alien demonstrates that  
25      alien has not abandoned the alien's residence.

1 An alien who is absent from the United States  
2 due to active service in the uniformed services  
3 has not abandoned the alien's residence in the  
4 United States during the period of such service.

5 (D) The alien has completed at least 1 of  
6 the following:

7 (i) The alien has acquired a degree  
8 from an institution of higher education in  
9 the United States or has completed at  
10 least 2 years, in good standing, in a pro-  
11 gram for a bachelor's degree or higher de-  
12 gree in the United States.

13 (ii) The alien has served in the uni-  
14 formed services for at least 2 years and, if  
15 discharged, has received an honorable dis-  
16 charge.

17 (E) The alien has provided a list of all of  
18 the secondary educational institutions that the  
19 alien attended in the United States.

20 (2) HARDSHIP EXCEPTION.—

21 (A) IN GENERAL.—The Secretary may, in  
22 the Secretary's discretion, remove the condi-  
23 tional status of an alien if the alien—

1 (i) satisfies the requirements of sub-  
2 paragraphs (A), (B), and (C) of paragraph  
3 (1);

4 (ii) demonstrates compelling cir-  
5 cumstances for the inability to complete  
6 the requirements described in paragraph  
7 (1)(D); and

8 (iii) demonstrates that the alien's re-  
9 moval from the United States would result  
10 in exceptional and extremely unusual hard-  
11 ship to the alien or the alien's spouse, par-  
12 ent, or child who is a citizen or a lawful  
13 permanent resident of the United States.

14 (B) EXTENSION.—Upon a showing of good  
15 cause, the Secretary may extend the period of  
16 the conditional resident status for the purpose  
17 of completing the requirements described in  
18 paragraph (1)(D).

19 (e) TREATMENT OF PERIOD FOR PURPOSES OF NAT-  
20 URALIZATION.—For purposes of title III of the Immigra-  
21 tion and Nationality Act (8 U.S.C. 1401 et seq.), in the  
22 case of an alien who is in the United States as a lawful  
23 permanent resident on a conditional basis under this sec-  
24 tion, the alien shall be considered to have been admitted  
25 as an alien lawfully admitted for permanent residence and

1 to be in the United States as an alien lawfully admitted  
2 to the United States for permanent residence. However,  
3 the conditional basis must be removed before the alien  
4 may apply for naturalization.

5 **SEC. 626. RETROACTIVE BENEFITS.**

6 If, on the date of enactment of this Act, an alien has  
7 satisfied all the requirements of subparagraphs (A)  
8 through (E) of section 624(a)(1) and section  
9 625(d)(1)(D), the Secretary may adjust the status of the  
10 alien to that of a conditional resident in accordance with  
11 section 624. The alien may petition for removal of such  
12 condition at the end of the conditional residence period  
13 in accordance with section 625(c) if the alien has met the  
14 requirements of subparagraphs (A), (B), and (C) of sec-  
15 tion 625(d)(1) during the entire period of conditional resi-  
16 dence.

17 **SEC. 627. EXCLUSIVE JURISDICTION.**

18 (a) IN GENERAL.—The Secretary shall have exclusive  
19 jurisdiction to determine eligibility for relief under this  
20 subtitle, except where the alien has been placed into depor-  
21 tation, exclusion, or removal proceedings either prior to  
22 or after filing an application for relief under this subtitle,  
23 in which case the Attorney General shall have exclusive  
24 jurisdiction and shall assume all the powers and duties  
25 of the Secretary until proceedings are terminated, or if



1 a final order of deportation, exclusion, or removal is en-  
2 tered the Secretary shall resume all powers and duties del-  
3 egated to the Secretary under this subtitle.

4 (b) STAY OF REMOVAL OF CERTAIN ALIENS EN-  
5 ROLLED IN PRIMARY OR SECONDARY SCHOOL.—The At-  
6 torney General shall stay the removal proceedings of any  
7 alien who—

8 (1) meets all the requirements of subpara-  
9 graphs (A), (B), (C), and (E) of section 624(a)(1);

10 (2) is at least 12 years of age; and

11 (3) is enrolled full time in a primary or sec-  
12 ondary school.

13 (c) EMPLOYMENT.—An alien whose removal is stayed  
14 pursuant to subsection (b) may be engaged in employment  
15 in the United States, consistent with the Fair Labor  
16 Standards Act (29 U.S.C. 201 et seq.), and State and  
17 local laws governing minimum age for employment.

18 (d) LIFT OF STAY.—The Attorney General shall lift  
19 the stay granted pursuant to subsection (b) if the alien—

20 (1) is no longer enrolled in a primary or sec-  
21 ondary school; or

22 (2) ceases to meet the requirements of sub-  
23 section (b)(1).

1 **SEC. 628. PENALTIES FOR FALSE STATEMENTS IN APPLICA-**  
2 **TION.**

3       Whoever files an application for relief under this sub-  
4 title and willfully and knowingly falsifies, misrepresents,  
5 or conceals a material fact or makes any false or fraudu-  
6 lent statement or representation, or makes or uses any  
7 false writing or document knowing the same to contain  
8 any false or fraudulent statement or entry, shall be fined  
9 in accordance with title 18, United States Code, or impris-  
10 oned not more than 5 years, or both.

11 **SEC. 629. CONFIDENTIALITY OF INFORMATION.**

12       (a) PROHIBITION.—No officer or employee of the  
13 United States may—

14           (1) use the information furnished by the appli-  
15 cant pursuant to an application filed under this sub-  
16 title to initiate removal proceedings against any per-  
17 sons identified in the application;

18           (2) make any publication whereby the informa-  
19 tion furnished by any particular individual pursuant  
20 to an application under this subtitle can be identi-  
21 fied; or

22           (3) permit anyone other than an officer or em-  
23 ployee of the United States Government or, in the  
24 case of applications filed under this subtitle with a  
25 designated entity, that designated entity, to examine  
26 applications filed under this subtitle.

1 (b) REQUIRED DISCLOSURE.—The Attorney General  
2 or the Secretary shall provide the information furnished  
3 under this section, and any other information derived from  
4 such furnished information, to—

5 (1) a duly recognized law enforcement entity in  
6 connection with an investigation or prosecution of an  
7 offense described in paragraph (2) or (3) of section  
8 212(a) of the Immigration and Nationality Act (8  
9 U.S.C. 1182(a)), when such information is requested  
10 in writing by such entity; or

11 (2) an official coroner for purposes of affirma-  
12 tively identifying a deceased individual (whether or  
13 not such individual is deceased as a result of a  
14 crime).

15 (c) PENALTY.—Whoever knowingly uses, publishes,  
16 or permits information to be examined in violation of this  
17 section shall be fined not more than \$10,000.

18 **SEC. 630. EXPEDITED PROCESSING OF APPLICATIONS; PRO-**

19 **HIBITION ON FEES.**

20 Regulations promulgated under this subtitle shall  
21 provide that applications under this subtitle will be consid-  
22 ered on an expedited basis and without a requirement for  
23 the payment by the applicant of any additional fee for  
24 such expedited processing.

1 **SEC. 631. HIGHER EDUCATION ASSISTANCE.**

2 Notwithstanding any provision of the Higher Edu-  
3 cation Act of 1965 (20 U.S.C. 1001 et seq.), with respect  
4 to assistance provided under title IV of the Higher Edu-  
5 cation Act of 1965 (20 U.S.C. 1070 et seq.), an alien who  
6 adjusts status to that of a lawful permanent resident  
7 under this subtitle shall be eligible only for the following  
8 assistance under such title IV:

9 (1) Student loans under parts B, D, and E of  
10 such title IV (20 U.S.C. 1071 et seq., 1087a et seq.,  
11 1087aa et seq.), subject to the requirements of such  
12 parts.

13 (2) Federal work-study programs under part C  
14 of such title IV (42 U.S.C. 2751 et seq.), subject to  
15 the requirements of such part.

16 (3) Services under such title IV (20 U.S.C.  
17 1070 et seq.), subject to the requirements for such  
18 services.

19 **SEC. 632. GAO REPORT.**

20 Seven years after the date of enactment of this Act,  
21 the Comptroller General of the United States shall submit  
22 a report to the Committee on the Judiciary of the Senate  
23 and the Committee on the Judiciary of the House of Rep-  
24 resentatives, which sets forth—

1 (1) the number of aliens who were eligible for  
2 cancellation of removal and adjustment of status  
3 under section 624(a);

4 (2) the number of aliens who applied for adjust-  
5 ment of status under section 624(a);

6 (3) the number of aliens who were granted ad-  
7 justment of status under section 624(a); and

8 (4) the number of aliens whose conditional per-  
9 manent resident status was removed under section  
10 625.

## 11 **Subtitle D—Programs To Assist** 12 **Nonimmigrant Workers**

### 13 **SEC. 641. INELIGIBILITY AND REMOVAL BEFORE APPLICA-** 14 **TION PERIOD.**

15 (a) LIMITATIONS ON INELIGIBILITY.—

16 (1) IN GENERAL.—An alien is not ineligible for  
17 any immigration benefit under any provision of this  
18 title, or any amendment made by this title, solely on  
19 the basis that the alien violated section 1543, 1544,  
20 or 1546 of chapter 75 of title 18, United States  
21 Code, during the period beginning on the date of the  
22 enactment of this Act and ending on the date that  
23 the Department of Homeland Security begins ac-  
24 cepting applications for benefits under title VI.

1           (2) PROSECUTION.—An alien who commits a  
2 violation of such section 1543, 1544, or 1546 during  
3 the period beginning on the date the enactment of  
4 this Act and ending on the date that the alien ap-  
5 plies for eligibility for such benefit may be pros-  
6 ecuted for the violation if the alien’s application for  
7 such benefit is denied.

8           (b) LIMITATION ON REMOVAL.—If an alien who is  
9 apprehended prior to the beginning of the applicable appli-  
10 cation period described in a provision of this title, or an  
11 amendment made by this title, is able to establish prima  
12 facie eligibility for an adjustment of status under such a  
13 provision, the alien may not be removed from the United  
14 States for any reason until the date that is 180 days after  
15 the first day of such applicable application period unless  
16 the alien has engaged in criminal conduct or is a threat  
17 to the national security of the United States.

18 **SEC. 642. GRANTS TO SUPPORT PUBLIC EDUCATION AND**  
19 **COMMUNITY TRAINING.**

20           (a) GRANTS AUTHORIZED.—The Assistant Attorney  
21 General, Office of Justice Programs, may award grants  
22 to qualified non-profit community organizations to edu-  
23 cate, train, and support non-profit agencies, immigrant  
24 communities, and other interested entities regarding the

1 provisions of this Act and the amendments made by this  
2 Act.

3 (b) USE OF FUNDS.—

4 (1) IN GENERAL.—Grants awarded under this  
5 section shall be used—

6 (A) for public education, training, technical  
7 assistance, government liaison, and all related  
8 costs (including personnel and equipment) in-  
9 curred by the grantee in providing services re-  
10 lated to this Act; and

11 (B) to educate, train, and support non-  
12 profit organizations, immigrant communities,  
13 and other interested parties regarding this Act  
14 and the amendments made by this Act and on  
15 matters related to its implementation.

16 (2) EDUCATION.—In addition to the purposes  
17 described in paragraph (1), grants awarded under  
18 this section shall be used to—

19 (A) educate immigrant communities and  
20 other interested entities regarding—

21 (i) the individuals and organizations  
22 that can provide authorized legal represen-  
23 tation in immigration matters under regu-  
24 lations prescribed by the Secretary; and

1                   (ii) the dangers of securing legal ad-  
2                   vice and assistance from those who are not  
3                   authorized to provide legal representation  
4                   in immigration matters;

5                   (B) educate interested entities regarding  
6                   the requirements for obtaining nonprofit rec-  
7                   ognition and accreditation to represent immi-  
8                   grants under regulations prescribed by the Sec-  
9                   retary;

10                  (C) provide nonprofit agencies with train-  
11                  ing and technical assistance on the recognition  
12                  and accreditation process; and

13                  (D) educate nonprofit community organi-  
14                  zations, immigrant communities, and other in-  
15                  terested entities regarding—

16                         (i) the process for obtaining benefits  
17                         under this Act or under an amendment  
18                         made by this Act; and

19                         (ii) the availability of authorized legal  
20                         representation for low-income persons who  
21                         may qualify for benefits under this Act or  
22                         under an amendment made by this Act.

23                  (c) DIVERSITY.—The Assistant Attorney General  
24 shall ensure, to the extent possible, that the nonprofit  
25 community organizations receiving grants under this sec-



1 tion serve geographically diverse locations and ethnically  
2 diverse populations who may qualify for benefits under the  
3 Act.

4 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
5 are authorized to be appropriated to the Office of Justice  
6 Programs of the Department of Justice such sums as may  
7 be necessary for each of the fiscal years 2008 through  
8 2010 to carry out this section.

9 **SEC. 643. STRENGTHENING AMERICAN CITIZENSHIP.**

10 (a) SHORT TITLE.—This section may be cited as the  
11 “Strengthening American Citizenship Act of 2007”.

12 (b) DEFINITION.—In this section, the term “Oath of  
13 Allegiance” means the binding oath (or affirmation) of al-  
14 legiance required to be naturalized as a citizen of the  
15 United States, as prescribed in section 337(e) of the Im-  
16 migration and Nationality Act, as added by subsection  
17 (h)(1)(B).

18 (c) ENGLISH FLUENCY.—

19 (1) EDUCATION GRANTS.—

20 (A) ESTABLISHMENT.—The Chief of the  
21 Office of Citizenship of the Department (re-  
22 ferred to in this paragraph as the “Chief”)  
23 shall establish a grant program to provide  
24 grants in an amount not to exceed \$500 to as-  
25 sist legal residents of the United States who de-

1           clare an intent to apply for citizenship in the  
2           United States to meet the requirements under  
3           section 312 of the Immigration and Nationality  
4           Act (8 U.S.C. 1423).

5           (B) USE OF FUNDS.—Grant funds award-  
6           ed under this paragraph shall be paid directly  
7           to an accredited institution of higher education  
8           or other qualified educational institution (as de-  
9           termined by the Chief) for tuition, fees, books,  
10          and other educational resources required by a  
11          course on the English language in which the  
12          legal resident is enrolled.

13          (C) APPLICATION.—A legal resident desir-  
14          ing a grant under this paragraph shall submit  
15          an application to the Chief at such time, in  
16          such manner, and accompanied by such infor-  
17          mation as the Chief may reasonably require.

18          (D) PRIORITY.—If insufficient funds are  
19          available to award grants to all qualified appli-  
20          cants, the Chief shall give priority based on the  
21          financial need of the applicants.

22          (E) NOTICE.—The Secretary, upon rel-  
23          evant registration of a legal resident with the  
24          Department, shall notify such legal resident of  
25          the availability of grants under this paragraph

1           for legal residents who declare an intent to  
2           apply for United States citizenship.

3           (F) DEFINITION.—For purposes of this  
4           subsection, the term “legal resident” means a  
5           lawful permanent resident or a lawfully admit-  
6           ted alien who, in order to adjust status to that  
7           of a lawful permanent resident must dem-  
8           onstrate a knowledge of the English language  
9           or satisfactory pursuit of a course of study to  
10          acquire such knowledge of the English lan-  
11          guage.

12          (2) FASTER CITIZENSHIP FOR ENGLISH FLU-  
13          ENCY.—Section 316 (8 U.S.C. 1427) is amended by  
14          adding at the end the following:

15          “(g) A lawful permanent resident of the United  
16          States who demonstrates English fluency, in accordance  
17          with regulations prescribed by the Secretary of Homeland  
18          Security, in consultation with the Secretary of State, will  
19          satisfy the residency requirement under subsection (a)  
20          upon the completion of 4 years of continuous legal resi-  
21          dency in the United States.”.

22          (3) SAVINGS PROVISION.—Nothing in this sub-  
23          section shall be construed to—

24                  (A) modify the English language require-  
25                  ments for naturalization under section

1           312(a)(1) of the Immigration and Nationality  
2           Act (8 U.S.C. 1423(a)(1)); or

3           (B) influence the naturalization test rede-  
4           sign process of the Office of Citizenship (except  
5           for the requirement under subsection (h)(2)).

6           (d) AMERICAN CITIZENSHIP GRANT PROGRAM.—

7           (1) IN GENERAL.—The Secretary shall establish  
8           a competitive grant program to provide financial as-  
9           sistance for—

10           (A) efforts by entities (including veterans  
11           and patriotic organizations) certified by the Of-  
12           fice of Citizenship to promote the patriotic inte-  
13           gration of prospective citizens into the Amer-  
14           ican way of life by providing civics, history, and  
15           English as a second language courses, with a  
16           specific emphasis on attachment to principles of  
17           the Constitution of the United States, the he-  
18           roes of American history (including military he-  
19           roes), and the meaning of the Oath of Alle-  
20           giance; and

21           (B) other activities approved by the Sec-  
22           retary to promote the patriotic integration of  
23           prospective citizens and the implementation of  
24           the Immigration and Nationality Act (8 U.S.C.  
25           1101 et seq.), including grants—

1 (i) to promote an understanding of  
2 the form of government and history of the  
3 United States; and

4 (ii) to promote an attachment to the  
5 principles of the Constitution of the United  
6 States and the well being and happiness of  
7 the people of the United States.

8 (2) ACCEPTANCE OF GIFTS.—The Secretary  
9 may accept and use gifts from the United States  
10 Citizenship Foundation, if the foundation is estab-  
11 lished under subsection (e), for grants under this  
12 subsection.

13 (3) AUTHORIZATION OF APPROPRIATIONS.—  
14 There are authorized to be appropriated such sums  
15 as may be necessary to carry out this subsection.

16 (e) FUNDING FOR THE OFFICE OF CITIZENSHIP.—

17 (1) AUTHORIZATION.—The Secretary, acting  
18 through the Director of the Bureau of Citizenship  
19 and Immigration Services, is authorized to establish  
20 the United States Citizenship Foundation (referred  
21 to in this subsection as the “Foundation”), an orga-  
22 nization duly incorporated in the District of Colum-  
23 bia, exclusively for charitable and educational pur-  
24 poses to support the functions of the Office of Citi-  
25 zenship.

1 (2) DEDICATED FUNDING.—

2 (A) IN GENERAL.—Not less than 1.5 per-  
3 cent of the funds made available to the Bureau  
4 of Citizenship and Immigration Services from  
5 fees shall be dedicated to the functions of the  
6 Office of Citizenship, which shall include the  
7 patriotic integration of prospective citizens  
8 into—

9 (i) American common values and tra-  
10 ditions, including an understanding of  
11 American history and the principles of the  
12 Constitution of the United States; and

13 (ii) civic traditions of the United  
14 States, including the Pledge of Allegiance,  
15 respect for the flag of the United States,  
16 and voting in public elections.

17 (B) SENSE OF CONGRESS.—It is the sense  
18 of Congress that dedicating increased funds to  
19 the Office of Citizenship should not result in an  
20 increase in fees charged by the Bureau of Citi-  
21 zenship and Immigration Services.

22 (3) GIFTS.—

23 (A) TO FOUNDATION.—The Foundation  
24 may solicit, accept, and make gifts of money  
25 and other property in accordance with section

1           501(c)(3) of the Internal Revenue Code of  
2           1986.

3           (B) FROM FOUNDATION.—The Office of  
4           Citizenship may accept gifts from the Founda-  
5           tion to support the functions of the Office.

6           (4) AUTHORIZATION OF APPROPRIATIONS.—  
7           There are authorized to be appropriated such sums  
8           as may be necessary to carry out the mission of the  
9           Office of Citizenship, including the functions de-  
10          scribed in paragraph (2)(A).

11          (f) RESTRICTION ON USE OF FUNDS.—No funds ap-  
12          propriated to carry out a program under this subsection  
13          (d) or (e) may be used to organize individuals for the pur-  
14          pose of political activism or advocacy.

15          (g) REPORTING REQUIREMENT.—

16           (1) IN GENERAL.—The Chief of the Office of  
17           Citizenship shall submit an annual report to the  
18           Committee on Health, Education, Labor, and Pen-  
19           sions of the Senate, the Committee on the Judiciary  
20           of the Senate, the Committee on Education and the  
21           Workforce of the House of Representatives, and the  
22           Committee on the Judiciary of the House of Rep-  
23           resentatives.

24           (2) CONTENTS.—The report submitted under  
25           paragraph (1) shall include—

1 (A) a list of the entities that have received  
2 funds from the Office of Citizenship during the  
3 reporting period under this section and the  
4 amount of funding received by each such entity;

5 (B) an evaluation of the extent to which  
6 grants received under this section successfully  
7 promoted an understanding of—

8 (i) the English language; and

9 (ii) American history and government,  
10 including the heroes of American history,  
11 the meaning of the Oath of Allegiance, and  
12 an attachment to the principles of the Con-  
13 stitution of the United States; and

14 (C) information about the number of legal  
15 residents who were able to achieve the knowl-  
16 edge described under paragraph (2) as a result  
17 of the grants provided under this section.

18 (h) OATH OR AFFIRMATION OF RENUNCIATION AND  
19 ALLEGIANCE.—

20 (1) REVISION OF OATH.—Section 337 (8 U.S.C.  
21 1448) is amended—

22 (A) in subsection (a), by striking “under  
23 section 310(b) an oath” and all that follows  
24 through “personal moral code.” and inserting



1           “under section 310(b), the oath (or affirmation)  
2           of allegiance prescribed in subsection (e).”; and

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

4           “(e)(1) Subject to paragraphs (2) and (3), the oath  
5 (or affirmation) of allegiance prescribed in this subsection  
6 is as follows: ‘I take this oath solemnly, freely, and without  
7 any mental reservation. I absolutely and entirely renounce  
8 all allegiance to any foreign state or power of which I have  
9 been a subject or citizen. My fidelity and allegiance from  
10 this day forward are to the United States of America. I  
11 will bear true faith and allegiance to the Constitution and  
12 laws of the United States, and will support and defend  
13 them against all enemies, foreign and domestic. I will bear  
14 arms, or perform noncombatant military or civilian serv-  
15 ice, on behalf of the United States when required by law.  
16 This I do solemnly swear, so help me God.’.

17           “(2) If a person, by reason of religious training and  
18 belief (or individual interpretation thereof) or for other  
19 reasons of good conscience, cannot take the oath pre-  
20 scribed in paragraph (1)—

21           “(A) with the term ‘oath’ included, the term  
22           ‘affirmation’ shall be substituted for the term ‘oath’;  
23           and

24           “(B) with the phrase ‘so help me God’ included,  
25           the phrase ‘so help me God’ shall be omitted.

1       “(3) If a person shows by clear and convincing evi-  
2       dence to the satisfaction of the Attorney General that such  
3       person, by reason of religious training and belief, cannot  
4       take the oath prescribed in paragraph (1)—

5               “(A) because such person is opposed to the  
6       bearing of arms in the Armed Forces of the United  
7       States, the words ‘bear arms, or’ shall be omitted;  
8       and

9               “(B) because such person is opposed to any  
10       type of service in the Armed Forces of the United  
11       States, the words ‘bear arms, or’ and ‘noncombatant  
12       military or’ shall be omitted.

13       “(4) As used in this subsection, the term ‘religious  
14       training and belief’—

15               “(A) means a belief of an individual in relation  
16       to a Supreme Being involving duties superior to  
17       those arising from any human relation; and

18               “(B) does not include essentially political, socio-  
19       logical, or philosophical views or a merely personal  
20       moral code.

21       “(5) Any reference in this title to ‘oath’ or ‘oath of  
22       allegiance’ under this section shall be deemed to refer to  
23       the oath (or affirmation) of allegiance prescribed under  
24       this subsection.”.

1           (2) HISTORY AND GOVERNMENT TEST.—The  
2 Secretary shall incorporate a knowledge and under-  
3 standing of the meaning of the Oath of Allegiance  
4 into the history and government test given to appli-  
5 cants for citizenship.

6           (3) NOTICE TO FOREIGN EMBASSIES.—Upon  
7 the naturalization of a new citizen, the Secretary, in  
8 cooperation with the Secretary of State, shall notify  
9 the embassy of the country of which the new citizen  
10 was a citizen or subject that such citizen has—

11                 (A) renounced allegiance to that foreign  
12 country; and

13                 (B) sworn allegiance to the United States.

14           (4) EFFECTIVE DATE.—The amendments made  
15 by paragraph (1) shall take effect on the date that  
16 is 6 months after the date of enactment of this Act.

17           (i) ESTABLISHMENT OF NEW CITIZENS AWARD PRO-  
18 GRAM.—

19                 (1) ESTABLISHMENT.—There is established a  
20 new citizens award program to recognize citizens  
21 who—

22                         (A) have made an outstanding contribution  
23 to the United States; and

24                         (B) were naturalized during the 10-year  
25 period ending on the date of such recognition.

1 (2) PRESENTATION AUTHORIZED.—

2 (A) IN GENERAL.—The President is au-  
3 thorized to present a medal, in recognition of  
4 outstanding contributions to the United States,  
5 to citizens described in paragraph (1).

6 (B) MAXIMUM NUMBER OF AWARDS.—Not  
7 more than 10 citizens may receive a medal  
8 under this subsection in any calendar year.

9 (3) DESIGN AND STRIKING.—The Secretary of  
10 the Treasury shall strike a medal with suitable em-  
11 blems, devices, and inscriptions, to be determined by  
12 the President.

13 (4) NATIONAL MEDALS.—The medals struck  
14 pursuant to this subsection are national medals for  
15 purposes of chapter 51 of title 31, United States  
16 Code.

17 (j) NATURALIZATION CEREMONIES.—

18 (1) IN GENERAL.—The Secretary, in consulta-  
19 tion with the Director of the National Park Service,  
20 the Archivist of the United States, and other appro-  
21 priate Federal officials, shall develop and implement  
22 a strategy to enhance the public awareness of natu-  
23 ralization ceremonies.

24 (2) VENUES.—In developing the strategy under  
25 this subsection, the Secretary shall consider the use

1 of outstanding and historic locations as venues for  
2 select naturalization ceremonies.

3 (3) REPORTING REQUIREMENT.—The Secretary  
4 shall submit an annual report to Congress that in-  
5 cludes—

6 (A) the content of the strategy developed  
7 under this subsection; and

8 (B) the progress made towards the imple-  
9 mentation of such strategy.

10 **SEC. 644. SUPPLEMENTAL IMMIGRATION FEE.**

11 (a) AUTHORIZATION OF FEE.—

12 (1) IN GENERAL.—Subject to paragraph (2),  
13 any alien who receives any immigration benefit  
14 under this title, or the amendments made by this  
15 title, shall, before receiving such benefit, pay a fee  
16 to the Secretary in an amount equal to \$500, in ad-  
17 dition to other applicable fees and penalties imposed  
18 under this title, or the amendments made by this  
19 title.

20 (2) FEES CONTINGENT ON APPROPRIATIONS.—

21 No fee may be collected under this section except to  
22 the extent that the expenditure of the fee to pay the  
23 costs of activities and services for which the fee is  
24 imposed, as described in subsection (b), is provided  
25 for in advance in an appropriations Act.

1 (b) DEPOSIT AND EXPENDITURE OF FEES.—

2 (1) DEPOSIT.—Amounts collected under sub-  
3 section (a) shall be deposited as an offsetting collec-  
4 tion in, and credited to, the accounts providing ap-  
5 propriations—

6 (A) to carry out the apprehension and de-  
7 tention of any alien who is inadmissible by rea-  
8 son of any offense described in section 212(a);

9 (B) to carry out the apprehension and de-  
10 tention of any alien who is deportable for any  
11 offense under section 237(a);

12 (C) to acquire border sensor and surveil-  
13 lance technology;

14 (D) for air and marine interdiction, oper-  
15 ations, maintenance, and procurement;

16 (E) for construction projects in support of  
17 the United States Customs and Border Protec-  
18 tion;

19 (F) to train Federal law enforcement per-  
20 sonnel; and

21 (G) for maritime security activities.

22 (2) AVAILABILITY OF FEES.—Amounts depos-  
23 ited under paragraph (1) shall remain available until  
24 expended for the activities and services described in  
25 paragraph (1).

1 **SEC. 645. ADDRESSING POVERTY IN MEXICO.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) There is a strong correlation between eco-  
4 nomic freedom and economic prosperity.

5 (2) Trade policy, fiscal burden of government,  
6 government intervention in the economy, monetary  
7 policy, capital flows and foreign investment, banking  
8 and finance, wages and prices, property rights, regu-  
9 lation, and informal market activity are key factors  
10 in economic freedom.

11 (3) Poverty in Mexico, including rural poverty,  
12 can be mitigated through strengthened economic  
13 freedom within Mexico.

14 (4) Strengthened economic freedom in Mexico  
15 can be a major influence in mitigating illegal immi-  
16 gration.

17 (5) Advancing economic freedom within Mexico  
18 is an important part of any comprehensive plan to  
19 understanding the sources of poverty and the path  
20 to economic prosperity.

21 (b) GRANT AUTHORIZED.—The Secretary of State  
22 may award a grant to a land grant university in the  
23 United States to establish a national program for a broad,  
24 university-based Mexican rural poverty mitigation pro-  
25 gram.

1 (c) FUNCTIONS OF MEXICAN RURAL POVERTY MITI-  
2 GATION PROGRAM.—The program established pursuant to  
3 subsection (b) shall—

4 (1) match a land grant university in the United  
5 States with the lead Mexican public university in  
6 each of Mexico’s 31 states to provide state-level co-  
7 ordination of rural poverty programs in Mexico;

8 (2) establish relationships and coordinate pro-  
9 grammatic ties between universities in the United  
10 States and universities in Mexico to address the  
11 issue of rural poverty in Mexico;

12 (3) establish and coordinate relationships with  
13 key leaders in the United States and Mexico to ex-  
14 plore the effect of rural poverty on illegal immigra-  
15 tion of Mexicans into the United States; and

16 (4) address immigration and border security  
17 concerns through a university-based, binational ap-  
18 proach for long-term institutional change.

19 (d) USE OF FUNDS.—

20 (1) AUTHORIZED USES.—Grant funds awarded  
21 under this section may be used—

22 (A) for education, training, technical as-  
23 sistance, and any related expenses (including  
24 personnel and equipment) incurred by the



1 grantee in implementing a program described in  
2 subsection (a); and

3 (B) to establish an administrative struc-  
4 ture for such program in the United States.

5 (2) LIMITATIONS.—Grant funds awarded under  
6 this section may not be used for activities, respon-  
7 sibilities, or related costs incurred by entities in  
8 Mexico.

9 (e) AUTHORIZATION OF APPROPRIATIONS.—There  
10 are authorized to be appropriated such funds as may be  
11 necessary to carry out this section.

12 **TITLE VII—MISCELLANEOUS**  
13 **Subtitle A—Immigration Litigation**  
14 **Reduction**

15 **CHAPTER 1—APPEALS AND REVIEW**

16 **SEC. 701. ADDITIONAL IMMIGRATION PERSONNEL.**

17 (a) DEPARTMENT OF HOMELAND SECURITY.—

18 (1) TRIAL ATTORNEYS.—In each of the fiscal  
19 years 2008 through 2012, the Secretary shall, sub-  
20 ject to the availability of appropriations for such  
21 purpose, increase the number of positions for attor-  
22 neys in the Office of General Counsel of the Depart-  
23 ment who represent the Department in immigration  
24 matters by not less than 100 above the number of

1 such positions for which funds were made available  
2 during each preceding fiscal year.

3 (2) AUTHORIZATION OF APPROPRIATIONS.—

4 There are authorized to be appropriated to the Sec-  
5 retary for each of the fiscal years 2008 through  
6 2012 such sums as may be necessary to carry out  
7 this subsection.

8 (b) DEPARTMENT OF JUSTICE.—

9 (1) LITIGATION ATTORNEYS.—In each of the  
10 fiscal years 2008 through 2012, the Attorney Gen-  
11 eral shall, subject to the availability of appropria-  
12 tions for such purpose, increase by not less than 50  
13 the number of positions for attorneys in the Office  
14 of Immigration Litigation of the Department of Jus-  
15 tice.

16 (2) UNITED STATES ATTORNEYS.—In each of  
17 the fiscal years 2008 through 2012, the Attorney  
18 General shall, subject to the availability of approp-  
19 riations for such purpose, increase by not less than  
20 50 the number of attorneys in the United States At-  
21 torneys' office to litigate immigration cases in the  
22 Federal courts.

23 (3) IMMIGRATION JUDGES.—In each of the fis-  
24 cal years 2008 through 2012, the Attorney General

1 shall, subject to the availability of appropriations for  
2 such purpose—

3 (A) increase by not less than 20 the num-  
4 ber of full-time immigration judges compared to  
5 the number of such positions for which funds  
6 were made available during the preceding fiscal  
7 year; and

8 (B) increase by not less than 80 the num-  
9 ber of positions for personnel to support the im-  
10 migration judges described in subparagraph (A)  
11 compared to the number of such positions for  
12 which funds were made available during the  
13 preceding fiscal year.

14 (4) STAFF ATTORNEYS.—In each of the fiscal  
15 years 2008 through 2012, the Attorney General  
16 shall, subject to the availability of appropriations for  
17 such purpose—

18 (A) increase by not less than 10 the num-  
19 ber of positions for full-time staff attorneys in  
20 the Board of Immigration Appeals compared to  
21 the number of such positions for which funds  
22 were made available during the preceding fiscal  
23 year; and

24 (B) increase by not less than 10 the num-  
25 ber of positions for personnel to support the

1 staff attorneys described in subparagraph (A)  
2 compared to the number of such positions for  
3 which funds were made available during the  
4 preceding fiscal year

5 (5) AUTHORIZATION OF APPROPRIATIONS.—

6 There are authorized to be appropriated to the At-  
7 torney General for each of the fiscal years 2008  
8 through 2012 such sums as may be necessary to  
9 carry out this subsection, including the hiring of  
10 necessary support staff.

11 (c) ADMINISTRATIVE OFFICE OF THE UNITED  
12 STATES COURTS.—In each of the fiscal years 2008  
13 through 2012, the Director of the Administrative Office  
14 of the United States Courts shall, subject to the avail-  
15 ability of appropriations, increase by not less than 50 the  
16 number of attorneys in the Federal Defenders Program  
17 who litigate criminal immigration cases in the Federal  
18 courts.

19 **CHAPTER 2—IMMIGRATION REVIEW**  
20 **REFORM**

21 **SEC. 702. BOARD OF IMMIGRATION APPEALS.**

22 (a) COMPOSITION AND APPOINTMENT.—Notwith-  
23 standing any other provision of law, the Board of Immi-  
24 gration Appeals of the Department of Justice (referred to  
25 in this section as the “Board”), shall be composed of a

1 Chair and 22 other immigration appeals judges, who shall  
2 be appointed by the Attorney General. Upon the expiration  
3 of a term of office, a Board member may continue to act  
4 until a successor has been appointed and qualified.

5 (b) QUALIFICATIONS.—Each member of the Board,  
6 including the Chair, shall—

7 (1) be an attorney in good standing of a bar of  
8 a State or the District of Columbia;

9 (2) have at least—

10 (A) 7 years of professional, legal expertise;

11 or

12 (B) 5 years of professional, legal expertise  
13 in immigration and nationality law; and

14 (3) meet the minimum appointment require-  
15 ments of an administrative law judge under title 5,  
16 United States Code.

17 (c) DUTIES OF THE CHAIR.—The Chair of the Board,  
18 subject to the supervision of the Director of the Executive  
19 Office for Immigration Review, shall—

20 (1) be responsible, on behalf of the Board, for  
21 the administrative operations of the Board and shall  
22 have the power to appoint such administrative as-  
23 sistants, attorneys, clerks, and other personnel as  
24 may be needed for that purpose;

1           (2) direct, supervise, and establish internal op-  
2           erating procedures and policies of the Board;

3           (3) designate a member of the Board to act as  
4           Chair if the Chair is absent or unavailable;

5           (4) adjudicate cases as a member of the Board;

6           (5) form 3-member panels as provided by sub-  
7           section (g);

8           (6) direct that a case be heard en banc as pro-  
9           vided by subsection (h); and

10          (7) exercise such other authorities as the Direc-  
11          tor may provide.

12          (d) BOARD MEMBERS DUTIES.—In deciding a case  
13          before the Board, the Board—

14               (1) shall exercise independent judgment and  
15               discretion; and

16               (2) may take any action that is appropriate and  
17               necessary for the disposition of such case that is  
18               consistent with the authority provided in this section  
19               and any regulations established in accordance with  
20               this section.

21          (e) JURISDICTION.—

22               (1) IN GENERAL.—The Board shall have juris-  
23               diction to hear appeals described in section  
24               1003.1(b) of title 8, Code of Federal Regulations (or  
25               any corresponding similar regulation).

1           (2) LIMITATION.—The Board shall not have ju-  
2           risdiction to hear an appeal of a decision of an im-  
3           migration judge for an order of removal entered in  
4           absentia.

5           (f) SCOPE OF REVIEW.—

6           (1) FINDINGS OR FACT.—The Board shall—

7           (A) accept findings of fact determined by  
8           an immigration judge, including findings as to  
9           the credibility of testimony, unless the findings  
10          are clearly erroneous; and

11          (B) give due deference to an immigration  
12          judge’s application of the law to the facts.

13          (2) QUESTIONS OF LAW.—The Board shall re-  
14          view de novo questions of law, discretion, and judg-  
15          ment, and all other issues in appeals from decisions  
16          of immigration judges.

17          (3) APPEALS FROM OFFICERS’ DECISIONS.—

18          (A) STANDARD OF REVIEW.—The Board  
19          shall review de novo all questions arising in ap-  
20          peals from decisions issued by officers of the  
21          Department.

22          (B) PROHIBITION OF FACT FINDING.—Ex-  
23          cept for taking administrative notice of com-  
24          monly known facts such as current events or  
25          the contents of official documents, the Board

1           may not engage in fact-finding in the course of  
2           deciding appeals.

3           (C) REMAND.—A party asserting that the  
4           Board cannot properly resolve an appeal with-  
5           out further fact-finding shall file a motion for  
6           remand. If further fact-finding is needed in a  
7           case, the Board shall remand the proceeding to  
8           the immigration judge or, as appropriate, to the  
9           Secretary.

10          (g) PANELS.—

11           (1) IN GENERAL.—Except as provided in para-  
12           graph (5) all cases shall be subject to review by a  
13           3-member panel. The Chair shall divide the Board  
14           into 3-member panels and designate a presiding  
15           member.

16           (2) AUTHORITY.—Each panel may exercise the  
17           appropriate authority of the Board that is necessary  
18           for the adjudication of cases before the Board.

19           (3) QUORUM.—Two members appointed to a  
20           panel shall constitute a quorum for such panel.

21           (4) CHANGES IN COMPOSITION.—The Chair  
22           may from time to time make changes in the com-  
23           position of a panel and of the presiding member of  
24           a panel.



1           (5) PRESIDING MEMBER DECISIONS.—The pre-  
2           siding member of a panel may act alone on any mo-  
3           tion as provided in paragraphs (2) and (3) of sub-  
4           section (i) and may not otherwise dismiss or deter-  
5           mine an appeal as a single Board member.

6           (h) EN BANC PROCESS.—

7           (1) IN GENERAL.—The Board may on its own  
8           motion, by a majority vote of the Board members,  
9           or by direction of the Chair—

10                   (A) consider any case as the full Board en  
11                   banc; or

12                   (B) reconsider as the full Board en banc  
13                   any case that has been considered or decided by  
14                   a 3-member panel or by a limited en banc  
15                   panel.

16           (2) QUORUM.—A majority of the Board mem-  
17           bers shall constitute a quorum of the Board sitting  
18           en banc.

19           (i) DECISIONS OF THE BOARD.—

20           (1) AFFIRMANCE WITHOUT OPINION.—Upon in-  
21           dividualized review of a case, the Board may affirm  
22           the decision of an immigration judge without opinion  
23           only if—

24                   (A) the decision of the immigration judge  
25                   resolved all issues in the case;

1 (B) the issue on appeal is squarely con-  
2 trolled by existing Board or Federal court  
3 precedent and does not involve the application  
4 of precedent to a novel fact situation;

5 (C) the factual and legal questions raised  
6 on appeal are so insubstantial that the case  
7 does not warrant the issuance of a written opin-  
8 ion in the case; and

9 (D) the Board approves both the result  
10 reached in the decision below and all of the rea-  
11 soning of that decision.

12 (2) SUMMARY DISMISSAL OF APPEALS.—The 3-  
13 member panel or the presiding member acting alone  
14 may summarily dismiss any appeal or portion of any  
15 appeal in any case which—

16 (A) the party seeking the appeal fails to  
17 specify the reasons for the appeal;

18 (B) the only reason for the appeal specified  
19 by such party involves a finding of fact or a  
20 conclusion of law that was conceded by that  
21 party at a prior proceeding;

22 (C) the appeal is from an order that grant-  
23 ed such party the relief that had been re-  
24 quested;

1 (D) the appeal is determined to be filed for  
2 an improper purpose, such as to cause unneces-  
3 sary delay; or

4 (E) the appeal lacks an arguable basis in  
5 fact or in law and is not supported by a good  
6 faith argument for extension, modification, or  
7 reversal of existing law.

8 (3) UNOPPOSED DISPOSITIONS.—The 3-member  
9 panel or the presiding member acting alone may—

10 (A) grant an unopposed motion or a mo-  
11 tion to withdraw an appeal pending before the  
12 Board; or

13 (B) adjudicate a motion to remand any ap-  
14 peal—

15 (i) from the decision of an officer of  
16 the Department if the appropriate official  
17 of the Department requests that the mat-  
18 ter be remanded back for further consider-  
19 ation;

20 (ii) if remand is required because of a  
21 defective or missing transcript; or

22 (iii) if remand is required for any  
23 other procedural or ministerial issue.

24 (4) NOTICE OF RIGHT TO APPEAL.—The deci-  
25 sion by the Board shall include notice to the alien

1 of the alien's right to file a petition for review in a  
2 United States Court of Appeals not later than 30  
3 days after the date of the decision.

4 **SEC. 703. IMMIGRATION JUDGES.**

5 (a) APPOINTMENT OF IMMIGRATION JUDGES.—

6 (1) IN GENERAL.—The Chief Immigration  
7 Judge (as described in section 1003.9 of title 8,  
8 Code of Federal Regulations, or any corresponding  
9 similar regulation) and other immigration judges  
10 shall be appointed by the Attorney General. Upon  
11 the expiration of a term of office, the immigration  
12 judge may continue to act until a successor has been  
13 appointed and qualified.

14 (2) QUALIFICATIONS.—Each immigration  
15 judge, including the Chief Immigration Judge, shall  
16 be an attorney in good standing of a bar of a State  
17 or the District of Columbia and shall have at least  
18 5 years of professional, legal expertise or at least 3  
19 years professional or legal expertise in immigration  
20 and nationality law.

21 (b) JURISDICTION.—An Immigration judge shall  
22 have the authority to hear matters related to any removal  
23 proceeding pursuant to section 240 of the Immigration  
24 and Nationality Act (8 U.S.C. 1229a) described in section

1 1240.1(a) of title 8, Code of Federal Regulations (or any  
2 corresponding similar regulation).

3 (c) DUTIES OF IMMIGRATION JUDGES.—In deciding  
4 a case, an immigration judge—

5 (1) shall exercise independent judgment and  
6 discretion; and

7 (2) may take any action that is appropriate and  
8 necessary for the disposition of such case that is  
9 consistent with their authorities under this section  
10 and regulations established in accordance with this  
11 section.

12 (d) REVIEW.—Decisions of immigration judges are  
13 subject to review by the Board of Immigration Appeals  
14 in any case in which the Board has jurisdiction.

15 **SEC. 704. REMOVAL AND REVIEW OF JUDGES.**

16 No immigration judge or member of the Board may  
17 be removed or otherwise subject to disciplinary or adverse  
18 action for their exercise of independent judgment and dis-  
19 cretion as prescribed by this chapter.

20 **SEC. 705. LEGAL ORIENTATION PROGRAM.**

21 (a) CONTINUED OPERATION.—The Director of the  
22 Executive Office for Immigration Review shall continue to  
23 operate a legal orientation program to provide basic infor-  
24 mation about immigration court procedures for immigra-

1 tion detainees and shall expand the legal orientation pro-  
2 gram to provide such information on a nationwide basis.

3 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
4 are authorized to be appropriated such sums as may be  
5 necessary to carry out such legal orientation program.

6 **SEC. 706. RULEMAKING.**

7 Not later than 180 days after the date of the enact-  
8 ment of this Act, the Attorney General shall issue regula-  
9 tions to implement this subtitle.

10 **SEC. 707. GAO STUDY ON THE APPELLATE PROCESS FOR**  
11 **IMMIGRATION APPEALS.**

12 (a) IN GENERAL.—The Comptroller General of the  
13 United States shall, not later than 180 days after enact-  
14 ment of this Act, conduct a study on the appellate process  
15 for immigration appeals.

16 (b) REQUIREMENTS.—In conducting the study under  
17 subsection (a), the Comptroller General shall consider the  
18 possibility of consolidating all appeals from the Board of  
19 Immigration Appeals and habeas corpus petitions in immi-  
20 gration cases into 1 United States Court of Appeals, by—

21 (1) consolidating all such appeals into an exist-  
22 ing circuit court, such as the United States Court of  
23 Appeals for the Federal Circuit;

24 (2) consolidating all such appeals into a central-  
25 ized appellate court consisting of active circuit court

1 judges temporarily assigned from the various cir-  
2 cuits, in a manner similar to the Foreign Intel-  
3 ligence Surveillance Court or the Temporary Emer-  
4 gency Court of Appeals; or

5 (3) implementing a mechanism by which a  
6 panel of active circuit court judges shall have the au-  
7 thority to reassign such appeals from circuits with  
8 relatively high caseloads to circuits with relatively  
9 low caseloads.

10 (c) FACTORS TO CONSIDER.—In conducting the  
11 study under subsection (a), the Comptroller General, in  
12 consultation with the Attorney General, the Secretary, and  
13 the Judicial Conference of the United States, shall con-  
14 sider—

15 (1) the resources needed for each alternative,  
16 including judges, attorneys and other support staff,  
17 case management techniques including technological  
18 requirements, physical infrastructure, and other pro-  
19 cedural and logistical issues as appropriate;

20 (2) the impact of each plan on various circuits,  
21 including their caseload in general and caseload per  
22 panel;

23 (3) the possibility of utilizing case management  
24 techniques to reduce the impact of any consolidation  
25 option, such as requiring certificates of reviewability,

1 similar to procedures for habeas and existing sum-  
2 mary dismissal procedures in local rules of the  
3 courts of appeals;

4 (4) the effect of reforms in this Act on the abil-  
5 ity of the circuit courts to adjudicate such appeals;

6 (5) potential impact, if any, on litigants; and

7 (6) other reforms to improve adjudication of  
8 immigration matters, including appellate review of  
9 motions to reopen and reconsider, and attorney fee  
10 awards with respect to review of final orders of re-  
11 moval.

12 **SEC. 708. SENIOR JUDGE PARTICIPATION IN THE SELEC-**  
13 **TION OF MAGISTRATES.**

14 Section 631(a) of title 28, United States Code, is  
15 amended by striking “Northern Mariana Islands” the first  
16 place it appears and inserting “Northern Mariana Islands,  
17 including any judge in regular active service and any judge  
18 who has retired from regular active service under section  
19 371(b) of this title,”.

20 **Subtitle B—Citizenship Assistance**  
21 **for Members of the Armed Services**

22 **SEC. 711. SHORT TITLE.**

23 This subtitle may be cited as the “Kendell Frederick  
24 Citizenship Assistance Act”.



1 **SEC. 712. WAIVER OF REQUIREMENT FOR FINGERPRINTS**  
2 **FOR MEMBERS OF THE ARMED FORCES.**

3 Notwithstanding any other provision of law or any  
4 regulation, the Secretary shall use the fingerprints pro-  
5 vided by an individual at the time the individual enlists  
6 in the Armed Forces to satisfy any requirement for finger-  
7 prints as part of an application for naturalization if the  
8 individual—

9 (1) may be naturalized pursuant to section 328  
10 or 329 of the Immigration and Nationality Act (8  
11 U.S.C. 1439 and 1440);

12 (2) was fingerprinted in accordance with the re-  
13 quirements of the Department of Defense at the  
14 time the individual enlisted in the Armed Forces;  
15 and

16 (3) submits an application for naturalization  
17 not later than 12 months after the date the indi-  
18 vidual enlisted in the Armed Forces.

19 **SEC. 713. PROVISION OF INFORMATION ON NATURALIZA-**  
20 **TION TO MEMBERS OF THE ARMED FORCES.**

21 The Secretary shall—

22 (1) establish a dedicated toll-free telephone  
23 service available only to members of the Armed  
24 Forces and the families of such members to provide  
25 information related to naturalization pursuant to  
26 section 328 or 329 of the Immigration and Nation-

1 ality Act (8 U.S.C. 1439 or 1440), including the sta-  
2 tus of an application for such naturalization;

3 (2) ensure that the telephone service required  
4 by paragraph (1) is operated by employees of the  
5 Department who—

6 (A) have received specialized training on  
7 the naturalization process for members of the  
8 Armed Forces and the families of such mem-  
9 bers; and

10 (B) are physically located in the same unit  
11 as the military processing unit that adjudicates  
12 applications for naturalization pursuant to such  
13 section 328 or 329; and

14 (3) implement a quality control program to  
15 monitor, on a regular basis, the accuracy and quality  
16 of information provided by the employees who oper-  
17 ate the telephone service required by paragraph (1),  
18 including the breadth of the knowledge related to the  
19 naturalization process of such employees.

20 **SEC. 714. PROVISION OF INFORMATION ON NATURALIZA-**  
21 **TION TO THE PUBLIC.**

22 Not later than 30 days after the date that a modifica-  
23 tion to any law or regulation related to the naturalization  
24 process becomes effective, the Secretary shall update the  
25 appropriate application form for naturalization, the in-

1 instructions and guidebook for obtaining naturalization, and  
2 the Internet website maintained by the Secretary to reflect  
3 such modification.

4 **SEC. 715. REPORTS.**

5 (a) ADJUDICATION PROCESS.—Not later than 120  
6 days after the date of the enactment of this Act, the  
7 Comptroller General of the United States shall submit to  
8 the appropriate congressional committees a report on the  
9 entire process for the adjudication of an application for  
10 naturalization filed pursuant to section 328 or 329 of the  
11 Immigration and Nationality Act (8 U.S.C. 1439 or  
12 1440), including the process that begins at the time the  
13 application is mailed to, or received by, the Secretary, re-  
14 gardless of whether the Secretary determines that such  
15 application is complete, through the final disposition of  
16 such application. Such report shall include a description  
17 of—

18 (1) the methods of the Secretary to prepare,  
19 handle, and adjudicate such applications;

20 (2) the effectiveness of the chain of authority,  
21 supervision, and training of employees of the Gov-  
22 ernment or of other entities, including contract em-  
23 ployees, who have any role in the such process or ad-  
24 judication; and

1           (3) the ability of the Secretary to use tech-  
2           nology to facilitate or accomplish any aspect of such  
3           process or adjudication.

4           (b) IMPLEMENTATION.—

5           (1) STUDY.—The Comptroller General of the  
6           United States shall conduct a study on the imple-  
7           mentation of this subtitle by the Secretary, including  
8           studying any technology that may be used to im-  
9           prove the efficiency of the naturalization process for  
10          members of the Armed Forces.

11          (2) REPORT.—Not later than 180 days after  
12          the date that the Comptroller General submits the  
13          report required by subsection (a), the Comptroller  
14          General shall submit to the appropriate congres-  
15          sional committees a report on the study required by  
16          paragraph (1). The report shall include any rec-  
17          ommendations of the Comptroller General for im-  
18          proving the implementation of this subtitle by the  
19          Secretary.

20          (c) APPROPRIATE CONGRESSIONAL COMMITTEES DE-  
21          FINED.—In this section, the term “appropriate congres-  
22          sional committees” means—

23                 (1) the Committee on Armed Services and the  
24                 Committee on the Judiciary of the Senate; and

1           (2) the Committee on Armed Services and the  
2           Committee on the Judiciary of the House of Rep-  
3           resentatives.

## 4   **Subtitle C—State Court Interpreter** 5                                   **Grant Program**

### 6   **SEC. 721. SHORT TITLE.**

7           This subtitle may be cited as the “State Court Inter-  
8   preter Grant Program Act”.

### 9   **SEC. 722. FINDINGS.**

10          Congress finds that—

11               (1) the fair administration of justice depends on  
12               the ability of all participants in a courtroom pro-  
13               ceeding to understand that proceeding, regardless of  
14               their English proficiency;

15               (2) 19 percent of the population of the United  
16               States over 5 years of age speaks a language other  
17               than English at home;

18               (3) only qualified court interpreters can ensure  
19               that persons with limited English proficiency com-  
20               prehend judicial proceedings in which they are a  
21               party;

22               (4) the knowledge and skills required of a quali-  
23               fied court interpreter differ substantially from those  
24               required in other interpretation settings, such as so-

1 cial service, medical, diplomatic, and conference in-  
2 terpreting;

3 (5) the Federal Government has demonstrated  
4 its commitment to equal administration of justice re-  
5 gardless of English proficiency;

6 (6) regulations implementing title VI of the  
7 Civil Rights Act of 1964, as well as the guidance  
8 issued by the Department of Justice pursuant to Ex-  
9 ecutive Order 13166, issued August 11, 2000, clar-  
10 ify that all recipients of Federal financial assistance,  
11 including State courts, are required to take reason-  
12 able steps to provide meaningful access to their pro-  
13 ceedings for persons with limited English pro-  
14 ficiency;

15 (7) 34 States have developed, or are developing,  
16 court interpreting programs;

17 (8) robust, effective court interpreter pro-  
18 grams—

19 (A) actively recruit skilled individuals to be  
20 court interpreters;

21 (B) train those individuals in the interpre-  
22 tation of court proceedings;

23 (C) develop and use a thorough, systematic  
24 certification process for court interpreters; and

1 (D) have sufficient funding to ensure that  
2 a qualified interpreter will be available to the  
3 court whenever necessary; and

4 (9) Federal funding is necessary to—

5 (A) encourage State courts that do not  
6 have court interpreter programs to develop  
7 them;

8 (B) assist State courts with nascent court  
9 interpreter programs to implement them;

10 (C) assist State courts with limited court  
11 interpreter programs to enhance them; and

12 (D) assist State courts with robust court  
13 interpreter programs to make further improve-  
14 ments and share successful programs with other  
15 States.

16 **SEC. 723. STATE COURT INTERPRETER GRANTS.**

17 (a) GRANTS AUTHORIZED.—

18 (1) IN GENERAL.—The Administrator of the  
19 Office of Justice Programs of the Department of  
20 Justice (referred to in this section as the “Adminis-  
21 trator”) shall make grants, in accordance with such  
22 regulations as the Attorney General may prescribe,  
23 to State courts to develop and implement programs  
24 to assist individuals with limited English proficiency

1 to access and understand State court proceedings in  
2 which they are a party.

3 (2) TECHNICAL ASSISTANCE.—The Adminis-  
4 trator shall allocate, for each fiscal year, \$500,000  
5 of the amount appropriated pursuant to section 724  
6 to be used to establish a court interpreter technical  
7 assistance program to assist State courts receiving  
8 grants under this subtitle.

9 (b) USE OF GRANTS.—Grants awarded under sub-  
10 section (a) may be used by State courts to—

11 (1) assess regional language demands;

12 (2) develop a court interpreter program for the  
13 State courts;

14 (3) develop, institute, and administer language  
15 certification examinations;

16 (4) recruit, train, and certify qualified court in-  
17 terpreters;

18 (5) pay for salaries, transportation, and tech-  
19 nology necessary to implement the court interpreter  
20 program developed under paragraph (2); and

21 (6) engage in other related activities, as pre-  
22 scribed by the Attorney General.

23 (c) APPLICATION.—

24 (1) IN GENERAL.—The highest State court of  
25 each State desiring a grant under this section shall



1 submit an application to the Administrator at such  
2 time, in such manner, and accompanied by such in-  
3 formation as the Administrator may reasonably re-  
4 quire.

5 (2) STATE COURTS.—The highest State court  
6 of each State submitting an application under para-  
7 graph (1) shall include in the application—

8 (A) an identification of each State court in  
9 that State which would receive funds from the  
10 grant;

11 (B) the amount of funds each State court  
12 identified under subparagraph (A) would re-  
13 ceive from the grant; and

14 (C) the procedures the highest State court  
15 would use to directly distribute grant funds to  
16 State courts identified under subparagraph (A).

17 (d) STATE COURT ALLOTMENTS.—

18 (1) BASE ALLOTMENT.—From amounts appro-  
19 priated for each fiscal year pursuant to section 724,  
20 the Administrator shall allocate \$100,000 to each of  
21 the highest State court of each State, which has an  
22 application approved under subsection (c).

23 (2) DISCRETIONARY ALLOTMENT.—From  
24 amounts appropriated for each fiscal year pursuant  
25 to section 724, the Administrator shall allocate a

1 total of \$5,000,000 to the highest State court of  
2 States that have extraordinary needs that must be  
3 addressed in order to develop, implement, or expand  
4 a State court interpreter program.

5 (3) **ADDITIONAL ALLOTMENT.**—In addition to  
6 the allocations made under paragraphs (1) and (2),  
7 the Administrator shall allocate to each of the high-  
8 est State court of each State, which has an applica-  
9 tion approved under subsection (c), an amount equal  
10 to the product reached by multiplying—

11 (A) the unallocated balance of the amount  
12 appropriated for each fiscal year pursuant to  
13 section 724; and

14 (B) the ratio between the number of people  
15 over 5 years of age who speak a language other  
16 than English at home in the State and the  
17 number of people over 5 years of age who speak  
18 a language other than English at home in all  
19 the States that receive an allocation under  
20 paragraph (1), as those numbers are deter-  
21 mined by the Bureau of the Census.

22 **SEC. 724. AUTHORIZATION OF APPROPRIATIONS.**

23 There are authorized to be appropriated \$15,000,000  
24 for each of the fiscal years 2008 through 2012 to carry  
25 out this subtitle.

1 **Subtitle D—Border Infrastructure**  
2 **and Technology Modernization**

3 **SEC. 731. SHORT TITLE.**

4 This subtitle may be cited as the “Border Infrastruc-  
5 ture and Technology Modernization Act”.

6 **SEC. 732. DEFINITIONS.**

7 In this subtitle:

8 (1) COMMISSIONER.—The term “Commis-  
9 sioner” means the Commissioner of United States  
10 Customs and Border Protection of the Department.

11 (2) MAQUILADORA.—The term “maquiladora”  
12 means an entity located in Mexico that assembles  
13 and produces goods from imported parts for export  
14 to the United States.

15 (3) NORTHERN BORDER.—The term “northern  
16 border” means the international border between the  
17 United States and Canada.

18 (4) SOUTHERN BORDER.—The term “southern  
19 border” means the international border between the  
20 United States and Mexico.

21 **SEC. 733. PORT OF ENTRY INFRASTRUCTURE ASSESSMENT**  
22 **STUDY.**

23 (a) REQUIREMENT TO UPDATE.—Not later than  
24 January 31 of each year, the Administrator of General  
25 Services shall update the Port of Entry Infrastructure As-

1 assessment Study prepared by the Bureau of Customs and  
2 Border Protection in accordance with the matter relating  
3 to the ports of entry infrastructure assessment that is set  
4 out in the joint explanatory statement in the conference  
5 report accompanying H.R. 2490 of the 106th Congress,  
6 1st session (House of Representatives Rep. No. 106–319,  
7 on page 67) and submit such updated study to Congress.

8 (b) CONSULTATION.—In preparing the updated stud-  
9 ies required in subsection (a), the Administrator of Gen-  
10 eral Services shall consult with the Director of the Office  
11 of Management and Budget, the Secretary, and the Com-  
12 missioner.

13 (c) CONTENT.—Each updated study required in sub-  
14 section (a) shall—

15 (1) identify port of entry infrastructure and  
16 technology improvement projects that would enhance  
17 border security and facilitate the flow of legitimate  
18 commerce if implemented;

19 (2) include the projects identified in the Na-  
20 tional Land Border Security Plan required by sec-  
21 tion 734; and

22 (3) prioritize the projects described in para-  
23 graphs (1) and (2) based on the ability of a project  
24 to—

1 (A) fulfill immediate security requirements;  
2 and  
3 (B) facilitate trade across the borders of  
4 the United States.

5 (d) PROJECT IMPLEMENTATION.—The Commissioner  
6 shall implement the infrastructure and technology im-  
7 provement projects described in subsection (c) in the order  
8 of priority assigned to each project under subsection  
9 (c)(3).

10 (e) DIVERGENCE FROM PRIORITIES.—The Commis-  
11 sioner may diverge from the priority order if the Commis-  
12 sioner determines that significantly changed cir-  
13 cumstances, such as immediate security needs or changes  
14 in infrastructure in Mexico or Canada, compellingly alter  
15 the need for a project in the United States.

16 **SEC. 734. NATIONAL LAND BORDER SECURITY PLAN.**

17 (a) IN GENERAL.—Not later than 1 year after the  
18 date of the enactment of this Act, an annually thereafter,  
19 the Secretary, after consultation with representatives of  
20 Federal, State, and local law enforcement agencies and  
21 private entities that are involved in international trade  
22 across the northern border or the southern border, shall  
23 submit a National Land Border Security Plan to Con-  
24 gress.

25 (b) VULNERABILITY ASSESSMENT.—

1           (1) IN GENERAL.—The plan required in sub-  
2           section (a) shall include a vulnerability assessment  
3           of each port of entry located on the northern border  
4           or the southern border.

5           (2) PORT SECURITY COORDINATORS.—The Sec-  
6           retary may establish 1 or more port security coordi-  
7           nators at each port of entry located on the northern  
8           border or the southern border—

9                   (A) to assist in conducting a vulnerability  
10                   assessment at such port; and

11                   (B) to provide other assistance with the  
12                   preparation of the plan required in subsection

13           (a).

14 **SEC. 735. EXPANSION OF COMMERCE SECURITY PRO-**  
15 **GRAMS.**

16           (a) CUSTOMS-TRADE PARTNERSHIP AGAINST TER-  
17           RORISM.—

18           (1) IN GENERAL.—Not later than 180 days  
19           after the date of enactment of this Act, the Commis-  
20           sioner, in consultation with the Secretary, shall de-  
21           velop a plan to expand the size and scope, including  
22           personnel, of the Customs-Trade Partnership  
23           Against Terrorism programs along the northern bor-  
24           der and southern border, including—

1 (A) the Business Anti-Smuggling Coali-  
2 tion;

3 (B) the Carrier Initiative Program;

4 (C) the Americas Counter Smuggling Ini-  
5 tiative;

6 (D) the Container Security Initiative;

7 (E) the Free and Secure Trade Initiative;

8 and

9 (F) other Industry Partnership Programs  
10 administered by the Commissioner.

11 (2) SOUTHERN BORDER DEMONSTRATION PRO-  
12 GRAM.—Not later than 180 days after the date of  
13 enactment of this Act, the Commissioner shall imple-  
14 ment, on a demonstration basis, at least 1 Customs-  
15 Trade Partnership Against Terrorism program,  
16 which has been successfully implemented along the  
17 northern border, along the southern border.

18 (b) MAQUILADORA DEMONSTRATION PROGRAM.—  
19 Not later than 180 days after the date of enactment of  
20 this Act, the Commissioner shall establish a demonstration  
21 program to develop a cooperative trade security system to  
22 improve supply chain security.

1 **SEC. 736. PORT OF ENTRY TECHNOLOGY DEMONSTRATION**  
2 **PROGRAM.**

3 (a) ESTABLISHMENT.—The Secretary shall carry out  
4 a technology demonstration program to—

5 (1) test and evaluate new port of entry tech-  
6 nologies;

7 (2) refine port of entry technologies and oper-  
8 ational concepts; and

9 (3) train personnel under realistic conditions.

10 (b) TECHNOLOGY AND FACILITIES.—

11 (1) TECHNOLOGY TESTING.—Under the tech-  
12 nology demonstration program, the Secretary shall  
13 test technologies that enhance port of entry oper-  
14 ations, including operations related to—

15 (A) inspections;

16 (B) communications;

17 (C) port tracking;

18 (D) identification of persons and cargo;

19 (E) sensory devices;

20 (F) personal detection;

21 (G) decision support; and

22 (H) the detection and identification of  
23 weapons of mass destruction.

24 (2) DEVELOPMENT OF FACILITIES.—At a dem-  
25 onstration site selected pursuant to subsection  
26 (c)(2), the Secretary shall develop facilities to pro-



1       vide appropriate training to law enforcement per-  
2       sonnel who have responsibility for border security,  
3       including—

4               (A) cross-training among agencies;

5               (B) advanced law enforcement training;

6               and

7               (C) equipment orientation.

8       (c) DEMONSTRATION SITES.—

9               (1) NUMBER.—The Secretary shall carry out  
10       the demonstration program at not less than 3 sites  
11       and not more than 5 sites.

12              (2) SELECTION CRITERIA.—To ensure that at  
13       least 1 of the facilities selected as a port of entry  
14       demonstration site for the demonstration program  
15       has the most up-to-date design, contains sufficient  
16       space to conduct the demonstration program, has a  
17       traffic volume low enough to easily incorporate new  
18       technologies without interrupting normal processing  
19       activity, and can efficiently carry out demonstration  
20       and port of entry operations, at least 1 port of entry  
21       selected as a demonstration site shall—

22              (A) have been established not more than

23              15 years before the date of the enactment of  
24              this Act;

1           (B) consist of not less than 65 acres, with  
2           the possibility of expansion to not less than 25  
3           adjacent acres; and

4           (C) have serviced an average of not more  
5           than 50,000 vehicles per month during the 1-  
6           year period ending on the date of the enactment  
7           of this Act.

8           (d) RELATIONSHIP WITH OTHER AGENCIES.—The  
9           Secretary shall permit personnel from an appropriate Fed-  
10          eral or State agency to utilize a demonstration site de-  
11          scribed in subsection (c) to test technologies that enhance  
12          port of entry operations, including technologies described  
13          in subparagraphs (A) through (H) of subsection (b)(1).

14          (e) REPORT.—

15               (1) REQUIREMENT.—Not later than 1 year  
16               after the date of the enactment of this Act, and an-  
17               nually thereafter, the Secretary shall submit to Con-  
18               gress a report on the activities carried out at each  
19               demonstration site under the technology demonstra-  
20               tion program established under this section.

21               (2) CONTENT.—The report submitted under  
22               paragraph (1) shall include an assessment by the  
23               Secretary of the feasibility of incorporating any dem-  
24               onstrated technology for use throughout the Bureau  
25               of Customs and Border Protection.

1 **SEC. 737. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) IN GENERAL.—In addition to any funds other-  
3 wise available, there are authorized to be appropriated—

4 (1) such sums as may be necessary for the fis-  
5 cal years 2008 through 2012 to carry out the provi-  
6 sions of section 733(a);

7 (2) to carry out section 733(d)—

8 (A) \$100,000,000 for each of the fiscal  
9 years 2008 through 2012; and

10 (B) such sums as may be necessary in any  
11 succeeding fiscal year;

12 (3) to carry out section 735(a)—

13 (A) \$30,000,000 for fiscal year 2008, of  
14 which \$5,000,000 shall be made available to  
15 fund the demonstration project established in  
16 section 736(a)(2); and

17 (B) such sums as may be necessary for the  
18 fiscal years 2009 through 2012;

19 (4) to carry out section 735(b)—

20 (A) \$5,000,000 for fiscal year 2008; and

21 (B) such sums as may be necessary for the  
22 fiscal years 2009 through 2012; and

23 (5) to carry out section 736, provided that not  
24 more than \$10,000,000 may be expended for tech-  
25 nology demonstration program activities at any 1  
26 port of entry demonstration site in any fiscal year—

1 (A) \$50,000,000 for fiscal year 2008; and

2 (B) such sums as may be necessary for

3 each of the fiscal years 2009 through 2012.

4 (b) INTERNATIONAL AGREEMENTS.—Amounts au-  
5 thorized to be appropriated under this subtitle may be  
6 used for the implementation of projects described in the  
7 Declaration on Embracing Technology and Cooperation to  
8 Promote the Secure and Efficient Flow of People and  
9 Commerce across our Shared Border between the United  
10 States and Mexico, agreed to March 22, 2002, Monterrey,  
11 Mexico (commonly known as the Border Partnership Ac-  
12 tion Plan) or the Smart Border Declaration between the  
13 United States and Canada, agreed to December 12, 2001,  
14 Ottawa, Canada that are consistent with the provisions of  
15 this subtitle.

16 **Subtitle E—Family Humanitarian**  
17 **Relief**

18 **SEC. 741. SHORT TITLE.**

19 This subtitle may be cited as the “September 11th  
20 Family Humanitarian Relief and Patriotism Act”.

21 **SEC. 742. ADJUSTMENT OF STATUS FOR CERTAIN NON-**  
22 **IMMIGRANT VICTIMS OF TERRORISM.**

23 (a) ADJUSTMENT OF STATUS.—

24 (1) IN GENERAL.—The status of any alien de-  
25 scribed in subsection (b) shall be adjusted by the

1 Secretary to that of an alien lawfully admitted for  
2 permanent residence, if the alien—

3 (A) applies for such adjustment not later  
4 than 2 years after the date on which the Sec-  
5 retary promulgates final regulations to imple-  
6 ment this section; and

7 (B) is otherwise admissible to the United  
8 States for permanent residence, except in deter-  
9 mining such admissibility the grounds for inad-  
10 missibility specified in paragraphs (4), (5),  
11 (6)(A), (7)(A), and (9)(B) of section 212(a) of  
12 the Immigration and Nationality Act (8 U.S.C.  
13 1182(a)) shall not apply.

14 (2) RULES IN APPLYING CERTAIN PROVI-  
15 SIONS.—

16 (A) IN GENERAL.—In the case of an alien  
17 described in subsection (b) who is applying for  
18 adjustment of status under this section—

19 (i) the provisions of section 241(a)(5)  
20 of the Immigration and Nationality Act (8  
21 U.S.C. 1231(a)(5)) shall not apply; and

22 (ii) the Secretary may grant the alien  
23 a waiver on the grounds of inadmissibility  
24 under subparagraphs (A) and (C) of sec-

1           tion 212(a)(9) of such Act (8 U.S.C.  
2           1182(a)(9)).

3           (B) STANDARDS.—In granting waivers  
4           under subparagraph (A)(ii), the Secretary shall  
5           use standards used in granting consent under  
6           subparagraphs (A)(iii) and (C)(ii) of such sec-  
7           tion 212(a)(9).

8           (3) RELATIONSHIP OF APPLICATION TO CER-  
9           TAIN ORDERS.—

10           (A) APPLICATION PERMITTED.—An alien  
11           present in the United States who has been or-  
12           dered excluded, deported, removed, or ordered  
13           to depart voluntarily from the United States  
14           under any provision of the Immigration and  
15           Nationality Act (8 U.S.C. 1101 et seq.) may,  
16           notwithstanding such order, apply for adjust-  
17           ment of status under paragraph (1).

18           (B) MOTION NOT REQUIRED.—An alien  
19           described in subparagraph (A) may not be re-  
20           quired, as a condition of submitting or granting  
21           such application, to file a separate motion to re-  
22           open, reconsider, or vacate such order.

23           (C) EFFECT OF DECISION.—If the Sec-  
24           retary grants a request under subparagraph  
25           (A), the Secretary shall cancel the order. If the

1 Secretary renders a final administrative deci-  
2 sion to deny the request, the order shall be ef-  
3 fective and enforceable to the same extent as if  
4 the application had not been made.

5 (b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STA-  
6 TUS.—The benefits provided by subsection (a) shall apply  
7 to any alien who—

8 (1) was lawfully present in the United States as  
9 a nonimmigrant alien described in section  
10 101(a)(15) of the Immigration and Nationality Act  
11 (8 U.S.C. 1101(a)(15)) on September 10, 2001;

12 (2) was, on such date, the spouse, child, de-  
13 pendent son, or dependent daughter of an alien  
14 who—

15 (A) was lawfully present in the United  
16 States as a nonimmigrant alien described in  
17 section 101(a)(15) of the Immigration and Na-  
18 tionality Act (8 U.S.C. 1101(a)(15)) on such  
19 date; and

20 (B) died as a direct result of a specified  
21 terrorist activity; and

22 (3) was deemed to be a beneficiary of, and by,  
23 the September 11th Victim Compensation Fund of  
24 2001 (49 U.S.C. 40101 note).

25 (c) STAY OF REMOVAL; WORK AUTHORIZATION.—

1           (1) IN GENERAL.—The Secretary shall estab-  
2           lish, by regulation, a process by which an alien sub-  
3           ject to a final order of removal may seek a stay of  
4           such order based on the filing of an application  
5           under subsection (a).

6           (2) DURING CERTAIN PROCEEDINGS.—Notwith-  
7           standing any provision of the Immigration and Na-  
8           tionality Act (8 U.S.C. 1101 et seq.), the Secretary  
9           shall not order any alien to be removed from the  
10          United States, if the alien is in removal proceedings  
11          under any provision of such Act and has applied for  
12          adjustment of status under subsection (a), except  
13          where the Secretary has rendered a final administra-  
14          tive determination to deny the application.

15          (3) WORK AUTHORIZATION.—The Secretary  
16          shall authorize an alien who has applied for adjust-  
17          ment of status under subsection (a) to engage in  
18          employment in the United States during the pend-  
19          ency of such application.

20          (d) AVAILABILITY OF ADMINISTRATIVE REVIEW.—  
21          The Secretary shall provide to applicants for adjustment  
22          of status under subsection (a) the same right to, and pro-  
23          cedures for, administrative review as are provided to—



1           (1) applicants for adjustment of status under  
2           section 245 of the Immigration and Nationality Act  
3           (8 U.S.C. 1255); or

4           (2) aliens subject to removal proceedings under  
5           section 240 of such Act (8 U.S.C. 1229a).

6 **SEC. 743. CANCELLATION OF REMOVAL FOR CERTAIN IMMI-**  
7 **GRANT VICTIMS OF TERRORISM.**

8           (a) **IN GENERAL.**—Subject to the provisions of the  
9 Immigration and Nationality Act (8 U.S.C. 1101 et seq.),  
10 other than subsections (b)(1), (d)(1), and (e) of section  
11 240A of such Act (8 U.S.C. 1229b), the Secretary shall,  
12 under such section 240A, cancel the removal of, and ad-  
13 just to the status of an alien lawfully admitted for perma-  
14 nent residence, an alien described in subsection (b), if the  
15 alien applies for such relief.

16           (b) **ALIENS ELIGIBLE FOR CANCELLATION OF RE-**  
17 **MOVAL.**—The benefits provided by subsection (a) shall  
18 apply to any alien who—

19           (1) was, on September 10, 2001, the spouse,  
20           child, dependent son, or dependent daughter of an  
21           alien who died as a direct result of a specified ter-  
22           rorist activity; and

23           (2) was deemed to be a beneficiary of, and by,  
24           the September 11th Victim Compensation Fund of  
25           2001 (49 U.S.C. 40101 note).

1 (c) STAY OF REMOVAL; WORK AUTHORIZATION.—

2 (1) IN GENERAL.—The Secretary shall provide  
3 by regulation for an alien subject to a final order of  
4 removal to seek a stay of such order based on the  
5 filing of an application under subsection (a).

6 (2) WORK AUTHORIZATION.—The Secretary  
7 shall authorize an alien who has applied for cancella-  
8 tion of removal under subsection (a) to engage in  
9 employment in the United States during the pend-  
10 ency of such application.

11 (d) MOTIONS TO REOPEN REMOVAL PRO-  
12 CEEDINGS.—

13 (1) IN GENERAL.—Notwithstanding any limita-  
14 tion imposed by law on motions to reopen removal  
15 proceedings (except limitations premised on an  
16 alien's conviction of an aggravated felony (as defined  
17 in section 101(a)(43) of the Immigration and Na-  
18 tionality Act (8 U.S.C. 1101(a)(43))), any alien who  
19 has become eligible for cancellation of removal as a  
20 result of the enactment of this section may file 1  
21 motion to reopen removal proceedings to apply for  
22 such relief.

23 (2) FILING PERIOD.—The Secretary shall des-  
24 ignate a specific time period in which all such mo-  
25 tions to reopen are required to be filed. The period

1 shall begin not later than 60 days after the date of  
2 enactment of this Act and shall extend for a period  
3 not to exceed 240 days.

4 **SEC. 744. EXCEPTIONS.**

5 Notwithstanding any other provision of this subtitle,  
6 an alien may not be provided relief under this subtitle if  
7 the alien is—

8 (1) inadmissible under paragraph (2) or (3) of  
9 section 212(a) of the Immigration and Nationality  
10 Act (8 U.S.C. 1182(a)), or deportable under para-  
11 graph (2) or (4) of section 237(a) of such Act (8  
12 U.S.C. 1227(a)), including any individual culpable  
13 for a specified terrorist activity; or

14 (2) a family member of an alien described in  
15 paragraph (1).

16 **SEC. 745. EVIDENCE OF DEATH.**

17 For purposes of this subtitle, the Secretary shall use  
18 the standards established under section 426 of the Uniting  
19 and Strengthening America by Providing Appropriate  
20 Tools Required to Intercept and Obstruct Terrorism (USA  
21 PATRIOT ACT) Act of 2001 (115 Stat. 362) in deter-  
22 mining whether death occurred as a direct result of a spec-  
23 ified terrorist activity.

1 **SEC. 746. DEFINITIONS.**

2 (a) APPLICATION OF IMMIGRATION AND NATION-  
 3 ALITY ACT PROVISIONS.—Except as otherwise specifically  
 4 provided in this subtitle, the definitions used in the Immi-  
 5 gration and Nationality Act (8 U.S.C. 1101 et seq.), other  
 6 than the definitions applicable exclusively to title III of  
 7 such Act, shall apply in the administration of this subtitle.

8 (b) SPECIFIED TERRORIST ACTIVITY DEFINED.—In  
 9 this subtitle, the term “specified terrorist activity” means  
 10 any terrorist activity conducted against the Government  
 11 or the people of the United States on September 11, 2001.

12 **Subtitle F—Other Matters**

13 **SEC. 751. NONCITIZEN MEMBERSHIP IN THE ARMED**  
 14 **FORCES.**

15 Section 329 (8 U.S.C. 1440) is amended—

16 (1) in subsection (b), by striking “subsection  
 17 (a)” and inserting “subsection (a) and (d)”; and

18 (2) by adding at the end the following:

19 “(d) Notwithstanding any other provision of law, ex-  
 20 cept for provisions relating to revocation of citizenship  
 21 under subsection (c), individuals who are not United  
 22 States citizens shall not be denied the opportunity to apply  
 23 for membership in the United States Armed Forces. Such  
 24 individuals who become active duty members of the United  
 25 States Armed Forces shall, consistent with this section  
 26 and with the approval of their chain of command, be

1 granted United States citizenship after performing at least  
2 2 years of honorable and satisfactory service on active  
3 duty. Not later than 90 days after such requirements are  
4 met with respect to an individual, such individual shall be  
5 granted United States citizenship.

6 “(e) An alien described in subsection (d) shall be nat-  
7 uralized without regard to the requirements of this title  
8 III and any other requirements, processes, or procedures  
9 prescribed by the Secretary of Homeland Security, if the  
10 alien—

11 “(1) filed an application for naturalization in  
12 accordance with such procedures to carry out this  
13 section as may be established by regulation by the  
14 Secretary of Homeland Security or the Secretary of  
15 Defense;

16 “(2) demonstrates to the alien’s military chain  
17 of command, proficiency in the English language,  
18 good moral character, and knowledge of the Federal  
19 Government and United States history, consistent  
20 with the requirements contained in this Act; and

21 “(3) takes the oath required under section 337  
22 and participates in an oath administration ceremony  
23 in accordance with this Act.”.

24 **SEC. 752. SURVEILLANCE TECHNOLOGIES PROGRAMS.**

25 (a) **AERIAL SURVEILLANCE PROGRAM.—**

1           (1) IN GENERAL.—In conjunction with the bor-  
2 der surveillance plan developed under section 5201  
3 of the Intelligence Reform and Terrorism Prevention  
4 Act of 2004 (Public Law 108–458; 8 U.S.C. 1701  
5 note), the Secretary, not later than 90 days after the  
6 date of enactment of this Act, shall develop and im-  
7 plement a program to fully integrate and utilize aer-  
8 ial surveillance technologies, including unmanned  
9 aerial vehicles, to enhance the security of the inter-  
10 national border between the United States and Can-  
11 ada and the international border between the United  
12 States and Mexico. The goal of the program shall be  
13 to ensure continuous monitoring of each mile of each  
14 such border.

15           (2) ASSESSMENT AND CONSULTATION REQUIRE-  
16 MENTS.—In developing the program under this sub-  
17 section, the Secretary shall—

18                   (A) consider current and proposed aerial  
19 surveillance technologies;

20                   (B) assess the feasibility and advisability  
21 of utilizing such technologies to address border  
22 threats, including an assessment of the tech-  
23 nologies considered best suited to address re-  
24 spective threats;

1 (C) consult with the Secretary of Defense  
2 regarding any technologies or equipment, which  
3 the Secretary may deploy along an international  
4 border of the United States; and

5 (D) consult with the Administrator of the  
6 Federal Aviation Administration regarding safe-  
7 ty, airspace coordination and regulation, and  
8 any other issues necessary for implementation  
9 of the program.

10 (3) ADDITIONAL REQUIREMENTS.—

11 (A) IN GENERAL.—The program developed  
12 under this subsection shall include the use of a  
13 variety of aerial surveillance technologies in a  
14 variety of topographies and areas, including  
15 populated and unpopulated areas located on or  
16 near an international border of the United  
17 States, in order to evaluate, for a range of cir-  
18 cumstances—

19 (i) the significance of previous experi-  
20 ences with such technologies in border se-  
21 curity or critical infrastructure protection;

22 (ii) the cost and effectiveness of var-  
23 ious technologies for border security, in-  
24 cluding varying levels of technical com-  
25 plexity; and

1 (iii) liability, safety, and privacy con-  
2 cerns relating to the utilization of such  
3 technologies for border security.

4 (4) CONTINUED USE OF AERIAL SURVEILLANCE  
5 TECHNOLOGIES.—The Secretary may continue the  
6 operation of aerial surveillance technologies while as-  
7 sessing the effectiveness of the utilization of such  
8 technologies.

9 (5) REPORT TO CONGRESS.—Not later than  
10 180 days after implementing the program under this  
11 subsection, the Secretary shall submit a report to  
12 Congress regarding the program developed under  
13 this subsection. The Secretary shall include in the  
14 report a description of the program together with  
15 such recommendations as the Secretary finds appro-  
16 priate for enhancing the program.

17 (6) AUTHORIZATION OF APPROPRIATIONS.—  
18 There are authorized to be appropriated such sums  
19 as may be necessary to carry out this subsection.

20 (b) INTEGRATED AND AUTOMATED SURVEILLANCE  
21 PROGRAM.—

22 (1) REQUIREMENT FOR PROGRAM.—Subject to  
23 the availability of appropriations, the Secretary shall  
24 establish a program to procure additional unmanned  
25 aerial vehicles, cameras, poles, sensors, satellites,



1 radar coverage, and other technologies necessary to  
2 achieve operational control of the international bor-  
3 ders of the United States and to establish a security  
4 perimeter known as a “virtual fence” along such  
5 international borders to provide a barrier to illegal  
6 immigration. Such program shall be known as the  
7 Integrated and Automated Surveillance Program.

8 (2) PROGRAM COMPONENTS.—The Secretary  
9 shall ensure, to the maximum extent feasible, the In-  
10 tegrated and Automated Surveillance Program is  
11 carried out in a manner that—

12 (A) the technologies utilized in the Pro-  
13 gram are integrated and function cohesively in  
14 an automated fashion, including the integration  
15 of motion sensor alerts and cameras, whereby a  
16 sensor alert automatically activates a cor-  
17 responding camera to pan and tilt in the direc-  
18 tion of the triggered sensor;

19 (B) cameras utilized in the Program do  
20 not have to be manually operated;

21 (C) such camera views and positions are  
22 not fixed;

23 (D) surveillance video taken by such cam-  
24 eras can be viewed at multiple designated com-  
25 munications centers;

1           (E) a standard process is used to collect,  
2 catalog, and report intrusion and response data  
3 collected under the Program;

4           (F) future remote surveillance technology  
5 investments and upgrades for the Program can  
6 be integrated with existing systems;

7           (G) performance measures are developed  
8 and applied that can evaluate whether the Pro-  
9 gram is providing desired results and increasing  
10 response effectiveness in monitoring and detect-  
11 ing illegal intrusions along the international  
12 borders of the United States;

13           (H) plans are developed under the Pro-  
14 gram to streamline site selection, site valida-  
15 tion, and environmental assessment processes to  
16 minimize delays of installing surveillance tech-  
17 nology infrastructure;

18           (I) standards are developed under the Pro-  
19 gram to expand the shared use of existing pri-  
20 vate and governmental structures to install re-  
21 mote surveillance technology infrastructure  
22 where possible; and

23           (J) standards are developed under the Pro-  
24 gram to identify and deploy the use of non-  
25 permanent or mobile surveillance platforms that

1 will increase the Secretary's mobility and ability  
2 to identify illegal border intrusions.

3 (3) REPORT TO CONGRESS.—Not later than 1  
4 year after the initial implementation of the Inte-  
5 grated and Automated Surveillance Program, the  
6 Secretary shall submit to Congress a report regard-  
7 ing the Program. The Secretary shall include in the  
8 report a description of the Program together with  
9 any recommendation that the Secretary finds appro-  
10 priate for enhancing the program.

11 (4) EVALUATION OF CONTRACTORS.—

12 (A) REQUIREMENT FOR STANDARDS.—The  
13 Secretary shall develop appropriate standards  
14 to evaluate the performance of any contractor  
15 providing goods or services to carry out the In-  
16 tegrated and Automated Surveillance Program.

17 (B) REVIEW BY THE INSPECTOR GEN-  
18 ERAL.—The Inspector General of the Depart-  
19 ment shall timely review each new contract re-  
20 lated to the Program that has a value of more  
21 than \$5,000,000, to determine whether such  
22 contract fully complies with applicable cost re-  
23 quirements, performance objectives, program  
24 milestones, and schedules. The Inspector Gen-  
25 eral shall report the findings of such review to

1           the Secretary in a timely manner. Not later  
2           than 30 days after the date the Secretary re-  
3           ceives a report of findings from the Inspector  
4           General, the Secretary shall submit to the Com-  
5           mittee on Homeland Security and Govern-  
6           mental Affairs of the Senate and the Committee  
7           on Homeland Security of the House of Rep-  
8           resentatives a report of such findings and a de-  
9           scription of any the steps that the Secretary  
10          has taken or plans to take in response to such  
11          findings.

12           (5) AUTHORIZATION OF APPROPRIATIONS.—

13           There are authorized to be appropriated such sums  
14           as may be necessary to carry out this subsection.

15 **SEC. 753. COMPREHENSIVE IMMIGRATION EFFICIENCY RE-**  
16 **VIEW.**

17           (a) REVIEW.—The Secretary, in consultation with the  
18           Secretary of State, shall conduct a comprehensive review  
19           of the immigration procedures in existence as of the date  
20           of the enactment of this Act.

21           (b) REPORT.—Not later than 90 days after the date  
22           of the enactment of this Act, the Secretary shall submit  
23           to Congress a report, in classified form, if necessary,  
24           that—

1           (1) identifies inefficient immigration proce-  
2           dures; and

3           (2) outlines a plan to improve the efficiency and  
4           responsiveness of the immigration process.

5 **SEC. 754. NORTHERN BORDER PROSECUTION INITIATIVE.**

6           (a) INITIATIVE REQUIRED.—

7           (1) IN GENERAL.—From amounts made avail-  
8           able to carry out this section, the Attorney General,  
9           acting through the Director of the Bureau of Justice  
10          Assistance of the Office of Justice Programs, shall  
11          establish and carry out a program, to be known as  
12          the Northern Border Prosecution Initiative, to pro-  
13          vide funds to reimburse eligible northern border en-  
14          tities for costs incurred by those entities for han-  
15          dling case dispositions of criminal cases that are fed-  
16          erally initiated but federally declined-referred.

17          (2) RELATION WITH SOUTHWESTERN BORDER  
18          PROSECUTION INITIATIVE.—The program estab-  
19          lished in paragraph (1) shall—

20                 (A) be modeled after the Southwestern  
21                 Border Prosecution Initiative; and

22                 (B) serve as a partner program to that ini-  
23                 tiative to reimburse local jurisdictions for proc-  
24                 essing Federal cases.

1 (b) PROVISION AND ALLOCATION OF FUNDS.—  
2 Funds provided under the program established in sub-  
3 section (a) shall be—

4 (1) provided in the form of direct reimburse-  
5 ments; and

6 (2) allocated in a manner consistent with the  
7 manner under which funds are allocated under the  
8 Southwestern Border Prosecution Initiative.

9 (c) USE OF FUNDS.—Funds provided to an eligible  
10 northern border entity under this section may be used by  
11 the entity for any lawful purpose, including:

12 (1) Prosecution and related costs;

13 (2) Court costs;

14 (3) Costs of courtroom technology;

15 (4) Costs of constructing holding spaces;

16 (5) Costs of administrative staff;

17 (6) Costs of defense counsel for indigent de-  
18 fendants; and

19 (7) Detention costs, including pre-trial and  
20 post-trial detention.

21 (d) DEFINITIONS.—In this section:

22 (1) CASE DISPOSITION.—The term “case dis-  
23 position”—

24 (A) for purposes of the Northern Border  
25 Prosecution Initiative, refers to the time be-

1           between the arrest of a suspect and the resolution  
2           of the criminal charges through a county or  
3           State judicial or prosecutorial process; and

4           (B) does not include incarceration time for  
5           sentenced offenders, or time spent by prosecu-  
6           tors on judicial appeals.

7           (2) ELIGIBLE NORTHERN BORDER ENTITY.—

8           The term “eligible northern border entity” means—

9           (A) the States of Alaska, Idaho, Maine,  
10          Michigan, Minnesota, Montana, New Hamp-  
11          shire, New York, North Dakota, Ohio, Pennsyl-  
12          vania, Vermont, Washington, and Wisconsin; or

13          (B) any unit of local government within a  
14          State referred to in subparagraph (A).

15          (3) FEDERALLY DECLINED-REFERRED.—The  
16          term “federally declined-referred”—

17          (A) means, with respect to a criminal case,  
18          that a decision has been made in that case by  
19          a United States Attorney or a Federal law en-  
20          forcement agency during a Federal investiga-  
21          tion to no longer pursue Federal criminal  
22          charges against a defendant and to refer such  
23          investigation to a State or local jurisdiction for  
24          possible prosecution; and

1 (B) includes a decision made on an individ-  
2 ualized case-by-case basis as well as a decision  
3 made pursuant to a general policy or practice  
4 or pursuant to prosecutorial discretion.

5 (4) **FEDERALLY INITIATED.**—The term “feder-  
6 ally initiated” means, with respect to a criminal  
7 case, that the case results from a criminal investiga-  
8 tion or an arrest involving Federal law enforcement  
9 authorities for a potential violation of Federal crimi-  
10 nal law, including investigations resulting from  
11 multi-jurisdictional task forces.

12 (e) **AUTHORIZATION OF APPROPRIATIONS.**—There  
13 are authorized to be appropriated to carry out this section  
14 \$28,000,000 for fiscal year 2008 and such sums as may  
15 be necessary for each fiscal year thereafter.

16 **SEC. 755. SOUTHWEST BORDER PROSECUTION INITIATIVE.**

17 (a) **REIMBURSEMENT TO STATE AND LOCAL PROS-**  
18 **ECUTORS FOR PROSECUTING FEDERALLY INITIATED**  
19 **DRUG CASES.**—The Attorney General shall, subject to the  
20 availability of appropriations, reimburse Southern Border  
21 State and county prosecutors for prosecuting federally ini-  
22 tiated and referred drug cases.

23 (b) **AUTHORIZATION OF APPROPRIATIONS.**—There is  
24 authorized to be appropriated \$50,000,000 for each of the



1 fiscal years 2008 through 2012 to carry out subsection  
2 (a).

3 **SEC. 756. GRANT PROGRAM TO ASSIST ELIGIBLE APPLI-**  
4 **CANTS.**

5 (a) **SHORT TITLE.**—This section may be cited as the  
6 “Initial Entry, Adjustment, and Citizenship Assistance  
7 Grant Act of 2007”.

8 (b) **PURPOSE.**—The purpose of this section is to es-  
9 tablish a grant program within the Bureau of Citizenship  
10 and Immigration Services that provides funding to com-  
11 munity-based organizations, including community-based  
12 legal service organizations, as appropriate, to develop and  
13 implement programs to assist eligible applicants for the  
14 conditional nonimmigrant worker program established  
15 under this Act by providing them with the services de-  
16 scribed in subsection (d)(2).

17 (c) **DEFINITIONS.**—In this section:

18 (1) **COMMUNITY-BASED ORGANIZATION.**—The  
19 term “community-based organization” means a non-  
20 profit, tax-exempt organization, including a faith-  
21 based organization, whose staff has experience and  
22 expertise in meeting the legal, social, educational,  
23 cultural educational, or cultural needs of immi-  
24 grants, refugees, persons granted asylum, or persons  
25 applying for such statuses.

1           (2) IEACA GRANT.—The term “IEACA grant”  
2           means an Initial Entry, Adjustment, and Citizenship  
3           Assistance Grant authorized under subsection (d).

4           (d) ESTABLISHMENT OF INITIAL ENTRY, ADJUST-  
5           MENT, AND CITIZENSHIP ASSISTANCE GRANT PRO-  
6           GRAM.—

7           (1) GRANTS AUTHORIZED.—The Secretary,  
8           working through the Director of the Bureau of Citi-  
9           zenship and Immigration Services, may award  
10          IEACA grants to community-based organizations.

11          (2) USE OF FUNDS.—Grants awarded under  
12          this section may be used for the design and imple-  
13          mentation of programs to provide the following serv-  
14          ices:

15                (A) INITIAL APPLICATION.—Assistance  
16                and instruction, including legal assistance, to  
17                aliens making initial application for treatment  
18                under the program established by section 218D  
19                of the Immigration and Nationality Act, as  
20                added by section 601. Such assistance may in-  
21                clude assisting applicants in—

22                       (i) screening to assess prospective ap-  
23                       plicants’ potential eligibility or lack of eli-  
24                       gibility;

25                       (ii) filling out applications;

1 (iii) gathering proof of identification,  
2 employment, residence, and tax payment;

3 (iv) gathering proof of relationships of  
4 eligible family members;

5 (v) applying for any waivers for which  
6 applicants and qualifying family members  
7 may be eligible; and

8 (vi) any other assistance that the Sec-  
9 retary or grantee considers useful to aliens  
10 who are interested in filing applications for  
11 treatment under such section 218D.

12 (B) ADJUSTMENT OF STATUS.—Assistance  
13 and instruction, including legal assistance, to  
14 aliens seeking to adjust their status in accord-  
15 ance with section 245 or 245B of the Immigra-  
16 tion and Nationality Act.

17 (C) CITIZENSHIP.—Assistance and instruc-  
18 tion to applicants on—

19 (i) the rights and responsibilities of  
20 United States Citizenship;

21 (ii) English as a second language;

22 (iii) civics; or

23 (iv) applying for United States citi-  
24 zenship.

25 (3) DURATION AND RENEWAL.—

1 (A) DURATION.—Each grant awarded  
2 under this section shall be awarded for a period  
3 of not more than 3 years.

4 (B) RENEWAL.—The Secretary may renew  
5 any grant awarded under this section in 1-year  
6 increments.

7 (4) APPLICATION FOR GRANTS.—Each entity  
8 desiring an IEACA grant under this section shall  
9 submit an application to the Secretary at such time,  
10 in such manner, and accompanied by such informa-  
11 tion as the Secretary may require.

12 (5) ELIGIBLE ORGANIZATIONS.—A community-  
13 based organization applying for a grant under this  
14 section to provide services described in subparagraph  
15 (A), (B), or (C)(iv) of paragraph (2) may not receive  
16 such a grant unless the organization is—

17 (A) recognized by the Board of Immigra-  
18 tion Appeals under section 292.2 of title 8,  
19 Code of Federal Regulations; or

20 (B) otherwise directed by an attorney.

21 (6) SELECTION OF GRANTEES.—Grants award-  
22 ed under this section shall be awarded on a competi-  
23 tive basis.

24 (7) GEOGRAPHIC DISTRIBUTION OF GRANTS.—  
25 The Secretary shall approve applications under this

1 section in a manner that ensures, to greatest extent  
2 practicable, that—

3 (A) not less than 50 percent of the funding  
4 for grants under this section are awarded to  
5 programs located in the 10 States with the  
6 highest percentage of foreign-born residents;  
7 and

8 (B) not less than 20 percent of the funding  
9 for grants under this section are awarded to  
10 programs located in States that are not de-  
11 scribed in subparagraph (A).

12 (8) ETHNIC DIVERSITY.—The Secretary shall  
13 ensure that community-based organizations receiving  
14 grants under this section provide services to an eth-  
15 nically diverse population, to the greatest extent pos-  
16 sible.

17 (e) LIAISON BETWEEN USCIS AND GRANTEEES.—  
18 The Secretary shall establish a liaison between United  
19 States Citizenship and Immigration Services and the com-  
20 munity of providers of services under this section to assure  
21 quality control, efficiency, and greater client willingness  
22 to come forward.

23 (f) REPORTS TO CONGRESS.—Not later than 180  
24 days after the date of the enactment of this Act, and each

1 subsequent July 1, the Secretary shall submit a report to  
2 Congress that includes information regarding—

3 (1) the status of the implementation of this sec-  
4 tion;

5 (2) the grants issued pursuant to this section;  
6 and

7 (3) the results of those grants.

8 (g) SOURCE OF GRANT FUNDS.—

9 (1) APPLICATION FEES.—The Secretary may  
10 use funds made available under sections 218A(l)(2)  
11 and 218D(f)(4)(B) of the Immigration and Nation-  
12 ality Act, as added by this Act, to carry out this sec-  
13 tion.

14 (2) AUTHORIZATION OF APPROPRIATIONS.—

15 (A) AMOUNTS AUTHORIZED.—In addition  
16 to the amounts made available under paragraph  
17 (1), there are authorized to be appropriated  
18 such additional sums as may be necessary for  
19 each of the fiscal years 2008 through 2012 to  
20 carry out this section.

21 (B) AVAILABILITY.—Any amounts appro-  
22 priated pursuant to subparagraph (A) shall re-  
23 main available until expended.

24 (h) DISTRIBUTION OF FEES AND FINES.—

1           (1) H-2C VISA FEES.—Notwithstanding section  
2           218A(1) of the Immigration and Nationality Act, as  
3           added by section 403, 2 percent of the fees collected  
4           under section 218A of such Act shall be made avail-  
5           able for grants under the Initial Entry, Adjustment,  
6           and Citizenship Assistance Grant Program estab-  
7           lished under this section.

8           (2) CONDITIONAL NONIMMIGRANT VISA FEES  
9           AND FINES.—Notwithstanding section 218D(f)(4) of  
10          the Immigration and Nationality Act, as added by  
11          section 601, 2 percent of the fees and fines collected  
12          under section 218D of such Act shall be made avail-  
13          able for grants under the Initial Entry, Adjustment,  
14          and Citizenship Assistance Grant Program estab-  
15          lished under this section.

16 **SEC. 757. SCREENING OF MUNICIPAL SOLID WASTE.**

17          (a) DEFINITIONS.—In this section:

18           (1) CBP.—The term “CBP” means United  
19           States Customs and Border Protection.

20           (2) COMMERCIAL MOTOR VEHICLE.—The term  
21           “commercial motor vehicle” has the meaning given  
22           the term in section 31101 of title 49, United States  
23           Code.

24           (3) COMMISSIONER.—The term “Commis-  
25           sioner” means the Commissioner of the CBP.

1           (4) MUNICIPAL SOLID WASTE.—The term “mu-  
2           nicipal solid waste” includes sludge (as defined in  
3           section 1004 of the Solid Waste Disposal Act (42  
4           U.S.C. 6903)).

5           (b) REPORTS TO CONGRESS.—Not later than 90 days  
6           after the date of enactment of this Act, the Commissioner  
7           shall submit to Congress a report that—

8           (1) indicates whether the methodologies and  
9           technologies used by the CBP to screen for and de-  
10          tect the presence of chemical, nuclear, biological,  
11          and radiological weapons in municipal solid waste  
12          are as effective as the methodologies and tech-  
13          nologies used by the CBP to screen for those mate-  
14          rials in other items of commerce entering the United  
15          States through commercial motor vehicle transport;  
16          and

17          (2) if the report indicates that the methodolo-  
18          gies and technologies used to screen municipal solid  
19          waste are less effective than those used to screen  
20          other items of commerce, identifies the actions that  
21          the CBP will take to achieve the same level of effec-  
22          tiveness in the screening of municipal solid waste,  
23          including actions necessary to meet the need for ad-  
24          ditional screening technologies.





1 Immigration and Naturalization Service in such area prior  
2 to the date of the enactment of the Homeland Security  
3 Act of 2002 (6 U.S.C. 101 et seq.).

4 **SEC. 759. BORDER SECURITY ON CERTAIN FEDERAL LAND.**

5 (a) DEFINITIONS.—In this section:

6 (1) PROTECTED LAND.—The term “protected  
7 land” means land under the jurisdiction of the Sec-  
8 retary concerned.

9 (2) SECRETARY CONCERNED.—The term “Sec-  
10 retary concerned” means—

11 (A) with respect to land under the jurisdic-  
12 tion of the Secretary of Agriculture, the Sec-  
13 retary of Agriculture; and

14 (B) with respect to land under the jurisdic-  
15 tion of the Secretary of the Interior, the Sec-  
16 retary of the Interior.

17 (b) SUPPORT FOR BORDER SECURITY NEEDS.—

18 (1) IN GENERAL.—To gain operational control  
19 over the international land borders of the United  
20 States and to prevent the entry of terrorists, unlaw-  
21 ful aliens, narcotics, and other contraband into the  
22 United States, the Secretary, in cooperation with the  
23 Secretary concerned, shall provide—

24 (A) increased Customs and Border Protec-  
25 tion personnel to secure protected land along

1 the international land borders of the United  
2 States;

3 (B) Federal land resource training for  
4 Customs and Border Protection agents dedi-  
5 cated to protected land; and

6 (C) Unmanned Aerial Vehicles, aerial as-  
7 sets, Remote Video Surveillance camera sys-  
8 tems, and sensors on protected land that is di-  
9 rectly adjacent to the international land border  
10 of the United States, with priority given to  
11 units of the National Park System.

12 (2) COORDINATION.—In providing training for  
13 Customs and Border Protection agents under para-  
14 graph (1)(B), the Secretary shall coordinate with the  
15 Secretary concerned to ensure that the training is  
16 appropriate to the mission of the National Park  
17 Service, the United States Fish and Wildlife Service,  
18 the Forest Service, or the relevant agency of the De-  
19 partment of the Interior or the Department of Agri-  
20 culture to minimize the adverse impact on natural  
21 and cultural resources from border protection activi-  
22 ties.

23 (c) INVENTORY OF COSTS AND ACTIVITIES.—The  
24 Secretary concerned shall develop and submit to the Sec-  
25 retary an inventory of costs incurred by the Secretary con-

1 cerned relating to illegal border activity, including the cost  
2 of equipment, training, recurring maintenance, construc-  
3 tion of facilities, restoration of natural and cultural re-  
4 sources, recapitalization of facilities, and operations.

5 (d) RECOMMENDATIONS.—The Secretary shall—

6 (1) develop joint recommendations with the Na-  
7 tional Park Service, the United States Fish and  
8 Wildlife Service, and the Forest Service for an ap-  
9 propriate cost recovery mechanism relating to items  
10 identified in subsection (c); and

11 (2) not later than March 31, 2008, submit to  
12 the appropriate congressional committees (as defined  
13 in section 2 of the Homeland Security Act of 2002  
14 (6 U.S.C. 101)), including the Subcommittee on Na-  
15 tional Parks of the Senate and the Subcommittee on  
16 National Parks, Recreation and Public Lands of the  
17 House of Representatives, the recommendations de-  
18 veloped under paragraph (1).

19 (e) BORDER PROTECTION STRATEGY.—The Sec-  
20 retary, the Secretary of the Interior, and the Secretary  
21 of Agriculture shall jointly develop a border protection  
22 strategy that supports the border security needs of the  
23 United States in the manner that best protects—

24 (1) units of the National Park System;

25 (2) National Forest System land;

1           (3) land under the jurisdiction of the United  
2 States Fish and Wildlife Service; and

3           (4) other relevant land under the jurisdiction of  
4 the Department of the Interior or the Department  
5 of Agriculture.

6 **SEC. 760. UNMANNED AERIAL VEHICLES.**

7           (a) UNMANNED AERIAL VEHICLES AND ASSOCIATED  
8 INFRASTRUCTURE.—The Secretary shall acquire and  
9 maintain MQ–9 unmanned aerial vehicles for use on the  
10 border, including related equipment such as—

11           (1) additional sensors;

12           (2) critical spares;

13           (3) satellite command and control; and

14           (4) other necessary equipment for operational  
15 support.

16           (b) AUTHORIZATION OF APPROPRIATIONS.—

17           (1) IN GENERAL.—There are authorized to be  
18 appropriated to the Secretary to carry out sub-  
19 section (a)—

20                   (A) \$178,400,000 for fiscal year 2008; and

21                   (B) \$276,000,000 for fiscal year 2009.

22           (2) AVAILABILITY OF FUNDS.—Amounts appro-  
23 priated pursuant to paragraph (1) shall remain  
24 available until expended.

1 **SEC. 761. RELIEF FOR WIDOWS AND ORPHANS.**

2 (a) IN GENERAL.—

3 (1) IN GENERAL.—In applying clause (iii) of  
4 section 201(b)(2)(A) of the Immigration and Na-  
5 tionality Act, as added by section 504(a), to an alien  
6 whose citizen relative died before the date of the en-  
7 actment of this Act, the alien relative may (notwith-  
8 standing the deadlines specified in such clause) file  
9 the classification petition under section  
10 204(a)(1)(A)(ii) of such Act not later than 2 years  
11 after the date of the enactment of this Act.

12 (2) ELIGIBILITY FOR PAROLE.—If an alien was  
13 excluded, deported, removed or departed voluntarily  
14 before the date of the enactment of this Act based  
15 solely upon the alien’s lack of classification as an  
16 immediate relative (as defined by 201(b)(2)(A)(ii) of  
17 the Immigration and Nationality Act) due to the  
18 citizen’s death—

19 (A) such alien shall be eligible for parole  
20 into the United States pursuant to the Attorney  
21 General’s discretionary authority under section  
22 212(d)(5) of such Act; and

23 (B) such alien’s application for adjustment  
24 of status shall be considered notwithstanding  
25 section 212(a)(9) of such Act.

1 (b) ADJUSTMENT OF STATUS.—Section 245 (8  
2 U.S.C. 1255), as amended by section 408(h) of this Act,  
3 is further amended by adding at the end the following:

4 “(o) APPLICATION FOR ADJUSTMENT OF STATUS BY  
5 SURVIVING SPOUSES, PARENTS, AND CHILDREN.—

6 “(1) IN GENERAL.—Any alien described in  
7 paragraph (2) who applies for adjustment of status  
8 before the death of the qualifying relative, may have  
9 such application adjudicated as if such death had  
10 not occurred.

11 “(2) ALIEN DESCRIBED.—An alien is described  
12 in this paragraph is an alien who—

13 “(A) is an immediate relative (as described  
14 in section 201(b)(2)(A));

15 “(B) is a family-sponsored immigrant (as  
16 described in subsection (a) or (d) of section  
17 203);

18 “(C) is a derivative beneficiary of an em-  
19 ployment-based immigrant under section 203(b)  
20 (as described in section 203(d)); or

21 “(D) is a derivative beneficiary of a diver-  
22 sity immigrant (as described in section  
23 203(c)).”.

24 (c) TRANSITION PERIOD.—

1           (1) IN GENERAL.—Notwithstanding a denial of  
2           an application for adjustment of status for an alien  
3           whose qualifying relative died before the date of the  
4           enactment of this Act, such application may be re-  
5           newed by the alien through a motion to reopen,  
6           without fee, if such motion is filed not later than 2  
7           years after such date of enactment.

8           (2) ELIGIBILITY FOR PAROLE.—If an alien was  
9           excluded, deported, removed or departed voluntarily  
10          before the date of the enactment of this Act—

11                 (A) such alien shall be eligible for parole  
12                 into the United States pursuant to the Attorney  
13                 General’s discretionary authority under section  
14                 212(d)(5) of the Immigration and Nationality  
15                 Act; and

16                 (B) such alien’s application for adjustment  
17                 of status shall be considered notwithstanding  
18                 section 212(a)(9) of such Act.

19          (d) PROCESSING OF IMMIGRANT VISAS.—Section  
20          204(b) (8 U.S.C. 1154), as amended by section 204(b)  
21          of this Act, is further amended—

22                 (1) by striking “After an investigation” and in-  
23                 serting the following:

24                         “(1) IN GENERAL.—After an investigation”;  
25                         and



1 (2) by adding at the end the following:

2 “(2) DEATH OF QUALIFYING RELATIVE.—

3 “(A) IN GENERAL.—Any alien described in  
4 paragraph (2) whose qualifying relative died be-  
5 fore the completion of immigrant visa proc-  
6 essing may have an immigrant visa application  
7 adjudicated as if such death had not occurred.  
8 An immigrant visa issued before the death of  
9 the qualifying relative shall remain valid after  
10 such death.

11 “(B) ALIEN DESCRIBED.—An alien is de-  
12 scribed in this paragraph is an alien who—

13 “(i) is an immediate relative (as de-  
14 scribed in section 201(b)(2)(A));

15 “(ii) is a family-sponsored immigrant  
16 (as described in subsection (a) or (d) of  
17 section 203);

18 “(iii) is a derivative beneficiary of an  
19 employment-based immigrant under section  
20 203(b) (as described in section 203(d)); or

21 “(iv) is a derivative beneficiary of a  
22 diversity immigrant (as described in sec-  
23 tion 203(c)).”.

24 (e) NATURALIZATION.—Section 319(a) (8 U.S.C.  
25 1429(a)) is amended by inserting “(or, if the spouse is

1 deceased, the spouse was a citizen of the United States)”  
2 after “citizen of the United States”.

3 **SEC. 762. TERRORIST ACTIVITIES.**

4 Section 212(a)(3)(B)(i) (8 U.S.C. 1182(a)(3)(B)(i))  
5 is amended—

6 (1) in subclause (III), by striking “, under cir-  
7 cumstances indicating an intention to cause death or  
8 serious bodily harm, incited” and inserting “incited  
9 or advocated”; and

10 (2) in subclause (VII), by striking “or espouses  
11 terrorist activity or persuades others to endorse or  
12 espouse” and inserting “espouses, or advocates ter-  
13 rorist activity or persuades others to endorse,  
14 espouse, or advocate”.

15 **SEC. 763. FAMILY UNITY.**

16 Section 212(a)(9) (8 U.S.C. 1182(a)(9)), as amended  
17 by section 212(a) of this Act, is further amended—

18 (1) in subparagraph (C)(ii), by striking “be-  
19 tween—” and all that follows and inserting the fol-  
20 lowing: “between—

21 (I) the alien having been bat-  
22 tered or subjected to extreme cruelty;  
23 and

24 (II) the alien’s removal, depar-  
25 ture from the United States, reentry

1 or reentries into the United States, or  
2 attempted reentry into the United  
3 States.”; and

4 (2) by adding at the end the following:

5 “(D) WAIVER.—

6 “(i) IN GENERAL.—The Secretary  
7 may waive the application of subpara-  
8 graphs (B) and (C) for an alien who is a  
9 beneficiary of a petition filed under section  
10 201 or 203 if such petition was filed not  
11 later than the date of the enactment of the  
12 Comprehensive Immigration Reform Act of  
13 2007.

14 “(ii) FINE.—An alien who is granted  
15 a waiver under clause (i) shall pay a  
16 \$2,000 fine.”.

17 **SEC. 764. TRAVEL DOCUMENT PLAN.**

18 Section 7209 (b)(1) of the Intelligence Reform and  
19 Terrorism Prevention Act of 2004 (8 U.S.C. 1185 note)  
20 is amended by striking “January 1, 2008” and inserting  
21 “June 1, 2009”.

22 **SEC. 765. ENGLISH AS NATIONAL LANGUAGE.**

23 (a) IN GENERAL.—Title 4, United States Code, is  
24 amended by adding at the end the following:



1 (b) CONFORMING AMENDMENT.—The table of chap-  
2 ters for title 4, United States Code, is amended by adding  
3 at the end the following:

“6. Language of the Government of the United States ..... 161”.

4 **SEC. 766. REQUIREMENTS FOR NATURALIZATION.**

5 (a) FINDINGS.—Congress makes the following find-  
6 ings:

7 (1) Section 312 of the Immigration and Nation-  
8 ality Act (8 U.S.C. 1423) requires lawful permanent  
9 residents of the United States who have immigrated  
10 from foreign countries, among other requirements,  
11 to demonstrate an understanding of the English lan-  
12 guage, United States history and Government, be-  
13 fore becoming citizens of the United States.

14 (2) The Department has conducted a review of  
15 the testing process used to ensure prospective  
16 United States citizens demonstrate said knowledge  
17 of the English language and United States history  
18 and Government for the purpose of redesigning said  
19 test.

20 (b) DEFINITIONS.—In this section:

21 (1) KEY DOCUMENTS.—The term “key docu-  
22 ments” means the documents that established or ex-  
23 plained the foundational principles of democracy in  
24 the United States, including the Constitution of the  
25 United States, the Declaration of Independence, the

1 Federalist Papers, and the Emancipation Proclama-  
2 tion.

3 (2) KEY EVENTS.—The term “key events”  
4 means the critical turning points in the history of  
5 the United States (including the American Revolu-  
6 tion, the Civil War, the world wars of the twentieth  
7 century, the civil rights movement, and the major  
8 court decisions and legislation) that contributed to  
9 extending the promise of democracy in American  
10 life.

11 (3) KEY IDEAS.—The term “key ideas” means  
12 the ideas that shaped the democratic institutions  
13 and heritage of the United States, including the no-  
14 tion of equal justice under the law, freedom, individ-  
15 ualism, human rights, and a belief in progress.

16 (4) KEY PERSONS.—The term “key persons”  
17 means the men and women who led the United  
18 States as founding fathers, elected officials, sci-  
19 entists, inventors, pioneers, advocates of equal  
20 rights, entrepreneurs, and artists.

21 (c) GOALS FOR CITIZENSHIP TEST REDESIGN.—The  
22 Secretary shall establish, as goals of the testing process  
23 designed to comply with section 312 of the Immigration  
24 and Nationality Act, that prospective citizens—

1           (1) demonstrate a sufficient understanding of  
2 the English language for usage in everyday life;

3           (2) demonstrate an understanding of American  
4 common values and traditions, including the prin-  
5 ciples of the Constitution of the United States, the  
6 Pledge of Allegiance, respect for the flag of the  
7 United States, the National Anthem, and voting in  
8 public elections;

9           (3) demonstrate an understanding of the his-  
10 tory of the United States, including the key events,  
11 key persons, key ideas, and key documents that  
12 shaped the institutions and democratic heritage of  
13 the United States;

14           (4) demonstrate an attachment to the principles  
15 of the Constitution of the United States and the well  
16 being and happiness of the people of the United  
17 States; and

18           (5) demonstrate an understanding of the rights  
19 and responsibilities of citizenship in the United  
20 States.

21       (d) IMPLEMENTATION.—The Secretary shall imple-  
22 ment changes to the testing process designed to ensure  
23 compliance with (8 U.S.C. 1423 (a)) not later than Janu-  
24 ary 1, 2008.

1 **SEC. 767. DECLARATION OF ENGLISH.**

2 English is the common and unifying language of the  
3 United States that helps provide unity for the people of  
4 the United States.

5 **SEC. 768. PRESERVING AND ENHANCING THE ROLE OF THE**  
6 **ENGLISH LANGUAGE.**

7 (a) REQUIREMENT.—The Government of the United  
8 States shall preserve and enhance the role of English as  
9 the common and unifying language of America.

10 (b) RELATIONSHIP TO OTHER LAWS.—Nothing in  
11 this section may be construed to diminish or expand any  
12 existing right under Federal law relative to services or ma-  
13 terials provided by the Government of the United States  
14 in any language other than English.

15 (c) LAW DEFINED.—In this this section, the term  
16 “law” includes provisions of the United States Code and  
17 the United States Constitution, controlling judicial deci-  
18 sions, regulations, and controlling Presidential Executive  
19 Orders.

20 **SEC. 769. EXCLUSION OF ILLEGAL ALIENS FROM CONGRES-**  
21 **SIONAL APPORTIONMENT TABULATIONS.**

22 In addition to any report required under this Act, the  
23 Director of the Bureau of the Census shall submit to Con-  
24 gress a report on the impact of illegal immigration on the  
25 apportionment of Representatives of Congress among the  
26 several States, and any methods and procedures that the



1 Director determines to be feasible and appropriate, to en-  
2 sure that individuals who are found by an authorized Fed-  
3 eral agency to be unlawfully present in the United States  
4 are not counted in tabulating population for purposes of  
5 apportionment of Representatives in Congress among the  
6 several States.

7 **SEC. 770. OFFICE OF INTERNAL CORRUPTION INVESTIGA-**  
8 **TION.**

9 (a) INTERNAL CORRUPTION; BENEFITS FRAUD.—  
10 Section 453 of the Homeland Security Act of 2002 (6  
11 U.S.C. 273) is amended—

12 (1) by striking “the Bureau of” each place it  
13 appears and inserting “United States”;

14 (2) in subsection (a)—

15 (A) by striking paragraph (1) and insert-  
16 ing the following:

17 “(1) establishing the Office of Internal Corrup-  
18 tion Investigation, which shall—

19 “(A) receive, process, administer, and in-  
20 vestigate criminal and noncriminal allegations  
21 of misconduct, corruption, and fraud involving  
22 any employee or contract worker of United  
23 States Citizenship and Immigration Services  
24 that are not subject to investigation by the In-  
25 spector General for the Department;

1           “(B) ensure that all complaints alleging  
2 any violation described in subparagraph (A) are  
3 handled and stored in a manner appropriate to  
4 their sensitivity;

5           “(C) have access to all records, reports,  
6 audits, reviews, documents, papers, rec-  
7 ommendations, or other material available to  
8 United States Citizenship and Immigration  
9 Services, which relate to programs and oper-  
10 ations for which the Director is responsible  
11 under this Act;

12           “(D) request such information or assist-  
13 ance from any Federal, State, or local govern-  
14 ment agency as may be necessary for carrying  
15 out the duties and responsibilities under this  
16 section;

17           “(E) require the production of all informa-  
18 tion, documents, reports, answers, records, ac-  
19 counts, papers, and other data and documen-  
20 tary evidence necessary to carry out the func-  
21 tions under this section—

22                   “(i) by subpoena, which shall be en-  
23 forceable, in the case of contumacy or re-  
24 fusal to obey, by order of any appropriate  
25 United States district court; or

1           “(ii) through procedures other than  
2           subpoenas if obtaining documents or infor-  
3           mation from Federal agencies;

4           “(F) administer to, or take from, any per-  
5           son an oath, affirmation, or affidavit, as nec-  
6           essary to carry out the functions under this sec-  
7           tion, which oath, affirmation, or affidavit, if ad-  
8           ministered or taken by or before an agent of  
9           the Office of Internal Corruption Investigation  
10          shall have the same force and effect as if ad-  
11          ministered or taken by or before an officer hav-  
12          ing a seal;

13          “(G) investigate criminal allegations and  
14          noncriminal misconduct;

15          “(H) acquire adequate office space, equip-  
16          ment, and supplies as necessary to carry out  
17          the functions and responsibilities under this  
18          section; and

19          “(I) be under the direct supervision of the  
20          Director.”;

21          (B) in paragraph (2), by striking “and” at  
22          the end;

23          (C) in paragraph (3), by striking the pe-  
24          riod at the end and inserting “; and”; and

25          (D) by adding at the end the following:

1           “(4) establishing the Office of Immigration  
2 Benefits Fraud Investigation, which shall—

3           “(A) conduct administrative investigations,  
4 including site visits, to address immigration  
5 benefit fraud;

6           “(B) assist United States Citizenship and  
7 Immigration Services provide the right benefit  
8 to the right person at the right time;

9           “(C) track, measure, assess, conduct pat-  
10 tern analysis, and report fraud-related data to  
11 the Director; and

12           “(D) work with counterparts in other Fed-  
13 eral agencies on matters of mutual interest or  
14 information-sharing relating to immigration  
15 benefit fraud.”; and

16           (3) by adding at the end the following:

17           “(c) ANNUAL REPORT.—The Director, in consulta-  
18 tion with the Office of Internal Corruption Investigations,  
19 shall submit an annual report to the Committee on the  
20 Judiciary of the Senate and the Committee on the Judici-  
21 ary of the House of Representatives that describes—

22           “(1) the activities of the Office, including the  
23 number of investigations began, completed, pending,  
24 turned over to the Inspector General for criminal in-

1 investigations, and turned over to a United States At-  
2 torney for prosecution; and

3 “(2) the types of allegations investigated by the  
4 Office during the 12-month period immediately pre-  
5 ceding the submission of the report that relate to the  
6 misconduct, corruption, and fraud described in sub-  
7 section (a)(1).”.

8 (b) USE OF IMMIGRATION FEES TO COMBAT  
9 FRAUD.—Section 286(v)(2)(B) (8 U.S.C. 1356(v)(2)(B))  
10 is amended by adding at the end the following: “Not less  
11 than 20 percent of the funds made available under this  
12 subparagraph shall be used for activities and functions de-  
13 scribed in paragraphs (1) and (4) of section 453(a) of the  
14 Homeland Security Act of 2002 (6 U.S.C. 273(a)).”.

15 **SEC. 771. ADJUSTMENT OF STATUS FOR CERTAIN PER-**  
16 **SECUTED RELIGIOUS MINORITIES.**

17 (a) IN GENERAL.—The Secretary shall adjust the  
18 status of an alien to that of an alien lawfully admitted  
19 for permanent residence if the alien—

20 (1) is a persecuted religious minority;

21 (2) is admissible to the United States as an im-  
22 migrant, except as provided under subsection (b);

23 (3) had an application for asylum pending on  
24 May 1, 2003;

25 (4) applies for such adjustment of status;

1           (5) was physically present in the United States  
2           on the date the application for such adjustment is  
3           filed; and

4           (6) pays a fee, in an amount determined by the  
5           Secretary, for the processing of such application.

6           (b) WAIVER OF CERTAIN GROUNDS FOR INADMIS-  
7           SIBILITY.—

8           (1)       INAPPLICABLE       PROVISION.—Section  
9           212(a)(7) of the Immigration and Nationality Act (8  
10          U.S.C. 1182(a)(7)) shall not apply to any adjust-  
11          ment of status under this section.

12          (2) WAIVER.—The Secretary may waive any  
13          other provision of section 212(a) of such Act (except  
14          for paragraphs (2) and (3)) if extraordinary and  
15          compelling circumstances warrant such an adjust-  
16          ment for humanitarian purposes, to ensure family  
17          unity, or if it is otherwise in the public interest.

18   **SEC. 772. ELIGIBILITY OF AGRICULTURAL AND FORESTRY**  
19                   **WORKERS FOR CERTAIN LEGAL ASSISTANCE.**

20          Section 305 of the Immigration Reform and Control  
21          Act of 1986 (8 U.S.C. 1101 note; Public Law 99–603)  
22          is amended—

23           (1) by striking “section 101(a)(15)(H)(ii)(a) of  
24          the Immigration and Nationality Act (8 U.S.C.  
25          1101(a)(15)(H)(ii)(a))” and inserting “item (a) or

1 (b) of section 101(a)(15)(H)(ii) of the Immigration  
2 and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii));  
3 and

4 (2) by inserting “or forestry” after “agricul-  
5 tural”.

6 **SEC. 773. DESIGNATION OF PROGRAM COUNTRIES.**

7 Section 217(c)(1) (8 U.S.C. 1187(c)(1)) is amended  
8 to read as follows:

9 “(1) IN GENERAL.—As soon as any country  
10 fully meets the requirements under paragraph (2),  
11 the Secretary of Homeland Security, in consultation  
12 with the Secretary of State, shall designate such  
13 country as a program country.”.

14 **SEC. 774. GLOBAL HEALTHCARE COOPERATION.**

15 (a) GLOBAL HEALTHCARE COOPERATION.—Title III  
16 (8 U.S.C. 1401 et seq.) is amended by inserting after sec-  
17 tion 317 the following:

18 **“SEC. 317A. TEMPORARY ABSENCE OF ALIENS PROVIDING**  
19 **HEALTHCARE IN DEVELOPING COUNTRIES.**

20 “(a) IN GENERAL.—Notwithstanding any other pro-  
21 vision of this Act, the Secretary of Homeland Security  
22 shall allow an eligible alien and the spouse or child of such  
23 alien to reside in a candidate country during the period  
24 that the eligible alien is working as a physician or other  
25 healthcare worker in a candidate country. During such pe-

1 riod the eligible alien and such spouse or child shall be  
2 considered—

3 “(1) to be physically present and residing in the  
4 United States for purposes of naturalization under  
5 section 316(a); and

6 “(2) to meet the continuous residency require-  
7 ments under section 316(b).

8 “(b) DEFINITIONS.—In this section:

9 “(1) CANDIDATE COUNTRY.—The term ‘can-  
10 didate country’ means a country that the Secretary  
11 of State determines is—

12 “(A) eligible for assistance from the Inter-  
13 national Development Association, in which the  
14 per capita income of the country is equal to or  
15 less than the historical ceiling of the Inter-  
16 national Development Association for the appli-  
17 cable fiscal year, as defined by the International  
18 Bank for Reconstruction and Development;

19 “(B) classified as a lower middle income  
20 country in the then most recent edition of the  
21 World Development Report for Reconstruction  
22 and Development published by the International  
23 Bank for Reconstruction and Development and  
24 having an income greater than the historical



1 ceiling for International Development Associa-  
2 tion eligibility for the applicable fiscal year; or

3 “(C) qualifies to be a candidate country  
4 due to special circumstances, including natural  
5 disasters or public health emergencies.

6 “(2) ELIGIBLE ALIEN.—The term ‘eligible  
7 alien’ means an alien who—

8 “(A) has been lawfully admitted to the  
9 United States for permanent residence; and

10 “(B) is a physician or other healthcare  
11 worker.

12 “(c) CONSULTATION.—The Secretary of Homeland  
13 Security shall consult with the Secretary of State in car-  
14 rying out this subsection.

15 “(d) PUBLICATION.—The Secretary of State shall  
16 publish—

17 “(1) not later than 6 months after the date of  
18 the enactment of the Comprehensive Immigration  
19 Reform Act of 2007, and annually thereafter, a list  
20 of candidate countries; and

21 “(2) an immediate amendment to such list at  
22 any time to include any country that qualifies as a  
23 candidate country due to special circumstances  
24 under subsection (b)(1)(C).”.

25 (b) RULEMAKING.—

1           (1) REQUIREMENT.—Not later than 6 months  
2 after the date of the enactment of this Act, the Sec-  
3 retary shall promulgate regulations to carry out the  
4 amendments made by this section.

5           (2) CONTENT.—The regulations required by  
6 paragraph (1) shall—

7           (A) permit an eligible alien (as defined in  
8 section 317A of the Immigration and Nation-  
9 ality Act, as added by subsection (a)) and the  
10 spouse or child of the eligible alien to reside in  
11 a foreign country to work as a physician or  
12 other healthcare worker as described in sub-  
13 section (a) of such section 317A for not less  
14 than a 12-month period and not more than a  
15 24-month period, and shall permit the Sec-  
16 retary to extend such period for an additional  
17 period not to exceed 12 months, if the Sec-  
18 retary determines that such country has a con-  
19 tinuing need for such a physician or other  
20 healthcare worker;

21           (B) provide for the issuance of documents  
22 by the Secretary to such eligible alien, and such  
23 spouse or child, if appropriate, to demonstrate  
24 that such eligible alien, and such spouse or

1 child, if appropriate, is authorized to reside in  
2 such country under such section 317A; and

3 (C) provide for an expedited process  
4 through which the Secretary shall review appli-  
5 cations for such an eligible alien to reside in a  
6 foreign country pursuant to subsection (a) of  
7 such section 317A if the Secretary of State de-  
8 termines a country is a candidate country pur-  
9 suant to subsection (b)(1)(C) of such section  
10 317A.

11 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

12 The Immigration and Nationality Act is amended as fol-  
13 lows:

14 (1) Section 101(a)(13)(C)(ii) (8 U.S.C.  
15 1101(a)(13)(C)(ii)) is amended by adding at the end  
16 “except in the case of an eligible alien, or the spouse  
17 or child of such alien, authorized to be absent from  
18 the United States pursuant to section 317A,”.

19 (2) Section 211(b) (8 U.S.C. 1181(b)) is  
20 amended by inserting “, including an eligible alien  
21 authorized to reside in a foreign country pursuant to  
22 section 317A and the spouse or child of such eligible  
23 alien, if appropriate,” after “101(a)(27)(A),”.

24 (3) Section 212(a)(7)(A)(i)(I) (8 U.S.C.  
25 1182(a)(7)(A)(i)(I)) is amended by inserting “other

1 than an eligible alien authorized to reside in a for-  
 2 eign country pursuant to section 317A and the  
 3 spouse or child of such eligible alien, if appropriate,”  
 4 after “Act.”.

5 (4) Section 319(b)(1)(B) (8 U.S.C.  
 6 1430(b)(1)(B)) is amended by inserting “an eligible  
 7 alien who is residing or has resided in a foreign  
 8 country pursuant to section 317A” before “and” at  
 9 the end.

10 (5) The table of contents is amended by insert-  
 11 ing after the item relating to section 317 the fol-  
 12 lowing:

“Sec. 317A. Temporary absence of aliens providing healthcare in developing  
 countries.”.

13 (d) **AUTHORIZATION OF APPROPRIATIONS.**—There  
 14 are authorized to be appropriated to the Bureau of Citi-  
 15 zenship and Immigration Services such sums as may be  
 16 necessary to carry out this section and the amendments  
 17 made by this section.

18 **SEC. 775. ATTESTATION BY HEALTHCARE WORKERS.**

19 (a) **REQUIREMENT FOR ATTESTATION.**—Section  
 20 212(a)(5) (8 U.S.C. 1182(a)(5)) is amended by adding at  
 21 the end the following:

22 “(E) **HEALTHCARE WORKERS WITH OTHER**  
 23 **OBLIGATIONS.**—

1           “(i) IN GENERAL.—An alien who  
2 seeks to enter the United States for the  
3 purpose of performing labor as a physician  
4 or other healthcare worker is inadmissible  
5 unless the alien submits to the Secretary of  
6 Homeland Security or the Secretary of  
7 State, as appropriate, an attestation that  
8 the alien is not seeking to enter the United  
9 States for such purpose during any period  
10 in which the alien has an outstanding obli-  
11 gation to the government of the alien’s  
12 country of origin or the alien’s country of  
13 residence.

14           “(ii) OBLIGATION DEFINED.—In this  
15 subparagraph, the term ‘obligation’ means  
16 an obligation incurred as part of a valid,  
17 voluntary individual agreement in which  
18 the alien received financial assistance to  
19 defray the costs of education or training to  
20 qualify as a physician or other healthcare  
21 worker in consideration for a commitment  
22 to work as a physician or other healthcare  
23 worker in the alien’s country of origin or  
24 the alien’s country of residence.

1           “(iii) WAIVER.—The Secretary of  
2 Homeland Security may waive a finding of  
3 inadmissibility under clause (i) if the Sec-  
4 retary determines that—

5                   “(I) the obligation was incurred  
6 by coercion or other improper means;

7                   “(II) the alien and the govern-  
8 ment of the country to which the alien  
9 has an outstanding obligation have  
10 reached a valid, voluntary agreement,  
11 pursuant to which the alien’s obliga-  
12 tion has been deemed satisfied, or the  
13 alien has shown to the satisfaction of  
14 the Secretary that the alien has been  
15 unable to reach such an agreement  
16 because of coercion or other improper  
17 means; or

18                   “(III) the obligation should not  
19 be enforced due to other extraordinary  
20 circumstances, including undue hard-  
21 ship that would be suffered by the  
22 alien in the absence of a waiver.”.

23 (b) EFFECTIVE DATE AND APPLICATION.—

1           (1) EFFECTIVE DATE.—The amendment made  
2           by subsection (a) shall become effective 180 days  
3           after the date of the enactment of this Act.

4           (2) APPLICATION BY THE SECRETARY.—The  
5           Secretary shall begin to carry out the subparagraph  
6           (E) of section 212(a)(5) of the Immigration and Na-  
7           tionality Act (8 U.S.C. 1182(a)(5)), as added by  
8           subsection (a), not later than the effective date de-  
9           scribed in paragraph (1), including the requirement  
10          for the attestation and the granting of a waiver de-  
11          scribed in such subparagraph, regardless of whether  
12          regulations to implement such subparagraph have  
13          been promulgated.

14 **SEC. 776. PUBLIC ACCESS TO THE STATUE OF LIBERTY.**

15          Not later than 60 days after the date of the enact-  
16          ment of this Act, the Secretary of the Interior shall ensure  
17          that all persons who satisfy reasonable and appropriate  
18          security measures shall have full access to the public areas  
19          of the Statue of Liberty, including the crown and the  
20          stairs leading to the crown.

21 **SEC. 777. NATIONAL SECURITY DETERMINATION.**

22          Notwithstanding any other provision of this Act, the  
23          President shall ensure that no provision of title IV or title  
24          VI of this Act, or any amendment made by either such  
25          title, is carried out until after the date on which the Presi-

1 dent makes a determination that the implementation of  
2 such title IV and title VI, and the amendments made by  
3 either such title, will strengthen the national security of  
4 the United States.

5 **TITLE VIII—INTERCOUNTRY**  
6 **ADOPTION REFORM**

7 **SEC. 801. SHORT TITLE.**

8 This title may be cited as the “Intercountry Adoption  
9 Reform Act of 2007” or the “ICARE Act”.

10 **SEC. 802. FINDINGS; PURPOSES.**

11 (a) FINDINGS.—Congress finds the following:

12 (1) That a child, for the full and harmonious  
13 development of his or her personality, should grow  
14 up in a family environment, in an atmosphere of  
15 happiness, love, and understanding.

16 (2) That intercountry adoption may offer the  
17 advantage of a permanent family to a child for  
18 whom a suitable family cannot be found in his or her  
19 country of origin.

20 (3) There has been a significant growth in  
21 intercountry adoptions. In 1990, Americans adopted  
22 7,093 children from abroad. In 2004, they adopted  
23 23,460 children from abroad.

24 (4) Americans increasingly seek to create or en-  
25 large their families through intercountry adoptions.



1           (5) There are many children worldwide that are  
2 without permanent homes.

3           (6) In the interest of children without a perma-  
4 nent family and the United States citizens who are  
5 waiting to bring them into their families, reforms  
6 are needed in the intercountry adoption process used  
7 by United States citizens.

8           (7) Before adoption, each child should have the  
9 benefit of measures taken to ensure that inter-  
10 country adoption is in his or her best interest and  
11 that prevents the abduction, selling, or trafficking of  
12 children.

13           (8) Congress recognizes that foreign-born  
14 adopted children do not make the decision whether  
15 to immigrate to the United States. They are being  
16 chosen by Americans to become part of their imme-  
17 diate families.

18           (9) As such these children should not be classi-  
19 fied as immigrants in the traditional sense. Once  
20 fully and finally adopted, they should be treated as  
21 children of United States citizens.

22           (10) Since a child who is fully and finally  
23 adopted is entitled to the same rights, duties, and  
24 responsibilities as a biological child, the law should  
25 reflect such equality.

1           (11) Foreign-born adopted children of United  
2 States citizens should be accorded the same proce-  
3 dural treatment as biological children born abroad to  
4 a United States citizen.

5           (12) If a United States citizen can confer citi-  
6 zenship to a biological child born abroad, that citizen  
7 is entitled to confer such citizenship to their legally  
8 and fully adopted foreign-born child immediately  
9 upon final adoption.

10          (13) If a United States citizen cannot confer  
11 citizenship to a biological child born abroad, that citi-  
12 zen cannot confer citizenship to their legally and  
13 fully adopted foreign-born child, except through the  
14 naturalization process.

15 (b) PURPOSES.—The purposes of this title are—

16           (1) to ensure the any adoption of a foreign-born  
17 child by parents in the United States is carried out  
18 in the manner that is in the best interest of the  
19 child;

20           (2) to ensure that foreign-born children adopted  
21 by United States citizens will be treated identically  
22 to a biological child born abroad to the same citizen  
23 parent; and

1           (3) to improve the intercountry adoption pro-  
2           cess to make it more citizen friendly and focused on  
3           the protection of the child.

4 **SEC. 803. DEFINITIONS.**

5           In this title:

6           (1) **ADOPTABLE CHILD.**—The term “adoptable  
7           child” has the same meaning given such term in sec-  
8           tion 101(c)(3) of the Immigration and Nationality  
9           Act (8 U.S.C. 1101(c)(3)), as added by section  
10          824(a).

11          (2) **AMBASSADOR AT LARGE.**—The term “Am-  
12          bassador at Large” means the Ambassador at Large  
13          for Intercountry Adoptions appointed to head the  
14          Office pursuant to section 811(b).

15          (3) **COMPETENT AUTHORITY.**—The term “com-  
16          petent authority” means the entity or entities au-  
17          thorized by the law of the child’s country of resi-  
18          dence to engage in permanent placement of children  
19          who are no longer in the legal or physical custody  
20          of their biological parents.

21          (4) **CONVENTION.**—The term “Convention”  
22          means the Convention on Protection of Children and  
23          Co-operation in Respect of Intercountry Adoption,  
24          done at The Hague on May 29, 1993.

1           (5) FULL AND FINAL ADOPTION.—The term  
2 “full and final adoption” means an adoption—

3           (A) that is completed according to the laws  
4 of the child’s country of residence or the State  
5 law of the parent’s residence;

6           (B) under which a person is granted full  
7 and legal custody of the adopted child;

8           (C) that has the force and effect of sev-  
9 ering the child’s legal ties to the child’s biologi-  
10 cal parents;

11           (D) under which the adoptive parents meet  
12 the requirements of section 825; and

13           (E) under which the child has been adju-  
14 dicated to be an adoptable child in accordance  
15 with section 826.

16           (6) OFFICE.—The term “Office” means the Of-  
17 fice of Intercountry Adoptions established under sec-  
18 tion 811(a).

19           (7) READILY APPROVABLE.—A petition or cer-  
20 tification is “readily approvable” if the documentary  
21 support provided along with such petition or certifi-  
22 cation demonstrates that the petitioner satisfies the  
23 eligibility requirements and no additional informa-  
24 tion or investigation is necessary.

1           **Subtitle A—Administration of**  
2                   **Intercountry Adoptions**

3 **SEC. 811. OFFICE OF INTERCOUNTRY ADOPTIONS.**

4           (a) **ESTABLISHMENT.**—Not later than 180 days after  
5 the date of enactment of this Act, there shall be estab-  
6 lished within the Department of State, an Office of Inter-  
7 country Adoptions which shall be headed by the Ambas-  
8 sador at Large for Intercountry Adoptions.

9           (b) **AMBASSADOR AT LARGE.**—

10               (1) **APPOINTMENT.**—The Ambassador at Large  
11 shall be appointed by the President, by and with the  
12 advice and consent of the Senate, from among indi-  
13 viduals who have background, experience, and train-  
14 ing in intercountry adoptions.

15               (2) **CONFLICTS OF INTEREST.**—The individual  
16 appointed to be the Ambassador at Large shall be  
17 free from any conflict of interest that could impede  
18 such individual's ability to serve as the Ambassador.

19               (3) **AUTHORITY.**—The Ambassador at Large  
20 shall report directly to the Secretary of State, in  
21 consultation with the Assistant Secretary for Con-  
22 sular Affairs.

23               (4) **REGULATIONS.**—The Ambassador at Large  
24 may not issue rules or regulations unless such rules

1 or regulations have been approved by the Secretary  
2 of State.

3 (5) DUTIES OF THE AMBASSADOR AT LARGE.—

4 The Ambassador at Large shall have the following  
5 responsibilities:

6 (A) IN GENERAL.—The primary respon-  
7 sibilities of the Ambassador at Large shall be—

8 (i) to ensure that any adoption of a  
9 foreign-born child by parents in the United  
10 States is carried out in the manner that is  
11 in the best interest of the child; and

12 (ii) to assist the Secretary of State in  
13 fulfilling the responsibilities designated to  
14 the central authority under title I of the  
15 Intercountry Adoption Act of 2000 (42  
16 U.S.C. 14911 et seq.).

17 (B) ADVISORY ROLE.—The Ambassador at  
18 Large shall be a principal advisor to the Presi-  
19 dent and the Secretary of State regarding mat-  
20 ters affecting intercountry adoption and the  
21 general welfare of children abroad and shall  
22 make recommendations regarding—

23 (i) the policies of the United States  
24 with respect to the establishment of a sys-

1           tem of cooperation among the parties to  
2           the Convention;

3           (ii) the policies to prevent abandon-  
4           ment, to strengthen families, and to ad-  
5           vance the placement of children in perma-  
6           nent families; and

7           (iii) policies that promote the protec-  
8           tion and well-being of children.

9           (C) DIPLOMATIC REPRESENTATION.—Sub-  
10          ject to the direction of the President and the  
11          Secretary of State, the Ambassador at Large  
12          may represent the United States in matters and  
13          cases relevant to international adoption in—

14          (i) fulfillment of the responsibilities  
15          designated to the central authority under  
16          title I of the Intercountry Adoption Act of  
17          2000 (42 U.S.C. 14911 et seq.);

18          (ii) contacts with foreign governments,  
19          intergovernmental organizations, and spe-  
20          cialized agencies of the United Nations and  
21          other international organizations of which  
22          the United States is a member; and

23          (iii) multilateral conferences and  
24          meetings relevant to international adop-  
25          tion.

1 (D) INTERNATIONAL POLICY DEVELOP-  
2 MENT.—The Ambassador at Large shall advise  
3 and support the Secretary of State and other  
4 relevant Bureaus of the Department of State in  
5 the development of sound policy regarding child  
6 protection and intercountry adoption.

7 (E) REPORTING RESPONSIBILITIES.—The  
8 Ambassador at Large shall have the following  
9 reporting responsibilities:

10 (i) IN GENERAL.—The Ambassador at  
11 Large shall assist the Secretary of State  
12 and other relevant Bureaus in preparing  
13 those portions of the Human Rights Re-  
14 ports that relate to the abduction, sale,  
15 and trafficking of children.

16 (ii) ANNUAL REPORT ON INTER-  
17 COUNTRY ADOPTION.—Not later than Sep-  
18 tember 1 of each year, the Secretary of  
19 State shall prepare and submit to Congress  
20 an annual report on intercountry adoption.  
21 Each annual report shall include—

22 (I) a description of the status of  
23 child protection and adoption in each  
24 foreign country, including—



1 (aa) trends toward improve-  
2 ment in the welfare and protec-  
3 tion of children and families;

4 (bb) trends in family reunifi-  
5 cation, domestic adoption, and  
6 intercountry adoption;

7 (cc) movement toward ratifi-  
8 cation and implementation of the  
9 Convention; and

10 (dd) census information on  
11 the number of children in or-  
12 phanages, foster homes, and  
13 other types of nonpermanent res-  
14 idential care as reported by the  
15 foreign country;

16 (II) the number of intercountry  
17 adoptions by United States citizens,  
18 including the country from which each  
19 child emigrated, the State in which  
20 each child resides, and the country in  
21 which the adoption was finalized;

22 (III) the number of intercountry  
23 adoptions involving emigration from  
24 the United States, including the coun-  
25 try where each child now resides and

1 the State from which each child emi-  
2 grated;

3 (IV) the number of placements  
4 for adoption in the United States that  
5 were disrupted, including the country  
6 from which the child emigrated, the  
7 age of the child, the date of the place-  
8 ment for adoption, the reasons for the  
9 disruption, the resolution of the dis-  
10 ruption, the agencies that handled the  
11 placement for adoption, and the plans  
12 for the child, and in addition, any in-  
13 formation regarding disruption or dis-  
14 solution of adoptions of children from  
15 other countries received pursuant to  
16 section 422(b)(14) of the Social Secu-  
17 rity Act (42 U.S.C. 622(b)(14));

18 (V) the average time required for  
19 completion of an adoption, set forth  
20 by the country from which the child  
21 emigrated;

22 (VI) the current list of agencies  
23 accredited and persons approved  
24 under the Intercountry Adoption Act

1 of 2000 (42 U.S.C. 14901 et seq.) to  
2 provide adoption services;

3 (VII) the names of the agencies  
4 and persons temporarily or perma-  
5 nently debarred under the Inter-  
6 country Adoption Act of 2000 (42  
7 U.S.C. 14901 et seq.), and the rea-  
8 sons for the debarment;

9 (VIII) the range of adoption fees  
10 involving adoptions by United States  
11 citizens and the median of such fees  
12 set forth by the country of origin;

13 (IX) the range of fees charged  
14 for accreditation of agencies and the  
15 approval of persons in the United  
16 States engaged in providing adoption  
17 services under the Convention; and

18 (X) recommendations of ways the  
19 United States might act to improve  
20 the welfare and protection of children  
21 and families in each foreign country.

22 (c) FUNCTIONS OF OFFICE.—The Office shall have  
23 the following 7 functions:

24 (1) APPROVAL OF A FAMILY TO ADOPT.—To  
25 approve or disapprove the eligibility of a United

1 States citizen to adopt a child born in a foreign  
2 country.

3 (2) CHILD ADJUDICATION.—To investigate and  
4 adjudicate the status of a child born in a foreign  
5 country to determine whether that child is an adopt-  
6 able child.

7 (3) FAMILY SERVICES.—To provide assistance  
8 to United States citizens engaged in the intercountry  
9 adoption process in resolving problems with respect  
10 to that process and to track intercountry adoption  
11 cases so as to ensure that all such adoptions are  
12 processed in a timely manner.

13 (4) INTERNATIONAL POLICY DEVELOPMENT.—  
14 To advise and support the Ambassador at Large and  
15 other relevant Bureaus of the Department of State  
16 in the development of sound policy regarding child  
17 protection and intercountry adoption.

18 (5) CENTRAL AUTHORITY.—To assist the Sec-  
19 retary of State in carrying out duties of the central  
20 authority as defined in section 3 of the Intercountry  
21 Adoption Act of 2000 (42 U.S.C. 14902).

22 (6) ENFORCEMENT.—To investigate, either di-  
23 rectly or in cooperation with other appropriate inter-  
24 national, Federal, State, or local entities, impropri-  
25 eties relating to intercountry adoption, including

1 issues of child protection, birth family protection,  
2 and consumer fraud.

3 (7) ADMINISTRATION.—To perform administra-  
4 tive functions related to the functions performed  
5 under paragraphs (1) through (6), including legal  
6 functions and congressional liaison and public affairs  
7 functions.

8 (d) ORGANIZATION.—

9 (1) IN GENERAL.—All functions of the Office  
10 shall be performed by officers employed in a central  
11 office located in Washington, DC. Within that office,  
12 there shall be 7 divisions corresponding to the 7  
13 functions of the Office. The director of each such di-  
14 vision shall report directly to the Ambassador at  
15 Large.

16 (2) APPROVAL TO ADOPT.—The division re-  
17 sponsible for approving parents to adopt shall be di-  
18 vided into regions of the United States as follows:

19 (A) Northwest.

20 (B) Northeast.

21 (C) Southwest.

22 (D) Southeast.

23 (E) Midwest.

24 (F) West.

1           (3) CHILD ADJUDICATION.—To the extent prac-  
2           ticable, the division responsible for the adjudication  
3           of foreign-born children as adoptable shall be divided  
4           by world regions which correspond to the world re-  
5           gions used by other divisions within the Department  
6           of State.

7           (4) USE OF INTERNATIONAL FIELD OFFI-  
8           CERS.—Nothing in this section shall be construed to  
9           prohibit the use of international field officers posted  
10          abroad, as necessary, to fulfill the requirements of  
11          this Act.

12          (5) COORDINATION.—The Ambassador at  
13          Large shall coordinate with appropriate employees of  
14          other agencies and departments of the United  
15          States, whenever appropriate, in carrying out the  
16          duties of the Ambassador.

17          (e) QUALIFICATIONS AND TRAINING.—In addition to  
18          meeting the employment requirements of the Department  
19          of State, officers employed in any of the 7 divisions of  
20          the Office shall undergo extensive and specialized training  
21          in the laws and processes of intercountry adoption as well  
22          as understanding the cultural, medical, emotional, and so-  
23          cial issues surrounding intercountry adoption and adoptive  
24          families. The Ambassador at Large shall, whenever pos-  
25          sible, recruit and hire individuals with background and ex-

1 perience in intercountry adoptions, taking care to ensure  
2 that such individuals do not have any conflicts of interest  
3 that might inhibit their ability to serve.

4 (f) USE OF ELECTRONIC DATABASES AND FILING.—  
5 To the extent possible, the Office shall make use of cen-  
6 tralized, electronic databases and electronic form filing.

7 **SEC. 812. RECOGNITION OF CONVENTION ADOPTIONS IN**  
8 **THE UNITED STATES.**

9 Section 505(a)(1) of the Intercountry Adoption Act  
10 of 2000 (42 U.S.C. 14901 note) is amended by inserting  
11 “301, 302,” after “205,”.

12 **SEC. 813. TECHNICAL AND CONFORMING AMENDMENT.**

13 Section 104 of the Intercountry Adoption Act of 2000  
14 (42 U.S.C. 14914) is repealed.

15 **SEC. 814. TRANSFER OF FUNCTIONS.**

16 (a) IN GENERAL.—Subject to subsection (c), all func-  
17 tions under the immigration laws of the United States  
18 with respect to the adoption of foreign-born children by  
19 United States citizens and their admission to the United  
20 States that have been vested by statute in, or exercised  
21 by, the Secretary immediately prior to the effective date  
22 of this Act, are transferred to the Secretary of State on  
23 the effective date of this Act and shall be carried out by  
24 the Ambassador at Large, under the supervision of the

1 Secretary of State, in accordance with applicable laws and  
2 this Act.

3 (b) EXERCISE OF AUTHORITIES.—Except as other-  
4 wise provided by law, the Ambassador at Large may, for  
5 purposes of performing any function transferred to the  
6 Ambassador at Large under subsection (a), exercise all  
7 authorities under any other provision of law that were  
8 available with respect to the performance of that function  
9 to the official responsible for the performance of the func-  
10 tion immediately before the effective date of the transfer  
11 of the function pursuant to this subtitle.

12 (c) LIMITATION ON TRANSFER OF PENDING ADOP-  
13 TIONS.—If an individual has filed a petition with the Im-  
14 migration and Naturalization Service or the Department  
15 with respect to the adoption of a foreign-born child prior  
16 to the date of enactment of this Act, the Secretary shall  
17 have the authority to make the final determination on  
18 such petition and such petition shall not be transferred  
19 to the Office.

20 **SEC. 815. TRANSFER OF RESOURCES.**

21 Subject to section 1531 of title 31, United States  
22 Code, upon the effective date of this Act, there are trans-  
23 ferred to the Ambassador at Large for appropriate alloca-  
24 tion in accordance with this Act, the assets, liabilities, con-  
25 tracts, property, records, and unexpended balance of ap-



1 appropriations, authorizations, allocations, and other funds  
2 employed, held, used, arising from, available to, or to be  
3 made available to the Department in connection with the  
4 functions transferred pursuant to this subtitle.

5 **SEC. 816. INCIDENTAL TRANSFERS.**

6       The Ambassador at Large may make such additional  
7 incidental dispositions of personnel, assets, liabilities,  
8 grants, contracts, property, records, and unexpended bal-  
9 ances of appropriations, authorizations, allocations, and  
10 other funds held, used, arising from, available to, or to  
11 be made available in connection with such functions, as  
12 may be necessary to carry out this subtitle. The Amba-  
13 sador at Large shall provide for such further measures  
14 and dispositions as may be necessary to effectuate the pur-  
15 poses of this subtitle.

16 **SEC. 817. SAVINGS PROVISIONS.**

17       (a) **LEGAL DOCUMENTS.**—All orders, determinations,  
18 rules, regulations, permits, grants, loans, contracts, agree-  
19 ments, including collective bargaining agreements, certifi-  
20 cates, licenses, and privileges—

21               (1) that have been issued, made, granted, or al-  
22       lowed to become effective by the President, the Am-  
23       bassador at Large, the former Commissioner of the  
24       Immigration and Naturalization Service, or the Sec-  
25       retary, or their delegates, or any other Government

1 official, or by a court of competent jurisdiction, in  
2 the performance of any function that is transferred  
3 pursuant to this subtitle; and

4 (2) that are in effect on the effective date of  
5 such transfer (or become effective after such date  
6 pursuant to their terms as in effect on such effective  
7 date),

8 shall continue in effect according to their terms until  
9 modified, terminated, superseded, set aside, or revoked in  
10 accordance with law by the President, any other author-  
11 ized official, a court of competent jurisdiction, or operation  
12 of law, except that any collective bargaining agreement  
13 shall remain in effect until the date of termination speci-  
14 fied in the agreement.

15 (b) PROCEEDINGS.—

16 (1) PENDING.—The transfer of functions under  
17 section 814 shall not affect any proceeding or any  
18 application for any benefit, service, license, permit,  
19 certificate, or financial assistance pending on the ef-  
20 fective date of this subtitle before an office whose  
21 functions are transferred pursuant to this subtitle,  
22 but such proceedings and applications shall be con-  
23 tinued.

24 (2) ORDERS.—Orders shall be issued in such  
25 proceedings, appeals shall be taken therefrom, and

1 payments shall be made pursuant to such orders, as  
2 if this Act had not been enacted, and orders issued  
3 in any such proceeding shall continue in effect until  
4 modified, terminated, superseded, or revoked by a  
5 duly authorized official, by a court of competent ju-  
6 risdiction, or by operation of law.

7 (3) DISCONTINUANCE OR MODIFICATION.—  
8 Nothing in this section shall be considered to pro-  
9 hibit the discontinuance or modification of any such  
10 proceeding under the same terms and conditions and  
11 to the same extent that such proceeding could have  
12 been discontinued or modified if this section had not  
13 been enacted.

14 (c) SUITS.—This subtitle shall not affect suits com-  
15 menced before the effective date of this subtitle, and in  
16 all such suits, proceeding shall be had, appeals taken, and  
17 judgments rendered in the same manner and with the  
18 same effect as if this Act had not been enacted.

19 (d) NONABATEMENT OF ACTIONS.—No suit, action,  
20 or other proceeding commenced by or against the Depart-  
21 ment of State, the Immigration and Naturalization Serv-  
22 ice, or the Department, or by or against any individual  
23 in the official capacity of such individual as an officer or  
24 employee in connection with a function transferred pursu-

1 ant to this section, shall abate by reason of the enactment  
2 of this Act.

3 (e) CONTINUANCE OF SUIT WITH SUBSTITUTION OF  
4 PARTIES.—If any Government officer in the official capac-  
5 ity of such officer is party to a suit with respect to a func-  
6 tion of the officer, and pursuant to this subtitle such func-  
7 tion is transferred to any other officer or office, then such  
8 suit shall be continued with the other officer or the head  
9 of such other office, as applicable, substituted or added  
10 as a party.

11 (f) ADMINISTRATIVE PROCEDURE AND JUDICIAL RE-  
12 VIEW.—Except as otherwise provided by this subtitle, any  
13 statutory requirements relating to notice, hearings, action  
14 upon the record, or administrative or judicial review that  
15 apply to any function transferred pursuant to any provi-  
16 sion of this subtitle shall apply to the exercise of such  
17 function by the head of the office, and other officers of  
18 the office, to which such function is transferred pursuant  
19 to such provision.

1 **Subtitle B—Reform of United**  
2 **States Laws Governing Inter-**  
3 **country Adoptions**

4 **SEC. 821. AUTOMATIC ACQUISITION OF CITIZENSHIP FOR**  
5 **ADOPTED CHILDREN BORN OUTSIDE THE**  
6 **UNITED STATES.**

7 (a) AUTOMATIC CITIZENSHIP PROVISIONS.—

8 (1) AMENDMENT OF THE IMMIGRATION AND  
9 NATIONALITY ACT.—Section 320 (8 U.S.C. 1431) is  
10 amended to read as follows:

11 **“SEC. 320. CONDITIONS FOR AUTOMATIC CITIZENSHIP FOR**  
12 **CHILDREN BORN OUTSIDE THE UNITED**  
13 **STATES.**

14 “(a) IN GENERAL.—A child born outside of the  
15 United States automatically becomes a citizen of the  
16 United States—

17 “(1) if the child is not an adopted child—

18 “(A) at least 1 parent of the child is a cit-  
19 izen of the United States, whether by birth or  
20 naturalization, who has been physically present  
21 (as determined under subsection (b)) in the  
22 United States or its outlying possessions for a  
23 period or periods totaling not less than 5 years,  
24 at least 2 of which were after attaining the age  
25 of 14 years; and

1           “(B) the child is under the age of 18  
2           years; or

3           “(2) if the child is an adopted child, on the date  
4           of the full and final adoption of the child—

5           “(A) at least 1 parent of the child is a cit-  
6           izen of the United States, whether by birth or  
7           naturalization, who has been physically present  
8           (as determined under subsection (b)) in the  
9           United States or its outlying possessions for a  
10          period or periods totaling not less than 5 years,  
11          at least 2 of which were after attaining the age  
12          of 14 years;

13          “(B) the child is an adoptable child;

14          “(C) the child is the beneficiary of a full  
15          and final adoption decree entered by a foreign  
16          government or a court in the United States;  
17          and

18          “(D) the child is under the age of 16  
19          years.

20          “(b) PHYSICAL PRESENCE.—For the purposes of  
21          subsection (a)(2)(A), the requirement for physical pres-  
22          ence in the United States or its outlying possessions may  
23          be satisfied by the following:

24                 “(1) Any periods of honorable service in the  
25                 Armed Forces of the United States.

1           “(2) Any periods of employment with the  
2 United States Government or with an international  
3 organization as that term is defined in section 1 of  
4 the International Organizations Immunities Act (22  
5 U.S.C. 288) by such citizen parent.

6           “(3) Any periods during which such citizen par-  
7 ent is physically present outside the United States or  
8 its outlying possessions as the dependent unmarried  
9 son or daughter and a member of the household of  
10 a person—

11                   “(A) honorably serving with the Armed  
12 Forces of the United States; or

13                   “(B) employed by the United States Gov-  
14 ernment or an international organization as de-  
15 fined in section 1 of the International Organiza-  
16 tions Immunities Act (22 U.S.C. 288).

17           “(c) FULL AND FINAL ADOPTION.—In this section,  
18 the term ‘full and final adoption’ means an adoption—

19                   “(1) that is completed under the laws of the  
20 child’s country of residence or the State law of the  
21 parent’s residence;

22                   “(2) under which a person is granted full and  
23 legal custody of the adopted child;

24                   “(3) that has the force and effect of severing  
25 the child’s legal ties to the child’s biological parents;

1           “(4) under which the adoptive parents meet the  
2 requirements of section 825 of the Intercountry  
3 Adoption Reform Act of 2007; and

4           “(5) under which the child has been adjudicated  
5 to be an adoptable child in accordance with section  
6 826 of the Intercountry Adoption Reform Act of  
7 2007.”.

8           (b) CONFORMING AMENDMENT.—The table of con-  
9 tents in the first section of the Immigration and Nation-  
10 ality Act (66 Stat. 163) is amended by striking the item  
11 relating to section 320 and inserting the following:

“Sec. 320. Conditions for automatic citizenship for children born outside the  
United States.”.

12           (c) EFFECTIVE DATE.—This section shall take effect  
13 as if enacted on June 27, 1952.

14 **SEC. 822. REVISED PROCEDURES.**

15           Notwithstanding any other provision of law, the fol-  
16 lowing requirements shall apply with respect to the adop-  
17 tion of foreign born children by United States citizens:

18           (1) Upon completion of a full and final adop-  
19 tion, the Secretary shall issue a United States pass-  
20 port and a Consular Report of Birth for a child who  
21 satisfies the requirements of section 320(a)(2) of the  
22 Immigration and Nationality Act (8 U.S.C.  
23 1431(a)(2)), as amended by section 821 of this Act,  
24 upon application by a United States citizen parent.



1           (2) An adopted child described in paragraph (1)  
2 shall not require the issuance of a visa for travel and  
3 admission to the United States but shall be admitted  
4 to the United States upon presentation of a valid,  
5 unexpired United States passport.

6           (3) No affidavit of support under section 213A  
7 of the Immigration and Nationality Act (8 U.S.C.  
8 1183a) shall be required in the case of any adopt-  
9 able child.

10           (4) The Secretary of State, acting through the  
11 Ambassador at Large, shall require that agencies  
12 provide prospective adoptive parents an opportunity  
13 to conduct an independent medical exam and a copy  
14 of any medical records of the child known to exist  
15 (to the greatest extent practicable, these documents  
16 shall include an English translation) on a date that  
17 is not later than the earlier of the date that is 2  
18 weeks before the adoption, or the date on which pro-  
19 spective adoptive parents travel to such a foreign  
20 country to complete all procedures in such country  
21 relating to adoption.

22           (5) The Secretary of State, acting through the  
23 Ambassador at Large, shall take necessary measures  
24 to ensure that all prospective adoptive parents  
25 adopting internationally are provided with training

1 that includes counseling and guidance for the pur-  
2 pose of promoting a successful intercountry adoption  
3 before such parents travel to adopt the child or the  
4 child is placed with such parents for adoption.

5 (6) The Secretary of State, acting through the  
6 Ambassador at Large, shall take necessary measures  
7 to ensure that—

8 (A) prospective adoptive parents are given  
9 full disclosure of all direct and indirect costs of  
10 intercountry adoption before the parents are  
11 matched with a child for adoption;

12 (B) fees charged in relation to the inter-  
13 country adoption be on a fee-for-service basis  
14 not on a contingent fee basis; and

15 (C) that the transmission of fees between  
16 the adoption agency, the country of origin, and  
17 the prospective adoptive parents is carried out  
18 in a transparent and efficient manner.

19 (7) The Secretary of State, acting through the  
20 Ambassador at Large, shall take all measures nec-  
21 essary to ensure that all documents provided to a  
22 country of origin on behalf of a prospective adoptive  
23 parent are truthful and accurate.

1 **SEC. 823. NONIMMIGRANT VISAS FOR CHILDREN TRAV-**  
2 **ELING TO THE UNITED STATES TO BE ADOPT-**  
3 **ED BY A UNITED STATES CITIZEN.**

4 (a) NONIMMIGRANT CLASSIFICATION.—

5 (1) IN GENERAL.—Section 101(a)(15) (8  
6 U.S.C. 1101(a)(15)) is amended by adding at the  
7 end the following:

8 “(W) an adoptable child who is coming into the  
9 United States for adoption by a United States cit-  
10 izen and a spouse jointly or by an unmarried United  
11 States citizen at least 25 years of age, who has been  
12 approved to adopt by the Office of International  
13 Adoption of the Department of State.”.

14 (2) TECHNICAL AND CONFORMING AMEND-  
15 MENTS.—Such section 101(a)(15) is further amend-  
16 ed—

17 (A) by striking “or” at the end of subpara-  
18 graph (U); and

19 (B) by striking the period at the end of  
20 subparagraph (V) and inserting “; or”.

21 (b) TERMINATION OF PERIOD OF AUTHORIZED AD-  
22 MISSION.—Section 214 of the Immigration and Nation-  
23 ality Act (8 U.S.C. 1184) is amended by adding at the  
24 end the following:

1 “(s) In the case of a nonimmigrant described in sec-  
2 tion 101(a)(15)(W), the period of authorized admission  
3 shall terminate on the earlier of—

4 “(1) the date on which the adoption of the non-  
5 immigrant is completed by the courts of the State  
6 where the parents reside; or

7 “(2) the date that is 4 years after the date of  
8 admission of the nonimmigrant into the United  
9 States, unless a petitioner is able to show cause as  
10 to why the adoption could not be completed prior to  
11 such date and the Secretary of State extends such  
12 period for the period necessary to complete the adop-  
13 tion.”.

14 (c) TEMPORARY TREATMENT AS LEGAL PERMANENT  
15 RESIDENT.—Notwithstanding any other law, all benefits  
16 and protections that apply to a legal permanent resident  
17 shall apply to a nonimmigrant described in section  
18 101(a)(15)(W) of the Immigration and Nationality Act,  
19 as added by subsection (a), pending a full and final adop-  
20 tion.

21 (d) EXCEPTION FROM IMMUNIZATION REQUIREMENT  
22 FOR CERTAIN ADOPTED CHILDREN.—Section  
23 212(a)(1)(C) of the Immigration and Nationality Act (8  
24 U.S.C. 1182(a)(1)(C)) is amended—

1           (1) in the heading by striking “**10 YEARS**” and  
2           inserting “**18 YEARS**”; and

3           (2) in clause (i), by striking “10 years” and in-  
4           serting “18 years”.

5           (e) REGULATIONS.—Not later than 90 days after the  
6           date of enactment of this Act, the Secretary of State shall  
7           prescribe such regulations as may be necessary to carry  
8           out this section.

9           **SEC. 824. DEFINITION OF ADOPTABLE CHILD.**

10          (a) IN GENERAL.—Section 101(c) (8 U.S.C. 1101(c))  
11          is amended by adding at the end the following:

12          “(3) The term ‘adoptable child’ means an unmarried  
13          person under the age of 18—

14                 “(A)(i) whose biological parents (or parent, in  
15                 the case of a child who has one sole or surviving  
16                 parent) or other persons or institutions that retain  
17                 legal custody of the child—

18                         “(I) have freely given their written irrev-  
19                         ocable consent to the termination of their legal  
20                         relationship with the child, and to the child’s  
21                         emigration and adoption and that such consent  
22                         has not been induced by payment or compensa-  
23                         tion of any kind and has not been given prior  
24                         to the birth of the child;

1           “(II) are unable to provide proper care for  
2           the child, as determined by the competent au-  
3           thority of the child’s residence; or

4           “(III) have voluntarily relinquished the  
5           child to the competent authorities pursuant to  
6           the law of the child’s residence; or

7           “(ii) who, as determined by the competent au-  
8           thority of the child’s residence—

9           “(I) has been abandoned or deserted by  
10          their biological parent, parents, or legal guard-  
11          ians; or

12          “(II) has been orphaned due to the death  
13          or disappearance of their biological parent, par-  
14          ents, or legal guardians;

15          “(B) with respect to whom the Secretary of  
16          State is satisfied that the proper care will be fur-  
17          nished the child if admitted to the United States;

18          “(C) with respect to whom the Secretary of  
19          State is satisfied that the purpose of the adoption is  
20          to form a bona fide parent-child relationship and  
21          that the parent-child relationship of the child and  
22          the biological parents has been terminated (and in  
23          carrying out both obligations under this subpara-  
24          graph the Secretary of State, in consultation with  
25          the Secretary of Homeland Security, may consider

1 whether there is a petition pending to confer immi-  
2 grant status on one or both of the biological par-  
3 ents);

4 “(D) with respect to whom the Secretary of  
5 State, is satisfied that there has been no induce-  
6 ment, financial or otherwise, offered to obtain the  
7 consent nor was it given before the birth of the  
8 child;

9 “(E) with respect to whom the Secretary of  
10 State, in consultation with the Secretary of Home-  
11 land Security, is satisfied that the person is not a  
12 security risk; and

13 “(F) whose eligibility for adoption and emigra-  
14 tion to the United States has been certified by the  
15 competent authority of the country of the child’s  
16 place of birth or residence.”.

17 (b) CONFORMING AMENDMENT.—Section 204(d) (8  
18 U.S.C. 1154(d)) is amended by inserting “and an adopt-  
19 able child as defined in section 101(c)(3)” before “unless  
20 a valid home-study”.

21 **SEC. 825. APPROVAL TO ADOPT.**

22 (a) IN GENERAL.—Prior to the issuance of a visa  
23 under section 101(a)(15)(W) of the Immigration and Na-  
24 tionality Act, as added by section 823(a), or the issuance  
25 of a full and final adoption decree, the United States cit-

1 izen adoptive parent shall have approved by the Office a  
2 petition to adopt. Such petition shall be subject to the  
3 same terms and conditions as are applicable to petitions  
4 for classification under section 204.3 of title 8 of the Code  
5 of Federal Regulations, as in effect on the day before the  
6 date of the enactment of this Act.

7 (b) EXPIRATION OF APPROVAL.—Approval to adopt  
8 under this Act is valid for 24 months from the date of  
9 approval. Nothing in this section may prevent the Sec-  
10 retary from periodically updating the fingerprints of an  
11 individual who has filed a petition for adoption.

12 (c) EXPEDITED REAPPROVAL PROCESS OF FAMILIES  
13 PREVIOUSLY APPROVED TO ADOPT.—The Secretary of  
14 State shall prescribe such regulations as may be necessary  
15 to provide for an expedited and streamlined process for  
16 families who have been previously approved to adopt and  
17 whose approval has expired, so long as not more than 4  
18 years have lapsed since the original application.

19 (d) DENIAL OF PETITION.—

20 (1) NOTICE OF INTENT.—If the officer adjudi-  
21 cating the petition to adopt finds that it is not read-  
22 ily approvable, the officer shall notify the petitioner,  
23 in writing, of the officer's intent to deny the peti-  
24 tion. Such notice shall include the specific reasons  
25 why the petition is not readily approvable.



1           (2) PETITIONER'S RIGHT TO RESPOND.—Upon  
2           receiving a notice of intent to deny, the petitioner  
3           has 30 days to respond to such notice.

4           (3) DECISION.—Within 30 days of receipt of  
5           the petitioner's response the Office must reach a  
6           final decision regarding the eligibility of the peti-  
7           tioner to adopt. Notice of a formal decision must be  
8           delivered in writing.

9           (4) RIGHT TO AN APPEAL.—Unfavorable deci-  
10          sions may be appealed to the Department of State  
11          and, after the exhaustion of the appropriate appeals  
12          process of the Department, to a United States dis-  
13          trict court.

14          (5) REGULATIONS REGARDING APPEALS.—Not  
15          later than 6 months after the date of enactment of  
16          this Act, the Secretary of State shall promulgate for-  
17          mal regulations regarding the process for appealing  
18          the denial of a petition.

19 **SEC. 826. ADJUDICATION OF CHILD STATUS.**

20          (a) IN GENERAL.—Prior to the issuance of a full and  
21          final adoption decree or a visa under section  
22          101(a)(15)(W) of the Immigration and Nationality Act,  
23          as added by section 823(a)—

24                  (1) the Ambassador at Large shall obtain from  
25          the competent authority of the country of the child's

1 residence a certification, together with documentary  
2 support, that the child sought to be adopted meets  
3 the definition of an adoptable child; and

4 (2) not later than 15 days after the date of the  
5 receipt of the certification referred to in paragraph  
6 (1), the Secretary of State shall make a final deter-  
7 mination on whether the certification and the docu-  
8 mentary support are sufficient to meet the require-  
9 ments of this section or whether additional investiga-  
10 tion or information is required.

11 (b) PROCESS FOR DETERMINATION.—

12 (1) IN GENERAL.—The Ambassador at Large  
13 shall work with the competent authorities of the  
14 child’s country of residence to establish a uniform,  
15 transparent, and efficient process for the exchange  
16 and approval of the certification and documentary  
17 support required under subsection (a).

18 (2) NOTICE OF INTENT.—If the Secretary of  
19 State determines that a certification submitted by  
20 the competent authority of the child’s country of ori-  
21 gin is not readily approvable, the Ambassador at  
22 Large shall—

23 (A) notify the competent authority and the  
24 prospective adoptive parents, in writing, of the

1 specific reasons why the certification is not suf-  
2 ficient; and

3 (B) provide the competent authority and  
4 the prospective adoptive parents the oppor-  
5 tunity to address the stated insufficiencies.

6 (3) PETITIONERS RIGHT TO RESPOND.—Upon  
7 receiving a notice of intent to find that a certifi-  
8 cation is not readily approvable, the prospective  
9 adoptive parents shall have 30 days to respond to  
10 such notice.

11 (4) DECISION.—Not later than 30 days after  
12 the date of receipt of a response submitted under  
13 paragraph (3), the Secretary of State shall reach a  
14 final decision regarding the child's eligibility as an  
15 adoptable child. Notice of such decision must be in  
16 writing.

17 (5) RIGHT TO AN APPEAL.—Unfavorable deci-  
18 sions on a certification may be appealed through the  
19 appropriate process of the Department of State and,  
20 after the exhaustion of such process, to a United  
21 States district court.

22 **SEC. 827. FUNDS.**

23 The Secretary of State shall provide the Ambassador  
24 at Large with such funds as may be necessary for—

25 (1) the hiring of staff for the Office;

- 1           (2) investigations conducted by such staff; and  
2           (3) travel and other expenses necessary to carry  
3 out this title.

## 4           **Subtitle C—Enforcement**

### 5   **SEC. 831. CIVIL PENALTIES AND ENFORCEMENT.**

6           (a) CIVIL PENALTIES.—A person shall be subject, in  
7 addition to any other penalty that may be prescribed by  
8 law, to a civil money penalty of not more than \$50,000  
9 for a first violation, and not more than \$100,000 for each  
10 succeeding violation if such person—

11           (1) violates a provision of this title or an  
12 amendment made by this title;

13           (2) makes a false or fraudulent statement, or  
14 misrepresentation, with respect to a material fact, or  
15 offers, gives, solicits, or accepts inducement by way  
16 of compensation, intended to influence or affect in  
17 the United States or a foreign country—

18           (A) a decision for an approval under title  
19 II;

20           (B) the relinquishment of parental rights  
21 or the giving of parental consent relating to the  
22 adoption of a child; or

23           (C) a decision or action of any entity per-  
24 forming a central authority function; or

1           (3) engages another person as an agent, wheth-  
2           er in the United States or in a foreign country, who  
3           in the course of that agency takes any of the actions  
4           described in paragraph (1) or (2).

5           (b) CIVIL ENFORCEMENT.—

6           (1) AUTHORITY OF ATTORNEY GENERAL.—The  
7           Attorney General may bring a civil action to enforce  
8           subsection (a) against any person in any United  
9           States district court.

10          (2) FACTORS TO BE CONSIDERED IN IMPOSING  
11          PENALTIES.—In imposing penalties the court shall  
12          consider the gravity of the violation, the degree of  
13          culpability of the defendant, and any history of prior  
14          violations by the defendant.

15       **SEC. 832. CRIMINAL PENALTIES.**

16          Any person who knowingly and willfully commits a  
17          violation described in paragraph (1) or (2) of section  
18          831(a) shall be subject to a fine of not more than  
19          \$250,000, imprisonment for not more than 5 years, or  
20          both.

Calendar No. 144

110<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**S. 1348**

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**A BILL**

To provide for comprehensive immigration reform  
and for other purposes.

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MAY 10, 2007

Read the second time and placed on the calendar