

111TH CONGRESS
1ST SESSION

H. R. 4321

To provide for comprehensive immigration reform, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 15, 2009

Mr. ORTIZ (for himself, Mr. CONYERS, Mr. SERRANO, Mr. RANGEL, Mr. PASTOR of Arizona, Mr. STARK, Mr. GUTIERREZ, Mr. WAXMAN, Mr. BECERRA, Mr. FRANK of Massachusetts, Ms. ROYBAL-ALLARD, Mr. BERMAN, Ms. VELÁZQUEZ, Mrs. CHRISTENSEN, Mr. HINOJOSA, Mr. TOWNS, Mr. REYES, Mr. LEWIS of Georgia, Mr. BACA, Mr. PALLONE, Mr. GONZALEZ, Mr. ANDREWS, Mrs. NAPOLITANO, Mr. McDERMOTT, Mr. GRIJALVA, Mr. ENGEL, Mr. CUELLAR, Mr. FALEOMAVAEGA, Mr. SALAZAR, Mr. NEAL of Massachusetts, Mr. SIRES, Mr. ABERCROMBIE, Mr. LUJÁN, Ms. NORTON, Mr. PIERLUISI, Mr. MORAN of Virginia, Mr. SABLAN, Mr. NADLER of New York, Mr. OLVER, Ms. WATERS, Ms. CORRINE BROWN of Florida, Mr. FARR, Mr. FILNER, Mr. GENE GREEN of Texas, Mr. HASTINGS of Florida, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. MALONEY, Mr. RUSH, Mr. SCOTT of Virginia, Ms. WOOLSEY, Mr. BLUMENAUER, Mr. FATTAH, Mr. JACKSON of Illinois, Ms. JACKSON-LEE of Texas, Mrs. CAPPS, Mr. DAVIS of Illinois, Ms. DEGETTE, Ms. KILPATRICK of Michigan, Mr. KUCINICH, Ms. LEE of California, Mr. MCGOVERN, Mr. MEEKS of New York, Ms. SCHAKOWSKY, Ms. BERKLEY, Mr. CAPUANO, Mr. CROWLEY, Mr. WEINER, Mr. CLAY, Mr. HONDA, Mr. ISRAEL, Ms. WATSON, Ms. BORDALLO, Mr. MEEK of Florida, Mr. CLEAVER, Mr. AL GREEN of Texas, Ms. MATSUI, Ms. MOORE of Wisconsin, Mr. CARSON of Indiana, Ms. CLARKE, Ms. EDWARDS of Maryland, Mr. ELLISON, Ms. FUDGE, Ms. HIRONO, Mr. JOHNSON of Georgia, Mr. PERLMUTTER, Ms. RICHARDSON, Mr. WELCH, Ms. CHU, Mr. HEINRICH, Ms. PINGREE of Maine, Mr. POLIS of Colorado, and Mr. QUIGLEY) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Homeland Security, Armed Services, Foreign Affairs, Natural Resources, Ways and Means, Education and Labor, Oversight and Government Reform, and House Administration, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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 for America’s Secu-
6 rity and Prosperity Act of 2009”, the “Comprehensive Im-
7 migration Reform ASAP Act of 2009”, or as the “CIR
8 ASAP Act of 2009”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Reference to the Immigration and Nationality Act.
- Sec. 4. Definitions.
- Sec. 5. Severability.

TITLE I—BORDER SECURITY AND ENFORCEMENT

Sec. 101. Sense of Congress.

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- Sec. 112. Increase in number of Customs and Border Protection Officers.
- Sec. 113. Improving ports of entry for border security and other purposes.
- Sec. 114. Inventory of personnel.
- Sec. 115. Standards of professional conduct.
- Sec. 116. Inventory of assets.
- Sec. 117. Customs border patrol and border protection assets.
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- Sec. 121. Surveillance technologies programs.
- Sec. 122. Border security searches of electronic devices.
- Sec. 123. Border relief grant program.
- Sec. 124. Northern and Southern border drug prosecution initiative.
- Sec. 125. Operation Streamline prosecution initiative.

- Sec. 126. Project Gunrunner.
- Sec. 127. Operation Armas Cruzadas.
- Sec. 128. Combating human smuggling.
- Sec. 129. Report on deaths and strategy study.
- Sec. 130. United States-Mexico Border Enforcement Commission.
- Sec. 131. Prohibition on military involvement in nonemergency border enforcement.
- Sec. 132. Definitions.
- Sec. 133. Border protection strategy.
- Sec. 134. Actions to further secure operational control of the international land borders of the United States.
- Sec. 135. Borderlands monitoring and mitigation.
- Sec. 136. Border Communities Liaison Office.
- Sec. 137. Office of Civil Rights and Civil Liberties and Office of Inspector General.
- Sec. 138. Improving ports of entry for border security and other purposes.
- Sec. 139. Ports of entry.
- Sec. 140. Ports of entry infrastructure and operations assessment study.
- Sec. 141. National Land Border Ports of Entry Security Plan.
- Sec. 142. Ports of entry technology demonstration program.
- Sec. 143. Reports on improving the exchange of information on North American security.
- Sec. 144. Southern Border Security Task Force.
- Sec. 145. Cooperation with the Government of Mexico.
- Sec. 146. Enhanced international cooperation.
- Sec. 147. Expansion of commerce security programs.
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Subtitle B—Detention

- Sec. 151. Definitions.
- Sec. 152. Detention conditions.
- Sec. 153. Specific detention requirements for short-term detention facilities.
- Sec. 154. Rulemaking and enforcement.
- Sec. 155. Immigration Detention Commission.
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- Sec. 157. Protection of community-based organizations, faith-based organizations and other institutions.
- Sec. 158. Apprehension procedures for immigration-related enforcement activities.
- Sec. 159. Protections against unlawful detentions of United States citizens.
- Sec. 160. Basic protections for vulnerable populations.
- Sec. 161. Report on protections for vulnerable populations impacted by immigration enforcement activities.
- Sec. 162. Family Detention and Unity Protections.
- Sec. 163. Apprehension procedures for families and parents.
- Sec. 164. Child welfare services for children separated from parents detained or removed from the United States for immigration violations.
- Sec. 165. Vulnerable population and child welfare training for immigration enforcement officers.
- Sec. 166. Access for parents, legal guardians, and, primary caregiver relatives.
- Sec. 167. Enhanced protections for vulnerable unaccompanied alien children and female detainees.
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- Sec. 407. Employer protections.
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- Sec. 410. Correction of Social Security records.
- Sec. 411. Restoration of State option to determine residency for purposes of higher education benefits.
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- Sec. 436. Administrative and judicial review.
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SUBCHAPTER B—CORRECTION OF SOCIAL SECURITY RECORDS

- Sec. 441. Correction of Social Security records.

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- Sec. 451. Amendments to the Immigration and Nationality Act.

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- Sec. 461. Determination and use of user fees.
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- Sec. 463. Reports to Congress.
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CHAPTER 1—IMMIGRATION AND LABOR MARKETS

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- Sec. 511. Protections for workers recruited abroad.

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- Sec. 521. Technical correction.

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- Sec. 531. Modification of application requirements.
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- Sec. 541. General modification of procedures for investigation and disposition.
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- Sec. 561. Prohibition on outplacement of L-1 nonimmigrants.
- Sec. 562. L-1 employer petition requirements for employment at new offices.
- Sec. 563. Cooperation with Secretary of State.
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- Sec. 565. Wage rate and working conditions for L-1 nonimmigrant.
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- Sec. 567. Prohibition on retaliation against L-1 nonimmigrants.
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- Sec. 581. Enforcement of federal labor laws relating to H-2B nonagricultural
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- Sec. 583. Prevailing wages for United States workers and H-2B workers.
- Sec. 584. Certification requirement.
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CHAPTER 4—ADJUSTMENTS TO THE EB-5 VISA PROGRAM

- Sec. 591. Permanent reauthorization of EB-5 regional center program; application fee.
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- Sec. 594. Improved set-aside for targeted employment areas.
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- Sec. 599. Eligibility for adjustment of status.
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- Sec. 599B. Application.

TITLE VI—INTEGRATION OF NEW AMERICANS

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- Sec. 601. Immigration service fees.
- Sec. 602. Administration of tests for naturalization; fulfillment by elderly persons of requirement for naturalization relating to knowledge of english language.
- Sec. 603. Voluntary electronic filing of applications.
- Sec. 604. Timely background checks.
- Sec. 605. National citizenship promotion program.
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- Sec. 611. Grants to support public education and community training.
- Sec. 612. Grant program to assist applicants for naturalization.
- Sec. 613. Naturalization for certain U.S. high school graduates.
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- Sec. 616. Credits for teachers of English language learners.
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- Sec. 618. Grants to States to form New American Councils.
- Sec. 619. Independence Day Ceremonies for oaths of allegiance.

1 SEC. 2. FINDINGS.

2 Congress makes the following findings:

1 (1) Federal immigration laws must uphold
2 America's long history of being a Nation of immi-
3 grants from every continent in the world, and reaf-
4 firm our Nation's commitment to strong and united
5 families, civil rights, economic opportunity and di-
6 versity.

7 (2) The Government of the United States
8 should reduce the deficit by ensuring that all individ-
9 uals and employers pay their fair share of taxes and
10 contribute equally to the prosperity of our great Na-
11 tion.

12 (3) The Government of the United States has
13 an obligation to ensure the labor rights of all work-
14 ers in our country, and end the driving down of
15 wages and workplace standards that exists today due
16 to our broken immigration system. Unscrupulous
17 employers should not be able to profit off of the
18 backs of a workforce with no voice in the workplace
19 or civic society.

20 (4) The Government of the United States also
21 has an obligation to ensure the growth and vitality
22 of honest American businesses that are playing by
23 the rules and fueling our economic recovery.

24 (5) The labor and immigration policies of the
25 United States Government should be modernized to

1 reflect the current needs of American workers and
2 the American economy.

3 (6) The Government of the United States can-
4 not effectively carry out its national security policies
5 unless it requires undocumented immigrants to come
6 forward and participate fully in our communities
7 and legally in the economy of the United States, so
8 that enforcement efforts are concentrated on the
9 truly bad actors.

10 (7) Elimination of America's immigrant work-
11 force is not an effective or honest solution to Amer-
12 icas economic crisis. We need a solution that levels
13 the playing field and promotes equal rights for all.

14 (8) Dividing American families in not a moral
15 or just solution to the broken immigration system.
16 We need policies that treat all families equally and
17 keep them together, to support each other and build
18 strong communities.

19 (9) Flawed immigration laws and persistent un-
20 equal administration of justice at the local level,
21 based on race or national origin, has undermined ef-
22 fective community policing by discouraging the re-
23 porting of crime and cooperation with prosecutors in
24 immigrant communities, due to well-founded fears of
25 immigration enforcement action against them. This

1 puts entire communities at risk and undermines
2 public safety for all.

3 (10) The Government of the United States
4 should ensure that racial profiling and unequal ad-
5 ministration of the law based on race or national ori-
6 gin is not permitted by any agency of Federal, State
7 or local government bodies.

8 (11) Our Government should ensure that our
9 Nation's borders are secure by investing in effective
10 strategies, eliminating the millions of dollars cur-
11 rently being allocated to ineffective ones, and by re-
12 quiring consultation with state and local commu-
13 nities on both the northern and southern borders be-
14 fore implementing new border enforcement strate-
15 gies.

16 (12) Foreign governments, particularly those
17 that share an international border with the United
18 States, must play a critical role in securing inter-
19 national borders and deterring illegal entry of for-
20 eign nationals into the United States.

21 (13) The Government of the United States has
22 an obligation to reaffirm its commitment to effective
23 immigrant integration by supporting the teaching
24 and promoting the learning of English.

1 (14) Comprehensive immigration reform and
2 strong enforcement of immigration laws will encour-
3 age legal immigration, deter illegal immigration, and
4 promote the economic and national security interests
5 of the United States.

6 **SEC. 3. REFERENCE TO THE IMMIGRATION AND NATION-**
7 **ALITY ACT.**

8 Except as otherwise expressly provided, whenever in
9 this Act an amendment or repeal is expressed in terms
10 of an amendment to, or repeal of, a section or other provi-
11 sion, the reference shall be considered to be made to a
12 section or other provision of the Immigration and Nation-
13 ality Act (8 U.S.C. 1101 et seq.).

14 **SEC. 4. DEFINITIONS.**

15 In this Act:

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

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

22 **SEC. 5. SEVERABILITY.**

23 If any provision of this Act, any amendment made
24 by this Act, or the application of such provision or amend-
25 ment to any person or circumstance is held to be invalid

1 for any reason, the remainder of this Act, the amendments
2 made by this Act, and the application of the provisions
3 of such to any other person or circumstance shall not be
4 affected by such holding.

5 **TITLE I—BORDER SECURITY**
6 **AND ENFORCEMENT**

7 **SEC. 101. SENSE OF CONGRESS.**

8 It is the sense of Congress that—

9 (1) the Secretary of Homeland Security should
10 establish a national strategic plan for short-term and
11 long-term border security with improved account-
12 ability and transparency in agency functions;

13 (2) the Secretary's border security priorities
14 must support and strengthen the significant ad-
15 vances in operational control of the border;

16 (3) the Secretary must secure our Nation's
17 ports of entry and facilitate the flow of commerce
18 and travel;

19 (4) the ports of entry to the United States re-
20 quire additional assets, personnel, infrastructure and
21 improvements in technology;

22 (5) although states along the Southern and
23 Northern borders play a unique role in supporting
24 the Federal Government, border security and en-

1 enforcement of the immigration laws are the responsi-
2 bility of the Federal Government;

3 (6) combating human smuggling, arms traf-
4 ficking and drug trafficking are essential to border
5 security;

6 (7) protecting the economic and civic vitality of
7 the border region is central to border security; and

8 (8) effective border security depends on sus-
9 tained international cooperation.

10 **Subtitle A—Border Security**

11 **SEC. 111. NATIONAL STRATEGY FOR BORDER SECURITY.**

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

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

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

1 (2) 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, un-
7 lawful 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 (3) An assessment of the most appropriate,
13 practical, and cost-effective means of defending the
14 international land and maritime borders of the
15 United States against threats to security and illegal
16 transit, including intelligence capacities, technology,
17 equipment, personnel, and training needed to ad-
18 dress security vulnerabilities to include—

19 (A) a comprehensive assessment of risks in
20 terms of cost, probability, and threats to society
21 and risk prevention and response measures cur-
22 rently taken and potentially taken relative to
23 that assessment of risks;

1 (B) prevention efforts and response meas-
2 ures to address such risks, whether already un-
3 derway or planned;

4 (C) recommendations on realignment of
5 programs, locations, and resources to best ad-
6 dress the comprehensive assessment of risks.

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

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

19 (6) An assessment of existing programs, activi-
20 ties and technologies used for border security and
21 the effect of the use of such efforts and technologies
22 on civil rights, family unity, private property rights,
23 privacy rights, and civil liberties, including an as-
24 sessment of efforts to take into account asylum seek-

1 ers, trafficking victims, unaccompanied minor aliens,
2 and other vulnerable populations.

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

7 (8) A description of ways to ensure that the
8 free flow of legitimate travel and commerce is not di-
9 minished by efforts, activities, and programs aimed
10 at securing the international land and maritime bor-
11 ders of the United States.

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

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

22 (c) CONSULTATION.—In developing the National
23 Strategy for Border Security, the Secretary shall consult
24 with representatives of—

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

4 (2) appropriate private sector entities, non-
5 governmental organizations, and affected commu-
6 nities that have expertise in areas related to border
7 management.

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

13 (e) SUBMISSION TO CONGRESS.—

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

18 (2) UPDATES.—The Secretary shall submit to
19 Congress any change of such Strategy that the Sec-
20 retary determines is necessary, not later than 30
21 days after such determination.

22 (f) IMMEDIATE ACTION.—Nothing in this section
23 may be construed to relieve the Secretary of the responsi-
24 bility to take all actions necessary and appropriate to

1 maintain and enhance operational control of the inter-
2 national land and maritime borders of the United States.

3 **SEC. 112. INCREASE IN NUMBER OF CUSTOMS AND BORDER**
4 **PROTECTION OFFICERS.**

5 (a) CUSTOMS AND BORDER PROTECTION OFFI-
6 CERS.—During the 5-year period between fiscal years
7 2010 and 2014, the Secretary of Homeland Security shall,
8 subject to the availability of appropriations for such pur-
9 pose, increase by not fewer than 5,000 the total number
10 of full-time, active-duty Customs and Border Protection
11 Officers within United States Customs and Border Protec-
12 tion for posting at United States ports of entry above the
13 number of such officers for which funds were made avail-
14 able during fiscal year 2009.

15 (b) AGRICULTURE SPECIALISTS.—During the 5-year
16 period between fiscal years 2010 and 2014, the Secretary
17 of Homeland Security shall, subject to the availability of
18 appropriations for such border security purposes, increase
19 by not fewer than a total of 1,200 the number of full-
20 time Customs and Border Protection agriculture special-
21 ists for United States ports of entry above the number
22 of such support personnel for which funds were made
23 available during fiscal year 2009.

24 (c) BORDER SECURITY SUPPORT PERSONNEL.—
25 During the 5-year period between fiscal years 2010 and

1 2014, the Secretary of Homeland Security shall, subject
2 to the availability of appropriations for such purpose, in-
3 crease by not fewer than a total of 350 the number of
4 full-time border security support personnel for United
5 States ports of entry above the number of such support
6 personnel for which funds were made available during fis-
7 cal year 2009.

8 **SEC. 113. IMPROVING PORTS OF ENTRY FOR BORDER SECU-**
9 **RITY AND OTHER PURPOSES.**

10 (a) IN GENERAL.—There are authorized to be appro-
11 priated to the Administrator of the General Services Ad-
12 ministration \$1,000,000,000 for each of fiscal years 2010
13 through 2014 to make improvements to existing ports of
14 entry in the United States to improve border security and
15 for other purposes.

16 (b) PRIORITY.—In making improvements described
17 in subsection (a), the Administrator of the General Serv-
18 ices Administration, in coordination with the Commis-
19 sioner of Customs and Border Protection, shall give pri-
20 ority to the ports of entry that the Administrator deter-
21 mines are in most need of repair to improve border secu-
22 rity and for other purposes in accordance with port of
23 entry infrastructure assessment studies required in section
24 603 of title VI, division E, of the Consolidated Appropria-
25 tions Act of 2008 (Public Law 101–161).

1 **SEC. 114. INVENTORY OF PERSONNEL.**

2 (a) INVENTORY.—The Secretary shall identify and
3 inventory the current personnel or other human resources
4 dedicated to border security and enforcement prior to any
5 increase in personnel or other human resources.

6 (b) REPORT.—The Secretary shall submit the inven-
7 tory required in subsection (a) to the following congres-
8 sional committees, 90 days after the enactment of this
9 Act—

10 (1) the Committee on Homeland Security and
11 Governmental Affairs and the Committee on the Ju-
12 diciary of the Senate;

13 (2) the Committee on Homeland Security and
14 the Committee on the Judiciary of the House of
15 Representatives; and

16 (3) the Committee on Oversight and Govern-
17 ment Reform of the House of Representatives.

18 **SEC. 115. STANDARDS OF PROFESSIONAL CONDUCT.**

19 (a) ESTABLISHMENT OF STANDARDS.—Not more
20 than 90 days after the date of enactment of this Act, the
21 Secretary of Homeland Security shall establish clear
22 standards of professional conduct for interaction with the
23 public, for all Customs and Border Protection agents, U.S.
24 Border Patrol agents, Immigration and Customs Enforce-
25 ment agents, and Agricultural Inspectors stationed within

1 100 miles of all land and marine borders and at ports of
2 entry.

3 (b) PURPOSE.—These standards of professional con-
4 duct will provide agents with a better understanding of
5 the prohibitions and limitations pertaining to their con-
6 duct and activities while representing the Department of
7 Homeland Security. These standards are intended to—

8 (1) alert agents to some of the more sensitive
9 and often problematic matters involved in agent con-
10 duct;

11 (2) specify, where possible, actions and inac-
12 tions that are contrary to and that conflict with the
13 duties and responsibilities of Department of Home-
14 land security agents; and

15 (3) guide agents in conducting themselves in a
16 manner that reflects standards of deportment and
17 professionalism.

18 (c) STANDARDS.—Department of Homeland Security
19 agents stationed within 100 miles of all land and marine
20 borders and at ports of entry—

21 (1) shall not violate any law or any agency pol-
22 icy, rule, or procedure;

23 (2) shall obey all lawful orders;

24 (3) shall not engage in any conduct or activities
25 on- or off-duty that reflect discredit on the agents,

1 tend to bring the agency into disrepute, or impair its
2 efficient and effective operation;

3 (4) shall conduct themselves toward the public
4 in a civil and professional manner that connotes a
5 service orientation and that will foster public respect
6 and cooperation;

7 (5) shall treat violators, or perceived violators,
8 with respect and courtesy, guard against employing
9 an officious or overbearing attitude or language that
10 may belittle, ridicule, or intimidate the individual, or
11 act in a manner that unnecessarily delays the per-
12 formance of their duty;

13 (6) while recognizing the need to demonstrate
14 authority and control over suspects and detainees,
15 agents shall adhere to this agency's use-of-force pol-
16 icy and shall observe the civil rights and protect the
17 well-being of those in their charge; and

18 (7) shall not use their agency powers to resolve
19 personal grievances (e.g., those involving the officer,
20 family members, relatives, or friends) with individ-
21 uals. In cases where there is personal involvement
22 with a member of the public that would reasonably
23 require law enforcement intervention, agents shall
24 summon other on-duty personnel and a supervisor.

1 (d) OVERSIGHT AND EVALUATION.—The Depart-
2 ment of Homeland Security shall develop and implement
3 a plan that applies the aforementioned standards in officer
4 evaluation and supervisor evaluation. This plan shall in-
5 clude the following provisions to ensure responsibility and
6 protect civil rights:

7 (1) Adherence to the standards of professional
8 conduct shall be a central criterion in the change
9 from probationary to journeyman status, as well as
10 periodic evaluations and promotions of officers.

11 (2) Managers and senior officers will be held re-
12 sponsible for—

13 (A) performance according to these stand-
14 ards;

15 (B) assessments of subordinates according
16 to these standards; and

17 (C) performance of their subordinates on
18 these standards, with meaningful penalties to
19 supervisors for failures of subordinates to ad-
20 here to such standards.

21 (3) The Department shall establish strong pen-
22 alties for failures to follow the standards of profes-
23 sional conduct that were unaddressed until exposed
24 by complaint processes or Inspector General inves-
25 tigations. However, organizational peers and superi-

1 ors who uncover and act on failures or abuses shall
2 be exempt from such penalties.

3 (4) Agents should not be indemnified when it is
4 determined that a violation of civil rights standards
5 occurred.

6 (e) EXCEPTION.—The standards of conduct set forth
7 in this section are not intended to serve as an exhaustive
8 treatment of requirements, limitations, or prohibitions on
9 agent conduct and activities established by the Secretary
10 of Homeland Security.

11 (f) NOTICE.—The standards of conduct established
12 under this section shall be posted at all ports of entry in
13 locations easily viewed by members of the public.

14 (g) COMPLAINTS.—Not more than 180 days after en-
15 actment, the Secretary shall, in consultation with the Of-
16 fice of Civil Rights and Civil Liberties, establish a uniform
17 and standardized process for the public regarding com-
18 plaints against all Customs and Border Protection agents,
19 U.S. Border Patrol agents, and Agricultural Inspectors for
20 violations of standards of professional conduct. The com-
21 plaint process shall—

22 (1) quickly review, effectively investigate, mean-
23 ingfully resolve complaints and identify patterns of
24 abuse or malfeasance and be accessible, transparent,
25 consistent, effective, and fair;

1 (2) apply uniformly to all Border Patrol Sectors
2 and Ports of Entry;

3 (3) specify to whom, how, and where complaints
4 are to be filed;

5 (4) be visible to the public at all ports of entry
6 and interior checkpoints, and be accessible in mul-
7 tiple languages;

8 (5) receive staff and funding commensurate
9 with the quantity of complaints submitted and with
10 the funding disbursed to Department enforcement
11 initiatives;

12 (6) establish a publicly accessible national,
13 standardized database capable of tracking and ana-
14 lyzing complaints and their resolution; and

15 (7) provide publicly accessible records, with cop-
16 ies of complaints and their resolutions permanently
17 preserved and available for inspection, while main-
18 taining the confidentiality of complainants' identi-
19 ties.

20 (h) COMPLAINANTS.—The following shall apply to all
21 complainants:

22 (1) Any interested party may file a complaint
23 through the complaint procedure, including a legal
24 representative.

1 (2) Complainants shall be protected from retal-
2 iatory action by law enforcement.

3 (3) No officer of the US may use the informa-
4 tion from a complaint to initiate removal pro-
5 ceedings or removals against any person filing a
6 complaint or identified in the complaint, nor remove
7 any individual involved in a complaint while the com-
8 plaint is pending.

9 (4) There shall be no publication of information
10 to related to an individual involved in a complaint
11 which would result in identification of the individual.

12 (5) Complainants shall receive full assistance
13 from the Department in filing complaints, including
14 language assistance, accommodations for disabilities,
15 and accurate and complete responses to their ques-
16 tions.

17 (i) REPORTING.—The Secretary shall report annually
18 to the following Congressional Committees on the number
19 and type of complaints received in each sector, demo-
20 graphic of complainants, results of investigations includ-
21 ing violations of standards and any disciplinary actions
22 taken, and identifying any complaint patterns that could
23 be prevented or reduced by policy or practice changes—

1 (1) the Committee on Homeland Security and
2 Governmental Affairs and the Committee on the Ju-
3 diciary of the Senate;

4 (2) the Committee on Homeland Security and
5 the Committee on the Judiciary of the House of
6 Representatives; and

7 (3) the Committee on Oversight and Govern-
8 ment Reform of the House of Representatives.

9 **SEC. 116. INVENTORY OF ASSETS.**

10 (a) INVENTORY.—The Secretary shall identify and
11 inventory the current assets, equipment, supplies, or other
12 physical resources dedicated to border security and en-
13 forcement prior to any increase in assets, equipment, sup-
14 plies or other physical resources.

15 (b) REPORT.—The Secretary shall submit the inven-
16 tory required in subsection (a) to the following congres-
17 sional committees, 90 days from the enactment of this
18 Act—

19 (1) the Committee on Homeland Security and
20 Governmental Affairs and the Committee on the Ju-
21 diciary of the Senate;

22 (2) the Committee on Homeland Security and
23 the Committee on the Judiciary of the House of
24 Representatives; and

1 (3) the Committee on Oversight and Govern-
2 ment Reform of the House of Representatives.

3 **SEC. 117. CUSTOMS BORDER PATROL AND BORDER PRO-**
4 **TECTION ASSETS.**

5 (a) PERSONAL EQUIPMENT.—

6 (1) BODY ARMOR.—The Secretary shall ensure
7 that every agent is issued high-quality body armor
8 that is appropriate for the climate and risks faced
9 by the agent. Each agent shall be permitted to select
10 from among a variety of approved brands and styles.
11 Agents shall be strongly encouraged, but not re-
12 quired, to wear such body armor whenever prac-
13 ticable. All body armor shall be replaced not less
14 often than once every five years.

15 (2) WEAPONS.—The Secretary shall ensure
16 that agents are equipped with weapons that are reli-
17 able and effective to protect themselves, their fellow
18 agents, and innocent third parties from the threats
19 posed by armed criminals. The Secretary shall en-
20 sure that the policies of the Department authorize
21 all agents to carry weapons that are suited to the
22 potential threats that they face.

23 (3) UNIFORMS.—The Secretary shall ensure
24 that all agents are provided with all necessary uni-
25 form items, including outerwear suited to the cli-

1 mate, footwear, belts, holsters, and personal protec-
2 tive equipment, at no cost to such agents. Such
3 items shall be replaced at no cost to such agents as
4 such items become worn or unserviceable or no
5 longer fit properly

6 (b) HELICOPTERS AND POWER BOATS.—

7 (1) HELICOPTERS.—The Secretary shall con-
8 duct a review of asset needs, and if determined to
9 be insufficient, shall increase the number of heli-
10 copters under the control of the Border Patrol. The
11 Secretary shall ensure that appropriate types of heli-
12 copters are procured for the various missions being
13 performed.

14 (2) POWER BOATS.—The Secretary shall con-
15 duct a review of asset needs and if determined to be
16 insufficient, shall increase the number of power
17 boats under the control of the Border Patrol. The
18 Secretary shall ensure that the types of power boats
19 that are procured are appropriate for both the wa-
20 terways in which they are used and the mission re-
21 quirements.

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 conduct a
6 review of asset needs and if determined to be insuffi-
7 cient, establish a fleet of motor vehicles appropriate
8 for use by the Border Patrol. The Secretary shall
9 ensure that there are sufficient numbers and types
10 of other motor vehicles to support the mission of the
11 Border Patrol.

12 (2) FEATURES.—All motor vehicles purchased
13 for the Border Patrol shall—

14 (A) be appropriate for the mission of the
15 Border Patrol; and

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

20 (d) ELECTRONIC EQUIPMENT.—

21 (1) PORTABLE COMPUTERS.—The Secretary
22 shall ensure that each police-type motor vehicle in
23 the fleet of the Border Patrol is equipped with a
24 portable computer with access to all necessary law
25 enforcement databases and otherwise suited to the

1 unique operational requirements of the Border Pa-
2 trol.

3 (2) RADIO EQUIPMENT.—The Secretary shall
4 augment the existing radio communications system
5 so that all law enforcement personnel working in
6 each area where Border Patrol operations are con-
7 ducted have clear and encrypted 2-way radio com-
8 munication capabilities at all times. Each portable
9 communications device shall be equipped with a
10 panic button and a global positioning system device
11 that is activated solely in emergency situations to
12 track the location of agents in distress.

13 (3) HANDHELD GLOBAL POSITIONING SYSTEM
14 DEVICES.—The Secretary shall ensure that each
15 Border Patrol agent who is determined by the Sec-
16 retary to need a handheld global positioning device
17 to effectively and safely carry out his or her duties
18 is issued a state-of-the-art handheld global posi-
19 tioning system device for navigational purposes.

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

1 (e) APPROPRIATIONS.—There are authorized to be
2 appropriated to the Secretary such sums as may be nec-
3 essary for each of fiscal years 2011 through 2015 to carry
4 out this section.

5 **SEC. 118. TECHNOLOGICAL ASSETS.**

6 (a) INCREASED AVAILABILITY OF EQUIPMENT.—The
7 Secretary and the Secretary of Defense shall analyze use
8 of authorities provided to the Secretary of Defense under
9 chapter 18 of title 10, United States Code, and whether
10 to increase the availability and use of Department of De-
11 fense equipment, including unmanned aerial vehicles, teth-
12 ered aerostat radars, and other surveillance equipment, to
13 assist the Secretary in carrying out surveillance activities
14 conducted at or near the international land borders of the
15 United States to deter criminal activity and terrorist
16 threats.

17 (b) REPORT.—Not later than 180 days after the date
18 of enactment of this Act, the Secretary and the Secretary
19 of Defense shall submit to Congress a report that contains

20 (1) an analysis of the current use of Depart-
21 ment of Defense equipment to assist the Secretary
22 in carrying out surveillance of the international land
23 borders of the United States and assessment of the
24 risks to citizens of the United States and foreign

1 policy interests associated with the use of such
2 equipment;

3 (2) an analysis of projected future use of De-
4 partment of Defense equipment to assist such sur-
5 veillance activities, including any increases;

6 (3) an analysis of the types of equipment and
7 other support to be provided by the Secretary of De-
8 fense under such plan during the one-year period be-
9 ginning on the date of the submission of the report;

10 (4) an analysis of costs and cost-effectiveness
11 related to any increase in the availability and use of
12 Department of Defense equipment; and

13 (5) an analysis of projected schedules for imple-
14 mentation.

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

20 (d) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated to the Secretary such
22 sums as may be necessary for each of fiscal years 2011
23 through 2015 to carry out this section.

1 **SEC. 119. 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. 120. SURVEILLANCE PLAN.**

17 (a) REQUIREMENT FOR PLAN.—The Secretary shall
18 develop a comprehensive plan for the systematic surveil-
19 lance of the international land and maritime borders of
20 the United States.

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

23 (1) An assessment of existing technologies em-
24 ployed on the international land and maritime bor-
25 ders of the United States.

1 (2) A description of the compatibility of new
2 surveillance technologies with surveillance tech-
3 nologies in use by the Secretary on the date of en-
4 actment of this Act.

5 (3) A description of how the Commissioner of
6 the United States Customs and Border Protection is
7 working, or is expected to work, with the Under Sec-
8 retary for Science and Technology of the Depart-
9 ment to identify and test surveillance technology.

10 (4) A description of the specific surveillance
11 technology to be deployed.

12 (5) Identification of any obstacles that may im-
13 pede such deployment.

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

17 (7) A description of how the Secretary is work-
18 ing with the Administrator of the Federal Aviation
19 Administration on safety and airspace control issues
20 associated with the use of unmanned aerial vehicles.

21 (8) A description of the demonstration program
22 to fully integrate and utilize aerial surveillance tech-
23 nologies developed pursuant to section 121(a).

1 (9) A description of the Integrated and Auto-
2 mated Surveillance demonstration program estab-
3 lished pursuant to section 121(b).

4 (c) SUBMISSION TO CONGRESS.—Not later than 180
5 days after the date of enactment of this Act, the Secretary
6 shall submit to Congress the plan required by this section.

7 **SEC. 121. SURVEILLANCE TECHNOLOGIES PROGRAMS.**

8 (a) AERIAL SURVEILLANCE DEMONSTRATION PRO-
9 GRAM.—

10 (1) IN GENERAL.—In conjunction with the bor-
11 der surveillance plan developed under section 5201
12 of the Intelligence Reform and Terrorism Prevention
13 Act of 2004 (Public Law 108–458; 8 U.S.C. 1701
14 note), the Secretary, not later than 90 days after the
15 date of enactment of this Act, shall develop a dem-
16 onstration program to fully integrate and utilize aer-
17 ial surveillance technologies, including unmanned
18 aerial vehicles, to enhance the security of the inter-
19 national border between the United States and Can-
20 ada and the international border between the United
21 States and Mexico.

22 (2) ASSESSMENT AND CONSULTATION REQUIRE-
23 MENTS.—In developing the program under this sub-
24 section, the Secretary shall—

1 (A) consider current and proposed aerial
2 surveillance technologies;

3 (B) assess the feasibility and advisability
4 of utilizing such technologies to address border
5 threats, including an assessment of the tech-
6 nologies considered best suited to address re-
7 spective threats, cost-effectiveness, reliability,
8 and minimal impact on border residential areas;

9 (C) consult with the Secretary of Defense
10 regarding any technologies or equipment, which
11 the Secretary may deploy along an international
12 border of the United States;

13 (D) consult with the Administrator of the
14 Federal Aviation Administration regarding safe-
15 ty, airspace coordination and regulation, and
16 any other issues necessary for implementation
17 of the program; and

18 (E) conduct a privacy impact assessment
19 with the Officer for Civil Rights and Civil Lib-
20 erties with the Department that includes rec-
21 ommendations with respect to ensuring the civil
22 liberties and civil rights of individuals in sur-
23 rounding communities.

24 (3) ADDITIONAL REQUIREMENTS.—

1 (A) IN GENERAL.—The demonstration pro-
2 gram developed under this subsection may in-
3 clude the use of a variety of aerial surveillance
4 technologies in a variety of topographies and
5 areas, including populated and unpopulated
6 areas located on or near an international border
7 of the United States, in order to evaluate, for
8 a range of circumstances—

9 (i) the significance of previous experi-
10 ences with such technologies in border se-
11 curity or critical infrastructure protection;

12 (ii) the cost and effectiveness of var-
13 ious technologies for border security, in-
14 cluding varying levels of technical com-
15 plexity; and

16 (iii) liability, safety, and privacy con-
17 cerns relating to the utilization of such
18 technologies for border security.

19 (4) CONTINUED USE OF AERIAL SURVEILLANCE
20 TECHNOLOGIES.—The Secretary may continue the
21 operation of aerial surveillance technologies while de-
22 veloping the demonstration program and assessing
23 the effectiveness of the utilization of such tech-
24 nologies.

1 (5) REPORT TO CONGRESS.—Not later than
2 180 days after developing the demonstration pro-
3 gram under this subsection, the Secretary shall sub-
4 mit to Congress a report regarding such program.
5 The Secretary shall include in the report a descrip-
6 tion of such program together with any rec-
7 ommendations that the Secretary finds appropriate
8 for implementing or terminating the program.

9 (b) INTEGRATED AND AUTOMATED SURVEILLANCE
10 DEMONSTRATION PROGRAM.—

11 (1) REQUIREMENT FOR PROGRAM.—Subject to
12 the availability of appropriations, the Secretary shall
13 establish a demonstration program to procure addi-
14 tional unmanned aerial vehicles, cameras, poles, sen-
15 sors, satellites, radar coverage, and other tech-
16 nologies necessary to enhance operational control of
17 the international borders of the United States. Such
18 program shall be known as the Integrated and Auto-
19 mated Surveillance Demonstration Program.

20 (2) PROGRAM COMPONENTS.—The Secretary
21 shall ensure, to the maximum extent feasible, that—

22 (A) the technologies utilized in the Inte-
23 grated and Automated Surveillance Demonstra-
24 tion Program are integrated and function cohe-
25 sively in an automated fashion, including the

1 integration of motion sensor alerts and cameras
2 in a manner where a sensor alert automatically
3 activates a corresponding camera to pan and
4 tilt in the direction of the triggered sensor;

5 (B) cameras utilized in the Program do
6 not have to be manually operated;

7 (C) such camera views and positions are
8 not fixed;

9 (D) surveillance video taken by such cam-
10 eras is able to be viewed at multiple designated
11 communications centers;

12 (E) a standard process is used to collect,
13 catalog, and report intrusion and response data
14 collected under the Program;

15 (F) future remote surveillance technology
16 investments and upgrades for the Program can
17 be integrated with existing systems;

18 (G) performance measures are developed
19 and applied that can evaluate whether the Pro-
20 gram is providing desired results and increasing
21 response effectiveness in monitoring and detect-
22 ing illegal intrusions along the international
23 borders of the United States;

24 (H) plans are developed under the Pro-
25 gram to streamline site selection, site valida-

tion, and environmental assessment processes to minimize delays of installing surveillance technology infrastructure;

(I) standards are developed under the Program to expand the shared use of existing private and governmental structures to install remote surveillance technology infrastructure where possible; and

(J) standards are developed under the Program to identify and deploy the use of non-permanent or mobile surveillance platforms that will increase the Secretary's mobility and ability to identify illegal border intrusions.

(3) REPORT TO CONGRESS.—Not later than one year after the initial implementation of the Integrated and Automated Surveillance Demonstration Program, the Secretary shall submit to Congress a report regarding the Program. The Secretary shall include in the report a description of the Program together with any recommendation that the Secretary finds appropriate for enhancing or terminating the program.

(4) EVALUATION OF CONTRACTORS.—

(A) REQUIREMENT FOR STANDARDS.—The Secretary shall develop appropriate standards

1 to evaluate the performance of any contractor
2 providing goods or services to carry out the In-
3 tegrated and Automated Surveillance Dem-
4 onstration Program.

5 (B) REVIEW BY THE INSPECTOR GEN-
6 ERAL.—

7 (i) IN GENERAL.—The Inspector Gen-
8 eral of the Department shall review each
9 new contract related to the Program that
10 has a value of more than \$5,000,000 in a
11 timely manner, to determine whether such
12 contract fully complies with applicable cost
13 requirements, performance objectives, pro-
14 gram milestones, and schedules.

15 (ii) REPORTS.—The Inspector General
16 shall report the findings of each review
17 carried out under clause (i) to the Sec-
18 retary in a timely manner. Not later than
19 30 days after the date the Secretary re-
20 ceives a report of findings from the Inspec-
21 tor General, the Secretary shall submit to
22 the Committee on Homeland Security and
23 Governmental Affairs of the Senate and
24 the Committee on Homeland Security of
25 the House of Representatives a report of

1 such findings and a description of any the
2 steps that the Secretary has taken or plans
3 to take in response to such findings.

4 (5) AUTHORIZATION OF APPROPRIATIONS.—

5 There are authorized to be appropriated such sums
6 as may be necessary to carry out this section.

7 **SEC. 122. BORDER SECURITY SEARCHES OF ELECTRONIC**
8 **DEVICES.**

9 (a) RULE.—Not later than 180 days after the date
10 of the enactment of this Act, the Secretary, acting through
11 the Commissioner of United States Customs and Border
12 Protection, in coordination with the Assistant Secretary
13 of Homeland Security for United States Immigration and
14 Customs Enforcement and the senior official appointed
15 pursuant to section 222 of the Homeland Security Act of
16 2002 (6 U.S.C. 142), shall issue a rule with respect to
17 the scope of and procedural and record keeping require-
18 ments associated with border security searches of elec-
19 tronic devices.

20 (b) CONTENT.—The rule issued pursuant to sub-
21 section (a) shall include the following:

22 (1) A requirement that information collected
23 during a border security search of an electronic de-
24 vice that is determined to be commercial informa-
25 tion, including trade secrets, information subject to

1 attorney-client privilege, information subject to doc-
2 tor-patient privilege, or information subject to an-
3 other privilege or protection shall be handled con-
4 sistent with the laws, rules, and regulations gov-
5 erning such information and shall not be shared
6 with a Federal, State, local, tribal, or foreign agency
7 unless it is determined that such agency has the
8 mechanisms in place to comply with such laws, rules,
9 and regulations.

10 (2) A requirement that authorized agents, to
11 the greatest extent practicable, conduct all border
12 security searches of electronic devices at a port of
13 entry in the presence of a supervisor and, where ap-
14 propriate, in the presence of the individuals whose
15 electronic devices are subject to such searches.

16 (3) A determination of the number of days that
17 an electronic device subjected to a border security
18 search or the information collected from such device
19 may be retained, unless probable cause exists, that
20 prohibits retention exceeding the period necessary to
21 translate, decrypt, or reasonably search such device
22 or information and that requires such information to
23 be destroyed if in the custody of an authorized agent
24 after such number of days.

1 (4) A requirement that if information collected
2 from an electronic device subjected to a border secu-
3 rity search is copied, shared, retained, or entered
4 into an electronic database, the individual from
5 whose electronic device such information is collected
6 shall receive written notification of such copying,
7 sharing, retention, or entry unless such notification
8 would hinder an investigation involving national se-
9 curity or would meet another criteria established by
10 the Secretary in the rule.

11 (5) A requirement that an individual subjected
12 to a border security search of an electronic device
13 shall receive a receipt for such device if such device
14 is removed from the possession of such individual.

15 (6) A requirement that an individual subjected
16 to a border security search of an electronic device
17 shall receive notice of how to report abuses or con-
18 cerns and how to seek redress from the Department
19 of Homeland Security.

20 (7) A requirement that information on the
21 rights of individuals with respect to border security
22 searches and Department of Homeland Security re-
23 dress procedures shall be posted at all ports of entry
24 in locations that are likely to be viewed by individ-
25 uals subject to border security searches.

1 (8) A privacy impact assessment of the rule, as
2 prepared by the senior official appointed pursuant to
3 section 222 of the Homeland Security Act of 2002,
4 that includes recommendations with respect to the
5 copying, sharing, retention, and entry into an elec-
6 tronic database of personally identifiable information
7 collected from electronic devices subjected to a bor-
8 der security search.

9 (9) A civil liberties impact assessment of the
10 rule, as prepared by the Officer for Civil Rights and
11 Civil Liberties of the Department of Homeland Se-
12 curity.

13 (c) TRAINING AND AUDITING WITH RESPECT TO
14 SEARCHES.—

15 (1) TRAINING.—The Secretary shall provide
16 each authorized agent with appropriate training to
17 conduct border security searches of electronic devices
18 at ports of entry in accordance with the rule issued
19 pursuant to subsection (a). The training shall in-
20 clude instruction on constitutional, privacy, civil
21 rights, and civil liberties issues related to such
22 searches.

23 (2) AUDITING.—The Secretary, acting through
24 the Inspector General of the Department of Home-
25 land Security, shall develop and annually administer

1 an auditing mechanism to review whether authorized
2 agents are conducting border security searches of
3 electronic devices at ports of entry in accordance
4 with the rule issued pursuant to subsection (a).

5 (d) REPORT.—Not later than 180 days after the ef-
6 fective date of the rule issued pursuant to subsection (a),
7 and quarterly thereafter, the Secretary shall submit to the
8 Committee on Homeland Security of the House of Rep-
9 resentatives and to the Committee on Homeland Security
10 and Governmental Affairs of the Senate a report that shall
11 include the following:

12 (1) A description of the activities of authorized
13 agents with respect to border security searches of
14 electronic devices at ports of entry.

15 (2) A description of the manner in which the
16 Department of Homeland Security has complied
17 with this Act.

18 (3) The number, by port of entry, of border se-
19 curity searches of electronic devices at ports of entry
20 conducted during the reporting period.

21 (4) The number, by port of entry, of instances
22 during the reporting period that information from
23 an electronic device subjected to a border security
24 search was retained, copied, shared, or entered in an
25 electronic database, including the number of elec-

1 tronic devices retained as the result of a border se-
2 curity search.

3 (5) The race, ethnicity, national origin, and citi-
4 zenship of each individual whose electronic device
5 was subjected to a border security at a port of entry
6 search during the reporting period, to determine the
7 existence or absence of racial profiling.

8 (6) The number of instances during the report-
9 ing period that information collected from an elec-
10 tronic device subjected to a border security search at
11 a port of entry was referred to a law enforcement or
12 intelligence agency for further action, including
13 whether such information resulted in a prosecution
14 or conviction.

15 (e) DEFINITIONS.—In this section, the following defi-
16 nitions apply:

17 (1) AUTHORIZED AGENT.—The term “author-
18 ized agent” means an agent, officer, or official of
19 United States Customs and Border Protection,
20 United States Immigration and Customs Enforce-
21 ment, or any other office or agency of the Depart-
22 ment of Homeland Security who is authorized to
23 conduct a border security search.

24 (2) BORDER SECURITY SEARCH.—The term
25 “border security search” means a search by an au-

1 thorized agent of persons, baggage, or cargo enter-
2 ing, departing, or passing through the United States
3 through any port of entry.

4 (3) **ELECTRONIC DEVICE.**—The term “elec-
5 tronic device” means an electronic, magnetic, opti-
6 cal, electrochemical, or other high-speed data proc-
7 essing device performing logical, arithmetic, or stor-
8 age functions, such as a computer, a cellular tele-
9 phone, or any other device used for electronic com-
10 munication or for storing electronic, digital or ana-
11 log data, and which includes any data storage facil-
12 ity or communications facility directly related to or
13 operating in conjunction with such device.

14 **SEC. 123. BORDER RELIEF GRANT PROGRAM.**

15 (a) **GRANTS AUTHORIZED.**—

16 (1) **IN GENERAL.**—The Attorney General is au-
17 thorized to award grants to—

18 (A) eligible law enforcement agencies, or a
19 coalition of such agencies, including sheriff’s of-
20 fices, police departments and tribal police de-
21 partments; and

22 (B) institutions of higher education that
23 provide assistance to law enforcement agencies
24 in counties described in subparagraph (A) or

1 (B) of subsection (d)(1) to provide the re-
2 sources described in subsection (b)(4).

3 (2) COMPETITIVE BASIS.—The Attorney Gen-
4 eral shall award grants under this section on a com-
5 petitive basis.

6 (3) PRIORITY.—In awarding grants for the uses
7 described in paragraphs (1) through (3) of sub-
8 section (b), the Attorney General shall give priority
9 to law enforcement agencies:

10 (A) located in a county that is within 100
11 miles from the United States border with Mex-
12 ico or Canada; and

13 (B) in compliance with Federal and State
14 racial profiling laws and guidelines.

15 (4) DURATION.—Grants awarded under this
16 section shall not exceed two years. Prior awardees
17 must reapply to be considered for continued funding.

18 (5) PROHIBITION.—The Attorney General shall
19 not award a grant to any applicant that is under in-
20 vestigation for violations of federal or state racial
21 profiling laws or guidelines.

22 (b) USE OF FUNDS.—Grants awarded under this sec-
23 tion may only be used to provide additional resources for
24 eligible law enforcement agencies to address drug-related
25 criminal activity, and for the training and assistance de-

1 scribed in paragraph (4) for organizations described in
2 subsection (a)(3), including resources to—

3 (1) combat criminal activities along the North-
4 ern and Southern border by—

5 (A) obtaining, upgrading, or maintain
6 equipment;

7 (B) hiring additional personnel;

8 (C) reimbursing operational expenditures,
9 including overtime and transportation costs;
10 and

11 (D) providing other assistance necessary to
12 address drug-related criminal activity;

13 (2) facilitate information sharing and collabora-
14 tion by—

15 (A) establishing, maintaining, or enhancing
16 multi-jurisdictional intelligence gathering and
17 sharing activities;

18 (B) facilitating regional crime prevention
19 and reduction efforts; and

20 (C) strengthening partnerships between
21 Federal, tribal, State, and local law enforce-
22 ment agencies;

23 (3) enhance jails, community corrections, and
24 detention operations by—

1 (A) improving the administration and oper-
2 ations of correction functions related to reduc-
3 ing and preventing criminal narcotics activity;

4 (B) improving access to intelligence and
5 collaboration between law enforcement and cor-
6 rectional system personnel;

7 (C) reducing the recidivism rates of drug
8 offenders; and

9 (D) hiring detention, probation, parole,
10 and other corrections personnel for implementa-
11 tion of the efforts described in this paragraph;
12 and

13 (4) provide training and technical assistance,
14 including training and assistance related to—

15 (A) narcotics-related kidnapping negotia-
16 tion and rescue tactics;

17 (B) intelligence and information sharing on
18 drug trafficking organizations; and

19 (C) the interdiction of narcotics, weapons,
20 and illegal drug proceeds.

21 (c) APPLICATION.—

22 (1) IN GENERAL.—Each eligible law enforce-
23 ment agency, or coalition of such agencies, seeking
24 a grant under this section shall submit an applica-
25 tion to the Attorney General at such time, in such

1 manner, and accompanied by such information as
2 the Attorney General may reasonably require.

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

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

7 (B) disclose whether the applicant has ever
8 been investigated for or convicted of violation of
9 Federal or State racial profiling laws or guide-
10 lines; and

11 (C) provide such additional assurances as
12 the Attorney General determines to be essential
13 to ensure compliance with the requirements
14 under this section.

15 (d) MONITORING AND OVERSIGHT.—

16 (1) Each grantee shall submit to the Attorney
17 General documentation of the use of grant funds, in-
18 cluding an assessment of their utility in protecting
19 border community safety, the prevention of smug-
20 gling activities, and the apprehension of persons in-
21 volved in violence and organized crime.

22 (2) These reports will determine whether the
23 grantee uses funds appropriately and should be con-
24 sidered for a renewal grant.

25 (e) DEFINITIONS.—In this section:

1 (1) ELIGIBLE LAW ENFORCEMENT AGENCY.—

2 The term “eligible law enforcement agency” means
3 a tribal, State, or local law enforcement agency, in-
4 cluding a community corrections agency and any
5 agency that employs prosecutors, probation officers,
6 or parole officers, which is located or performs du-
7 ties in—

8 (A) a county that is not more than 100
9 miles from a United States border with Mexico;

10 (B) a county that is not more than 100
11 miles from a United States border with Canada;
12 or

13 (C) a jurisdiction that has been designated
14 by the Director of the Office of Drug Control
15 Policy as a High Intensity Drug Trafficking
16 Area.

17 (2) HIGH INTENSITY DRUG TRAFFICKING
18 AREA.—The term “High Intensity Drug Trafficking
19 Area” means any jurisdiction designated as a “High
20 Intensity Drug Trafficking Area” by the National
21 Drug Control Program under section 707 of the Of-
22 fice of National Drug Control Policy Reauthorization
23 Act of 1998 (21 U.S.C. 1706).

24 (f) ASSESSMENT AND REPORT.—The Attorney Gen-
25 eral shall submit a bi-annual report assessing the success

1 of the program in combating and reducing drug-traf-
2 ficking and drug-related criminal activity, cost-effective-
3 ness of the program, and future value and viability of the
4 program to—

5 (1) the Committee on the Judiciary of the
6 House of Representatives; and

7 (2) the Committee on the Judiciary of the Sen-
8 ate.

9 (g) AUTHORIZATION OF APPROPRIATIONS.—

10 (1) IN GENERAL.—There are authorized to be
11 appropriated \$100,000,000 for each of the fiscal
12 years 2011 through 2015 to carry out the provisions
13 of this section.

14 (2) ALLOCATION OF AUTHORIZED FUNDS.—Of
15 the amounts appropriated pursuant to paragraph
16 (1)—

17 (A) not more than 33 percent may be set
18 aside for High Intensity Drug Trafficking
19 Areas; and

20 (B) not more than 30 percent may be used
21 for activities described in paragraphs (3) and
22 (4) of subsection (b).

23 (3) SUPPLEMENT NOT SUPPLANT.—Amounts
24 appropriated for grants pursuant to paragraph (1)
25 shall be used to supplement and not to supplant

1 other tribal, State, and local public funds obligated
2 for the purposes provided under this section.

3 **SEC. 124. NORTHERN AND SOUTHERN BORDER DRUG PROS-**
4 **ECUTION INITIATIVE.**

5 (a) REIMBURSEMENT TO STATE AND LOCAL PROS-
6 ECUTORS FOR PROSECUTING FEDERALLY INITIATED
7 DRUG CASES.—The Attorney General shall, subject to the
8 availability of appropriations, reimburse State and county
9 prosecutors located in States along the Northern or South-
10 ern border of the United States for prosecuting federally
11 initiated and referred drug cases.

12 (b) AUTHORIZATION OF APPROPRIATIONS.—There
13 are authorized to be appropriated such sums as necessary
14 for each of the fiscal years 2011 through 2015 to carry
15 out subsection (a).

16 **SEC. 125. OPERATION STREAMLINE PROSECUTION INITIA-**
17 **TIVE.**

18 (a) SUSPENSION OF OPERATION STREAMLINE.—The
19 Secretary shall suspend the program pending submission
20 of the report in subsection (b) to the relevant congres-
21 sional committees in subsection (c) and a revaluation of
22 the program's future viability.

23 (b) REPORTING REQUIREMENT.—Not later than 180
24 days after the date of the enactment of this Act, the Sec-
25 retary of Homeland Security, in coordination with the At-

1 torney General, shall submit a report to the relevant con-
2 gressional committees set forth in subsection (c) that pro-
3 vides details about—

4 (1) operational goals and oversight mechanisms
5 of “Operation Streamline” and similar programs;

6 (2) costs of seeking Federal court prosecution
7 and jail time for all illegal entrants prior to referral
8 to immigration court removal proceedings, as com-
9 pared to initial referral of such entrants to immigra-
10 tion courts upon apprehension;

11 (3) costs of detentions, prosecutions, and incar-
12 cerations for immigrant offenses under Operation
13 Streamline programs over the three years prior to
14 enactment of this Act;

15 (4) cost estimates for federal resources that
16 would be necessary to implement Operation Stream-
17 line effectively in each Border Patrol sector, includ-
18 ing sufficient judicial resources, Federal Public De-
19 fenders, U.S. Marshals, detention facilities, United
20 States Attorneys, and costs already being incurred
21 in active areas;

22 (5) the impact of Operation Streamline pro-
23 grams on federal prosecutorial initiatives focused on
24 curbing border violence, including enhanced use of
25 investigations and prosecutions for money laun-

1 dering or other financial offenses to disrupt the il-
2 licit firearms trade, human smuggling, and cross-
3 border drug and currency trafficking;

4 (6) the impact of Operation Streamline pro-
5 grams on discretionary prosecutorial decisions;

6 (7) the numbers of Federal prosecutions for
7 drug trafficking, human smuggling, white-collar,
8 civil rights, environmental, and other criminal cases
9 over the three years prior to enactment of this Act
10 in areas utilizing Operation Streamline initiatives;

11 (8) lengths of imprisonment, names, convic-
12 tions, and locations of prisons used for those ar-
13 rested under Operation Streamline programs over
14 the three years prior to enactment of this Act;

15 (9) Federal convictions obtained under Oper-
16 ation Streamline including number of non-violent
17 immigration offenses;

18 (10) comparison of rates of Federal prosecu-
19 tions and convictions in districts along the southern
20 border in relation to other districts nationwide; and

21 (11) interviews with criminal defense attorneys
22 who have represented defendants charged under Op-
23 eration Streamline, including review of the oppor-
24 tunity of arrestees to consult with immigration at-

1 torneys prior to conviction, and the ratio of defend-
2 ants to defense attorneys.

3 (c) RELEVANT CONGRESSIONAL COMMITTEES IN
4 THIS SECTION.—

5 (1) The Committee on Appropriations of the
6 Senate.

7 (2) The Committee on the Judiciary of the Sen-
8 ate.

9 (3) The Committee on Appropriations of the
10 House of Representatives.

11 (4) The Committee on the Judiciary of the
12 House of Representatives.

13 (5) The Committee on Homeland Security and
14 Governmental Affairs of the Senate.

15 (6) The Committee on Homeland Security of
16 the House of Representatives.

17 (d) RE-EVALUATION OF PROGRAM.—The Secretary
18 of Homeland Security, in coordination with the Attorney
19 General, shall have 180 additional days, after submission
20 of the report in subsection (b) to the relevant congres-
21 sional committees, to re-evaluate the future viability of the
22 program. At the end of the 180 day period, the Secretary
23 shall determine whether to continue or terminate the pro-
24 gram.

1 **SEC. 126. PROJECT GUNRUNNER.**

2 (a) IN GENERAL.—The Attorney General shall dedi-
3 cate and expand the resources provided for the Project
4 Gunrunner initiative of the Bureau of Alcohol, Tobacco,
5 Firearms, and Explosives to identify, investigate, and
6 prosecute individuals involved in the trafficking of fire-
7 arms across the international border between the United
8 States and Mexico.

9 (b) ACTIVITIES.—In carrying out this section, the At-
10 torney General shall

11 (1) assign additional agents of the Bureau of
12 Alcohol, Tobacco, Firearms, and Explosives to the
13 area of the United States adjacent to the inter-
14 national border between the United States and Mex-
15 ico to support the expansion of Project Gunrunner
16 teams;

17 (2) establish not fewer than one Project Gun-
18 runner team in each State along the international
19 border between the United States and Mexico; and

20 (3) coordinate with the heads of other relevant
21 Federal law enforcement agencies and State and
22 local law enforcement agencies to address firearms
23 trafficking in a comprehensive manner.

24 (c) ADDITIONAL STAFF.—The Attorney General may
25 hire Bureau of Alcohol, Tobacco, Firearms, and Explo-

1 sives agents for, and otherwise expend additional resources
2 needed to adequately support, Project Gunrunner.

3 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
4 authorized to be appropriated \$15,000,000 for each of fis-
5 cal years 2011 and 2015 to carry out this section.

6 **SEC. 127. OPERATION ARMAS CRUZADAS.**

7 (a) IN GENERAL.—In accordance with subsection (b),
8 the Secretary of Homeland Security shall dedicate and ex-
9 pand the resources provided for Operation Armas
10 Cruzadas of United States Immigration and Customs En-
11 forcement (ICE) to identify, investigate, and prosecute in-
12 dividuals involved in the trafficking and smuggling of fire-
13 arms across the international border between the United
14 States and Mexico.

15 (b) RESOURCES.—To achieve the goal described in
16 subsection (a), the Secretary of Homeland Security
17 shall—

18 (1) increase the number of ICE agents assigned
19 to Operation Armas Cruzadas over the number of
20 such agents who are so assigned as of the date of
21 the enactment of this section;

22 (2) increase the number of Border Enforcement
23 Security Task Force (BEST) teams stationed along
24 the border over the number of such teams so sta-

1 tioned as of the date of the enactment of this sec-
2 tion; and

3 (3) coordinate with the heads of other relevant
4 Federal, State, and local law enforcement agencies
5 to address firearms trafficking in a comprehensive
6 manner.

7 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
8 authorized to be appropriated \$15,000,000 for each of fis-
9 cal years 2011 and 2012 to carry out this section.

10 **SEC. 128. COMBATING HUMAN SMUGGLING.**

11 (a) REQUIREMENT FOR PLAN.—The Secretary shall
12 develop and implement a plan to improve coordination
13 among United States Immigration and Customs Enforce-
14 ment and United States Customs and Border Protection
15 and any other Federal, State, local, or tribal authorities,
16 as determined appropriate by the Secretary, to improve
17 coordination efforts to combat human smuggling.

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

20 (1) the interoperability of databases utilized to
21 prevent human smuggling;

22 (2) adequate and effective personnel training,
23 including methods to ascertain crime victims and
24 vulnerable populations as described in subtitle B of
25 this title;

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

3 (4) effective utilization of—

4 (A) visas for victims of trafficking and
5 other crimes; and

6 (B) investigatory techniques, equipment,
7 and procedures that prevent, detect, and pros-
8 ecute international money laundering and other
9 operations that are utilized in smuggling;

10 (5) joint measures, with the Secretary of State,
11 to enhance intelligence sharing and cooperation with
12 foreign governments whose citizens are preyed on by
13 human smugglers; and

14 (6) other measures that the Secretary considers
15 appropriate to combat human smuggling.

16 (c) REPORT.—Not later than one year after imple-
17 menting the plan described in subsection (a), the Sec-
18 retary shall submit to Congress a report on such plan, in-
19 cluding any recommendations for legislative action to im-
20 prove efforts to combating human smuggling.

21 **SEC. 129. REPORT ON DEATHS AND STRATEGY STUDY.**

22 (a) IN GENERAL.—The Commissioner of the United
23 States Customs and Border Protection shall do the fol-
24 lowing:

1 (1) COLLECTION OF STATISTICS.—Collect sta-
2 tistics relating to deaths occurring at the border be-
3 tween the United States and Mexico, including—

4 (A) the causes of the deaths; and

5 (B) the total number of deaths.

6 (2) PUBLICATION OF STATISTICS.—Publish the
7 statistics collected in paragraph (1) quarterly.

8 (3) REPORT.—Not later than 1 year after the
9 date of enactment of this Act, and annually there-
10 after, submit to the Secretary a report that—

11 (A) analyzes trends with respect to the sta-
12 tistics collected under subsection (a) during the
13 preceding year; and

14 (B) recommends actions to reduce and pre-
15 vent the deaths described in subsection (a).

16 (b) SOUTHWEST BORDER STRATEGY STUDY & ANAL-
17 YSIS.—The Secretary shall conduct a study of Southwest
18 Border Enforcement operations since 1994 and its rela-
19 tionship to death rates on the US-Mexico border.

20 (1) SUBSTANCE.—The study shall include—

21 (A) an analysis on the relationship of bor-
22 der enforcement and deaths on the border;

23 (B) an analysis of whether physical bar-
24 riers, technology, and enforcement programs
25 have contributed to the rate of migrant deaths;

1 (C) an analysis of the effectiveness of geo-
2 graphical terrain as a natural barrier for entry
3 into the United States in achieving Department
4 goals and its role in contributing to rates of mi-
5 grant deaths; and

6 (D) consultation with nongovernmental or-
7 ganizations and other community stakeholders
8 involved in recovering and identifying migrant
9 deaths; and

10 (E) an assessment of existing protocol re-
11 lated to reporting, tracking and inter-agency
12 communications between CBP and local first
13 responders and consular services.

14 (2) REPORT.—The studies shall be submitted
15 to—

16 (3) the United States-Mexico Border Enforce-
17 ment Commission as established in section 130;

18 (4) the Committee on Homeland Security and
19 Governmental Affairs and the Committee on the Ju-
20 diciary of the Senate;

21 (5) the Committee on Homeland Security and
22 the Committee on the Judiciary of the House of
23 Representatives; and

24 (6) the Committee on Oversight and Govern-
25 ment Reform of the House of Representatives.

1 (c) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated such sums as are nec-
3 essary to carry out this section.

4 **SEC. 130. UNITED STATES-MEXICO BORDER ENFORCEMENT**
5 **COMMISSION.**

6 (a) ESTABLISHMENT OF COMMISSION.—

7 (1) IN GENERAL.—There is established an inde-
8 pendent commission to be known as the Immigration
9 and United States-Mexico Border Enforcement
10 Commission (referred to in this section as the “Com-
11 mission”).

12 (2) PURPOSES.—The purposes of the Commis-
13 sion are—

14 (A) to study the overall enforcement strat-
15 egies, programs and policies of Federal agencies
16 along the United States-Mexico border, includ-
17 ing the Department of Homeland Security, Jus-
18 tice and other relevant agencies;

19 (B) to strengthen relations and collabora-
20 tion between communities in the border regions
21 and the Department of Homeland Security,
22 Justice and other Federal agencies that carry
23 out such strategies, programs and policies;

24 (C) to ensure the strategies, programs and
25 policies of Federal agencies along the United

1 States-Mexico border and the agents and em-
2 ployees charged to implement them protect the
3 due process and civil and human rights of all
4 individuals and communities at and near the
5 border; and

6 (D) to make recommendations to the
7 President and Congress with respect to such
8 strategies, programs, and policies.

9 (3) MEMBERSHIP.—The Commission shall be
10 composed of 16 voting members, who shall be ap-
11 pointed as follows:

12 (A) The Governors of the States of Cali-
13 fornia, New Mexico, Arizona, and Texas shall
14 each appoint 4 voting members of whom—

15 (i) 1 shall be a local elected official
16 from the State’s border region;

17 (ii) 1 shall be a local law enforcement
18 official from the State’s border region; and

19 (iii) 2 shall be from the State’s com-
20 munities of academia, religious leaders,
21 civic leaders or community leaders.

22 (B) 2 nonvoting members, of whom—

23 (i) 1 shall be appointed by the Sec-
24 retary; and

1 (ii) 1 shall be appointed by the Attor-
2 ney General.

3 (4) QUALIFICATIONS.—

4 (A) IN GENERAL.—Members of the Com-
5 mission shall be—

6 (i) individuals with expertise in migra-
7 tion, border enforcement and protection,
8 civil and human rights, community rela-
9 tions, cross-border trade and commerce or
10 other pertinent qualifications or experience;
11 and

12 (ii) representative of a broad cross
13 section of perspectives from the region
14 along the international border between the
15 United States and Mexico.

16 (B) POLITICAL AFFILIATION.—Not more
17 than 2 members of the Commission appointed
18 by each Governor under paragraph (3)(A) may
19 be members of the same political party.

20 (C) NONGOVERNMENTAL APPOINTEES.—
21 An individual appointed as a voting member to
22 the Commission may not be an officer or em-
23 ployee of the Federal Government.

24 (5) DEADLINE FOR APPOINTMENT.—All mem-
25 bers of the Commission shall be appointed not later

1 than 6 months after the enactment of this Act. If
2 any member of the Commission described in para-
3 graph (3)(A) is not appointed by such date, the
4 Commission shall carry out its duties under this sec-
5 tion without the participation of such member.

6 (6) TERM OF SERVICE.—The term of office for
7 members shall be for the life of the Commission, or
8 3 years, whichever is shorter.

9 (7) VACANCIES.—Any vacancy in the Commis-
10 sion shall not affect its powers, but shall be filled in
11 the same manner in which the original appointment
12 was made.

13 (8) MEETINGS.—

14 (A) INITIAL MEETING.—The Commission
15 shall meet and begin the operations of the Com-
16 mission as soon as practical.

17 (B) SUBSEQUENT MEETINGS.—After its
18 initial meeting, the Commission shall meet upon
19 the call of the chairman or a majority of its
20 members.

21 (C) OUTREACH.—The Commission shall
22 formulate and implement an effective outreach
23 strategy to border communities.

24 (9) QUORUM.—Nine members of the Commis-
25 sion shall constitute a quorum.

1 (10) CHAIR AND VICE CHAIR.—The voting
2 members of the Commission shall elect a Chairman
3 and Vice Chairman from among its members. The
4 term of office shall be for the life of the Commission
5 or by a vote of a minimum of quorum members of
6 the Commission.

7 (11) STRUCTURE.—The Review Commission
8 will have a Federal, regional and local review struc-
9 ture, and will be divided into two subcommittees—
10 one focused on border technology, equipment and in-
11 frastructure, and a second to focus on border and
12 immigration enforcement policies and programs.

13 (b) DUTIES.—The Commission shall review, examine,
14 and make recommendations regarding immigration and
15 border enforcement policies, strategies, and programs, in-
16 cluding recommendations regarding—

17 (1) the compliance of the Department of Home-
18 land Security and other immigration and border-re-
19 lated agencies with existing laws and regulations;

20 (2) the extent to which agency policies and
21 practices protect the civil rights of migrants and
22 border community residents, including but not lim-
23 ited to the contexts of engagement, detention, appre-
24 hension, use of force, definition and use of reason-

1 able suspicion and probable cause, and racial
2 profiling;

3 (3) the frequency, adequacy and effectiveness of
4 human and civil rights training of border enforce-
5 ment personnel and others from Federal agencies
6 who have contact with the public in the border re-
7 gions;

8 (4) the complaint process and the extent to
9 which the process is transparent and accessible to
10 the public, investigations are opened as necessary
11 and effectively pursued and complaints are resolved
12 in a timely and transparent manner;

13 (5) the effectiveness and capacity of agency
14 oversight, accountability, and management including
15 prevention and disciplinary policies involving use of
16 force, abuse, malfeasance, corruption and illegal ac-
17 tivity,

18 (6) the effect of operations, technology, and en-
19 forcement infrastructure along such border on the—

20 (A) environment;

21 (B) crossborder traffic and commerce;

22 (C) privacy rights and other civil liberties;

23 and

24 (D) the quality of life of border commu-
25 nities;

1 (7) the extent to which State and local law en-
2 forcement engage in the enforcement of Federal im-
3 migration law;

4 (8) the extent of compliance with due process
5 standards and equal protection of the law for immi-
6 grants and other individuals at and near the border;

7 (9) whether border policies and agencies are ac-
8 complishing their stated goals; and

9 (10) any other matters regarding immigration
10 and border enforcement policies, strategies, and pro-
11 grams the Commission determines appropriate.

12 (c) POWERS OF COMMISSION.—

13 (1) IN GENERAL.—

14 (A) HEARINGS AND EVIDENCE.—The
15 Commission or, on the authority of the Com-
16 mission, any subcommittee or member thereof,
17 may, for the purpose of carrying out this title—

18 (i) hold such hearings and sit and act
19 at such times and places, take such testi-
20 mony, receive such evidence, administer
21 such oaths; and

22 (ii) subject to paragraph (2)(A), re-
23 quire, by subpoena or otherwise, the at-
24 tendance and testimony of such witnesses
25 and the production of such books, records,

1 correspondence, memoranda, papers, and
2 documents, as the Commission or such
3 designated subcommittee or designated
4 member may determine advisable.

5 (B) SUBPOENAS.—

6 (i) ISSUANCE.—A subpoena may be
7 issued under this subsection only—

8 (I) by the agreement of the
9 chairman and the vice chairman; or

10 (II) by the affirmative vote of 6
11 members of the Commission.

12 (ii) SIGNATURE.—Subject to clause
13 (i), subpoenas issued under this subsection
14 may be issued under the signature of the
15 chairman or any member designated by a
16 majority of the Commission, and may be
17 served by any person designated by the
18 chairman or by a member designated by a
19 majority of the Commission.

20 (iii) ENFORCEMENT.—In the case of
21 contumacy or failure to obey a subpoena
22 issued under subsection (a), the United
23 States district court for the judicial district
24 in which the subpoenaed person resides, is
25 served, or may be found, or where the sub-

1 poena is returnable, may issue an order re-
2 quiring such person to appear at any des-
3 ignated place to testify or to produce docu-
4 mentary or other evidence. Any failure to
5 obey the order of the court may be pun-
6 ished by the court as a contempt of that
7 court.

8 (2) RECOMMENDATIONS.—

9 (A) The Commission has the ability to
10 make recommendations to the Secretary of
11 Homeland Security on the disposition of cases
12 and discipline of personnel under the Immigra-
13 tion and Naturalization Act.

14 (B) Within 180 days of receipt of a Com-
15 mission report, the Secretary of Homeland Se-
16 curity shall issue a response, which shall de-
17 scribe how the Department of Homeland Secu-
18 rity, the Department of Justice, and the De-
19 partment of Defense have addressed the rec-
20 ommendation.

21 (3) CONTRACTING.—The Commission may, to
22 such extent and in such amounts as are provided in
23 appropriation Acts, enter into contracts to enable
24 the Commission to discharge its duties under this
25 title.

1 (4) INFORMATION FROM FEDERAL AGENCIES.—

2 (A) IN GENERAL.—The Commission is au-
3 thorized to secure directly from any executive
4 department, bureau, agency, board, commission,
5 office, independent establishment, or instrumen-
6 tality of the Government, information, sugges-
7 tions, estimates, and statistics for the purposes
8 of this title. Each department, bureau, agency,
9 board, commission, office, independent estab-
10 lishment, or instrumentality shall, to the extent
11 authorized by law, furnish such information,
12 suggestions, estimates, and statistics directly to
13 the Commission, upon request made by the
14 chairman, the chairman of any subcommittee
15 created by a majority of the Commission, or
16 any member designated by a majority of the
17 Commission.

18 (B) RECEIPT, HANDLING, STORAGE, AND
19 DISSEMINATION.—Information shall only be re-
20 ceived, handled, stored, and disseminated by
21 members of the Commission and its staff con-
22 sistent with all applicable statutes, regulations,
23 and Executive orders.

24 (5) ASSISTANCE FROM FEDERAL AGENCIES.—

1 (A) GENERAL SERVICES ADMINISTRA-
2 TION.—The Administrator of General Services
3 shall provide to the Commission on a reimburs-
4 able basis administrative support and other
5 services for the performance of the Commis-
6 sion's functions.

7 (B) OTHER DEPARTMENTS AND AGEN-
8 CIES.—In addition to the assistance prescribed
9 in paragraph (1), departments and agencies of
10 the United States may provide to the Commis-
11 sion such services, funds, facilities, staff, and
12 other support services as they may determine
13 advisable and as may be authorized by law.

14 (6) POSTAL SERVICES.—The Commission may
15 use the United States mails in the same manner and
16 under the same conditions as departments and agen-
17 cies of the United States.

18 (d) COMPENSATION.—

19 (1) IN GENERAL.—Members of the Commission
20 shall serve without pay.

21 (2) REIMBURSEMENT OF EXPENSES.—All mem-
22 bers of the Commission shall be reimbursed for rea-
23 sonable travel expenses and subsistence, and other
24 reasonable and necessary expenses incurred by them
25 in the performance of their duties.

1 (e) TRAINING.—The Commission shall establish a
2 process and criteria by which Commission members re-
3 ceive orientation and training on human, constitutional
4 and civil rights.

5 (f) REPORT.—Not later than 2 years after the date
6 of the first meeting called pursuant to (a)(8)(A), the Com-
7 mission shall submit a report to the President and Con-
8 gress that contains—

9 (1) findings with respect to the duties of the
10 Commission;

11 (2) recommendations regarding border and im-
12 migration enforcement policies, strategies, and pro-
13 grams;

14 (3) suggestions for the implementation of the
15 Commission's recommendations; and

16 (4) a recommendation as to whether the Com-
17 mission should continue to exist after the date of
18 termination described in subsection (g), and if so, a
19 description of the purposes and duties recommended
20 to be carried out by the Commission after such date.

21 (g) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated such sums as may be
23 necessary to carry out this section.

24 (h) SUNSET.—Unless the Commission is re-author-
25 ized by Congress, the Commission shall terminate on the

1 date that is 60 days after the date the Commission sub-
2 mits the report described in subsection (f).

3 **SEC. 131. PROHIBITION ON MILITARY INVOLVEMENT IN**
4 **NONEMERGENCY BORDER ENFORCEMENT.**

5 (a) IN GENERAL.—The Armed Forces of the United
6 States, including the National Guard, are prohibited from
7 assisting in Federal, State and local and civilian law en-
8 forcement of immigration laws.

9 (b) EXCEPTION.—The Armed Forces of the United
10 States, including the National Guard may assist in Fed-
11 eral, State and local and civilian law enforcement of immi-
12 gration laws when the President of the United States has
13 declared a national emergency or when required for spe-
14 cific counter-terrorism duties. In the case that, Armed
15 Forces of the United States, including the National Guard
16 are required to perform such duties, those duties in sup-
17 port of Federal, State and local and civilian law enforce-
18 ment of immigration laws shall be limited to—

19 (1) rear echelon support duties, including
20 logistical support, construction, and intelligence col-
21 lection from positions at least 25 miles from the bor-
22 der;

23 (2) nonarmed operations within 25 miles of the
24 border, including listening posts and observation
25 post operations; and

1 (3) armed operations outside 25 miles of the
2 border, including listening posts and observation
3 post operations.

4 (c) REPORT.—The Secretary shall submit on an an-
5 nual basis a report to Congress that details the involve-
6 ment of the Armed Forces in border security and the en-
7 forcement of Federal immigration laws.

8 **SEC. 132. DEFINITIONS.**

9 For sections 124 through 128:

10 (a) INDIAN TRIBE.—The term “Indian tribe” has the
11 meaning given such term in section 4 of the Indian Self-
12 Determination and Education Assistance Act (25 U.S.C.
13 450b).

14 (b) SECRETARY CONCERNED.—The term “Secretary
15 concerned” means the Secretary of Agriculture with re-
16 spect to land under the jurisdiction of the Secretary of
17 Agriculture, the Secretary of the Interior with respect to
18 land under the jurisdiction of the Secretary of the Interior,
19 the Secretary of Defense with respect to land under the
20 jurisdiction of the Secretary of Defense or the secretary
21 of a military department, or the Secretary of Commerce
22 with respect to land under the jurisdiction of the Secretary
23 of Commerce.

1 **SEC. 133. BORDER PROTECTION STRATEGY.**

2 (a) IN GENERAL.—Not later than September 30,
3 2010, the Secretary, the Secretary of the Interior, the Sec-
4 retary of Agriculture, the Secretary of Defense, and the
5 Secretary of Commerce, in consultation with tribal, State,
6 and local officials, shall jointly develop and submit to Con-
7 gress a border protection strategy for the international
8 land borders of the United States.

9 (b) ELEMENTS OF THE STRATEGY.—The strategy
10 developed in accordance with subsection (a) shall include
11 the following components:

12 (1) A comparative analysis of the levels of oper-
13 ational control, based on auditable and verifiable
14 data, achievable through alternative tactical infra-
15 structure and other security measures. Measures as-
16 sessed shall include, at a minimum—

17 (A) pedestrian fencing;

18 (B) vehicle barriers, especially in the vicin-
19 ity of existing or planned roads;

20 (C) additional Border Patrol agents;

21 (D) efficacy of natural barriers and open
22 space in response to unauthorized or unlawful
23 border crossing;

24 (E) fielding of advanced remote sensing
25 and information integration technology, includ-
26 ing the use of unmanned aerial vehicles and

1 other advanced technologies and systems, in-
2 cluding systems developed and employed, or
3 under development, for tactical surveillance,
4 multisource information integration, and re-
5 sponse analysis in difficult terrain and under
6 adverse environmental conditions;

7 (F) regional as well as urban and rural
8 variation in border security methodologies, and
9 incorporation of natural barriers;

10 (G) enhanced cooperation with, and assist-
11 ance to, intelligence, security, and law enforce-
12 ment agencies in Mexico and Canada in detect-
13 ing, reporting, analyzing, and successfully re-
14 sponding to unauthorized or unlawful border
15 crossings from or into Mexico or Canada; and

16 (H) removal of obstructive non-native vege-
17 tation.

18 (2) A comprehensive analysis of cost and other
19 impacts of security measures assessed in paragraph
20 (1), including an assessment of—

21 (A) land acquisition costs, including re-
22 lated litigation and other costs;

23 (B) construction costs, including both
24 labor and material costs;

25 (C) maintenance costs over 25 years;

1 (D) contractor costs;

2 (E) management and overhead costs;

3 (F) the impacts on wildlife, wildlife habi-
4 tat, natural communities, and functioning cross-
5 border wildlife migration corridors and hydrol-
6 ogy (including water quantity, quality, and nat-
7 ural hydrologic flows) on Federal, tribal, State,
8 local, and private lands along the border; and

9 (G) costs of fully mitigating the adverse
10 impacts to Federal, tribal, State, local, and pri-
11 vate lands, waters (including water quality,
12 quantity, and hydrological flows), wildlife, and
13 wildlife habitats, including, where such action is
14 possible, the full costs of the replacement or
15 restoration of severed wildlife migration cor-
16 ridors with protected corridors of equivalent bi-
17 ological functionality, as determined by each
18 Secretary concerned, in consultation with ap-
19 propriate authorities of tribal, State, and local
20 governments and appropriate authorities of
21 Mexico and Canada.

22 (3) A comprehensive compilation of the fiscal
23 investments in acquiring or managing Federal, trib-
24 al, State, local, and private lands and waters in the
25 vicinity of, or ecologically related to, the land bor-

1 ders of the United States that have been acquired or
2 managed in whole or in part for conservation pur-
3 poses (including the creation or management of pro-
4 tected wildlife migration corridors) in—

5 (A) units of the National Park System;

6 (B) National Forest System land;

7 (C) land under the jurisdiction of the Bu-
8 reau of Land Management;

9 (D) land under the jurisdiction of the
10 United States Fish and Wildlife Service;

11 (E) other relevant land under the jurisdic-
12 tion of the Department of the Interior or the
13 Department of Agriculture;

14 (F) land under the jurisdiction of the De-
15 partment of Defense or the individual military
16 department;

17 (G) land under the jurisdiction of the De-
18 partment of Commerce;

19 (H) tribal lands;

20 (I) State and private lands; and

21 (J) lands within Mexico and Canada.

22 (4) Recommendations for strategic border secu-
23 rity management based on comparative security as
24 detailed in paragraph (1), the cost-benefit analysis
25 as detailed in paragraph (2), as well as protection of

1 investments in public lands specified in paragraph
2 (3).

3 (c) TRAINING.—

4 (1) REQUIRED TRAINING.—The Secretary, in
5 cooperation with the Secretary concerned, shall pro-
6 vide—

7 (A) natural resource protection training for
8 Customs and Border Protection agents or other
9 Federal personnel assigned to plan or oversee
10 the construction or operation of border security
11 tactical infrastructure or to patrol land along or
12 in the vicinity of a land border of the United
13 States; and

14 (B) cultural resource training for Customs
15 and Border Protection agents and other Fed-
16 eral personnel assigned to plan or oversee the
17 construction or operation of border security tac-
18 tical infrastructure or to patrol tribal lands.

19 (2) ADDITIONAL CONSIDERATIONS.—In devel-
20 oping and providing training under subparagraph
21 (A) of paragraph (1), the Secretary shall coordinate
22 with the Secretary concerned and the relevant tribal
23 government to ensure that such training is appro-
24 priate to the mission of the relevant agency and is
25 focused on achieving border security objectives while

1 avoiding or minimizing the adverse impact on nat-
2 ural and cultural resources resulting from border se-
3 curity tactical infrastructure, operations, or other
4 activities.

5 **SEC. 134. ACTIONS TO FURTHER SECURE OPERATIONAL**
6 **CONTROL OF THE INTERNATIONAL LAND**
7 **BORDERS OF THE UNITED STATES.**

8 (a) IN GENERAL.—Section 102 of the Illegal Immi-
9 gration Reform and Immigrant Responsibility Act of 1996
10 (Public Law 104–208; 8 U.S.C. 1103 note) is amended
11 to read as follows:

12 **“SEC. 102. IMPROVEMENT OF OPERATIONAL CONTROL OF**
13 **BORDER.**

14 “(a) IN GENERAL.—The Secretary of Homeland Se-
15 curity shall take such actions as may be required to gain
16 operational control of the international land borders of the
17 United States. Such actions may be taken only in accord-
18 ance with the border protection strategy developed under
19 section 124(a).

20 “(b) PRIORITY OF METHODS.—In carrying out the
21 requirements of subsection (a), the Secretary of Homeland
22 Security shall, where practicable, give first priority to the
23 use of remote cameras, sensors, removal of nonnative
24 vegetation, incorporation of natural barriers, additional

1 manpower, unmanned aerial vehicles, or other low impact
2 border enforcement techniques.

3 “(c) CONSULTATION.—

4 “(1) IN GENERAL.—In carrying out this sec-
5 tion, the Secretary of Homeland Security shall con-
6 sult with the Secretary of the Interior, the Secretary
7 of Agriculture, the Secretary of Defense, Secretary
8 of Commerce, States, local governments, tribal gov-
9 ernments, and private property owners in the United
10 States to minimize the impact on the environment,
11 culture, commerce, safety, and quality of life for the
12 communities and residents located near the sites at
13 which actions under subsection (a) are proposed to
14 be taken.

15 “(2) RULE OF CONSTRUCTION.—Nothing in
16 this subsection may be construed to—

17 “(A) create or negate any right of action
18 for a State, local government, tribal govern-
19 ment, or other person or entity affected by this
20 subsection;

21 “(B) affect the eminent domain laws of the
22 United States or of any State; or

23 “(C) waive the application of any other ap-
24 plicable Federal, State, local, or tribal law.

1 “(3) LIMITATION ON REQUIREMENTS.—Not-
2 withstanding subsection (a), nothing in this section
3 shall require the Secretary of Homeland Security to
4 install fencing, physical barriers, roads, lighting,
5 cameras, or sensors in a particular location along an
6 international border of the United States if the Sec-
7 retary determines that the use or placement of such
8 resources is not the most effective and appropriate
9 means to achieve and maintain operational control
10 over the international border at such location, or if
11 the Secretary determines that the direct and indirect
12 costs of or the impacts on the environment, culture,
13 commerce, safety, or quality of life for the commu-
14 nities and residents along the border likely to result
15 from the use or placement of such resources out-
16 weigh the benefits of such use or placement.”.

17 (b) PRECONDITIONS.—In fulfilling the requirements
18 of section 102 of the Illegal Immigration Reform and Im-
19 migrant Responsibility Act of 1996, as amended by this
20 section, the Secretary of Homeland Security shall not com-
21 mence any construction of fencing, physical barriers,
22 roads, lighting, cameras, sensors, or other tactical infra-
23 structure along or in the vicinity of an international land
24 border of the United States, or award or expend funds
25 pursuant to any contract or other agreement related there-

1 to, prior to 90 days following the submission to Congress
2 of the border protection strategy required under section
3 133(a) of this subtitle.

4 **SEC. 135. BORDERLANDS MONITORING AND MITIGATION.**

5 (a) IN GENERAL.—The Secretary, in consultation
6 with the Secretary of the Interior, the Secretary of Agri-
7 culture, the Secretary of Defense, the Secretary of Com-
8 merce, and the heads of appropriate State and tribal wild-
9 life agencies and entities, shall develop and implement a
10 comprehensive monitoring and mitigation plan to address
11 the ecological and environmental impacts of border secu-
12 rity infrastructure, measures, and activities along the
13 international land borders of the United States.

14 (b) REQUIREMENTS.—The mitigation plan required
15 under subsection (a) shall include, at a minimum, meas-
16 ures to address and mitigate the full range of ecological
17 and environmental impacts of border security infrastruc-
18 ture, measures, and activities, including—

19 (1) preserving, maintaining, and, if necessary,
20 restoring wildlife migration corridors, key habitats,
21 and the ecologically functional connectivity between
22 and among key habitats sufficient to ensure that
23 species (whether or not designated as rare, pro-
24 tected, or of concern) remain viable and are able to
25 adapt to the impacts of climate change;

1 (2) addressing control of invasive species and
2 implementing measures necessary to avoid the
3 spread of such species;

4 (3) maintaining hydrological functionality, in-
5 cluding water quantity and quality;

6 (4) incorporating adaptive management, includ-
7 ing detailed provisions for long-term monitoring of
8 the mitigation plan's effectiveness and for necessary
9 adjustments to such plan based on such monitoring
10 results; and

11 (5) protection of cultural and historical re-
12 sources.

13 (c) PREEMPTION.—

14 (1) IN GENERAL.—Notwithstanding any other
15 provision of law, the Secretary may, subject to para-
16 graph (2), carry out the mitigation plan required
17 under subsection (a) on any Federal, State, local,
18 tribal, or private lands in the vicinity of or eco-
19 logically related to an international land border of
20 the United States regardless of which individual,
21 agency, or entity has ownership of or principal re-
22 sponsibility for the management of any such lands.

23 (2) CONDITIONS.—Activities carried out pursu-
24 ant to paragraph (1) in connection with the mitiga-
25 tion plan shall be carried out in full consultation

1 with, and with the concurrence of, the owner of, or
2 entity with principal responsibility for, the manage-
3 ment of the lands described in such paragraph.

4 (d) ADMINISTRATION.—

5 (1) AUTHORIZATION.—The Secretary of Home-
6 land Security may transfer funds of the Department
7 of Homeland Security to other Federal agencies
8 for—

9 (A) expenditure under programs (including
10 any international programs) of such agencies
11 that are designed to fund conservation related
12 activities (directly or through grants or similar
13 mechanisms) on non-Federal lands, including
14 land acquisition programs; and

15 (B) mitigation activities on Federal lands
16 managed by such agencies, if such activities are
17 required to implement the mitigation plan re-
18 quired under subsection (a) and if the costs of
19 such activities are higher than the costs associ-
20 ated with managing such lands in the absence
21 of such activities.

22 (2) EXEMPTION FROM REPROGRAMMING RE-
23 QUIREMENTS.—Funds transferred pursuant to the
24 authorization under paragraph (1) shall not be sub-
25 ject to reprogramming requirements.

1 (3) ACCEPTANCE AND USE OF DONATIONS.—

2 The Secretary may accept and use donations for the
3 purpose of developing and implementing the mitiga-
4 tion plan required under subsection (a), and may
5 transfer such funds to any other Federal agency for
6 expenditure under such plan pursuant to paragraph
7 (1).

8 (e) AUTHORIZATION OF APPROPRIATIONS.—Notwith-
9 standing any other provision of law, funds appropriated
10 to the Department of Homeland Security for border secu-
11 rity infrastructure and activities may be used by the Sec-
12 retary to develop and implement the mitigation plan re-
13 quired under subsection (a).

14 **SEC. 136. BORDER COMMUNITIES LIAISON OFFICE.**

15 (a) ESTABLISHMENT.—The Secretary shall establish,
16 in consultation with the Office of Civil Rights and Civil
17 Liberties, a Border Communities Liaison Office in every
18 border patrol sector at the southern and northern borders.

19 (b) PURPOSE.—The purpose of the Border Commu-
20 nities Liaison Office shall be—

21 (1) to foster and institutionalize consultation
22 with border communities;

23 (2) to consult with border communities on
24 agency policies, directives and laws;

1 (3) to consult with border communities on
2 agency strategies and strategy development;

3 (4) to consult with border communities on
4 agency services and operational issues;

5 (5) to receive assessments on agency perform-
6 ance from border communities; and

7 (6) to receive complaints regarding agency per-
8 formance and agent conduct.

9 (c) AUTHORIZATION OF APPROPRIATIONS.—There
10 are authorized to be appropriated such sums as are nec-
11 essary to carry out this section.

12 **SEC. 137. OFFICE OF CIVIL RIGHTS AND CIVIL LIBERTIES**
13 **AND OFFICE OF INSPECTOR GENERAL.**

14 There are authorized to be appropriated such sums
15 as are necessary for the Department's Office of Inspector
16 General and the Department's Office of Civil Rights and
17 Civil Liberties to be comparable to those of other Federal
18 agencies and commensurate with the size and scope of the
19 DHS operational budget.

20 **SEC. 138. IMPROVING PORTS OF ENTRY FOR BORDER SECU-**
21 **RITY AND OTHER PURPOSES.**

22 (a) IN GENERAL.—There are authorized to be appro-
23 priated to the Administrator of the General Services Ad-
24 ministration such sums as may be necessary for each of
25 fiscal years 2011 through 2015 to make improvements to

1 existing ports of entry in the United States to improve
2 border security and for other purposes.

3 (b) **PRIORITY.**—In making improvements described
4 in subsection (a), the Administrator of the General Serv-
5 ices Administration, in coordination with the Commis-
6 sioner of Customs and Border Protection, shall give pri-
7 ority to the ports of entry that the Administrator deter-
8 mines are in most need of repair to improve border secu-
9 rity and for other purposes in accordance with port of
10 entry infrastructure assessment studies required in section
11 603 of title VI, division E, of the Consolidated Appropria-
12 tions Act of 2008 (Public Law 101–161).

13 **SEC. 139. PORTS OF ENTRY.**

14 (a) **IN GENERAL.**—In order to aid in the enforcement
15 of Federal customs, immigration, and agriculture laws,
16 and national security goals the Customs and Border Pro-
17 tection Commissioner may—

18 (1) design, construct, and modify land ports of
19 entry and other structures and facilities, including
20 living quarters for officers, agents, and personnel;

21 (2) acquire, by purchase, donation, or exchange,
22 land or any interest in land determined to be nec-
23 essary to carry out the Commissioner’s duties under
24 this section; and

1 (3) construct additional ports of entry along the
2 southern border and the northern border.

3 (b) CONSULTATION.—

4 (1) LOCATIONS FOR NEW PORTS OF ENTRY.—

5 The Secretary of Homeland Security shall consult
6 with the Secretary of the Interior, the Secretary of
7 Agriculture, the Secretary of State, the International
8 Boundary and Water Commission, the International
9 Joint Commission, and appropriate representatives
10 of States, local governments, Indian tribes, and
11 property owners to—

12 (A) determine locations for new ports of
13 entry; and

14 (B) minimize adverse impacts from such
15 ports on the environment, historic and cultural
16 resources, commerce, and quality of life for the
17 communities and residents located near such
18 ports.

19 (2) ACQUISITION OF LEASEHOLD INTEREST.—

20 The Secretary of Homeland Security may acquire a
21 leasehold interest in real property, and may con-
22 struct or modify any facility on the leased property,
23 if the Secretary determines that the acquisition of
24 such interest, and such construction or modification,

1 are necessary to facilitate the implementation of this
2 Act.

3 (3) CONSTRUCTION OF BORDER CONTROL FA-
4 CILITIES.—Subject to the availability of appropria-
5 tions, the Secretary may construct all-weather roads
6 and acquire additional vehicle barriers and facilities
7 necessary to maintain and enhance operational con-
8 trol of the international borders of the United
9 States.

10 **SEC. 140. PORTS OF ENTRY INFRASTRUCTURE AND OPER-**
11 **ATIONS ASSESSMENT STUDY.**

12 (a) REQUIREMENT TO UPDATE.—Not later than
13 January 31 of each year, the Administrator of General
14 Services shall update the Port of Entry Infrastructure and
15 Operations Assessment Study prepared by United States
16 Customs and Border Protection in accordance with the
17 matter relating to the ports of entry infrastructure assess-
18 ment that is set out in the joint explanatory statement
19 in the conference report accompanying H.R. 2490 of the
20 106th Congress, 1st session (House of Representatives
21 Rep. No. 106–319, on page 67) and submit such updated
22 study to Congress.

23 (b) CONSULTATION.—In preparing the updated stud-
24 ies required in subsection (a), the Administrator of Gen-
25 eral Services shall consult with the Director of the Office

1 of Management and Budget, the Secretary, and the Com-
2 missioner of U.S. Customs and Border Protection.

3 (c) CONTENT.—Each updated study required in sub-
4 section (a) shall—

5 (1) identify port of entry infrastructure and
6 technology improvement projects that would enhance
7 border security and facilitate the flow of legitimate
8 travel and commerce if implemented;

9 (2) identify port operations and practices (to in-
10 clude, but not be limited to training and staffing lev-
11 els) that would enhance border security and facili-
12 tate the flow of legitimate individual travel and com-
13 merce if implemented;

14 (3) establish a process to identify and prioritize
15 needs at ports for shelter from the elements, Ameri-
16 cans with Disability Act compliance, and related
17 issues;

18 (4) include the projects identified in the Na-
19 tional Land Border Ports of Entry Security Plan re-
20 quired by section 141; and

21 (5) prioritize the projects described in para-
22 graphs (1), (2), (3), and (4) based on the ability of
23 a project to—

24 (A) fulfill immediate security requirements;

1 (B) facilitate trade across the borders of
2 the United States;

3 (C) facilitate individual travel; and

4 (D) reduce individual and commercial wait
5 times for pedestrians and vehicles.

6 (d) PROJECT IMPLEMENTATION.—The Commissioner
7 shall implement the infrastructure, operations, and tech-
8 nology improvement projects described in subsection (c)
9 in the order of priority assigned to each project under
10 paragraph (3) of such subsection.

11 (e) DIVERGENCE FROM PRIORITIES.—The Commis-
12 sioner may diverge from the priority order if the Commis-
13 sioner determines that significantly changed cir-
14 cumstances, such as immediate security needs or changes
15 in infrastructure in Mexico or Canada, compellingly alter
16 the need for a project in the United States.

17 **SEC. 141. NATIONAL LAND BORDER PORTS OF ENTRY SECU-**
18 **RITY PLAN.**

19 (a) IN GENERAL.—Not later than one year after the
20 date of enactment of this Act, and annually thereafter,
21 the Secretary, after consultation with representatives of
22 Federal, State, and local law enforcement agencies and
23 private entities that are involved in international trade
24 across Northern or Southern ports of entry, shall submit

1 a National Land Border Ports of Entry Security Plan to
2 Congress.

3 (b) VULNERABILITY ASSESSMENT.—

4 (1) IN GENERAL.—The plan required in sub-
5 section (a) shall include a vulnerability assessment
6 of each port of entry located on the northern border
7 or the southern border.

8 (2) PORT SECURITY COORDINATORS.—The Sec-
9 retary may establish 1 or more port security coordi-
10 nators at each port of entry located on the northern
11 border or the southern border—

12 (A) to assist in conducting a vulnerability
13 assessment at such port; and

14 (B) to provide other assistance with the
15 preparation of the plan required in subsection
16 (a).

17 **SEC. 142. PORTS OF ENTRY TECHNOLOGY DEMONSTRATION**
18 **PROGRAM.**

19 (a) DEMONSTRATION PROGRAM.—The Secretary
20 shall carry out a technology demonstration program to—

21 (1) test and evaluate new port of entry tech-
22 nologies;

23 (2) refine port of entry technologies and oper-
24 ational concepts; and

25 (3) train personnel under realistic conditions.

1 (b) TECHNOLOGY AND FACILITIES.—

2 (1) TECHNOLOGY TESTING.—Under the tech-
3 nology demonstration program, the Secretary shall
4 test technologies that enhance port of entry oper-
5 ations, including operations related to—

6 (A) inspections;

7 (B) communications;

8 (C) port tracking;

9 (D) identification of persons and cargo;

10 (E) sensory devices;

11 (F) personal detection;

12 (G) decision support; and

13 (H) the detection and identification of
14 weapons, including weapons of mass destruc-
15 tion.

16 (2) DEVELOPMENT OF FACILITIES.—At a dem-
17 onstration site selected pursuant to subsection
18 (c)(2), the Secretary shall develop facilities to pro-
19 vide appropriate training to law enforcement per-
20 sonnel who have responsibility for border security,
21 including—

22 (A) cross-training among agencies;

23 (B) advanced law enforcement training;

24 and

25 (C) equipment orientation.

1 (c) DEMONSTRATION SITES.—

2 (1) NUMBER.—The Secretary shall carry out
3 the demonstration program at not less than three
4 sites and not more than five sites.

5 (2) SELECTION CRITERIA.—To ensure that at
6 least 1 of the facilities selected as a port of entry
7 demonstration site for the demonstration program
8 has the most up-to-date design, contains sufficient
9 space to conduct the demonstration program, has a
10 traffic volume low enough to easily incorporate new
11 technologies without interrupting normal processing
12 activity, and is able to efficiently carry out dem-
13 onstration and port of entry operations, at least 1
14 port of entry selected as a demonstration site shall—

15 (A) have been established not more than
16 15 years before the date of enactment of this
17 Act;

18 (B) consist of not less than 65 acres, with
19 the possibility of expansion to not less than 25
20 adjacent acres; and

21 (C) have serviced an average of not more
22 than 50,000 vehicles per month during the one-
23 year period ending on the date of enactment of
24 this Act.

1 (d) RELATIONSHIP WITH OTHER AGENCIES.—The
2 Secretary shall permit personnel from an appropriate Fed-
3 eral or State agency to utilize a demonstration site de-
4 scribed in subsection (c) to test technologies that enhance
5 port of entry operations, including technologies described
6 in subparagraphs (A) through (H) of subsection (b)(1).

7 (e) REPORT.—

8 (1) REQUIREMENT.—Not later than one year
9 after the date of enactment of this Act, and annually
10 thereafter, the Secretary shall submit to Congress a
11 report on the activities carried out at each dem-
12 onstration site under the technology demonstration
13 program established under this section.

14 (2) CONTENT.—The report submitted under
15 paragraph (1) shall include an assessment by the
16 Secretary of the feasibility of incorporating any dem-
17 onstrated technology for use throughout United
18 States Customs and Border Protection.

19 **SEC. 143. REPORTS ON IMPROVING THE EXCHANGE OF IN-**
20 **FORMATION ON NORTH AMERICAN SECU-**
21 **RITY.**

22 (a) REQUIREMENT FOR REPORTS.—Not later than
23 one year after the date of enactment of this Act, and an-
24 nually thereafter, the Secretary of State, in coordination
25 with the Secretary and the heads of other appropriate

1 Federal agencies, shall submit to Congress a report on the
2 status of improvements to information exchange related
3 to the security of North America.

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

6 (1) SECURITY CLEARANCES AND DOCUMENT IN-
7 TEGRITY.—The status of the development of com-
8 mon enrollment, security, technical, and biometric
9 standards for the issuance, authentication, valida-
10 tion, and repudiation of secure documents, includ-
11 ing—

12 (A) technical and biometric standards
13 based on best practices and consistent with
14 international standards for the issuance, au-
15 thentication, validation, and repudiation of trav-
16 el documents, including—

17 (i) passports;

18 (ii) visas; and

19 (iii) permanent resident cards;

20 (B) working with Canada and Mexico to
21 encourage foreign governments to enact laws to
22 combat alien smuggling and trafficking, and
23 laws to forbid the use and manufacture of
24 fraudulent travel documents; and

1 (C) applying the necessary pressures and
2 support to ensure that other countries meet
3 proper travel document standards and are com-
4 mitted to travel document verification before
5 the citizens of such countries travel internation-
6 ally, including travel by such citizens to the
7 United States.

8 (2) IMMIGRATION AND VISA MANAGEMENT.—

9 The progress of efforts to share information regard-
10 ing high-risk individuals who may attempt to enter
11 Canada, Mexico, or the United States, including the
12 progress made—

13 (A) in implementing the Statement of Mu-
14 tual Understanding on Information Sharing,
15 signed by Canada and the United States in
16 February 2003; and

17 (B) in identifying trends related to immi-
18 gration fraud, including asylum and document
19 fraud, and to analyze such trends.

20 (3) VISA POLICY COORDINATION AND IMMIGRA-

21 TION SECURITY.—The progress made by Canada,
22 Mexico, and the United States to enhance the secu-
23 rity of North America by cooperating on visa policy
24 and identifying best practices regarding immigration
25 security, including the progress made—

1 (A) in enhancing consultation among offi-
2 cials who issue visas at the consulates or em-
3 bassies of Canada, Mexico, or the United States
4 throughout the world to share information,
5 trends, and best practices on visa flows;

6 (B) in comparing the procedures and poli-
7 cies of Canada and the United States related to
8 visitor visa processing, including—

9 (i) application process;

10 (ii) interview policy;

11 (iii) general screening procedures;

12 (iv) visa validity;

13 (v) quality control measures; and

14 (vi) access to appeal or review;

15 (C) in exploring methods for Canada, Mex-
16 ico, and the United States to waive visa re-
17 quirements for nationals and citizens of the
18 same foreign countries;

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

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

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

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

15 (5) TERRORIST WATCH LISTS.—The status of
16 the capacity of the United States to combat ter-
17 rorism through the coordination of counterterrorism
18 efforts, including any progress made—

19 (A) in developing and implementing bilat-
20 eral agreements between Canada and the
21 United States and between Mexico and the
22 United States to govern the sharing of terrorist
23 watch list data and to comprehensively enu-
24 merate the uses of such data by the govern-
25 ments of each country;

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

4 (C) in exploring with foreign governments
5 the establishment of a multilateral watch list
6 mechanism that would facilitate direct coordina-
7 tion between the country that identifies an indi-
8 vidual as an individual included on a watch list,
9 and the country that owns such list, including
10 procedures that satisfy the security concerns
11 and are consistent with the privacy and other
12 laws of each participating country; and

13 (D) in establishing transparent standards
14 and processes that enable innocent individuals
15 to remove their names from a watch list.

16 (6) MONEY LAUNDERING, CURRENCY SMUG-
17 GLING, AND ALIEN SMUGGLING.—The progress made
18 in improving information sharing and law enforce-
19 ment cooperation in combating organized crime, in-
20 cluding the progress made—

21 (A) in combating currency smuggling,
22 money laundering, alien smuggling, and traf-
23 ficking in alcohol, firearms, and explosives;

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

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

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

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

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

17 (7) LAW ENFORCEMENT COOPERATION.—The
18 progress made in enhancing law enforcement co-
19 operation among Canada, Mexico, and the United
20 States through enhanced technical assistance for the
21 development and maintenance of a national database
22 built upon identified best practices to identify sus-
23 pected criminals or terrorists, including exploring
24 the formation of law enforcement teams that include

1 personnel from the United States and Mexico, and
2 appropriate procedures for such teams.

3 **SEC. 144. SOUTHERN BORDER SECURITY TASK FORCE.**

4 (a) ESTABLISHMENT.—Not later than 180 days after
5 the date of the enactment of this Act, the Secretary of
6 Homeland Security shall establish a Southern Border Se-
7 curity Task Force (in this Act referred to as the “Task
8 Force”) to coordinate the efforts of Federal, State, and
9 local border and law enforcement officials and task forces
10 to protect United States border cities and communities
11 from violence associated with drug trafficking,
12 gunrunning, illegal alien smuggling, violence, and kidnap-
13 ping along and across the international border between the
14 United States and Mexico.

15 (b) COMPOSITION AND DEPLOYMENT.—

16 (1) COMPOSITION.—The Task Force shall be
17 comprised of personnel from—

18 (A) United States Customs and Border
19 Protection;

20 (B) United States Immigration and Cus-
21 toms Enforcement;

22 (C) the Coast Guard;

23 (D) other Federal agencies, as appropriate;

24 (E) southern border State law enforcement
25 agencies; and

1 (F) local law enforcement agencies from
2 affected southern border cities and commu-
3 nities.

4 (2) DEPLOYMENT.—The Secretary of Home-
5 land Security shall deploy the Task Force along the
6 international border between the United States and
7 Mexico in cities and communities most affected by
8 violence, as determined by the Secretary.

9 (c) DIRECTOR.—The Secretary of Homeland Security
10 shall appoint as a Director of the Task Force an individual
11 who is experienced and knowledgeable in law enforcement
12 generally and border security issues specifically.

13 (d) REPORT.—Not later than 180 days after the date
14 of the establishment of the Task Force under subsection
15 (a) and annually thereafter, the Secretary of Homeland
16 Security shall submit to the Committee on Homeland Se-
17 curity of the House of Representatives and the Committee
18 on Homeland Security and Governmental Affairs of the
19 Senate a report on the effectiveness of the Task Force
20 in reducing the drug trafficking, gunrunning, illegal alien
21 smuggling, violence, and kidnapping along and across the
22 international border between the United States and Mex-
23 ico as measured by crime statistics, including violent
24 deaths, incidents of violence, and drug related arrests.

1 (e) AUTHORIZATION OF APPROPRIATIONS.—There is
2 authorized to be appropriated to the Secretary of Home-
3 land Security \$10,000,000 for each of fiscal years 2010
4 through 2014—

5 (1) to establish and operate the Task Force, in-
6 cluding to provide for operational, administrative,
7 and technological costs to Federal, State, and local
8 law enforcement agencies participating in the Task
9 Force; and

10 (2) to investigate, apprehend, and prosecute in-
11 dividuals engaged in drug trafficking, gunrunning,
12 illegal alien smuggling, violence, and kidnapping
13 along and across the international border between
14 the United States and Mexico.

15 **SEC. 145. COOPERATION WITH THE GOVERNMENT OF MEX-**
16 **ICO.**

17 (a) COOPERATION REGARDING BORDER SECU-
18 RITY.—The Secretary of State, in cooperation with the
19 Secretary and representatives of Federal, State, and local
20 law enforcement agencies that are involved in border secu-
21 rity and immigration enforcement efforts, shall work with
22 the appropriate officials from the Government of Mexico
23 to improve coordination between the United States and
24 Mexico regarding—

1 (1) improved border security along the inter-
2 national border between the United States and Mex-
3 ico;

4 (2) the reduction of human trafficking and
5 smuggling between the United States and Mexico;

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

8 (4) the reduction of gang membership in the
9 United States and Mexico;

10 (5) the reduction of violence against women in
11 the United States and Mexico; and

12 (6) the reduction of other violence and criminal
13 activity.

14 (b) COOPERATION REGARDING EDUCATION ON IMMI-
15 GRATION LAWS.—The Secretary of State, in cooperation
16 with other appropriate Federal officials, shall work with
17 the appropriate officials from the Government of Mexico
18 to carry out activities to educate citizens and nationals
19 of Mexico regarding eligibility for status as a non-
20 immigrant under Federal law to ensure that the citizens
21 and nationals are not exploited while working in the
22 United States.

23 (c) COOPERATION REGARDING CIRCULAR MIGRA-
24 TION.—The Secretary of State, in cooperation with the
25 Secretary of Labor and other appropriate Federal offi-

1 cials, shall work with the appropriate officials from the
2 Government of Mexico to improve coordination between
3 the United States and Mexico to encourage circular migra-
4 tion, including assisting in the development of economic
5 opportunities and providing job training for citizens and
6 nationals in Mexico.

7 (d) CONSULTATION REQUIREMENT.—Federal, State,
8 and local representatives in the United States shall work
9 to cooperate with their counterparts in Mexico concerning
10 border security structures along the international border
11 between the United States and Mexico, as authorized by
12 this title, in order to—

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

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

23 **SEC. 146. ENHANCED INTERNATIONAL COOPERATION.**

24 (a) IN GENERAL.—The Attorney General, in coopera-
25 tion with the Secretary of State, shall—

1 (1) assign agents of the Bureau of Alcohol, To-
2 bacco, Firearms, and Explosives to the United
3 States mission in Mexico, to work with Mexican law
4 enforcement agencies in conducting investigations
5 relating to firearms trafficking and other criminal
6 enterprises;

7 (2) provide the equipment and technological re-
8 sources necessary to support investigations and to
9 trace firearms recovered in Mexico; and

10 (3) support the training of Mexican law en-
11 forcement officers in serial number restoration tech-
12 niques, canine explosive detection, and anti-traf-
13 ficking tactics.

14 (b) **AUTHORIZATION OF APPROPRIATIONS.**—There is
15 authorized to be appropriated \$9,500,000 for each of fis-
16 cal years 2011 and 2012 to carry out this section.

17 **SEC. 147. EXPANSION OF COMMERCE SECURITY PRO-**
18 **GRAMS.**

19 (a) **CUSTOMS-TRADE PARTNERSHIP AGAINST TER-**
20 **RORISM.**—

21 (1) **IN GENERAL.**—Not later than 180 days
22 after the date of enactment of this Act, the Commis-
23 sioner, in consultation with the Secretary, shall de-
24 velop a plan to expand the programs of the Cus-
25 toms–Trade Partnership Against Terrorism estab-

lished pursuant to section 211 of the SAFE Port Act (6 U.S.C. 961), including adding additional personnel for such programs, along the northern border and southern border, including the following programs:

(A) The Business Anti-Smuggling Coalition.

(B) The Carrier Initiative Program.

(C) The Americas Counter Smuggling Initiative.

(D) The Container Security Initiative established pursuant to section 205 of the SAFE Port Act (6 U.S.C. 945).

(E) The Free and Secure Trade Initiative.

(F) Other industry partnership programs administered by the Commissioner.

(2) SOUTHERN BORDER DEMONSTRATION PROGRAM.—Not later than 180 days after the date of enactment of this Act, the Commissioner shall implement, on a demonstration basis, at least 1 Customs–Trade Partnership Against Terrorism program, which has been successfully implemented along the northern border, along the southern border.

(b) DEMONSTRATION PROGRAM.—Not later than 180 days after the date of enactment of this Act, the Commis-

1 sioner shall establish a demonstration program to develop
 2 a cooperative trade security system to improve supply
 3 chain security.

4 **SEC. 148. AUTHORIZATION OF APPROPRIATIONS.**

5 (a) IN GENERAL.—In addition to any funds other-
 6 wise available, there are authorized to be appropriated
 7 such sums as may be necessary for the fiscal years 2011
 8 through 2015 to carry out this subtitle.

9 (b) INTERNATIONAL AGREEMENTS.—Amounts ap-
 10 propriated pursuant to the authorization of appropriations
 11 in subsection (a) may be used for the implementation of
 12 projects described in the Declaration on Embracing Tech-
 13 nology and Cooperation to Promote the Secure and Effi-
 14 cient Flow of People and Commerce across our Shared
 15 Border between the United States and Mexico, agreed to
 16 March 22, 2002, Monterrey, Mexico or the Smart Border
 17 Declaration between the United States and Canada,
 18 agreed to December 12, 2001, Ottawa, Canada that are
 19 consistent with the provisions of this subtitle.

20 **Subtitle B—Detention**

21 **SEC. 151. DEFINITIONS.**

22 In this subtitle:

23 (1) DETENTION.—The term “detention”, in the
 24 context of an immigration-related enforcement activ-
 25 ity, means government custody or any other depriva-

1 tion of an individual’s freedom of movement by gov-
2 ernment agents.

3 (2) DETENTION FACILITY.—The term “deten-
4 tion facility” means any Federal, State, local govern-
5 ment facility, or privately owned and operated facil-
6 ity that is used to hold immigration detainees for
7 more than 72 hours.

8 (3) SHORT-TERM DETENTION FACILITY.—The
9 term “short-term detention facility” means any Fed-
10 eral, State, local government facility, or privately
11 owned and operated facility that is used to hold im-
12 migration detainees for 72 hours or less.

13 (4) IMMIGRATION-RELATED ENFORCEMENT AC-
14 TIVITY.—The term “immigration-related enforce-
15 ment activity” means any government action in
16 which—

17 (A) an individual suspected of an immigra-
18 tion violation is detained for such violation; or

19 (B) an individual who has been detained
20 by government agents is questioned about pos-
21 sible immigration violations.

22 (5) SECURE ALTERNATIVES PROGRAMS.—The
23 term “secure alternatives” means custodial or non-
24 custodial programs under which aliens are screened
25 and provided with appearance assistance services or

1 placed in supervision programs as needed to ensure
2 they appear at all immigration interviews, appoint-
3 ments and hearings.

4 (6) UNACCOMPANIED ALIEN CHILDREN.—The
5 term “unaccompanied alien child or children” shall
6 be defined as found in section 462(g) of the Home-
7 land Security Act of 2002 (6 U.S.C. 279(g))

8 (7) APPREHENSION.—The term “apprehen-
9 sion”, in the context of an immigration enforcement
10 related activity, means government detention, arrest,
11 or custody, or any significant deprivation of an indi-
12 viduals freedom of action by government officials or
13 entities acting under agreement with the Depart-
14 ment of Homeland Security for suspicion of viola-
15 tions under the Immigration and Nationality Act (8
16 U.S.C. 1101 et seq.).

17 (8) SSA.—The term “SSA” means the appro-
18 priate State or local service agency, including rel-
19 evant nongovernmental organizations, child welfare
20 agencies, child protective service agencies, school and
21 head start administrators, mental health and legal
22 service providers, and hospitals.

23 **SEC. 152. DETENTION CONDITIONS.**

24 (a) IN GENERAL.—The Secretary shall—

1 (1) ensure that all detainees are treated hu-
2 manely and granted the protections described in this
3 section; and

4 (2) comply with the minimum requirements set
5 forth in this section.

6 (b) QUALITY OF MEDICAL CARE.—

7 (1) RIGHT TO MEDICAL CARE.—Each detainee
8 has the right to—

9 (A) prompt and adequate medical care, de-
10 signed to ensure continuity of care, at no cost
11 to the detainee;

12 (B) care to address medical needs that ex-
13 isted prior to detention; and

14 (C) primary care, emergency care, chronic
15 care, prenatal care, dental care, eye care, men-
16 tal health care, and other medically necessary
17 specialized care.

18 (2) SCREENINGS AND EXAMINATIONS.—Each
19 detainee shall receive—

20 (A) a comprehensive medical, dental, and
21 mental health intake screening, including
22 screening for sexual abuse or assault by a li-
23 censed health care professional upon arrival at
24 a detention facility or short-term detention fa-
25 cility; and

1 (B) a comprehensive medical and mental
2 health examination by a licensed health care
3 professional not later than 14 days after the de-
4 tainee's arrival at a detention facility.

5 (3) MEDICATIONS AND TREATMENT.—

6 (A) PRESCRIPTIONS.—Each detainee tak-
7 ing prescribed medications prior to detention
8 shall be allowed to continue taking such medica-
9 tions, on schedule and without interruption,
10 until and unless a licensed health care profes-
11 sional examines the immigration detainee and
12 decides upon an alternative course of treatment.
13 Detainees who arrive at a detention facility
14 without prescription medications and report
15 being on such medications shall be evaluated by
16 a qualified health care professional not later
17 than 24 hours after arrival. All decisions to dis-
18 continue or modify a detainee's reported pre-
19 scription medication regimen shall be conveyed
20 to the detainee in a language that the detainee
21 understands and shall be recorded in writing in
22 the detainee's medical records.

23 (B) PSYCHOTROPIC MEDICATION.—Medi-
24 cation may not be forcibly administered to a de-
25 tainee to facilitate transport, removal, or other-

1 wise to control the detainee's behavior. Involun-
2 tary psychotropic medication may only be used,
3 to the extent authorized by applicable law, in
4 emergency situations after a physician has per-
5 sonally examined the detainee and determined
6 that—

7 (i) the detainee is imminently dan-
8 gerous to self or others due to a mental ill-
9 ness; and

10 (ii) involuntary psychotropic medica-
11 tion is medically appropriate to treat the
12 mental illness and necessary to prevent
13 harm.

14 (C) TREATMENT.—Each detainee shall be
15 provided medically necessary treatment, includ-
16 ing prenatal care, prenatal vitamins, hormonal
17 therapies, and birth control. Female detainees
18 shall be provided with adequate access to sani-
19 tary products.

20 (4) MEDICAL CARE DECISIONS.—Any decision
21 regarding requested medical care for a detainee—

22 (A) shall be made in writing by an on-site
23 licensed health care professional not later than
24 72 hours after such medical care is requested;
25 and

1 (B) shall be immediately communicated to
2 the detainee.

3 (5) ADMINISTRATIVE APPEALS PROCESS.—

4 (A) IN GENERAL.—Detention facilities, in
5 conjunction with the Department of Homeland
6 Security, shall ensure that detainees, medical
7 providers, and legally appointed advocates have
8 the opportunity to appeal a denial of requested
9 health care services by an on-site provider to an
10 independent appeals board.

11 (B) APPEALS BOARD.—The appeals board
12 shall include health care professionals in the
13 fields relevant to the request for medical or
14 mental health care.

15 (C) DECISION.—Not later than 7 days
16 after an appeal is received by the appeals board
17 under this paragraph, or earlier if medically
18 necessary, the appeals board shall issue a writ-
19 ten decision regarding the appeal and notify the
20 detention facility and the appellee of such deci-
21 sion.

22 (6) REVIEW OF ON-SITE MEDICAL PROVIDER
23 REQUESTS.—

24 (A) IN GENERAL.—The Secretary shall re-
25 spond within 72 hours to any request by an on-

1 site medical provider for authorization to pro-
2 vide medical or mental health care to a de-
3 tainee.

4 (B) WRITTEN EXPLANATION.—If the Sec-
5 retary denies or fails to grant a request de-
6 scribed in subparagraph (A), the Secretary shall
7 immediately provide a written explanation of
8 the reasons for such decision to the on-site
9 medical provider and the detainee.

10 (C) APPEALS BOARD.—The on-site medical
11 provider and the detainee (or the detainee’s le-
12 gally appointed advocate) shall be permitted to
13 appeal the denial of, or failure to grant, a re-
14 quest described in subparagraph (A) to an inde-
15 pendent appeals board.

16 (D) DECISION.—Not later than 7 days
17 after an appeal is received by the appeals board
18 under this paragraph, or earlier if medically
19 necessary, the appeals board shall issue a writ-
20 ten decision regarding the appeal and notify the
21 on-site medical provider, the detainee, and the
22 detention facility of such decision.

23 (7) CONDITIONAL RELEASE.—

24 (A) IN GENERAL.—If a licensed health
25 care professional determines that a detainee has

1 a medical or mental health care condition, is
2 pregnant, or is a nursing mother, the Secretary
3 shall consider releasing the detainee on parole,
4 on bond, or into a secure alternatives program.

5 (B) REEVALUATION.—If a detainee de-
6 scribed in subparagraph (A) is not initially re-
7 leased under this paragraph, the Secretary shall
8 periodically reevaluate the situation of the de-
9 tainee to determine if such a release would be
10 appropriate.

11 (C) DISCHARGE PLANNING.—Upon re-
12 moval or release, all detainees with medical or
13 mental health conditions and women who are
14 pregnant, post-natal, and nursing mothers shall
15 receive discharge planning to ensure continuity
16 of care for a reasonable period of time.

17 (8) MEDICAL RECORDS.—

18 (A) IN GENERAL.—The Secretary shall
19 maintain complete, confidential medical records
20 for every detainee and make such records avail-
21 able to a detainee or to individuals authorized
22 by the detainee not later than 72 hours after
23 receiving a request for such records.

24 (B) TRANSFER OF MEDICAL RECORDS.—
25 Immediately upon a detainee's transfer between

1 detention facilities, the detainee's complete
2 medical records, including any transfer sum-
3 mary, shall be provided to the receiving deten-
4 tion facility.

5 (c) ACCESS TO TELEPHONES.—Detention facilities
6 shall provide to detainees reasonable and equitable access
7 to working telephones, and the ability to contact, through
8 confidential toll-free numbers, legal representatives, family
9 courts, child protective services, foreign consulates, the im-
10 migration courts, Federal and state courts in which the
11 detainee is, or may become, involved in a legal proceeding,
12 the Board of Immigration Appeals, nongovernmental orga-
13 nizations designated by the Secretary, all government im-
14 migration agencies and adjudicatory bodies including the
15 Office of the Inspector General of the Department of
16 Homeland Security and the Office for Civil Rights and
17 Civil Liberties of the Department of Homeland Security,
18 in addition to persons and offices contacted for the pur-
19 pose of obtaining legal representation. Detention facilities
20 shall provide to detainees access to telephones during facil-
21 ity working hours and on an emergency basis in accord-
22 ance with the following:

23 (1) The detention facility shall provide to each
24 detainee a copy of its rules governing telephone ac-
25 cess and shall post those rules, together with an ex-

1 planation of how to make calls, within sight of each
2 telephone available to detainees. These rules shall be
3 translated into Spanish and two additional lan-
4 guages spoken by a substantial part of the detainee
5 population of the detention facility. If a detention fa-
6 cility has determined that more than 5 percent of its
7 population is of a certain language group, the docu-
8 ment should be translated into that language
9 group's appropriate language. The detention facility
10 shall also provide oral interpretation and written
11 translation assistance to detainees in reading any
12 relevant materials required to request telephone ac-
13 cess, including oral interpretation assistance for
14 those who are not literate in English, Spanish, and
15 other languages spoken by the detainee population
16 of the facility.

17 (2) The rates charged for telephone calls shall
18 be reasonable and equitable and shall not signifi-
19 cantly impair detainees' access to telephones.

20 (3) The detention facility shall not restrict the
21 number of calls detainees may place to their legal
22 representatives or consular officials, or to any others
23 for the purpose of obtaining legal representation, or
24 limit the duration of those calls by rule or automatic
25 cut-off, unless necessary for security reasons. The

1 detention facility shall have a reasonable number of
2 working phones available to detainees, and at a min-
3 imum one phone per each 25 users.

4 (4) The detention facility shall ensure the pri-
5 vacy of telephone conversations between detainees
6 and legal representatives or consular officials, and
7 calls made for the purpose of obtaining legal rep-
8 resentation. Means to ensure privacy may include
9 the use of privacy panels, the placement of phones
10 in housing pods, and other appropriate measures.

11 (5) Detainees' telephone calls to a court, legal
12 representative, or consular official, or for the pur-
13 pose of obtaining legal representation, shall not be
14 monitored or recorded without a court order and
15 without prior notification to the detainee.

16 (6) The detention facility shall take and deliver
17 telephone messages to detainees as promptly as pos-
18 sible, but no less often than twice a day. Detainees
19 shall be permitted to make confidential telephone
20 calls promptly within 8 hours of receipt of messages
21 left by a court, legal representative, prospective legal
22 representative, or consular official as soon as reason-
23 ably possible after the delivery of the message.

24 (d) SEXUAL ABUSE REGULATIONS CONCERNING
25 CARE AND CUSTODY OF DETAINEES.—

1 (1) IN GENERAL.—Detention facilities shall
2 take all necessary measures to prevent sexual abuse
3 of detainees, including sexual assaults, and shall ob-
4 serve the minimum standards under the Prison Rape
5 Elimination Act of 2003 (42 U.S.C. 15601 et seq.).

6 (2) MEASURES WHERE ABUSE OCCURS.—Where
7 sexual abuse occurs, detention facilities shall ensure
8 that—

9 (A) prompt and appropriate medical inter-
10 vention is taken to minimize medical and psy-
11 chological trauma;

12 (B) a medical history is taken and a phys-
13 ical examination is conducted by qualified and
14 culturally appropriate licensed medical profes-
15 sionals to determine the extent of physical in-
16 jury and whether referral to another medical fa-
17 cility is indicated;

18 (C) prophylactic treatment and follow-up
19 for sexually transmitted diseases are provided
20 within the appropriate time frame;

21 (D) the case is evaluated by a qualified
22 and culturally appropriate mental health profes-
23 sional for crisis intervention counseling and
24 long-term follow-up;

1 (E) victims are separated from their abus-
2 ers and are considered for release on parole or
3 for an alternative to detention program—

4 (i) shall not result in the transfer of
5 the victim away from counsel absent
6 exceptional circumstances; and

7 (ii) shall never result in the placement
8 of the victim in solitary confinement; and

9 (F) any and all medical and mental health
10 records arising out of a detainee's allegation of
11 sexual abuse shall be treated as confidential, as
12 required by the Health Insurance Portability
13 and Accountability Act of 1996.

14 (3) REPORTING.—A detention facility shall not
15 subject any person to punishment or any other form
16 of retaliation for reporting incidents of sexual abuse.

17 (4) INVESTIGATION.—In all cases of alleged
18 sexual abuse, the detention facility shall conduct a
19 thorough and timely investigation and shall provide
20 to the Secretary of Homeland Security a report of
21 the circumstances and the response of the detention
22 facility. If the report is not completed within 30
23 days after alleged sexual abuse comes to the atten-
24 tion of the detention facility, the detention facility
25 shall submit to the Secretary of Homeland Security

1 a description of the status of the investigation and
2 an estimated date of completion 30 days after the
3 alleged sexual abuse comes to the attention of the
4 detention facility and every 30 days thereafter until
5 the report is provided to the Secretary of Homeland
6 Security. The report required by this subsection
7 shall include at minimum a determination of wheth-
8 er the alleged sexual abuse occurred, an in-depth
9 analysis of the relevant facts including the causes of
10 any sexual abuse that may have occurred and wheth-
11 er and to what extent the alleged abuse indicates a
12 failure of policy, a failure of training, a failure of
13 oversight, or a failure of management, and a de-
14 scription of the actions that the facility will take to
15 prevent the occurrence of similar incidents in the fu-
16 ture and a plan for monitoring the implementation
17 of those actions. The detention facility shall provide
18 to the Secretary of Homeland Security periodic re-
19 ports monitoring the implementation of the plan in
20 accordance with the schedule set forth in such plan
21 as approved by the Secretary of Homeland Security.

22 (e) TRANSFER OF DETAINEES.—

23 (1) PROCEDURES.—In adopting procedures gov-
24 erning the transfer of individuals detained under the
25 Immigration and Nationality Act (8 U.S.C. 1226),

1 the Secretary of Homeland Security shall prohibit
2 transfer of a detainee if such transfer would—

3 (A) negatively affect an existing attorney-
4 client relationship;

5 (B) negatively affect the detainee's legal
6 proceedings, including merits or calendar hear-
7 ings, or a pending application with United
8 States Citizenship and Immigration Services or
9 the Executive Office for Immigration Review,
10 by—

11 (i) limiting the detainee's access to se-
12 curing legal representation;

13 (ii) limiting the detainee's ability to
14 prepare a legal defense to removal; or

15 (iii) removing the detainee from the
16 legal venue of such proceeding;

17 (C) negatively affect the detainee's health
18 and medical fitness; or

19 (D) to the extent it does not conflict with
20 clauses (i), (ii), and (iii)—

21 (i) place the detainee in a location
22 more distant from the detainee's residence
23 than the original detention location; or

1 (ii) place the detainee in a location
2 more distant from family members than
3 the original detention location.

4 (2) NOTICE.—Unless exigent circumstances dic-
5 tate an immediate transfer—

6 (A) the Secretary of Homeland Security
7 shall provide not less than 72 hours notice to
8 any detainee prior to transferring the detainee
9 to another detention facility;

10 (B) detainees shall be afforded at least one
11 toll-free call and the Secretary of Homeland Se-
12 curity shall notify the detainee’s legal represent-
13 ative or if unrepresented, an adult family mem-
14 ber or other person designated by the detainee,
15 of the transfer and the detainee’s new location
16 by telephone and in writing;

17 (C) if removal proceedings are pending, the
18 Secretary of Homeland Security shall also
19 promptly notify the Immigration Court, Board
20 of Immigration Appeals, or the Circuit Court of
21 Appeals, as appropriate of the transfer and the
22 detainee’s new address; and

23 (D) the Secretary of Homeland Security
24 shall not transfer any detainee who has already

1 requested, and is awaiting, a bond hearing or a
2 bond redetermination hearing.

3 (3) EXCEPTION.—The Secretary may transfer a
4 detainee who has an existing attorney-client relation-
5 ship to an alternate detention facility if such trans-
6 fer is necessitated by a highly unusual emergency,
7 such as a natural disaster or comparable emergency.

8 (4) PROTECTING DETAINEES LEGAL RIGHTS.—
9 If the Secretary determines that a transfer is nec-
10 essary due to a highly unusual emergency, the Sec-
11 retary shall ensure that the detainee’s legal rights
12 are not prejudiced and the existing attorney-client
13 relationship is not impaired, including evaluating the
14 location of the detention facility based on its prox-
15 imity to the detainee’s counsel or nongovernmental
16 or pro bono organizations providing free or low cost
17 immigration legal services.

18 (5) RECORD.—In cases in which a detainee is
19 transferred, the Secretary shall make a record of the
20 reasons and circumstances necessitating such trans-
21 fer.

22 **SEC. 153. SPECIFIC DETENTION REQUIREMENTS FOR**
23 **SHORT-TERM DETENTION FACILITIES.**

24 (a) ACCESS TO BASIC NEEDS, PEOPLE, AND PROP-
25 erty.—

1 (1) BASIC NEEDS.—All detainees in short-term
2 detention facilities shall receive—

3 (A) potable water;

4 (B) food, if detained for more than 5
5 hours;

6 (C) basic toiletries, diapers, sanitary prod-
7 ucts, and blankets;

8 (D) access to bathroom facilities; and

9 (E) access to telephones.

10 (2) PEOPLE.—The Secretary shall provide con-
11 sular officials with access to detainees held at any
12 short-term detention facility. Detainees shall be af-
13 farded reasonable access to a licensed health care
14 professional. The Secretary shall ensure that nursing
15 mothers in such facilities have access to their chil-
16 dren.

17 (3) PROPERTY.—Any property belonging to a
18 detainee that was confiscated by an official of the
19 Department of Homeland Security shall be returned
20 to the detainee upon repatriation or transfer.

21 (b) PROTECTIONS FOR CHILDREN.—

22 (1) QUALIFIED STAFF.—The Secretary shall
23 ensure that adequately trained and qualified staff
24 are stationed at each major port of entry at which,
25 during the most recent 2 fiscal years, an average of

1 not fewer than 50 unaccompanied alien children per
2 year have been held by United States Customs and
3 Border Protection, such staff shall include—

4 (A) independent licensed social workers
5 dedicated to ensuring the proper temporary
6 care for the children while in the custody of
7 United States Customs and Border Protection;
8 and

9 (B) agents charged primarily with the safe,
10 swift, and humane transportation of such chil-
11 dren to the custody of the Office of Refugee Re-
12 settlement.

13 (2) SPECIFIC RIGHTS.—The social workers de-
14 scribed in paragraph (1)(A) shall ensure that each
15 unaccompanied alien child—

16 (A) receives emergency medical care;

17 (B) receives mental health care in case of
18 trauma;

19 (C) has access to psychosocial health serv-
20 ices;

21 (D) is provided with—

22 (i) a pillow, linens, and sufficient
23 blankets to rest at a comfortable tempera-
24 ture; and

- 1 (ii) a bed and mattress placed in an
2 area specifically designated for residential
3 use;
4 (E) receives adequate nutrition;
5 (F) enjoys a safe and sanitary living envi-
6 ronment;
7 (G) receives educational materials; and
8 (H) has access to at least 3 hours of in-
9 door and outdoor recreational programs and ac-
10 tivities per day.

11 (c) CONFIDENTIALITY.—

12 (1) IN GENERAL.—The Secretary of Health and
13 Human Services shall maintain the privacy and con-
14 fidentiality of all information gathered in the course
15 of providing care, custody, placement, and follow-up
16 services to unaccompanied alien children and sepa-
17 rated children as defined in section 164(c), con-
18 sistent with the best interest of such children, by not
19 disclosing such information to other government
20 agencies or nonparental third parties, except as pro-
21 vided under paragraph (2).

22 (2) LIMITED DISCLOSURE OF INFORMATION.—
23 The Secretary may only disclose information regard-
24 ing an unaccompanied alien child if—

1 (A) the child authorizes such disclosure
2 and such is consistent with the child's best in-
3 terest; or

4 (B) the disclosure is to a duly recognized
5 law enforcement entity and is necessary to pre-
6 vent imminent and serious harm to another in-
7 dividual.

8 (3) WRITTEN RECORD.—All disclosures under
9 paragraph (2) shall be duly recorded in writing and
10 placed in the child's file.

11 **SEC. 154. RULEMAKING AND ENFORCEMENT.**

12 (a) REGULATIONS.—

13 (1) NOTICE OF PROPOSED RULEMAKING.—Not
14 later than 60 days after the date of the enactment
15 of this Act, the Secretary shall issue a notice of pro-
16 posed rulemaking regarding the implementation of
17 this Act.

18 (2) FINAL REGULATIONS.—Not later than 180
19 days after the date of the enactment of this Act, the
20 Secretary shall promulgate regulations, which shall
21 be binding upon all detention facilities and short-
22 term detention facilities, to ensure that the detention
23 requirements under sections 142 and 143 are fully
24 implemented and enforced and that all facilities
25 comply with the regulations.

1 (b) ENFORCEMENT.—

2 (1) IN GENERAL.—The Secretary shall enforce
3 all regulations and standards promulgated under
4 subsection (a). Not later than 180 days after the
5 date of the enactment of this Act, the Secretary
6 shall issue guidance to detention facilities and short-
7 term detention facilities to ensure compliance with
8 all the detention requirements under sections 142
9 and 143.

10 (2) INVESTIGATION.—

11 (A) GRIEVANCES.—Each detainee has the
12 right to file grievances with the staff of deten-
13 tion facilities, short-term detention facilities,
14 and the Department of Homeland Security, and
15 shall be protected from retaliation for exercising
16 such right.

17 (B) REVIEW.—The Secretary shall—

18 (i) review any grievance or other com-
19 plaint containing evidence that a detention
20 facility or short-term detention facility has
21 violated any requirement under this Act;

22 (ii) issue a determination in writing to
23 the complainant indicating the Secretary's
24 findings regarding the alleged violation not

1 later than 30 days after receiving such
2 complaint;

3 (iii) remedy any violation not later
4 than 30 days after issuing a determination
5 under clause (ii); and

6 (iv) promptly advise the complainant
7 of the remedy referred to in clause (iii).

8 (C) WRITTEN RESPONSE.—If the Sec-
9 retary issues a written response under subpara-
10 graph (B)(ii) indicating that no violation has
11 occurred, such response shall constitute final
12 agency action for the purposes of section 702 of
13 title 5, United States Code.

14 (3) PENALTIES.—The Secretary shall enforce
15 compliance with the detention requirements under
16 sections 142 and 143 by—

17 (A) imposing financial penalties upon de-
18 tention facilities and short-term detention facili-
19 ties that are not in compliance with such re-
20 quirements; and

21 (B) terminating the contracts of such fa-
22 cilities if such noncompliance persists.

23 (4) COMPLIANCE OFFICER.—

24 (A) DESIGNATION.—Each detention facil-
25 ity and short-term detention facility shall des-

1 designate an officer to ensure compliance with the
2 provisions of this Act.

3 (B) DUTIES.—Each officer designated
4 under subparagraph (A) shall—

5 (i) investigate all evidence pertaining
6 to a violation of this Act; and

7 (ii) if a violation is identified, remedy
8 the violation within 30 days.

9 (C) JUDICIAL REVIEW.—A detainee may
10 not seek judicial review of the detention facili-
11 ty's determination until after the passage of the
12 30-day period, except where irreparable harm
13 would result.

14 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
15 tion may be construed to preclude review of noncompliance
16 with this Act under—

17 (1) section 1331 or 2241 of title 28, United
18 States Code; or

19 (2) section 1979 of the Revised Statutes (42
20 U.S.C. 1983).

21 (d) PUNITIVE DAMAGES.—No individual may seek
22 punitive damages for any violation under this Act.

23 **SEC. 155. IMMIGRATION DETENTION COMMISSION.**

24 (a) APPOINTMENT.—The Secretary shall appoint and
25 convene an Immigration Detention Commission (referred

1 to in this section as the “Commission”), which shall be
2 comprised of—

3 (1) experts from United States Immigration
4 and Customs Enforcement, United States Customs
5 and Border Protection, the Office of Refugee Reset-
6 tlement, and the Division of Immigration Health
7 Services of the Department of Health and Human
8 Services; and

9 (2) independent experts, in a number equal to
10 the number of experts appointed under paragraph
11 (1), from nongovernmental organizations and inter-
12 governmental organizations with expertise in work-
13 ing on behalf of detainees and other vulnerable pop-
14 ulations.

15 (b) DUTIES.—The Commission shall conduct inde-
16 pendent investigations, and evaluate and report on the
17 compliance of detention facilities, short-term detention fa-
18 cilities, and the Department of Homeland Security with
19 the detention requirements under sections 142 and 143.

20 (c) BIENNIAL REPORTS.—Not later than 60 days
21 after the end of the first fiscal year beginning after the
22 date of the enactment of this Act, and every 2 years there-
23 after, the Commission shall submit a report containing the
24 findings of its investigations and evaluations under sub-
25 section (b) to—

1 (1) the Committee on the Judiciary of the Sen-
2 ate;

3 (2) the Committee on Homeland Security and
4 Governmental Affairs of the Senate;

5 (3) the Committee on the Judiciary of the
6 House of Representatives; and

7 (4) the Committee on Homeland Security of the
8 House of Representatives.

9 **SEC. 156. DEATH IN CUSTODY REPORTING REQUIREMENT.**

10 (a) IN GENERAL.—If an individual dies while in the
11 custody of the Department of Homeland Security or en
12 route to or from such custody—

13 (1) the supervising official at the detention fa-
14 cility or short-term detention facility at which the
15 death took place shall immediately notify the Sec-
16 retary of such death; and

17 (2) not later than 48 hours after receiving a no-
18 tification under paragraph (1), the Secretary shall
19 report the death to—

20 (A) the Office of the Inspector General of
21 the Department of Homeland Security; and

22 (B) the Department of Justice.

23 (b) MORBIDITY AND MORTALITY REVIEW.—The De-
24 partment of Homeland Security shall complete an inves-
25 tigation of each detainee death that shall be conducted

1 consistent with established medical practice for morbidity
2 and mortality reviews and examine both individual and
3 systemic contributors to the death. The investigation shall
4 be conducted by a panel of physicians with experience in
5 morbidity and mortality reviews and shall include the med-
6 ical staff of the facility or facilities that cared for the de-
7 ceased detainee, physicians from within the Department,
8 and independent physicians not affiliated with the Depart-
9 ment or facility. The panel shall complete a report and
10 corrective action plan in each case.

11 (c) REPORT TO CONGRESS.—Not later than 60 days
12 after the end of each fiscal year, the Secretary shall sub-
13 mit a report containing detailed information regarding all
14 the deaths of individuals in the custody of the Department
15 of Homeland Security during the preceding fiscal year to
16 the committees set forth in section 155(c).

17 (d) CONTENTS.—The reports submitted under sub-
18 section (a)(2) and subsection (c) shall include—

- 19 (1) the name, gender, race, ethnicity, and age
20 of the deceased;
- 21 (2) the date, time, and location of death;
- 22 (3) the law enforcement agency that detained,
23 arrested, or was in the process of arresting the de-
24 ceased;

1 (4) a description of the circumstances sur-
2 rounding the death;

3 (5) the status and results of any investigation
4 that has been conducted into the circumstances sur-
5 rounding the death; and

6 (6) all medical records of the deceased.

7 **SEC. 157. PROTECTION OF COMMUNITY-BASED ORGANIZA-**
8 **TIONS, FAITH-BASED ORGANIZATIONS AND**
9 **OTHER INSTITUTIONS.**

10 (a) IN GENERAL.—The Secretary shall issue regula-
11 tions requiring officials of the Department of Homeland
12 Security to—

13 (1) prohibit the apprehension of persons on the
14 premises or in the immediate vicinity of—

15 (A) a childcare provider;

16 (B) a school;

17 (C) a legal-service provider;

18 (D) a Federal court or State court pro-
19 ceeding;

20 (E) an administrative proceeding;

21 (F) a funeral home;

22 (G) a cemetery;

23 (H) a college, university, or community
24 college;

25 (I) a victim services agency;

1 (J) a social service agency;

2 (K) a hospital or emergency care center;

3 (L) a health care clinic;

4 (M) a place of worship;

5 (N) a day care center;

6 (O) a head start center;

7 (P) a school bus stop;

8 (Q) a recreation center;

9 (R) a mental health facility; and

10 (S) a community center; and

11 (2) tightly control investigative operations at
12 the locations described in paragraph (1).

13 (b) NOTICE TO APPEAR.—The Secretary shall amend
14 the Notice to Appear form to include a statement that no
15 immigration enforcement activity was undertaken in any
16 of the locations described in subsection (a)(1).

17 **SEC. 158. APPREHENSION PROCEDURES FOR IMMIGRA-**
18 **TION-RELATED ENFORCEMENT ACTIVITIES.**

19 (a) IN GENERAL.—Any immigration-related enforce-
20 ment activity engaged in by the Department of Homeland
21 Security or by other entities under agreement with the De-
22 partment of Homeland Security for alleged violations
23 under the Immigration and Nationality Act (8 U.S.C.
24 1101 et seq.), which results in the apprehension of at least

1 1 alien shall be carried out in accordance with the proce-
2 dures described in this section.

3 (b) APPREHENSION PROCEDURES.—The Department
4 of Homeland Security and entities under agreement with
5 the Department of Homeland Security shall—

6 (1) conduct an initial review of each individual
7 apprehended in an immigration-related enforcement
8 activity to ascertain whether such individual may be
9 a United States citizen, a lawful permanent resident
10 of the United States, or an alien lawfully present in
11 the United States;

12 (2) if an individual claims to be a United States
13 citizen, a lawful permanent resident of the United
14 States, or an alien lawfully present in the United
15 States, ensure that personnel of the Department of
16 Homeland Security or personnel under agreement
17 with the Department of Homeland Security inves-
18 tigate the individual's claims and considers the indi-
19 vidual for release under section 160(c);

20 (3) notify SSAs of such immigration-related en-
21 forcement activity not later than 24 hours before the
22 commencement of such activity, specifically notifying
23 the SSAs of—

24 (A) the specific area of the State that will
25 be affected; and

1 (B) the languages anticipated may be spo-
2 ken by individuals at the targeted site;

3 (4) if such immigration-related enforcement ac-
4 tivities cannot be planned more than 24 hours in ad-
5 vance, notify SSAs in a timely fashion before the ac-
6 tivity commences or, if this is not possible, imme-
7 diately following the commencement of such activity;

8 (5) provide SSAs with ongoing confidential ac-
9 cess to individuals apprehended by the Department
10 of Homeland Security or any entity operating under
11 agreement with the Department of Homeland Secu-
12 rity within six hours of the individual's apprehen-
13 sion, to assist the Department of Homeland Security
14 in determining if he or she is a member of a vulner-
15 able population as described in section 160(a)(2);

16 (6) notify local law enforcement of the specific
17 area of the State that will be affected by such immi-
18 gration-related enforcement activity not later than
19 24 hours before the commencement of such activity
20 or, if such immigration-related enforcement activity
21 cannot be planned more than 24 hours in advance,
22 notify local law enforcement in a timely fashion be-
23 fore the activity commences, or if this is not pos-
24 sible, immediately following the commencement of
25 such activity;

1 (7) provide all Department of Homeland Secu-
2 rity personnel, personnel from entities under agree-
3 ment with the Department of Homeland Security
4 participating, SSAs, and medical personnel with de-
5 tailed instructions on what steps to take if they en-
6 counter individuals who are a member of a vulner-
7 able population;

8 (8) ensure that not fewer than one independent
9 certified interpreter who is fluent in Spanish or any
10 language other than English spoken by more than 5
11 percent of the target population of the immigration-
12 related enforcement activity is available for in-person
13 translation for every 5 individuals targeted by an
14 immigration-related enforcement activity, and that
15 the Department of Homeland Security and entities
16 operating under agreement with the Department of
17 Homeland Security utilize appropriate translation
18 services where interpreters cannot or have not been
19 retained prior to commencement of an immigration-
20 related enforcement activity;

21 (9) permit nonprofit legal service providers, or-
22 ganizations, and attorneys to offer free legal services
23 to individuals subject to an immigration-related en-
24 forcement activity at the time of the apprehension of
25 such individuals; and

1 (10) permit access to a telephone within 6
2 hours after an individual is detained.

3 **SEC. 159. PROTECTIONS AGAINST UNLAWFUL DETENTIONS**
4 **OF UNITED STATES CITIZENS.**

5 (a) NOTIFICATIONS.—

6 (1) IN GENERAL.—Prior to questioning an indi-
7 vidual who has been detained on the basis of a sus-
8 pected immigration violation or has been detained
9 during an immigration-related enforcement activity,
10 a Department of Homeland Security or other officer
11 must first advise the detainee, in the language spo-
12 ken by the detainee that—

13 (A) the detainee has the right to be rep-
14 resented by counsel at no expense to the Fed-
15 eral Government;

16 (B) the detainee may remain silent; and

17 (C) any statement made by the detainee
18 may be used against the detainee in a subse-
19 quent removal or criminal proceeding.

20 (2) EFFECT OF VIOLATION.—Any evidence ob-
21 tained by an officer from a detainee in violation of
22 paragraph (1) may not be—

23 (A) admissible in a removal proceeding
24 against the detainee; or

1 (B) used to confirm that the detainee is a
2 noncitizen for purposes of issuing an immigra-
3 tion detainer.

4 (b) LEGAL ORIENTATION PROGRAM.—

5 (1) IN GENERAL.—The Attorney General, in
6 consultation with the Secretary, shall ensure that all
7 detained aliens who are in, or may be subject to, de-
8 tention by the Department of Homeland Security,
9 Immigration and Customs Enforcement, and who
10 are, or may be, in EOIR Immigration Court pro-
11 ceedings pursuant to sections 235, 238, 240, and
12 241 of the Immigration and Nationality Act receive
13 legal orientation through a program administered
14 and implemented by the Executive Office of Immi-
15 gration Review of the Department of Justice.

16 (2) CONTENT OF THE PROGRAM.—The legal
17 orientation program developed pursuant to this sec-
18 tion shall be based on the Legal Orientation Pro-
19 gram carried out by the Executive Office for Immi-
20 gration Review on the date of the enactment of this
21 Act.

22 (3) AUTHORIZATION OF APPROPRIATIONS.—
23 There are authorized to be appropriated such sums
24 as may be necessary to carry out such legal orienta-
25 tion program.

1 (c) ACCESS TO COUNSEL.—

2 (1) IN GENERAL.—An individual who is subject
3 to or detained during an immigration-related en-
4 forcement activity may be represented by legal coun-
5 sel at any time.

6 (2) LIST OF FREE LEGAL SERVICES.—The ex-
7 amining officer shall, in the language spoken by the
8 individual being detained—

9 (A) provide the individual, prior to trans-
10 ferring the individual from the point of appre-
11 hension to the detention facility for an immi-
12 gration-related violation with a list of available
13 free or low-cost legal services provided by orga-
14 nizations and attorneys that are located in the
15 region in which the arrest occurred; and

16 (B) certify on the Notice to Appear issued
17 to such individual that such a list was provided
18 to the individual.

19 (3) AMENDMENT.—Section 236 of the Immi-
20 gration and Nationality Act (8 U.S.C. 1226) is
21 amended—

22 (A) by redesignating subsection (e) as sub-
23 section (l);

1 (B) by redesignating subsections (b), (c),
2 (d), and (e) as subsections (f), (g), and (h), and
3 (i) respectively; and

4 (C) by inserting before subsection (l), as
5 redesignated, the following:

6 “(k) RIGHT OF ACCESS TO COUNSEL.—An individual
7 may be represented by counsel of the individual’s choosing
8 while being subject to any immigration-related enforce-
9 ment activity, including—

10 “(1) interviews;

11 “(2) processing appointments;

12 “(3) booking or intake questions;

13 “(4) hearings; and

14 “(5) any procedure that may result in a conclu-
15 sion that the detainee will be detained or removed
16 from the United States.”.

17 (d) REPRESENTATION OF DISABLED ALIENS; AC-
18 CESS TO COUNSEL.—The Attorney General shall ensure
19 that any alien with a legal, mental or physical disability
20 that prevents him from meaningfully representing himself
21 in proceedings shall have counsel, including counsel ap-
22 pointed by the Attorney General at the expense of the Gov-
23 ernment.

24 (e) NOTICE.—

1 (1) AMENDMENT.—Section 236 of such Act, as
2 amended by subsection (b)(3), is further amended by
3 inserting before subsection (k), the following:

4 “(j) NOTICE AND CHARGES.—

5 “(1) IN GENERAL.—Not later than 48 hours
6 after the commencement of a detention of an indi-
7 vidual under this section, the Secretary of Homeland
8 Security shall—

9 “(A) file a Notice to Appear or other rel-
10 evant charging document with the immigration
11 court closest to the location at which the indi-
12 vidual was apprehended; and

13 “(B) serve such notice or charging docu-
14 ment on the individual.

15 “(2) CUSTODY DETERMINATION.—Any indi-
16 vidual who is detained under this section for more
17 than 48 hours shall be brought before an immigra-
18 tion judge for a custody determination not later than
19 72 hours after the commencement of such detention
20 unless the individual waives the right in accordance
21 with paragraph (3).

22 “(3) WAIVER.—The requirements of this sub-
23 section may be waived for not more than 7 days if
24 the detainee—

1 “(A) enters into a written agreement with
2 the Department of Homeland Security to waive
3 such requirements; and

4 “(B) is prima facie eligible for immigration
5 benefits or demonstrates prima facie eligibility
6 for a defense against removal.”.

7 (2) APPLICABILITY OF OTHER LAW.—Nothing
8 in section 236(f) of the Immigration and Nationality
9 Act, as added by paragraph (1), may be construed
10 to repeal section 236A of such Act (8 U.S.C.
11 1226a).

12 (f) ISSUANCE OF DETAINERS.—

13 (1) IN GENERAL.—Section 287(d) is amended
14 by adding at the end the following: “The alien and
15 his or her attorney in the criminal proceeding shall
16 be provided with a written notice of the detainer in-
17 dicating the intention of the Secretary to assume
18 custody of the alien upon completion of the pending
19 criminal proceedings. The written notice shall in-
20 clude information about the specific basis for issuing
21 the detainer and instructions about how individuals
22 can challenge a detainer lodged in error. Where the
23 state or federal criminal court has granted pre-trial
24 release, and the alien has complied with conditions
25 of such release, DHS shall not take custody of the

1 alien until resolution of the pending criminal
2 charges. The existence of a detainer shall not be
3 used as a basis for denying pre-trial release. This
4 section is the sole authority for issuance of immigra-
5 tion detainers.”.

6 (2) RULEMAKING.—The Secretary shall issue
7 regulations that require officials of the Department
8 of Homeland Security to confirm, before issuing a
9 detainer, the alienage of the individual to be made
10 subject to such detainer. The regulations shall re-
11 quire officials of the Department of Homeland Secu-
12 rity to confirm—

13 (A) the alienage of an individual through
14 lawfully obtained information, including the
15 name of the individual; the date of birth of the
16 individual; or the fingerprints of the individual;
17 and

18 (B) whether the individual is removable
19 from the United States.

20 (3) DATA COLLECTION.—The Secretary of
21 Homeland Security shall collect data regarding de-
22 tainers issued under section 287(d) of the Immigra-
23 tion and Nationality Act (8 U.S.C. 1357(d)) includ-
24 ing—

1 (A) the criminal charge for which the indi-
2 vidual was arrested and/or convicted;

3 (B) the date the detainer was issued;

4 (C) the basis for issuance of the detainer;

5 (D) the date(s) the detainer was lifted;

6 (E) the date(s) of release of the individual
7 ordered by a State or Federal criminal court or
8 other government entity;

9 (F) the date that DHS took custody of the
10 individual;

11 (G) the race and ethnicity and country of
12 origin of the individual against whom the de-
13 tainer was issued;

14 (H) the disposition of criminal case;

15 (I) the ultimate disposition of immigration
16 case or whether individual was discovered to be
17 a United States citizen;

18 (J) the grounds of removal if applicable
19 and any charges brought by the Secretary; and

20 (K) the number of individuals removed
21 after the Secretary took custody while any
22 criminal matter was still pending.

23 (4) REPORT ON DETAINERS.—On a yearly basis
24 beginning one year after the date of the enactment
25 of this Act, the Secretary of Homeland Security

1 shall report the results of the Secretary's data collec-
2 tion to the Department of Homeland Security In-
3 spector General, the Department of Justice Civil
4 Rights Division, Congress, and the Department of
5 Homeland Security Office of Civil Rights and Civil
6 Liberties for purposes of ascertaining the extent to
7 which detainees are erroneously lodged against indi-
8 viduals who are United States citizens or not deport-
9 able, how often individuals remain in detention un-
10 lawfully past the expiration of the detainer, whether
11 detainees are lodged disproportionately against cer-
12 tain ethnicities, whether the lodging of detainees re-
13 sults in longer incarceration times, and whether de-
14 tainers are lodged for an investigatory purpose to in-
15 vestigate criminal activity instead of placing individ-
16 uals in removal proceedings.

17 (5) AUTHORIZATION OF APPROPRIATIONS.—

18 There are authorized to be appropriated such sums
19 as may be necessary to carry out this section for
20 each of fiscal years 2008 through 2012 to carry out
21 this section.

22 **SEC. 160. BASIC PROTECTIONS FOR VULNERABLE POPU-**
23 **LATIONS.**

24 (a) VULNERABLE POPULATIONS.—

1 (1) IN GENERAL.—Not later than 48 hours
2 after the commencement of an immigration-related
3 enforcement activity, the Department of Homeland
4 Security shall screen each detainee to determine
5 whether the detainee is a member of a vulnerable
6 population.

7 (2) VULNERABLE POPULATIONS.—A member of
8 a vulnerable population includes any of the fol-
9 lowing:

10 (A) Individuals with a nonfrivolous claim
11 to United States citizenship.

12 (B) Individuals who have a disability or
13 have been determined by a medically trained
14 professional to have medical or mental health
15 needs.

16 (C) Pregnant or nursing women.

17 (D) Individuals who are detained with 1 or
18 more of their children, and their detained chil-
19 dren.

20 (E) Individuals who provide financial,
21 physical, and other direct support to their
22 minor children, parents, or other dependents.

23 (F) Individuals who are at least 65 years
24 of age.

1 (G) Children (as defined in section
2 101(b)(1) of the Immigration and Nationality
3 Act (8 U.S.C. 1101(b)(1))).

4 (H) Victims of abuse, violence, crime, or
5 human trafficking.

6 (I) Individuals who have been referred for
7 a credible fear interview, a reasonable fear
8 interview, or an asylum hearing.

9 (J) Stateless individuals.

10 (K) Individuals who have applied or intend
11 to apply for asylum, withholding of removal, or
12 protection under the Convention Against Tor-
13 ture and Other Cruel, Inhuman or Degrading
14 Treatment or Punishment, done at New York,
15 December 10, 1984, and entered into force
16 June 26, 1987.

17 (L) Individuals who make a prima facie
18 case for eligibility for relief under any provision
19 of the Immigration and Nationality Act (8
20 U.S.C. 1101 et seq.), including returning lawful
21 permanent residents.

22 (M) Any group designated by the Sec-
23 retary as a vulnerable population.

24 (b) OPTIONS REGARDING DETENTION DECISIONS
25 FOR VULNERABLE POPULATIONS.—Section 236 of the

1 Immigration and Nationality Act, as amended by this Act,
2 is further amended—

3 (1) in subsection (a)—

4 (A) in the matter preceding paragraph (1),
5 by striking “(c)” and inserting “(g)”; and

6 (B) in paragraph (2)—

7 (i) in subparagraph (A), by striking
8 “or” at the end;

9 (ii) in subparagraph (B), by striking
10 “but” and inserting “or”; and

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

13 “(C) the individual’s own recognizance;”;

14 (C) by redesignating paragraph (3) as
15 paragraph (4); and

16 (D) by inserting after paragraph (2) the
17 following:

18 “(3) may enroll the alien in a secure alter-
19 natives program; but”; and

20 (2) by inserting after subsection (a) the fol-
21 lowing:

22 “(b) DETENTION DECISION STANDARDS.—

23 “(1) CRITERIA TO BE CONSIDERED.—If an
24 alien is not subject to mandatory detention under
25 subsection (g) or section 236A, the criteria that the

1 Secretary or the Attorney General shall use to dem-
2 onstrate that detention of the alien is necessary are
3 the following:

4 “(A) Whether the alien poses a risk to
5 public safety, including a risk to national secu-
6 rity.

7 “(B) Whether—

8 “(i) the alien poses a risk of flight;
9 and

10 “(ii) there are no conditions of release
11 that will reasonably ensure that the alien
12 will appear for immigration proceedings,
13 including bond or other conditions of re-
14 lease that reduce the risk of flight.

15 “(2) EXCEPTION FOR MANDATORY DETAIN-
16 EES.—The requirements described in paragraph (1)
17 shall not apply if the Secretary of Homeland Secu-
18 rity demonstrates by substantial evidence that the
19 alien is subject to detention under subsection (g).

20 “(c) CUSTODY DECISIONS FOR VULNERABLE POPU-
21 LATIONS.—

22 “(1) IN GENERAL.—Not later than 72 hours
23 after an individual is detained under this section
24 (unless the 72-hour requirement is waived in writing
25 by the individual), an individual who is a member of

1 a vulnerable population (as defined by section
2 5(a)(3) of the Protect Citizens and Residents from
3 Unlawful Detention Act) shall be released from the
4 custody of the Department of Homeland Security
5 and shall not be subject to electronic monitoring un-
6 less the Department demonstrates by a preponder-
7 ance of the evidence that the individual—

8 “(A) is subject to mandatory custody or
9 mandatory detention under subsection (g) or
10 section 236A;

11 “(B) poses a risk to the national security
12 of the United States; or

13 “(C) is a flight risk and the risk cannot be
14 mitigated through supervision in a non-custo-
15 dial secure alternatives program.

16 “(2) RELEASE.—An individual shall be released
17 from custody under this subsection—

18 “(A) on the individual’s own recognizance;

19 “(B) by posting a minimum bond under
20 subsection (a)(2)(a); or

21 “(C) on parole in accordance with section
22 212(d)(5)(A).

23 “(d) DECISIONS TO DETAIN ALIENS.—

24 “(1) IN GENERAL.—All detention decisions
25 under this section shall—

1 “(A) be made in writing by an official of
2 the Department of Homeland Security;

3 “(B) specify the reasons for the decision, if
4 the decision is made to continue the detention
5 without bond or parole; and

6 “(C) be served upon the detainee, in the
7 language spoken by the alien, not later than 72
8 hours after—

9 “(i) the commencement of the deten-
10 tion; or

11 “(ii) a positive determination of cred-
12 ible fear of persecution or reasonable fear
13 of persecution or torture, if the detainee is
14 subject to section 235 or 241(a)(5).

15 “(2) REDETERMINATION.—

16 “(A) REQUEST.—Any alien detained by
17 the Department of Homeland Security, at any
18 time after being served with the decision de-
19 scribed in paragraph (1)(A), may request a re-
20 determination of such decision by an immigra-
21 tion judge.

22 “(B) OTHER DECISIONS.—All custody de-
23 cisions by the Secretary of Homeland Security
24 shall be subject to redetermination by an immi-
25 gration judge.

1 “(C) SAVINGS PROVISION.—Nothing in
2 this paragraph may be construed to prevent a
3 detainee from requesting a bond redetermina-
4 tion.

5 “(e) SECURE ALTERNATIVES PROGRAMS.—

6 “(1) IN GENERAL.—The Secretary of Homeland
7 Security shall establish secure alternatives programs
8 to ensure public safety and appearances at immigra-
9 tion proceedings.

10 “(2) CONTRACT AUTHORITY.—The Secretary
11 shall contract with nongovernmental organizations to
12 conduct screening of detainees, provide appearance
13 assistance services, and operate community-based
14 supervision programs.

15 “(3) INDIVIDUALIZED DETERMINATIONS.—
16 When deciding whether to use secure alternatives,
17 the Secretary shall make an individualized deter-
18 mination and review each case on a monthly basis.

19 “(4) CUSTODY.—If an individual is not eligible
20 for release from custody, the Secretary shall con-
21 sider the alien for placement in secure alternatives
22 that maintain custody over the alien, including the
23 use of electronic ankle devices. The Secretary may
24 use secure alternatives programs to maintain cus-

1 today over any alien detained under this Act except
2 for aliens detained under section 236A.”.

3 **SEC. 161. REPORT ON PROTECTIONS FOR VULNERABLE**
4 **POPULATIONS IMPACTED BY IMMIGRATION**
5 **ENFORCEMENT ACTIVITIES.**

6 (a) REQUIREMENT FOR REPORTS.—Not later than 1
7 year after the date of the enactment of this Act, and annu-
8 ally thereafter, the Secretary of Homeland Security shall
9 submit a report to Congress that describes the impact of
10 immigration-related enforcement activities and fugitive op-
11 erations on United States citizens, lawful permanent resi-
12 dents, individuals otherwise lawfully present in the United
13 States, and, where possible, undocumented aliens present
14 in the United States.

15 (b) CONTENT.—The report submitted under sub-
16 section (a) shall include an assessment of—

17 (1) the number of individuals apprehended dur-
18 ing immigration-related enforcement activities who
19 are children, United States citizens, lawful perma-
20 nent residents, lawfully present non-citizens;

21 (2) immigration-related apprehensions at
22 homes, schools, school bus stops, day care centers,
23 colleges, places of worship, hospitals, health care
24 clinics, funeral homes, cemeteries, victim services
25 agencies, social services agencies, head start centers,

1 recreation centers, legal service providers, courts and
2 community centers;

3 (3) apprehensions, detentions, and removals of
4 sole caregivers, primary breadwinners, pregnant and
5 nursing mothers, and other vulnerable populations
6 during an immigration-related enforcement activity;

7 (4) the extent to which the Department of
8 Homeland Security cooperates and coordinates with
9 State and local law enforcement during immigration-
10 related enforcement activities;

11 (5) the number of immigration-related enforce-
12 ment apprehensions resulting from cooperation with
13 State and local law enforcement;

14 (6) whether apprehended individuals are pro-
15 vided access to a telephone;

16 (7) how quickly apprehended individuals are
17 provided access to a telephone;

18 (8) the manner through which family members
19 of the target population of the immigration-related
20 enforcement activity are notified of their family
21 member's detention;

22 (9) the number of parents, guardians, or care-
23 givers of children removed from the United States;

1 (10) the number of parents, guardians, or care-
2 givers of children removed from the United States
3 whose children accompany or join them;

4 (11) the number of parents, guardians, or care-
5 givers of children removed from the United States
6 who are removed without their children;

7 (12) the number of occasions on which both
8 parents of a particular children are removed from
9 the United States without their children;

10 (13) the length of time the parents, guardians,
11 or caregivers of children were present in the United
12 States before their removal from the United States;

13 (14) the number of United States citizen chil-
14 dren that remain in the United States after the re-
15 moval of a parent, guardian, or caregiver;

16 (15) the number of individuals apprehended de-
17 termined to be part of a vulnerable population re-
18 leased within specified time limit under section
19 160(c);

20 (16) the length of time between when an indi-
21 vidual is determined to be part of a vulnerable popu-
22 lation and that individual is released under section
23 160(c);

24 (17) the methodology of the Department of
25 Homeland Security for notifying agents and entities

1 under agreement with the Department of Homeland
2 Security about standards regarding enforcement ac-
3 tions concerning vulnerable populations and holding
4 them accountable when such standards are violated;

5 (18) the number of officials of the Department
6 of Homeland Security disciplined for violations dur-
7 ing apprehensions and in making detention deci-
8 sions;

9 (19) transfers of immigrants during the course
10 of an immigration-related enforcement activity, in-
11 cluding—

12 (A) whether the immigrants had access to
13 legal counsel before being transferred;

14 (B) whether the immigrant received notice
15 of an impending transfer; and

16 (C) whether the immigrant was evaluated
17 for vulnerability under section 160(a) before
18 being transferred;

19 (20) apprehension procedures for immigration-
20 related enforcement activities, and compliance with
21 screening procedures for vulnerable populations;

22 (21) recommendations for improving immigra-
23 tion-related enforcement activities and fugitive oper-
24 ations by reducing the negative impact on children
25 and vulnerable populations;

1 (22) secure alternatives programs, including the
2 types of programs used, number of individuals
3 placed in these programs, reasons for not placing
4 immigrants that qualify as a member of a vulnerable
5 population as defined in section 160(a) in these pro-
6 grams, percentage of cases in which adjustment of
7 immigration status is granted, percentage of cases in
8 which removal is undertaken, and frequency of ab-
9 sconding; and

10 (23) the number of individuals apprehended
11 after officials were notified by a health or mental
12 health professional.

13 **SEC. 162. FAMILY DETENTION AND UNITY PROTECTIONS.**

14 (a) DEFINITION OF FAMILIES WITH CHILDREN.—
15 Family with Children is defined as any parent or legal
16 guardian who is apprehended with one or more of their
17 children.

18 (b) PLACEMENT IN REMOVAL PROCEEDINGS.—Any
19 family with children sought to be removed by the Depart-
20 ment of Homeland Security shall be placed in removal pro-
21 ceedings under section 240 of the Immigration and Na-
22 tionality Act (8 U.S.C. 1229a).

23 (c) CUSTODY OF FAMILIES WITH CHILDREN.—The
24 following requirements shall apply with respect to families
25 with children:

1 (1) Families with children shall not be sepa-
2 rated or taken into custody except when justified by
3 exceptional circumstances, or when required by law.

4 (2) In exceptional circumstances where release
5 or a secure alternatives program is not an option,
6 the Secretary shall ensure that—

7 (A) special non-penal, residential, home-
8 like facilities that enable families to live as a
9 family unit are designed to house families with
10 children, taking into account the particular
11 needs and vulnerabilities of the children;

12 (B) procedures and conditions of custody
13 are appropriate for families with children;

14 (C) entities with demonstrated experience
15 and expertise in child welfare shall staff and be
16 responsible for the management of facilities
17 housing families with children;

18 (D) no restrictions on freedom of move-
19 ment; visitations; telephone, internet, library,
20 and law library access; possession of personal
21 property, including personal clothing; age ap-
22 propriate education; or religious practice shall
23 apply other than to prevent flight and ensure
24 the safety of residents;

(E) individualized reviews by an immigration judge of each family’s well being, custody status and the need for continued detention are conducted every 30 days for any family held in such a facility for more than three weeks, and all families shall be notified in writing of the decision and of the individualized reasons for the decision; and

(F) parents retain fundamental parental rights and responsibilities, including the discipline of children, in keeping with applicable State laws.

(d) DISCRETIONARY WAIVER AUTHORITY FOR FAMILIES WITH CHILDREN.—Section 235(b)(1)(B)(iii) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(B)(iii)) is amended—

(1) in subclause (IV), by striking “Any alien” and inserting “Except as provided in subclause (V), any alien”; and

(2) by adding at the end the following:

“(V) DISCRETIONARY WAIVER AUTHORITY FOR FAMILIES WITH CHILDREN.—The Secretary of Homeland Security may decide for humanitarian reasons or significant public

1 benefit not to detain families with
2 children who are otherwise subject to
3 mandatory detention under subclause
4 (IV).”.

5 **SEC. 163. APPREHENSION PROCEDURES FOR FAMILIES**
6 **AND PARENTS.**

7 The Department of Homeland Security and entities
8 under agreement with the Department of Homeland Secu-
9 rity shall—

10 (1) offer confidential psychosocial and mental
11 health services to children and family members of
12 such individuals at the time of the apprehension;

13 (2) provide, and advertise in the mainstream
14 and foreign language media, as well as make avail-
15 able to the public via the website of the Department
16 of Homeland Security, a toll-free number through
17 which family members of persons apprehended as a
18 result of an immigration enforcement-related activity
19 may report information relevant to the release of an
20 apprehended family member as a member of a vul-
21 nerable population, which will be conveyed to the ap-
22 propriate Department of Homeland Security official
23 and applicable SSA, and through which State child
24 welfare service providers, family members, and legal
25 counsel representing those who are apprehended may

1 obtain information about the apprehended family
2 members, including their location, in English and
3 the majority language of those who are apprehended;

4 (3) if there is reason to believe that an indi-
5 vidual who is apprehended is a parent, legal guard-
6 ian, or primary caregiver relative of a dependent
7 child in the United States, provide this parent, legal
8 guardian, or primary caregiver relative with—

9 (A) confidential and toll-free telephone
10 calls to arrange for care of dependent children
11 within 2 hours of screening;

12 (B) information regarding and contact in-
13 formation for legal service providers, organiza-
14 tions, and attorneys that can offer free legal ad-
15 vice regarding child welfare and custody deter-
16 minations; and

17 (C) information regarding and contact in-
18 formation for multiple State and local child wel-
19 fare providers;

20 (4) ensure that personnel of the Department of
21 Homeland Security and of entities operating under
22 agreement with the Department do not—

23 (A) interrogate or screen individuals in the
24 immediate presence of children;

1 (B) interrogate, arrest, or detain any child
 2 apprehended with his or her parent or parents
 3 without the presence or consent of a parent,
 4 family member, legal guardian, or legal counsel;
 5 or

6 (C) compel or request children to translate
 7 for other individuals who are encountered as
 8 part of an immigration enforcement-related ac-
 9 tivity; and

10 (5) ensure that the best interests of children
 11 are considered in decisions and actions relating to
 12 the detention or release of any individual appre-
 13 hended by the Department of Homeland Security,
 14 and that there be a preference for family unity
 15 whenever appropriate.

16 **SEC. 164. CHILD WELFARE SERVICES FOR CHILDREN SEPA-**
 17 **RATED FROM PARENTS DETAINED OR RE-**
 18 **MOVED FROM THE UNITED STATES FOR IM-**
 19 **MIGRATION VIOLATIONS.**

20 (a) STATE PLAN REQUIREMENTS.—Section 471(a)
 21 of the Social Security Act (42 U.S.C. 671(a)) is amend-
 22 ed—

23 (1) by striking “and” at the end of paragraph
 24 (32);

1 (2) by striking the period at the end of para-
2 graph (33) and inserting “; and”; and

3 (3) by adding at the end the following:

4 “(34) provides that the State shall—

5 “(A) create and implement protocols to
6 provide guidance on how all employees of State
7 agencies providing services to children under
8 the State plan should handle cases of separated
9 children that take into account the best interest
10 of the child, including consideration of the best
11 outcome for the family of the child;

12 “(B) develop and implement memoranda of
13 understanding or protocols with the Depart-
14 ment of Homeland Security, Federal, State,
15 and local government agencies to facilitate com-
16 munication between the agencies and such a
17 child, a parent, guardian, or relative referred to
18 in section 475(9)(B), family members of such a
19 child, family courts, providers of services to
20 such a child under the State plan, providers of
21 long-term care to such a child, and legal rep-
22 resentatives of such a child or of such a parent,
23 guardian, or relative;

24 “(C) develop and implement joint protocols
25 and training with law enforcement agencies to

1 minimize the trauma, at the time of the appre-
2 hension of such a parent, guardian, or relative,
3 to a child who will become a separated child as
4 a result of the apprehension, including protocols
5 and training for apprehension of such a parent,
6 guardian, or relative in the presence of the child
7 and how to best ensure appropriate and prompt
8 care arrangements for the child;

9 “(D) ensure that the case manager for
10 such a child is capable of communicating in the
11 native language of the child and of the family
12 of the child, or an interpreter who is so capable
13 is provided to communicate with the child and
14 the family of the child at no cost to the child
15 or the family of the child;

16 “(E) require that, in all decisions and ac-
17 tions relating to the care, custody, and place-
18 ment of such a child, the best interest of the
19 child, including the best outcome for the family
20 of the child, be considered, and ensure that the
21 decisions are based on clearly articulated fac-
22 tors that do not include predictions or conclu-
23 sions about immigration status or pending Fed-
24 eral immigration proceedings; and

1 “(F) coordinate with the Department of
2 Homeland Security, foreign consular officials
3 and nongovernmental organizations designated
4 by the Secretary to ensure that parents of such
5 a child who wish for the child to accompany
6 them to their country of origin are given ade-
7 quate time to obtain a passport and visa, collect
8 all relevant vital documents such as birth cer-
9 tificate, health and educational records, and
10 other information.”.

11 (b) ADDITIONAL INFORMATION TO BE INCLUDED IN
12 CASE PLAN.—Section 475(1) of such Act (42 U.S.C.
13 675(1)) is amended by adding at the end the following:

14 “(H) In the case of a separated child with
15 respect to whom the State plan requires the
16 State to provide services pursuant to section
17 471(a)(34)—

18 “(i) the location of the parent, guard-
19 ian, or relative referred to in paragraph
20 (9)(B) of this subsection from whom the
21 child has been separated; and

22 “(ii) a written record of each disclo-
23 sure to a government agency or person
24 (other than such a parent, guardian, or
25 relative) of information gathered in the

1 course of tracking the care, custody, and
2 placement of, and follow-up services pro-
3 vided to, the child.”.

4 (c) SEPARATED CHILDREN DEFINED.—Section 475
5 of such Act (42 U.S.C. 675) is amended by adding at the
6 end the following:

7 “(9) The term ‘separated children’ means indi-
8 viduals who—

9 “(A) have a parent, legal guardian, or pri-
10 mary caregiver relative who has been detained
11 by a Federal, State, or local law enforcement
12 agency in the enforcement of an immigration
13 law, or removed from the United States as a re-
14 sult of a violation of such a law; and

15 “(B) are in foster care under the responsi-
16 bility of a State.”.

17 **SEC. 165. VULNERABLE POPULATION AND CHILD WELFARE**
18 **TRAINING FOR IMMIGRATION ENFORCEMENT**
19 **OFFICERS.**

20 (a) MANDATORY TRAINING.—

21 (1) IN GENERAL.—The Secretary of Homeland
22 Security, in consultation with the Secretary of
23 Health and Human Services, and independent child
24 welfare experts shall mandate live specialized train-
25 ing of all Federal personnel, relevant personnel em-

1 employed by those States reimbursed for activities re-
2 lated to care and services for separated children, and
3 State and local personnel and relevant SSAs, who
4 come into contact with vulnerable populations as de-
5 fined at section 160(a) in all relevant legal authori-
6 ties, policies, and procedures pertaining to the hu-
7 manitarian and due process protections for these
8 vulnerable populations.

9 (2) VULNERABLE POPULATIONS.—Such per-
10 sonnel shall be trained to work with vulnerable popu-
11 lations, including identifying members of a vulner-
12 able population, and identifying members of a vul-
13 nerable population for whom asylum or special juve-
14 nile immigrant relief may be appropriate.

15 (3) MENTAL HEALTH NEEDS.—Personnel shall
16 establish collaborative relationships with local mental
17 health professionals to provide training in prepara-
18 tion for apprehensions of individuals with mental
19 health needs.

20 (4) BEST PRACTICES.—Participants will be re-
21 quired to undertake periodic and continuing training
22 on best practices and changes in the law, policies,
23 and procedures for these vulnerable populations.

24 (b) MEMORANDA OF UNDERSTANDING.—The Sec-
25 retary of Homeland Security shall require all law enforce-

1 ment agencies under agreement with the Department of
2 Homeland Security to establish Memoranda of Under-
3 standing with SSAs with respect to the availability of serv-
4 ices relevant to the humanitarian and due process protec-
5 tions for vulnerable populations as defined in section
6 160(a).

7 **SEC. 166. ACCESS FOR PARENTS, LEGAL GUARDIANS, AND,**
8 **PRIMARY CAREGIVER RELATIVES.**

9 (a) IN GENERAL.—The Secretary of the Department
10 of Homeland Security shall ensure that all detention facili-
11 ties operated by or under agreement with the Department
12 take steps to preserve family unity and ensure that the
13 best outcome for families can be considered in decisions
14 and actions relating to the custody of children whose par-
15 ent, legal guardian, or primary caregiver relative is de-
16 tained by reason of the parent’s, legal guardian’s, or pri-
17 mary caregiver relative’s immigration status.

18 (b) TRAINING.—The Secretary of Homeland Secu-
19 rity, in consultation with the Department of Health and
20 Human Services, the Department of Justice, the Depart-
21 ment of State, and independent family law experts, shall
22 mandate live, specialized training of all personnel at deten-
23 tion facilities operated by the Department of Homeland
24 Security or under agreement with the Department of
25 Homeland Security in all relevant legal authorities, poli-

1 cies and procedures related to ensuring that parents, legal
2 guardians, and primary caregiver relatives of children
3 have regular, ongoing and in-person access to children,
4 State family courts, consular officers and staff of State
5 social service agencies responsible for administering child
6 welfare programs. Such personnel shall be required to un-
7 dertake periodic and continuing training on best practices
8 and changes in relevant law, policies, and procedures per-
9 taining to the preservation of family unity.

10 (c) ACCESS TO CHILDREN, LOCAL AND STATE
11 COURTS, CHILD PROTECTIVE SERVICES, AND CONSULAR
12 OFFICIALS.—The Secretary of Homeland Security shall
13 be responsible for—

14 (1) ensuring that detained parents, legal guard-
15 ians, and primary caregiver relatives of children
16 under 18 years of age are granted free and confiden-
17 tial phone calls with their children on a daily basis;

18 (2) ensuring that detained parents, legal guard-
19 ians, and primary caregiver relatives of children
20 under 18 years of age are permitted regular contact
21 visits with their children;

22 (3) ensuring that detained parents, legal guard-
23 ians, and primary caregiver relatives of children
24 under 18 years of age are able to participate fully,
25 and to the extent possible in-person, in all family

1 court proceedings and any other proceeding impact-
2 ing upon custody of their children;

3 (4) ensuring that detained parents, legal guard-
4 ians, and primary caregiver relatives of children
5 under 18 years of age are able to fully participate
6 in and comply with all family court orders impacting
7 upon custody of their child;

8 (5) ensuring that detained parents, legal guard-
9 ians, and primary caregiver relatives of children
10 under 18 years of age have regular, on-site access to
11 reunification programming including parenting class-
12 es;

13 (6) ensuring that detained parents, legal guard-
14 ians, and primary caregiver relatives of children
15 under 18 years of age are provided with contact in-
16 formation for child protective services entities and
17 family courts in all fifty States, the District of Co-
18 lumbia, all United States territories, and are granted
19 free, confidential, and unlimited telephone access to
20 child protective services entities and family courts to
21 report child abuse, abandonment or neglect;

22 (7) ensuring that detained parents, legal guard-
23 ians, and primary caregiver relatives of children
24 under 18 years of age are granted regular, confiden-
25 tial and in-person access to consular officials; free,

1 unlimited, confidential phone calls to consular offi-
2 cials; and access to United States passport applica-
3 tions for the purpose of obtaining travel documents
4 for their children;

5 (8) ensuring that detained parents, legal guard-
6 ians, and primary caregiver relatives of children
7 under 18 years of age who wish to take their chil-
8 dren with them to their country of origin are grant-
9 ed adequate time prior to being removed to obtain
10 a passport and other relevant travel documents nec-
11 essary for children to accompany them on their re-
12 turn to their country of origin or join them in their
13 country of origin; and

14 (9) facilitating detained parents', legal guard-
15 ians', and primary caregiver relatives' ability to re-
16 unify with their children under 18 years of age at
17 the time of removal to their country of origin, in-
18 cluding providing information about the detained
19 parent, legal guardian, or primary caregiver rel-
20 ative's travel arrangements to State social service
21 agencies or other caregivers.

1 **SEC. 167. ENHANCED PROTECTIONS FOR VULNERABLE UN-**
2 **ACCOMPANIED ALIEN CHILDREN AND FE-**
3 **MALE DETAINEES.**

4 (a) MANDATORY TRAINING.—The Secretary of
5 Homeland Security, in consultation with the Office of Ref-
6 ugee Resettlement of the Department of Health and
7 Human Services and independent child welfare experts,
8 shall mandate live training of all personnel who come into
9 contact with unaccompanied alien children (as defined in
10 section 462 of the Homeland Security Act of 2002 (6
11 U.S.C. 279)) in all relevant legal authorities, policies, and
12 procedures pertaining to this vulnerable population.

13 (b) CARE AND TRANSPORTATION.—Notwithstanding
14 any other provision of law, the Secretary of Homeland Se-
15 curity shall ensure that all unaccompanied children who
16 will undergo any immigration proceedings before the De-
17 partment of Homeland Security and the Executive Office
18 for Immigration Review are duly transported and placed
19 in the care and legal and physical custody of the Office
20 of Refugee Resettlement within a maximum of 24 hours
21 of their apprehension absent narrowly defined exceptional
22 circumstances, including a natural disaster or comparable
23 emergency beyond the control of the Secretary of Home-
24 land Security or the Office of Refugee Resettlement. The
25 Secretary of Homeland Security shall ensure that female
26 officers are responsible and at all times present during the

1 transfer and transport of female detainees who are in the
2 custody of the Secretary of Homeland Security.

3 (c) NOTIFICATION.—The Secretary of Homeland Se-
4 curity shall immediately notify the Office of Refugee Re-
5 settlement of an unaccompanied alien child in the custody
6 of the Department of Homeland Security to effectively and
7 efficiently coordinate the child’s transfer to and placement
8 with the Office of Refugee Resettlement.

9 (d) NOTICE OF RIGHTS AND ACCESS TO COUNSEL.—
10 The Secretary of Homeland Security shall ensure that an
11 independent licensed social worker, as described in section
12 153(b)(1)(A), provides all unaccompanied alien children
13 upon apprehension with both a video orientation and oral
14 and written notice of their rights under the Immigration
15 and Nationality Act including their rights to relief from
16 removal and their rights to confer with counsel (as guar-
17 anteed under section 292 of such Act), family, or friends
18 while in the Department of Homeland Security’s tem-
19 porary custody and relevant complaint mechanisms to re-
20 port any abuse or misconduct they may have experienced.
21 The Secretary of Homeland Security shall ensure that the
22 video orientation and written notice of rights is available
23 in English and in the five most common native languages
24 spoken by the unaccompanied children held in custody at
25 that location during the preceding fiscal year, and that

1 the oral notice of rights is available in English and in the
2 most common native language spoken by the unaccom-
3 panied children held in custody at that location during the
4 preceding fiscal year.

5 (e) CONFIDENTIALITY.—The Secretary of Health
6 and Human Services shall maintain the privacy and con-
7 fidentiality of all information gathered in the course of
8 providing care, custody, placement and follow-up services
9 to unaccompanied alien children, consistent with the best
10 interest of the unaccompanied alien child, by not dis-
11 closing such information to other government agencies or
12 nonparental third parties. The Secretary may share infor-
13 mation when authorized to do so by the child and when
14 consistent with the child's best interest. The Secretary
15 may provide information to a duly recognized law enforce-
16 ment entity, if such disclosure would prevent imminent
17 and serious harm to another individual. All disclosures
18 shall be duly recorded in writing and placed in the child's
19 files.

20 (f) OTHER POLICIES AND PROCEDURES.—The Sec-
21 retary shall further adopt fundamental child protection
22 policies and procedures—

23 (1) for reliable age-determinations of children
24 which exclude the use of fallible forensic testing of

1 children's bone and teeth developed in consultation
2 with medical and child welfare experts;

3 (2) to ensure the safe and secure repatriation
4 and reintegration of unaccompanied alien children to
5 their home countries through specialized programs
6 developed in close consultation with the Secretary of
7 State, the Office of the Refugee Resettlement and
8 reputable independent child welfare experts includ-
9 ing placement of children with their families or non-
10 governmental agencies to provide food, shelter and
11 vocational training and microfinance opportunities;

12 (3) to utilize all legal authorities to defer the
13 child's removal if the child faces a risk of life-threat-
14 ening harm upon return including due to the child's
15 mental health or medical condition; and

16 (4) to ensure that unaccompanied alien children
17 (as defined in section 462 of the Homeland Security
18 Act of 2002 (6 U.S.C. 279)) are physically sepa-
19 rated from any adult who is not a family member,
20 guardian, or caregiver and are separated by sight
21 and sound from immigration detainees and inmates
22 with criminal convictions, pretrial inmates facing
23 criminal prosecution, children who have been adju-
24 dicated delinquents or convicted of adult offenses or
25 are pending delinquency or criminal proceedings,

1 and those inmates exhibiting violent behavior while
2 in detention as is consistent with the Juvenile Jus-
3 tice and Delinquency Prevention Act of 1974 (42
4 U.S.C. 5601 et seq.).

5 **SEC. 168. PREVENTING UNNECESSARY DETENTION OF REF-**
6 **UGEES.**

7 Section 209 of the Immigration and Nationality Act
8 (8 U.S.C. 1159) is amended—

9 (1) in subsection (a)(1) by striking “return or
10 be returned to the Department of Homeland Secu-
11 rity for inspection and examination for admission”
12 and also “in accordance with the provisions of sec-
13 tions 235, 240, and 241” and inserting “be eligible
14 for adjustment of status”;

15 (2) in subsection (a)(2) by striking “upon in-
16 spection and examination”; and

17 (3) in subsection (c) by adding at the end “An
18 application for adjustment under this section may be
19 filed up to 3 months before the date the applicant
20 would first otherwise be eligible for adjustment
21 under this section.”.

22 **SEC. 169. REPORTS ON PROTECTIONS FROM UNLAWFUL**
23 **DETENTION.**

24 (a) REPORT REQUIREMENT.—Not later than 1 year
25 after the date of the enactment of this Act, and annually

1 thereafter, the Secretary shall prepare and submit a report
2 to Congress that describes the impact of worksite and fu-
3 gitive operations on United States citizens, lawful perma-
4 nent residents, and individuals otherwise lawfully present
5 in the United States.

6 (b) CONTENT.—The report submitted under sub-
7 section (a) shall include an assessment of—

8 (1)(A) United States Immigration and Customs
9 Enforcement protocol for humanitarian screening
10 during a worksite enforcement action;

11 (B) the compliance with such protocol; and

12 (C) the nature of any related protocol in small-
13 er worksite or nonworksite actions;

14 (2) collateral arrests under the National Fugitive
15 Operations Program and worksite enforcement
16 initiatives;

17 (3) whether individuals detained in an immigra-
18 tion-related enforcement activity are notified of their
19 right to counsel;

20 (4) whether United States Immigration and
21 Customs Enforcement agents—

22 (A) use excessive force in executing war-
23 rants, arrests, detentions, or other immigration-
24 enforcement activities;

1 (B) enter private homes or residences with-
2 out a search warrant or consent; or

3 (C) display and use weapons during immi-
4 gration-enforcement activities or interrogations;

5 (5) whether United States Immigration and
6 Customs Enforcement agents identify themselves
7 when entering a location for enforcement purposes;

8 (6) the conditions under which individuals are
9 confined;

10 (7) whether detainees are notified of their
11 rights in a language they can understand;

12 (8) whether individuals detained during a raid
13 or an immigration enforcement activity are forced or
14 coerced to sign any documents or waive any rights
15 without consulting with an attorney;

16 (9) the procedures used by the Department of
17 Homeland Security—

18 (A) to notify agents about humanitarian
19 standards regarding enforcement actions; and

20 (B) hold agents accountable when they vio-
21 late such standards;

22 (10) the per detainee cost of each raid involving
23 more than 50 detainees;

1 (11) the number of United States Immigration
2 and Customs Enforcement agents disciplined for vio-
3 lations in detention proceedings; and

4 (12) recommendations for improving worksite
5 operations and fugitive operations.

6 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
7 authorized to be appropriated such sums as may be nec-
8 essary to carry out this section.

9 **SEC. 170. RULEMAKING.**

10 Not later than 1 year after the date of the enactment
11 of this Act, the Secretary shall promulgate regulations to
12 implement this subtitle and the amendments made by this
13 subtitle.

14 **Subtitle C—Enforcement**

15 **SEC. 181. LABOR ENFORCEMENT.**

16 (a) LABOR ENFORCEMENT ACTIONS.—Section
17 274A(e) of the Immigration and Nationality Act (8 U.S.C.
18 1324a(e)) is amended to add a new paragraph (10).

19 “(10) CONDUCT IN ENFORCEMENT ACTIONS.—

20 “(A) ENFORCEMENT ACTION.—When an
21 enforcement action is undertaken by the De-
22 partment of Homeland Security and the De-
23 partment receives information that there is a
24 labor dispute in progress, or that information
25 was provided to the Department of Homeland

1 Security to retaliate against employees for exer-
2 cising their employment rights, the Department
3 shall ensure that any aliens who are arrested or
4 detained and are necessary for the prosecution
5 of any labor or employment law violations are
6 not removed from the country without notifying
7 the appropriate law enforcement agency that
8 has jurisdiction over the violations and pro-
9 viding the agency with the opportunity to inter-
10 view such aliens. The Department shall ensure
11 that no aliens entitled to a stay of removal
12 under this section are removed.

13 “(B) INTERVIEWS.—Any arrangements for
14 aliens to be held or interviewed shall be made
15 in consultation with the relevant labor and em-
16 ployment law enforcement agencies.

17 “(C) STAY OF REMOVAL.—

18 “(i) An alien against whom removal
19 proceedings have been initiated pursuant
20 to chapter 4 of title III of the Immigration
21 and Nationality Act, who has filed a work-
22 place claim or who is a material witness in
23 any pending or anticipated proceeding in-
24 volving a workplace claim, shall be entitled
25 to a stay of removal and to an employment

1 authorized endorsement unless the Depart-
2 ment establishes by a preponderance of the
3 evidence in proceedings before the immi-
4 gration judge presiding over that alien's
5 removal hearing that—

6 “(I) the Department initiated the
7 alien's removal proceeding for wholly
8 independent reasons and not in any
9 respect based on, or as a result of,
10 any information provided to or ob-
11 tained by the Department from the
12 aliens employer, from any outside
13 source, including any anonymous
14 source, or as a result of the filing or
15 prosecution of the workplace claim;
16 and

17 “(II) the workplace claim was
18 filed in a bad faith with the intent to
19 delay or avoid the alien's removal.

20 “(ii) Any stay of removal or work au-
21 thorization issued pursuant to subsection
22 (i) shall remain valid and in effect at least
23 during the pendency of the proceedings
24 concerning such workplace claim. The Sec-
25 retary of Homeland Security shall extend

1 such relief for a period of not longer than
2 3 additional years upon determining that—

3 “(I) such relief would enable the
4 alien asserting the workplace claim to
5 be made whole;

6 “(II) the deterrent goals of any
7 statute underlying the workplace
8 claim would thereby be served; or

9 “(III) such extension would oth-
10 erwise further the interests of justice.

11 “(iii) In this section—

12 “(I) the term ‘workplace claim’
13 shall include any claim, charge, com-
14 plaint, or grievance filed with or sub-
15 mitted to the employer, a Federal or
16 State or local agency or court, or an
17 arbitrator, to challenge an employer’s
18 alleged civil or criminal violation of
19 any legal or administrative rule or re-
20 quirement affecting the terms or con-
21 ditions of its workers employment, the
22 treatment of workers, or the hiring or
23 firing of its workers; and

24 “(II) the term ‘material witness’
25 means an individual who presents a

1 declaration from an attorney inves-
2 tigating, prosecuting, or defending the
3 workplace claim or from the presiding
4 officer overseeing the workplace claim
5 attesting that, to the best of the de-
6 clarant’s knowledge and belief, reason-
7 able cause exists to believe that the
8 testimony of the individual will be rel-
9 evant to the outcome of the workplace
10 claim.”

11 (b) WHISTLE BLOWER PROTECTIONS; VICTIMS OF
12 CRIMINAL ACTIVITY.—Section 101(a)(15)(U) of the Im-
13 migration and Nationality Act (8 U.S.C. 1101(a)(15)(U))
14 is amended—

15 (1) in clause (ii), by striking “and” at the end;

16 (2) in clause (iii)—

17 (A) by striking “or” before “attempt”; and

18 (B) by adding at the end the following: “a
19 civil violation of Federal, State, or local employ-
20 ment or labor laws; and”; and

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

22 “(iv) the Secretary may not grant a
23 petition filed by an alien based on a civil
24 violation of Federal employment or labor
25 laws unless the alien has—

1 “(I) a reasonable fear of retalia-
2 tion based on immigration status;
3 “(II) has been threatened with
4 retaliation based on immigration; or
5 “(III) has been retaliated against
6 based on immigration status for at-
7 tempting to remedy such violations;
8 or”.

9 **SEC. 182. MANDATORY ADDRESS REPORTING REQUIRE-**
10 **MENTS.**

11 (a) CLARIFYING ADDRESS REPORTING REQUIRE-
12 MENTS.—Section 265 (8 U.S.C. 1305) is amended—

13 (1) in subsection (a)—

14 (A) by striking “notify the Attorney Gen-
15 eral in writing” and inserting “submit written
16 or electronic notification to the Secretary of
17 Homeland Security, in a manner approved by
18 the Secretary,”;

19 (B) by striking “the Attorney General may
20 require” and inserting “the Secretary may re-
21 quire”; and

22 (C) by adding at the end the following: “If
23 the alien is involved in proceedings before an
24 immigration judge or in an administrative ap-
25 peal of such proceedings, the alien shall submit

1 to the Attorney General the alien's current ad-
2 dress and a telephone number, if any, at which
3 the alien may be contacted.”;

4 (2) in subsection (b), by striking “Attorney
5 General” each place such term appears and inserting
6 “Secretary of Homeland Security”;

7 (3) in subsection (c), by striking “given to such
8 parent” and inserting “given by such parent”; and

9 (4) by adding at the end the following:

10 “(d) ADDRESS TO BE PROVIDED.—

11 “(1) IN GENERAL.—Except as otherwise pro-
12 vided by the Secretary under paragraph (2), an ad-
13 dress provided by an alien under this section shall
14 be the alien's current residential mailing address,
15 and shall not be a post office box or other nonresi-
16 dential mailing address or the address of an attor-
17 ney, representative, labor organization, or employer.

18 “(2) SPECIFIC REQUIREMENTS.—The Secretary
19 may provide specific requirements with respect to—

20 “(A) designated classes of aliens and spe-
21 cial circumstances, including aliens who are em-
22 ployed at a remote location; and

23 “(B) the reporting of address information
24 by aliens who are incarcerated in a Federal,
25 State, or local correctional facility.

1 “(3) DETENTION.—An alien who is being de-
2 tained by the Secretary under this Act is not re-
3 quired to report the alien’s current address under
4 this section during the time the alien remains in de-
5 tention, but shall be required to notify the Secretary
6 of the alien’s address under this section at the time
7 of the alien’s release from detention.

8 “(e) USE OF MOST RECENT ADDRESS PROVIDED BY
9 THE ALIEN.—

10 “(1) IN GENERAL.—Notwithstanding any other
11 provision of law, the Secretary may provide for the
12 appropriate coordination and cross referencing of
13 address information provided by an alien under this
14 section with other information relating to the alien’s
15 address under other Federal programs, including—

16 “(A) any information pertaining to the
17 alien, which is submitted in any application, pe-
18 tition, or motion filed under this Act with the
19 Secretary of Homeland Security, the Secretary
20 of State, or the Secretary of Labor;

21 “(B) any information available to the At-
22 torney General with respect to an alien in a
23 proceeding before an immigration judge or an
24 administrative appeal or judicial review of such
25 proceeding;

1 “(C) any information collected with respect
2 to nonimmigrant foreign students or exchange
3 program participants under section 641 of the
4 Illegal Immigration Reform and Immigrant Re-
5 sponsibility Act of 1996 (8 U.S.C. 1372); and

6 “(D) any information collected from State
7 or local correctional agencies pursuant to the
8 State Criminal Alien Assistance Program.

9 “(2) RELIANCE.—The Secretary may rely on
10 the most recent address provided by the alien under
11 this section or section 264 to send to the alien any
12 notice, form, document, or other matter pertaining
13 to Federal immigration laws, including service of a
14 notice to appear. The Attorney General and the Sec-
15 retary may rely on the most recent address provided
16 by the alien under section 239(a)(1)(F) to contact
17 the alien about pending removal proceedings.

18 “(3) OBLIGATION.—The alien’s provision of an
19 address for any other purpose under the Federal im-
20 migration laws does not excuse the alien’s obligation
21 to submit timely notice of the alien’s address to the
22 Secretary under this section (or to the Attorney
23 General under section 239(a)(1)(F) with respect to
24 an alien in a proceeding before an immigration judge
25 or an administrative appeal of such proceeding).

1 “(f) REQUIREMENT FOR DATABASE.—The Secretary
2 of Homeland Security shall establish an electronic data-
3 base to timely record and preserve addresses provided
4 under this section.”.

5 (b) CONFORMING CHANGES WITH RESPECT TO REG-
6 ISTRATION REQUIREMENTS.—Chapter 7 of title II (8
7 U.S.C. 1301 et seq.) is amended—

8 (1) in section 262(c), by striking “Attorney
9 General” and inserting “Secretary of Homeland Se-
10 curity”;

11 (2) in section 263(a), by striking “Attorney
12 General” and inserting “Secretary of Homeland Se-
13 curity”; and

14 (3) in section 264—

15 (A) in subsections (a), (b), (c), and (d), by
16 striking “Attorney General” each place it ap-
17 pears and inserting “Secretary of Homeland
18 Security”; and

19 (B) in subsection (f)—

20 (i) by striking “Attorney General is
21 authorized” and inserting “Secretary of
22 Homeland Security and Attorney General
23 are authorized”; and

1 (ii) by striking “Attorney General or
2 the Service” and inserting “Secretary or
3 the Attorney General”.

4 (c) EFFECT ON ELIGIBILITY FOR IMMIGRATION BEN-
5 EFITS.—If an alien fails to comply with section 262, 263,
6 or 265 of the Immigration and Nationality Act (8 U.S.C.
7 1302, 1303, and 1305) or section 264.1 of title 8, Code
8 of Federal Regulations, or removal orders or voluntary de-
9 parture agreements based on any such section for acts
10 committed prior to the enactment of this Act such failure
11 shall not affect the eligibility of the alien to apply for a
12 benefit under the Immigration and Nationality Act (8
13 U.S.C. 1101 et seq.).

14 (d) TECHNICAL AMENDMENTS.—Section 266 (8
15 U.S.C. 1306) is amended by striking “Attorney General”
16 each place it appears and inserting “Secretary of Home-
17 land Security”.

18 (e) EFFECTIVE DATES.—

19 (1) IN GENERAL.—Except as provided in para-
20 graph (2), the amendments made by this section
21 shall take effect on the date of the enactment of this
22 Act.

23 (2) EXCEPTIONS.—The amendments made by
24 paragraphs (1)(A), (1)(B), (2), and (3) of subsection
25 (a) shall take effect as if enacted on March 1, 2003.

1 **SEC. 183. PREEMPTION OF STATE AND LOCAL LAW.**

2 (a) PREEMPTION.—This Act preempts any State or
3 local law, contract, license, or other standard, require-
4 ment, action or instrument—

5 (1) discriminating among persons on the basis
6 of immigration status, except as specifically author-
7 ized in Federal law; or

8 (2) imposing any sanction or liability—

9 (A) on any individual based on his or her
10 immigration status;

11 (B) on any person or entity based on the
12 immigration status of its clients, employees,
13 tenants, or other associates; or

14 (C) relating to a violation or alleged viola-
15 tion of immigration law.

16 (b) DEFINITION.—For purposes of this section, “im-
17 migration status” refers to a person’s present or previous:
18 visa classification, refugee status, temporary protected
19 status, status as an immigrant lawfully admitted for per-
20 manent residence, lawful presence, work authorization, or
21 other classification or category created by, or related to
22 this, Act or the Immigration and Nationality Act.

23 **SEC. 184. DELEGATION OF IMMIGRATION AUTHORITY.**

24 Section 287(g) (8 U.S.C. 1357(g)) is amended to
25 read as follows:

1 “(g) Except as provided in section 103(a)(10), 242,
2 or 274(c), the authority to investigate, identify, appre-
3 hend, arrest, or detain persons for a violation of any sec-
4 tion of this Act or regulation pursuant to this Act is re-
5 stricted to immigration officers and employees of the De-
6 partment. Any such authority is further subject to any
7 specific limitations set forth in this Act.”.

8 **SEC. 185. IMMIGRATION AND CUSTOMS ENFORCEMENT OM-**
9 **BUDSMAN.**

10 (a) ESTABLISHMENT.—Subtitle D of title III of the
11 Homeland Security Act of 2002 (6 U.S.C. 251 et seq.)
12 is amended by adding at the end the following:

13 **“SEC. 447. IMMIGRATION AND CUSTOMS ENFORCEMENT**
14 **OMBUDSMAN.**

15 “(a) IN GENERAL.—There established in the Depart-
16 ment of Homeland Security a position of Immigration and
17 Customs Enforcement Ombudsman (referred to in this
18 section as the ‘Ombudsman’).

19 “(b) REQUIREMENTS.—The Ombudsman shall—

20 “(1) report directly to the Assistant Secretary
21 for Immigration and Customs Enforcement (referred
22 to in this section as the ‘Assistant Secretary’); and

23 “(2) have a background in immigration law.

24 “(c) FUNCTIONS.—The Ombudsman shall—

1 “(1) undertake regular and unannounced in-
2 spections of detention facilities and local offices of
3 United States Immigration and Customs Enforce-
4 ment to determine whether the facilities and offices
5 comply with relevant policies, procedures, standards,
6 laws, and regulations;

7 “(2) report all findings of compliance or non-
8 compliance of the facilities and local offices de-
9 scribed in paragraph (1) to the Secretary and the
10 Assistant Secretary;

11 “(3) develop procedures for detainees or their
12 representatives to submit confidential written com-
13 plaints directly to the Ombudsman;

14 “(4) investigate and resolve all complaints, in-
15 cluding confidential and anonymous complaints, re-
16 lated to decisions, recommendations, acts, or omis-
17 sions made by the Assistant Secretary or the Com-
18 missioner of United States Customs and Border
19 Protection in the course of custody and detention
20 operations;

21 “(5) initiate investigations into allegations of
22 systemic problems at detention facilities;

23 “(6) conduct any review or audit relating to de-
24 tention, as directed by the Secretary or Assistant
25 Secretary;

1 “(7) refer matters, as appropriate, to the Office
2 of Inspector General of the Department of Justice,
3 the Office of Civil Rights and Civil Liberties of the
4 Department, or any other relevant office or agency;

5 “(8) propose changes in the policies or practices
6 of United States Immigration and Customs Enforce-
7 ment to improve the treatment of United States citi-
8 zens and residents, immigrants, detainees, and oth-
9 ers subject to immigration-related enforcement oper-
10 ations;

11 “(9) establish a public advisory group con-
12 sisting of nongovernmental organization representa-
13 tives and Federal, State, and local government offi-
14 cials with expertise in detention and vulnerable pop-
15 ulations to provide the Ombudsman with input on—

16 “(A) the priorities of the Ombudsman; and

17 “(B) current practices of United States
18 Immigration and Customs Enforcement; and

19 “(10) recommend to the Assistant Secretary
20 personnel action based on any finding of noncompli-
21 ance.

22 “(d) ANNUAL REPORT.—

23 “(1) OBJECTIVES.—Not later than June 30 of
24 each year, the Ombudsman shall prepare and submit
25 a report to the Committee on the Judiciary of the

1 Senate and the Committee on the Judiciary of the
2 House of Representatives on the objectives of the
3 Office of the Ombudsman for the next fiscal year.

4 “(2) CONTENTS.—Each report submitted under
5 paragraph (1) shall include—

6 “(A) full and substantive analysis of the
7 objectives of the Office of the Ombudsman;

8 “(B) statistical information regarding such
9 objectives;

10 “(C) a description of each detention facil-
11 ity found to be in noncompliance with the de-
12 tention standards of the Department of Home-
13 land Security or other applicable regulations;

14 “(D) a description of the actions taken by
15 the Department of Homeland Security to rem-
16 edy any findings of noncompliance or other
17 identified problems;

18 “(E) information regarding whether the
19 actions described in subparagraph (D) resulted
20 in compliance with detention standards;

21 “(F) a summary of the most pervasive and
22 serious problems encountered by individuals
23 subject to the enforcement operations of the
24 Department of Homeland Security, including a
25 description of the nature of such problems; and

1 “(G) such other information as the Om-
2 budsman may consider advisable.”.

3 (b) AMENDMENT.—The table of contents in section
4 1(b) of the Homeland Security Act of 2002 (6 U.S.C. 101
5 et seq.) is amended by inserting after the item relating
6 to section 446 the following:

“Sec. 447. Immigration and Customs Enforcement Ombudsman.”.

7 **SEC. 186. ELIMINATING ARBITRARY BAR TO ASYLUM.**

8 Section 208(a)(2) (8. U.S.C. 1158(a)(2)) is amend-
9 ed—

10 (1) by striking subparagraph (B);

11 (2) in subparagraph (C), by striking “(D)” and
12 inserting “(C)”;

13 (3) in subparagraph (D), by striking “subpara-
14 graphs (B) and (C),” and inserting “subparagraph
15 (B),”; and

16 (4) by redesignating subparagraphs (C) and
17 (D) as subparagraphs (B) and (C), respectively.

18 **SEC. 187. RESTORATION OF JUDICIAL REVIEW.**

19 Section 242 (8 U.S.C. 1252) is amended—

20 (1) by striking subsection (a)(2) (matters not
21 subject to judicial review);

22 (2) in subsection (b)(1), by striking “30 days”
23 and inserting “60 days”;

24 (3) in subsection (b)(3)(B), by striking “does
25 not” and inserting “shall”;

1 (4) in subsection (b)(3)(C), by striking “shall”
2 and inserting “may”;

3 (5) in subsection (b)(4)(B), by striking “any
4 reasonable adjudicator would be compelled to con-
5 clude to the contrary” and inserting “the findings
6 are not supported by substantial evidence”;

7 (6) in subsection (b)(8)(C), by inserting “unless
8 a stay is automatically granted by any provision of
9 law or any court of competent jurisdiction” after “to
10 defer removal of the alien”;

11 (7) in subsection (b)(9), by striking “Except as
12 otherwise provided in this section, no court shall
13 have jurisdiction, by habeas corpus under section
14 2241 of title 28 or any other habeas corpus provi-
15 sion, by section 1361 or 1651 of such title, or by
16 any other provision of law (statutory or nonstatu-
17 tory), to review such an order or such questions of
18 law or fact.”;

19 (8) by striking subsection (e)(1)(B);

20 (9) in subsection (e)(2)(B) by inserting “law-
21 fully” after “was” and before “ordered”;

22 (10) by striking subsection (e)(3);

23 (11) by redesignating subsection (e)(4) as sub-
24 section (e)(3);

1 (12) by redesignating subsection (e)(5) as sub-
2 section (e)(4);

3 (13) by striking subsection (f);

4 (14) by redesignating subsection (g) as sub-
5 section (f); and

6 (15) in subsection (g) (as so redesignated), by
7 striking “and notwithstanding any other provision of
8 law (statutory or nonstatutory), including section
9 2241 of title 28, or any other habeas corpus provi-
10 sion, and sections 1361 and 1651 of such title,”.

11 **TITLE II—EMPLOYMENT** 12 **VERIFICATION**

13 **SEC. 201. EMPLOYMENT VERIFICATION.**

14 (a) IN GENERAL.—Section 274A (8 U.S.C. 1324a)
15 is amended to read as follows:

16 **“SEC. 274A. EMPLOYMENT VERIFICATION.**

17 “(a) MAKING EMPLOYMENT OF UNAUTHORIZED
18 ALIENS UNLAWFUL.—

19 “(1) IN GENERAL.—It is unlawful for an em-
20 ployer—

21 “(A) to hire, recruit, or refer for a fee an
22 alien for employment in the United States
23 knowing or with reckless disregard that the
24 alien is an unauthorized alien with respect to
25 such employment; or

1 “(B) to hire in the United States an indi-
2 vidual unless such employer meets the require-
3 ments of subsections (b) and (c).

4 “(2) CONTINUING EMPLOYMENT.—It is unlaw-
5 ful for an employer, after lawfully hiring an alien for
6 employment, to continue to employ the alien in the
7 United States knowing that the alien is (or has be-
8 come) an unauthorized alien with respect to such
9 employment.

10 “(3) USE OF LABOR THROUGH CONTRACT.—An
11 employer who uses a contract, subcontract, or ex-
12 change entered into, renegotiated, or extended after
13 the date of the enactment of this Act to obtain the
14 labor of an alien in the United States knowing or
15 with reckless disregard that the alien is an unau-
16 thorized alien with respect to performing such labor,
17 shall be considered to have hired the alien for em-
18 ployment in the United States in violation of para-
19 graph (1)(A).

20 “(4) TREATMENT OF DOCUMENTATION FOR
21 CERTAIN EMPLOYEES.—

22 “(A) IN GENERAL.—For purposes of this
23 section, if—

24 “(i) an individual is a member of a
25 collective-bargaining unit and is employed,

1 under a collective bargaining agreement
2 entered into between one or more employee
3 organizations and an association of two or
4 more employers, by an employer that is a
5 member of such association; and

6 “(ii) within the period specified in
7 subparagraph (B), another employer that
8 is a member of the association (or an
9 agent of such association on behalf of the
10 employer) has complied with the require-
11 ments of subsection (b) of this section with
12 respect to the employment of the indi-
13 vidual, the subsequent employer shall be
14 deemed to have complied with the require-
15 ments of subsection (b) of this section with
16 respect to the hiring of the employee and
17 shall not be liable for civil penalties de-
18 scribed in subsection (d)(4) of this section.

19 “(B) PERIOD.—The period described in
20 this subparagraph is 3 years, or, if less, the pe-
21 riod of time that the individual is authorized to
22 be employed in the United States.

23 “(C) LIABILITY.—

24 “(i) IN GENERAL.—If any employer
25 that is a member of an association hires

1 for employment in the United States an in-
2 dividual and relies upon the provisions of
3 subparagraph (A) to comply with the re-
4 quirements of subsection (b) of this section
5 and the individual is an alien not author-
6 ized to work in the United States, then for
7 the purposes of paragraph (1)(A), subject
8 to clause (ii), the employer shall be pre-
9 sumed to have known at the time of hiring
10 or afterward that the individual was an
11 alien not authorized to work in the United
12 States.

13 “(ii) REBUTTAL OF PRESUMPTION.—
14 The presumption established by clause (i)
15 may be rebutted by the employer only
16 through the presentation of clear and con-
17 vincing evidence that the employer did not
18 know (and could not reasonably have
19 known) that the individual at the time of
20 hiring or afterward was an alien not au-
21 thorized to work in the United States.

22 “(iii) EXCEPTION.—Clause (i) shall
23 not apply in any prosecution under sub-
24 section (e)(1) of this section.

1 “(5) ORDER OF INTERNAL REVIEW AND CER-
2 TIFICATION OF COMPLIANCE.—

3 “(A) AUTHORITY TO REQUIRE CERTIFI-
4 CATION.—If the Secretary has reasonable cause
5 to believe that an employer has failed to comply
6 with this section, the Secretary is authorized, at
7 any time, to require that the employer certify
8 that the employer is in compliance with this
9 section or has instituted a program to come
10 into compliance with the section.

11 “(B) CONTENT OF CERTIFICATION.—Not
12 later than 60 days after the date an employer
13 receives a request for a certification under sub-
14 paragraph (A) the employer shall certify under
15 penalty of perjury that—

16 “(i) the employer is in compliance
17 with the requirements of subsections (b)
18 and (c); or

19 “(ii) that the employer has instituted
20 a program to come into compliance with
21 such requirements.

22 “(C) EXTENSION.—The 60-day period re-
23 ferred to in subparagraph (B), may be extended
24 by the Secretary for good cause, at the request
25 of the employer.

1 “(D) PUBLICATION.—The Secretary is au-
2 thorized to publish in the Federal Register
3 standards or methods for certification under
4 subparagraph (A) and for specific record-
5 keeping practices with respect to such certifi-
6 cation, and procedures for the audit of any
7 records related to such certification.

8 “(6) DEFENSE.—

9 “(A) IN GENERAL.—Subject to subpara-
10 graph (B), an employer that establishes that
11 the employer has complied in good faith, not-
12 withstanding a technical or procedural failure,
13 with the requirements of subsections (b) and (c)
14 with respect to the hiring of an individual has
15 established an affirmative defense that the em-
16 ployer has not violated paragraph (1)(B) with
17 respect to such hiring.

18 “(B) EXCEPTION.—Until the date that an
19 employer is required to participate in the Elec-
20 tronic Employment Verification System under
21 subsection (c), the employer may establish an
22 affirmative defense under subparagraph (A)
23 without a showing of compliance with sub-
24 section (c).

1 “(7) NO AUTHORIZATION OF NATIONAL IDENTI-
2 FICATION CARDS.—Nothing in this title may be con-
3 strued to authorize, directly or indirectly, the
4 issuance, use, or establishment of a national identi-
5 fication card or a national identification system.

6 “(b) DOCUMENT VERIFICATION REQUIREMENTS.—
7 An employer hiring an individual for employment in the
8 United States shall verify that the individual is eligible for
9 such employment by meeting the following requirements:

10 “(1) ATTESTATION BY EMPLOYER.—

11 “(A) REQUIREMENTS.—

12 “(i) IN GENERAL.—The employer
13 shall attest, under penalty of perjury and
14 on a form prescribed by the Secretary, that
15 the employer has verified the identity and
16 eligibility for employment of the individual
17 by examining an original, unexpired docu-
18 ment or documents described in section
19 274a.2(b)(1)(v) of title 8, Code of Federal
20 Regulation as evidence of the individual’s
21 employment authorization and identity.

22 “(ii) SIGNATURE REQUIREMENTS.—
23 An attestation required by clause (i) may
24 be manifested by a handwritten or elec-
25 tronic signature.

1 “(iii) STANDARDS FOR EXAMINA-
2 TION.—An employer has complied with the
3 requirement of this paragraph with respect
4 to examination of a document if the docu-
5 ment examined reasonably appears on its
6 face to be genuine and relates to the indi-
7 vidual whose identity and eligibility for em-
8 ployment in the United States is being
9 verified. Nothing in this paragraph may be
10 construed as requiring the employer to so-
11 licit the production of any other document
12 or as requiring the individual to produce
13 such other document.

14 “(B) AUTHORITY TO PROHIBIT USE OF
15 CERTAIN DOCUMENTS.—

16 “(i) AUTHORITY.—If the Secretary
17 finds that a document or class of docu-
18 ments described in subparagraph (A)(i) is
19 not reliable to establish identity or eligi-
20 bility for employment (as the case may be)
21 or is being used fraudulently to an unac-
22 ceptable degree, the Secretary is author-
23 ized to prohibit, or impose conditions on,
24 the use of such document or class of docu-
25 ments for purposes of this subsection.

1 “(ii) REQUIREMENT FOR PUBLICA-
2 TION.—The Secretary shall publish notice
3 of any findings under clause (i) in the Fed-
4 eral Register.

5 “(2) ATTESTATION OF INDIVIDUAL.—

6 “(A) IN GENERAL.—The individual shall
7 attest, under penalty of perjury on a form pre-
8 scribed by the Secretary, that the individual
9 is—

10 “(i) a national of the United States;

11 “(ii) an alien lawfully admitted for
12 permanent residence; or

13 “(iii) an alien who is authorized under
14 this Act or by the Secretary to be em-
15 ployed in the United States.

16 “(B) SIGNATURE FOR EXAMINATION.—An
17 attestation required by subparagraph (A) may
18 be manifested by a handwritten or electronic
19 signature.

20 “(C) PENALTIES.—An individual who
21 falsely attests that he or she is eligible for em-
22 ployment in the United States shall be subject
23 to the terms and penalties regarding document
24 fraud described in section 274C of the Immi-
25 gration and Nationality Act.

“(D) SCHEDULE.—

“(i) REPLACEMENT DOCUMENTS.—An employer shall accept a receipt for the application for a replacement document or a document described in subparagraph (B) of subsection (b)(1) in lieu of the required document in order to comply with any requirement to examine documentation imposed by this section, in the following circumstances:

“(I) The individual is unable to provide the required document within the time specified in this section because the document was lost, stolen, or damaged.

“(II) The individual presents a receipt for the application for the document within the time specified in this section.

“(III) The individual presents the document within 90 days of the hire. If the actual document or replacement document is to be issued by the United States Citizenship and Immigration Services and the application

1 is still under review 60 days after re-
2 ceipt of the application, United States
3 Citizenship and Immigration Services
4 shall, not later than the 60th day
5 after receipt of the application, issue a
6 letter for the applicant to take to the
7 employer which shall automatically
8 grant the individual an additional 90
9 days from the original deadline in
10 subsection (b)(6)(A)(i)(II) to present
11 the document or replacement docu-
12 ment; and

13 “(ii) PROHIBITION ON ACCEPTANCE
14 OF A RECEIPT FOR SHORT-TERM EMPLOY-
15 MENT.—An employer may not accept a re-
16 ceipt in lieu of the required document if
17 the individual is hired for a duration of
18 less than 10 working days.

19 “(3) DOCUMENT RETENTION AND RECORD-
20 KEEPING REQUIREMENTS.—The System described in
21 subsection (c) shall include an auto-save feature al-
22 lowing the employer to retain an electronic version
23 of an attestation submitted under paragraph (1) or
24 (2) for an individual and a record of any action
25 taken, and copies of any correspondence written or

1 received, with respect to the verification of an indi-
2 vidual's identity or eligibility for employment in the
3 United States, including records received through
4 the Electronic Employment Verification System
5 under subsection (c). The employer shall retain such
6 records, either in electronic, paper, microfiche, or
7 microfilm form, and make such attestations available
8 for inspection by an officer of the Department of
9 Homeland Security, any other person designated by
10 the Secretary, the Special Counsel for Immigration-
11 Related Unfair Employment Practices of the De-
12 partment of Justice, or the Secretary of Labor—

13 “(A) during a period beginning on the date
14 of the hiring of the individual and ending on
15 the date that is the later of—

16 “(i) 3 years after the date of such hir-
17 ing; or

18 “(ii) 1 year after the date the individ-
19 ual's employment is terminated; or

20 “(B) during a shorter period determined
21 by the Secretary, if the Secretary reduces the
22 period described in subparagraph (A) for the
23 employer or a class of employers that includes
24 the employer.

1 “(C) USE OF RETAINED DOCUMENTS.—An
 2 employer shall use copies retained under clause
 3 (i) or (ii) of subparagraph (A) only for the pur-
 4 poses of complying with the requirements of
 5 this subsection, except as otherwise permitted
 6 under law.

7 “(4) PENALTIES.—An employer that fails to
 8 comply with the requirement of this subsection shall
 9 be subject to the penalties described in subsection
 10 (d)(4)(B).

11 “(c) ELECTRONIC EMPLOYMENT VERIFICATION SYS-
 12 TEM.—

13 “(1) REQUIREMENT FOR SYSTEM.—The Sec-
 14 retary, in cooperation with the Commissioner of So-
 15 cial Security, shall implement an Electronic Employ-
 16 ment Verification System (referred to in this sub-
 17 section as the ‘System’) as described in this sub-
 18 section.

19 “(2) TECHNOLOGY STANDARD TO VERIFY EM-
 20 PLOYMENT ELIGIBILITY.—

21 “(A) IN GENERAL.—The Secretary, based
 22 upon recommendations from the Director of the
 23 National Institute of Standards and Tech-
 24 nology, shall not later than 180 days after the
 25 date of the enactment of the this Act develop

1 and certify a technology standard as described
2 in this subparagraph. The Secretary shall have
3 discretion to extend the 180-day period if the
4 Secretary determines that such extension will
5 result in substantial improvement of the Sys-
6 tem.

7 “(B) INTEGRATED.—Notwithstanding any
8 other provision of Federal law, the technology
9 standard developed shall be the technological
10 basis for a secure cross-agency, cross-platform
11 electronic system that is a cost-effective, effi-
12 cient, fully integrated means to share immigra-
13 tion and Social Security information necessary
14 to confirm the employment eligibility of all indi-
15 viduals seeking employment while protecting in-
16 dividual privacy.

17 “(C) REPORT.—Not later than 18 months
18 after the date of the enactment of this Act, the
19 Secretary and the Director of the National In-
20 stitute of Standards and Technology shall joint-
21 ly submit to Congress a report describing the
22 development, implementation, efficacy, and pri-
23 vacy implications of the technology standard
24 and the System.

1 “(3) IDENTITY AND EMPLOYMENT ELIGIBILITY
2 VERIFICATION.—An employer shall verify the iden-
3 tity and eligibility for employment of an individual
4 hired by the employer through the System as fol-
5 lows:

6 “(A) INITIAL INQUIRY.—The employer
7 shall submit through the Internet or other elec-
8 tronic media, or over a telephone line an inquiry
9 through the System to seek confirmation of the
10 individual’s identity and eligibility for employ-
11 ment in the United States not earlier than on
12 the first day such employment actually com-
13 mences and not later than 5 working days after
14 the date such employment actually commences.

15 “(i) IN GENERAL.—The Secretary,
16 through the System, shall confirm or ten-
17 tatively nonconfirm an individual’s identity
18 and eligibility for employment in the
19 United States not later than 1 working day
20 after an employer submits an inquiry re-
21 garding the employee.

22 “(ii) MANUAL VERIFICATION.—If the
23 System provides a tentative nonconfirma-
24 tion with respect to an individual under
25 clause (i), the Secretary and/or Commis-

1 sioner shall complete a secondary manual
2 verification not later than 6 working days
3 after such tentative nonconfirmation is
4 made.

5 “(iii) DETERMINATION.—Not later
6 than 10 days after the employer submits
7 an inquiry under subparagraph (A) the
8 Secretary, through the System, shall pro-
9 vide to the employer the results of the
10 verification required by clause (i) and (ii).
11 Such results shall be a determination
12 that—

13 “(I) confirms the individual’s
14 identity and eligibility for employment
15 in the United States; or

16 “(II) the System is tentatively
17 unable to confirm the individual’s
18 identity or eligibility for employment
19 (referred to in this section as a ‘ten-
20 tative nonconfirmation’).

21 “(B) SUBMISSION OF INFORMATION.—An
22 individual who is the subject of a tentative non-
23 confirmation may submit to the Secretary or
24 Commissioner, through the System, information
25 to confirm such individual’s identity or eligi-

bility for employment or to otherwise contest such tentative nonconfirmation not later than 15 working days after the individual receives notice of such tentative nonconfirmation.

“(C) EXTENSION.—The 15-day period referred to in subparagraph (B) may be extended by the Secretary for good cause at the request of the individual.

“(D) PROHIBITION ON TERMINATION FOR TENTATIVE NONCONFIRMATION.—An employer may not terminate the employment of an individual based on tentative nonconfirmation.

“(E) FINAL DETERMINATION.—Not later than 10 days after the individual contests such tentative nonconfirmation or, in the case of an individual who fails to contest such tentative nonconfirmation, not later than 25 days after the date of the initial tentative nonconfirmation, the Secretary shall provide, through the system to the employer the results of the verification. Such results shall be a determination that—

“(i) confirms the individual’s identity and eligibility for employment in the United States; or

1 “(ii) the System is unable to confirm
2 the individual’s identity or eligibility for
3 employment (referred to in this section as
4 a ‘final nonconfirmation’).

5 “(F) ADMINISTRATIVE AND JUDICIAL RE-
6 VIEW.—If the Secretary, through the System,
7 provides a final nonconfirmation with respect to
8 an individual, the individual shall have the right
9 to administrative review under paragraph (21)
10 and judicial review under paragraph (22) of
11 such final nonconfirmation.

12 “(G) TERMINATION OF EMPLOYEE.—If an
13 employer receives a final nonconfirmation with
14 respect to an individual under paragraph (E),
15 the employer shall terminate the employment of
16 such individual after the conclusion of the 30-
17 day period for the individual to file an adminis-
18 trative appeal as described in paragraph (21),
19 unless the Secretary or the Commissioner stays
20 the final nonconfirmation notice pending the
21 resolution of the administrative appeal or judi-
22 cial review.

23 “(H) RIGHT TO REVIEW AND CORRECT
24 SYSTEM INFORMATION.—

1 “(i) The Secretary, in consultation
2 with the Commissioner of Social Security,
3 shall establish procedures to permit an in-
4 dividual to verify the individual’s eligibility
5 for employment in the United States prior
6 to obtaining or changing employment, to
7 view the individual’s own records in the
8 System in order to ensure the accuracy of
9 such records, and to correct or update the
10 information used by the System regarding
11 the individual. To the greatest practicable
12 extent such procedures shall allow elec-
13 tronic submission of such information.

14 “(ii) The Secretary, in consultation
15 with the Commissioner of Social Security,
16 shall establish procedures for an Enhanced
17 Verification System under paragraph (25)
18 through which an individual who has
19 viewed the individual’s own record may
20 electronically block he use of the individ-
21 ual’s social security number and may reg-
22 ister a phone number or e-mail address to
23 be contacted upon removal of the block
24 under the System and remove such block
25 in order to prevent the fraudulent or other

1 misuse of a social security account num-
2 ber, prevent employer misuse of the sys-
3 tem, protect privacy, and limit erroneous
4 non-confirmations during employment
5 verification.

6 “(H) REVERIFICATION.—

7 “(i) IN GENERAL.—It is an unfair im-
8 migration-related employment practice
9 under section 274B for an employer to
10 reverify an individual’s identity and em-
11 ployment eligibility unless—

12 “(I) the individual’s work author-
13 ization expires as described in section
14 274a.2(b)(1)(vii) of title 8, Code of
15 Federal Regulation or a subsequent
16 similar regulation, in which case—

17 “(aa) not later than 30 days
18 prior to the expiration of the in-
19 dividual’s work authorization, the
20 Secretary shall notify the em-
21 ployer of such expiration and of
22 the employer’s need to reverify
23 the individual’s employment eligi-
24 bility; and

1 “(bb) the individual may
2 present, and the employer shall
3 accept, a receipt for the applica-
4 tion for a replacement document,
5 extension of work authorization,
6 or a document described in
7 clause (i) through (v) of subpara-
8 graph (B) of subsection (b)(1) in
9 lieu of the required document by
10 the expiration date in order to
11 comply with any requirement to
12 examine documentation imposed
13 by this section, and the individual
14 shall present the required docu-
15 ment within 90 days from the
16 date the employment authoriza-
17 tion expires. If the actual docu-
18 ment or replacement document is
19 to be issued by United States
20 Citizenship and Immigration
21 Services and the application is
22 still under review 60 days after
23 the employment authorization ex-
24 piration date, United States Citi-
25 zenship and Immigration Services

1 shall by the 60th day after the
2 expiration date of the employ-
3 ment authorization, issue a letter
4 for the applicant to take to the
5 employer which shall automati-
6 cally grant the individual an ad-
7 ditional 90 days to present the
8 document or replacement docu-
9 ment; and

10 “(II) the employer has actual or
11 constructive knowledge that the indi-
12 vidual is not authorized to work in the
13 United States; or

14 “(III) unless otherwise required
15 by law.

16 “(ii) CONTINUING EMPLOYMENT.—An
17 employer may not verify an individual’s
18 employment eligibility if the individual is
19 continuing in his or her employment as de-
20 scribed in section 274a.2(b)(1)(viii) of title
21 8, Code of Federal Regulation or any sub-
22 sequent similar regulation.

23 “(4) DESIGN AND OPERATION OF SYSTEM.—
24 The Secretary, in consultation with the Commis-

1 sioner of Social Security, shall design and operate
2 the System—

3 “(A) to maximize reliability and ease of
4 use by employers and employees in a manner
5 that protects and maintains the privacy and se-
6 curity of the information maintained in the Sys-
7 tem;

8 “(B) to permit an employer to submit an
9 inquiry to the System through the Internet or
10 other electronic media or over a telephone line;

11 “(C) to respond to each inquiry made by
12 an employer;

13 “(D) to maintain a record of each such in-
14 quiry and each such response;

15 “(E) to track and record any occurrence
16 when the System is unable to receive such an
17 inquiry;

18 “(F) to include appropriate administrative,
19 technical, and physical safeguards to prevent
20 unauthorized disclosure of personal information
21 during use, transmission, storage, or disposal of
22 that information, including the use of
23 encryption, carrying out periodic testing of the
24 System to detect, prevent, and respond to

1 vulnerabilities or other failures, and utilizing
2 periodic security updates;

3 “(G) to allow for monitoring of the use of
4 the System and provide an audit capability;

5 “(H) to have reasonable safeguards, devel-
6 oped in consultation with the Attorney General,
7 to prevent employers from engaging in unlawful
8 discriminatory practices;

9 “(I) to permit an employer to submit the
10 attestations required by subsection (b); and

11 “(J) to permit an employer to utilize any
12 technology that is consistent with this section
13 and with any regulation or guidance from the
14 Secretary to streamline the procedures to com-
15 ply with the attestation and employment eligi-
16 bility verification requirements contained in this
17 section.

18 “(5) LIMITATION ON DATA ELEMENTS
19 STORED.—

20 “(A) The System and any databases cre-
21 ated by the Commissioner of Social Security or
22 the Secretary for use in the System shall store
23 only the minimum data about each individual
24 for whom an inquiry was made through the
25 System to facilitate the successful operation of

1 the System, and in no case shall the data stored
2 be other than—

3 “(i) the individual’s full legal name;

4 “(ii) the individual’s date of birth;

5 “(iii) the individual’s social security
6 account number or employment authoriza-
7 tion status identification number;

8 “(iv) the address of the employer
9 making the inquiry and the dates of any
10 prior inquiries concerning the identity and
11 authorization of the individual by the em-
12 ployer or any other employer and the ad-
13 dress of such employer;

14 “(v) a record of each prior determina-
15 tion regarding the individual’s identity and
16 employment eligibility issued through the
17 System; and

18 “(vi) in the case of the individual who
19 successfully contested or appealed a ten-
20 tative nonconfirmation or final noncon-
21 firmation, explanatory information con-
22 cerning the successful resolution of any er-
23 roneous data or confusion regarding the
24 identity or eligibility for employment of the

1 individual, including the source of that
2 error.

3 “(B) Information provided pursuant to
4 subsection (c)(5)(A)(i)–(v) shall be deleted from
5 the System one year after the date of entry un-
6 less the Secretary shall determine it is relevant
7 to an ongoing determination or appeal, a review
8 of errors or compensation for errors, or an on-
9 going investigation of fraud or misuse of the
10 system. The Secretary shall not retain any data
11 pursuant to this subsection after the completion
12 of an appeal or investigation except as de-
13 scribed in subsection (c)(5)(A)(vi).

14 “(6) RESPONSIBILITIES OF THE COMMISSIONER
15 OF SOCIAL SECURITY.—The Commissioner of Social
16 Security shall establish a reliable, secure method to
17 provide through the System, within the time periods
18 required by subparagraphs (B) and (C) of para-
19 graph (2)—

20 “(A) a confirmation of whether or not the
21 individual is a United States citizen;

22 “(B) a determination of whether the name
23 and social security account number provided,
24 with respect to an individual, in an inquiry by
25 an employer, match such information main-

1 tained by the Commissioner in order to confirm
2 the validity of the information provided;

3 “(C) a determination of whether such so-
4 cial security account number was issued to the
5 individual; and

6 “(D) a determination described in subpara-
7 graph (B) or (C) of paragraph (2), in a manner
8 that ensures that other information maintained
9 by the Commissioner is not disclosed or re-
10 leased to employers through the System.

11 “(7) RESPONSIBILITIES OF THE SECRETARY.—
12 The Secretary shall establish a reliable, secure meth-
13 od to provide, through the System, within the time
14 periods required by subparagraphs (B) and (C) of
15 paragraph (2)—

16 “(A) a determination of whether the name
17 and alien identification or authorization number
18 provided, with respect to an individual, in an in-
19 quiry by an employer match such information
20 maintained by the Secretary in order to confirm
21 the validity of the information provided;

22 “(B) a determination of whether such
23 number was issued to the individual;

1 “(C) a determination of whether the indi-
2 vidual is authorized to be employed in the
3 United States; and

4 “(D) any other related information that
5 the Secretary determines is appropriate.

6 “(8) PRIVACY IMPACT ASSESSMENT.—The
7 Commissioner of Social Security and the Secretary
8 shall each complete a privacy impact assessment as
9 described in section 208 of the E-Government Act of
10 2002 (Public Law 107–347; 44 U.S.C. 3501 note)
11 with regard to the System.

12 “(9) TRAINING.—Not later than 6 months be-
13 fore implementation of the EEVS, the Commissioner
14 of Social Security and the Secretary shall institute
15 a comprehensive program of outreach and training
16 for employers regarding the operation of the
17 verification system described in this section and in-
18 forming them of ongoing assistance resources for the
19 implementation and use of such systems.

20 “(10) PUBLIC EDUCATION.—Not later than 6
21 months before implementation of the EEVS, the
22 Commissioner of Social Security and the Secretary
23 shall develop a public education campaign regarding
24 the obligations imposed by this section as well as in-

1 structional materials provided without cost to the
2 public regarding how to use the EEVS.

3 “(11) HOTLINE.—The Secretary shall establish
4 a fully staffed 24-hour toll-free hotline that shall re-
5 ceive inquiries from individuals or employers con-
6 cerning determinations made by the System and
7 shall identify for an individual, at the time of in-
8 quiry, the particular data that resulted in a deter-
9 mination that the System was unable to verify the
10 individual’s identity or eligibility for employment.

11 “(12) PARTICIPATION.—

12 “(A) REQUIREMENTS FOR PARTICIPA-
13 TION.—Except as provided in subparagraphs
14 (D) and (E), the Secretary shall require em-
15 ployers to participate in the System as follows:

16 “(i) CRITICAL EMPLOYERS.—Not later
17 than 6 months after the date of enactment
18 of this Act, the Secretary shall require all
19 agencies and departments of the United
20 States (including the Armed Forces), a
21 State government (including a State em-
22 ployment agency before making a referral),
23 or any other employer if it employs individ-
24 uals working in a location that is a Fed-
25 eral, State, or local government building, a

1 military base, a nuclear energy site, a
2 weapon site, or an airport, but only to the
3 extent of such individuals, to participate in
4 the System, with respect to all individuals
5 hired after the date the Secretary requires
6 such participation.

7 “(ii) LARGE EMPLOYERS.—Not later
8 than 1 year after the date of enactment of
9 this Act the Secretary shall require an em-
10 ployer with 5,000 or more employees in the
11 United States to participate in the System,
12 with respect to all employees hired by the
13 employer after the date the Secretary re-
14 quires such participation.

15 “(iii) MIDSIZED EMPLOYERS.—Not
16 later than 2 years after the date of enact-
17 ment of this Act the Secretary shall re-
18 quire an employer with less than 5,000
19 employees and 1,000 or more employees in
20 the United States to participate in the Sys-
21 tem, with respect to all employees hired by
22 the employer after the date the Secretary
23 requires such participation.

24 “(iv) SMALL EMPLOYERS.—Not later
25 than 3 years after the date of the enact-

1 ment of the this Act, the Secretary shall
2 require all employers with less than 1,000
3 employees in the United States to partici-
4 pate in the System, with respect to all em-
5 ployees hired by the employer after the
6 date the Secretary requires such participa-
7 tion.

8 “(B) REQUIREMENT TO PUBLISH.—The
9 Secretary shall publish in the Federal Register
10 the requirements for participation in the Sys-
11 tem for employers described in clauses (i)
12 through (iv) of subparagraph (A) prior to the
13 effective date of such requirements.

14 “(C) OTHER PARTICIPATION IN SYSTEM.—
15 Notwithstanding subparagraph (A), the Sec-
16 retary has the authority to permit any employer
17 that is not required to participate in the System
18 under subparagraph (A) to participate in the
19 System on a voluntary basis

20 “(D) WAIVER.—

21 “(i) AUTHORITY TO PROVIDE A WAIV-
22 ER.—The Secretary is authorized to waive
23 or delay the participation requirements of
24 subparagraph (A) with respect to any em-
25 ployer or class of employers if the Sec-

1 retary provides notice to Congress of such
2 waiver prior to the date such waiver is
3 granted.

4 “(ii) REQUIREMENT TO PROVIDE A
5 WAIVER.—The Secretary shall waive or
6 delay the participation requirements of
7 subparagraph (A) with respect to any em-
8 ployer or class of employers until the date
9 that the Comptroller General of the United
10 States submits the initial certification de-
11 scribed in paragraph (19)(E) and shall
12 waive or delay such participation during a
13 year if the Comptroller General fails to
14 submit a certification of paragraph (19)(E)
15 for such year.

16 “(E) CONSEQUENCE OF FAILURE TO PAR-
17 TICIPATE.—If an employer is required to par-
18 ticipate in the System and fails to comply with
19 the requirements of the System with respect to
20 an individual—

21 “(i) such failure shall be treated as a
22 violation of subsection (a)(1)(B); and

23 “(ii) a rebuttable presumption is cre-
24 ated that the employer has violated sub-
25 section (a)(1)(A), however, such presump-

tion may not apply to a prosecution under subsection (e)(1).

“(13) EMPLOYER REQUIREMENTS.—

“(A) IN GENERAL.—An employer that participates in the System, with respect to the hiring of an individual for employment in the United States, shall—

“(i) notify the individual of the use of the System and that the System may be used for immigration enforcement purposes;

“(ii) obtain from the individual the documents required by subsection (b)(1) and record on the form designated by the Secretary—

“(I) the individual’s social security account number; and

“(II) in the case of an individual who does not attest that the individual is a national of the United States under subsection (b)(2), such identification or authorization number that the Secretary shall require;

“(iii) retain such form in electronic, paper, microfilm, or microfiche form and

1 make such form available for inspection for
2 the periods and in the manner described in
3 subsection (b)(3); and

4 “(iv) safeguard any information col-
5 lected for purposes of the System and pro-
6 tect any means of access to such informa-
7 tion to ensure that such information is not
8 used for any purpose other than to deter-
9 mine the identity and employment eligi-
10 bility of the individual and to protect the
11 confidentiality of such information, includ-
12 ing ensuring that such information is not
13 provided to any person other than a person
14 who carries out the employer’s responsibil-
15 ities under this subsection. Failure to safe-
16 guard such information shall be a violation
17 of subsection (c)(14).

18 “(B) CONFIRMATION, TENTATIVE NONCON-
19 FIRMATION, OR FINAL NONCONFIRMATION.—

20 “(i) CONFIRMATION.—If an employer
21 receives a determination through the Sys-
22 tem under paragraph (3) for an individual,
23 the employer shall retain either an elec-
24 tronic, paper, or microfiche form record of

1 such confirmation for the period required
2 by subsection (b)(4)(A).

3 “(ii) TENTATIVE NONCONFIRMATION
4 AND VERIFICATION.—

5 “(I) NONCONFIRMATION.—If an
6 employer receives a tentative noncon-
7 firmation with respect to an indi-
8 vidual, the employer shall retain either
9 an electronic or paper record of such
10 nonconfirmation for the period re-
11 quired by subsection (b)(4)(A) and in-
12 form such individual not later than 3
13 working days after the issuance of
14 such notice in the manner prescribed
15 by the Secretary that includes infor-
16 mation regarding the individual’s
17 right to submit information to contest
18 the tentative nonconfirmation and the
19 address and telephone numbers estab-
20 lished by the Commissioner and the
21 Secretary to obtain information on
22 how to submit such information. The
23 individual must acknowledge in writ-
24 ing whether or not the individual
25 chooses to contest or not contest the

1 tentative nonconfirmation. The em-
2 ployer shall submit to the System the
3 individual's action.

4 “(II) NO CONTEST.—If the indi-
5 vidual does not contest the tentative
6 nonconfirmation notice within 15
7 working days of receiving notice from
8 the individual's employer, the notice
9 shall become final and the employer
10 shall retain either an electronic or
11 paper record of such final noncon-
12 firmation for the period required by
13 subsection (b)(4)(A). An individual's
14 failure to contest a tentative noncon-
15 firmation may not be the basis for de-
16 termining that the employer acted in
17 a knowing (as defined in section
18 274a.1 of title 8, Code of Federal
19 Regulations, or any corresponding
20 similar regulation) manner.

21 “(III) CONTEST.—If the indi-
22 vidual contests the tentative noncon-
23 firmation notice under subclause (I),
24 the individual shall submit appro-
25 priate information to contest such no-

1 tice to the Secretary or Commissioner
2 of Social Security within 15 working
3 days of receiving notice from the indi-
4 vidual's employer and shall utilize the
5 verification process developed under
6 paragraph (3)(B).

7 “(IV) EFFECTIVE PERIOD OF
8 TENTATIVE NONCONFIRMATION.—A
9 tentative nonconfirmation notice shall
10 remain in effect until such notice be-
11 comes final under clause (II) or a
12 final confirmation notice or final non-
13 confirmation notice is issued by the
14 System.

15 “(V) PROHIBITION.—An em-
16 ployer may not terminate the employ-
17 ment of an individual based on a ten-
18 tative nonconfirmation notice. Noth-
19 ing in this clause shall apply to termi-
20 nation of employment for any legiti-
21 mate reason other than because of
22 such a tentative nonconfirmation.

23 “(iii) FINAL NONCONFIRMATION.—

24 “(I) If an employer has received
25 a final nonconfirmation with respect

1 to an individual, the employer shall
2 terminate the employment of the indi-
3 vidual after the expiration of the time
4 period prescribed in paragraph (21)
5 for the individual to file an adminis-
6 trative appeal of a final nonconfirma-
7 tion notice, unless the Secretary or
8 the Commissioner stays the final non-
9 confirmation notice pending the reso-
10 lution of the administrative appeal, or
11 a stay is issued pending judicial re-
12 view.

13 “(II) CONTINUED EMPLOYMENT
14 AFTER FINAL NONCONFIRMATION.—If
15 the employer continues to employ (or
16 to recruit or refer) an individual after
17 the expiration of the period for the in-
18 dividual to file an administrative ap-
19 peal of a final nonconfirmation notice
20 under paragraph (21) (unless the Sec-
21 retary or the Commissioner stayed the
22 final nonconfirmation notice pending
23 the resolution of the administrative
24 appeal or a stay is issued pending ju-
25 dicial review), a rebuttable presump-

1 tion is created that the employer has
2 violated subsections paragraphs
3 (1)(A) and (2) of subsection (a). Such
4 presumption may not apply to a pros-
5 ecution under subsection (e)(1).

6 “(14) PROHIBITION OF UNLAWFUL ACCESSING
7 AND OBTAINING OF INFORMATION.—

8 “(A) IN GENERAL.—It shall be unlawful
9 for any individual other than an employee of
10 the Social Security Administration or the De-
11 partment of Homeland Security specifically
12 charged with maintaining the System to inten-
13 tionally and knowingly—

14 “(i) access the System or the data-
15 bases utilized to verify identity or employ-
16 ment eligibility for the System for any pur-
17 pose other than verifying identity or em-
18 ployment eligibility or modifying the Sys-
19 tem pursuant to law or regulation; or

20 “(ii) obtain the information con-
21 cerning an individual stored in the System
22 or the databases utilized to verify identity
23 or employment eligibility for the System
24 for any purpose other than verifying iden-
25 tity or employment authorization or modi-

1 fying the System pursuant to law or regu-
2 lation.

3 “(B) PENALTIES.—

4 “(i) UNLAWFUL ACCESS.—Any indi-
5 vidual who unlawfully accesses the System
6 or the databases as described in subpara-
7 graph (A)(i) shall be fined no more than
8 \$1,000 per individual or sentenced to no
9 more than 6 months imprisonment or both
10 per individual whose file was compromised.

11 “(ii) UNLAWFUL USE.—Any indi-
12 vidual who unlawfully obtains information
13 stored in the System in the database uti-
14 lized to verify identity or employment eligi-
15 bility for the System and uses the informa-
16 tion to commit identity theft for financial
17 gain or to evade security or to assist an-
18 other in gaining financially or evading se-
19 curity, shall be fined no more than
20 \$10,000 per individual or sentenced to no
21 more than 1 year of imprisonment or both
22 per individual whose information was ob-
23 tained and misappropriated.

24 “(15) PROTECTION FROM LIABILITY.—No em-
25 ployer that participates in the System and complies

1 in good faith with the attestation in subsection
2 (b)(1) and the employer requirements of this section
3 shall be liable under any law for any employment-re-
4 lated action taken with respect to an individual in
5 good faith reliance on information provided by the
6 System regarding that individual.

7 “(16) LIMITATION ON USE OF THE SYSTEM.—
8 Notwithstanding any other provision of law, nothing
9 in this subsection shall be construed to permit or
10 allow any department, bureau, or other agency of
11 the United States to utilize any information, data-
12 base, or other records used in the System for any
13 purpose other than as provided for under this sub-
14 section.

15 “(17) ACCESS TO DATABASE.—No officer or
16 employee of any agency or department of the United
17 States, other than such an officer or employee who
18 is responsible for the verification of employment eli-
19 gibility or for the evaluation of an employment eligi-
20 bility verification program at the Social Security Ad-
21 ministration, the Department of Homeland Security,
22 and the Department of Labor, may have access to
23 any information, database, or other records utilized
24 by the System.

1 “(18) MODIFICATION AUTHORITY.—The Sec-
2 retary, after notice is submitted to Congress and
3 provided to the public in the Federal Register, is au-
4 thorized to modify the requirements of this sub-
5 section, including requirements with respect to com-
6 pletion of forms, method of storage, attestations,
7 copying of documents, signatures, methods of trans-
8 mitting information, and other operational and tech-
9 nical aspects to improve the efficiency, accuracy, and
10 security of the System.

11 “(19) ANNUAL STUDY AND REPORT.—

12 “(A) REQUIREMENT FOR STUDY.—The
13 Comptroller General of the United States shall
14 conduct an annual study of the System as de-
15 scribed in this paragraph.

16 “(B) PURPOSE OF THE STUDY.—The
17 Comptroller General shall, for each year, under-
18 take a study to determine whether the System
19 meets the following requirements:

20 “(i) DEMONSTRATED ACCURACY OF
21 THE DATABASES.—New information and
22 information changes submitted by an indi-
23 vidual to the System is updated in all of
24 the relevant databases not later than 3

1 working days after submission in at least
2 99 percent of all cases.

3 “(ii) LOW ERROR RATES AND DELAYS
4 IN VERIFICATION.—

5 “(I) RATES OF INCORRECT FINAL
6 NONCONFIRMATION NOTICES.—That,
7 during a year, not more than .5 per-
8 cent of all final nonconfirmations pro-
9 vided through the System during such
10 year are incorrect.

11 “(II) RATES OF INCORRECT TEN-
12 TATIVE NONCONFIRMATION NO-
13 TICES.—

14 “(aa) That, during a year,
15 not more than 1 percent of na-
16 tive-born United States citizens
17 whose identity and work eligi-
18 bility are submitted to the system
19 is the subject of a tentative non-
20 confirmation.

21 “(bb) That, during a year,
22 not more than 3 percent of for-
23 eign-born, work authorized indi-
24 viduals whose identity and work
25 eligibility are submitted to the

1 System are the subject of a ten-
2 tentative nonconfirmation.

3 “(iii) CONTAINMENT OF ERROR
4 RATES.—That, during a year, the rate of
5 incorrect final and incorrect tentative non-
6 confirmations shall not have increased by
7 more than 3 percent over the previous
8 year.

9 “(iv) MEASURABLE EMPLOYER COM-
10 PLIANCE WITH SYSTEM REQUIREMENTS.—

11 “(I) NO DISCRIMINATION BASED
12 ON SYSTEM OPERATIONS.—The Sys-
13 tem has not resulted in increased em-
14 ployment discrimination on the basis
15 of race or national origin.

16 “(II) REQUIREMENT FOR INDE-
17 PENDENT STUDY.—The determination
18 described in subclause (I) shall be
19 based on an independent study com-
20 missioned by the Comptroller General
21 in each phase of expansion of the Sys-
22 tem.

23 “(v) PROTECTION OF WORKERS’ PRI-
24 VATE INFORMATION.—At least 97 percent
25 of employers who participate in the System

1 are in full compliance with the privacy re-
2 quirements described in this subsection.

3 “(vi) EFFECTIVE SECURITY.—An as-
4 sessment of the privacy and confidentiality
5 of the system and of the overall security of
6 the system with respect to cybertheft and
7 theft and misuse of private data.

8 “(vii) ADEQUATE AGENCY STAFFING
9 AND FUNDING.—The Secretary and Com-
10 missioner of Social Security have sufficient
11 funding to meet all of the deadlines and re-
12 quirements of this subsection.

13 “(C) CONSULTATION.—In conducting a
14 study under this paragraph, the Comptroller
15 General shall consult with representatives of
16 business, labor, immigrant communities, State
17 governments, privacy advocates, and appro-
18 priate departments of the United States.

19 “(D) REQUIREMENT FOR REPORTS.—Not
20 later than 21 months after the date of the en-
21 actment of this Act and annually thereafter, the
22 Comptroller General shall submit to the Sec-
23 retary and to Congress a report containing the
24 findings of the study carried out under this
25 paragraph.

1 “(E) CERTIFICATION.—If the Comptroller
2 General determines that the System meets the
3 requirements set out in clauses (i) through (vii)
4 of subparagraph (B) for a year, the Comptroller
5 shall certify such determination and submit
6 such certification to Congress with the report
7 required by subparagraph (D).

8 “(20) ANNUAL AUDIT AND REPORT.—

9 “(A) PURPOSE OF THE AUDIT AND RE-
10 PORT.—The Office for Civil Rights and Civil
11 Liberties shall conduct annual audits of the sys-
12 tem described in section 403(a) of the Illegal
13 Immigration Reform and Responsibility Act of
14 1996, Public Law 104–208, Div. C, 110 Stat.
15 3009-546, to assess employer compliance with
16 System requirements, including civil rights and
17 civil liberties protections, and compliance with
18 the System rules and procedures set forth in
19 the Memorandum of Understanding between
20 employers and the Social Security Administra-
21 tion and the Department of Homeland Security.

22 “(B) REQUIREMENTS OF AUDIT.—Annual
23 audits shall include, but are not limited to, the
24 following activities:

1 “(i) Use of testers to check if employ-
2 ers are using E-Verify as outlined in the
3 Memorandum of Understanding between
4 employers and the Department of Home-
5 land Security and the Social Security Ad-
6 ministration, including if employers are
7 misusing the system to prescreen job appli-
8 cants, if employers are giving proper notifi-
9 cation to employees’ regarding tentative
10 non-confirmations, and if employers are
11 taking adverse actions against workers
12 based upon tentative non-confirmations.

13 “(ii) Random audits of employers to
14 confirm that employers are using the sys-
15 tem as outlined in the Memorandum of
16 Understanding and in a manner consistent
17 with civil rights and civil liberties protec-
18 tions.

19 “(iii) Periodic audits of employers for
20 which the Special Counsel has received in-
21 formation or complaints and/or actual
22 charges of citizenship/national origin dis-
23 crimination or document abuse.

24 “(C) AUTHORITY OF OFFICE FOR CIVIL
25 RIGHTS AND CIVIL LIBERTIES.—The Office

1 shall have the authority to obtain from users of
2 the E-Verify program relevant documents and
3 testimony and answers to written interrog-
4 atories. The Office shall also have the authority
5 to conduct site visits, and interview employees.

6 “(D) FAILURE OF EMPLOYERS TO CO-
7 OPERATE.—Employers that fail to cooperate
8 with the Office for Civil Rights and Civil Lib-
9 erties shall be noted in the annual report set
10 forth below in subsection (E).

11 “(E) REQUIREMENT FOR REPORTS.—Not
12 later than 18 months after the date of enact-
13 ment of this Act, and annually thereafter, the
14 Office for Civil Rights and Civil Liberties shall
15 submit to the President of the Senate, the
16 Speaker of the House of Representatives, and
17 the appropriate committees and subcommittees
18 of Congress a report containing the findings of
19 the audit carried out under this paragraph.

20 “(21) ADMINISTRATIVE REVIEW.—

21 “(A) IN GENERAL.—An individual who re-
22 ceives a final nonconfirmation may, not later
23 than 30 days after the date of such notice, file
24 an appeal of such final nonconfirmation. An in-
25 dividual subject to a final nonconfirmation may

1 file an appeal thereof after the 30-day period if
2 the appeal is accompanied by evidence that the
3 individual did not receive timely notice of a ten-
4 tative or final nonconfirmation, or that there
5 was good cause for the failure to file an appeal
6 within the 30-day period.

7 “(B) PROCEDURES.—

8 “(i) The Secretary and Commissioner
9 of Social Security shall develop procedures
10 to review appeals filed under subparagraph
11 (A) and to make final determinations on
12 such appeals. The review on appeal may
13 include any additional or newly discovered
14 evidence presented by the appellant during
15 the time of the pending appeal or subse-
16 quently by motion to reopen.

17 “(ii) The Secretary or the Commis-
18 sioner shall stay the final nonconfirmation
19 notice pending the resolution of the admin-
20 istrative appeal unless the Secretary or the
21 Commissioner determines that the admin-
22 istrative appeal is frivolous, unlikely to
23 succeed on the merits, or filed for purposes
24 of delay.

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 for employment in the United
5 States, the administrative review process shall
6 require the Secretary to determine if the final
7 nonconfirmation 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) an error or negligence on the
13 part of an employer or entity acting on be-
14 half of the employer;

15 “(iii) the decision rules, processes, or
16 procedures utilized by the System; or

17 “(iv) erroneous system information
18 that was not the result of acts or omissions
19 of the individual.

20 “(D) COMPENSATION FOR ERROR.—

21 “(i) IN GENERAL.—If the individual
22 was denied a stay under subparagraph
23 (B)(2) and Secretary makes a determina-
24 tion under subparagraph (C) that the final
25 nonconfirmation issued for an individual

1 was not caused by an act or omission of
2 the individual or the employer, the Sec-
3 retary shall compensate the individual for
4 lost wages and for reasonable costs and at-
5 torneys' fees not exceeding \$75,000, sub-
6 ject to annual inflation adjustments per
7 the US Consumer Price Index - All Urban
8 Consumers (CPI-U) compiled by the Bu-
9 reau of Labor Statistics.

10 “(ii) CALCULATION OF LOST
11 WAGES.—Lost wages shall be calculated
12 based on the wage rate and work schedule
13 that prevailed prior to termination. The in-
14 dividual shall be compensated for wages
15 lost beginning on the first scheduled work
16 day after employment was terminated and
17 ending 180 days after completion of the
18 administrative review process described in
19 this paragraph, or judicial review if any, or
20 the day after the individual is reinstated or
21 obtains employment elsewhere, whichever
22 occurs first. If the individual obtains em-
23 ployment elsewhere at a lower wage rate,
24 the individual shall be compensated for the
25 difference in wages for the period ending

1 180 days after completion of the adminis-
2 trative review process or judicial review, if
3 any.

4 “(iii) LIMITATION ON COMPENSA-
5 TION.—For purposes of determining an in-
6 dividual’s compensation for the loss of em-
7 ployment, such compensation shall not in-
8 clude any period in which the individual
9 was ineligible for employment in the
10 United States.

11 “(iv) SOURCE OF FUNDS.—Compensa-
12 tion or reimbursement provided under this
13 paragraph shall not be provided from
14 funds appropriated in annual appropria-
15 tions Acts to the Secretary for the Depart-
16 ment of Homeland Security.

17 “(E) TEMPORARY STAY OF FINAL ADMIN-
18 ISTRATIVE DECISION DENYING APPEAL.—If the
19 appeal is denied, the Secretary shall stay the
20 decision for a period of 15 days to permit the
21 individual to seek judicial review of the decision
22 pursuant to paragraph (21).

23 “(22) JUDICIAL REVIEW.—

24 “(A) IN GENERAL.—After the Secretary
25 makes a final determination on an appeal filed

1 by an individual under paragraph (19), the in-
2 dividual may obtain judicial review of such de-
3 termination in a civil action commenced not
4 later than 90 days after notice of such decision,
5 or such further time as the Secretary may
6 allow.

7 “(B) JURISDICTION.—A civil action for
8 such judicial review shall be brought in the dis-
9 trict court of the United States for the judicial
10 district in which the plaintiff resides, or has a
11 principal place of business, or, if the plaintiff
12 does not reside or have a principal place of
13 business within any such judicial district, in the
14 District Court of the United States for the Dis-
15 trict of Columbia.

16 “(C) ANSWER.—As part of the Secretary’s
17 answer to a complaint for such judicial review,
18 the Secretary shall file a certified copy of the
19 administrative record compiled during the ad-
20 ministrative review under paragraph (21), in-
21 cluding the evidence upon which the findings
22 and decision complained of are based. The court
23 shall have power to enter, upon the pleadings
24 and transcript of the record, a judgment affirm-
25 ing or reversing the result of that administra-

1 tive review, with or without remanding the
2 cause for a rehearing.

3 “(D) COMPENSATION FOR ERROR.—

4 “(i) IN GENERAL.—In cases in which
5 the individual was denied a stay under
6 subparagraph (19)(B)(2) and such judicial
7 review reverses the final determination of
8 the Secretary made under paragraph (21),
9 the court shall compensate the individual
10 for lost wages and for reasonable costs and
11 attorneys’ fees not exceeding \$75,000, sub-
12 ject to annual inflation adjustments per
13 the US Consumer Price Index - All Urban
14 Consumers (CPI-U) compiled by the Bu-
15 reau of Labor Statistics.

16 “(ii) CALCULATION OF LOST
17 WAGES.—Lost wages shall be calculated
18 based on the wage rate and work schedule
19 that prevailed prior to termination. The in-
20 dividual shall be compensated for wages
21 lost beginning on the first scheduled work
22 day after employment was terminated and
23 ending 180 days after completion of the ju-
24 dicial review described in this paragraph or
25 the day after the individual is reinstated or

1 obtains employment elsewhere, whichever
2 occurs first. If the individual obtains em-
3 ployment elsewhere at a lower wage rate,
4 the individual shall be compensated for the
5 difference in wages for the period ending
6 180 days after completion of the adminis-
7 trative and judicial review process.

8 “(23) PRIVATE RIGHT OF ACTION.—If the Sec-
9 retary makes a determination under paragraph (21)
10 that the final nonconfirmation issued for an indi-
11 vidual was caused by an act or negligence on the
12 part of the employer, the individual may seek recov-
13 ery of damages, reinstatement, back pay, and other
14 appropriate remedies in a civil action against the
15 employer. Such action must be commenced not later
16 than 90 days after notice of the Secretary’s decision.
17 The action shall be brought in the district court of
18 the United States for the judicial district in which
19 the plaintiff resides, or has a principal place of busi-
20 ness, or, if the plaintiff does not reside or have a
21 principal place of business within any such judicial
22 district, in the District Court of the United States
23 for the District of Columbia.

24 “(24) STATUTORY CONSTRUCTION.—Nothing in
25 this subsection shall affect any existing rights and

1 obligations of employers or employees under other
2 Federal, State, or local laws.

3 “(25) ENHANCED VERIFICATION SYSTEM.—The
4 Secretary, in consultation with the Commissioner of
5 Social Security, shall establish a voluntary self-
6 verification system in order to prevent the fraudu-
7 lent or other misuse of the individual’s Social Secu-
8 rity number during employment verification, to pre-
9 vent employer misuse of the system, to protect pri-
10 vacy, and to limit erroneous nonconfirmation during
11 employment verification. The voluntary system shall
12 allow an individual to verify the individual’s own
13 record, to block and unblock the use of the individ-
14 ual’s Social Security number, and to register a
15 phone number or e-mail address to be contacted
16 upon removal of the block.

17 “(A) VOLUNTARY ENROLLMENT.—An indi-
18 vidual may enroll in the Enhanced Verification
19 System on a voluntary basis.

20 “(B) SELECT ENTITIES REQUIRED TO PAR-
21 TICIPATE IN THE ENHANCED VERIFICATION
22 SYSTEM.—

23 “(i) EXECUTIVE DEPARTMENTS.—
24 Each Department of the Federal Govern-
25 ment shall elect to participate in the En-

1 hanced Verification System and shall com-
2 ply with the terms and conditions of such
3 an election.

4 “(ii) LEGISLATIVE BRANCH.—Each
5 Member of Congress, each officer of Con-
6 gress, and the head of each agency of the
7 legislative branch shall elect to participate
8 in the Enhanced Verification System and
9 shall comply with the terms and conditions
10 of such an election.

11 “(C) ELECTRONIC ACCESS.—The Secretary
12 shall establish procedures allowing individuals
13 to use a Personal Identification Number (PIN)
14 or other biographic information to authenticate
15 the individual’s identity and to block and
16 unblock the individual’s Social Security number
17 electronically.

18 “(D) USE OF ENHANCED VERIFICATION
19 SYSTEM RECEIPT FOR PURPOSE OF EMPLOY-
20 MENT VERIFICATION.—

21 “(i) ENCRYPTED CODE.—The Sec-
22 retary shall establish procedures to allow
23 an individual who has authenticated the in-
24 dividual’s identity and unblocked the indi-
25 vidual’s Social Security number to receive

1 a single-use encrypted code which may be
2 presented to the employer instead of the
3 documents described in subsection (b) and
4 for the employer to submit the encrypted
5 single-use code to the system.

6 “(ii) CONFIRMATION.—An employer
7 who submits a valid single-use encrypted
8 code with respect to an individual shall im-
9 mediately receive a confirmation through
10 the system.

11 “(iii) EXPEDITED REVIEW PROC-
12 ESS.—The Secretary shall establish an ex-
13 pedited review process to allow an indi-
14 vidual who has authenticated the individ-
15 ual’s identity and unblocked the individ-
16 ual’s Social Security number immediately
17 to correct user or system errors which re-
18 sult in an erroneous non-confirmation of
19 work eligibility.

20 “(E) REPORTS.—

21 “(i) IN GENERAL.—The Secretary of
22 Homeland Security shall submit to the
23 Committees on the Judiciary of the House
24 of Representatives and of the Senate re-
25 ports on the Enhanced Verification System

1 within 3 months after the end of the third
2 and fourth years in which the programs
3 are in effect. Such reports shall—

4 “(I) assess the degree of fraudu-
5 lent attesting of United States citizen-
6 ship;

7 “(II) assess the benefits of the
8 Enhanced Verification System to em-
9 ployers and the degree to which it
10 prevents fraudulent claims of United
11 States citizenship or legal residence
12 and strengthens the enforcement of
13 section 274A;

14 “(III) assess the benefits of the
15 Enhanced Verification System to indi-
16 viduals and the degree to which they
17 prevent misuse of the System and er-
18 roneous non-confirmations during em-
19 ployment verification;

20 “(IV) assess if the Enhanced
21 Verification System aides in reducing
22 discrimination during the employment
23 verification process;

24 “(V) assess the degree to which
25 the Enhanced Verification System

1 protects employee civil liberties and
2 privacy; and

3 “(VI) include recommendations
4 on whether or not Enhanced
5 Verification System should be contin-
6 ued or modified, and

7 “(ii) REPORT ON EXPANSION.—Not
8 later than 6 months after the end of the
9 fourth year in which the programs are in
10 effect, the Secretary of Homeland Security
11 shall submit to the Committees on the Ju-
12 diciary of the House of Representatives
13 and the Senate a report—

14 “(I) evaluating whether the prob-
15 lems identified by the report sub-
16 mitted under subsection (i) have been
17 substantially resolved; and

18 “(II) describing what actions the
19 Secretary of Homeland Security shall
20 take before requiring any individuals
21 to participate in the Enhanced
22 Verification System.

23 “(F) LIMITATION ON USE OF THE CON-
24 FIRMATION SYSTEM AND ANY RELATED SYS-
25 TEMS.—Notwithstanding any other provision of

1 law, nothing in this subtitle shall be construed
2 to permit or allow any department, bureau, or
3 other agency of the United States Government
4 to utilize any information, data base, or other
5 records assembled under this subtitle for any
6 other purpose other than as provided for under
7 the Enhanced Verification System.

8 “(d) COMPLIANCE.—

9 “(1) COMPLAINTS AND INVESTIGATIONS.—The
10 Secretary shall establish procedures—

11 “(A) for a person to file a complaint re-
12 garding a potential violation of paragraph
13 (1)(A), (1)(B), or (2) of subsection (a);

14 “(B) for the investigation of any such com-
15 plaint that the Secretary determines is appro-
16 priate to investigate; and

17 “(C) for the investigation of such other
18 violation of paragraph (1)(A), (1)(B), or (2) of
19 subsection (a) that the Secretary determines is
20 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, if designated by the Sec-

1 retary, may compel by subpoena the attendance
2 of witnesses and the production of evidence at
3 any designated place in an investigation or case
4 under this subsection.

5 “(B) FAILURE TO COOPERATE.—In case of
6 refusal to obey a subpoena lawfully issued
7 under subparagraph (A), the Secretary may re-
8 quest that the Attorney General apply in an ap-
9 propriate district court of the United States for
10 an order requiring compliance with such sub-
11 poena, and any failure to obey such order may
12 be punished by such court as contempt.

13 “(C) DEPARTMENT OF LABOR.—The Sec-
14 retary of Labor shall have the investigative au-
15 thority provided under section 11(a) of the Fair
16 Labor Standards Act of 1938 (29 U.S.C.
17 211(a)) to ensure compliance with the provi-
18 sions of this section, or any regulation or order
19 issued under this section.

20 “(D) AGENCY REPRESENTATION AND CO-
21 ORDINATION.—United States Immigration and
22 Customs Enforcement officials may not mis-
23 represent to employees or employers that they
24 are a member of any agency or organization
25 that provides domestic violence services, en-

1 forces health and safety law or other labor laws,
2 provides health care services, or any other serv-
3 ices intended to protect life and safety.

4 “(3) COMPLIANCE PROCEDURES.—

5 “(A) PREPENALTY NOTICE.—If the Sec-
6 retary has reasonable cause to believe that
7 there has been a violation of a requirement of
8 this section and determines that further pro-
9 ceedings related to such violation are war-
10 ranted, the Secretary shall issue to the em-
11 ployer concerned a written notice of the Sec-
12 retary’s intention to issue a claim for a fine or
13 other penalty. Such notice shall—

14 “(i) describe the violation;

15 “(ii) specify the laws and regulations
16 allegedly violated;

17 “(iii) disclose the material facts which
18 establish the alleged violation; and

19 “(iv) inform such employer that the
20 employer shall have a reasonable oppor-
21 tunity to make representations as to why a
22 claim for a monetary or other penalty
23 should not be imposed.

24 “(B) REMISSION OR MITIGATION OF PEN-
25 ALTIES.—

1 “(i) PETITION BY EMPLOYER.—If an
2 employer receives written notice of a fine
3 or other penalty in accordance with sub-
4 paragraph (A), the employer may file with-
5 in 45 days from receipt of such notice,
6 with the Secretary a petition for the remis-
7 sion or mitigation of such fine or penalty,
8 or a petition for termination of the pro-
9 ceedings. The petition may include any rel-
10 evant evidence or proffer of evidence the
11 employer wishes to present, and shall be
12 filed and considered in accordance with
13 procedures to be established by the Sec-
14 retary.

15 “(ii) REVIEW BY SECRETARY.—If the
16 Secretary finds that such fine or other
17 penalty was incurred erroneously, or finds
18 the existence of such mitigating cir-
19 cumstances as to justify the remission or
20 mitigation of such fine or penalty, the Sec-
21 retary may remit or mitigate such fine or
22 other penalty on the terms and conditions
23 as the Secretary determines are reasonable
24 and just, or order termination of any pro-
25 ceedings related to the notice. Such miti-

gating circumstances may include good faith compliance and participation in, or agreement to participate in, the System, if not otherwise required.

“(iii) APPLICABILITY.—This subparagraph may not apply to an employer that has or is engaged in a pattern or practice of violations of paragraph (1)(A), (1)(B), or (2) of subsection (a) or of any other requirements of this section.

“(C) PENALTY CLAIM.—After considering evidence and representations offered by the employer pursuant to subparagraph (B), the Secretary shall determine whether there was a violation and promptly issue a written final determination setting forth the findings of fact and conclusions of law on which the determination is based and the appropriate penalty.

“(4) CIVIL PENALTIES.—

“(A) HIRING OR CONTINUING TO EMPLOY UNAUTHORIZED ALIENS.—Any employer that violates paragraph (1)(A) or (2) of subsection (a) shall pay civil penalties as follows:

“(i) Pay a civil penalty of not less than \$500 and not more than \$4,000 for

1 each unauthorized alien with respect to
2 each such violation.

3 “(ii) If the employer has previously
4 been fined 1 time within the preceding 12
5 months under this subparagraph, pay a
6 civil penalty of not less than \$4,000 and
7 not more than \$10,000 for each unauthor-
8 ized alien with respect to each such viola-
9 tion.

10 “(iii) If the employer has previously
11 been fined more than 1 time within the
12 preceding 12 months under this subpara-
13 graph or has failed to comply with a pre-
14 viously issued and final order related to
15 any such provision, pay a civil penalty of
16 not less than \$6,000 and not more than
17 \$20,000 for each unauthorized alien with
18 respect to each such violation.

19 “(B) RECORDKEEPING OR VERIFICATION
20 PRACTICES.—Any employer that violates or fails
21 to comply with paragraph (1)(B) of subsection
22 (a) shall pay a civil penalty as follows:

23 “(i) Pay a civil penalty of not less
24 than \$200 and not more than \$2,000 for
25 each such violation or failure.

1 “(ii) If the employer has previously
2 been fined 1 time within the preceding 12
3 months under this subparagraph, pay a
4 civil penalty of not less than \$400 and not
5 more than \$4,000 for each such violation
6 of failure.

7 “(iii) If the employer has previously
8 been fined more than 1 time within the
9 preceding 12 months under this subpara-
10 graph or has failed to comply with a pre-
11 viously issued and final order related to
12 such requirements, pay a civil penalty of
13 \$6,000 for each such violation or failure.

14 “(iv) SPECIAL RULE GOVERNING PA-
15 PERWORK VIOLATION.—In the case where
16 an employer commits a violation of this
17 section that is deemed to be purely a pa-
18 perwork violation where the Secretary fails
19 to establish any intent to hire an individual
20 who is not unauthorized for employment in
21 the United States, the Secretary shall per-
22 mit the employer to correct such paper-
23 work error within 30 days of receiving no-
24 tice from the Secretary of such violation.

1 “(C) OTHER PENALTIES.—Notwith-
2 standing subparagraphs (A) and (B), the Sec-
3 retary may impose additional penalties for vio-
4 lations, including cease and desist orders, spe-
5 cially designed compliance plans to prevent fur-
6 ther violations, suspended fines to take effect in
7 the event of a further violation, and in appro-
8 priate cases, the civil penalty described in sub-
9 section (e)(2).

10 “(5) JUDICIAL REVIEW.—

11 “(A) IN GENERAL.—An employer adversely
12 affected by a final determination may, within
13 45 days after the date the final determination
14 is issued, obtain judicial review of such deter-
15 mination.

16 “(B) REPORT.—Not later than 180 days
17 after the date of enactment of the this Act, the
18 Director of the Federal Judicial Center shall
19 submit to Congress a report on judicial review
20 of a final determination. The report shall con-
21 tain recommendations on jurisdiction and pro-
22 cedures that shall be instituted to seek ade-
23 quate and timely review of such decision.

24 “(6) ENFORCEMENT OF ORDERS.—If an em-
25 ployer fails to comply with a final determination

1 issued against that employer under this subsection,
2 and the final determination is not subject to review
3 as provided in paragraph (5), the Attorney General
4 may file suit to enforce compliance with the final de-
5 termination, not earlier than 46 days and not later
6 than 90 days, after the date the final determination
7 is issued, in any appropriate district court of the
8 United States. The burden shall remain on the em-
9 ployer to show that the final determination was not
10 supported by a preponderance of the evidence.

11 “(7) RECOVERY OF COSTS AND ATTORNEYS’
12 FEES.—In any appeal brought under paragraph (5)
13 or suit brought under paragraph (6), the employer
14 shall be entitled to recover from the Secretary rea-
15 sonable costs and attorneys’ fees if such employer
16 prevails on the merits of the case. The award of at-
17 torneys’ fees shall not exceed \$75,000. Such amount
18 shall be subject to annual inflation adjustments per
19 the United States Consumer Price Index - All Urban
20 Consumers (CPI-U) compiled by the Bureau of
21 Labor Statistics. Any costs and attorneys’ fees as-
22 sessed against the Secretary shall be charged against
23 the operating expenses of the Department of Home-
24 land Security for the fiscal year in which the assess-

1 ment is made, and shall not be reimbursed from any
2 other source.

3 “(8) COORDINATION.—An investigation under
4 paragraph (1)(C) shall be coordinated with the ap-
5 propriate regional office of the National Labor Rela-
6 tions Board, the Department of Labor, and all rel-
7 evant State and local agencies that are charged with
8 enforcing workplace standards. Evidence gathered
9 from such agencies shall be considered in deter-
10 mining whether the entity under investigation has
11 violated subsection (a).

12 “(e) CRIMINAL PENALTIES AND INJUNCTIONS FOR
13 PATTERN OR PRACTICE VIOLATIONS.—

14 “(1) CRIMINAL PENALTY.—An employer that
15 engages in a pattern or practice of knowing viola-
16 tions of paragraph (1)(A) or (2) of subsection (a)
17 shall be fined not more than \$20,000 for each unau-
18 thorized alien with respect to whom such a violation
19 occurs, imprisoned for not more than 3 years for the
20 entire pattern or practice, or both.

21 “(2) ENJOINING OF PATTERN OR PRACTICE
22 VIOLATIONS.—If the Secretary or the Attorney Gen-
23 eral has reasonable cause to believe that an employer
24 is engaged in a pattern or practice of employment in
25 violation of paragraph (1)(A) or (2) of subsection

1 (a), the Attorney General may bring a civil action in
2 the appropriate district court of the United States
3 requesting such relief, including a permanent or
4 temporary injunction, restraining order, or other
5 order against the employer, as the Secretary deems
6 necessary.

7 “(f) ADJUSTMENT FOR INFLATION.—All penalties
8 and limitations on the recovery of costs and attorney’s fees
9 in this section shall be increased every 4 years beginning
10 January 2010 to reflect the percentage increase in the
11 consumer price index for all urban consumers (all items;
12 United States city average) for the 48 month period end-
13 ing with September of the year preceding the year such
14 adjustment is made. Any adjustment under this subpara-
15 graph shall be rounded to the nearest dollar.

16 “(g) PROHIBITION OF INDEMNITY BONDS.—

17 “(1) PROHIBITION.—It is unlawful for an em-
18 ployer, in the hiring of an individual, to require the
19 individual to post a bond or security, to pay or agree
20 to pay an amount, or otherwise to provide a finan-
21 cial guaranty or indemnity, against any potential li-
22 ability arising under this section relating to such hir-
23 ing of the individual.

24 “(2) CIVIL PENALTY.—Any employer which is
25 determined, after notice and opportunity for mitiga-

1 tion of the monetary penalty under subsection (d),
2 to have violated paragraph (1) shall be subject to a
3 civil penalty of \$10,000 for each violation and to an
4 administrative order requiring the return of any
5 amounts received in violation of such paragraph to
6 the individual.

7 “(h) PROHIBITION ON AWARD OF GOVERNMENT
8 CONTRACTS, GRANTS, AND AGREEMENTS.—

9 “(1) EMPLOYERS WITH NO CONTRACTS,
10 GRANTS, OR AGREEMENTS.—

11 “(A) IN GENERAL.—If an employer who
12 does not hold a Federal contract, grant, or co-
13 operative agreement is determined by the Sec-
14 retary to be a repeat violator of this section the
15 employer shall be debarred from the receipt of
16 a Federal contract, grant, or cooperative agree-
17 ment for a period of 5 years. The Secretary or
18 the Attorney General shall advise the Adminis-
19 trator of General Services of such a debarment,
20 and the Administrator of General Services shall
21 list the employer on the List of Parties Ex-
22 cluded from Federal Procurement and Non-
23 procurement Programs for a period of 5 years.

24 “(B) WAIVER.—The Administrator of Gen-
25 eral Services, in consultation with the Secretary

1 and the Attorney General, may waive operation
2 of this subsection or may limit the duration or
3 scope of the debarment.

4 “(2) EMPLOYERS WITH CONTRACTS, GRANTS,
5 OR AGREEMENTS.—

6 “(A) IN GENERAL.—An employer who
7 holds a Federal contract, grant, or cooperative
8 agreement and is determined by the Secretary
9 to be a repeat violator of this section or is con-
10 victed of a crime under this section, shall be
11 debarred from the receipt of new Federal con-
12 tracts, grants, or cooperative agreements for a
13 period of 5 years.

14 “(B) NOTICE TO AGENCIES.—Prior to de-
15 barring the employer under subparagraph (A),
16 the Secretary, in cooperation with the Adminis-
17 trator of General Services, shall advise any
18 agency or department holding a contract, grant,
19 or cooperative agreement with the employer of
20 the Government’s intention to debar the em-
21 ployer from the receipt of new Federal con-
22 tracts, grants, or cooperative agreements for a
23 period of 5 years.

24 “(C) REVIEW.—The decision of whether to
25 debar or take alternate action under this para-

1 graph shall be reviewable pursuant to section 9,
2 Federal Acquisition Regulation.

3 “(3) SUSPENSION.—Indictments for violations
4 of this section or adequate evidence of actions that
5 could form the basis for debarment under this sub-
6 section shall be considered a cause for suspension
7 under the procedures and standards for suspension
8 prescribed by the Federal Acquisition Regulation.

9 “(4) REPEAT VIOLATOR DEFINED.—In this
10 subsection, the term ‘repeat violator’ means, with re-
11 spect to an employer, that the employer has violated
12 paragraph (1)(A), (1)(B), or (2) of subsection (a)
13 more than 1 time and that such violations were dis-
14 covered as a result of more than 1 separate inves-
15 tigation of the employer. A violation of such para-
16 graph (1)(B) that is inadvertent and unrelated to a
17 violation of subsection (a)(1)(A) and (a)(2) may not
18 be considered to be a violation of such paragraph
19 (1)(B) for the purposes of this paragraph.

20 “(i) MISCELLANEOUS PROVISIONS.—

21 “(1) DOCUMENTATION.—In providing docu-
22 mentation or endorsement of authorization of aliens
23 (other than aliens lawfully admitted for permanent
24 residence) eligible to be employed in the United
25 States, the Secretary shall provide that any limita-

1 tions with respect to the period or type of employ-
2 ment or employer shall be conspicuously stated on
3 the documentation or endorsement.

4 “(2) PREEMPTION.—The provisions of this sec-
5 tion preempt any State or local law, contract license,
6 or other standard, requirement, action or instrument
7 from—

8 “(A) imposing sanctions or liabilities for
9 employing, or recruiting or referring for em-
10 ployment, unauthorized aliens, or for working
11 without employment authorization;

12 “(B) requiring those hiring, recruiting, or
13 referring individuals for employment to ascer-
14 tain or verify the individuals’ employment au-
15 thorization or to participate in an employment
16 authorization verification system, or requiring
17 individuals to demonstrate employment author-
18 ization; and

19 “(C) requiring, authorizing or permitting
20 the use of an employment verification system,
21 unless otherwise mandated by Federal law, for
22 any other purpose including, but without limita-
23 tion, such purposes as verifying the status of
24 renters, determining eligibility for receipt of
25 benefits, enrollment in school, obtaining or re-

1 taining a business license or other license, or
2 conducting a background check.

3 “(j) BACKPAY REMEDIES.—Neither backpay nor any
4 other monetary remedy for unlawful employment prac-
5 tices, workplace injuries or other causes of action giving
6 rise to liability shall be denied to a present or former em-
7 ployee on account of: the employer’s or the employee’s fail-
8 ure to comply with the requirements of this section in es-
9 tablishing or maintaining the employment relationship; the
10 employee’s violation of the provisions of federal law related
11 to the employment verification system set forth in sub-
12 section (a); or the employee’s continuing status as an un-
13 authorized alien both during and after termination of em-
14 ployment.

15 “(k) DEFINITIONS.—In this section—

16 “(1) EMPLOYER.—The term ‘employer’ means
17 any person or entity, including any entity of the
18 Government of the United States, hiring an indi-
19 vidual for employment in the United States.

20 “(2) SECRETARY.—Except as otherwise pro-
21 vided, the term ‘Secretary’ means the Secretary of
22 Homeland Security.

23 “(3) UNAUTHORIZED ALIEN.—The term ‘unau-
24 thorized alien’ means, with respect to the employ-

1 ment of an alien at a particular time, that the alien
2 is not at that time either—

3 “(A) an alien lawfully admitted for perma-
4 nent residence; or

5 “(B) authorized to be so employed by this
6 Act or by the Secretary.”.

7 (b) CONFORMING AMENDMENTS.—

8 (1) AMENDMENTS.—

9 (A) REPEAL OF E-VERIFY.—Sections 401,
10 402, 403, 404, and 405 of the Illegal Immigra-
11 tion Reform and Immigrant Responsibility Act
12 of 1996 (division C of Public Law 104–208; 8
13 U.S.C. 1324a note) are repealed.

14 (B) REPEAL OF REPORTING REQUIRE-
15 MENTS.—

16 (i) REPORT ON EARNINGS OF ALIENS
17 NOT AUTHORIZED TO WORK.—Subsection
18 (c) of section 290 (8 U.S.C. 1360) is re-
19 pealed.

20 (ii) REPORT ON FRAUDULENT USE OF
21 SOCIAL SECURITY ACCOUNT NUMBERS.—
22 Subsection (b) of section 414 of the Illegal
23 Immigration Reform and Immigrant Re-
24 sponsibility Act of 1996 (division C of

1 Public Law 104–208; 8 U.S.C. 1360 note)
2 is repealed.

3 (C) REPEAL OF DEFINITION.—Paragraph
4 (1)(F) of section 1961 of title 18, United
5 States Code, is repealed.

6 (2) CONSTRUCTION.—Nothing in this sub-
7 section or in subsection (c) of section 274A, as
8 amended by subsection (a), may be construed to
9 limit the authority of the Secretary to allow or con-
10 tinue to allow the participation of employers who
11 participated in the E-Verify program under such
12 sections 401, 402, 403, 404, and 405 of the Illegal
13 Immigration Reform and Immigrant Responsibility
14 Act of 1996 (division C of Public Law 104–208; 8
15 U.S.C. 1324a note) in the Electronic Employment
16 Verification System established pursuant to such
17 subsection (d).

18 (c) TECHNICAL AMENDMENTS.—

19 (1) DEFINITION OF UNAUTHORIZED ALIEN.—
20 Sections 218(i)(1) (8 U.S.C. 1188(i)(1)), 245(c)(8)
21 (8 U.S.C. 1255(c)(8)), 274(a)(3)(B)(i) (8 U.S.C.
22 1324(a)(3)(B)(i)), and 274B(a)(1) (8 U.S.C.
23 1324b(a)(1)) are amended by striking “274A(h)(3)”
24 and inserting “274A(h)”.

1 (2) DOCUMENT REQUIREMENTS.—Section 274B
2 (8 U.S.C. 1324b) is amended—

3 (A) in subsections (a)(6) and (g)(2)(B), by
4 striking “274A(b)” and inserting “274A(d)”;
5 and

6 (B) in subsection (g)(2)(B)(ii), by striking
7 “274A(b)(5)” and inserting “274A(d)(9)”.

8 (d) EMPLOYMENT VERIFICATION ADVISORY
9 PANEL.—

10 (1) IN GENERAL.—Not later than 180 days
11 after the date of enactment of this Act, the Sec-
12 retary shall establish an Employment Verification
13 Advisory Panel (hereinafter in the subsection re-
14 ferred to as the “Advisory Panel”).

15 (2) MEMBERSHIP.—The Advisory Panel should
16 consist of members appointed by the Secretary, after
17 consulting with the Commissioner of Social Security,
18 the Director of National Institutes of Standards and
19 Technology, and other appropriate Federal agencies.
20 Such members should include representatives from
21 appropriate Federal agencies and private sector rep-
22 resentatives of affected industries and groups, in-
23 cluding immigration policy, human resource, em-
24 ployer and employee organizations, experts in fields

1 including database security, employment verification,
2 biometrics, and privacy.

3 (3) FUNCTIONS.—

4 (A) ADVICE ON IMPLEMENTATION AND DE-
5 PLOYMENT.—The Advisory Panel shall advise
6 the Secretary and the Commissioner of Social
7 Security on the implementation and deployment
8 of the verification systems established under the
9 amendments made by this section, including—

10 (i) the best means of promoting effi-
11 ciency, compliance responsiveness, accu-
12 racy, public education, user support, inter-
13 operability, and cost-effectiveness of the
14 systems established under this section;

15 (ii) the best practices and procedures
16 in order to protect the privacy and identi-
17 ties of individuals enrolled in the systems
18 established under this section;

19 (iii) standards of database accuracy,
20 error rates, privacy, and measurable com-
21 pliance with system rules that must be met
22 before implementation begins and before
23 each additional phase of implementation;
24 and

1 (iv) the best means by which data ob-
2 tained through such systems may be used
3 to timely improve the accuracy of data-
4 bases maintained by the Secretary and the
5 Commissioner of Social Security.

6 (B) STUDY AND REPORT ON IDENTITY FRAUD
7 AND ALTERNATIVES FOR STRENGTHENING IDENTITY
8 AUTHENTICATION.—

9 (i) STUDY.—The Advisory Panel shall
10 evaluate the vulnerability of the System to iden-
11 tity fraud and the degree to which individuals
12 not authorized for employment in the United
13 States are able to be confirmed by the System.

14 (ii) REPORT.—Not later than 180 days
15 after its establishment, the Advisory Panel shall
16 issue a report to the Secretary on alternatives
17 for strengthening identity authentication and
18 preventing fraudulent confirmations by the Sys-
19 tem. The report shall—

20 (I) survey available technologies for
21 identity authentication, including but not
22 limited to biometric and biographical iden-
23 tity assurance systems;

24 (II) analyze alternatives to identity
25 assurance technologies, including the en-

hanced verification system described in subsection (c)(25) of section 274A of the Immigration and Nationality Act, as amended by this section;

(III) analyze the technical feasibility of adding new identity authentication requirements to the System described in subsection (c) of such section, including by considering:

(IV) process burdens (at the point of collection, information processing, etc.);

(V) performance burdens (anticipated system throughputs, scalability, reconfigurability, etc);

(VI) accuracy and realistic failure rates and projected increases in erroneous nonconfirmations of work authorized individuals;

(VII) projected compliance and non-compliance rates,

(VIII) data Security, data storage requirements, and added risk to individuals' privacy;

(IX) estimate the costs and benefits of different strategies for strengthening iden-

1 tity authentication and evaluate their over-
2 all strengths and weaknesses, including but
3 not limited to requirements that employers
4 collect biometric, biographical, or other
5 data from new employees instead of or in
6 addition to the data identified in sub-
7 sections (b) and (c) of such section and re-
8 quirements that individuals participate in
9 the enhanced verification system described
10 in subsection (c)(25) of such section.

11 (4) TERMINATION.—The Advisory Panel shall
12 terminate 5 years after the date of the enactment of
13 this Act.

14 (e) EFFECTIVE DATE.—The amendments made by
15 subsections (a), (b), and (c) shall take effect on the date
16 that is 180 days after the date of the enactment of this
17 Act.

18 **SEC. 202. PARITY WITH CIVIL RIGHTS ACT OF 1964.**

19 (a) PROHIBITION OF EMPLOYMENT DISCRIMINA-
20 TION.—Section 274B(a) (8 U.S.C. 1324b(a)) is amend-
21 ed—

22 (1) by amending paragraph (1) to read as fol-
23 lows:

24 “(1) IN GENERAL.—It is an unfair immigra-
25 tion-related employment practice for a person or

1 other entity to discriminate against any individual
2 (other than an unauthorized alien defined in section
3 274A(h)(3)) with respect to—

4 “(A) the hiring, or recruitment or referral
5 for a fee, of the individual for employment, the
6 verification of the individual’s eligibility for em-
7 ployment, or the discharging of the individual
8 from employment—

9 “(i) because of such individual’s na-
10 tional origin; or

11 “(ii) because of such individual’s citi-
12 zenship status;

13 “(B) the compensation, terms, or condi-
14 tions of the employment of the individual.”;

15 (2) by amending paragraph (2)(A) to read as
16 follows:

17 “(A) a person or other entity that employs
18 three or fewer employees, except for an ‘employ-
19 ment agency,’ meaning any person regularly un-
20 dertaking with or without compensation to pro-
21 cure employees for an employer or to procure
22 for employees opportunities to work for an em-
23 ployer and includes an agent of such a per-
24 son.”;

1 (3) by repealing section 274(a)(3) (8 U.S.C.
2 1324(a)(3));

3 (4) in paragraph (6), by striking “if made for
4 the purpose or with the intent of discriminating
5 against an individual in violation of paragraph (1)”
6 and inserting “in violation of paragraph (1). Addi-
7 tional information and compliance assistance will be
8 provided to employers to assist them in complying
9 with the law”;

10 (5) by inserting a new paragraph (7) as follows:

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 Employment Verification
16 System described in section 274A(c)—

17 “(A) to terminate the employment of an
18 individual or take any adverse employment ac-
19 tion due to a tentative nonconfirmation issued
20 by such System, with respect to that individual;

21 “(B) to use the System for screening of an
22 applicant for employment prior to making the
23 individual an offer of employment;

24 “(C) to use the System for the
25 reverification of an employee after the employee

1 has satisfied the process described in (b)(1),
2 unless otherwise required by Federal law.

3 “(D) to use the System selectively to ex-
4 clude certain individuals from consideration for
5 employment as a result of a perceived likelihood
6 that additional verification will be required, be-
7 yond what is required for most job applicants;
8 or

9 “(E) to use the System to deny workers’
10 employment benefits or otherwise interfere with
11 their labor rights, or to engage in any other un-
12 lawful employment practice.”;

13 (6) by inserting a new paragraph (8) as follows:

14 “(8) BURDEN OF PROOF IN DISPARATE IMPACT
15 CASES.—

16 “(A) An unlawful immigration-related em-
17 ployment practice or unfair labor practice case
18 based on disparate impact is established under
19 this general rule only if—

20 “(i) a complaining party demonstrates
21 that a respondent uses a particular em-
22 ployment practice that causes a disparate
23 impact on the basis of national origin or
24 citizenship status and the respondent fails
25 to demonstrate that the challenged practice

1 is job related for the position in question
2 and consistent with business necessity; or

3 “(ii) the complaining party makes the
4 demonstration with respect to an alter-
5 native employment practice and the re-
6 spondent refuses to adopt such an alter-
7 native employment practice. An alternative
8 employment practice is defined as a policy
9 that would satisfy the employer’s legiti-
10 mate interests without having a disparate
11 impact on a protected class.

12 “(B) With respect to demonstrating that a
13 particular employment practice causes a dis-
14 parate impact as described in subparagraph
15 (8)(A), the complaining party shall demonstrate
16 that each particular challenged employment
17 practice causes a disparate impact, except that
18 if the complaining party can demonstrate to the
19 court that the elements of a respondent’s deci-
20 sion-making process are not capable of separa-
21 tion for analysis, the decisionmaking process
22 may be analyzed as one employment practice.

23 “(C) If the respondent demonstrates that a
24 specific employment practice does not cause the
25 disparate impact, the respondent shall not be

1 required to demonstrate that such practice is
2 required by business necessity.

3 “(D) A demonstration that an employment
4 practice is required by business necessity may
5 not be used as a defense against a claim of in-
6 tentional discrimination under this statute.”;
7 and

8 (7) by inserting a new paragraph (9) as follows:

9 “(9) Except as otherwise provided in this sub-
10 chapter, an unlawful immigration-related unfair em-
11 ployment practice is established when the charging
12 party demonstrates that citizenship status or na-
13 tional origin was a motivating factor for any employ-
14 ment practice, even though other factors also moti-
15 vated the practice.”

16 (b) CHARGES AND COMPLAINTS.—Section 274B(d)
17 (8 U.S.C. 1324b(d)) is amended—

18 (1) in paragraph (1), by striking “within 120
19 days of the date of the receipt of the charge” and
20 “subject to paragraph (3)”;

21 (2) by striking “The Special Counsel’s failure
22 to file such a complaint within such 120-day period
23 shall not affect the right of the Special Counsel to
24 investigate the charge or to bring a complaint before
25 an administrative law judge during such 90-day pe-

1 riod.” and inserting at the end of paragraph (2)
 2 “Nothing contained in this Act shall relieve any Gov-
 3 ernment agency or official of his or her responsibility
 4 for unlawful electronic employment verification prac-
 5 tices.”;

6 (3) by striking paragraph (3).

7 (c) INCREASE IN CIVIL MONEY PENALTIES.—Section
 8 274B(g)(2)(B)(iv) (8 U.S.C. 1324b(g)(2)(B)(iv)) is
 9 amended—

10 (1) in subclause (I), by striking “\$250 and not
 11 more than \$1,000” and inserting “\$2,000 and not
 12 more than \$4,000”;

13 (2) in subclause (II), by striking “\$2,000 and
 14 not more than \$5,000” and inserting “\$4,000 and
 15 not more than \$10,000”;

16 (3) in subclause (III), by striking “\$3,000 and
 17 not more than \$10,000” and inserting “\$6,000 and
 18 not more than \$20,000”;

19 (4) in subclause (IV), by striking “\$100 and
 20 not more than \$1,000” and inserting “\$500 and not
 21 more than \$5,000.”

22 (d) ORDERS FINDING VIOLATIONS.—Section
 23 274B(g) (8 U.S.C. 1324b(g)) is amended—

24 (1) in paragraph (2)(B)(iii), by inserting “, and
 25 to provide such other relief as the administrative law

1 judge determines appropriate to make the individual
2 whole” before the semicolon at the end; and

3 (2) by inserting the following at the end of
4 paragraph (2)(B)(viii):

5 “(ix)(I) No order of the court shall re-
6 quire the admission or reinstatement of an
7 individual as a member of a union, or the
8 hiring, reinstatement, or promotion of an
9 individual as an employee, or the payment
10 to him of any back pay, if such individual
11 was refused admission, suspended, or ex-
12 pelled, or was refused employment or ad-
13 vancement or was suspended or discharged
14 for any reason other than discrimination
15 on account of citizenship status or national
16 origin or in violation of this section.

17 “(II) On a claim in which an indi-
18 vidual proves a violation under subsection
19 (a)(7) and a respondent demonstrates that
20 the respondent would have taken the same
21 action in the absence of the impermissible
22 motivating factor, the court may grant de-
23 claratory relief, injunctive relief (except as
24 provided in clause (b)), and attorney’s fees
25 and costs demonstrated to be directly at-

1 tributable only to the pursuit of a claim
2 under subsection (a)(7); and shall not
3 award damages or issue an order requiring
4 any admission, reinstatement, hiring, pro-
5 motion, or payment, described in subpara-
6 graph (I).”;

7 (3) by inserting at the end of paragraph (2) a
8 new subparagraph (E) as follows:

9 “(E) COMPENSATORY AND PUNITIVE DAM-
10 AGES.—

11 “(i) DETERMINATION OF PUNITIVE
12 DAMAGES.—A complaining party may ac-
13 quire punitive damages against a respond-
14 ent (other than the federal government or
15 a federal government agency) if the com-
16 plaining party demonstrates that the re-
17 spondent engaged in discriminatory prac-
18 tice or practices with malice or reckless in-
19 difference to the federally protected rights
20 of an aggrieved individual under subsection
21 (a)(1).

22 “(ii) COMPENSATORY DAMAGES
23 AWARDED UNDER THIS SECTION.—Com-
24 pensatory damages awarded under this
25 section shall not include backpay, interest

1 on backpay, or any other type of relief au-
2 thorized under subparagraphs (B) and (C)
3 of subsection (g)(2).

4 “(iii) LIMITATIONS.—The sum of
5 compensatory damages awarded under this
6 section for future pecuniary losses, emo-
7 tional pain, suffering, inconvenience, men-
8 tal anguish, loss of enjoyment of life, and
9 other nonpecuniary losses on account of
10 national origin discrimination shall not ex-
11 ceed \$50,000 for each complaining party.
12 In the case of citizenship status discrimi-
13 nation, the limitations should be as follows:

14 “(I) In the case of a respondent
15 who has more than 3 and fewer than
16 101 employees in each of 20 or more
17 calendar weeks in the current or pre-
18 ceding calendar year, \$50,000.

19 “(II) In the case of a respondent
20 who has more than 100 and fewer
21 than 201 employees in each of 20 or
22 more calendar weeks in the current or
23 preceding calendar year, \$100,000.

24 “(III) In the case of a respond-
25 ent who has more than 200 and fewer

1 than 501 employees in each of 20 or
2 more calendar weeks in the current or
3 preceding calendar year, \$200,000.

4 “(IV) In the case of a respondent
5 who has more than 500 employees in
6 each of 20 or more calendar weeks in
7 the current or preceding calendar
8 year, \$300,000.”.

9 (e) DISSEMINATION OF INFORMATION.—Section
10 274B is amended—

11 (1) in subparagraph (l)(3), by striking
12 “\$10,000,000” and inserting “\$50,000,000”.

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

14 “(m) REPORTS.—The Secretary of Homeland Secu-
15 rity shall make transactional data and citizenship status
16 data available upon request by the Special Counsel (ap-
17 pointed under subsection (c) of this section).”.

18 (f) EFFECTIVE DATE.—The amendments made by
19 this section shall take effect on the date of the enactment
20 of this Act and shall apply to violations occurring on or
21 after such date.

22 **SEC. 203. AMENDMENTS TO THE SOCIAL SECURITY ACT.**

23 (a) SOCIAL SECURITY ACT.—Section 205(c)(2) of the
24 Social Security Act (42 U.S.C. 405(c)(2)) is amended by
25 adding at the end the following new subparagraphs:

1 “(I)(i) The Commissioner of Social Secu-
2 rity shall, subject to the provisions of title III
3 of the this Act, establish a reliable, secure
4 method to provide through the employment
5 verification systems established pursuant to sec-
6 tion 274A of the Immigration and Nationality
7 Act (referred to in this subparagraph as the
8 ‘System’), within the time periods required by
9 such section—

10 “(I) a determination of whether the
11 name, date of birth, employer identification
12 number, and social security account num-
13 ber of an individual provided in an inquiry
14 made to the System by an employer is con-
15 sistent with such information maintained
16 by the Commissioner in order to confirm
17 the validity of the information provided;

18 “(II) a determination of the citizen-
19 ship status associated with such name and
20 social security account number, according
21 to the records maintained by the Commis-
22 sioner;

23 “(III) a determination of whether the
24 name and number belongs to an individual

1 who is deceased, according to the records
2 maintained by the Commissioner;

3 “(IV) a determination of whether the
4 name and number is blocked in accordance
5 with clause (ii); and

6 “(V) a confirmation or a nonconfirma-
7 tion described in such subsection (c), in a
8 manner that ensures that other informa-
9 tion maintained by the Commissioner is
10 not disclosed or released to employers
11 through the System.

12 “(ii) The Commissioner of Social Security
13 shall prevent the fraudulent or other misuse of
14 a social security account number by establishing
15 procedures under which an individual who has
16 been assigned a social security account number
17 may block the use of such number under the
18 System and remove such block.

19 “(J) In assigning social security account
20 numbers to aliens who are authorized to work
21 in the United States under section 218A of the
22 Immigration and Nationality Act, the Commis-
23 sioner of Social Security shall, to the maximum
24 extent practicable, assign such numbers by em-
25 ploying the enumeration procedure administered

1 jointly by the Commissioner, the Secretary of
2 State, and the Secretary.”.

3 (b) AUTHORIZATION OF APPROPRIATIONS.—

4 (1) IN GENERAL.—There are authorized to be
5 appropriated to the Secretary such sums as are nec-
6 essary to carry out the amendments made by this
7 section.

8 (2) LIMITATION ON VERIFICATION RESPON-
9 SIBILITIES OF COMMISSIONER OF SOCIAL SECU-
10 RITY.—The Commissioner of Social Security is au-
11 thorized to perform activities with respect to car-
12 rying out the Commissioner’s responsibilities in this
13 title or the amendments made by this title, but only
14 to the extent the Secretary has provided, in advance,
15 funds to cover the Commissioner’s full costs in car-
16 rying out such responsibilities. In no case shall
17 funds from the Federal Old-Age and Survivors In-
18 surance Trust Fund or the Federal Disability Insur-
19 ance Trust Fund be used to carry out such respon-
20 sibilities.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect on the date that is 180 days
23 after the date of the enactment of this Act.

TITLE III—VISA REFORMS

SEC. 301. ELIMINATION OF EXISTING BACKLOGS.

(a) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—Section 201(c) of the Immigration and Nationality Act (8 U.S.C. 1151(c)) is amended to read as follows:

“(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—

“(1) IN GENERAL.—Subject to subparagraph (B), the worldwide level of family-sponsored immigrants under this subsection for a fiscal year is equal to the sum of—

“(A) 480,000; and

“(B) the sum of—

“(i) the number computed under paragraph (2); and

“(ii) the number computed under paragraph (3).

“(2) UNUSED VISA NUMBERS FROM PREVIOUS FISCAL YEAR.—The number computed under this paragraph for a fiscal year is the difference, if any, between—

“(A) the worldwide level of family-sponsored immigrant visas established for the previous fiscal year; and

1 “(B) the number of visas issued under sec-
2 tion 203(a), subject to this subsection, during
3 the previous fiscal year.

4 “(3) UNUSED VISA NUMBERS FROM FISCAL
5 YEARS 1992 THROUGH 2009.—The number computed
6 under this paragraph is the difference, if any, be-
7 tween—

8 “(A) the difference, if any, between—

9 “(i) the sum of the worldwide levels of
10 family-sponsored immigrant visas estab-
11 lished for each of fiscal years 1992
12 through 2008; and

13 “(ii) the number of visas issued under
14 section 203(a), subject to this subsection,
15 during such fiscal years; and

16 “(B) the number of unused visas from fis-
17 cal years 1992 through 2008 that were issued
18 after fiscal year 2007 under section 203(a),
19 subject to this subsection.”.

20 (b) WORLDWIDE LEVEL OF EMPLOYMENT-BASED
21 IMMIGRANTS.—Section 201(d) of the Immigration and
22 Nationality Act (8 U.S.C. 1151(d)) is amended to read
23 as follows:

24 “(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED
25 IMMIGRANTS.—

1 “(1) IN GENERAL.—The worldwide level of em-
2 ployment-based immigrants under this subsection for
3 a fiscal year is equal to the sum of—

4 “(A) 290,000;

5 “(B) the number computed under para-
6 graph (2); and

7 “(C) the number computed under para-
8 graph (3).

9 “(2) UNUSED VISA NUMBERS FROM PREVIOUS
10 FISCAL YEAR.—The number computed under this
11 paragraph for a fiscal year is the difference, if any,
12 between—

13 “(A) the worldwide level established under
14 paragraph (1) for the previous fiscal year; and

15 “(B) the number of visas actually issued
16 under section 203(b), subject to this subsection,
17 during the previous fiscal year.

18 “(3) UNUSED VISA NUMBERS FROM FISCAL
19 YEARS 1992 THROUGH 2009.—The number computed
20 under this paragraph is the difference, if any, be-
21 tween—

22 “(A) the difference, if any, between—

23 “(i) the sum of the worldwide levels
24 established under paragraph (1) for fiscal
25 years 1992 through 2009; and

1 “(ii) the number of visas actually
 2 issued under section 203(b), subject to this
 3 subsection, during such fiscal years; and

4 “(B) the number of visas actually issued
 5 after fiscal year 2009 pursuant to an immi-
 6 grant visa number issued under section 203(b),
 7 subject to this subsection, during fiscal years
 8 1992 through 2009.”.

9 (c) EXCEPTION TO NONDISCRIMINATION.—Section
 10 202(a)(1)(A) (8 U.S.C. 1152(a)(1)(A)) is amended by
 11 striking “201(b)(2)(A)(i)” and inserting “201(b)”.

12 (d) EFFECTIVE DATE.—The amendments made by
 13 this section shall take effect on the date which is 60 days
 14 after the date of the enactment of this Act.

15 **SEC. 302. RECLASSIFICATION OF SPOUSES AND MINOR**
 16 **CHILDREN OF LEGAL PERMANENT RESI-**
 17 **DENTS AS IMMEDIATE RELATIVES.**

18 (a) IN GENERAL.—Section 201(b)(2) of the Immi-
 19 gration and Nationality Act (8 U.S.C. 1151(b)(2)) is
 20 amended to read as follows:

21 “(2) IMMEDIATE RELATIVE.—

22 “(A) IN GENERAL.—

23 “(i) IMMEDIATE RELATIVE DE-
 24 FINED.—In this subparagraph, the term
 25 ‘immediate relative’ means a child, spouse,

1 or parent of a citizen of the United States
2 or a child or spouse of a lawful permanent
3 resident (and for each family member of a
4 citizen or lawful permanent resident under
5 this subparagraph, such individual's spouse
6 or child who is accompanying or following
7 to join the individual), except that, in the
8 case of parents, such citizens shall be at
9 least 21 years of age.

10 “(ii) PREVIOUSLY ISSUED VISA.—
11 Aliens admitted under section 211(a) on
12 the basis of a prior issuance of a visa
13 under section 203(a) to their accom-
14 panying parent who is an immediate rel-
15 ative.

16 “(iii) PARENTS AND CHILDREN.—An
17 alien who was the child or the parent of a
18 citizen of the United States or a child of
19 a lawful permanent resident at the time of
20 the citizen's or resident's death if the alien
21 files a petition under section
22 204(a)(1)(A)(ii) within 2 years after such
23 date or prior to reaching 21 years of age.

24 “(iv) SPOUSE.—In the case of an
25 alien who was the spouse of a citizen of the

1 United States or spouse of a lawful perma-
2 nent resident and was not legally separated
3 from the citizen or resident at the time of
4 the citizen's or resident's death, the alien
5 (and each child of the alien) shall be con-
6 sidered for purposes of this subsection, to
7 remain an immediate relative after the
8 date of the citizen's or resident's death if
9 the spouse files a petition under section
10 204(a)(1)(A)(ii) before the earlier of—

11 “(I) 2 years after such date; or

12 “(II) the date on which the
13 spouse remarries.

14 “(v) SPECIAL RULE.—For purposes of
15 this subparagraph, an alien who has filed
16 a petition under clause (iii) or (iv) of sec-
17 tion 204(a)(1)(A) remains an immediate
18 relative if the United States citizen or law-
19 ful permanent resident spouse or parent
20 loses United States citizenship or residence
21 on account of the abuse.

22 “(B) BIRTH DURING TEMPORARY VISIT
23 ABROAD.—Aliens born to an alien lawfully ad-
24 mitted for permanent residence during a tem-
25 porary visit abroad.”.

1 (b) ALLOCATION OF IMMIGRANT VISAS.—Section
2 203(a) of the Immigration and Nationality Act (8 U.S.C.
3 1153(a)) is amended—

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

6 (2) by striking paragraph (2) and inserting the
7 following:

8 “(2) UNMARRIED SONS AND UNMARRIED
9 DAUGHTERS OF PERMANENT RESIDENT ALIENS.—
10 Qualified immigrants who are the unmarried sons or
11 unmarried daughters (but are not the children) of
12 an alien lawfully admitted for permanent residence
13 shall be allocated visas in a number not to exceed
14 60,000, plus any visas not required for the class
15 specified in paragraph (1).”;

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

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

20 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

21 (1) RULES FOR DETERMINING WHETHER CER-
22 TAIN ALIENS ARE IMMEDIATE RELATIVES.—Section
23 201(f) of the Immigration and Nationality Act (8
24 U.S.C. 1151(f)) is amended—

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

4 (B) by striking paragraph (2);

5 (C) by redesignating paragraphs (3) and
6 (4) as paragraphs (2) and (3), respectively; and

7 (D) in paragraph (3), as redesignated by
8 subparagraph (C), by striking “through (3)”
9 and inserting “and (2)”.

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

13 (A) in subsection (a)(4)—

14 (i) by striking subparagraphs (A) and
15 (B);

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

19 (iii) in subparagraph (A), as redesign-
20 nated by clause (ii) of this paragraph, by
21 striking “section 203(a)(2)(B)” and insert-
22 ing “section 203(a)(2)”;

23 (B) in subsection (e), in the flush matter
24 following paragraph (3), by striking “, or as
25 limiting the number of visas that may be issued

1 under section 203(a)(2)(A) pursuant to sub-
2 section (a)(4)(A)’’.

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

6 (A) in paragraph (1)—

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

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

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

20 (B) by amending paragraph (2) to read as
21 follows:

22 “(2) PETITIONS DESCRIBED.—The petition de-
23 scribed in this paragraph is a petition filed under
24 section 204 for classification of the alien’s parent

1 under subsection (a), (b), or (c) of this section.”;
2 and

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

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

9 (A) in subsection (a)(1)—

10 (i) in subparagraph (A)—

11 (I) in clause (i), by inserting “or
12 lawful permanent resident” after “cit-
13 izen”;

14 (II) in clause (ii), by striking
15 “described in the second sentence of
16 section 201(b)(2)(A)(i) also” and in-
17 serting “, alien child, or alien parent
18 described in section 201(b)(2)(A)”;

19 (III) in clause (iii)—

20 (aa) in subclause (I)(aa), by
21 inserting “or legal permanent
22 resident” after “citizen”; and

23 (bb) in subclause (II)(aa)—

24 (AA) in subitems (AA)
25 and (BB), by inserting “or

1 legal permanent resident;”
2 after “citizen” each place
3 that term appears;

4 (BB) in subitem (CC),
5 by inserting “or legal per-
6 manent resident” after “cit-
7 izen” each place that term
8 appears; and

9 (CC) in subitem
10 (CC)(bbb), by inserting “or
11 legal permanent resident”
12 after “citizenship”;

13 (IV) in clause (iv), by inserting
14 “or legal permanent resident” after
15 “citizen” each place that term ap-
16 pears;

17 (V) in clause (v)(I), by inserting
18 “or legal permanent resident” after
19 “citizen”; and

20 (VI) in clause (vi)—

21 (aa) by inserting “or legal
22 permanent resident status” after
23 “renunciation of citizenship”;
24 and

1 (bb) by inserting “or legal
2 permanent resident” after “abus-
3 er’s citizenship”;

4 (ii) by striking subparagraph (B);

5 (iii) in subparagraph (C), by striking
6 “subparagraph (A)(iii), (A)(iv), (B)(ii), or
7 (B)(iii)” and inserting “clause (iii) or (iv)
8 of subparagraph (A)”;

9 (iv) in subparagraph (J), by striking
10 “or clause (ii) or (iii) of subparagraph
11 (B)”;

12 (B) in subsection (a), by striking para-
13 graph (2);

14 (C) in subsection (c)(1), by striking “or
15 preference status”;

16 (D) in subsection (h), by striking “or a pe-
17 tition filed under subsection (a)(1)(B)(ii)”.

18 **SEC. 303. COUNTRY LIMITS.**

19 Section 202(a) of the Immigration and Nationality
20 Act (8 U.S.C. 1152(a)) is amended—

21 (1) in paragraph (2)—

22 (A) by striking “, (4), and (5)” and insert-
23 ing “and (4)”;

24 (B) by striking “subsections (a) and (b) of
25 section 203” and inserting “section 203(a)”;

(C) by striking “7 percent (in the case of a single foreign state) or 2 percent” and inserting “10 percent (in the case of a single foreign state) or 5 percent”; and

(D) by striking “such subsections” and inserting “such section”; and

(2) by striking paragraph (5).

SEC. 304. PROMOTING FAMILY UNITY.

(a) WAIVERS OF INADMISSIBILITY.—Section 212(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)) is amended—

(1) in subparagraph (B)—

(A) in clause (iii)—

(i) in subclause (I), by striking “18 years of age” and inserting “21 years of age”;

(ii) by moving subclause (V) 4 ems to the right; and

(iii) by adding at the end the following:

“(VI) Clause (i) shall not apply to an alien for whom an immigrant visa is available or was available on or before the date of the enactment of the CIR ASAP Act of 2009, and is

1 otherwise admissible to the United
2 States for permanent residence; and”;

3 (B) in clause (v)—

4 (i) by striking “spouse or son or
5 daughter” and inserting “spouse, son,
6 daughter, or parent”;

7 (ii) by striking “extreme”;

8 (iii) by inserting “, son, daughter,”
9 after “lawfully resident spouse”; and

10 (iv) by striking “alien.” and inserting
11 “alien or, if the Attorney General deter-
12 mines that a waiver is necessary for hu-
13 manitarian purposes, to ensure family
14 unity or is otherwise in the public inter-
15 est.”; and

16 (2) in subparagraph (C), by amending clause
17 (ii) to read as follows:

18 “(ii) EXCEPTIONS.—Clause (i) shall
19 not apply to an alien—

20 “(I) seeking admission more than
21 10 years after the date of the alien’s
22 last departure from the United States
23 if, prior to the alien’s reembarkation
24 at a place outside the United States
25 or attempt to be readmitted from a

1 foreign contiguous territory, the Sec-
2 retary of Homeland Security has con-
3 sented to the alien’s reapplication for
4 admission; or

5 “(II) for whom an immigrant
6 visa is available or was available on or
7 before the date of the enactment of
8 this Act, and is otherwise admissible
9 to the United States for permanent
10 residence.”.

11 (b) FALSE CLAIMS AND MISREPRESENTATIONS.—
12 The Immigration and Nationality Act (8 U.S.C. 1101, et
13 seq.) is amended—

14 (1) in section 237(a)(3)(D) (8 U.S.C.
15 1227(a)(3)(D)), by inserting “and willfully” after
16 “falsely” each place such term appears;

17 (2) in section 212(a)(6)(C)(ii) (8 U.S.C.
18 1182(a)(6)(C)(ii)), by inserting “and willfully” after
19 “falsely” each place such term appears;

20 (3) in section 212(a)(6)(C)(iii) (8 U.S.C.
21 1182(a)(6)(C)(iii)), by striking “of clause (i)”; and

22 (4) by amending section 212(i)(1) (8 U.S.C.
23 1182(i)(1)) to read as follows:

24 “(1) The Attorney General or the Secretary of
25 Homeland Security may, in the discretion of the At-

1 torney General or the Secretary, waive the applica-
2 tion of subsection (a)(6)(C) in the case of an immi-
3 grant who is the parent, spouse, son, or daughter of
4 a United States citizen or of an alien lawfully admit-
5 ted for permanent residence, or an alien granted
6 classification under clause (iii) or (iv) of section
7 204(a)(1)(A), if it is established to the satisfaction
8 of the Attorney General or the Secretary that the
9 admission to the United States of such alien would
10 not be contrary to the national welfare, safety, or se-
11 curity of the United States.”.

12 **SEC. 305. SURVIVING RELATIVES.**

13 (a) CONTINUED WAIVER ELIGIBILITY FOR WIDOWS,
14 WIDOWERS AND ORPHANS.—Section 212(a)(2)(F) is
15 amended to read as follows:

16 “(F) CONTINUED WAIVER ELIGIBILITY
17 FOR WIDOWS, WIDOWERS AND ORPHANS.—In
18 the case of an alien who would have been statu-
19 torily eligible for a waiver of inadmissibility
20 under the Immigration and Nationality Act but
21 for the death of the qualifying relative, the alien
22 may be considered for any waiver under the Im-
23 migration and Nationality Act notwithstanding
24 the death of the qualifying relative upon a
25 showing of hardship to the alien or a family

1 member, or that the granting of the waiver is
2 in the public interest.”.

3 (b) NATURALIZATION OF SURVIVING RELATIVES.—
4 Section 319(a) of the Immigration and Nationality Act (8
5 U.S.C. 1430(a)) is amended by inserting “(or, if the
6 spouse is deceased, the spouse was a citizen of the United
7 States)” after “citizen of the United States”.

8 (c) PROTECTION FOR THE SURVIVING RELATIVES OF
9 REFUGEES AND ASYLEES.—An alien described in section
10 204(l)(2)(D) of the Immigration and Nationality Act may
11 have such petition described in paragraph (2) of section
12 204(l) or an application for adjustment of status to that
13 of a person admitted for lawful permanent residence based
14 upon the family relationship described in such paragraph,
15 and any related applications, adjudicated notwithstanding
16 the death of the qualifying relative, regardless of whether
17 the alien is present inside or outside the United States
18 at the time of the qualifying relative’s death or after the
19 qualifying relative’s death.

20 **SEC. 306. EXTENSION OF WAIVER AUTHORITY.**

21 Section 217(c)(8)(A)(iii) of the Immigration and Na-
22 tionality Act (8 U.S.C. 1187(c)(8)(A)(iii)) is amended—
23 (1) by striking “June 30, 2009” and inserting
24 “June 30, 2011”; and

1 (2) by striking “July 1, 2009” and inserting
2 “July 1, 2011”.

3 **SEC. 307. DISCRETIONARY WAIVER FOR LONG-TERM LAW-**
4 **FUL PERMANENT RESIDENTS.**

5 Section 240A(a) is amended by inserting after para-
6 graph (3) the following:

7 “The Attorney General may waive the application of sub-
8 paragraph (C) to an individual only if the individual’s con-
9 viction resulted in a sentence served of two years or less
10 and the Attorney General determines in his or her sole
11 discretion that the individual does not pose a danger to
12 the community or a national security threat and that sub-
13 paragraph (C) should be waived for compelling reasons
14 such as to preserve family unity or because removal is oth-
15 erwise not in the public interest.”.

16 **SEC. 308. CONTINUOUS PRESENCE.**

17 Section 240A(d) of the Immigration and Nationality
18 Act (8 U.S.C. 1229b(d)) is amended by striking para-
19 graph (1).

20 **SEC. 309. BAR ON THE REMOVAL OF CERTAIN REFUGEES,**
21 **PAROLEES OR ASYLEES.**

22 (a) IN GENERAL.—Chapter 4 of title II of the Immi-
23 gration and Nationality Act is amended by inserting after
24 section 237 the following new section:

1 **“SEC. 237A. BAR ON REMOVAL OF CERTAIN REFUGEES, PA-**
 2 **ROLEES OR ASYLEES.**

3 “‘No individual who fled their homeland for fear of
 4 persecution while under the age of 12 years and was later
 5 admitted to the United States as a refugee or parolee or
 6 was granted asylum in the United States shall be removed
 7 from the United States.’”.

8 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 9 The table of sections for the Immigration and Nationality
 10 Act is amended by inserting after the item relating to sec-
 11 tion 237 the following new item:

“Sec. 237A. Bar on removal of certain refugees, parolees or asylees.”.

12 **SEC. 310. EXEMPTION FROM IMMIGRANT VISA LIMIT FOR**
 13 **CERTAIN VETERANS WHO ARE NATIVES OF**
 14 **PHILIPPINES.**

15 Section 201(b)(1) of the Immigration and Nationality
 16 Act (8 U.S.C. 1151(b)(1)) is amended by adding at the
 17 end the following:

18 “(F) Aliens who are eligible for an immi-
 19 grant visa under paragraph (1) or (3) of section
 20 203(a) and who have a parent who was natural-
 21 ized pursuant to section 405 of the Immigration
 22 Act of 1990 (8 U.S.C. 1440 note).”.

23 **SEC. 311. FIANCÉE OR FIANCÉ CHILD STATUS PROTECTION.**

24 (a) DEFINITION.—Section 101(a)(15)(K)(iii) of the
 25 Immigration and Nationality Act (8 U.S.C.

1 1101(a)(15)(K)(iii)) is amended by inserting before the
2 semicolon at the end the following: “if a determination of
3 the age of such minor child is made using the age of the
4 alien on the date on which the petition is filed with the
5 Secretary of Homeland Security to classify the alien’s par-
6 ent as the fiancée or fiancé of a United States citizen (in
7 the case of an alien parent described in clause (i)) or as
8 the spouse of a United States citizen under section
9 201(b)(2)(A)(i) (in the case of an alien parent described
10 in clause (ii))”.

11 (b) ADJUSTMENT OF STATUS AUTHORIZED.—Section
12 214(d) of the Immigration and Nationality Act (8 U.S.C.
13 1184(d)) is amended—

14 (1) by redesignating paragraphs (2) and (3) as
15 paragraphs (3) and (4), respectively;

16 (2) in paragraph (1), by striking the last sen-
17 tence; and

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

20 “(2)(A) If an alien does not marry the peti-
21 tioner under paragraph (1) within 3 months after
22 the alien and the alien’s minor children are admitted
23 into the United States, such alien and children shall
24 be required to depart from the United States. If
25 such aliens fail to depart from the United States,

1 they shall be removed in accordance with sections
2 240 and 241.

3 “(B) Subject to subparagraphs (C) and (D), if
4 an alien marries the petitioner described in section
5 101(a)(15)(K)(i) within 3 months after the alien is
6 admitted into the United States, the Secretary of
7 Homeland Security or the Attorney General, subject
8 to the provisions of section 245(d), may adjust the
9 status of the alien, and any minor children accom-
10 panying or following to join the alien, to that of an
11 alien lawfully admitted for permanent residence on
12 a conditional basis under section 216 if the alien
13 and any such minor children apply for such adjust-
14 ment and are not determined to be inadmissible to
15 the United States.

16 “(C) Paragraphs (5) and (7)(A) of section
17 212(a) shall not apply to an alien who is eligible to
18 apply for adjustment of his or her status to an alien
19 lawfully admitted for permanent residence under this
20 section.

21 “(D) An alien eligible for a waiver of inadmis-
22 sibility as otherwise authorized under this Act shall
23 be permitted to apply for adjustment of his or her
24 status to that of an alien lawfully admitted for per-
25 manent residence under this section.”.

1 (c) AGE DETERMINATION.—Section 245(d) of the
2 Immigration and Nationality Act (8 U.S.C. 1155(d)) is
3 amended—

4 (1) by striking “(d) The Attorney General” in-
5 serting the following:

6 “(d)(1) The Attorney General”; and

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

8 “(2) A determination of the age of an alien ad-
9 mitted to the United States under section
10 101(a)(15)(K)(iii) shall be made, for purposes of ad-
11 justment to the status of an alien lawfully admitted
12 for permanent residence on a conditional basis under
13 section 216, using the age of the alien on the date
14 on which the petition is filed with the Secretary of
15 Homeland Security to classify the alien’s parent as
16 the fiancée or fiancé of a United States citizen (in
17 the case of an alien parent admitted to the United
18 States under section 101(a)(15)(K)(i)) or as the
19 spouse of a United States citizen under section
20 201(b)(2)(A)(i) (in the case of an alien parent ad-
21 mitted to the United States under section
22 101(a)(15)(K)(ii)).”.

23 (d) EFFECTIVE DATE.—

24 (1) IN GENERAL.—The amendments made by
25 this section shall be effective as if included in the

1 Immigration Marriage Fraud Amendments of 1986
2 (Public Law 99–639).

3 (2) APPLICABILITY.—The amendments made
4 by this section shall apply to all petitions or applica-
5 tions described in such amendments that—

6 (A) are pending as of the date of the en-
7 actment of this Act; or

8 (B) have been denied, but would have been
9 approved if such amendments had been in effect
10 at the time of adjudication of the petition or
11 application.

12 (3) MOTION TO REOPEN OR RECONSIDER.—A
13 motion to reopen or reconsider a petition or applica-
14 tion described in paragraph (2)(B) shall be granted
15 if such motion is filed with the Secretary of Home-
16 land Security or the Attorney General not later than
17 2 years after the date of the enactment of this Act
18 and the Secretary shall use parole authority to per-
19 mit an alien outside the United States to pursue a
20 petition or application that has been reopened.

21 **SEC. 312. EQUAL TREATMENT FOR ALL STEPCHILDREN.**

22 Section 101(b)(1)(B) of the Immigration and Nation-
23 ality Act (8 U.S.C. 1101(b)(1)(B)) is amended by striking
24 “, provided the child had not reached the age of eighteen

1 years at the time the marriage creating the status of step-
2 child occurred”.

3 **SEC. 313. SONS AND DAUGHTERS OF FILIPINO WORLD WAR**

4 **II VETERANS.**

5 Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended
6 by section 310 of this Act, is further amended by adding
7 at the end the following:

8 “(G) Aliens who are eligible for a visa
9 under paragraph (1) or (3) of section 203(a)
10 and are the son or daughter of a citizen of the
11 United States who was naturalized pursuant to
12 section 405 of the Immigration Act of 1990 (8
13 U.S.C. 1440 note).”.

14 **SEC. 314. DETERMINATIONS UNDER THE HAITIAN REFUGEE**

15 **IMMIGRATION FAIRNESS ACT OF 1998.**

16 (a) IN GENERAL.—Section 902(d) of the Haitian
17 Refugee Immigration Fairness Act of 1998 (8 U.S.C.
18 1255 note) is amended by adding at the end the following:

19 “(3) DETERMINATIONS WITH RESPECT TO
20 CHILDREN.—

21 “(A) USE OF APPLICATION FILING
22 DATE.—Determinations made under this sub-
23 section as to whether an individual is a child of
24 a parent shall be made using the age and status
25 of the individual on October 21, 1998.

1 “(B) APPLICATION SUBMISSION BY PAR-
2 ENT.—Notwithstanding paragraph (1)(C), an
3 application under this subsection filed based on
4 status as a child may be filed for the benefit of
5 such child by a parent or guardian of the child,
6 if the child is physically present in the United
7 States on such filing date.”.

8 (b) NEW APPLICATIONS AND MOTIONS TO RE-
9 OPEN.—

10 (1) NEW APPLICATIONS.—Notwithstanding sec-
11 tion 902(a)(1)(A) of the Haitian Refugee Immigra-
12 tion Fairness Act of 1998, an alien who is eligible
13 for adjustment of status under such Act may submit
14 an application for adjustment of status under such
15 Act not later than the later of—

16 (A) 2 years after the date of the enactment
17 of this Act; or

18 (B) 1 year after the date on which final
19 regulations are promulgated to implement this
20 section and the amendment made by subsection
21 (a).

22 (2) MOTIONS TO REOPEN.—The Secretary shall
23 establish procedures for the reopening and reconsid-
24 eration of applications for adjustment of status
25 under the Haitian Refugee Immigration Fairness

1 Act of 1998 that are affected by the amendment
2 made by subsection (a).

3 (3) RELATIONSHIP OF APPLICATION TO CER-
4 TAIN ORDERS.—Section 902(a)(3) of the Haitian
5 Refugee Immigration Fairness Act of 1998 shall
6 apply to an alien present in the United States who
7 has been ordered excluded, deported, removed, or or-
8 dered to depart voluntarily, and who files an applica-
9 tion under paragraph (1) or a motion under para-
10 graph (2), in the same manner as such section
11 902(a)(3) applied to aliens filing applications for ad-
12 justment of status under such Act prior to April 1,
13 2000.

14 (c) INADMISSIBILITY DETERMINATION.—Section 902
15 of the Haitian Refugee Immigration Fairness Act of 1998
16 (8 U.S.C. 1255 note) is amended—

17 (1) in subsection (a)(1)(B), by inserting
18 “(6)(C)(i),” after “(6)(A),”; and

19 (2) in subsection (d)(1)(D), by inserting
20 “(6)(C)(i),” after “(6)(A),”.

21 **SEC. 315. DISCRETIONARY AUTHORITY.**

22 Section 240(c)(4) of the Immigration and Nationality
23 Act (8 U.S.C. 1229a(c)(4)) is amended by adding at the
24 end the following:

1 “(D) DISCRETION OF JUDGE IN CASE OF
2 CITIZEN CHILD.—In the case of an alien subject
3 to removal, deportation, or exclusion who is the
4 parent of a child who is a citizen of the United
5 States, the immigration judge may exercise dis-
6 cretion to decline to order the alien removed,
7 deported, or excluded from the United States if
8 the judge determines that such removal, depor-
9 tation, or exclusion is clearly against the best
10 interests of the child, except that this subpara-
11 graph shall not apply to any alien who the
12 judge determines—

13 “(i) is described in section 212(a)(3)
14 or 237(a)(4); or

15 “(ii) has engaged in conduct described
16 in paragraph (8) or (9) of section 103 of
17 the Trafficking Victims Protection Act of
18 2000 (22 U.S.C. 7102).”.

19 **SEC. 316. AFFIDAVIT OF SUPPORT.**

20 Section 213A of the Immigration and Nationality Act
21 (8 U.S.C. 1183a) is amended—

22 (1) in subsection (a)(1)(A) by striking “125”
23 and inserting “100”;

24 (2) in subsection (f)(1)(E), by striking “125”
25 and inserting “100”;

1 (3) in subsection (f)(4)(B)(i), by striking “125”
2 and inserting “100”; and
3 (4) in subsection (f)(5)(A), by striking “125”
4 and inserting “100”.

5 **SEC. 317. VISA TO PREVENT UNAUTHORIZED MIGRATION.**

6 (a) **WORLDWIDE LEVEL OF TRANSITIONAL VISAS.**—
7 Section 201 of the Immigration and Nationality Act (8
8 U.S.C. 1152) is amended by adding at the end the fol-
9 lowing:

10 “(g) **WORLDWIDE LEVEL OF PUM IMMIGRANTS.**—
11 The worldwide level of PUM immigrants is equal to
12 100,000 for each fiscal year the PUM visa is authorized.”.

13 (b) **TRANSITION TO SAFE AND LEGAL IMMIGRA-**
14 **TION.**—Section 203 of the Immigration and Nationality
15 Act is amended by adding at the end the following:

16 “(i) **PREVENT UNAUTHORIZED MIGRATION (PUM)**
17 **TRANSITIONAL VISA.**—

18 “(1) **IN GENERAL.**—Except as provided in para-
19 graph (2), aliens subject to the worldwide level speci-
20 fied in section 201(g) for PUM immigrants shall be
21 allotted visas during the first three fiscal years fol-
22 lowing 6 months after enactment of the CIR ASAP
23 Act of 2009 as follows:

24 “(A) **DETERMINATION OF ADMISSION**
25 **STATES.**—The Secretary shall determine for the

1 most recent previous 5-fiscal year period for
2 which data are available—

3 “(i) each country (in this paragraph
4 referred to as a ‘transitional visa admis-
5 sion state’) whose nationals represented
6 not less than 5 percent of the total number
7 of unauthorized immigrants to the United
8 States during the 5-fiscal year period; and

9 “(ii) the percentage of unauthorized
10 immigrants that nationals of each transi-
11 tional visa admission state represented of
12 the total number of unauthorized immi-
13 grants to all transitional visa admission
14 states during the 5-year period.

15 “(B) DISTRIBUTION OF VISAS.—

16 “(i) FOR A TRANSITIONAL VISA AD-
17 MISSION STATE.—Subject to clause (ii),
18 the percentage of immigrant visas made
19 available under this paragraph to nationals
20 of any single transitional visa admission
21 state shall not exceed the percentage deter-
22 mined for that transitional visa admission
23 state in subparagraph (A)(ii).

24 “(ii) REDISTRIBUTION OF UNUSED
25 VISA NUMBERS.—If the Secretary of State

1 estimates that the number of immigrant
2 visas to be issued to nationals in any state
3 for a fiscal year under this paragraph is
4 less than the number of immigrant visas
5 made available to such nationals under this
6 paragraph for the fiscal year, the excess
7 visa numbers shall be made available to
8 nationals of the other states in proportion
9 to the percentages otherwise specified in
10 subparagraph (A)(ii).

11 “(2) ELIGIBILITY.—An alien is not eligible for
12 a visa under this subsection unless the alien—

13 “(A) at the time of application for such a
14 visa, is not present in the United States and is
15 not entitled to an immigrant status under any
16 other provision of the Immigration and Nation-
17 ality Act;

18 “(B) has no other employment-based or
19 family-based visa application pending;

20 “(C) submits to a security and law en-
21 forcement background check, according to pro-
22 cedures established by the Secretary; and

23 “(D) with regard to education, has com-
24 pleted less than a 4-year college degree pro-
25 gram.

1 “(3) REQUIREMENT WITH REGARD TO PARTICI-
2 PATION IN DATA COLLECTION AND STUDY.—Transi-
3 tional visa holders shall be required to participate in
4 data collection and study as described in section
5 501(b)(1)(G) of this Act that the Labor Commission
6 deems necessary or helpful to fulfill its purpose and
7 mission.

8 “(4) MAINTENANCE OF INFORMATION.—The
9 Secretary of State shall maintain information on the
10 age, occupation, education level, and other relevant
11 characteristics of immigrants issued visas under this
12 subsection and share such information to the Labor
13 Commission in Title V of this Act as needed.

14 “(5) ORDER OF CONSIDERATION.—Immigrant
15 visas made available each fiscal year under this sub-
16 section shall be issued to eligible qualified immi-
17 grants in a random order established by the Sec-
18 retary of State.”.

19 **SEC. 318. ADJUSTMENT OF STATUS.**

20 (a) CONDITIONAL PERMANENT RESIDENT STA-
21 TUS.—

22 (1) IN GENERAL.—

23 (A) CONDITIONAL BASIS FOR STATUS.—

24 Notwithstanding any other provision of law, an
25 alien whose status has been adjusted under sub-

1 section (b) to that of an alien lawfully admitted
2 for permanent residence shall be considered to
3 have obtained such status on a conditional basis
4 subject to the provisions of this paragraph.
5 Such conditional permanent resident status
6 shall be valid for a period of 3 years, subject to
7 termination under paragraph (2).

8 (B) NOTICE OF REQUIREMENTS.—At the
9 time an alien obtains permanent resident status
10 on a conditional basis under subsection (b), the
11 Secretary of Homeland Security shall provide
12 notice to the alien regarding the provisions of
13 this section and the requirements of paragraph
14 (3) to have the conditional basis of such status
15 removed.

16 (2) TERMINATION OF STATUS.—

17 (A) IN GENERAL.—The Secretary shall ter-
18minate the conditional permanent resident sta-
19tus of any alien who obtained such status under
20this Act, if the Secretary determines that the
21alien ceases to meet the requirements of sub-
22section (b)(1).

23 (B) RETURN TO COUNTRY OF ORIGIN.—
24Any alien whose conditional permanent resident
25status is terminated under subparagraph (A)

1 shall be required to return to their country of
2 origin.

3 (3) REQUIREMENTS OF TIMELY PETITION FOR
4 REMOVAL OF CONDITION.—

5 (A) IN GENERAL.—In order for the condi-
6 tional basis of the permanent resident status
7 obtained by an alien under subsection (b) to be
8 removed, the alien must file with the Secretary
9 of Homeland Security, in accordance with para-
10 graph (4), a petition which requests the re-
11 moval of such conditional basis and which pro-
12 vides, under penalty of perjury, the facts and
13 information so that the Secretary may make the
14 determination described in subparagraph (B)(i).

15 (B) ADJUDICATION OF PETITION TO RE-
16 MOVE CONDITION.—

17 (i) IN GENERAL.—If a petition is filed
18 in accordance with clause (A) for an alien,
19 the Secretary shall make a determination
20 as to whether the alien meets the require-
21 ments set out in subparagraphs (A) and
22 (B) of paragraph (4).

23 (ii) REMOVAL OF CONDITIONAL BASIS
24 IF FAVORABLE DETERMINATION.—If the
25 Secretary determines that the alien meets

1 such requirements, the Secretary shall no-
2 tify the alien of such determination and
3 immediately remove the conditional basis
4 of the status of the alien.

5 (iii) TERMINATION OF CONDITIONAL
6 STATUS IF UNFAVORABLE DETERMINA-
7 TION.—If the Secretary determines that
8 the alien does not meet such requirements,
9 the Secretary shall notify the alien of such
10 determination and terminate conditional
11 permanent resident status of the alien as
12 of the date of the determination.

13 (C) TIME TO FILE PETITION.—An alien
14 may petition to remove the conditional basis of
15 lawful resident status during the period begin-
16 ning 90 days before and ending 180 days after
17 either the date that is 3 years after the date of
18 granting conditional permanent resident status
19 or any other expiration date of the conditional
20 permanent resident status provided by the Sec-
21 retary in accordance with this Act. The alien
22 shall be deemed in conditional permanent resi-
23 dent status in the United States during the pe-
24 riod in which the petition is pending.

25 (4) DETAILS OF PETITION.—

1 (A) CONTENTS OF PETITION.—Each peti-
2 tion for an alien under paragraph (3)(A) shall
3 contain information to permit the Secretary to
4 determine whether each of the following re-
5 quirements is met:

6 (i) The alien has demonstrated good
7 moral character during the entire period
8 the alien has been a conditional permanent
9 resident.

10 (ii) The alien is in compliance with
11 subsection (b)(1).

12 (iii) The alien has not abandoned the
13 alien's residence in the United States. The
14 Secretary shall presume that the alien has
15 abandoned such residence if the alien is
16 absent from the United States for more
17 than 365 days, in the aggregate, during
18 the period of conditional residence, unless
19 the alien demonstrates that the alien has
20 not abandoned the alien's residence. An
21 alien who is absent from the United States
22 due to active service in the uniformed serv-
23 ices has not abandoned the alien's resi-
24 dence in the United States during the pe-
25 riod of such service.

1 (iv) The alien has satisfied all Federal
2 income tax liabilities and is in good stand-
3 ing with the Internal Revenue Service as
4 described in (B) of this paragraph.

5 (v) where applicable, can establish
6 proof of registration under the Military Se-
7 lective Service Act (50 U.S.C. App. 451 et
8 seq.).

9 (B) PAYMENT OF INCOME TAXES.—

10 (i) IN GENERAL.—Not later than the
11 date on which status is adjusted under this
12 section, a conditional nonimmigrant or
13 conditional nonimmigrant dependent shall
14 satisfy any applicable Federal tax liability
15 by establishing that—

16 (I) no such tax liability exists;

17 (II) all outstanding liabilities
18 have been paid; or

19 (III) the conditional non-
20 immigrant has entered into, and is in
21 compliance with, an agreement for
22 payment of all outstanding liabilities
23 with the Internal Revenue Service.

24 (ii) APPLICABLE FEDERAL TAX LI-
25 ABILITY.—For purposes of (i), the term

1 “applicable Federal tax liability” means li-
2 ability for Federal taxes, including pen-
3 alties and interest, owed for any year while
4 classified as a conditional permanent resi-
5 dent for which the statutory period for as-
6 sessment of any deficiency for such taxes
7 has not expired.

8 (iii) IRS COOPERATION.—The Sec-
9 retary of the Treasury shall establish rules
10 and procedures under which the Commis-
11 sioner of Internal Revenue shall provide
12 documentation to—

13 (I) a conditional permanent resi-
14 dent, upon request, to establish the
15 payment of all taxes required under
16 this subsection; or

17 (II) the Secretary, upon request,
18 regarding the payment of Federal
19 taxes by an alien applying for a ben-
20 efit under this section.

21 (iv) COMPLIANCE.—The alien may
22 satisfy proof of compliance with this sub-
23 section by submitting documentation that
24 establishes that—

25 (I) no such tax liability exists;

1 (II) all outstanding liabilities
2 have been met; or
3 (III) the alien has entered into,
4 and is in compliance with, an agree-
5 ment for payment of all outstanding
6 liabilities with the Internal Revenue
7 Service.

8 (b) ADJUSTMENT OF STATUS.—

9 (1) ADJUSTMENT OF STATUS.—Notwith-
10 standing any other provision of law, and except as
11 otherwise provided in this Act, the Secretary of
12 Homeland Security may adjust the status of an alien
13 granted a PUM visa, subject to the conditional basis
14 described in subsection (a), if the alien demonstrates
15 that the alien is not inadmissible under paragraph
16 (2) (criminal grounds), (3) (security grounds), 4(A)
17 and (B) (public charge), 6(E) (smugglers), or 10(C)
18 (child abductors) of section 212(a) of the Immigra-
19 tion and Nationality Act (8 U.S.C. 1182(a)),

20 (2) MANDATORY FEE.—Aliens granted a waiver
21 of inadmissibility from 212(a) not listed in (1) shall
22 pay a \$500 fee that shall be deposited into the Secu-
23 rity and Prosperity Account as described in section
24 502 of the Comprehensive Immigration Reform
25 ASAP Act of 2009.

1 (3) ALIENS NOT SUBJECT TO DIRECT NUMER-
2 ICAL LIMITATIONS.—Section 201(b)(1) (8 U.S.C.
3 1151(b)(1)), as amended by sections 310, 313, and
4 317(a) of this Act, is further amended by adding at
5 the end the following:

6 “(I) Aliens whose status is adjusted under
7 section 203(i).”.

8 **SEC. 319. RULEMAKING.**

9 The Secretary shall promulgate regulations regarding
10 the timely filing and processing of applications for visas
11 awarded under section 203(i) of the Immigration and Na-
12 tionality Act, as added by section 317(b) of this Act.

13 **SEC. 320. UNITED STATES-EDUCATED IMMIGRANTS.**

14 (a) EXEMPTION FROM NUMERICAL LIMITATIONS.—

15 (1) IN GENERAL.—Section 201(b)(1) (8 U.S.C.
16 1151(b)(1)), as amended by sections 310, 313,
17 317(a), and 318(b)(3) of this Act, is further amend-
18 ed by adding at the end the following:

19 “(J) Aliens who have earned a master’s or
20 higher degree from an accredited university in
21 the United States.

22 “(K) Aliens who have been awarded med-
23 ical specialty certification based on postdoctoral
24 training and experience in the United States

1 preceding their application for an immigrant
2 visa under section 203(b).

3 “(L) Aliens who will perform labor in
4 shortage occupations designated by the Sec-
5 retary of Labor for blanket certification under
6 section 212(a)(5)(A) as lacking sufficient
7 United States workers able, willing, qualified,
8 and available for such occupations and for
9 which the employment of aliens will not ad-
10 versely affect the terms and conditions of simi-
11 larly employed United States workers.

12 “(M) Aliens who have earned a master’s
13 degree or higher in science, technology, engi-
14 neering, or mathematics and have been working
15 in a related field in the United States in a non-
16 immigrant status during the 3-year period pre-
17 ceding their application for an immigrant visa
18 under section 203(b).

19 “(N) Aliens described in subparagraph (A)
20 or (B) of section 203(b)(1) or who have re-
21 ceived a national interest waiver under section
22 203(b)(2)(B).

23 “(O) The spouse and minor children of an
24 alien described in subparagraph (J), (K), (L),
25 (M), or (N).”.

1 (2) APPLICABILITY.—The amendment made by
2 paragraph (1) shall apply to any visa application—

3 (A) pending on the date of the enactment
4 of this Act; or

5 (B) filed on or after such date of enact-
6 ment.

7 (b) LABOR CERTIFICATIONS.—Section
8 212(a)(5)(A)(ii) (8 U.S.C. 1182(a)(5)(A)(ii)) is amend-
9 ed—

10 (1) in subclause (I), by striking “, or” and in-
11 serting a semicolon;

12 (2) in subclause (II), by striking the period at
13 the end and inserting “; or”; and

14 (3) by adding at the end the following:

15 “(III) is a member of the profes-
16 sions and has a master’s degree or
17 higher from an accredited university
18 in the United States or has been
19 awarded medical specialty certification
20 based on postdoctoral training and ex-
21 perience in the United States.”.

22 (c) ATTESTATION BY HEALTH CARE WORKERS.—

23 (1) REQUIREMENT FOR ATTESTATION.—Section
24 212(a)(5) (8 U.S.C. 1182(a)(5)) is amended by add-
25 ing at the end the following:

1 “(E) HEALTH CARE WORKERS WITH
2 OTHER OBLIGATIONS.—

3 “(i) IN GENERAL.—An alien who
4 seeks to enter the United States for the
5 purpose of performing labor as a physician
6 or other health care worker is inadmissible
7 unless the alien submits to the Secretary of
8 Homeland Security or the Secretary of
9 State, as appropriate, an attestation that
10 the alien is not seeking to enter the United
11 States for such purpose during any period
12 in which the alien has an outstanding obli-
13 gation to the government of the alien’s
14 country of origin or the alien’s country of
15 residence.

16 “(ii) OBLIGATION DEFINED.—In this
17 subparagraph, the term ‘obligation’ means
18 an obligation incurred as part of a valid,
19 voluntary individual agreement in which
20 the alien received financial assistance to
21 defray the costs of education or training to
22 qualify as a physician or other health care
23 worker in consideration for a commitment
24 to work as a physician or other health care

1 worker in the alien's country of origin or
2 the alien's country of residence.

3 “(iii) WAIVER.—The Secretary of
4 Homeland Security may waive a finding of
5 inadmissibility under clause (i) if the Sec-
6 retary determines that—

7 “(I) the obligation was incurred
8 by coercion or other improper means;

9 “(II) the alien and the govern-
10 ment of the country to which the alien
11 has an outstanding obligation have
12 reached a valid, voluntary agreement,
13 pursuant to which the alien's obliga-
14 tion has been deemed satisfied, or the
15 alien has shown to the satisfaction of
16 the Secretary that the alien has been
17 unable to reach such an agreement
18 because of coercion or other improper
19 means; or

20 “(III) the obligation should not
21 be enforced due to other extraordinary
22 circumstances, including undue hard-
23 ship that would be suffered by the
24 alien in the absence of a waiver.”.

25 (2) EFFECTIVE DATE AND APPLICATION.—

1 (A) EFFECTIVE DATE.—The amendment
2 made by paragraph (1) shall become effective
3 180 days after the date of the enactment of this
4 Act.

5 (B) APPLICATION BY THE SECRETARY.—
6 The Secretary shall begin to carry out section
7 212(a)(5)(E) of the Immigration and Nation-
8 ality Act, as added by paragraph (1), not later
9 than the effective date described in subpara-
10 graph (A), including the requirement for the at-
11 testation and the granting of a waiver described
12 in such section, regardless of whether regula-
13 tions to implement such section have been pro-
14 mulgated.

15 **SEC. 321. RETAINING WORKERS SUBJECT TO GREEN CARD**
16 **BACKLOG.**

17 (a) ADJUSTMENT OF STATUS.—Section 245 (8
18 U.S.C. 1255), as amended by this title, is further amended
19 by adding at the end the following:

20 “(n) ADJUSTMENT OF STATUS FOR EMPLOYMENT-
21 BASED IMMIGRANTS.—

22 “(1) ELIGIBILITY.—The Secretary of Homeland
23 Security shall promulgate regulations to provide for
24 the filing of an application for adjustment of status
25 by an alien (and any eligible dependents of such

1 alien), regardless of whether an immigrant visa is
2 immediately available at the time the application is
3 filed, if the alien—

4 “(A) has an approved petition under sub-
5 paragraph (E) or (F) of section 204(a)(1); or

6 “(B) at the discretion of the Secretary, has
7 a pending petition under subparagraph (E) or
8 (F) of section 204(a)(1).

9 “(2) VISA AVAILABILITY.—An application filed
10 pursuant to paragraph (1) may not be approved
11 until an immigrant visa becomes available.

12 “(3) FEES.—If an application is filed pursuant
13 to paragraph (1), the beneficiary of such application
14 shall pay a supplemental fee of \$500. Such fee may
15 not be charged to any dependent accompanying or
16 following to join such beneficiary.

17 “(4) EXTENSION OF EMPLOYMENT AUTHORIZA-
18 TION AND ADVANCED PAROLE DOCUMENT.—

19 “(A) IN GENERAL.—The Secretary of
20 Homeland Security shall provide employment
21 authorization and advanced parole documents,
22 in 3-year increments, to beneficiaries of an ap-
23 plication for adjustment of status based on a
24 petition that is filed or, at the discretion of the

1 Secretary, pending, under subparagraph (E) or
2 (F) of section 204(a)(1).

3 “(B) FEE ADJUSTMENTS.—Application
4 fees under this subsection may be adjusted in
5 accordance with the 3-year period of validity as-
6 signed to the employment authorization or ad-
7 vanced parole documents under subparagraph
8 (A).”.

9 (b) USE OF FEES.—Section 286 (8 U.S.C. 1356) is
10 amended—

11 (1) in subsection (m)—

12 (A) by striking “(m) Notwithstanding any
13 other provisions of law,” and inserting the fol-
14 lowing:

15 “(m) IMMIGRATION EXAMINATIONS FEE AC-
16 COUNT.—

17 “(1) IN GENERAL.—Notwithstanding any other
18 provision of law, all fees collected under section
19 245(o)(3) and”;

20 (B) by striking “: *Provided, however, That*
21 *all*” and inserting the following:

22 “(2) VIRGIN ISLANDS; GUAM.—All”; and

23 (C) by striking “: *Provided further, That*
24 *fees*” and inserting the following:

25 “(3) COST RECOVERY.—Fees”;

1 (2) in subsection (n)—

2 (A) by striking “(n) All deposits” and in-
3 serting the following:

4 “(4) USE OF FUNDS.—

5 “(A) IN GENERAL.—Except as provided
6 under subparagraph (B), all deposits”; and

7 (B) adding at the end the following:

8 “(B) SUPPLEMENTAL FEE FOR ADJUST-
9 MENT OF STATUS OF EMPLOYMENT-BASED IM-
10 MIGRANTS.—Any amounts deposited into the
11 Immigration Examinations Fee Account that
12 were collected under section 245(o)(3) shall re-
13 main available until expended by the Secretary
14 of Homeland Security for backlog reduction and
15 clearing security background check delays.”;

16 (3) in subsection (o), by striking “(o) The At-
17 torney General” and inserting the following:

18 “(5) ANNUAL FINANCIAL REPORT TO CON-
19 GRESS.—The Attorney General”; and

20 (4) in subsection (p), by striking “(p) The pro-
21 visions set forth in subsections (m), (n), and (o) of
22 this section” and inserting the following:

23 “(6) APPLICABILITY.—The provisions set forth
24 in this subsection shall”.

1 **SEC. 322. RETURN OF TALENT PROGRAM.**

2 (a) SHORT TITLE.—This section may be cited as the
3 “Return of Talent Act”.

4 (b) ESTABLISHMENT.—

5 (1) IN GENERAL.—Title III (8 U.S.C. 1401 et
6 seq.) is amended by inserting after section 317 the
7 following:

8 **“SEC. 317A. TEMPORARY ABSENCE OF PERSONS PARTICI-**
9 **PATING IN THE RETURN OF TALENT PRO-**
10 **GRAM.**

11 “(a) IN GENERAL.—The Secretary of Homeland Se-
12 curity, in consultation with the Secretary of State, shall
13 establish the Return of Talent Program to permit eligible
14 aliens to temporarily return to the alien’s country of citi-
15 zenship in order to make a material contribution to that
16 country if the country is engaged in postconflict or natural
17 disaster reconstruction activities, for a period not longer
18 than 2 years, unless an exception is granted under sub-
19 section (d).

20 “(b) ELIGIBLE ALIEN.—An alien is eligible to partici-
21 pate in the Return of Talent Program established under
22 subsection (a) if the alien meets the special immigrant de-
23 scription under section 101(a)(27)(N).

24 “(c) FAMILY MEMBERS.—The spouse, parents, sib-
25 lings, and any minor children of an alien who participates
26 in the Return of Talent Program established under sub-

1 section (a) may return to such alien's country of citizen-
2 ship with the alien and reenter the United States with the
3 alien.

4 “(d) EXTENSION OF TIME.—The Secretary of Home-
5 land Security may extend the 2-year period referred to in
6 subsection (a) upon a showing that circumstances warrant
7 that an extension is necessary for postconflict or natural
8 disaster reconstruction efforts.

9 “(e) RESIDENCY REQUIREMENTS.—An immigrant
10 described in section 101(a)(27)(N) who participates in the
11 Return of Talent Program established under subsection
12 (a), and the spouse, parents, siblings, and any minor chil-
13 dren who accompany such immigrant to that immigrant's
14 country of citizenship, shall be considered, during such pe-
15 riod of participation in the program—

16 “(1) for purposes of section 316(a), physically
17 present and residing in the United States for pur-
18 poses of naturalization within the meaning of that
19 section; and

20 “(2) for purposes of section 316(b), to meet the
21 continuous residency requirements in that section.

22 “(f) OVERSIGHT AND ENFORCEMENT.—The Sec-
23 retary of Homeland Security, in consultation with the Sec-
24 retary of State, shall oversee and enforce the requirements
25 of this section.”.

1 (2) TABLE OF CONTENTS.—The table of con-
2 tents (8 U.S.C. 1101 et seq.) is amended by insert-
3 ing after the item relating to section 317 the fol-
4 lowing:

“317A. Temporary absence of persons participating in the Return of Talent
Program”.”

5 (c) ELIGIBLE IMMIGRANTS.—Section 101(a)(27) (8
6 U.S.C. 1101(a)(27)) is amended by adding at the end the
7 following:

8 “(N) an immigrant who—

9 “(i) has been lawfully admitted to the
10 United States for permanent residence;

11 “(ii) demonstrates an ability and will-
12 ingness to make a material contribution to
13 the postconflict or natural disaster recon-
14 struction in the alien’s country of citizen-
15 ship; and

16 “(iii) as determined by the Secretary
17 of State in consultation with the Secretary
18 of Homeland Security—

19 “(I) is a citizen of a country in
20 which Armed Forces of the United
21 States are engaged, or have engaged
22 in the 10 years preceding such deter-
23 mination, in combat or peacekeeping
24 operations;

1 “(II) is a citizen of a country
2 where authorization for United Na-
3 tions peacekeeping operations was ini-
4 tiated by the United Nations Security
5 Council during the 10 years preceding
6 such determination; or

7 “(III) is a citizen of a country
8 which received, during the preceding 2
9 years, funding from the Office of For-
10 eign Disaster Assistance of the United
11 States Agency for International Devel-
12 opment in response to a declared dis-
13 aster in such country by the United
14 States Ambassador, the Chief of the
15 U.S. Mission, or the appropriate As-
16 sistant Secretary of State, that is be-
17 yond the ability of such country’s re-
18 sponse capacity and warrants a re-
19 sponse by the United States Govern-
20 ment.”.

21 (d) REPORT TO CONGRESS.—Not later than 2 years
22 after the date of the enactment of this Act, the Secretary,
23 in consultation with the Secretary of State, shall submit
24 a report to Congress that describes—

1 (1) the countries of citizenship of the partici-
2 pants in the Return of Talent Program established
3 under section 317A of the Immigration and Nation-
4 ality Act, as added by subsection (b);

5 (2) the postconflict or natural disaster recon-
6 struction efforts that benefitted, or were made pos-
7 sible, through participation in the program; and

8 (3) any other information that the Secretary
9 determines to be appropriate.

10 (e) REGULATIONS.—Not later than 6 months after
11 the date of the enactment of this Act, the Secretary shall
12 promulgate regulations to carry out this section and the
13 amendments made by this section.

14 (f) AUTHORIZATION OF APPROPRIATIONS.—There
15 are authorized to be appropriated to United States Citi-
16 zenship and Immigration Services such sums as may be
17 necessary to carry out this section and the amendments
18 made by this section.

19 **TITLE IV—EARNED LEGALIZA-**
20 **TION OF UNDOCUMENTED IN-**
21 **DIVIDUALS**

22 **Subtitle A—Conditional**
23 **Nonimmigrants**

24 **SEC. 401. CONDITIONAL NONIMMIGRANTS.**

25 (a) IN GENERAL.—

1 (1) REQUIRED REGISTRATION.—An alien as de-
2 scribed in this section shall register with the Depart-
3 ment of Homeland Security by submitting biometric
4 identification pursuant to subsection (b) and filing
5 an application with the Secretary that demonstrates
6 the alien’s compliance with the requirements listed
7 in subsections (b) through (e).

8 (2) CLASSIFICATION.—Notwithstanding any
9 other provision of law, including section 244(h) of
10 the Immigration and Nationality Act (8 U.S.C.
11 1254a(h)), the Secretary shall classify an alien as a
12 conditional nonimmigrant or conditional non-
13 immigrant dependent if the alien registers pursuant
14 to paragraph (1) and is determined to meet the re-
15 quirements listed in this section.

16 (b) COMPLIANCE WITH SECURITY AND LAW EN-
17 FORCEMENT BACKGROUND CHECKS.—Registration and
18 classification as a conditional nonimmigrant or conditional
19 nonimmigrant dependent under this section is contingent
20 upon the submission of all required biometric data in ac-
21 cordance with procedures established by the Secretary.

22 (c) PHYSICAL PRESENCE.—

23 (1) PRESENCE IN THE UNITED STATES.—The
24 alien shall establish that the alien—

1 (A) was present in the United States on
2 the date of the introduction of this Act in the
3 United States House of Representatives;

4 (B) has been continuously present in the
5 United States since the date described in sub-
6 paragraph (A); and

7 (C) was not legally present in the United
8 States on the date of the introduction of this
9 Act in the United States House of Representa-
10 tives under any classification described in sec-
11 tion 101(a)(15) of the Immigration and Nation-
12 ality Act (8 U.S.C. 1101(a)(15)) or has been in
13 violation of status on or before such date.

14 (2) CONTINUOUS PRESENCE.—For purposes of
15 this subsection, an absence from the United States
16 without authorization for a continuous period of
17 more than 180 days between the date of the enact-
18 ment of this Act and the beginning of the applica-
19 tion period for classification as a conditional non-
20 immigrant or conditional nonimmigrant dependent
21 shall constitute a break in continuous physical pres-
22 ence. Individuals absent under advance parole shall
23 not be considered as failing to meet the continuous
24 physical presence requirement.

1 (d) OTHERWISE ADMISSIBLE TO THE UNITED
2 STATES.—

3 (1) IN GENERAL.—An alien shall be eligible for
4 classification as a conditional nonimmigrant or con-
5 ditional nonimmigrant dependent if the Secretary
6 determines that the alien—

7 (A) is not inadmissible to the United
8 States under section 212(a) of the Immigration
9 and Nationality Act (8 U.S.C. 1182(a)), except
10 as provided in paragraph (2);

11 (B) has not ordered, incited, assisted, or
12 otherwise participated in the persecution of any
13 person on account of race, religion, nationality,
14 membership in a particular social group, or po-
15 litical opinion; and

16 (C) is not an alien—

17 (i) who has been convicted by final
18 judgment of a particularly serious crime
19 and constitutes a danger to the community
20 of the United States;

21 (ii) for whom there are reasonable
22 grounds for believing that the alien has
23 committed a particularly serious crime out-
24 side the United States before arriving in
25 the United States; or

1 (iii) for whom there are reasonable
2 grounds for regarding the alien as a dan-
3 ger to the security of the United States;
4 and

5 (iv) who has been convicted of a fel-
6 ony or 3 or more misdemeanors for which
7 the alien has served not less than 12
8 months of imprisonment in the aggregate.

9 (2) GROUNDS OF INADMISSIBILITY.—In deter-
10 mining an alien's admissibility under paragraph
11 (1)(A)—

12 (A) paragraphs (5), (6), (7), (9), and
13 (10)(B) of section 212(a) of such Act shall not
14 apply;

15 (B) the Secretary may not waive—

16 (i) subparagraph (A), (B), (C),
17 (D)(ii), (E), (G), (H), or (I) of section
18 212(a)(2) of such Act (relating to crimi-
19 nals);

20 (ii) section 212(a)(3) of such Act (re-
21 lating to security and related grounds); or

22 (iii) subparagraph (A), (C), or (D) of
23 section 212(a)(10) of such Act (relating to
24 polygamists and child abductors);

1 (C) the Secretary may waive the applica-
2 tion of any provision of section 212(a) of such
3 Act not listed in subparagraph (B) on behalf of
4 an individual alien for humanitarian purposes,
5 to ensure family unity, or if such waiver is oth-
6 erwise in the public interest; and

7 (D) nothing in this paragraph shall be con-
8 strued as affecting the authority of the Sec-
9 retary other than under this paragraph to waive
10 the provisions of section 212(a) of such Act.

11 (3) APPLICABILITY OF OTHER PROVISIONS.—

12 Sections 240B(d) and 241(a)(5) of the Immigration
13 and Nationality Act (8 U.S.C. 1229c(d) and
14 1231(a)(5)) shall not apply to an alien who is apply-
15 ing for classification under this section for conduct
16 that occurred before the date of enactment of this
17 Act.

18 (e) CONTRIBUTIONS TO THE UNITED STATES
19 THROUGH EMPLOYMENT, EDUCATION, MILITARY SERV-
20 ICE OR OTHER COMMITMENT TO THE COMMUNITY.—

21 (1) IN GENERAL.—The Secretary shall not ac-
22 cept the registration of an alien, or classify an alien
23 as a conditional nonimmigrant or conditional non-
24 immigrant dependent unless the alien attests, under
25 penalty of perjury, that he or she is contributing to

1 the United States through one or more of the fol-
2 lowing enterprises—

3 (A) the alien is employed full-time, part-
4 time, or seasonally in the United States, is self-
5 employed, or is actively seeking employment; or

6 (B) is enrolled full- or part-time in an ac-
7 credited secondary or post-secondary school,
8 university, or other institution of higher edu-
9 cation, or an accredited vocational, technical, or
10 other training program; or

11 (C) is a member of the active or reserve
12 Armed Services, the National Guard, or other
13 government sponsored civil service program; or

14 (D) otherwise establishes, to the satisfac-
15 tion of the Secretary, that the alien is an active
16 volunteer or community member.

17 (2) EXEMPTIONS.—The requirements in para-
18 graph (1) shall not apply to any individual who, at
19 the time of registration—

20 (A) is 65 years of age or older, has a phys-
21 ical or mental disability, is pregnant, is the pri-
22 mary caregiver to a child under the age of 16
23 or to an elderly or disabled person, or is on offi-
24 cial extended medical leave; or

1 (B) is the spouse of a United States citizen
2 or lawful permanent resident;

3 (C) is a child 21 years of age or younger
4 of a United States citizen or lawful permanent
5 resident; or

6 (D) has been physically present in the
7 United States for a continuous period of not
8 less than 5 years immediately preceding the
9 date of enactment of this Act, and had not yet
10 reached the age of 16 years at the time of ini-
11 tial entry and had not yet reached the age of
12 35 years on the date of the enactment of this
13 Act.

14 (3) DEFINITIONS.—In this subtitle:

15 (A) INSTITUTION OF HIGHER EDU-
16 CATION.—The term “institution of higher edu-
17 cation” has the meaning given that term in sec-
18 tion 101 of the Higher Education Act of 1965
19 (20 U.S.C. 1001).

20 (B) UNIFORMED SERVICES.—The term
21 “uniformed services” has the meaning given
22 that term in section 101(a) of title 10, United
23 States Code.

24 (f) SPECIAL RULE FOR SPOUSES AND CHILDREN.—
25 Notwithstanding any other provision of law, the Secretary

1 shall classify the spouse or child of a conditional non-
2 immigrant as a conditional nonimmigrant dependent, or
3 provide the spouse or child with a conditional non-
4 immigrant dependent visa if—

5 (1) the spouse or child is not otherwise inadmis-
6 sible to the United States as described in subsection
7 (d);

8 (2) in the case of a child, was 21 years of age
9 or younger on the date of enactment of this Act; or

10 (3) in the case of a spouse, was married to the
11 conditional nonimmigrant on or before the date of
12 enactment and is married at the time of the applica-
13 tion;

14 (4) except that the spouse or child of an alien
15 who was subsequently classified as a conditional
16 nonimmigrant under this Act may apply for classi-
17 fication as a conditional nonimmigrant if the spousal
18 or parental relationship has terminated and—

19 (A) the termination of the relationship
20 with such spouse or parent was connected to
21 domestic violence; and

22 (B) the spouse or child has been battered
23 or subjected to extreme cruelty by the spouse or
24 parent who is a conditional nonimmigrant.

1 (g) APPLICATION PROCEDURES, FEE AND PEN-
2 ALTY.—

3 (1) APPLICATION PROCEDURES.—For purposes
4 of establishing enrollment in this program, an appli-
5 cation shall be considered complete if it includes ap-
6 propriate biometric data, applicable fees, penalties
7 through fines, and answers fully and completely all
8 questions attesting to eligibility as described in sub-
9 sections (a) through (f). The Secretary may require
10 evidence upon initial submission of the application
11 sufficient to establish prima facie eligibility for con-
12 ditional nonimmigrant or conditional nonimmigrant
13 dependent status. The Secretary may, at his or her
14 discretion, require additional evidence or an inter-
15 view to make a final determination that an alien has
16 established eligibility for classification.

17 (2) APPLICATION FEE AND PENALTY.—

18 (A) APPLICATION FEE.—The Secretary
19 shall impose a fee for filing an application
20 under this section. Such fee shall be sufficient
21 to cover the administrative and other expenses
22 incurred in connection with the review of such
23 applications.

24 (B) PENALTY.—

1 (i) IN GENERAL.—Except as provided
2 under clause (ii), an alien filing an applica-
3 tion under this section shall submit to the
4 Secretary, in addition to the fee required
5 under subparagraph (A), a fine of \$500.

6 (ii) EXCEPTION.—An alien who is
7 classified as a conditional nonimmigrant
8 who qualifies for classification based on the
9 exemption in subsection (e)(2)(D) or a
10 conditional nonimmigrant dependent be-
11 cause he or she was younger than 21 years
12 of age on the date of enactment of this Act
13 shall not be required to pay a fine under
14 this paragraph.

15 (C) DISPOSITION OF FEES AND FINES.—

16 (i) FEES.—Fees collected under this
17 paragraph shall be deposited into the Im-
18 migration Examination Fee Account and
19 remain available as provided under sub-
20 sections (m) and (n) of section 286 of the
21 Immigration and Nationality Act (8 U.S.C.
22 1356).

23 (ii) FINES.—Fines collected under
24 this paragraph shall be deposited into the

1 Security and Prosperity Account estab-
2 lished under section 286(w) of such Act.

3 (h) TREATMENT OF APPLICANTS.—

4 (1) IN GENERAL.—An alien who files an appli-
5 cation under this section to become a conditional
6 nonimmigrant or a conditional nonimmigrant de-
7 pendent shall be considered enrolled in the program
8 pursuant to subsection (a)(2) until such time as a
9 final determination is made on the application for
10 classification. Following submission of biometric
11 data pursuant to subsection (b) and successful clear-
12 ance of the Secretary's security and criminal back-
13 ground checks, a registered alien—

14 (A) shall be granted employment author-
15 ization pending final adjudication of the alien's
16 application;

17 (B) shall be granted permission to travel
18 abroad;

19 (C) may not be detained for immigration
20 purposes, determined inadmissible or deport-
21 able, or removed pending final adjudication of
22 the alien's application, unless the alien, due to
23 subsequent conduct or criminal conviction, be-
24 comes ineligible for conditional nonimmigrant
25 classification; and

1 (D) may not be considered an unauthor-
2 ized alien (as defined in section 274A(h)(3) of
3 the Immigration and Nationality Act (8 U.S.C.
4 1324a(h)(3))) until employment authorization
5 under subparagraph (A) is denied.

6 (2) DOCUMENT OF AUTHORIZATION.—The Sec-
7 retary shall provide each alien described in para-
8 graph (1) with a counterfeit-resistant document of
9 authorization that—

10 (A) meets all current requirements estab-
11 lished by the Secretary for travel documents, in-
12 cluding the requirements under section 403 of
13 the Illegal Immigration Reform and Immigrant
14 Responsibility Act of 1996 (8 U.S.C. 1324a
15 note); and

16 (B) reflects the benefits and status set
17 forth in paragraph (1).

18 (3) BEFORE APPLICATION PERIOD.—If an alien
19 is apprehended between the date of the enactment of
20 this Act and the date on which the alien files an ap-
21 plication under this section, and the alien can estab-
22 lish prima facie eligibility as a conditional non-
23 immigrant or a conditional nonimmigrant dependent,
24 the alien shall not be detained and the Secretary

1 shall provide the alien with a reasonable opportunity
2 to file an application under this section.

3 (4) DURING CERTAIN PROCEEDINGS.—Notwith-
4 standing any provision of the Immigration and Na-
5 tionality Act, if an immigration judge determines
6 that an alien who is in removal proceedings has
7 made a prima facie case of eligibility for classifica-
8 tion as a conditional nonimmigrant or a conditional
9 nonimmigrant dependent, the judge shall adminis-
10 tratively close such proceedings and permit the alien
11 a reasonable opportunity to apply for such classifica-
12 tion.

13 (5) RELATIONSHIPS OF APPLICATION TO CER-
14 TAIN ORDERS.—

15 (A) IN GENERAL.—An alien who is present
16 in the United States and has been ordered ex-
17 cluded, deported, removed, or ordered to depart
18 voluntarily from the United States under any
19 provision of the Immigration and Nationality
20 Act—

21 (i) notwithstanding such order, may
22 apply for classification as a conditional
23 nonimmigrant or conditional nonimmigrant
24 dependent under this subtitle;

1 (ii) shall not be required to file a sep-
2 arate motion to reopen, reconsider, or va-
3 cate the exclusion, deportation, removal, or
4 voluntary departure order; and

5 (iii) the filing of an application for
6 conditional nonimmigrant or conditional
7 nonimmigrant dependent status shall stay
8 the removal of the alien pending final adju-
9 dication of the application, unless the re-
10 moval or detainment of the alien is based
11 on criminal or national security-related
12 grounds that would render the alien ineli-
13 gible under this section.

14 (B) APPLICATION GRANTED.—If the Sec-
15 retary grants the application described in sub-
16 paragraph (A)(i), the Secretary shall cancel the
17 order described in subparagraph (A).

18 (C) APPLICATION DENIED.—If the Sec-
19 retary renders a final administrative decision to
20 deny the application described in subparagraph
21 (A)(i), the order described in subparagraph (A)
22 shall be effective and enforceable to the same
23 extent as if the application had not been made.

24 (i) CLASSIFICATION.—

1 (1) BENEFITS AND DOCUMENTATION.—If the
2 Secretary determines that an alien is eligible for
3 classification as a conditional nonimmigrant or con-
4 ditional nonimmigrant dependent, the alien shall be
5 entitled to all benefits described in subsection (h)(1).
6 The Secretary may authorize the use of a document
7 described in subsection (h)(2) as evidence of such
8 classification or may issue additional documentation
9 as evidence of classification as a conditional non-
10 immigrant or conditional nonimmigrant dependent.

11 (2) PERIOD OF AUTHORIZED STAY.—

12 (A) IN GENERAL.—Except as provided
13 under subparagraph (C), the period of author-
14 ized stay for a conditional nonimmigrant or a
15 conditional nonimmigrant dependent shall be 6
16 years from the date on which such status is
17 conferred.

18 (B) EXTENSION.—The Secretary may ex-
19 tend the period described in subparagraph (A)
20 in additional 5-year increments provided that
21 the alien continues to meet the requirements of
22 this section.

23 (j) TERMINATION OF BENEFITS.—

24 (1) IN GENERAL.—Any benefit provided to an
25 alien seeking classification as a conditional non-

1 immigrant or conditional nonimmigrant dependent,
2 or who is classified as such, under this section shall
3 terminate if—

4 (A) the Secretary determines that the alien
5 is ineligible for such classification and all review
6 procedures under section 603 have been ex-
7 hausted or waived by the alien;

8 (B) the alien has used documentation
9 issued under this section for unlawful or fraud-
10 ulent purposes; or

11 (C) in the case of the spouse or child of an
12 alien applying for classification as a conditional
13 nonimmigrant or classified as a conditional non-
14 immigrant under this section, the benefits for
15 the principal alien are terminated unless bene-
16 fits are terminated due to the death of the prin-
17 cipal applicant; provided that the spouse or
18 child shall be given a reasonable opportunity to
19 apply independently for classification under this
20 section.

21 (k) DISSEMINATION OF INFORMATION ON CONDI-
22 TIONAL NONIMMIGRANT PROGRAM.—During the 12-
23 month period immediately following the issuance of regu-
24 lations implementing this section, the Secretary, in co-
25 operation with entities approved by the Secretary, shall

1 broadly disseminate information respecting conditional
2 nonimmigrant or conditional nonimmigrant dependent
3 classification under this section and the requirements to
4 be satisfied to obtain such classification. The Secretary
5 shall disseminate information to employers and labor
6 unions to advise them of the rights and protections avail-
7 able to them and to workers who file applications under
8 this section. Such information shall be broadly dissemi-
9 nated, in the principal languages, as determined by the
10 Secretary, spoken by aliens who would qualify for classi-
11 fication under this section, including to television, radio,
12 and print media to which such aliens would have access.

13 (l) CONSTRUCTION CLAUSE.—Nothing in this sub-
14 section shall be construed to prevent an alien described
15 in this section from filing an application for an immigra-
16 tion benefit in accordance with any other provision of law.

17 **SEC. 402. ADJUSTMENT OF STATUS FOR CONDITIONAL**
18 **NONIMMIGRANTS.**

19 (a) REQUIREMENTS.—

20 (1) IN GENERAL.—Notwithstanding any other
21 provision of law, including section 244(h) of the Im-
22 migration and Nationality Act (8 U.S.C. 1254a(h)),
23 the Secretary may adjust the status of a conditional
24 nonimmigrant or a conditional nonimmigrant de-
25 pendent to that of an alien lawfully admitted for

1 permanent residence if the conditional nonimmigrant
2 or conditional nonimmigrant dependent satisfies the
3 applicable requirements under this subsection.

4 (2) FULFILLMENT OF CONDITIONAL REQUIRE-
5 MENTS.—A conditional nonimmigrant applying for
6 adjustment of status under this section shall estab-
7 lish that during the 5-year period immediately pre-
8 ceding the application for adjustment of status, he
9 or she has fulfilled the requirements of the alien’s
10 conditional status by demonstrating that the alien—

11 (A) has not been convicted of any offenses
12 that would render the alien inadmissible as de-
13 scribed in subsection (b);

14 (B) has satisfied all past or current Fed-
15 eral income tax liabilities and is in good stand-
16 ing with the Internal Revenue Service as de-
17 scribed in subsection (c);

18 (C) can establish that he or she has con-
19 tributed to the community through employment,
20 education, military service or other enterprise
21 as described in subsection (d);

22 (D) has demonstrated sufficient mastery of
23 basic English skills as described in subsection
24 (e); and

1 (E) where applicable, can establish proof of
2 registration under the Military Selective Service
3 Act (50 U.S.C. App. 451 et seq.).

4 (b) ADMISSIBLE UNDER IMMIGRATION LAWS.—A
5 conditional nonimmigrant or conditional nonimmigrant
6 dependent applying for adjustment of status under this
7 section shall establish that he or she is not inadmissible
8 under section 212(a) of the Immigration and Nationality
9 Act (8 U.S.C. 1182(a)), except for any provision under
10 that section that is not applicable or waived under para-
11 graph (2) or (3) of section 401(d). For purposes of an
12 application filed under this section, any prior waiver of
13 inadmissibility granted to an alien under section 401(d)(2)
14 shall remain in effect with respect to the specific conduct
15 considered by the Secretary at the time of classification
16 under section 401.

17 (c) PAYMENT OF INCOME TAXES.—

18 (1) IN GENERAL.—Not later than the date on
19 which status is adjusted under this section, a condi-
20 tional nonimmigrant or conditional nonimmigrant
21 dependent shall satisfy any applicable Federal tax li-
22 ability by establishing that—

23 (A) no such tax liability exists;

24 (B) all outstanding liabilities have been
25 paid; or

1 (C) the conditional nonimmigrant has en-
2 tered into, and is in compliance with, an agree-
3 ment for payment of all outstanding liabilities
4 with the Internal Revenue Service.

5 (2) APPLICABLE FEDERAL TAX LIABILITY.—
6 For purposes of paragraph (1), the term “applicable
7 Federal tax liability” means liability for Federal
8 taxes, including penalties and interest, owed for any
9 year while classified as a conditional nonimmigrant
10 or conditional nonimmigrant dependent for which
11 the statutory period for assessment of any deficiency
12 for such taxes has not expired.

13 (3) IRS COOPERATION.—The Secretary of the
14 Treasury shall establish rules and procedures under
15 which the Commissioner of Internal Revenue shall
16 provide documentation to—

17 (A) a conditional nonimmigrant or condi-
18 tional nonimmigrant dependent, upon request,
19 to establish the payment of all taxes required
20 under this subsection; or

21 (B) the Secretary, upon request, regarding
22 the payment of Federal taxes by an alien apply-
23 ing for a benefit under this section.

1 (4) COMPLIANCE.—The alien may satisfy proof
2 of compliance with this subsection by submitting
3 documentation that establishes that—

4 (A) no such tax liability exists;

5 (B) all outstanding liabilities have been
6 met; or

7 (C) the alien has entered into, and is in
8 compliance with, an agreement for payment of
9 all outstanding liabilities with the Internal Rev-
10 enue Service.

11 (d) CONTRIBUTIONS TO THE UNITED STATES
12 THROUGH EMPLOYMENT, EDUCATION, MILITARY SERV-
13 ICE OR OTHER COMMITMENT TO THE COMMUNITY.—

14 (1) An alien shall demonstrate contributions to
15 the United States by submitting evidence that he or
16 she—

17 (A) is or has been engaged in full-time,
18 part-time, self, or seasonal employment in the
19 United States; or

20 (B) has completed or is enrolled in an ac-
21 credited education program as described under
22 subsection (e)(1)(B) of section 401; or

23 (C) is serving in the military or has com-
24 pleted military service as described in sub-
25 section (e)(1)(C) of section 401; or

1 (D) otherwise establishes, to the satisfac-
2 tion of the Secretary, that the alien is an active
3 volunteer or community member; or

4 (E) is exempt from these requirements, as
5 described under subsection (e)(2) of section
6 401; and

7 (F) is self-sufficient or self-supporting, in-
8 cluding through the support of family, commu-
9 nity members, or others, as determined by the
10 Secretary, such that the alien is not a public
11 charge or at risk of becoming a public charge.

12 (2) EVIDENCE OF EMPLOYMENT, EDUCATION,
13 MILITARY SERVICE OR OTHER CONTRIBUTIONS.—

14 (A) CONCLUSIVE DOCUMENTS.—An alien
15 may conclusively establish compliance with
16 paragraph (1) by submitting records to the Sec-
17 retary that demonstrate such employment, edu-
18 cation, military service, or other contributions
19 that have been maintained by the Social Secu-
20 rity Administration, the Internal Revenue Serv-
21 ice, the Armed Services or any other Federal,
22 State, or local government agency or public or
23 private educational institution.

24 (B) OTHER DOCUMENTS.—An alien who is
25 unable to submit a document described in sub-

1 paragraph (A) may satisfy the requirement
2 under paragraph (1) by submitting to the Sec-
3 retary at least 2 other types of reliable docu-
4 ments that provide evidence of contributions to
5 the United States, including—

6 (i) bank records;

7 (ii) business records;

8 (iii) employer records;

9 (iv) records of a labor union, day
10 labor center, or organization that assists
11 workers in employment;

12 (v) records of a registered charitable,
13 voluntary or 501(c)(3) nonprofit organiza-
14 tion; and

15 (vi) sworn affidavits from nonrelatives
16 who have direct knowledge of the alien's
17 contribution, that contain—

18 (I) the name, address, and tele-
19 phone number of the affiant;

20 (II) the nature and duration of
21 the relationship between the affiant
22 and the alien; and

23 (III) other verification or infor-
24 mation; and

25 (vii) remittance records.

1 (C) ADDITIONAL DOCUMENTS AND RE-
2 STRICTIONS.—The Secretary may—

3 (i) designate additional documents to
4 evidence employment, education, military
5 service or and other contributions to the
6 United States; and

7 (ii) set such terms and conditions on
8 the use of affidavits as is necessary to
9 verify and confirm the identity of any affi-
10 ant or otherwise prevent fraudulent sub-
11 missions.

12 (4) BURDEN OF PROOF.—An alien described in
13 paragraph (1) who is applying for adjustment of sta-
14 tus under this section shall prove, by a preponder-
15 ance of the evidence, that the alien has satisfied the
16 requirements of this subsection. An alien may meet
17 such burden of proof by producing sufficient evi-
18 dence to demonstrate employment, education, mili-
19 tary service, or other contribution to the United
20 States as a matter of reasonable inference.

21 (e) BASIC CITIZENSHIP SKILLS.—

22 (1) IN GENERAL.—Except as provided under
23 paragraph (2), a conditional nonimmigrant or condi-
24 tional nonimmigrant dependent shall establish that
25 he or she—

1 (A) meets the requirements under section
2 312 of the Immigration and Nationality Act (8
3 U.S.C. 1423);

4 (B) earned a high school diploma or ob-
5 tained a general education development certifi-
6 cate in the United States; or

7 (C) is satisfactorily pursuing a course of
8 study to achieve such an understanding of
9 English and knowledge and understanding of
10 the history and Government of the United
11 States.

12 (2) RELATION TO NATURALIZATION EXAMINA-
13 TION.—A conditional nonimmigrant or conditional
14 nonimmigrant dependent who demonstrates that he
15 or she meets the requirements under such section
16 312 may be considered to have satisfied the require-
17 ments of that section for purposes of becoming natu-
18 ralized as a citizen of the United States under title
19 III of the Immigration and Nationality Act (8
20 U.S.C. 1401 et seq.).

21 (3) EXCEPTIONS.—

22 (A) MANDATORY.—Paragraph (1) shall
23 not apply to any person who is unable to com-
24 ply with those requirements because of a phys-
25 ical or developmental disability or mental im-

1 pairment (as described in section 312(b)(1) of
2 the Immigration and Nationality Act (8 U.S.C.
3 1423(b)(1))).

4 (B) DISCRETIONARY.—The Secretary may
5 waive all or part of paragraph (1) for a condi-
6 tional nonimmigrant who is at least 65 years of
7 age on the date on which an application is filed
8 for adjustment of status under this section.

9 (f) APPLICATION PROCEDURE, FEES, AND FINES.—

10 (1) COMPLIANCE WITH ALL REQUIREMENTS.—

11 A conditional nonimmigrant or conditional non-
12 immigrant dependent seeking to adjust status to
13 that of a lawful permanent resident shall submit to
14 a full medical examination and all security and other
15 law enforcement checks required of an applicant for
16 adjustment under section 245 of the Immigration
17 and Nationality Act.

18 (2) APPLICATION AND FEE.—The Secretary
19 shall promulgate regulations establishing procedures
20 for submitting an application for adjustment of sta-
21 tus under this section. The Secretary shall impose a
22 fee for filing an application for adjustment of status
23 under this section which shall be sufficient to cover
24 the administrative and other expenses incurred in
25 connection with the review of such applications.

1 (3) DEPOSIT OF FEES.—Fees collected under
2 this paragraph shall be deposited into the Immigra-
3 tion Examination Fee Account and shall remain
4 available as provided under subsections (m) and (n)
5 of section 286 of the Immigration and Nationality
6 Act (8 U.S.C. 1356).

7 (g) TREATMENT OF CONDITIONAL NONIMMIGRANT
8 DEPENDENTS.—

9 (1) ADJUSTMENT OF STATUS.—Notwith-
10 standing any other provision of law, the Secretary
11 may—

12 (A) adjust the status of a conditional non-
13 immigrant dependent to that of a person admit-
14 ted for lawful permanent residence if the prin-
15 cipal conditional nonimmigrant spouse or par-
16 ent has been found eligible for adjustment of
17 status under this section, provided that the de-
18 pendent complies with subparagraphs (A), (B),
19 and (E), where applicable, of subsection (a)(2)
20 and completes the application requirements de-
21 scribed in subsection (f);

22 (B) adjust the status of a conditional non-
23 immigrant dependent who was the spouse or
24 child of an alien who was classified as a condi-
25 tional nonimmigrant, or was eligible for such

1 classification under section 401, to that of a
2 person admitted for permanent residence if—

3 (i) the termination of the relationship
4 with such spouse or parent was connected
5 to domestic violence; and

6 (ii) the spouse or child has been bat-
7 tered or subjected to extreme cruelty by
8 the spouse or parent; provided that the de-
9 pendent complies with subparagraphs (A),
10 (B), and (E), where applicable, of sub-
11 section (a)(2) and completes the applica-
12 tion requirements described in subsection
13 (g).

14 (2) APPLICATION OF OTHER LAW.—In proc-
15 essing applications under this subsection on behalf
16 of aliens who have been battered or subjected to ex-
17 treme cruelty, the Secretary shall apply—

18 (A) the provisions under section
19 204(a)(1)(J) of the Immigration and Nation-
20 ality Act (8 U.S.C. 1154(a)(1)(J)); and

21 (B) the protections, prohibitions, and pen-
22 alties under section 384 of the Illegal Immigra-
23 tion Reform and Immigrant Responsibility Act
24 of 1996 (8 U.S.C. 1367).

25 (h) BACK OF THE LINE.—

1 (1) IN GENERAL.—An alien may not adjust sta-
2 tus to that of a lawful permanent resident status
3 under this Act until that earlier of—

4 (A) 30 days after an immigrant visa be-
5 comes available for petitions filed under section
6 201, 202, or 203 of the Immigration and Na-
7 tionality Act (8 U.S.C. 1151, 1152, and 1153),
8 which were filed before the date of enactment of
9 this Act; or

10 (B) 6 years after the date of the enact-
11 ment of this Act.

12 (2) SPECIAL RULE FOR CONDITIONAL IMMI-
13 GRANTS QUALIFYING UNDER SUBSECTION (e)(2)(D)
14 OF SECTION 401.—An alien who qualifies as a condi-
15 tional nonimmigrant as described in subsection
16 (e)(2)(D) of section 401 shall be eligible to apply for
17 adjustment of status immediately upon the comple-
18 tion of one of the following:

19 (A) The alien has acquired a degree from
20 an institution of higher education in the United
21 States or has completed at least 2 years, in
22 good standing, in a program for a bachelor's
23 degree or higher degree in the United States.

1 (B) The alien has served in the uniformed
2 services for at least 2 years and, if discharged,
3 has received an honorable discharge.

4 (C) The alien has been employed full-time,
5 part-time, or seasonally for at least 2 years
6 prior to date of application.

7 (3) NATURALIZATION.—For purposes of natu-
8 ralization only, aliens who adjust their status to that
9 of a lawful permanent resident under the special rule
10 described in paragraph (2) shall be eligible to apply
11 for naturalization 3 years after the date on which
12 adjustment of status is granted.

13 (i) INELIGIBILITY FOR PUBLIC BENEFITS.—For pur-
14 poses of section 403 of the Personal Responsibility and
15 Work Opportunity Reconciliation Act of 1996 (8 U.S.C.
16 1613), an alien whose status has been adjusted under this
17 section shall not be eligible for any Federal means-tested
18 public benefit unless the alien meets the alien eligibility
19 criteria for such benefit under title IV of such Act (8
20 U.S.C. 1601 et seq.).

21 **SEC. 403. ADMINISTRATIVE AND JUDICIAL REVIEW.**

22 (a) ADMINISTRATIVE REVIEW.—

23 (1) SINGLE LEVEL OF ADMINISTRATIVE APPEL-
24 LATE REVIEW.—The Secretary of Homeland Secu-
25 rity shall establish an independent appellate author-

1 ity within the Bureau of Citizenship and Immigra-
2 tion Services to provide for a single level of adminis-
3 trative appellate review of a determination respect-
4 ing an application for classification or adjustment of
5 status under this subtitle.

6 (2) STANDARD FOR REVIEW.—Administrative
7 appellate review referred to in paragraph (1) shall be
8 based solely upon the administrative record estab-
9 lished at the time of the determination on the appli-
10 cation and upon the presentation of additional or
11 newly discovered evidence during the time of the
12 pending appeal or subsequently on motion to reopen.

13 (b) JUDICIAL REVIEW.—

14 (1) DIRECT REVIEW.—A person whose applica-
15 tion for classification or adjustment of status under
16 this subtitle is denied after administrative appellate
17 review under subsection (a) may seek review of such
18 denial, in accordance with chapter 7 of title 5,
19 United States Code, before the United States dis-
20 trict court for the district in which the person re-
21 sides.

22 (2) REVIEW AFTER REMOVAL PROCEEDINGS.—
23 There shall be judicial review in the Federal courts
24 of appeal of the denial of an application for classi-
25 fication or adjustment of status under this subtitle

1 in conjunction with judicial review of an order of re-
2 moval, deportation, or exclusion.

3 (3) STANDARD FOR JUDICIAL REVIEW.—Judi-
4 cial review of a denial of an application under this
5 subtitle shall be based upon the administrative
6 record established at the time of the review, but the
7 court may remand the case to the agency for consid-
8 eration of additional evidence where the court finds
9 that the evidence is material and there were reason-
10 able grounds for failure to adduce the evidence be-
11 fore the agency. Notwithstanding any other provi-
12 sion of law, judicial review of all questions arising
13 from a denial of an application under this subtitle
14 shall be governed by the standard of review set forth
15 in chapter 7 of title 5, United States Code.

16 (4) REMEDIAL POWERS.—Notwithstanding any
17 other provision of law, the district courts of the
18 United States shall have jurisdiction over any cause
19 or claim arising from a pattern or practice of the
20 Secretary of Homeland Security in the operation or
21 implementation of this subtitle that is arbitrary, ca-
22 pricious, or otherwise contrary to law, and may
23 order any appropriate relief. The district courts may
24 order any appropriate relief in accordance with the
25 preceding sentence without regard to exhaustion,

1 ripeness, or other standing requirements (other than
2 constitutionally-mandated requirements), if the court
3 determines that resolution of such cause or claim
4 will serve judicial and administrative efficiency or
5 that a remedy would otherwise not be reasonably
6 available or practicable.

7 (c) STAY OF REMOVAL.—Aliens seeking administra-
8 tive or judicial review under this section shall not be re-
9 moved from the United States until a final decision is ren-
10 dered establishing ineligibility under this subtitle.

11 **SEC. 404. MANDATORY DISCLOSURE OF INFORMATION.**

12 (a) MANDATORY DISCLOSURE.—The Secretary and
13 the Secretary of State shall provide a duly recognized law
14 enforcement entity that submits a written request with the
15 information furnished pursuant to an application filed
16 under this subtitle, and any other information derived
17 from such furnished information, in connection with a
18 criminal investigation or prosecution, or a national secu-
19 rity investigation or prosecution, of an individual suspect
20 or group of suspects.

21 (b) LIMITATIONS.—Except as otherwise provided
22 under this section, no Federal agency, or any officer, em-
23 ployee, or agent of such agency, may—

24 (1) use the information furnished by the appli-
25 cant pursuant to an application for benefits under

1 this subtitle for any purpose other than to make a
2 determination on the application;

3 (2) make any publication through which the in-
4 formation furnished by any particular applicant can
5 be identified; or

6 (3) permit anyone other than the sworn officers
7 and employees of such agency to examine individual
8 applications.

9 (c) CONSTRUCTION.—Nothing under subsection (b)
10 shall prevent an alien or an alien’s attorney access to his
11 or her application, case file, or information related to such
12 application or adjudication thereof.

13 (d) CRIMINAL PENALTY.—Any person who knowingly
14 uses, publishes, or permits information to be examined in
15 violation of this section shall be fined not more than
16 \$10,000.

17 **SEC. 405. PENALTIES FOR FALSE STATEMENTS IN APPLICA-**
18 **TIONS.**

19 (a) CRIMINAL PENALTY.—

20 (1) VIOLATION.—It shall be unlawful for any
21 person—

22 (A) to file, or assist in filing, an applica-
23 tion for benefits under this subtitle; and

1 (i) to knowingly and willfully falsify,
2 misrepresent, conceal, or cover up a mate-
3 rial fact;

4 (ii) to make any false, fictitious, or
5 fraudulent statements or representations;
6 or

7 (iii) to make or use any false writing
8 or document knowing the same to contain
9 any false, fictitious, or fraudulent state-
10 ment or entry; or

11 (B) to create or supply a false writing or
12 document for use in making such an applica-
13 tion.

14 (2) PENALTY.—Any person who violates para-
15 graph (1) shall be fined in accordance with title 18,
16 United States Code, imprisoned not more than 5
17 years, or both.

18 (b) INADMISSIBILITY.—An alien who is convicted of
19 violating subsection (a) shall be considered to be inadmis-
20 sible to the United States on the ground described in sec-
21 tion 212(a)(6)(C)(i) of the Immigration and Nationality
22 Act (8 U.S.C. 1182(a)(6)(C)(i)).

23 (c) EXCEPTION.—Notwithstanding subsections (a)
24 and (b), any alien or other entity (including an employer
25 or union) that submits an employment record that con-

1 tains incorrect data used by the alien to obtain such em-
2 ployment, shall not, on that ground, be determined to have
3 violated this section.

4 **SEC. 406. ALIENS NOT SUBJECT TO DIRECT NUMERICAL**
5 **LIMITATIONS.**

6 Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended
7 by title III, is further amended—

8 (1) in subparagraph (A), by striking “subpara-
9 graph (A) or (B) of”; and

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

11 “(N) Aliens whose status is adjusted from
12 that of a conditional nonimmigrant or condi-
13 tional nonimmigrant dependent.”.

14 **SEC. 407. EMPLOYER PROTECTIONS.**

15 (a) IMMIGRATION STATUS OF ALIEN.—Employers of
16 aliens applying for conditional nonimmigrant or condi-
17 tional nonimmigrant dependent classification or adjust-
18 ment of status under section 401 or 402 shall not be sub-
19 ject to civil and criminal tax liability relating directly to
20 the employment of such alien before receiving employment
21 authorization under this subtitle.

22 (b) PROVISION OF EMPLOYMENT RECORDS.—Em-
23 ployers that provide unauthorized aliens with copies of em-
24 ployment records or other evidence of employment pursu-
25 ant to an application for conditional nonimmigrant or con-

ditional nonimmigrant dependent classification or adjustment of status under section 401 or 402 or any other application or petition pursuant to any other immigration law, shall not be subject to civil and criminal liability under section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) for employing such unauthorized aliens.

(c) APPLICABILITY OF OTHER LAW.—Nothing in this section may be used to shield an employer from liability under section 274B of the Immigration and Nationality Act (8 U.S.C. 1324b) or any other labor or employment law.

SEC. 408. LIMITATIONS ON ELIGIBILITY.

(a) IN GENERAL.—An alien is not ineligible for any immigration benefit under any provision of this subtitle, or any amendment made by this subtitle, solely on the basis that the alien violated section 1543, 1544, or 1546 of title 18, United States Code, or any amendment made by this Act, during the period beginning on the date of the enactment of this Act and ending on the date on which the alien applies for any benefits under this subtitle.

(b) PROSECUTION.—An alien who violates section 1543, 1544, or 1546 of such title, or any amendment made by this Act, during the period beginning on the date of the enactment of this Act and ending on the date that

1 the alien applies for eligibility for such benefit may be
2 prosecuted for the violation if the alien's application for
3 such benefit is denied.

4 **SEC. 409. RULEMAKING.**

5 The Secretary shall promulgate regulations regarding
6 the timely filing and processing of applications for benefits
7 under this subtitle.

8 **SEC. 410. CORRECTION OF SOCIAL SECURITY RECORDS.**

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

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

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

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

17 “(D) who is granted an adjustment of im-
18 migration status pursuant to the CIR ASAP
19 Act of 2009 or an amendment made by that
20 Act,”; and

21 (4) by striking “1990.” and inserting “1990, or
22 in the case of an alien described in subparagraph
23 (D), if such conduct is alleged to have occurred be-
24 fore the date on which the alien was granted an ad-
25 justment of status described in such subparagraph.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 subsection (a) shall take effect on the first day of the sev-
3 enth month that begins after the date of the enactment
4 of this Act.

5 **SEC. 411. RESTORATION OF STATE OPTION TO DETERMINE**
6 **RESIDENCY FOR PURPOSES OF HIGHER EDU-**
7 **CATION BENEFITS.**

8 (a) IN GENERAL.—Section 505 of the Illegal Immi-
9 gration Reform and Immigrant Responsibility Act of 1996
10 (8 U.S.C. 1623) is repealed.

11 (b) EFFECTIVE DATE.—The repeal under subsection
12 (a) shall take effect as if included in the enactment of the
13 Illegal Immigration Reform and Immigrant Responsibility
14 Act of 1996 (division C of Public Law 104–208; 110 Stat.
15 3009–546).

16 **SEC. 412. AUTHORIZATION OF APPROPRIATIONS.**

17 (a) IN GENERAL.—There are authorized to be appro-
18 priated to the Secretary such sums as may be necessary
19 to carry out this subtitle and the amendments made by
20 this subtitle.

21 (b) AVAILABILITY OF FUNDS.—Funds appropriated
22 pursuant to subsection (a) shall remain available until ex-
23 pended.

24 (c) SENSE OF CONGRESS.—It is the sense of Con-
25 gress that funds authorized to be appropriated under sub-

1 section (a) should be directly appropriated so as to facili-
2 tate the orderly and timely commencement of the proc-
3 essing of applications filed under sections 401 and 402.

4 **Subtitle B—Agricultural Job Op-**
5 **portunities, Benefits, and Secu-**
6 **rity**

7 **CHAPTER 1—TITLE AND DEFINITIONS**

8 **SEC. 421. SHORT TITLE.**

9 This subtitle may be cited as the “Agricultural Job
10 Opportunities, Benefits, and Security Act of 2009” or the
11 “AgJOBS Act of 2009”.

12 **SEC. 422. DEFINITIONS.**

13 In this Act:

14 (1) **AGRICULTURAL EMPLOYMENT.**—The term
15 “agricultural employment” means any service or ac-
16 tivity that is considered to be agricultural under sec-
17 tion 3(f) of the Fair Labor Standards Act of 1938
18 (29 U.S.C. 203(f)) or agricultural labor under sec-
19 tion 3121(g) of the Internal Revenue Code of 1986
20 or the performance of agricultural labor or services
21 described in section 101(a)(15)(H)(ii)(a) of the Im-
22 migration and Nationality Act (8 U.S.C.
23 1101(a)(15)(H)(ii)(a)).

24 (2) **BLUE CARD STATUS.**—The term “blue card
25 status” means the status of an alien who has been

1 lawfully admitted into the United States for tem-
2 porary residence under section 101(a).

3 (3) DEPARTMENT.—The term “Department”
4 means the Department of Homeland Security.

5 (4) EMPLOYER.—The term “employer” means
6 any person or entity, including any farm labor con-
7 tractor and any agricultural association, that em-
8 ploys workers in agricultural employment.

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

12 (6) WORK DAY.—The term “work day” means
13 any day in which the individual is employed 5.75 or
14 more hours in agricultural employment.

15 **CHAPTER 2—PILOT PROGRAM FOR**
16 **EARNED STATUS ADJUSTMENT OF AG-**
17 **RICULTURAL WORKERS**

18 **Subchapter A—Blue Card Status**

19 **SEC. 431. REQUIREMENTS FOR BLUE CARD STATUS.**

20 (a) REQUIREMENT TO GRANT BLUE CARD STA-
21 TUS.—Notwithstanding any other provision of law, the
22 Secretary shall, pursuant to the requirements of this sec-
23 tion, grant blue card status to an alien who qualifies under
24 this section if the Secretary determines that the alien—

1 (1) during the 24-month period ending on De-
2 cember 31, 2008—

3 (A) performed agricultural employment in
4 the United States for at least 863 hours or 150
5 work days; or

6 (B) earned at least \$7,500 from agricul-
7 tural employment in the United States;

8 (2) applied for such status during the 18-month
9 application period beginning on the first day of the
10 seventh month that begins after the date of enact-
11 ment of this Act;

12 (3) is otherwise admissible to the United States
13 under section 212 of the Immigration and Nation-
14 ality Act (8 U.S.C. 1182), except as otherwise pro-
15 vided under section 105(b); and

16 (4) has not been convicted of any felony or a
17 misdemeanor, an element of which involves bodily in-
18 jury, threat of serious bodily injury, or harm to
19 property in excess of \$500.

20 (b) AUTHORIZED TRAVEL.—An alien who is granted
21 blue card status is authorized to travel outside the United
22 States (including commuting to the United States from
23 a residence in a foreign country) in the same manner as
24 an alien lawfully admitted for permanent residence.

1 (c) AUTHORIZED EMPLOYMENT.—The Secretary
2 shall provide an alien who is granted blue card status an
3 employment authorized endorsement or other appropriate
4 work permit, in the same manner as an alien lawfully ad-
5 mitted for permanent residence.

6 (d) TERMINATION OF BLUE CARD STATUS.—

7 (1) DEPORTABLE ALIENS.—The Secretary shall
8 terminate blue card status granted to an alien if the
9 Secretary determines that the alien is deportable.

10 (2) OTHER GROUNDS FOR TERMINATION.—The
11 Secretary shall terminate blue card status granted to
12 an alien if—

13 (A) the Secretary finds, by a preponder-
14 ance of the evidence, that the adjustment to
15 blue card status was the result of fraud or will-
16 ful misrepresentation, as described in section
17 212(a)(6)(C)(i) of the Immigration and Nation-
18 ality Act (8 U.S.C. 1182(a)(6)(C)(i)); or

19 (B) the alien—

20 (i) commits an act that makes the
21 alien inadmissible to the United States
22 under section 212 of the Immigration and
23 Nationality Act (8 U.S.C. 1182), except as
24 provided under section 105(b);

1 (ii) is convicted of a felony or 3 or
2 more misdemeanors committed in the
3 United States;

4 (iii) is convicted of an offense, an ele-
5 ment of which involves bodily injury, threat
6 of serious bodily injury, or harm to prop-
7 erty in excess of \$500; or

8 (iv) fails to perform the agricultural
9 employment required under paragraph
10 (1)(A) of section 103(a) unless the alien
11 was unable to work in agricultural employ-
12 ment due to the extraordinary cir-
13 cumstances described in paragraph (3) of
14 such section.

15 (e) RECORD OF EMPLOYMENT.—

16 (1) IN GENERAL.—Each employer of an alien
17 granted blue card status shall annually—

18 (A) provide a written record of employ-
19 ment to the alien; and

20 (B) provide a copy of such record to the
21 Secretary.

22 (2) CIVIL PENALTIES.—

23 (A) IN GENERAL.—If the Secretary finds,
24 after notice and opportunity for a hearing, that
25 an employer of an alien granted blue card sta-

1 tus has failed to provide the record of employ-
2 ment required under paragraph (1) or has pro-
3 vided a false statement of material fact in such
4 a record, the employer shall be subject to a civil
5 penalty in an amount not to exceed \$1,000 per
6 violation.

7 (B) LIMITATION.—The penalty applicable
8 under subparagraph (A) for failure to provide
9 records shall not apply unless the alien has pro-
10 vided the employer with evidence of employment
11 authorization granted under this section.

12 (3) SUNSET.—The obligation under paragraph
13 (1) shall terminate on the date that is 6 years after
14 the date of the enactment of this Act.

15 (f) REQUIRED FEATURES OF IDENTITY CARD.—The
16 Secretary shall provide each alien granted blue card sta-
17 tus, and the spouse and any child of each such alien resid-
18 ing in the United States, with a card that contains—

19 (1) an encrypted, machine-readable, electronic
20 identification strip that is unique to the alien to
21 whom the card is issued;

22 (2) biometric identifiers, including fingerprints
23 and a digital photograph; and

1 (3) physical security features designed to pre-
2 vent tampering, counterfeiting, or duplication of the
3 card for fraudulent purposes.

4 (g) FINE.—An alien granted blue card status shall
5 pay a fine of \$100 to the Secretary.

6 (h) MAXIMUM NUMBER.—The Secretary may not
7 issue more than 1,350,000 blue cards during the 5-year
8 period beginning on the date of the enactment of this Act.

9 **SEC. 432. TREATMENT OF ALIENS GRANTED BLUE CARD**
10 **STATUS.**

11 (a) IN GENERAL.—Except as otherwise provided
12 under this section, an alien granted blue card status (in-
13 cluding a spouse or child of the alien granted derivative
14 status) shall be considered to be an alien lawfully admitted
15 for permanent residence for purposes of any law other
16 than any provision of the Immigration and Nationality Act
17 (8 U.S.C. 1101 et seq.).

18 (b) DELAYED ELIGIBILITY FOR CERTAIN FEDERAL
19 PUBLIC BENEFITS.—Except as otherwise provided in law,
20 an alien granted blue card status shall not be eligible, by
21 reason of such status, for any form of assistance or benefit
22 described in section 403(a) of the Personal Responsibility
23 and Work Opportunity Reconciliation Act of 1996 (8
24 U.S.C. 1613(a)) until 5 years after the date on which the

1 alien is granted an adjustment of status under section
2 103.

3 **SEC. 433. ADJUSTMENT TO PERMANENT RESIDENCE.**

4 (a) IN GENERAL.—Except as provided in subsection
5 (b), the Secretary shall adjust the status of an alien grant-
6 ed blue card status to that of an alien lawfully admitted
7 for permanent residence if the Secretary determines that
8 the following requirements are satisfied:

9 (1) QUALIFYING EMPLOYMENT.—

10 (A) IN GENERAL.—Subject to subpara-
11 graph (B), the alien has performed at least—

12 (i) 5 years of agricultural employment
13 in the United States for at least 100 work
14 days per year, during the 5-year period be-
15 ginning on the date of the enactment of
16 this Act; or

17 (ii) 3 years of agricultural employ-
18 ment in the United States for at least 150
19 work days per year, during the 3-year pe-
20 riod beginning on the date of the enact-
21 ment of this Act.

22 (B) 4-YEAR PERIOD OF EMPLOYMENT.—

23 An alien shall be considered to meet the re-
24 quirements of subparagraph (A) if the alien has
25 performed 4 years of agricultural employment

1 in the United States for at least 150 work days
2 during 3 years of those 4 years and at least
3 100 work days during the remaining year, dur-
4 ing the 4-year period beginning on the date of
5 the enactment of this Act.

6 (2) PROOF.—An alien may demonstrate compli-
7 ance with the requirement under paragraph (1) by
8 submitting—

9 (A) the record of employment described in
10 section 101(e); or

11 (B) documentation that may be submitted
12 under section 104(c).

13 (3) EXTRAORDINARY CIRCUMSTANCES.—

14 (A) IN GENERAL.—In determining whether
15 an alien has met the requirement of paragraph
16 (1)(A), the Secretary may credit the alien with
17 not more than 12 additional months of agricul-
18 tural employment in the United States to meet
19 such requirement if the alien was unable to
20 work in agricultural employment due to—

21 (i) pregnancy, injury, or disease, if the
22 alien can establish such pregnancy, dis-
23 abling injury, or disease through medical
24 records;

1 (ii) illness, disease, or other special
2 needs of a minor child, if the alien can es-
3 tablish such illness, disease, or special
4 needs through medical records;

5 (iii) severe weather conditions that
6 prevented the alien from engaging in agri-
7 cultural employment for a significant pe-
8 riod of time; or

9 (iv) termination from agricultural em-
10 ployment, if the Secretary finds that the
11 termination was without just cause and
12 that the alien was unable to find alter-
13 native agricultural employment after a rea-
14 sonable job search.

15 (B) EFFECT OF FINDING.—A finding
16 made under subparagraph (A)(iv), with respect
17 to an alien, shall not—

18 (i) be conclusive, binding, or admis-
19 sible in a separate or subsequent judicial
20 or administrative action or proceeding be-
21 tween the alien and a current or prior em-
22 ployer of the alien or any other party; or

23 (ii) subject the alien's employer to the
24 payment of attorney fees incurred by the

1 alien in seeking to obtain a finding under
2 subparagraph (A)(iv).

3 (4) APPLICATION PERIOD.—The alien applies
4 for adjustment of status not later than 7 years after
5 the date of the enactment of this Act.

6 (5) FINE.—The alien pays a fine of \$400 to the
7 Secretary.

8 (b) GROUNDS FOR DENIAL OF ADJUSTMENT OF STA-
9 TUS.—The Secretary shall deny an alien granted blue card
10 status an adjustment of status under this section if—

11 (1) the Secretary finds, by a preponderance of
12 the evidence, that the adjustment to blue card status
13 was the result of fraud or willful misrepresentation,
14 as described in section 212(a)(6)(C)(i) of the Immi-
15 gration and Nationality Act (8 U.S.C.
16 1182(a)(6)(C)(i)); or

17 (2) the alien—

18 (A) commits an act that makes the alien
19 inadmissible to the United States under section
20 212 of the Immigration and Nationality Act (8
21 U.S.C. 1182), except as provided under section
22 105(b);

23 (B) is convicted of a felony or 3 or more
24 misdemeanors committed in the United States;

1 (C) is convicted of an offense, an element
2 of which involves bodily injury, threat of serious
3 bodily injury, or harm to property in excess of
4 \$500; or

5 (D) failed to perform the agricultural em-
6 ployment required under paragraph (1)(A) of
7 subsection (a) unless the alien was unable to
8 work in agricultural employment due to the ex-
9 traordinary circumstances described in para-
10 graph (3) of such subsection.

11 (c) GROUNDS FOR REMOVAL.—Any alien granted
12 blue card status who does not apply for adjustment of sta-
13 tus under this section before the expiration of the applica-
14 tion period described in subsection (a)(4) or who fails to
15 meet the other requirements of subsection (a) by the end
16 of the application period, is deportable and may be re-
17 moved under section 240 of the Immigration and Nation-
18 ality Act (8 U.S.C. 1229a).

19 (d) PAYMENT OF TAXES.—

20 (1) IN GENERAL.—Not later than the date on
21 which an alien's status is adjusted under this sec-
22 tion, the alien shall establish that the alien does not
23 owe any applicable Federal tax liability by estab-
24 lishing that—

25 (A) no such tax liability exists;

1 (B) all such outstanding tax liabilities have
2 been paid; or

3 (C) the alien has entered into an agree-
4 ment for payment of all outstanding liabilities
5 with the Internal Revenue Service.

6 (2) APPLICABLE FEDERAL TAX LIABILITY.—In
7 paragraph (1) the term “applicable Federal tax li-
8 ability” means liability for Federal taxes, including
9 penalties and interest, owed for any year during the
10 period of employment required under subsection
11 (a)(1) for which the statutory period for assessment
12 of any deficiency for such taxes has not expired.

13 (3) IRS COOPERATION.—The Secretary of the
14 Treasury shall establish rules and procedures under
15 which the Commissioner of Internal Revenue shall
16 provide documentation to an alien upon request to
17 establish the payment of all taxes required by this
18 subsection.

19 (e) SPOUSES AND MINOR CHILDREN.—

20 (1) IN GENERAL.—Notwithstanding any other
21 provision of law, the Secretary shall confer the sta-
22 tus of lawful permanent resident on the spouse and
23 minor child of an alien granted any adjustment of
24 status under subsection (a), including any individual
25 who was a minor child on the date such alien was

1 granted blue card status, if the spouse or minor
2 child applies for such status, or if the principal alien
3 includes the spouse or minor child in an application
4 for adjustment of status to that of a lawful perma-
5 nent resident.

6 (2) TREATMENT OF SPOUSES AND MINOR CHIL-
7 DREN.—

8 (A) GRANTING OF STATUS AND RE-
9 MOVAL.—The Secretary shall grant derivative
10 status to the alien spouse and any minor child
11 residing in the United States of an alien grant-
12 ed blue card status and shall not remove such
13 derivative spouse or child during the period that
14 the alien granted blue card status maintains
15 such status, except as provided in paragraph
16 (3). A grant of derivative status to such a
17 spouse or child under this subparagraph shall
18 not decrease the number of aliens who may re-
19 ceive blue card status under subsection (h) of
20 section 101.

21 (B) TRAVEL.—The derivative spouse and
22 any minor child of an alien granted blue card
23 status may travel outside the United States in
24 the same manner as an alien lawfully admitted
25 for permanent residence.

1 (C) EMPLOYMENT.—The derivative spouse
2 of an alien granted blue card status may apply
3 to the Secretary for a work permit to authorize
4 such spouse to engage in any lawful employ-
5 ment in the United States while such alien
6 maintains blue card status.

7 (3) GROUNDS FOR DENIAL OF ADJUSTMENT OF
8 STATUS AND REMOVAL.—The Secretary shall deny
9 an alien spouse or child adjustment of status under
10 paragraph (1) and may remove such spouse or child
11 under section 240 of the Immigration and Nation-
12 ality Act (8 U.S.C. 1229a) if the spouse or child—

13 (A) commits an act that makes the alien
14 spouse or child inadmissible to the United
15 States under section 212 of such Act (8 U.S.C.
16 1182), except as provided under section 105(b);

17 (B) is convicted of a felony or 3 or more
18 misdemeanors committed in the United States;
19 or

20 (C) is convicted of an offense, an element
21 of which involves bodily injury, threat of serious
22 bodily injury, or harm to property in excess of
23 \$500.

24 **SEC. 434. APPLICATIONS.**

25 (a) SUBMISSION.—The Secretary shall provide that—

1 (1) applications for blue card status may be
2 submitted—

3 (A) to the Secretary if the applicant is rep-
4 resented by an attorney or a nonprofit religious,
5 charitable, social service, or similar organization
6 recognized by the Board of Immigration Ap-
7 peals under section 292.2 of title 8, Code of
8 Federal Regulations; or

9 (B) to a qualified designated entity if the
10 applicant consents to the forwarding of the ap-
11 plication to the Secretary; and

12 (2) applications for adjustment of status under
13 section 103 shall be filed directly with the Secretary.

14 (b) QUALIFIED DESIGNATED ENTITY DEFINED.—In
15 this section, the term “qualified designated entity”
16 means—

17 (1) a qualified farm labor organization or an
18 association of employers designated by the Sec-
19 retary; or

20 (2) any such other person designated by the
21 Secretary if that Secretary determines such person
22 is qualified and has substantial experience, dem-
23 onstrated competence, and has a history of long-
24 term involvement in the preparation and submission
25 of applications for adjustment of status under sec-

tion 209, 210, or 245 of the Immigration and Nationality Act (8 U.S.C. 1159, 1160, and 1255), the Act entitled “An Act to adjust the status of Cuban refugees to that of lawful permanent residents of the United States, and for other purposes”, approved November 2, 1966 (Public Law 89–732; 8 U.S.C. 1255 note), Public Law 95–145 (8 U.S.C. 1255 note), or the Immigration Reform and Control Act of 1986 (Public Law 99–603; 100 Stat. 3359) or any amendment made by that Act.

(c) PROOF OF ELIGIBILITY.—

(1) IN GENERAL.—An alien may establish that the alien meets the requirement of section 101(a)(1) or 103(a)(1) through government employment records or records supplied by employers or collective bargaining organizations, and other reliable documentation as the alien may provide. The Secretary shall establish special procedures to properly credit work in cases in which an alien was employed under an assumed name.

(2) DOCUMENTATION OF WORK HISTORY.—

(A) BURDEN OF PROOF.—An alien applying for status under section 101(a) or 103(a) has the burden of proving by a preponderance of the evidence that the alien has worked the

1 requisite number of hours or days required
2 under section 101(a)(1) or 103(a)(1), as appli-
3 cable.

4 (B) TIMELY PRODUCTION OF RECORDS.—

5 If an employer or farm labor contractor employ-
6 ing such an alien has kept proper and adequate
7 records respecting such employment, the alien's
8 burden of proof under subparagraph (A) may
9 be met by securing timely production of those
10 records under regulations to be promulgated by
11 the Secretary.

12 (C) SUFFICIENT EVIDENCE.—An alien

13 may meet the burden of proof under subpara-
14 graph (A) to establish that the alien has per-
15 formed the days or hours of work required by
16 section 101(a)(1) or 103(a)(1) by producing
17 sufficient evidence to show the extent of that
18 employment as a matter of just and reasonable
19 inference.

20 (d) APPLICATIONS SUBMITTED TO QUALIFIED DES-
21 IGNATED ENTITIES.—

22 (1) REQUIREMENTS.—Each qualified des-
23 ignated entity shall agree—

24 (A) to forward to the Secretary an applica-
25 tion submitted to that entity pursuant to sub-

1 section (a)(1)(B) if the applicant has consented
2 to such forwarding;

3 (B) not to forward to the Secretary any
4 such application if the applicant has not con-
5 sented to such forwarding; and

6 (C) to assist an alien in obtaining docu-
7 mentation of the alien's work history, if the
8 alien requests such assistance.

9 (2) NO AUTHORITY TO MAKE DETERMINA-
10 TIONS.—No qualified designated entity may make a
11 determination required by this subtitle to be made
12 by the Secretary.

13 (e) LIMITATION ON ACCESS TO INFORMATION.—Files
14 and records collected or compiled by a qualified designated
15 entity for the purposes of this section are confidential and
16 the Secretary shall not have access to such a file or record
17 relating to an alien without the consent of the alien, except
18 as allowed by a court order issued pursuant to subsection
19 (f).

20 (f) CONFIDENTIALITY OF INFORMATION.—

21 (1) IN GENERAL.—Except as otherwise pro-
22 vided in this section, the Secretary or any other offi-
23 cial or employee of the Department or a bureau or
24 agency of the Department is prohibited from—

1 (A) using information furnished by the ap-
2 plicant pursuant to an application filed under
3 this subtitle, the information provided by an ap-
4 plicant to a qualified designated entity, or any
5 information provided by an employer or former
6 employer for any purpose other than to make a
7 determination on the application or for impos-
8 ing the penalties described in subsection (g);

9 (B) making any publication in which the
10 information furnished by any particular indi-
11 vidual can be identified; or

12 (C) permitting a person other than a
13 sworn officer or employee of the Department or
14 a bureau or agency of the Department or, with
15 respect to applications filed with a qualified
16 designated entity, that qualified designated en-
17 tity, to examine individual applications.

18 (2) REQUIRED DISCLOSURES.—The Secretary
19 shall provide the information furnished under this
20 subtitle or any other information derived from such
21 furnished information to—

22 (A) a duly recognized law enforcement en-
23 tity in connection with a criminal investigation
24 or prosecution, if such information is requested
25 in writing by such entity; or

1 (B) an official coroner, for purposes of af-
2 firmatively identifying a deceased individual,
3 whether or not the death of such individual re-
4 sulted from a crime.

5 (3) CONSTRUCTION.—

6 (A) IN GENERAL.—Nothing in this sub-
7 section shall be construed to limit the use, or
8 release, for immigration enforcement purposes
9 or law enforcement purposes, of information
10 contained in files or records of the Department
11 pertaining to an application filed under this sec-
12 tion, other than information furnished by an
13 applicant pursuant to the application, or any
14 other information derived from the application,
15 that is not available from any other source.

16 (B) CRIMINAL CONVICTIONS.—Notwith-
17 standing any other provision of this subsection,
18 information concerning whether the alien apply-
19 ing for blue card status or an adjustment of
20 status under section 103 has been convicted of
21 a crime at any time may be used or released for
22 immigration enforcement or law enforcement
23 purposes.

24 (4) CRIME.—Any person who knowingly uses,
25 publishes, or permits information to be examined in

1 violation of this subsection shall be subject to a fine
2 in an amount not to exceed \$10,000.

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

5 (1) CRIMINAL PENALTY.—Any person who—

6 (A) files an application for blue card status
7 or an adjustment of status under section 103
8 and knowingly and willfully falsifies, conceals,
9 or covers up a material fact or makes any false,
10 fictitious, or fraudulent statements or represen-
11 tations, or makes or uses any false writing or
12 document knowing the same to contain any
13 false, fictitious, or fraudulent statement or
14 entry; or

15 (B) creates or supplies a false writing or
16 document for use in making such an applica-
17 tion,

18 shall be fined in accordance with title 18, United
19 States Code, imprisoned not more than 5 years, or
20 both.

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

1 the Immigration and Nationality Act (8 U.S.C.
2 1182(a)(6)(C)(i)).

3 (h) ELIGIBILITY FOR LEGAL SERVICES.—Section
4 504(a)(11) of Public Law 104–134 (110 Stat. 1321–53
5 et seq.) shall not be construed to prevent a recipient of
6 funds under the Legal Services Corporation Act (42
7 U.S.C. 2996 et seq.) from providing legal assistance di-
8 rectly related to an application for blue card status or an
9 adjustment of status under section 103.

10 (i) APPLICATION FEES.—

11 (1) FEE SCHEDULE.—The Secretary shall pro-
12 vide for a schedule of fees that—

13 (A) shall be charged for the filing of an
14 application for blue card status or for an ad-
15 justment of status under section 103; and

16 (B) may be charged by qualified des-
17 ignated entities to help defray the costs of serv-
18 ices provided to such applicants.

19 (2) PROHIBITION ON EXCESS FEES BY QUALI-
20 FIED DESIGNATED ENTITIES.—A qualified des-
21 ignated entity may not charge any fee in excess of,
22 or in addition to, the fees authorized under para-
23 graph (1)(B) for services provided to applicants.

24 (3) DISPOSITION OF FEES.—

1 (A) IN GENERAL.—There is established in
2 the general fund of the Treasury a separate ac-
3 count, which shall be known as the “Agricul-
4 tural Worker Immigration Status Adjustment
5 Account”. Notwithstanding any other provision
6 of law, there shall be deposited as offsetting re-
7 cepts into the account all fees collected under
8 paragraph (1)(A).

9 (B) USE OF FEES FOR APPLICATION PROC-
10 ESSING.—Amounts deposited in the “Agricul-
11 tural Worker Immigration Status Adjustment
12 Account” shall remain available to the Sec-
13 retary until expended for processing applica-
14 tions for blue card status or an adjustment of
15 status under section 103.

16 **SEC. 435. WAIVER OF NUMERICAL LIMITATIONS AND CER-**
17 **TAIN GROUNDS FOR INADMISSIBILITY.**

18 (a) NUMERICAL LIMITATIONS DO NOT APPLY.—The
19 numerical limitations of sections 201 and 202 of the Im-
20 migration and Nationality Act (8 U.S.C. 1151 and 1152)
21 shall not apply to the adjustment of aliens to lawful per-
22 manent resident status under section 103.

23 (b) WAIVER OF CERTAIN GROUNDS OF INADMIS-
24 SIBILITY.—In the determination of an alien’s eligibility for
25 status under section 101(a) or an alien’s eligibility for ad-

1 justment of status under section 103(b)(2)(A) the fol-
2 lowing rules shall apply:

3 (1) GROUNDS OF EXCLUSION NOT APPLICA-
4 BLE.—The provisions of paragraphs (5), (6)(A), (7),
5 and (9) of section 212(a) of the Immigration and
6 Nationality Act (8 U.S.C. 1182(a)) shall not apply.

7 (2) WAIVER OF OTHER GROUNDS.—

8 (A) IN GENERAL.—Except as provided in
9 subparagraph (B), the Secretary may waive any
10 other provision of such section 212(a) in the
11 case of individual aliens for humanitarian pur-
12 poses, to ensure family unity, or if otherwise in
13 the public interest.

14 (B) GROUNDS THAT MAY NOT BE
15 WAIVED.—Subparagraphs (A), (B), (C), (D),
16 (G), (H), and (I) of paragraph (2) and para-
17 graphs (3) and (4) of such section 212(a) may
18 not be waived by the Secretary under subpara-
19 graph (A).

20 (C) CONSTRUCTION.—Nothing in this
21 paragraph shall be construed as affecting the
22 authority of the Secretary other than under this
23 subparagraph to waive provisions of such sec-
24 tion 212(a).

1 (3) SPECIAL RULE FOR DETERMINATION OF
2 PUBLIC CHARGE.—An alien is not ineligible for blue
3 card status or an adjustment of status under section
4 103 by reason of a ground of inadmissibility under
5 section 212(a)(4) of the Immigration and Nation-
6 ality Act (8 U.S.C. 1182(a)(4)) if the alien dem-
7 onstrates a history of employment in the United
8 States evidencing self-support without reliance on
9 public cash assistance.

10 (c) TEMPORARY STAY OF REMOVAL AND WORK AU-
11 THORIZATION FOR CERTAIN APPLICANTS.—

12 (1) BEFORE APPLICATION PERIOD.—Effective
13 on the date of enactment of this Act, the Secretary
14 shall provide that, in the case of an alien who is ap-
15 prehended before the beginning of the application
16 period described in section 101(a)(2) and who can
17 establish a nonfrivolous case of eligibility for blue
18 card status (but for the fact that the alien may not
19 apply for such status until the beginning of such pe-
20 riod), until the alien has had the opportunity during
21 the first 30 days of the application period to com-
22 plete the filing of an application for blue card status,
23 the alien—

24 (A) may not be removed; and

1 (B) shall be granted authorization to en-
2 gage in employment in the United States and
3 be provided an employment authorized endorse-
4 ment or other appropriate work permit for such
5 purpose.

6 (2) DURING APPLICATION PERIOD.—The Sec-
7 retary shall provide that, in the case of an alien who
8 presents a nonfrivolous application for blue card sta-
9 tus during the application period described in section
10 101(a)(2), including an alien who files such an ap-
11 plication within 30 days of the alien’s apprehension,
12 and until a final determination on the application
13 has been made in accordance with this section, the
14 alien—

15 (A) may not be removed; and

16 (B) shall be granted authorization to en-
17 gage in employment in the United States and
18 be provided an employment authorized endorse-
19 ment or other appropriate work permit for such
20 purpose.

21 **SEC. 436. ADMINISTRATIVE AND JUDICIAL REVIEW.**

22 (a) IN GENERAL.—There shall be no administrative
23 or judicial review of a determination respecting an applica-
24 tion for blue card status or adjustment of status under
25 section 103 except in accordance with this section.

1 (b) ADMINISTRATIVE REVIEW.—

2 (1) SINGLE LEVEL OF ADMINISTRATIVE APPEL-
3 LATE REVIEW.—The Secretary shall establish an ap-
4 pellate authority to provide for a single level of ad-
5 ministrative appellate review of such a determina-
6 tion.

7 (2) STANDARD FOR REVIEW.—Such administra-
8 tive appellate review shall be based solely upon the
9 administrative record established at the time of the
10 determination on the application and upon such ad-
11 ditional or newly discovered evidence as may not
12 have been available at the time of the determination.

13 (c) JUDICIAL REVIEW.—

14 (1) LIMITATION TO REVIEW OF REMOVAL.—
15 There shall be judicial review of such a determina-
16 tion only in the judicial review of an order of re-
17 moval under section 242 of the Immigration and
18 Nationality Act (8 U.S.C. 1252).

19 (2) STANDARD FOR JUDICIAL REVIEW.—Such
20 judicial review shall be based solely upon the admin-
21 istrative record established at the time of the review
22 by the appellate authority and the findings of fact
23 and determinations contained in such record shall be
24 conclusive unless the applicant can establish abuse
25 of discretion or that the findings are directly con-

1 trary to clear and convincing facts contained in the
2 record considered as a whole.

3 **SEC. 437. USE OF INFORMATION.**

4 Beginning not later than the first day of the applica-
5 tion period described in section 101(a)(2), the Secretary,
6 in cooperation with qualified designated entities (as that
7 term is defined in section 104(b)), shall broadly dissemi-
8 nate information respecting the benefits that aliens may
9 receive under this subtitle and the requirements that an
10 alien is required to meet to receive such benefits.

11 **SEC. 438. REGULATIONS, EFFECTIVE DATE, AUTHORIZA-**
12 **TION OF APPROPRIATIONS.**

13 (a) **REGULATIONS.**—The Secretary shall issue regula-
14 tions to implement this subtitle not later than the first
15 day of the seventh month that begins after the date of
16 enactment of this Act.

17 (b) **EFFECTIVE DATE.**—This subtitle shall take effect
18 on the date that regulations required by subsection (a) are
19 issued, regardless of whether such regulations are issued
20 on an interim basis or on any other basis.

21 (c) **AUTHORIZATION OF APPROPRIATIONS.**—There
22 are authorized to be appropriated to the Secretary such
23 sums as may be necessary to implement this subtitle, in-
24 cluding any sums needed for costs associated with the ini-

1 tiation of such implementation, for fiscal years 2009 and
2 2010.

3 **Subchapter B—Correction of Social Security**
4 **Records**

5 **SEC. 441. CORRECTION OF SOCIAL SECURITY RECORDS.**

6 (a) IN GENERAL.—Section 208(e)(1) of the Social
7 Security Act (42 U.S.C. 408(e)(1)) is amended—

8 (1) in subparagraph (B)(ii), by striking “or” at
9 the end;

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

12 (3) by inserting after subparagraph (C) the fol-
13 lowing:

14 “(D) who is granted blue card status under the
15 Agricultural Job Opportunities, Benefits, and Secu-
16 rity Act of 2009”; and

17 (4) by striking “1990.” and inserting “1990, or
18 in the case of an alien described in subparagraph
19 (D), if such conduct is alleged to have occurred be-
20 fore the date on which the alien was granted blue
21 card status.”.

22 (b) EFFECTIVE DATE.—The amendments made by
23 subsection (a) shall take effect on the first day of the sev-
24 enth month that begins after the date of the enactment
25 of this Act.

1 **CHAPTER 3—REFORM OF H-2A WORKER**
2 **PROGRAM**

3 **SEC. 451. AMENDMENTS TO THE IMMIGRATION AND NA-**
4 **TIONALITY ACT.**

5 (a) IN GENERAL.—Title II of the Immigration and
6 Nationality Act (8 U.S.C. 1151 et seq.) is amended by
7 striking section 218 and inserting the following:

8 **“SEC. 218. H-2A EMPLOYER APPLICATIONS.**

9 “(a) APPLICATIONS TO THE SECRETARY OF
10 LABOR.—

11 “(1) IN GENERAL.—No alien may be admitted
12 to the United States as an H-2A worker, or other-
13 wise provided status as an H-2A worker, unless the
14 employer has filed with the Secretary of Labor an
15 application containing—

16 “(A) the assurances described in sub-
17 section (b);

18 “(B) a description of the nature and loca-
19 tion of the work to be performed;

20 “(C) the anticipated period (expected be-
21 ginning and ending dates) for which the work-
22 ers will be needed; and

23 “(D) the number of job opportunities in
24 which the employer seeks to employ the work-
25 ers.

1 “(2) ACCOMPANIED BY JOB OFFER.—Each ap-
2 plication filed under paragraph (1) shall be accom-
3 panied by a copy of the job offer describing the
4 wages and other terms and conditions of employ-
5 ment and the bona fide occupational qualifications
6 that shall be possessed by a worker to be employed
7 in the job opportunity in question.

8 “(b) ASSURANCES FOR INCLUSION IN APPLICA-
9 TIONS.—The assurances referred to in subsection (a)(1)
10 are the following:

11 “(1) JOB OPPORTUNITIES COVERED BY COL-
12 LECTIVE BARGAINING AGREEMENTS.—With respect
13 to a job opportunity that is covered under a collec-
14 tive bargaining agreement:

15 “(A) UNION CONTRACT DESCRIBED.—The
16 job opportunity is covered by a union contract
17 which was negotiated at arm’s length between a
18 bona fide union and the employer.

19 “(B) STRIKE OR LOCKOUT.—The specific
20 job opportunity for which the employer is re-
21 questing an H-2A worker is not vacant because
22 the former occupant is on strike or being locked
23 out in the course of a labor dispute.

24 “(C) NOTIFICATION OF BARGAINING REP-
25 RESENTATIVES.—The employer, at the time of

1 filing the application, has provided notice of the
2 filing under this paragraph to the bargaining
3 representative of the employer's employees in
4 the occupational classification at the place or
5 places of employment for which aliens are
6 sought.

7 “(D) TEMPORARY OR SEASONAL JOB OP-
8 PORTUNITIES.—The job opportunity is tem-
9 porary or seasonal.

10 “(E) OFFERS TO UNITED STATES WORK-
11 ERS.—The employer has offered or will offer
12 the job to any eligible United States worker
13 who applies and is equally or better qualified
14 for the job for which the nonimmigrant is, or
15 the nonimmigrants are, sought and who will be
16 available at the time and place of need.

17 “(F) PROVISION OF INSURANCE.—If the
18 job opportunity is not covered by the State
19 workers' compensation law, the employer will
20 provide, at no cost to the worker, insurance cov-
21 ering injury and disease arising out of, and in
22 the course of, the worker's employment which
23 will provide benefits at least equal to those pro-
24 vided under the State's workers' compensation
25 law for comparable employment.

1 “(2) JOB OPPORTUNITIES NOT COVERED BY
2 COLLECTIVE BARGAINING AGREEMENTS.—With re-
3 spect to a job opportunity that is not covered under
4 a collective bargaining agreement:

5 “(A) STRIKE OR LOCKOUT.—The specific
6 job opportunity for which the employer has ap-
7 plied for an H-2A worker is not vacant because
8 the former occupant is on strike or being locked
9 out in the course of a labor dispute.

10 “(B) TEMPORARY OR SEASONAL JOB OP-
11 PORTUNITIES.—The job opportunity is tem-
12 porary or seasonal.

13 “(C) BENEFIT, WAGE, AND WORKING CON-
14 DITIONS.—The employer will provide, at a min-
15 imum, the benefits, wages, and working condi-
16 tions required by section 218A to all workers
17 employed in the job opportunities for which the
18 employer has applied for an H-2A worker
19 under subsection (a) and to all other workers in
20 the same occupation at the place of employ-
21 ment.

22 “(D) NONDISPLACEMENT OF UNITED
23 STATES WORKERS.—The employer did not dis-
24 place and will not displace a United States
25 worker employed by the employer during the

1 period of employment and for a period of 30
2 days preceding the period of employment in the
3 occupation at the place of employment for
4 which the employer has applied for an H-2A
5 worker.

6 “(E) REQUIREMENTS FOR PLACEMENT OF
7 THE NONIMMIGRANT WITH OTHER EMPLOY-
8 ERS.—The employer will not place the non-
9 immigrant with another employer unless—

10 “(i) the nonimmigrant performs du-
11 ties in whole or in part at 1 or more work-
12 sites owned, operated, or controlled by
13 such other employer;

14 “(ii) there are indicia of an employ-
15 ment relationship between the non-
16 immigrant and such other employer; and

17 “(iii) the employer has inquired of the
18 other employer as to whether, and has no
19 actual knowledge or notice that, during the
20 period of employment and for a period of
21 30 days preceding the period of employ-
22 ment, the other employer has displaced or
23 intends to displace a United States worker
24 employed by the other employer in the oc-
25 cupation at the place of employment for

1 which the employer seeks approval to em-
2 ploy H-2A workers.

3 “(F) STATEMENT OF LIABILITY.—The ap-
4 plication form shall include a clear statement
5 explaining the liability under subparagraph (E)
6 of an employer if the other employer described
7 in such subparagraph displaces a United States
8 worker as described in such subparagraph.

9 “(G) PROVISION OF INSURANCE.—If the
10 job opportunity is not covered by the State
11 workers’ compensation law, the employer will
12 provide, at no cost to the worker, insurance cov-
13 ering injury and disease arising out of and in
14 the course of the worker’s employment which
15 will provide benefits at least equal to those pro-
16 vided under the State’s workers’ compensation
17 law for comparable employment.

18 “(H) EMPLOYMENT OF UNITED STATES
19 WORKERS.—

20 “(i) RECRUITMENT.—The employer
21 has taken or will take the following steps
22 to recruit United States workers for the
23 job opportunities for which the H-2A non-
24 immigrant is, or H-2A nonimmigrants are,
25 sought:

1 “(I) CONTACTING FORMER
2 WORKERS.—The employer shall make
3 reasonable efforts through the sending
4 of a letter by United States Postal
5 Service mail, or otherwise, to contact
6 any United States worker the em-
7 ployer employed during the previous
8 season in the occupation at the place
9 of intended employment for which the
10 employer is applying for workers and
11 has made the availability of the em-
12 ployer’s job opportunities in the occu-
13 pation at the place of intended em-
14 ployment known to such previous
15 workers, unless the worker was termi-
16 nated from employment by the em-
17 ployer for a lawful job-related reason
18 or abandoned the job before the work-
19 er completed the period of employ-
20 ment of the job opportunity for which
21 the worker was hired.

22 “(II) FILING A JOB OFFER WITH
23 THE LOCAL OFFICE OF THE STATE
24 EMPLOYMENT SECURITY AGENCY.—
25 Not later than 28 days before the

1 date on which the employer desires to
2 employ an H-2A worker in a tem-
3 porary or seasonal agricultural job op-
4 portunity, the employer shall submit a
5 copy of the job offer described in sub-
6 section (a)(2) to the local office of the
7 State employment security agency
8 which serves the area of intended em-
9 ployment and authorize the posting of
10 the job opportunity on ‘America’s Job
11 Bank’ or other electronic job registry,
12 except that nothing in this subclause
13 shall require the employer to file an
14 interstate job order under section 653
15 of title 20, Code of Federal Regula-
16 tions.

17 “(III) ADVERTISING OF JOB OP-
18 PORTUNITIES.—Not later than 14
19 days before the date on which the em-
20 ployer desires to employ an H-2A
21 worker in a temporary or seasonal ag-
22 ricultural job opportunity, the em-
23 ployer shall advertise the availability
24 of the job opportunities for which the
25 employer is seeking workers in a pub-

1 lication in the local labor market that
2 is likely to be patronized by potential
3 farm workers.

4 “(IV) EMERGENCY PROCE-
5 DURES.—The Secretary of Labor
6 shall, by regulation, provide a proce-
7 dure for acceptance and approval of
8 applications in which the employer
9 has not complied with the provisions
10 of this subparagraph because the em-
11 ployer’s need for H–2A workers could
12 not reasonably have been foreseen.

13 “(ii) JOB OFFERS.—The employer has
14 offered or will offer the job to any eligible
15 United States worker who applies and is
16 equally or better qualified for the job for
17 which the nonimmigrant is, or non-
18 immigrants are, sought and who will be
19 available at the time and place of need.

20 “(iii) PERIOD OF EMPLOYMENT.—The
21 employer will provide employment to any
22 qualified United States worker who applies
23 to the employer during the period begin-
24 ning on the date on which the H–2A work-
25 er departs for the employer’s place of em-

1 employment and ending on the date on which
2 50 percent of the period of employment for
3 which the H-2A worker who is in the job
4 was hired has elapsed, subject to the fol-
5 lowing requirements:

6 “(I) PROHIBITION.—No person
7 or entity shall willfully and knowingly
8 withhold United States workers before
9 the arrival of H-2A workers in order
10 to force the hiring of United States
11 workers under this clause.

12 “(II) COMPLAINTS.—Upon re-
13 ceipt of a complaint by an employer
14 that a violation of subclause (I) has
15 occurred, the Secretary of Labor shall
16 immediately investigate. The Sec-
17 retary of Labor shall, within 36 hours
18 of the receipt of the complaint, issue
19 findings concerning the alleged viola-
20 tion. If the Secretary of Labor finds
21 that a violation has occurred, the Sec-
22 retary of Labor shall immediately sus-
23 pend the application of this clause
24 with respect to that certification for
25 that date of need.

1 “(III) PLACEMENT OF UNITED
2 STATES WORKERS.—Before referring
3 a United States worker to an em-
4 ployer during the period described in
5 the matter preceding subclause (I),
6 the Secretary of Labor shall make all
7 reasonable efforts to place the United
8 States worker in an open job accept-
9 able to the worker, if there are other
10 job offers pending with the job service
11 that offer similar job opportunities in
12 the area of intended employment.

13 “(iv) STATUTORY CONSTRUCTION.—
14 Nothing in this subparagraph shall be con-
15 strued to prohibit an employer from using
16 such legitimate selection criteria relevant
17 to the type of job that are normal or cus-
18 tomary to the type of job involved so long
19 as such criteria are not applied in a dis-
20 criminatory manner.

21 “(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF
22 OF EMPLOYER MEMBERS.—

23 “(1) IN GENERAL.—An agricultural association
24 may file an application under subsection (a) on be-
25 half of 1 or more of its employer members that the

1 association certifies in its application has or have
2 agreed in writing to comply with the requirements of
3 this section and sections 218A, 218B, and 218C.

4 “(2) TREATMENT OF ASSOCIATIONS ACTING AS
5 EMPLOYERS.—If an association filing an application
6 under paragraph (1) is a joint or sole employer of
7 the temporary or seasonal agricultural workers re-
8 quested on the application, the certifications granted
9 under subsection (e)(2)(B) to the association may be
10 used for the certified job opportunities of any of its
11 producer members named on the application, and
12 such workers may be transferred among such pro-
13 ducer members to perform the agricultural services
14 of a temporary or seasonal nature for which the cer-
15 tifications were granted.

16 “(d) WITHDRAWAL OF APPLICATIONS.—

17 “(1) IN GENERAL.—An employer may withdraw
18 an application filed pursuant to subsection (a), ex-
19 cept that if the employer is an agricultural associa-
20 tion, the association may withdraw an application
21 filed pursuant to subsection (a) with respect to 1 or
22 more of its members. To withdraw an application,
23 the employer or association shall notify the Sec-
24 retary of Labor in writing, and the Secretary of
25 Labor shall acknowledge in writing the receipt of

1 such withdrawal notice. An employer who withdraws
2 an application under subsection (a), or on whose be-
3 half an application is withdrawn, is relieved of the
4 obligations undertaken in the application.

5 “(2) LIMITATION.—An application may not be
6 withdrawn while any alien provided status under sec-
7 tion 101(a)(15)(H)(ii)(a) pursuant to such applica-
8 tion is employed by the employer.

9 “(3) OBLIGATIONS UNDER OTHER STATUTES.—
10 Any obligation incurred by an employer under any
11 other law or regulation as a result of the recruit-
12 ment of United States workers or H-2A workers
13 under an offer of terms and conditions of employ-
14 ment required as a result of making an application
15 under subsection (a) is unaffected by withdrawal of
16 such application.

17 “(e) REVIEW AND APPROVAL OF APPLICATIONS.—

18 “(1) RESPONSIBILITY OF EMPLOYERS.—The
19 employer shall make available for public examina-
20 tion, within 1 working day after the date on which
21 an application under subsection (a) is filed, at the
22 employer’s principal place of business or worksite, a
23 copy of each such application (and such accom-
24 panying documents as are necessary).

1 “(2) RESPONSIBILITY OF THE SECRETARY OF
2 LABOR.—

3 “(A) COMPILATION OF LIST.—The Sec-
4 retary of Labor shall compile, on a current
5 basis, a list (by employer and by occupational
6 classification) of the applications filed under
7 subsection (a). Such list shall include the wage
8 rate, number of workers sought, period of in-
9 tended employment, and date of need. The Sec-
10 retary of Labor shall make such list available
11 for examination in the District of Columbia.

12 “(B) REVIEW OF APPLICATIONS.—The
13 Secretary of Labor shall review such an applica-
14 tion only for completeness and obvious inac-
15 curacies. Unless the Secretary of Labor finds
16 that the application is incomplete or obviously
17 inaccurate, the Secretary of Labor shall certify
18 that the intending employer has filed with the
19 Secretary of Labor an application as described
20 in subsection (a). Such certification shall be
21 provided within 7 days of the filing of the appli-
22 cation.”

23 **“SEC. 218A. H-2A EMPLOYMENT REQUIREMENTS.**

24 “(a) PREFERENTIAL TREATMENT OF ALIENS PRO-
25 HIBITED.—Employers seeking to hire United States work-

1 ers shall offer the United States workers no less than the
2 same benefits, wages, and working conditions that the em-
3 ployer is offering, intends to offer, or will provide to H-
4 2A workers. Conversely, no job offer may impose on
5 United States workers any restrictions or obligations
6 which will not be imposed on the employer's H-2A work-
7 ers.

8 “(b) MINIMUM BENEFITS, WAGES, AND WORKING
9 CONDITIONS.—Except in cases where higher benefits,
10 wages, or working conditions are required by the provi-
11 sions of subsection (a), in order to protect similarly em-
12 ployed United States workers from adverse effects with
13 respect to benefits, wages, and working conditions, every
14 job offer which shall accompany an application under sec-
15 tion 218(b)(2) shall include each of the following benefit,
16 wage, and working condition provisions:

17 “(1) REQUIREMENT TO PROVIDE HOUSING OR A
18 HOUSING ALLOWANCE.—

19 “(A) IN GENERAL.—An employer applying
20 under section 218(a) for H-2A workers shall
21 offer to provide housing at no cost to all work-
22 ers in job opportunities for which the employer
23 has applied under that section and to all other
24 workers in the same occupation at the place of

1 employment, whose place of residence is beyond
2 normal commuting distance.

3 “(B) TYPE OF HOUSING.—In complying
4 with subparagraph (A), an employer may, at
5 the employer’s election, provide housing that
6 meets applicable Federal standards for tem-
7 porary labor camps or secure housing that
8 meets applicable local standards for rental or
9 public accommodation housing or other sub-
10 stantially similar class of habitation, or in the
11 absence of applicable local standards, State
12 standards for rental or public accommodation
13 housing or other substantially similar class of
14 habitation. In the absence of applicable local or
15 State standards, Federal temporary labor camp
16 standards shall apply.

17 “(C) FAMILY HOUSING.—If it is the pre-
18 vailing practice in the occupation and area of
19 intended employment to provide family housing,
20 family housing shall be provided to workers
21 with families who request it.

22 “(D) WORKERS ENGAGED IN THE RANGE
23 PRODUCTION OF LIVESTOCK.—The Secretary of
24 Labor shall issue regulations that address the
25 specific requirements for the provision of hous-

1 ing to workers engaged in the range production
2 of livestock.

3 “(E) LIMITATION.—Nothing in this para-
4 graph shall be construed to require an employer
5 to provide or secure housing for persons who
6 were not entitled to such housing under the
7 temporary labor certification regulations in ef-
8 fect on June 1, 1986.

9 “(F) CHARGES FOR HOUSING.—

10 “(i) CHARGES FOR PUBLIC HOUS-
11 ING.—If public housing provided for mi-
12 grant agricultural workers under the aus-
13 pices of a local, county, or State govern-
14 ment is secured by an employer, and use of
15 the public housing unit normally requires
16 charges from migrant workers, such
17 charges shall be paid by the employer di-
18 rectly to the appropriate individual or enti-
19 ty affiliated with the housing’s manage-
20 ment.

21 “(ii) DEPOSIT CHARGES.—Charges in
22 the form of deposits for bedding or other
23 similar incidentals related to housing shall
24 not be levied upon workers by employers
25 who provide housing for their workers. An

1 employer may require a worker found to
2 have been responsible for damage to such
3 housing which is not the result of normal
4 wear and tear related to habitation to re-
5 imburse the employer for the reasonable
6 cost of repair of such damage.

7 “(G) HOUSING ALLOWANCE AS ALTER-
8 NATIVE.—

9 “(i) IN GENERAL.—If the requirement
10 set out in clause (ii) is satisfied, the em-
11 ployer may provide a reasonable housing
12 allowance instead of offering housing
13 under subparagraph (A). Upon the request
14 of a worker seeking assistance in locating
15 housing, the employer shall make a good
16 faith effort to assist the worker in identi-
17 fying and locating housing in the area of
18 intended employment. An employer who of-
19 fers a housing allowance to a worker, or
20 assists a worker in locating housing which
21 the worker occupies, pursuant to this
22 clause shall not be deemed a housing pro-
23 vider under section 203 of the Migrant and
24 Seasonal Agricultural Worker Protection
25 Act (29 U.S.C. 1823) solely by virtue of

1 providing such housing allowance. No
2 housing allowance may be used for housing
3 which is owned or controlled by the em-
4 ployer.

5 “(ii) CERTIFICATION.—The require-
6 ment of this clause is satisfied if the Gov-
7 ernor of the State certifies to the Secretary
8 of Labor that there is adequate housing
9 available in the area of intended employ-
10 ment for migrant farm workers and H-2A
11 workers who are seeking temporary hous-
12 ing while employed in agricultural work.
13 Such certification shall expire after 3 years
14 unless renewed by the Governor of the
15 State.

16 “(iii) AMOUNT OF ALLOWANCE.—

17 “(I) NONMETROPOLITAN COUN-
18 TIES.—If the place of employment of
19 the workers provided an allowance
20 under this subparagraph is a non-
21 metropolitan county, the amount of
22 the housing allowance under this sub-
23 paragraph shall be equal to the state-
24 wide average fair market rental for
25 existing housing for nonmetropolitan

1 counties for the State, as established
2 by the Secretary of Housing and
3 Urban Development pursuant to sec-
4 tion 8(c) of the United States Hous-
5 ing Act of 1937 (42 U.S.C. 1437f(c)),
6 based on a 2-bedroom dwelling unit
7 and an assumption of 2 persons per
8 bedroom.

9 “(II) METROPOLITAN COUN-
10 TIES.—If the place of employment of
11 the workers provided an allowance
12 under this paragraph is in a metro-
13 politan county, the amount of the
14 housing allowance under this subpara-
15 graph shall be equal to the statewide
16 average fair market rental for existing
17 housing for metropolitan counties for
18 the State, as established by the Sec-
19 retary of Housing and Urban Devel-
20 opment pursuant to section 8(c) of
21 the United States Housing Act of
22 1937 (42 U.S.C. 1437f(c)), based on
23 a 2-bedroom dwelling unit and an as-
24 sumption of 2 persons per bedroom.

25 “(2) REIMBURSEMENT OF TRANSPORTATION.—

1 “(A) TO PLACE OF EMPLOYMENT.—A
2 worker who completes 50 percent of the period
3 of employment of the job opportunity for which
4 the worker was hired shall be reimbursed by the
5 employer for the cost of the worker’s transpor-
6 tation and subsistence from the place from
7 which the worker came to work for the em-
8 ployer (or place of last employment, if the
9 worker traveled from such place) to the place of
10 employment.

11 “(B) FROM PLACE OF EMPLOYMENT.—A
12 worker who completes the period of employment
13 for the job opportunity involved shall be reim-
14 bursed by the employer for the cost of the
15 worker’s transportation and subsistence from
16 the place of employment to the place from
17 which the worker, disregarding intervening em-
18 ployment, came to work for the employer, or to
19 the place of next employment, if the worker has
20 contracted with a subsequent employer who has
21 not agreed to provide or pay for the worker’s
22 transportation and subsistence to such subse-
23 quent employer’s place of employment.

24 “(C) LIMITATION.—

1 “(i) AMOUNT OF REIMBURSEMENT.—

2 Except as provided in clause (ii), the
3 amount of reimbursement provided under
4 subparagraph (A) or (B) to a worker or
5 alien shall not exceed the lesser of—

6 “(I) the actual cost to the worker
7 or alien of the transportation and sub-
8 sistence involved; or

9 “(II) the most economical and
10 reasonable common carrier transpor-
11 tation charges and subsistence costs
12 for the distance involved.

13 “(ii) DISTANCE TRAVELED.—No reim-
14 bursement under subparagraph (A) or (B)
15 shall be required if the distance traveled is
16 100 miles or less, or the worker is not re-
17 siding in employer-provided housing or
18 housing secured through an allowance as
19 provided in paragraph (1)(G).

20 “(D) EARLY TERMINATION.—If the worker
21 is laid off or employment is terminated for con-
22 tract impossibility (as described in paragraph
23 (4)(D)) before the anticipated ending date of
24 employment, the employer shall provide the
25 transportation and subsistence required by sub-

1 paragraph (B) and, notwithstanding whether
2 the worker has completed 50 percent of the pe-
3 riod of employment, shall provide the transpor-
4 tation reimbursement required by subparagraph
5 (A).

6 “(E) TRANSPORTATION BETWEEN LIVING
7 QUARTERS AND WORKSITE.—The employer
8 shall provide transportation between the work-
9 er’s living quarters and the employer’s worksite
10 without cost to the worker, and such transpor-
11 tation will be in accordance with applicable laws
12 and regulations.

13 “(3) REQUIRED WAGES.—

14 “(A) IN GENERAL.—An employer applying
15 for workers under section 218(a) shall offer to
16 pay, and shall pay, all workers in the occupa-
17 tion for which the employer has applied for
18 workers, not less (and is not required to pay
19 more) than the greater of the prevailing wage
20 in the occupation in the area of intended em-
21 ployment or the adverse effect wage rate. No
22 worker shall be paid less than the greater of the
23 hourly wage prescribed under section 6(a)(1) of
24 the Fair Labor Standards Act of 1938 (29

1 U.S.C. 206(a)(1)) or the applicable State min-
2 imum wage.

3 “(B) LIMITATION.—Effective on the date
4 of the enactment of the Agricultural Job Op-
5 portunities, Benefits, and Security Act of 2009
6 and continuing for 3 years thereafter, no ad-
7 verse effect wage rate for a State may be more
8 than the adverse effect wage rate for that State
9 in effect on January 1, 2009, as established by
10 section 655.107 of title 20, Code of Federal
11 Regulations.

12 “(C) REQUIRED WAGES AFTER 3-YEAR
13 FREEZE.—

14 “(i) FIRST ADJUSTMENT.—If Con-
15 gress does not set a new wage standard
16 applicable to this section before the first
17 March 1 that is not less than 3 years after
18 the date of enactment of this section, the
19 adverse effect wage rate for each State be-
20 ginning on such March 1 shall be the wage
21 rate that would have resulted if the ad-
22 verse effect wage rate in effect on January
23 1, 2009, had been annually adjusted, be-
24 ginning on March 1, 2012, by the lesser
25 of—

1 “(I) the 12-month percentage
2 change in the Consumer Price Index
3 for All Urban Consumers between De-
4 cember of the second preceding year
5 and December of the preceding year;
6 and

7 “(II) 4 percent.

8 “(ii) SUBSEQUENT ANNUAL ADJUST-
9 MENTS.—Beginning on the first March 1
10 that is not less than 4 years after the date
11 of enactment of this section, and each
12 March 1 thereafter, the adverse effect
13 wage rate then in effect for each State
14 shall be adjusted by the lesser of—

15 “(I) the 12-month percentage
16 change in the Consumer Price Index
17 for All Urban Consumers between De-
18 cember of the second preceding year
19 and December of the preceding year;
20 and

21 “(II) 4 percent.

22 “(D) DEDUCTIONS.—The employer shall
23 make only those deductions from the worker’s
24 wages that are authorized by law or are reason-
25 able and customary in the occupation and area

1 of employment. The job offer shall specify all
2 deductions not required by law which the em-
3 ployer will make from the worker's wages.

4 “(E) FREQUENCY OF PAY.—The employer
5 shall pay the worker not less frequently than
6 twice monthly, or in accordance with the pre-
7 vailing practice in the area of employment,
8 whichever is more frequent.

9 “(F) HOURS AND EARNINGS STATE-
10 MENTS.—The employer shall furnish to the
11 worker, on or before each payday, in 1 or more
12 written statements—

13 “(i) the worker's total earnings for
14 the pay period;

15 “(ii) the worker's hourly rate of pay,
16 piece rate of pay, or both;

17 “(iii) the hours of employment which
18 have been offered to the worker (broken
19 out by hours offered in accordance with
20 and over and above the $\frac{3}{4}$ guarantee de-
21 scribed in paragraph (4);

22 “(iv) the hours actually worked by the
23 worker;

24 “(v) an itemization of the deductions
25 made from the worker's wages; and

1 “(vi) if piece rates of pay are used,
2 the units produced daily.

3 “(G) REPORT ON WAGE PROTECTIONS.—
4 Not later than December 31, 2011, the Comp-
5 troller General of the United States shall pre-
6 pare and transmit to the Secretary of Labor,
7 the Committee on the Judiciary of the Senate,
8 and Committee on the Judiciary of the House
9 of Representatives, a report that addresses—

10 “(i) whether the employment of H-2A
11 or unauthorized aliens in the United States
12 agricultural workforce has depressed
13 United States farm worker wages below
14 the levels that would otherwise have pre-
15 vailed if alien farm workers had not been
16 employed in the United States;

17 “(ii) whether an adverse effect wage
18 rate is necessary to prevent wages of
19 United States farm workers in occupations
20 in which H-2A workers are employed from
21 falling below the wage levels that would
22 have prevailed in the absence of the em-
23 ployment of H-2A workers in those occu-
24 pations;

1 “(iii) whether alternative wage stand-
2 ards, such as a prevailing wage standard,
3 would be sufficient to prevent wages in oc-
4 cupations in which H–2A workers are em-
5 ployed from falling below the wage level
6 that would have prevailed in the absence of
7 H–2A employment;

8 “(iv) whether any changes are war-
9 ranted in the current methodologies for
10 calculating the adverse effect wage rate
11 and the prevailing wage; and

12 “(v) recommendations for future wage
13 protection under this section.

14 “(H) COMMISSION ON WAGE STAND-
15 ARDS.—

16 “(i) ESTABLISHMENT.—There is es-
17 tablished the Commission on Agricultural
18 Wage Standards under the H–2A program
19 (in this subparagraph referred to as the
20 ‘Commission’).

21 “(ii) COMPOSITION.—The Commission
22 shall consist of 10 members as follows:

23 “(I) Four representatives of agri-
24 cultural employers and 1 representa-
25 tive of the Department of Agriculture,

1 each appointed by the Secretary of
2 Agriculture.

3 “(II) Four representatives of ag-
4 ricultural workers and 1 representa-
5 tive of the Department of Labor, each
6 appointed by the Secretary of Labor.

7 “(iii) FUNCTIONS.—The Commission
8 shall conduct a study that shall address—

9 “(I) whether the employment of
10 H-2A or unauthorized aliens in the
11 United States agricultural workforce
12 has depressed United States farm
13 worker wages below the levels that
14 would otherwise have prevailed if alien
15 farm workers had not been employed
16 in the United States;

17 “(II) whether an adverse effect
18 wage rate is necessary to prevent
19 wages of United States farm workers
20 in occupations in which H-2A work-
21 ers are employed from falling below
22 the wage levels that would have pre-
23 vailed in the absence of the employ-
24 ment of H-2A workers in those occu-
25 pations;

1 “(III) whether alternative wage
2 standards, such as a prevailing wage
3 standard, would be sufficient to pre-
4 vent wages in occupations in which
5 H-2A workers are employed from fall-
6 ing below the wage level that would
7 have prevailed in the absence of H-2A
8 employment;

9 “(IV) whether any changes are
10 warranted in the current methodolo-
11 gies for calculating the adverse effect
12 wage rate and the prevailing wage
13 rate; and

14 “(V) recommendations for future
15 wage protection under this section.

16 “(iv) FINAL REPORT.—Not later than
17 December 31, 2011, the Commission shall
18 submit a report to the Congress setting
19 forth the findings of the study conducted
20 under clause (iii).

21 “(v) TERMINATION DATE.—The Com-
22 mission shall terminate upon submitting
23 its final report.

24 “(4) GUARANTEE OF EMPLOYMENT.—

1 “(A) OFFER TO WORKER.—The employer
2 shall guarantee to offer the worker employment
3 for the hourly equivalent of at least $\frac{3}{4}$ of the
4 work days of the total period of employment,
5 beginning with the first work day after the ar-
6 rival of the worker at the place of employment
7 and ending on the expiration date specified in
8 the job offer. For purposes of this subpara-
9 graph, the hourly equivalent means the number
10 of hours in the work days as stated in the job
11 offer and shall exclude the worker’s Sabbath
12 and Federal holidays. If the employer affords
13 the United States or H–2A worker less employ-
14 ment than that required under this paragraph,
15 the employer shall pay such worker the amount
16 which the worker would have earned had the
17 worker, in fact, worked for the guaranteed
18 number of hours.

19 “(B) FAILURE TO WORK.—Any hours
20 which the worker fails to work, up to a max-
21 imum of the number of hours specified in the
22 job offer for a work day, when the worker has
23 been offered an opportunity to do so, and all
24 hours of work actually performed (including vol-
25 untary work in excess of the number of hours

1 specified in the job offer in a work day, on the
2 worker's Sabbath, or on Federal holidays) may
3 be counted by the employer in calculating
4 whether the period of guaranteed employment
5 has been met.

6 “(C) ABANDONMENT OF EMPLOYMENT,
7 TERMINATION FOR CAUSE.—If the worker vol-
8 untarily abandons employment before the end
9 of the contract period, or is terminated for
10 cause, the worker is not entitled to the ‘ $\frac{3}{4}$
11 guarantee’ described in subparagraph (A).

12 “(D) CONTRACT IMPOSSIBILITY.—If, be-
13 fore the expiration of the period of employment
14 specified in the job offer, the services of the
15 worker are no longer required for reasons be-
16 yond the control of the employer due to any
17 form of natural disaster, including a flood, hur-
18 ricane, freeze, earthquake, fire, drought, plant
19 or animal disease or pest infestation, or regu-
20 latory drought, before the guarantee in sub-
21 paragraph (A) is fulfilled, the employer may
22 terminate the worker's employment. In the
23 event of such termination, the employer shall
24 fulfill the employment guarantee in subpara-
25 graph (A) for the work days that have elapsed

1 from the first work day after the arrival of the
2 worker to the termination of employment. In
3 such cases, the employer will make efforts to
4 transfer the United States worker to other com-
5 parable employment acceptable to the worker. If
6 such transfer is not effected, the employer shall
7 provide the return transportation required in
8 paragraph (2)(D).

9 “(5) MOTOR VEHICLE SAFETY.—

10 “(A) MODE OF TRANSPORTATION SUBJECT
11 TO COVERAGE.—

12 “(i) IN GENERAL.—Except as pro-
13 vided in clauses (iii) and (iv), this sub-
14 section applies to any H-2A employer that
15 uses or causes to be used any vehicle to
16 transport an H-2A worker within the
17 United States.

18 “(ii) DEFINED TERM.—In this para-
19 graph, the term ‘uses or causes to be
20 used’—

21 “(I) applies only to transpor-
22 tation provided by an H-2A employer
23 to an H-2A worker, or by a farm
24 labor contractor to an H-2A worker

1 at the request or direction of an H–
2 2A employer; and

3 “(II) does not apply to—

4 “(aa) transportation pro-
5 vided, or transportation arrange-
6 ments made, by an H–2A work-
7 er, unless the employer specifi-
8 cally requested or arranged such
9 transportation; or

10 “(bb) car pooling arrange-
11 ments made by H–2A workers
12 themselves, using 1 of the work-
13 ers’ own vehicles, unless specifi-
14 cally requested by the employer
15 directly or through a farm labor
16 contractor.

17 “(iii) CLARIFICATION.—Providing a
18 job offer to an H–2A worker that causes
19 the worker to travel to or from the place
20 of employment, or the payment or reim-
21 bursement of the transportation costs of
22 an H–2A worker by an H–2A employer,
23 shall not constitute an arrangement of, or
24 participation in, such transportation.

1 “(iv) AGRICULTURAL MACHINERY AND
2 EQUIPMENT EXCLUDED.—This subsection
3 does not apply to the transportation of an
4 H-2A worker on a tractor, combine, har-
5 vester, picker, or other similar machinery
6 or equipment while such worker is actually
7 engaged in the planting, cultivating, or
8 harvesting of agricultural commodities or
9 the care of livestock or poultry or engaged
10 in transportation incidental thereto.

11 “(v) COMMON CARRIERS EX-
12 CLUDED.—This subsection does not apply
13 to common carrier motor vehicle transpor-
14 tation in which the provider holds itself out
15 to the general public as engaging in the
16 transportation of passengers for hire and
17 holds a valid certification of authorization
18 for such purposes from an appropriate
19 Federal, State, or local agency.

20 “(B) APPLICABILITY OF STANDARDS, LI-
21 CENSING, AND INSURANCE REQUIREMENTS.—

22 “(i) IN GENERAL.—When using, or
23 causing to be used, any vehicle for the pur-
24 pose of providing transportation to which

1 this subparagraph applies, each employer
2 shall—

3 “(I) ensure that each such vehi-
4 cle conforms to the standards pre-
5 scribed by the Secretary of Labor
6 under section 401(b) of the Migrant
7 and Seasonal Agricultural Worker
8 Protection Act (29 U.S.C. 1841(b))
9 and other applicable Federal and
10 State safety standards;

11 “(II) ensure that each driver has
12 a valid and appropriate license, as
13 provided by State law, to operate the
14 vehicle; and

15 “(III) have an insurance policy
16 or a liability bond that is in effect
17 which insures the employer against li-
18 ability for damage to persons or prop-
19 erty arising from the ownership, oper-
20 ation, or causing to be operated, of
21 any vehicle used to transport any H-
22 2A worker.

23 “(ii) AMOUNT OF INSURANCE RE-
24 QUIRED.—The level of insurance required
25 shall be determined by the Secretary of

1 Labor pursuant to regulations to be issued
2 under this subsection.

3 “(iii) EFFECT OF WORKERS’ COM-
4 PENSATION COVERAGE.—If the employer
5 of any H-2A worker provides workers’
6 compensation coverage for such worker in
7 the case of bodily injury or death as pro-
8 vided by State law, the following adjust-
9 ments in the requirements of subparagraph
10 (B)(i)(III) relating to having an insurance
11 policy or liability bond apply:

12 “(I) No insurance policy or liabil-
13 ity bond shall be required of the em-
14 ployer, if such workers are trans-
15 ported only under circumstances for
16 which there is coverage under such
17 State law.

18 “(II) An insurance policy or li-
19 ability bond shall be required of the
20 employer for circumstances under
21 which coverage for the transportation
22 of such workers is not provided under
23 such State law.

24 “(c) COMPLIANCE WITH LABOR LAWS.—An em-
25 ployer shall assure that, except as otherwise provided in

1 this section, the employer will comply with all applicable
2 Federal, State, and local labor laws, including laws affect-
3 ing migrant and seasonal agricultural workers, with re-
4 spect to all United States workers and alien workers em-
5 ployed by the employer, except that a violation of this as-
6 surance shall not constitute a violation of the Migrant and
7 Seasonal Agricultural Worker Protection Act (29 U.S.C.
8 1801 et seq.).

9 “(d) COPY OF JOB OFFER.—The employer shall pro-
10 vide to the worker, not later than the day the work com-
11 mences, a copy of the employer’s application and job offer
12 described in section 218(a), or, if the employer will require
13 the worker to enter into a separate employment contract
14 covering the employment in question, such separate em-
15 ployment contract.

16 “(e) RANGE PRODUCTION OF LIVESTOCK.—Nothing
17 in this section, section 218, or section 218B shall preclude
18 the Secretary of Labor and the Secretary from continuing
19 to apply special procedures and requirements to the ad-
20 mission and employment of aliens in occupations involving
21 the range production of livestock.

22 **“SEC. 218B. PROCEDURE FOR ADMISSION AND EXTENSION**
23 **OF STAY OF H-2A WORKERS.**

24 “(a) PETITIONING FOR ADMISSION.—An employer,
25 or an association acting as an agent or joint employer for

1 its members, that seeks the admission into the United
2 States of an H-2A worker may file a petition with the
3 Secretary. The petition shall be accompanied by an accept-
4 ed and currently valid certification provided by the Sec-
5 retary of Labor under section 218(e)(2)(B) covering the
6 petitioner.

7 “(b) EXPEDITED ADJUDICATION BY THE SEC-
8 RETARY.—The Secretary shall establish a procedure for
9 expedited adjudication of petitions filed under subsection
10 (a) and within 7 working days shall, by fax, cable, or other
11 means assuring expedited delivery, transmit a copy of no-
12 tice of action on the petition to the petitioner and, in the
13 case of approved petitions, to the appropriate immigration
14 officer at the port of entry or United States consulate (as
15 the case may be) where the petitioner has indicated that
16 the alien beneficiary (or beneficiaries) will apply for a visa
17 or admission to the United States.

18 “(c) CRITERIA FOR ADMISSIBILITY.—

19 “(1) IN GENERAL.—An H-2A worker shall be
20 considered admissible to the United States if the
21 alien is otherwise admissible under this section, sec-
22 tion 218, and section 218A, and the alien is not in-
23 eligible under paragraph (2).

24 “(2) DISQUALIFICATION.—An alien shall be
25 considered inadmissible to the United States and in-

1 eligible for nonimmigrant status under section
2 101(a)(15)(H)(ii)(a) if the alien has, at any time
3 during the past 5 years—

4 “(A) violated a material provision of this
5 section, including the requirement to promptly
6 depart the United States when the alien’s au-
7 thorized period of admission under this section
8 has expired; or

9 “(B) otherwise violated a term or condition
10 of admission into the United States as a non-
11 immigrant, including overstaying the period of
12 authorized admission as such a nonimmigrant.

13 “(3) WAIVER OF INELIGIBILITY FOR UNLAW-
14 FUL PRESENCE.—

15 “(A) IN GENERAL.—An alien who has not
16 previously been admitted into the United States
17 pursuant to this section, and who is otherwise
18 eligible for admission in accordance with para-
19 graphs (1) and (2), shall not be deemed inad-
20 missible by virtue of section 212(a)(9)(B). If an
21 alien described in the preceding sentence is
22 present in the United States, the alien may
23 apply from abroad for H-2A status, but may
24 not be granted that status in the United States.

1 “(B) MAINTENANCE OF WAIVER.—An
2 alien provided an initial waiver of ineligibility
3 pursuant to subparagraph (A) shall remain eli-
4 gible for such waiver unless the alien violates
5 the terms of this section or again becomes ineli-
6 gible under section 212(a)(9)(B) by virtue of
7 unlawful presence in the United States after
8 the date of the initial waiver of ineligibility pur-
9 suant to subparagraph (A).

10 “(d) PERIOD OF ADMISSION.—

11 “(1) IN GENERAL.—The alien shall be admitted
12 for the period of employment in the application cer-
13 tified by the Secretary of Labor pursuant to section
14 218(e)(2)(B), not to exceed 10 months, supple-
15 mented by a period of not more than 1 week before
16 the beginning of the period of employment for the
17 purpose of travel to the worksite and a period of 14
18 days following the period of employment for the pur-
19 pose of departure or extension based on a subse-
20 quent offer of employment, except that—

21 “(A) the alien is not authorized to be em-
22 ployed during such 14-day period except in the
23 employment for which the alien was previously
24 authorized; and

1 “(B) the total period of employment, in-
2 cluding such 14-day period, may not exceed 10
3 months.

4 “(2) CONSTRUCTION.—Nothing in this sub-
5 section shall limit the authority of the Secretary to
6 extend the stay of the alien under any other provi-
7 sion of this Act.

8 “(e) ABANDONMENT OF EMPLOYMENT.—

9 “(1) IN GENERAL.—An alien admitted or pro-
10 vided status under section 101(a)(15)(H)(ii)(a) who
11 abandons the employment which was the basis for
12 such admission or status shall be considered to have
13 failed to maintain nonimmigrant status as an H–2A
14 worker and shall depart the United States or be sub-
15 ject to removal under section 237(a)(1)(C)(i).

16 “(2) REPORT BY EMPLOYER.—The employer, or
17 association acting as agent for the employer, shall
18 notify the Secretary not later than 7 days after an
19 H–2A worker prematurely abandons employment.

20 “(3) REMOVAL BY THE SECRETARY.—The Sec-
21 retary shall promptly remove from the United States
22 any H–2A worker who violates any term or condi-
23 tion of the worker’s nonimmigrant status.

24 “(4) VOLUNTARY TERMINATION.—Notwith-
25 standing paragraph (1), an alien may voluntarily

1 terminate his or her employment if the alien prompt-
2 ly departs the United States upon termination of
3 such employment.

4 “(f) REPLACEMENT OF ALIEN.—

5 “(1) IN GENERAL.—Upon presentation of the
6 notice to the Secretary required by subsection (e)(2),
7 the Secretary of State shall promptly issue a visa to,
8 and the Secretary shall admit into the United
9 States, an eligible alien designated by the employer
10 to replace an H-2A worker—

11 “(A) who abandons or prematurely termi-
12 nates employment; or

13 “(B) whose employment is terminated
14 after a United States worker is employed pur-
15 suant to section 218(b)(2)(H)(iii), if the United
16 States worker voluntarily departs before the
17 end of the period of intended employment or if
18 the employment termination is for a lawful job-
19 related reason.

20 “(2) CONSTRUCTION.—Nothing in this sub-
21 section is intended to limit any preference required
22 to be accorded United States workers under any
23 other provision of this Act.

24 “(g) IDENTIFICATION DOCUMENT.—

1 “(1) IN GENERAL.—Each alien authorized to be
2 admitted under section 101(a)(15)(H)(ii)(a) shall be
3 provided an identification and employment eligibility
4 document to verify eligibility for employment in the
5 United States and verify the alien’s identity.

6 “(2) REQUIREMENTS.—No identification and
7 employment eligibility document may be issued
8 which does not meet the following requirements:

9 “(A) The document shall be capable of re-
10 liably determining whether—

11 “(i) the individual with the identifica-
12 tion and employment eligibility document
13 whose eligibility is being verified is in fact
14 eligible for employment;

15 “(ii) the individual whose eligibility is
16 being verified is claiming the identity of
17 another person; and

18 “(iii) the individual whose eligibility is
19 being verified is authorized to be admitted
20 into, and employed in, the United States
21 as an H-2A worker.

22 “(B) The document shall be in a form that
23 is resistant to counterfeiting and to tampering.

24 “(C) The document shall—

1 “(i) be compatible with other data-
2 bases of the Secretary for the purpose of
3 excluding aliens from benefits for which
4 they are not eligible and determining
5 whether the alien is unlawfully present in
6 the United States; and

7 “(ii) be compatible with law enforce-
8 ment databases to determine if the alien
9 has been convicted of criminal offenses.

10 “(h) EXTENSION OF STAY OF H-2A ALIENS IN THE
11 UNITED STATES.—

12 “(1) EXTENSION OF STAY.—If an employer
13 seeks approval to employ an H-2A alien who is law-
14 fully present in the United States, the petition filed
15 by the employer or an association pursuant to sub-
16 section (a), shall request an extension of the alien’s
17 stay and a change in the alien’s employment.

18 “(2) LIMITATION ON FILING A PETITION FOR
19 EXTENSION OF STAY.—A petition may not be filed
20 for an extension of an alien’s stay—

21 “(A) for a period of more than 10 months;
22 or

23 “(B) to a date that is more than 3 years
24 after the date of the alien’s last admission to
25 the United States under this section.

1 “(3) WORK AUTHORIZATION UPON FILING A
2 PETITION FOR EXTENSION OF STAY.—

3 “(A) IN GENERAL.—An alien who is law-
4 fully present in the United States may com-
5 mence the employment described in a petition
6 under paragraph (1) on the date on which the
7 petition is filed.

8 “(B) DEFINITION.—For purposes of sub-
9 paragraph (A), the term ‘file’ means sending
10 the petition by certified mail via the United
11 States Postal Service, return receipt requested,
12 or delivered by guaranteed commercial delivery
13 which will provide the employer with a docu-
14 mented acknowledgment of the date of receipt
15 of the petition.

16 “(C) HANDLING OF PETITION.—The em-
17 ployer shall provide a copy of the employer’s pe-
18 tition to the alien, who shall keep the petition
19 with the alien’s identification and employment
20 eligibility document as evidence that the peti-
21 tion has been filed and that the alien is author-
22 ized to work in the United States.

23 “(D) APPROVAL OF PETITION.—Upon ap-
24 proval of a petition for an extension of stay or
25 change in the alien’s authorized employment,

1 the Secretary shall provide a new or updated
2 employment eligibility document to the alien in-
3 dicating the new validity date, after which the
4 alien is not required to retain a copy of the pe-
5 tition.

6 “(4) LIMITATION ON EMPLOYMENT AUTHORIZA-
7 TION OF ALIENS WITHOUT VALID IDENTIFICATION
8 AND EMPLOYMENT ELIGIBILITY DOCUMENT.—An ex-
9 pired identification and employment eligibility docu-
10 ment, together with a copy of a petition for exten-
11 sion of stay or change in the alien’s authorized em-
12 ployment that complies with the requirements of
13 paragraph (1), shall constitute a valid work author-
14 ization document for a period of not more than 60
15 days beginning on the date on which such petition
16 is filed, after which time only a currently valid iden-
17 tification and employment eligibility document shall
18 be acceptable.

19 “(5) LIMITATION ON AN INDIVIDUAL’S STAY IN
20 STATUS.—

21 “(A) MAXIMUM PERIOD.—The maximum
22 continuous period of authorized status as an
23 H-2A worker (including any extensions) is 3
24 years.

1 “(B) REQUIREMENT TO REMAIN OUTSIDE
2 THE UNITED STATES.—

3 “(i) IN GENERAL.—Subject to clause
4 (ii), in the case of an alien outside the
5 United States whose period of authorized
6 status as an H-2A worker (including any
7 extensions) has expired, the alien may not
8 again apply for admission to the United
9 States as an H-2A worker unless the alien
10 has remained outside the United States for
11 a continuous period equal to at least $\frac{1}{5}$
12 the duration of the alien’s previous period
13 of authorized status as an H-2A worker
14 (including any extensions).

15 “(ii) EXCEPTION.—Clause (i) shall
16 not apply in the case of an alien if the
17 alien’s period of authorized status as an
18 H-2A worker (including any extensions)
19 was for a period of not more than 10
20 months and such alien has been outside
21 the United States for at least 2 months
22 during the 12 months preceding the date
23 the alien again is applying for admission to
24 the United States as an H-2A worker.

1 “(i) SPECIAL RULES FOR ALIENS EMPLOYED AS
2 SHEEPHERDERS, GOAT HERDERS, OR DAIRY WORK-
3 ERS.—Notwithstanding any provision of the Agricultural
4 Job Opportunities, Benefits, and Security Act of 2009, an
5 alien admitted under section 101(a)(15)(H)(ii)(a) for em-
6 ployment as a shepherd, goat herder, or dairy worker—

7 “(1) may be admitted for an initial period of 12
8 months;

9 “(2) subject to subsection (j)(5), may have such
10 initial period of admission extended for a period of
11 up to 3 years; and

12 “(3) shall not be subject to the requirements of
13 subsection (h)(5) (relating to periods of absence
14 from the United States).

15 “(j) ADJUSTMENT TO LAWFUL PERMANENT RESI-
16 DENT STATUS FOR ALIENS EMPLOYED AS SHEEP-
17 HERDERS, GOAT HERDERS, OR DAIRY WORKERS.—

18 “(1) ELIGIBLE ALIEN.—For purposes of this
19 subsection, the term ‘eligible alien’ means an alien—

20 “(A) having nonimmigrant status under
21 section 101(a)(15)(H)(ii)(a) based on employ-
22 ment as a shepherd, goat herder, or dairy
23 worker;

24 “(B) who has maintained such non-
25 immigrant status in the United States for a cu-

1 mulative total of 36 months (excluding any pe-
2 riod of absence from the United States); and

3 “(C) who is seeking to receive an immi-
4 grant visa under section 203(b)(3)(A)(iii).

5 “(2) CLASSIFICATION PETITION.—In the case
6 of an eligible alien, the petition under section 204
7 for classification under section 203(b)(3)(A)(iii) may
8 be filed by—

9 “(A) the alien’s employer on behalf of the
10 eligible alien; or

11 “(B) the eligible alien.

12 “(3) NO LABOR CERTIFICATION REQUIRED.—
13 Notwithstanding section 203(b)(3)(C), no deter-
14 mination under section 212(a)(5)(A) is required with
15 respect to an immigrant visa described in paragraph
16 (1)(C) for an eligible alien.

17 “(4) EFFECT OF PETITION.—The filing of a pe-
18 tition described in paragraph (2) or an application
19 for adjustment of status based on the approval of
20 such a petition shall not constitute evidence of an
21 alien’s ineligibility for nonimmigrant status under
22 section 101(a)(15)(H)(ii)(a).

23 “(5) EXTENSION OF STAY.—The Secretary
24 shall extend the stay of an eligible alien having a
25 pending or approved classification petition described

1 in paragraph (2) in 1-year increments until a final
2 determination is made on the alien's eligibility for
3 adjustment of status to that of an alien lawfully ad-
4 mitted for permanent residence.

5 “(6) CONSTRUCTION.—Nothing in this sub-
6 section shall be construed to prevent an eligible alien
7 from seeking adjustment of status in accordance
8 with any other provision of law.

9 **“SEC. 218C. WORKER PROTECTIONS AND LABOR STAND-**
10 **ARDS ENFORCEMENT.**

11 “(a) ENFORCEMENT AUTHORITY.—

12 “(1) INVESTIGATION OF COMPLAINTS.—

13 “(A) AGGRIEVED PERSON OR THIRD-PARTY
14 COMPLAINTS.—The Secretary of Labor shall es-
15 tablish a process for the receipt, investigation,
16 and disposition of complaints respecting a peti-
17 tioner's failure to meet a condition specified in
18 section 218(b), or an employer's misrepresenta-
19 tion of material facts in an application under
20 section 218(a). Complaints may be filed by any
21 aggrieved person or organization (including bar-
22 gaining representatives). No investigation or
23 hearing shall be conducted on a complaint con-
24 cerning such a failure or misrepresentation un-
25 less the complaint was filed not later than 12

1 months after the date of the failure, or mis-
2 representation, respectively. The Secretary of
3 Labor shall conduct an investigation under this
4 subparagraph if there is reasonable cause to be-
5 lieve that such a failure or misrepresentation
6 has occurred.

7 “(B) DETERMINATION ON COMPLAINT.—

8 Under such process, the Secretary of Labor
9 shall provide, within 30 days after the date
10 such a complaint is filed, for a determination as
11 to whether or not a reasonable basis exists to
12 make a finding described in subparagraph (C),
13 (D), (E), or (G). If the Secretary of Labor de-
14 termines that such a reasonable basis exists,
15 the Secretary of Labor shall provide for notice
16 of such determination to the interested parties
17 and an opportunity for a hearing on the com-
18 plaint, in accordance with section 556 of title 5,
19 United States Code, within 60 days after the
20 date of the determination. If such a hearing is
21 requested, the Secretary of Labor shall make a
22 finding concerning the matter not later than 60
23 days after the date of the hearing. In the case
24 of similar complaints respecting the same appli-
25 cant, the Secretary of Labor may consolidate

1 the hearings under this subparagraph on such
2 complaints.

3 “(C) FAILURES TO MEET CONDITIONS.—If
4 the Secretary of Labor finds, after notice and
5 opportunity for a hearing, a failure to meet a
6 condition of paragraph (1)(A), (1)(B), (1)(D),
7 (1)(F), (2)(A), (2)(B), or (2)(G) of section
8 218(b), a substantial failure to meet a condition
9 of paragraph (1)(C), (1)(E), (2)(C), (2)(D),
10 (2)(E), or (2)(H) of section 218(b), or a mate-
11 rial misrepresentation of fact in an application
12 under section 218(a)—

13 “(i) the Secretary of Labor shall no-
14 tify the Secretary of such finding and may,
15 in addition, impose such other administra-
16 tive remedies (including civil money pen-
17 alties in an amount not to exceed \$1,000
18 per violation) as the Secretary of Labor
19 determines to be appropriate; and

20 “(ii) the Secretary may disqualify the
21 employer from the employment of aliens
22 described in section 101(a)(15)(H)(ii)(a)
23 for a period of 1 year.

24 “(D) WILLFUL FAILURES AND WILLFUL
25 MISREPRESENTATIONS.—If the Secretary of

1 Labor finds, after notice and opportunity for
2 hearing, a willful failure to meet a condition of
3 section 218(b), a willful misrepresentation of a
4 material fact in an application under section
5 218(a), or a violation of subsection (d)(1)—

6 “(i) the Secretary of Labor shall no-
7 tify the Secretary of such finding and may,
8 in addition, impose such other administra-
9 tive remedies (including civil money pen-
10 alties in an amount not to exceed \$5,000
11 per violation) as the Secretary of Labor
12 determines to be appropriate;

13 “(ii) the Secretary of Labor may seek
14 appropriate legal or equitable relief to ef-
15 fectuate the purposes of subsection (d)(1);
16 and

17 “(iii) the Secretary may disqualify the
18 employer from the employment of H-2A
19 workers for a period of 2 years.

20 “(E) DISPLACEMENT OF UNITED STATES
21 WORKERS.—If the Secretary of Labor finds,
22 after notice and opportunity for hearing, a will-
23 ful failure to meet a condition of section 218(b)
24 or a willful misrepresentation of a material fact
25 in an application under section 218(a), in the

1 course of which failure or misrepresentation the
2 employer displaced a United States worker em-
3 ployed by the employer during the period of em-
4 ployment on the employer's application under
5 section 218(a) or during the period of 30 days
6 preceding such period of employment—

7 “(i) the Secretary of Labor shall no-
8 tify the Secretary of such finding and may,
9 in addition, impose such other administra-
10 tive remedies (including civil money pen-
11 alties in an amount not to exceed \$15,000
12 per violation) as the Secretary of Labor
13 determines to be appropriate; and

14 “(ii) the Secretary may disqualify the
15 employer from the employment of H-2A
16 workers for a period of 3 years.

17 “(F) LIMITATIONS ON CIVIL MONEY PEN-
18 ALTIES.—The Secretary of Labor shall not im-
19 pose total civil money penalties with respect to
20 an application under section 218(a) in excess of
21 \$90,000.

22 “(G) FAILURES TO PAY WAGES OR RE-
23 QUIRED BENEFITS.—If the Secretary of Labor
24 finds, after notice and opportunity for a hear-
25 ing, that the employer has failed to pay the

1 wages, or provide the housing allowance, trans-
2 portation, subsistence reimbursement, or guar-
3 antee of employment, required under section
4 218A(b), the Secretary of Labor shall assess
5 payment of back wages, or other required bene-
6 fits, due any United States worker or H-2A
7 worker employed by the employer in the specific
8 employment in question. The back wages or
9 other required benefits under section 218A(b)
10 shall be equal to the difference between the
11 amount that should have been paid and the
12 amount that actually was paid to such worker.

13 “(2) STATUTORY CONSTRUCTION.—Nothing in
14 this section shall be construed as limiting the au-
15 thority of the Secretary of Labor to conduct any
16 compliance investigation under any other labor law,
17 including any law affecting migrant and seasonal ag-
18 ricultural workers, or, in the absence of a complaint
19 under this section, under section 218 or 218A.

20 “(b) RIGHTS ENFORCEABLE BY PRIVATE RIGHT OF
21 ACTION.—H-2A workers may enforce the following rights
22 through the private right of action provided in subsection
23 (c), and no other right of action shall exist under Federal
24 or State law to enforce such rights:

1 “(1) The providing of housing or a housing al-
2 lowance as required under section 218A(b)(1).

3 “(2) The reimbursement of transportation as
4 required under section 218A(b)(2).

5 “(3) The payment of wages required under sec-
6 tion 218A(b)(3) when due.

7 “(4) The benefits and material terms and con-
8 ditions of employment expressly provided in the job
9 offer described in section 218(a)(2), not including
10 the assurance to comply with other Federal, State,
11 and local labor laws described in section 218A(c),
12 compliance with which shall be governed by the pro-
13 visions of such laws.

14 “(5) The guarantee of employment required
15 under section 218A(b)(4).

16 “(6) The motor vehicle safety requirements
17 under section 218A(b)(5).

18 “(7) The prohibition of discrimination under
19 subsection (d)(2).

20 “(c) PRIVATE RIGHT OF ACTION.—

21 “(1) MEDIATION.—Upon the filing of a com-
22 plaint by an H-2A worker aggrieved by a violation
23 of rights enforceable under subsection (b), and with-
24 in 60 days of the filing of proof of service of the
25 complaint, a party to the action may file a request

1 with the Federal Mediation and Conciliation Service
2 to assist the parties in reaching a satisfactory reso-
3 lution of all issues involving all parties to the dis-
4 pute. Upon a filing of such request and giving of no-
5 tice to the parties, the parties shall attempt medi-
6 ation within the period specified in subparagraph
7 (B).

8 “(A) MEDIATION SERVICES.—The Federal
9 Mediation and Conciliation Service shall be
10 available to assist in resolving disputes arising
11 under subsection (b) between H-2A workers
12 and agricultural employers without charge to
13 the parties.

14 “(B) 90-DAY LIMIT.—The Federal Medi-
15 ation and Conciliation Service may conduct me-
16 diation or other nonbinding dispute resolution
17 activities for a period not to exceed 90 days be-
18 ginning on the date on which the Federal Medi-
19 ation and Conciliation Service receives the re-
20 quest for assistance unless the parties agree to
21 an extension of this period of time.

22 “(C) AUTHORIZATION.—

23 “(i) IN GENERAL.—Subject to clause
24 (ii), there are authorized to be appro-
25 priated to the Federal Mediation and Con-

1 ciliation Service \$500,000 for each fiscal
2 year to carry out this section.

3 “(ii) MEDIATION.—Notwithstanding
4 any other provision of law, the Director of
5 the Federal Mediation and Conciliation
6 Service is authorized to conduct the medi-
7 ation or other dispute resolution activities
8 from any other appropriated funds avail-
9 able to the Director and to reimburse such
10 appropriated funds when the funds are ap-
11 propriated pursuant to this authorization,
12 such reimbursement to be credited to ap-
13 propriations currently available at the time
14 of receipt.

15 “(2) MAINTENANCE OF CIVIL ACTION IN DIS-
16 TRICT COURT BY AGGRIEVED PERSON.—An H-2A
17 worker aggrieved by a violation of rights enforceable
18 under subsection (b) by an agricultural employer or
19 other person may file suit in any district court of the
20 United States having jurisdiction over the parties,
21 without regard to the amount in controversy, with-
22 out regard to the citizenship of the parties, and
23 without regard to the exhaustion of any alternative
24 administrative remedies under this Act, not later
25 than 3 years after the date the violation occurs.

1 “(3) ELECTION.—An H-2A worker who has
2 filed an administrative complaint with the Secretary
3 of Labor may not maintain a civil action under
4 paragraph (2) unless a complaint based on the same
5 violation filed with the Secretary of Labor under
6 subsection (a)(1) is withdrawn before the filing of
7 such action, in which case the rights and remedies
8 available under this subsection shall be exclusive.

9 “(4) PREEMPTION OF STATE CONTRACT
10 RIGHTS.—Nothing in this Act shall be construed to
11 diminish the rights and remedies of an H-2A worker
12 under any other Federal or State law or regulation
13 or under any collective bargaining agreement, except
14 that no court or administrative action shall be avail-
15 able under any State contract law to enforce the
16 rights created by this Act.

17 “(5) WAIVER OF RIGHTS PROHIBITED.—Agree-
18 ments by employees purporting to waive or modify
19 their rights under this Act shall be void as contrary
20 to public policy, except that a waiver or modification
21 of the rights or obligations in favor of the Secretary
22 of Labor shall be valid for purposes of the enforce-
23 ment of this Act. The preceding sentence may not
24 be construed to prohibit agreements to settle private
25 disputes or litigation.

1 “(6) AWARD OF DAMAGES OR OTHER EQUI-
2 TABLE RELIEF.—

3 “(A) If the court finds that the respondent
4 has intentionally violated any of the rights en-
5 forceable under subsection (b), it shall award
6 actual damages, if any, or equitable relief.

7 “(B) Any civil action brought under this
8 section shall be subject to appeal as provided in
9 chapter 83 of title 28, United States Code.

10 “(7) WORKERS’ COMPENSATION BENEFITS; EX-
11 CLUSIVE REMEDY.—

12 “(A) Notwithstanding any other provision
13 of this section, where a State’s workers’ com-
14 pensation law is applicable and coverage is pro-
15 vided for an H-2A worker, the workers’ com-
16 pensation benefits shall be the exclusive remedy
17 for the loss of such worker under this section
18 in the case of bodily injury or death in accord-
19 ance with such State’s workers’ compensation
20 law.

21 “(B) The exclusive remedy prescribed in
22 subparagraph (A) precludes the recovery under
23 paragraph (6) of actual damages for loss from
24 an injury or death but does not preclude other
25 equitable relief, except that such relief shall not

1 include back or front pay or in any manner, di-
2 rectly or indirectly, expand or otherwise alter or
3 affect—

4 “(i) a recovery under a State workers’
5 compensation law; or

6 “(ii) rights conferred under a State
7 workers’ compensation law.

8 “(8) TOLLING OF STATUTE OF LIMITATIONS.—

9 If it is determined under a State workers’ compensa-
10 tion law that the workers’ compensation law is not
11 applicable to a claim for bodily injury or death of an
12 H-2A worker, the statute of limitations for bringing
13 an action for actual damages for such injury or
14 death under subsection (c) shall be tolled for the pe-
15 riod during which the claim for such injury or death
16 under such State workers’ compensation law was
17 pending. The statute of limitations for an action for
18 actual damages or other equitable relief arising out
19 of the same transaction or occurrence as the injury
20 or death of the H-2A worker shall be tolled for the
21 period during which the claim for such injury or
22 death was pending under the State workers’ com-
23 pensation law.

24 “(9) PRECLUSIVE EFFECT.—Any settlement by
25 an H-2A worker and an H-2A employer or any per-

1 son reached through the mediation process required
2 under subsection (c)(1) shall preclude any right of
3 action arising out of the same facts between the par-
4 ties in any Federal or State court or administrative
5 proceeding, unless specifically provided otherwise in
6 the settlement agreement.

7 “(10) SETTLEMENTS.—Any settlement by the
8 Secretary of Labor with an H-2A employer on be-
9 half of an H-2A worker of a complaint filed with the
10 Secretary of Labor under this section or any finding
11 by the Secretary of Labor under subsection
12 (a)(1)(B) shall preclude any right of action arising
13 out of the same facts between the parties under any
14 Federal or State court or administrative proceeding,
15 unless specifically provided otherwise in the settle-
16 ment agreement.

17 “(d) DISCRIMINATION PROHIBITED.—

18 “(1) IN GENERAL.—It is a violation of this sub-
19 section for any person who has filed an application
20 under section 218(a), to intimidate, threaten, re-
21 strain, coerce, blacklist, discharge, or in any other
22 manner discriminate against an employee (which
23 term, for purposes of this subsection, includes a
24 former employee and an applicant for employment)
25 because the employee has disclosed information to

1 the employer, or to any other person, that the em-
2 ployee reasonably believes evidences a violation of
3 section 218 or 218A or any rule or regulation per-
4 taining to section 218 or 218A, or because the em-
5 ployee cooperates or seeks to cooperate in an inves-
6 tigation or other proceeding concerning the employ-
7 er's compliance with the requirements of section 218
8 or 218A or any rule or regulation pertaining to ei-
9 ther of such sections.

10 “(2) DISCRIMINATION AGAINST H-2A WORK-
11 ERS.—It is a violation of this subsection for any per-
12 son who has filed an application under section
13 218(a), to intimidate, threaten, restrain, coerce,
14 blacklist, discharge, or in any manner discriminate
15 against an H-2A employee because such worker has,
16 with just cause, filed a complaint with the Secretary
17 of Labor regarding a denial of the rights enumer-
18 ated and enforceable under subsection (b) or insti-
19 tuted, or caused to be instituted, a private right of
20 action under subsection (c) regarding the denial of
21 the rights enumerated under subsection (b), or has
22 testified or is about to testify in any court pro-
23 ceeding brought under subsection (c).

24 “(e) AUTHORIZATION TO SEEK OTHER APPRO-
25 PRIATE EMPLOYMENT.—The Secretary of Labor and the

1 Secretary shall establish a process under which an H-2A
2 worker who files a complaint regarding a violation of sub-
3 section (d) and is otherwise eligible to remain and work
4 in the United States may be allowed to seek other appro-
5 priate employment in the United States for a period not
6 to exceed the maximum period of stay authorized for such
7 nonimmigrant classification.

8 “(f) ROLE OF ASSOCIATIONS.—

9 “(1) VIOLATION BY A MEMBER OF AN ASSOCIA-
10 TION.—An employer on whose behalf an application
11 is filed by an association acting as its agent is fully
12 responsible for such application, and for complying
13 with the terms and conditions of sections 218 and
14 218A, as though the employer had filed the applica-
15 tion itself. If such an employer is determined, under
16 this section, to have committed a violation, the pen-
17 alty for such violation shall apply only to that mem-
18 ber of the association unless the Secretary of Labor
19 determines that the association or other member
20 participated in, had knowledge, or reason to know,
21 of the violation, in which case the penalty shall be
22 invoked against the association or other association
23 member as well.

24 “(2) VIOLATIONS BY AN ASSOCIATION ACTING
25 AS AN EMPLOYER.—If an association filing an appli-

1 cation as a sole or joint employer is determined to
2 have committed a violation under this section, the
3 penalty for such violation shall apply only to the as-
4 sociation unless the Secretary of Labor determines
5 that an association member or members participated
6 in or had knowledge, or reason to know of the viola-
7 tion, in which case the penalty shall be invoked
8 against the association member or members as well.

9 **“SEC. 218D. DEFINITIONS.**

10 “For purposes of this section and section 218, 218A,
11 218B, and 218C:

12 “(1) AGRICULTURAL EMPLOYMENT.—The term
13 ‘agricultural employment’ means any service or ac-
14 tivity that is considered to be agricultural under sec-
15 tion 3(f) of the Fair Labor Standards Act of 1938
16 (29 U.S.C. 203(f)) or agricultural labor under sec-
17 tion 3121(g) of the Internal Revenue Code of 1986
18 or the performance of agricultural labor or services
19 described in section 101(a)(15)(H)(ii)(a).

20 “(2) BONA FIDE UNION.—The term ‘bona fide
21 union’ means any organization in which employees
22 participate and which exists for the purpose of deal-
23 ing with employers concerning grievances, labor dis-
24 putes, wages, rates of pay, hours of employment, or
25 other terms and conditions of work for agricultural

1 employees. Such term does not include an organiza-
2 tion formed, created, administered, supported, domi-
3 nated, financed, or controlled by an employer or em-
4 ployer association or its agents or representatives.

5 “(3) DISPLACE.—The term ‘displace’, in the
6 case of an application with respect to 1 or more H-
7 2A workers by an employer, means laying off a
8 United States worker from a job for which the H-
9 2A worker or workers is or are sought.

10 “(4) ELIGIBLE.—The term ‘eligible’, when used
11 with respect to an individual, means an individual
12 who is not an unauthorized alien (as defined in sec-
13 tion 274A).

14 “(5) EMPLOYER.—The term ‘employer’ means
15 any person or entity, including any farm labor con-
16 tractor and any agricultural association, that em-
17 ploys workers in agricultural employment.

18 “(6) H-2A EMPLOYER.—The term ‘H-2A em-
19 ployer’ means an employer who seeks to hire 1 or
20 more nonimmigrant aliens described in section
21 101(a)(15)(H)(ii)(a).

22 “(7) H-2A WORKER.—The term ‘H-2A worker’
23 means a nonimmigrant described in section
24 101(a)(15)(H)(ii)(a).

1 “(8) JOB OPPORTUNITY.—The term ‘job oppor-
2 tunity’ means a job opening for temporary or sea-
3 sonal full-time employment at a place in the United
4 States to which United States workers can be re-
5 ferred.

6 “(9) LAYING OFF.—

7 “(A) IN GENERAL.—The term ‘laying off’,
8 with respect to a worker—

9 “(i) means to cause the worker’s loss
10 of employment, other than through a dis-
11 charge for inadequate performance, viola-
12 tion of workplace rules, cause, voluntary
13 departure, voluntary retirement, contract
14 impossibility (as described in section
15 218A(b)(4)(D)), or temporary suspension
16 of employment due to weather, markets, or
17 other temporary conditions; but

18 “(ii) does not include any situation in
19 which the worker is offered, as an alter-
20 native to such loss of employment, a simi-
21 lar employment opportunity with the same
22 employer (or, in the case of a placement of
23 a worker with another employer under sec-
24 tion 218(b)(2)(E), with either employer de-
25 scribed in such section) at equivalent or

1 higher compensation and benefits than the
2 position from which the employee was dis-
3 charged, regardless of whether or not the
4 employee accepts the offer.

5 “(B) STATUTORY CONSTRUCTION.—Noth-
6 ing in this paragraph is intended to limit an
7 employee’s rights under a collective bargaining
8 agreement or other employment contract.

9 “(10) REGULATORY DROUGHT.—The term ‘reg-
10 ulatory drought’ means a decision subsequent to the
11 filing of the application under section 218 by an en-
12 tity not under the control of the employer making
13 such filing which restricts the employer’s access to
14 water for irrigation purposes and reduces or limits
15 the employer’s ability to produce an agricultural
16 commodity, thereby reducing the need for labor.

17 “(11) SEASONAL.—Labor is performed on a
18 ‘seasonal’ basis if—

19 “(A) ordinarily, it pertains to or is of the
20 kind exclusively performed at certain seasons or
21 periods of the year; and

22 “(B) from its nature, it may not be contin-
23 uous or carried on throughout the year.

1 “(12) SECRETARY.—Except as otherwise pro-
2 vided, the term ‘Secretary’ means the Secretary of
3 Homeland Security.

4 “(13) TEMPORARY.—A worker is employed on a
5 ‘temporary’ basis where the employment is intended
6 not to exceed 10 months.

7 “(14) UNITED STATES WORKER.—The term
8 ‘United States worker’ means any worker, whether
9 a national of the United States, an alien lawfully ad-
10 mitted for permanent residence, or any other alien,
11 who is authorized to work in the job opportunity
12 within the United States, except an alien admitted
13 or otherwise provided status under section
14 101(a)(15)(H)(ii)(a).”.

15 (b) TABLE OF CONTENTS.—The table of contents of
16 the Immigration and Nationality Act (8 U.S.C. 1101 et
17 seq.) is amended by striking the item relating to section
18 218 and inserting the following:

“Sec. 218. H-2A employer applications.

“Sec. 218A. H-2A employment requirements.

“Sec. 218B. Procedure for admission and extension of stay of H-2A workers.

“Sec. 218C. Worker protections and labor standards enforcement.

“Sec. 218D. Definitions.”.

19 **CHAPTER 4—MISCELLANEOUS** 20 **PROVISIONS**

21 **SEC. 461. DETERMINATION AND USE OF USER FEES.**

22 (a) SCHEDULE OF FEES.—The Secretary shall estab-
23 lish and periodically adjust a schedule of fees for the em-

1 ployment of aliens pursuant to the amendment made by
2 section 451(a) of this Act and a collection process for such
3 fees from employers. Such fees shall be the only fees
4 chargeable to employers for services provided under such
5 amendment.

6 (b) DETERMINATION OF SCHEDULE.—

7 (1) IN GENERAL.—The schedule under sub-
8 section (a) shall reflect a fee rate based on the num-
9 ber of job opportunities indicated in the employer's
10 application under section 218 of the Immigration
11 and Nationality Act, as amended by section 451 of
12 this Act, and sufficient to provide for the direct
13 costs of providing services related to an employer's
14 authorization to employ aliens pursuant to the
15 amendment made by section 451(a) of this Act, to
16 include the certification of eligible employers, the
17 issuance of documentation, and the admission of eli-
18 gible aliens.

19 (2) PROCEDURE.—

20 (A) IN GENERAL.—In establishing and ad-
21 justing such a schedule, the Secretary shall
22 comply with Federal cost accounting and fee
23 setting standards.

24 (B) PUBLICATION AND COMMENT.—The
25 Secretary shall publish in the Federal Register

1 an initial fee schedule and associated collection
2 process and the cost data or estimates upon
3 which such fee schedule is based, and any sub-
4 sequent amendments thereto, pursuant to which
5 public comment shall be sought and a final rule
6 issued.

7 (c) **USE OF PROCEEDS.**—Notwithstanding any other
8 provision of law, all proceeds resulting from the payment
9 of the fees pursuant to the amendment made by section
10 451(a) of this Act shall be available without further appro-
11 priation and shall remain available without fiscal year lim-
12 itation to reimburse the Secretary, the Secretary of State,
13 and the Secretary of Labor for the costs of carrying out—

14 (1) sections 218 and 218B of the Immigration
15 and Nationality Act, as amended and added, respec-
16 tively, by section 451 of this Act; and

17 (2) the provisions of this Act.

18 **SEC. 462. REGULATIONS.**

19 (a) **REQUIREMENT FOR THE SECRETARY TO CON-**
20 **SULT.**—The Secretary shall consult with the Secretary of
21 Labor and the Secretary of Agriculture during the promul-
22 gation of all regulations to implement the duties of the
23 Secretary under this Act and the amendments made by
24 this Act.

1 (b) REQUIREMENT FOR THE SECRETARY OF STATE
2 TO CONSULT.—The Secretary of State shall consult with
3 the Secretary, the Secretary of Labor, and the Secretary
4 of Agriculture on all regulations to implement the duties
5 of the Secretary of State under this Act and the amend-
6 ments made by this Act.

7 (c) REQUIREMENT FOR THE SECRETARY OF LABOR
8 TO CONSULT.—The Secretary of Labor shall consult with
9 the Secretary of Agriculture and the Secretary on all regu-
10 lations to implement the duties of the Secretary of Labor
11 under this Act and the amendments made by this Act.

12 (d) DEADLINE FOR ISSUANCE OF REGULATIONS.—
13 All regulations to implement the duties of the Secretary,
14 the Secretary of State, and the Secretary of Labor created
15 under sections 218, 218A, 218B, 218C, and 218D of the
16 Immigration and Nationality Act, as amended or added
17 by section 451 of this Act, shall take effect on the effective
18 date of section 451 and shall be issued not later than 1
19 year after the date of enactment of this Act.

20 **SEC. 463. REPORTS TO CONGRESS.**

21 (a) ANNUAL REPORT.—Not later than September 30
22 of each year, the Secretary shall submit a report to Con-
23 gress that identifies, for the previous year—

24 (1) the number of job opportunities approved
25 for employment of aliens admitted under section

1 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
2 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), and the
3 number of workers actually admitted, disaggregated
4 by State and by occupation;

5 (2) the number of such aliens reported to have
6 abandoned employment pursuant to subsection
7 (e)(2) of section 218B of such Act, as added by sec-
8 tion 451;

9 (3) the number of such aliens who departed the
10 United States within the period specified in sub-
11 section (d) of such section 218B;

12 (4) the number of aliens who applied for blue
13 card status pursuant to section 431(a);

14 (5) the number of aliens who were granted such
15 status pursuant section 431(a);

16 (6) the number of aliens who applied for an ad-
17 justment of status pursuant to section 433(a); and

18 (7) the number of aliens who received an ad-
19 justment of status pursuant section 433(a).

20 (b) IMPLEMENTATION REPORT.—Not later than 180
21 days after the date of the enactment of this Act, the Sec-
22 retary shall prepare and submit to Congress a report that
23 describes the measures being taken and the progress made
24 in implementing this Act.

1 **SEC. 464. EFFECTIVE DATE.**

2 The amendments made by section 451 and section
3 461 shall take effect 1 year after the date of the enact-
4 ment of this Act.

5 **TITLE V—STRENGTHENING THE**
6 **U.S. ECONOMY AND WORKFORCE**
7 **Subtitle A—Immigration and Labor**
8 **CHAPTER 1—IMMIGRATION AND LABOR**
9 **MARKETS**

10 **SEC. 501. COMMISSION ON IMMIGRATION AND LABOR MAR-**
11 **KETS.**

12 (a) ESTABLISHMENT OF COMMISSION.—

13 (1) IN GENERAL.—There is established a per-
14 manent, independent, Federal agency within the Ex-
15 ecutive Branch of the United States to be known as
16 the Commission on Immigration and Labor Markets
17 (referred to in this section as “Commission”).

18 (2) PURPOSES.—Through objective, thorough,
19 accurate and nonpartisan review and analysis, the
20 purposes of the Commission are to—

21 (A) establish employment-based immigra-
22 tion policies that promote America’s economic
23 growth and competitiveness while minimizing
24 job displacement, wage depression and unau-
25 thorized employment in the United States;

1 (B) create and implement a policy-focused
2 research agenda on the economic impacts of im-
3 migration at the national, regional, state, indus-
4 try and occupation levels;

5 (C) collect and analyze information about
6 employment-based immigration and the labor
7 market and share the data and analysis with
8 lawmakers, researchers and the American pub-
9 lic;

10 (D) recommend to the Congress and the
11 President on a regular basis an evidence-based
12 methodology for determining the level of em-
13 ployment-based immigration; and

14 (E) recommend to Congress and the Presi-
15 dent the numeric levels and characteristics of
16 workers to be admitted in various employment-
17 based visa categories.

18 (3) MEMBERSHIP.—The Commission shall be
19 composed of—

20 (A) 7 voting members—

21 (i) who shall be appointed by the
22 President, with the advice and consent of
23 the Senate, no later than 6 months after
24 the date of the enactment of this Act;

1 (ii) who shall serve for 5-year stag-
2 gered terms;

3 (iii) one of whom the President shall
4 appoint as Chair of the commission to
5 serve a 6-year term, which can be extended
6 for 1 additional 3-year term;

7 (iv) who shall have expertise in eco-
8 nomics, demography, sociology, labor, busi-
9 ness, civil rights, immigration or other per-
10 tinent qualifications or experience; and

11 (v) not more than 4 of whom may be
12 members of the same political party; and

13 (B) 8 ex-officio members, including—

14 (i) the Secretary;

15 (ii) the Secretary of State;

16 (iii) the Attorney General;

17 (iv) the Secretary of Labor;

18 (v) the Secretary of Commerce

19 (vi) the Secretary of Health and
20 Human Services;

21 (vii) the Secretary of Agriculture; and

22 (viii) The Commissioner of Social Se-
23 curity.

1 (4) VACANCIES.—Any vacancy in the Commis-
2 sion shall be filled in the same manner as the origi-
3 nal appointment.

4 (5) MEETINGS.—

5 (A) INITIAL MEETING.—The Commission
6 shall meet and begin carrying out the duties de-
7 scribed in subsection (b) as soon as practicable.

8 (B) SUBSEQUENT MEETINGS.—After its
9 initial meeting, the Commission shall meet upon
10 the call of the Chair or a majority of its mem-
11 bers.

12 (C) QUORUM.—Five voting members of the
13 Commission shall constitute a quorum.

14 (b) DUTIES OF THE COMMISSION.—The Commission
15 shall—

16 (1) collect, analyze and publish data regard-
17 ing—

18 (A) the historic migration patterns to and
19 from the United States and demographic
20 trends, including the birth rate, education lev-
21 els, and age profiles of the immigrant and na-
22 tive population of the United States;

23 (B) the impact of employment-based immi-
24 gration—

1 (i) at the national, regional, state and
2 local levels;

3 (ii) within industries and business sec-
4 tors;

5 (iii) on occupations and occupational
6 levels;

7 (iv) on small business; and

8 (v) on employment and unemployment
9 levels;

10 (C) the current and anticipated needs of
11 employers for skilled and unskilled labor;

12 (D) the current and anticipated supply of
13 skilled and unskilled labor;

14 (E) the impact of employment-based immi-
15 gration on the economic growth and competi-
16 tiveness and labor standards, conditions, and
17 wages;

18 (F) the extent and impact of unauthorized
19 employment in the United States;

20 (G) the factors that determine the eco-
21 nomic success of immigrants to the United
22 States; and

23 (H) any other matters regarding the im-
24 pact of employment-based immigration that the
25 Commission considers appropriate;

1 (2) after soliciting and reviewing input from the
2 public, develop and publish in the federal register a
3 plan for the performance of its duties, including a
4 description of the methodologies it will employ to
5 measure the need for immigrant workers or non-
6 immigrant foreign workers in different regions,
7 states, industries and occupations;

8 (3) submit to the Congress, according to the
9 procedures in subsection (c), the methodologies it
10 proposes to use to determine the need for immigrant
11 workers and nonimmigrant foreign workers;

12 (4) submit to the Congress, according to the
13 procedures in subsection (c), any amendments which
14 the Commission deems appropriate to the numeric
15 levels of visas established by the Immigration and
16 Nationality Act for temporary or permanent employ-
17 ment;

18 (5) annually thereafter, submit a report to the
19 President and Congress that—

20 (A) contains any amendments to the nu-
21 meric levels set according to the procedures in
22 subsection (c)(2), which shall take effect in the
23 same manner described therein unless dis-
24 approved by the passage of a resolution in Con-
25 gress; and

1 (B) makes other recommendations regard-
2 ing employment-based visas or immigration, in-
3 cluding legislative or administrative action, that
4 the Commission determines to be in the na-
5 tional interest; and

6 (6) establish collaborative relationships with
7 international organizations and agencies in countries
8 of origin to encourage the deposit of remittances
9 with financial institutions that will reinvest the re-
10 mittances received from the United States to pro-
11 mote job development in those countries of origin
12 that have sent immigrants to the United States.

13 (c) PROCEDURES TO DETERMINE APPROPRIATE
14 LEVEL OF EMPLOYMENT BASED IMMIGRATION FOR TEM-
15 PORARY OR PERMANENT EMPLOYMENT.—

16 (1) METHODOLOGY.—Not later than 12 months
17 after Congress appropriates funds for its operation,
18 the Commission shall submit to Congress the meth-
19 odologies it proposes to use to determine the need
20 for immigrant workers and nonimmigrant foreign
21 workers. Congress shall have 90 days to enact a res-
22 olution of disapproval. In the absence of such action,
23 the methodologies shall stand approved.

24 (2) INITIAL DETERMINATION OF NUMERIC LEV-
25 ELS.—At the beginning of the first regular session

1 of Congress after the methodologies in paragraph
2 (1) have been approved, but not later than the first
3 day of April, the Commission shall submit to Con-
4 gress the numeric levels of visas it recommends, by
5 majority vote, to be made available for temporary or
6 permanent employment under the Immigration and
7 Nationality Act and a statement of the reasons
8 therefore. Congress shall have 90 days to enact a
9 resolution of disapproval. In absence of such action,
10 the numeric levels shall stand approved and be im-
11 plemented at the start of the next fiscal year.

12 (3) ANNUAL DETERMINATIONS.—Once the ini-
13 tial determination of numeric levels is established,
14 the Commission shall annually thereafter submit to
15 Congress any increase or decrease in numeric levels
16 of employment based immigration it recommends by
17 majority vote, which shall be disapproved by Con-
18 gress in the same manner as in clause (2), or stand
19 approved for the next fiscal year.

20 (d) POWERS OF THE COMMISSION.—

21 (1) The Commission, by vote of a majority of
22 the members present and voting, shall have the
23 power to—

24 (A) establish general policies and promul-
25 gate such rules and regulations for the Commis-

1 sion as are necessary to carry out the purposes
2 of this section;

3 (B) appoint and fix the salary and duties
4 of the Staff Director of the Commission, who
5 shall serve at the discretion of the Commission
6 and who shall be compensated at a rate not to
7 exceed the highest rate now or hereafter pre-
8 scribed for Level 6 of the Senior Executive
9 Service Schedule (5 U.S.C. 5382), and such
10 other personnel as may be necessary to enable
11 the Commission to carry out its functions;

12 (C) deny, revise, or ratify any request for
13 regular, supplemental, or deficiency appropria-
14 tions prior to any submission of such request to
15 the Office of Management and Budget by the
16 Chair;

17 (D) utilize, with their consent, the services,
18 equipment, personnel, information, and facilities
19 of other Federal, State, local, and private agen-
20 cies and instrumentalities with or without reim-
21 bursement therefor;

22 (E) without regard to section 3324 of title
23 31, United States Code, enter into and perform
24 such contracts, leases, cooperative agreements,
25 and other transactions as may be necessary in

1 the conduct of the functions of the Commission,
2 with any public agency, or with any person,
3 firm, association, corporation, educational insti-
4 tution, or nonprofit organization;

5 (F) accept and employ, in carrying out the
6 provisions of this title, voluntary and uncom-
7 pensated services, notwithstanding the provi-
8 sions of section 1342 of title 31, United States
9 Code, however, individuals providing such serv-
10 ices shall not be considered Federal employees
11 except for purposes of chapter 81 of title 5,
12 United States Code, with respect to job-in-
13 curred disability and title 28, United States
14 Code, with respect to tort claims;

15 (G) request such information, data, and re-
16 ports from any Federal agency as the Commis-
17 sion may from time to time require and as may
18 be produced consistent with other law;

19 (H) arrange with the head of any other
20 Federal agency for the performance by such
21 agency of any function of the Commission, with
22 or without reimbursement;

23 (I) establish a research and development
24 program within the Commission for the purpose
25 of understanding and documenting the effects

1 of immigration and the temporary admission of
2 foreign workers on the labor market and na-
3 tional competitiveness;

4 (J) collect systematically the data obtained
5 from studies, research, and the empirical expe-
6 rience of public and private agencies concerning
7 the need for and effects of employment-based
8 immigration and the admission of non-
9 immigrant workers;

10 (K) interview and confer with state and
11 local officials, representatives of labor and in-
12 dustry, and experts in academia to obtain infor-
13 mation about the need for or benefit of addi-
14 tional immigrant or nonimmigrant workers;

15 (L) make recommendations to Congress
16 concerning modification or enactment of stat-
17 utes relating to matters that the Commission
18 finds to be necessary and advisable to carry out
19 an effective employment-based immigration pol-
20 icy;

21 (M) hold hearings and call witnesses to as-
22 sist the Commission in the exercise of its pow-
23 ers or duties;

1 (N) retain and, in its discretion pay rea-
2 sonable attorneys' fees out of its appropriated
3 funds to, private attorneys who—

4 (i) shall provide legal advice to the
5 Commission in the conduct of its work, or
6 to appear for or represent the Commission
7 in any case in which the Commission is au-
8 thorized by law to represent itself, or in
9 which the Commission is representing itself
10 with the consent of the Department of
11 Justice; and

12 (ii) when serving as officers or em-
13 ployees of the United States, shall be con-
14 sidered special government employees as
15 defined in section 202(a) of title 18; and

16 (O) grant incentive awards to its employ-
17 ees pursuant to chapter 45 of title 5, United
18 States Code.

19 (2) The Commission shall have such other pow-
20 ers and duties and shall perform such other func-
21 tions as may be necessary to carry out the purposes
22 of this section, and may delegate to any member or
23 designated person such powers as may be appro-
24 priate.

1 (e) INFORMATION AND ASSISTANCE FROM FEDERAL
2 AGENCIES.—

3 (1) INFORMATION.—The head of any Federal
4 department or agency that receives a request from
5 the Commission for information, including sugges-
6 tions, estimates, and statistics, as the Commission
7 considers necessary to carry out the provisions of
8 this section, shall furnish such information to the
9 Commission, to the extent allowed by law.

10 (2) ASSISTANCE.—

11 (A) GENERAL SERVICES ADMINISTRA-
12 TION.—The Administrator of General Services
13 shall, on a reimbursable basis, provide the Com-
14 mission with administrative support and other
15 services for the performance of the Commis-
16 sion's functions.

17 (B) OTHER FEDERAL AGENCIES.—The de-
18 partments and agencies of the United States
19 may provide the Commission with such services,
20 funds, facilities, staff, and other support serv-
21 ices as heads of such departments and agencies
22 determine advisable and authorized by law.

23 (f) PERSONNEL MATTERS.—

24 (1) STAFF.—

1 (A) Except as provided under subpara-
2 graph (B), any personnel of the Commission
3 who are employees shall be considered to be em-
4 ployees under section 2105 of title 5, United
5 States Code, for purposes of chapters 63, 81,
6 83, 84, 85, 87, 89 and 90 of such title.

7 (B) Subparagraph (A) shall not apply to
8 members of the Commission.

9 (2) DETAILEES.—Any employee of the Federal
10 Government may be detailed to the Commission
11 without reimbursement from the Commission. Such
12 detailee shall retain the rights, status, and privileges
13 of his or her regular employment without interrup-
14 tion.

15 (3) CONSULTANT SERVICES.—The Commission
16 may procure the services of experts and consultants
17 in accordance with section 3109 of title 5, United
18 States Code, at rates not to exceed the daily rate
19 paid a person occupying a position at level IV of Ex-
20 ecutive Schedule under section 5315 of such title 5.

21 (g) COMPENSATION AND TRAVEL EXPENSES.—

22 (1) COMPENSATION.—Each voting member of
23 the Commission may be compensated at a rate not
24 to exceed the daily equivalent of the annual rate of
25 basic pay in effect for a position at level IV of the

1 Executive Schedule under section 5315 of title 5,
2 United States Code, for each day during which that
3 member is engaged in the actual performance of the
4 duties of the Commission.

5 (2) TRAVEL EXPENSES.—Members of the Com-
6 mission shall be allowed travel expenses, including
7 per diem in lieu of subsistence, in the same manner
8 as persons employed intermittently in Government
9 service are allowed expenses under section 5703(b)
10 of title 5, United States Code, while away from their
11 homes or regular places of business in performance
12 of services for the Commission.

13 (h) AUTHORIZATION OF APPROPRIATIONS.—There
14 are authorized to carry out the purposes of this section
15 such sums as may be necessary.

16 **SEC. 502. SECURITY AND PROSPERITY ACCOUNT.**

17 Section 286 (8 U.S.C. 1356) is amended by adding
18 at the end the following new subsection:

19 “(w) PROSPERITY ACCOUNT.—

20 “(1) ESTABLISHMENT.—There is established in
21 the general fund of the Treasury an account, which
22 shall be known as the ‘Security and Prosperity Ac-
23 count’.

24 “(2) DEPOSITS.—Notwithstanding any other
25 provision of this Act, there shall be deposited as off-

1 setting receipts into the Security and Prosperity Ac-
2 count—

3 “(A) all fines collected under section
4 401(g)(2)(B) of the CIR ASAP Act of 2009;
5 and

6 “(B) all fees collected under section
7 401(g)(2)(A) of such Act.

8 “(3) USE OF FUNDS.—The fees and fines de-
9 posited into the Security and Prosperity Fund shall
10 be allocated as follows:

11 “(A) 25 percent shall be allocated for
12 ‘Training and Employment Services’ for activi-
13 ties under the Workforce Investment Act (WIA)
14 of 1998 which shall distributed as follows:

15 “(i) 25 percent for grants to the
16 States for adult employment and training
17 activities.

18 “(ii) 20 percent for grants to the
19 States for dislocated worker employment
20 and training activities.

21 “(iii) 10 percent shall be allocated for
22 the dislocated workers assistance national
23 reserve, except that—

24 “(I) such funds shall be made
25 available for grants only to eligible en-

1 tities that serve areas of high unem-
2 ployment or high poverty and only for
3 purposes described in subsection
4 173(a)(1) of the WIA; and

5 “(II) the Secretary of Labor shall
6 ensure that applicants for such funds
7 demonstrate how income support,
8 child care and other supportive serv-
9 ices necessary for an individual’s par-
10 ticipation in job training will be pro-
11 vided; and

12 “(iv) 45 percent for a program of
13 competitive grants for worker training and
14 placement in high growth and emerging in-
15 dustry sectors.

16 “(B) 5 percent shall be allocated for the
17 American Worker Recruit and Match System
18 described in section 503 of the CIR ASAP Act
19 of 2009.

20 “(C) 10 percent shall be allocated to the
21 Secretary of Homeland Security for the proc-
22 essing of immigration benefits applications and
23 to subsidize the costs of immigration benefits
24 applications described in section 321.

1 “(D) 3 percent shall be allocated to imple-
2 ment title VI of the CIR ASAP Act of 2009.

3 “(E) 2 percent shall be allocated for the
4 establishment and operations of the Commis-
5 sion on Labor Markets and Immigration as de-
6 scribed in section 501 of such Act.

7 “(F) 30 percent shall be allocated to im-
8 plement the amendments made by title II of the
9 CIR ASAP Act of 2009, and enforcement ef-
10 forts mandated in such amendments to ensure
11 compliance with the employment practices de-
12 scribed in such amendments.

13 “(G) 25 percent distributed equally among
14 the programs established in title I of the CIR
15 ASAP Act of 2009 for border security, deten-
16 tion, and enforcement.”.

17 **SEC. 503. AMERICAN RECRUIT AND MATCH SYSTEM.**

18 (a) ESTABLISHMENT OF PROGRAM.—Each State
19 Workforce Agency (SWA) shall establish an Internet-
20 based program entitled “American Worker Recruit and
21 Match” program, to be incorporated with existing SWA
22 Web-based job search engines, if any—

23 (1) whereby employers may electronically post
24 employment opportunities in fields and occupations
25 that have traditionally relied on unauthorized labor,

1 such as hospitality, agriculture, construction, domes-
2 tic services, food services and as determined by the
3 Secretary of Labor;

4 (2) whereby individuals may electronically post
5 employment profiles; and

6 (3) that shall be searchable and shall match
7 employers with qualified individuals.

8 (b) SINGLE INTERNET LINK.—The Secretary of
9 Labor shall establish a publicly accessible Web page on
10 the Internet website of the Department of Labor that pro-
11 vides a single internet link to each State workforce agen-
12 cy's American Worker Recruit and Match program.

13 (c) EDUCATION.—Each State workforce agency shall
14 conduct monthly seminars that shall be publicly noticed,
15 to educate employers and individuals regarding use of the
16 American Recruit and Match System.

17 (d) FUNDING.—Fees and fines deposited in the Pros-
18 perity Fund under section 286(w)(3)(B) of the Immigra-
19 tion and Nationality Act may be used to carry out this
20 section.

1 **CHAPTER 2—PROTECTION OF WORKERS**
2 **RECRUITED ABROAD**

3 **SEC. 511. PROTECTIONS FOR WORKERS RECRUITED**
4 **ABROAD.**

5 (a) BASIC REQUIREMENTS.—(1) Each employer and
6 foreign labor contractor who engages in foreign labor con-
7 tracting activity shall ascertain and disclose to each such
8 worker who is recruited for employment the following in-
9 formation at the time of the worker's recruitment:

10 (A) The place of employment.

11 (B) The compensation for the employment.

12 (C) A description of employment activities.

13 (D) The period of employment.

14 (E) The transportation, housing, and any other
15 employee benefit to be provided and any costs to be
16 charged for each benefit.

17 (F) The existence of any labor organizing ef-
18 fort, strike, lockout, or other labor dispute at the
19 place of employment.

20 (G) The existence of any arrangements with
21 any owner or agent of any establishment in the area
22 of employment under which the contractor or em-
23 ployer is to receive a commission or any other ben-
24 efit resulting from any sales (including the provision
25 of services) by such establishment to the workers.

1 (H) Whether and the extent to which workers
2 will be compensated through workers' compensation,
3 private insurance, or otherwise for injuries or death,
4 including work related injuries and death, during the
5 period of employment and, if so, the name of the
6 State workers' compensation insurance carrier or the
7 name of the policyholder of the private insurance,
8 the name and the telephone number of each person
9 who must be notified of an injury or death, and the
10 time period within which such notice must be given.

11 (I) Any education or training to be provided or
12 made available, including the nature and cost of
13 such training, who will pay such costs, and whether
14 the training is a condition of employment, continued
15 employment, or future employment.

16 (J) A statement, approved by the Secretary of
17 Labor, describing the protections of this part for
18 workers recruited abroad.

19 (2) No foreign labor contractor or employer shall
20 knowingly provide false or misleading information to any
21 worker concerning any matter required to be disclosed in
22 paragraph (1).

23 (3) The information required to be disclosed by para-
24 graph (1) to workers shall be provided in written form.
25 Such information shall be provided in English or, as nec-

1 essary and reasonable, in the language of the worker being
2 recruited. The Department of Labor shall make forms
3 available in English, Spanish, and other languages, as nec-
4 essary, which may be used in providing workers with infor-
5 mation required under this section.

6 (4) No fees may be charged to a worker for recruit-
7 ment.

8 (5) No employer or foreign labor contractor shall,
9 without justification, violate the terms of any working ar-
10 rangement made by that contractor or employer.

11 (6) The employer shall pay the transportation costs,
12 including subsistence costs during the period of travel, for
13 the worker from the place of recruitment to the place of
14 employment and from the place of employment to such
15 worker's place of permanent residence.

16 (7)(A) It shall be unlawful for an employer or a for-
17 eign labor contractor to fail or refuse to hire or to dis-
18 charge any individual, or otherwise discriminate against
19 an individual with respect to compensation, terms, condi-
20 tions, or privileges of employment because such individ-
21 ual's race, color, creed, sex, national origin, religion, age,
22 or disability.

23 (B) For the purposes of determining the existence of
24 unlawful discrimination under subclause (A)—

1 (i) in the case of a claim of discrimination
2 based on race, color, creed, sex, national origin, or
3 religion, the same legal standards shall apply as are
4 applicable under title VII of the Civil Rights Act of
5 1964 (42 U.S.C. 2000e et seq.);

6 (ii) in the case of a claim of discrimination
7 based on unlawful discrimination based on age, the
8 same legal standards shall apply as are applicable
9 under the Age Discrimination in Employment Act of
10 1967 (29 U.S.C. 621 et seq.); and

11 (iii) in the case of a claim of discrimination
12 based on disability, the same legal standards shall
13 apply as are applicable under title I of the Ameri-
14 cans With Disabilities Act (42 U.S.C. 12101 et
15 seq.).

16 (b) OTHER WORKER PROTECTIONS.—(1) Each em-
17 ployer shall notify the Secretary of the identity of any for-
18 eign labor contractor involved in any foreign labor con-
19 tractor activity for or on behalf of the employer. The em-
20 ployer shall be subject to the civil remedies of this chapter
21 for violations committed by such foreign labor contractor
22 to the same extent as if the employer had committed the
23 violation. The employer shall notify the Secretary of the
24 identity of such a foreign labor contractor whose activities
25 do not comply with this chapter.

1 (2) The Secretary shall maintain a list of all foreign
2 labor contractors whom the Secretary knows or believes
3 have been involved in violations of this chapter, and make
4 that list publicly available. The Secretary shall provide a
5 procedure by which an employer, a foreign labor con-
6 tractor, or someone acting on behalf of such contractor
7 may seek to have a foreign labor contractor's name re-
8 moved from such list by demonstrating to the Secretary's
9 satisfaction that the foreign labor contractor has not vio-
10 lated this chapter in the previous five years.

11 (3) No foreign labor contractor shall violate, without
12 justification, the terms of any written agreements made
13 with an employer pertaining to any contracting activity or
14 worker protection under this chapter.

15 (c) DISCRIMINATION PROHIBITED AGAINST WORK-
16 ERS SEEKING RELIEF UNDER THIS CHAPTER.—No per-
17 son shall intimidate, threaten, restrain, coerce, blacklist,
18 discharge, or in any manner discriminate against any
19 worker because such worker has, with just cause, filed any
20 complaint or instituted, or caused to be instituted, any
21 proceeding under or related to this chapter, or has testi-
22 fied or is about to testify in any such proceedings, or be-
23 cause of the exercise, with just cause, by such worker on
24 behalf of himself or others of any right or protection af-
25 forced by this chapter.

1 **SEC. 512. ENFORCEMENT PROVISIONS.**

2 (a) CRIMINAL SANCTIONS.—Whoever knowingly vio-
3 lates this chapter shall be fined under title 18, United
4 States Code, or imprisoned not more than one year, or
5 both. Upon conviction, after a first conviction under this
6 section, for a second or subsequent violation of this chap-
7 ter, the defendant shall be fined under title 18, United
8 States Code, or imprisoned not more than three years, or
9 both.

10 (b) ADMINISTRATIVE SANCTIONS.—(1)(A) Subject to
11 subparagraph (B), the Secretary may assess a civil money
12 penalty of not more than \$5,000 on any person who vio-
13 lates this chapter.

14 (B) In determining the amount of any penalty to be
15 assessed under subparagraph (A), the Secretary shall take
16 into account (i) the previous record of the person in terms
17 of compliance with this chapter and with comparable re-
18 quirements of the Fair Labor Standards Act of 1938, and
19 with regulations promulgated under such Acts, and (ii) the
20 gravity of the violation.

21 (2) Any employer who uses the services of a foreign
22 labor contractor who is on the list maintained by the Sec-
23 retary pursuant to section 2(b)(2), shall, if the actions of
24 such foreign labor contractor have contributed to a viola-
25 tion of this chapter by the employer, be fined \$10,000 per

1 violation in addition to any other fines or penalties for
2 which the employer may be liable for the violation.

3 (c) ACTIONS BY SECRETARY.—The Secretary may
4 take such actions, including seeking appropriate injunctive
5 relief and specific performance of contractual obligations,
6 as may be necessary to assure employer compliance with
7 terms and conditions of employment under this chapter
8 and with this chapter.

9 (d) WAIVER OF RIGHTS.—Agreements by employees
10 purporting to waive or to modify their rights under this
11 chapter shall be void as contrary to public policy.

12 (e) REPRESENTATION IN COURT.—Except as pro-
13 vided in section 518(a) of title 28, United States Code,
14 relating to litigation before the Supreme Court, the Solic-
15 itor of Labor may appear for and represent the Secretary
16 in any civil litigation brought under this chapter, but all
17 such litigation shall be subject to the direction and control
18 of the Attorney General.

19 **SEC. 513. PROCEDURES IN ADDITION TO OTHER RIGHTS OF**
20 **EMPLOYEES.**

21 The rights and remedies provided to workers by this
22 chapter are in addition to, and not in lieu of, any other
23 contractual or statutory rights and remedies of the work-
24 ers, and are not intended to alter or affect such rights
25 and remedies.

1 **SEC. 514. AUTHORITY TO PRESCRIBE REGULATIONS.**

2 The Secretary of Labor shall prescribe such regula-
3 tions as may be necessary to carry out this chapter.

4 **SEC. 515. DEFINITIONS.**

5 (a) IN GENERAL.—Except as otherwise provided by
6 this chapter, for purposes of this chapter the terms used
7 in this chapter shall have the same meanings, respectively,
8 as are given those terms in section 3 of the Fair Labor
9 Standards Act of 1938.

10 (b) OTHER DEFINITIONS.—As used in this chapter:

11 (1) The term “State” means any State of the
12 United States and includes the District of Columbia,
13 Puerto Rico, Guam, American Samoa, the Common-
14 wealth of the Northern Mariana Islands, and the
15 Virgin Islands of the United States.

16 (2) The term “foreign labor contractor” means
17 any person who for any money or other valuable
18 consideration paid or promised to be paid, performs
19 any foreign labor contracting activity.

20 (3) The term “foreign labor contracting activ-
21 ity” means recruiting, soliciting, hiring, employing,
22 or furnishing, an individual who resides outside of
23 the United States to be employed in the United
24 States.

25 (4) The term “Secretary” means the Secretary
26 of Labor.

1 (5) The term “worker” means an individual
 2 who is the subject of foreign labor contracting activ-
 3 ity.

4 **CHAPTER 3—TECHNICAL CORRECTION**

5 **SEC. 521. TECHNICAL CORRECTION.**

6 Section 212 of the Immigration and Nationality Act
 7 is amended by redesignating the second subsection (t), as
 8 added by section 1(b)(2)(B) of the Act entitled “An Act
 9 to amend and extend the Irish Peace Process Cultural and
 10 Training Program Act of 1998” (Public Law 108–449
 11 (118 Stat. 3470)), as subsection (u).

12 **Subtitle B—Reforms of Certain** 13 **Classes of Employment-based Visas**

14 **CHAPTER 1—H-1B VISA FRAUD AND** 15 **ABUSE PROTECTIONS**

16 **Subchapter A—H-1B Employer Application** 17 **Requirements**

18 **SEC. 531. MODIFICATION OF APPLICATION REQUIRE-** 19 **MENTS.**

20 (a) GENERAL APPLICATION REQUIREMENTS.—Sub-
 21 paragraph (A) of section 212(n)(1) of the Immigration
 22 and Nationality Act (8 U.S.C. 1182(n)(1)) is amended to
 23 read as follows:

24 “(A) The employer—

1 “(i) is offering and will offer to H–1B non-
2 immigrants, during the period of authorized
3 employment for each H–1B nonimmigrant,
4 wages that are determined based on the best in-
5 formation available at the time the application
6 is filed and which are not less than the highest
7 of—

8 “(I) the locally determined prevailing
9 wage level for the occupational classifica-
10 tion in the area of employment;

11 “(II) the median average wage for all
12 workers in the occupational classification
13 in the area of employment; and

14 “(III) the median wage for skill level
15 2 in the occupational classification found
16 in the most recent Occupational Employ-
17 ment Statistics survey; and

18 “(ii) will provide working conditions for
19 such H–1B nonimmigrant that will not ad-
20 versely affect the working conditions of other
21 workers similarly employed.”.

22 (b) INTERNET POSTING REQUIREMENT.—Subpara-
23 graph (C) of such section 212(n)(1) is amended—

24 (1) by redesignating clause (ii) as subclause

25 (II);

1 (2) by striking “(i) has provided” and inserting
2 the following:

3 “(ii)(I) has provided”; and

4 (3) by inserting before clause (ii), as redesignated by paragraph (2) of this subsection, the following:

7 “(i) has posted on the Internet website described in paragraph (3), for at least 30 calendar days, a detailed description of each position for which a nonimmigrant is sought that includes a description of—

12 “(I) the wages and other terms and conditions of employment;

14 “(II) the minimum education, training, experience, and other requirements for the position; and

17 “(III) the process for applying for the position; and”.

19 (c) WAGE DETERMINATION INFORMATION.—Subparagraph (D) of such section 212(n)(1) is amended by inserting “the wage determination methodology used under subparagraph (A)(i),” after “shall contain”.

23 (d) APPLICATION OF REQUIREMENTS TO ALL EMPLOYERS.—
24

1 (1) NONDISPLACEMENT.—Subparagraph (E) of
2 such section 212(n)(1) is amended—

3 (A) in clause (i)—

4 (i) by striking “90 days” both places
5 it appears and inserting “180 days”; and

6 (ii) by striking “(i) In the case of an
7 application described in clause (ii), the”
8 and inserting “The”; and

9 (B) by striking clause (ii).

10 (2) RECRUITMENT.—Subparagraph (G)(i) of
11 such section 212(n)(1) is amended by striking “In
12 the case of an application described in subparagraph
13 (E)(ii), subject” and inserting “Subject”.

14 (e) REQUIREMENT FOR WAIVER.—Subparagraph (F)
15 of such section 212(n)(1) is amended to read as follows:

16 “(F) The employer shall not place, outsource,
17 lease, or otherwise contract for the services or place-
18 ment of H–1B nonimmigrants with another em-
19 ployer unless the employer of the alien has been
20 granted a waiver under paragraph (2)(E).”.

21 **SEC. 532. NEW APPLICATION REQUIREMENTS.**

22 Section 212(n)(1) of the Immigration and Nationality
23 Act (8 U.S.C. 1182(n)(1)) is amended by inserting after
24 clause (ii) of subparagraph (G) the following:

1 “(H)(i) The employer has not advertised any
2 available position specified in the application in an
3 advertisement that states or indicates that—

4 “(I) such position is only available to an
5 individual who is or will be an H–1B non-
6 immigrant; or

7 “(II) an individual who is or will be an H–
8 1B nonimmigrant shall receive priority or a
9 preference in the hiring process for such posi-
10 tion.

11 “(ii) The employer has not solely recruited indi-
12 viduals who are or who will be H–1B nonimmigrants
13 to fill such position.

14 “(I) If the employer employs 50 or more em-
15 ployees in the United States, the sum of the number
16 of such employees who are H–1B nonimmigrants
17 plus the number of such employees who are non-
18 immigrants described in section 101(a)(15)(L) may
19 not exceed 50 percent of the total number of em-
20 ployees.

21 “(J) If the employer, in such previous period as
22 the Secretary shall specify, employed 1 or more H–
23 1B nonimmigrants, the employer shall submit to the
24 Secretary the Internal Revenue Service Form W–2
25 Wage and Tax Statement filed by the employer with

1 respect to the H-1B nonimmigrants for such pe-
2 riod.”.

3 **SEC. 533. APPLICATION REVIEW REQUIREMENTS.**

4 (a) TECHNICAL AMENDMENT.—Section 212(n)(1) of
5 the Immigration and Nationality Act (8 U.S.C.
6 1182(n)(1)), as amended by section 102, is further
7 amended in the undesignated paragraph at the end, by
8 striking “The employer” and inserting the following:

9 “(K) The employer.”.

10 (b) APPLICATION REVIEW REQUIREMENTS.—Sub-
11 paragraph (K) of such section 212(n)(1), as designated
12 by subsection (a), is amended—

13 (1) by inserting “and through the Department
14 of Labor’s website, without charge.” after “D.C.”;

15 (2) by striking “only for completeness” and in-
16 serting “for completeness and clear indicators of
17 fraud or misrepresentation of material fact,”;

18 (3) by striking “or obviously inaccurate” and
19 inserting “, presents clear indicators of fraud or
20 misrepresentation of material fact, or is obviously in-
21 accurate”;

22 (4) by striking “within 7 days of” and inserting
23 “not later than 14 days after”; and

24 (5) by adding at the end the following: “If the
25 Secretary’s review of an application identifies clear

1 indicators of fraud or misrepresentation of material
2 fact, the Secretary may conduct an investigation and
3 hearing in accordance with paragraph (2).”.

4 **Subchapter B—Investigation and Disposition**
5 **of Complaints Against H-1B**

6 **SEC. 541. GENERAL MODIFICATION OF PROCEDURES FOR**
7 **INVESTIGATION AND DISPOSITION.**

8 Subparagraph (A) of section 212(n)(2) of the Immi-
9 gration and Nationality Act (8 U.S.C. 1182(n)(2)) is
10 amended—

11 (1) by striking “(A) Subject” and inserting
12 “(A)(i) Subject”;

13 (2) by striking “12 months” and inserting “24
14 months”;

15 (3) by striking the last sentence; and

16 (4) by adding at the end the following:

17 “(ii)(I) Upon the receipt of such a com-
18 plaint, the Secretary may initiate an investiga-
19 tion to determine if such a failure or misrepre-
20 sentation has occurred.

21 “(II) The Secretary may conduct surveys
22 of the degree to which employers comply with
23 the requirements of this subsection and may
24 conduct annual compliance audits of employers
25 that employ H-1B nonimmigrants.

1 “(III) The Secretary shall—

2 “(aa) conduct annual compliance au-
3 dits of not less than 1 percent of the em-
4 ployers that employ H–1B nonimmigrants
5 during the applicable calendar year;

6 “(bb) conduct annual compliance au-
7 dits of each employer with more than 100
8 employees who work in the United States
9 if more than 15 percent of such employees
10 are H–1B nonimmigrants; and

11 “(cc) make available to the public an
12 executive summary or report describing the
13 general findings of the audits carried out
14 pursuant to this subclause.”.

15 **SEC. 542. INVESTIGATION, WORKING CONDITIONS, AND**
16 **PENALTIES.**

17 Subparagraph (C) of section 212(n)(2) of the Immi-
18 gration and Nationality Act (8 U.S.C. 1182(n)(2)) is
19 amended—

20 (1) in clause (i)—

21 (A) in the matter preceding subclause

22 (I)—

23 (i) by striking “a condition of para-
24 graph (1)(B), (1)(E), or (1)(F)” and in-
25 serting “a condition under subparagraph

1 (A), (B), (C)(i), (E), (F), (G)(i)(I), (H),
2 (I), or (J) of paragraph (1)”; and

3 (ii) by striking “(1)(C)” and inserting
4 “(1)(C)(ii)”; and

5 (B) in subclause (I)—

6 (i) by striking “\$1,000” and inserting
7 “\$2,000”; and

8 (ii) by striking “and” at the end;

9 (C) in subclause (II), by striking the pe-
10 riod at the end and inserting a semicolon and
11 “and”;

12 (D) by adding at the end the following:

13 “(III) an employer that violates such subpara-
14 graph (A) shall be liable to the employees harmed by
15 such violations for lost wages and benefits.”; and

16 (2) in clause (ii)—

17 (A) in subclause (I)—

18 (i) by striking “may” and inserting
19 “shall”; and

20 (ii) by striking “\$5,000” and insert-
21 ing “\$10,000”; and

22 (B) in subclause (II), by striking the pe-
23 riod at the end and inserting a semicolon and
24 “and”;

25 (C) by adding at the end the following:

1 “(III) an employer that violates such subpara-
2 graph (A) shall be liable to the employees harmed by
3 such violations for lost wages and benefits.”; and

4 (3) in clause (iii)—

5 (A) in the matter preceding subclause (I),
6 by striking “90 days” both places it appears
7 and inserting “180 days”;

8 (B) in subclause (I)—

9 (i) by striking “may” and inserting
10 “shall”; and

11 (ii) by striking “and” at the end;

12 (C) in subclause (II), by striking the pe-
13 riod at the end and inserting a semicolon and
14 “and”; and

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

16 “(III) an employer that violates subparagraph
17 (A) of such paragraph shall be liable to the employ-
18 ees harmed by such violations for lost wages and
19 benefits.”;

20 (4) in clause (iv)—

21 (A) by inserting “to take, fail to take, or
22 threaten to take or fail to take, a personnel ac-
23 tion, or” before “to intimidate”;

24 (B) by inserting “(I)” after “(iv)”; and

25 (C) by adding at the end the following:

1 “(II) An employer that violates this clause shall
2 be liable to the employees harmed by such violation
3 for lost wages and benefits.”; and

4 (5) in clause (vi)—

5 (A) by amending subclause (I) to read as
6 follows:

7 “(I) It is a violation of this clause for an em-
8 ployer who has filed an application under this sub-
9 section—

10 “(aa) to require an H–1B nonimmigrant to
11 pay a penalty for ceasing employment with the
12 employer prior to a date agreed to by the non-
13 immigrant and the employer (the Secretary
14 shall determine whether a required payment is
15 a penalty, and not liquidated damages, pursu-
16 ant to relevant State law); and

17 “(bb) to fail to offer to an H–1B non-
18 immigrant, during the nonimmigrant’s period of
19 authorized employment, on the same basis, and
20 in accordance with the same criteria, as the em-
21 ployer offers to United States workers, benefits
22 and eligibility for benefits, including—

23 “(AA) the opportunity to participate
24 in health, life, disability, and other insur-
25 ance plans;

1 “(BB) the opportunity to participate
2 in retirement and savings plans; and
3 “(CC) cash bonuses and noncash com-
4 pensation, such as stock options (whether
5 or not based on performance).”; and
6 (B) in subclause (III), by striking
7 “\$1,000” and inserting “\$2,000”.

8 **SEC. 543. WAIVER REQUIREMENTS.**

9 (a) IN GENERAL.—Subparagraph (E) of section
10 212(n)(2) of the Immigration and Nationality Act (8
11 U.S.C. 1182(n)(2)) is amended to read as follows:

12 “(E)(i) The Secretary of Labor may waive the prohi-
13 bition in paragraph (1)(F) if the Secretary determines
14 that the employer seeking the waiver has established
15 that—

16 “(I) the employer with whom the H–1B non-
17 immigrant would be placed has not displaced, and
18 does not intend to displace, a United States worker
19 employed by the employer within the period begin-
20 ning 180 days before and ending 180 days after the
21 date of the placement of the nonimmigrant with the
22 employer;

23 “(II) the H–1B nonimmigrant will not be con-
24 trolled and supervised principally by the employer

1 with whom the H-1B nonimmigrant would be
2 placed; and

3 “(III) the placement of the H-1B non-
4 immigrant is not essentially an arrangement to pro-
5 vide labor for hire for the employer with whom the
6 H-1B nonimmigrant will be placed.

7 “(ii) The Secretary shall grant or deny a waiver
8 under this subparagraph not later than 7 days after the
9 Secretary receives the application for such waiver.”.

10 (b) REQUIREMENT FOR RULES.—

11 (1) RULES FOR WAIVERS.—The Secretary of
12 Labor shall promulgate rules, after notice and a pe-
13 riod for comment, for an employer to apply for a
14 waiver under subparagraph (E) of section 212(n)(2)
15 of such Act, as amended by subsection (a).

16 (2) REQUIREMENT FOR PUBLICATION.—The
17 Secretary of Labor shall submit to Congress and
18 publish in the Federal Register and other appro-
19 priate media a notice of the date that rules required
20 by paragraph (1) are published.

21 **SEC. 544. INITIATION OF INVESTIGATIONS.**

22 Subparagraph (G) of section 212(n)(2) of the Immi-
23 gration and Nationality Act (8 U.S.C. 1182(n)(2)) is
24 amended—

1 (1) in clause (i), by striking “if the Secretary”
2 and all that follows and inserting “with regard to
3 the employer’s compliance with the requirements of
4 this subsection.”;

5 (2) in clause (ii), by striking “and whose iden-
6 tity” and all that follows through “failure or fail-
7 ures.” and inserting “the Secretary of Labor may
8 conduct an investigation into the employer’s compli-
9 ance with the requirements of this subsection.”;

10 (3) in clause (iii), by striking the last sentence;

11 (4) by striking clauses (iv) and (v);

12 (5) by redesignating clauses (vi), (vii), and (viii)
13 as clauses (iv), (v), and (vi), respectively;

14 (6) in clause (iv), as so redesignated, by strik-
15 ing “meet a condition described in clause (ii), unless
16 the Secretary of Labor receives the information not
17 later than 12 months” and inserting “comply with
18 the requirements under this subsection, unless the
19 Secretary of Labor receives the information not later
20 than 24 months”;

21 (7) by amending clause (v), as so redesignated,
22 to read as follows:

23 “(v) The Secretary of Labor shall provide no-
24 tice to an employer of the intent to conduct an in-
25 vestigation. The notice shall be provided in such a

1 manner, and shall contain sufficient detail, to permit
2 the employer to respond to the allegations before an
3 investigation is commenced. The Secretary is not re-
4 quired to comply with this clause if the Secretary de-
5 termines that such compliance would interfere with
6 an effort by the Secretary to investigate or secure
7 compliance by the employer with the requirements of
8 this subsection. A determination by the Secretary
9 under this clause shall not be subject to judicial re-
10 view.”;

11 (8) in clause (vi), as so redesignated, by strik-
12 ing “An investigation” and all that follows through
13 “the determination.” and inserting “If the Secretary
14 of Labor, after an investigation under clause (i) or
15 (ii), determines that a reasonable basis exists to
16 make a finding that the employer has failed to com-
17 ply with the requirements under this subsection, the
18 Secretary shall provide interested parties with notice
19 of such determination and an opportunity for a
20 hearing in accordance with section 556 of title 5,
21 United States Code, not later than 120 days after
22 the date of such determination.”; and

23 (9) by adding at the end the following:

24 “(vii) If the Secretary of Labor, after a hear-
25 ing, finds a reasonable basis to believe that the em-

1 ployer has violated the requirements under this sub-
2 section, the Secretary shall impose a penalty under
3 subparagraph (C).”.

4 **SEC. 545. INFORMATION SHARING.**

5 Subparagraph (H) of section 212(n)(2) of the Immi-
6 gration and Nationality Act (8 U.S.C. 1182(n)(2)) is
7 amended to read as follows:

8 “(H) The Director of United States Citizenship and
9 Immigration Services shall provide the Secretary of Labor
10 with any information contained in the materials submitted
11 by employers of H–1B nonimmigrants as part of the adju-
12 dication process that indicates that the employer is not
13 complying with visa program requirements for H–1B non-
14 immigrants. The Secretary may initiate and conduct an
15 investigation and hearing under this paragraph after re-
16 ceiving information of noncompliance under this subpara-
17 graph.”.

18 **SEC. 546. CONFORMING AMENDMENT.**

19 Subparagraph (F) of section 212(n)(2) of the Immi-
20 gration and Nationality Act (8 U.S.C. 1182) is amended
21 by striking “The preceding sentence shall apply to an em-
22 ployer regardless of whether or not the employer is an H–
23 1B-dependent employer.”.

1 **Subchapter C—Other H-1B Provisions**

2 **SEC. 551. POSTING AVAILABLE H-1B POSITIONS THROUGH**
3 **THE DEPARTMENT OF LABOR.**

4 (a) DEPARTMENT OF LABOR WEBSITE.—Paragraph
5 (3) of section 212(n) of the Immigration and Nationality
6 Act (8 U.S.C. 1182(n)) is amended to read as follows:

7 “(3)(A) Not later than 90 days after the date
8 of the enactment of the H-1B and L-1 Visa Reform
9 Act of 2009, the Secretary of Labor shall establish
10 a searchable Internet website for posting positions
11 as required by paragraph (1)(C). Such website shall
12 be available to the public without charge.

13 “(B) The Secretary may work with private com-
14 panies or nonprofit organizations to develop and op-
15 erate the Internet website described in subparagraph
16 (A).

17 “(C) The Secretary may promulgate rules, after
18 notice and a period for comment, to carry out the
19 requirements of this paragraph.”.

20 (b) REQUIREMENT FOR PUBLICATION.—The Sec-
21 retary of Labor shall submit to Congress and publish in
22 the Federal Register and other appropriate media a notice
23 of the date that the Internet website required by para-
24 graph (3) of section 212(n) of such Act, as amended by
25 subsection (a), will be operational.

1 (c) APPLICATION.—The amendments made by sub-
2 section (a) shall apply to an application filed on or after
3 the date that is 30 days after the date described in sub-
4 section (b).

5 **SEC. 552. H-1B GOVERNMENT AUTHORITY AND REQUIRE-**
6 **MENTS.**

7 (a) IMMIGRATION DOCUMENTS.—Section 204 of the
8 Immigration and Nationality Act (8 U.S.C. 1154) is
9 amended by adding at the end the following:

10 “(1) EMPLOYER TO PROVIDE IMMIGRATION PAPER-
11 WORK EXCHANGED WITH FEDERAL AGENCIES.—Not
12 later than 21 business days after receiving a written re-
13 quest from a former, current, or future employee or bene-
14 ficiary, an employer shall provide such employee or bene-
15 ficiary with the original (or a certified copy of the original)
16 of all petitions, notices, and other written communication
17 exchanged between the employer and the Department of
18 Labor, the Department of Homeland Security, or any
19 other Federal agency or department that is related to an
20 immigrant or nonimmigrant petition filed by the employer
21 for such employee or beneficiary.”.

22 (b) REPORT ON JOB CLASSIFICATION AND WAGE
23 DETERMINATIONS.—Not later than 1 year after the date
24 of the enactment of this Act, the Comptroller General of
25 the United States shall prepare a report analyzing the ac-

1 curacy and effectiveness of the Secretary of Labor's cur-
2 rent job classification and wage determination system. The
3 report shall—

4 (1) specifically address whether the systems in
5 place accurately reflect the complexity of current job
6 types as well as geographic wage differences; and

7 (2) make recommendations concerning nec-
8 essary updates and modifications.

9 **SEC. 553. ADDITIONAL DEPARTMENT OF LABOR EMPLOY-**
10 **EES.**

11 (a) IN GENERAL.—The Secretary of Labor is author-
12 ized to hire 200 additional employees to administer, over-
13 see, investigate, and enforce programs involving non-
14 immigrant employees described in section
15 101(a)(15)(H)(i)(B).

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

19 **CHAPTER 2—L-1 NONIMMIGRANTS**

20 **SEC. 561. PROHIBITION ON OUTPLACEMENT OF L-1 NON-**
21 **IMMIGRANTS.**

22 (a) IN GENERAL.—Subparagraph (F) of section
23 214(c)(2) of the Immigration and Nationality Act (8
24 U.S.C. 1184(c)(2)) is amended to read as follows:

1 “(F)(i) Unless an employer receives a
2 waiver under clause (ii), an employer may not
3 employ an alien, for a cumulative period of
4 more than 1 year, who—

5 “(I) will serve in a capacity involving
6 specialized knowledge with respect to an
7 employer for purposes of section
8 101(a)(15)(L); and

9 “(II) will be stationed primarily at the
10 worksite of an employer other than the pe-
11 titioning employer or its affiliate, sub-
12 sidiary, or parent, including pursuant to
13 an outsourcing, leasing, or other con-
14 tracting agreement.

15 “(ii) The Secretary of Homeland Security
16 may grant a waiver of the requirements of
17 clause (i) for an employer if the Secretary de-
18 termines that the employer has established
19 that—

20 “(I) the employer with whom the alien
21 referred to in clause (i) would be placed
22 has not displaced and does not intend to
23 displace a United States worker employed
24 by the employer within the period begin-

1 ning 180 days after the date of the place-
2 ment of such alien with the employer;

3 “(II) such alien will not be controlled
4 and supervised principally by the employer
5 with whom the nonimmigrant would be
6 placed; and

7 “(III) the placement of the non-
8 immigrant is not essentially an arrange-
9 ment to provide labor for hire for an unaf-
10 filiated employer with whom the non-
11 immigrant will be placed, rather than a
12 placement in connection with the provision
13 or a product or service for which special-
14 ized knowledge specific to the petitioning
15 employer is necessary.

16 “(iii) The Secretary shall grant or deny a
17 waiver under clause (ii) not later than 7 days
18 after the date that the Secretary receives the
19 application for the waiver.”.

20 (b) REGULATIONS.—The Secretary of Homeland Se-
21 curity shall promulgate rules, after notice and a period
22 for comment, for an employer to apply for a waiver under
23 subparagraph (F)(ii) of section 214(c)(2), as added by
24 subsection (a).

1 **SEC. 562. L-1 EMPLOYER PETITION REQUIREMENTS FOR**
2 **EMPLOYMENT AT NEW OFFICES.**

3 Section 214(c)(2) of the Immigration and Nationality
4 Act (8 U.S.C. 1184(c)(2)) is amended by adding at the
5 end the following:

6 “(G)(i) If the beneficiary of a petition
7 under this paragraph is coming to the United
8 States to open, or be employed in, a new office,
9 the petition may be approved for up to 12
10 months only if—

11 “(I) the alien has not been the bene-
12 ficiary of 2 or more petitions under this
13 subparagraph during the immediately pre-
14 ceding 2 years; and

15 “(II) the employer operating the new
16 office has—

17 “(aa) an adequate business plan;

18 “(bb) sufficient physical premises
19 to carry out the proposed business ac-
20 tivities; and

21 “(cc) the financial ability to com-
22 mence doing business immediately
23 upon the approval of the petition.

24 “(ii) An extension of the approval period
25 under clause (i) may not be granted until the
26 importing employer submits an application to

1 the Secretary of Homeland Security that con-
2 tains—

3 “(I) evidence that the importing em-
4 ployer meets the requirements of this sub-
5 section;

6 “(II) evidence that the beneficiary of
7 the petition is eligible for nonimmigrant
8 status under section 101(a)(15)(L);

9 “(III) a statement summarizing the
10 original petition;

11 “(IV) evidence that the importing em-
12 ployer has fully complied with the business
13 plan submitted under clause (i)(I);

14 “(V) evidence of the truthfulness of
15 any representations made in connection
16 with the filing of the original petition;

17 “(VI) evidence that the importing em-
18 ployer, for the entire period beginning on
19 the date on which the petition was ap-
20 proved under clause (i), has been doing
21 business at the new office through regular,
22 systematic, and continuous provision of
23 goods and services;

24 “(VII) a statement of the duties the
25 beneficiary has performed at the new office

1 during the approval period under clause (i)
2 and the duties the beneficiary will perform
3 at the new office during the extension pe-
4 riod granted under this clause;

5 “(VIII) a statement describing the
6 staffing at the new office, including the
7 number of employees and the types of posi-
8 tions held by such employees;

9 “(IX) evidence of wages paid to em-
10 ployees;

11 “(X) evidence of the financial status
12 of the new office; and

13 “(XI) any other evidence or data pre-
14 scribed by the Secretary.

15 “(iii) A NEW OFFICE EMPLOYING THE
16 BENEFICIARY OF AN L.—1 petition approved
17 under this paragraph shall do business only
18 through regular, systematic, and continuous
19 provision of goods and services for the entire
20 period for which the petition is sought.

21 “(iv) Notwithstanding clause (ii), and sub-
22 ject to the maximum period of authorized ad-
23 mission set forth in subparagraph (D), the Sec-
24 retary of Homeland Security, in the Secretary’s
25 discretion, may approve a subsequently filed pe-

1 tition on behalf of the beneficiary to continue
2 employment at the office described in this sub-
3 paragraph for a period beyond the initially
4 granted 12-month period if the importing em-
5 ployer has been doing business at the new office
6 through regular, systematic, and continuous
7 provision of goods and services for the 6
8 months immediately preceding the date of ex-
9 tension petition filing and demonstrates that
10 the failure to satisfy any of the requirements
11 described in those subclauses was directly
12 caused by extraordinary circumstances, as de-
13 termined by the Secretary in the Secretary's
14 discretion.”.

15 **SEC. 563. COOPERATION WITH SECRETARY OF STATE.**

16 Section 214(c)(2) of the Immigration and Nationality
17 Act (8 U.S.C. 1184(c)(2)), as amended by section 202,
18 is further amended by adding at the end the following:

19 “(H) For purposes of approving petitions
20 under this paragraph, the Secretary of Home-
21 land Security shall work cooperatively with the
22 Secretary of State to verify the existence or
23 continued existence of a company or office in
24 the United States or in a foreign country.”.

1 **SEC. 564. INVESTIGATION AND DISPOSITION OF COM-**
2 **PLAINTS AGAINST L-1 EMPLOYERS.**

3 Section 214(c)(2) of the Immigration and Nationality
4 Act (8 U.S.C. 1184(c)(2)), as amended by sections 202
5 and 203, is further amended by adding at the end the
6 following:

7 “(I)(i) The Secretary of Homeland Secu-
8 rity may initiate an investigation of any em-
9 ployer that employs nonimmigrants described in
10 section 101(a)(15)(L) with regard to the em-
11 ployer’s compliance with the requirements of
12 this subsection.

13 “(ii) If the Secretary receives specific cred-
14 ible information from a source who is likely to
15 have knowledge of an employer’s practices, em-
16 ployment conditions, or compliance with the re-
17 quirements under this subsection, the Secretary
18 may conduct an investigation into the employ-
19 er’s compliance with the requirements of this
20 subsection. The Secretary may withhold the
21 identity of the source from the employer, and
22 the source’s identity shall not be subject to dis-
23 closure under section 552 of title 5, United
24 States Code.

25 “(iii) The Secretary shall establish a proce-
26 dure for any person desiring to provide to the

1 Secretary information described in clause (ii)
2 that may be used, in whole or in part, as the
3 basis for the commencement of an investigation
4 described in such clause, to provide the infor-
5 mation in writing on a form developed and pro-
6 vided by the Secretary and completed by or on
7 behalf of the person.

8 “(iv) No investigation described in clause
9 (ii) (or hearing described in clause (vi) based on
10 such investigation) may be conducted with re-
11 spect to information about a failure to comply
12 with the requirements under this subsection,
13 unless the Secretary receives the information
14 not later than 24 months after the date of the
15 alleged failure.

16 “(v) Before commencing an investigation
17 of an employer under clause (i) or (ii), the Sec-
18 retary shall provide notice to the employer of
19 the intent to conduct such investigation. The
20 notice shall be provided in such a manner, and
21 shall contain sufficient detail, to permit the em-
22 ployer to respond to the allegations before an
23 investigation is commenced. The Secretary is
24 not required to comply with this clause if the
25 Secretary determines that to do so would inter-

1 fere with an effort by the Secretary to inves-
2 tigate or secure compliance by the employer
3 with the requirements of this subsection. There
4 shall be no judicial review of a determination by
5 the Secretary under this clause.

6 “(vi) If the Secretary, after an investiga-
7 tion under clause (i) or (ii), determines that a
8 reasonable basis exists to make a finding that
9 the employer has failed to comply with the re-
10 quirements under this subsection, the Secretary
11 shall provide the interested parties with notice
12 of such determination and an opportunity for a
13 hearing in accordance with section 556 of title
14 5, United States Code, not later than 120 days
15 after the date of such determination. If such a
16 hearing is requested, the Secretary shall make
17 a finding concerning the matter by not later
18 than 120 days after the date of the hearing.

19 “(vii) If the Secretary, after a hearing,
20 finds a reasonable basis to believe that the em-
21 ployer has violated the requirements under this
22 subsection, the Secretary shall impose a penalty
23 under subparagraph (L).

“(viii)(I) The Secretary may conduct surveys of the degree to which employers comply with the requirements under this section.

“(II) The Secretary shall—

“(aa) conduct annual compliance audits of not less than 1 percent of the employers that employ nonimmigrants described in section 101(a)(15)(L) during the applicable fiscal year;

“(bb) conduct annual compliance audits of each employer with more than 100 employees who work in the United States if more than 15 percent of such employees are nonimmigrants described in 101(a)(15)(L); and

“(cc) make available to the public an executive summary or report describing the general findings of the audits carried out pursuant to this subclause.”.

SEC. 565. WAGE RATE AND WORKING CONDITIONS FOR L-1 NONIMMIGRANT.

(a) IN GENERAL.—Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as amended by section 202, 203, and 204, is further amended by adding at the end the following:

1 “(J)(i) An employer that employs a nonimmigrant
2 described in section 101(a)(15)(L) for a cumulative period
3 of time in excess of 1 year shall—

4 “(I) offer such nonimmigrant, during the period
5 of authorized employment, wages, based on the best
6 information available at the time the application is
7 filed, which are not less than the highest of—

8 “(aa) the locally determined prevailing
9 wage level for the occupational classification in
10 the area of employment;

11 “(bb) the median average wage for all
12 workers in the occupational classification in the
13 area of employment; and

14 “(cc) the median wage for skill level 2 in
15 the occupational classification found in the
16 most recent Occupational Employment Statis-
17 tics survey; and

18 “(II) provide working conditions for such non-
19 immigrant that will not adversely affect the working
20 conditions of workers similarly employed.

21 “(ii) If an employer, in such previous period specified
22 by the Secretary of Homeland Security, employed 1 or
23 more such nonimmigrants, the employer shall provide to
24 the Secretary of Homeland Security the Internal Revenue
25 Service Form W-2 Wage and Tax Statement filed by the

1 employer with respect to such nonimmigrants for such pe-
2 riod.

3 “(iii) It is a failure to meet a condition under this
4 subparagraph for an employer who has filed a petition to
5 import 1 or more aliens as nonimmigrants described in
6 section 101(a)(15)(L)—

7 “(I) to require such a nonimmigrant to pay a
8 penalty for ceasing employment with the employer
9 before a date mutually agreed to by the non-
10 immigrant and the employer; or

11 “(II) to fail to offer to such a nonimmigrant,
12 during the nonimmigrant’s period of authorized em-
13 ployment, on the same basis, and in accordance with
14 the same criteria, as the employer offers to United
15 States workers, benefits and eligibility for benefits,
16 including—

17 “(aa) the opportunity to participate in
18 health, life, disability, and other insurance
19 plans;

20 “(bb) the opportunity to participate in re-
21 tirement and savings plans; and

22 “(cc) cash bonuses and noncash compensa-
23 tion, such as stock options (whether or not
24 based on performance).

1 “(iv) The Secretary of Homeland Security shall de-
2 termine whether a required payment under clause (iii)(I)
3 is a penalty (and not liquidated damages) pursuant to rel-
4 evant State law.”.

5 (b) REGULATIONS.—The Secretary of Homeland Se-
6 curity shall promulgate rules, after notice and a period
7 of comment, to implement the requirements of subpara-
8 graph (J) of section 214(c)(2) of the Immigration and Na-
9 tionality Act (8 U.S.C. 1184(c)(2)), as added by sub-
10 section (a). In promulgating these rules, the Secretary
11 shall take into consideration any special circumstances re-
12 lating to intracompany transfers.

13 **SEC. 566. PENALTIES.**

14 Section 214(c)(2) of the Immigration and Nationality
15 Act (8 U.S.C. 1184(c)(2)), as amended by sections 202,
16 203, 204, and 205, is further amended by adding at the
17 end the following:

18 “(K)(i) If the Secretary of Homeland Security finds,
19 after notice and an opportunity for a hearing, a failure
20 by an employer to meet a condition under subparagraph
21 (F), (G), (J), or (L) or a misrepresentation of material
22 fact in a petition to employ 1 or more aliens as non-
23 immigrants described in section 101(a)(15)(L)—

24 “(I) the Secretary shall impose such adminis-
25 trative remedies (including civil monetary penalties

1 in an amount not to exceed \$2,000 per violation) as
2 the Secretary determines to be appropriate;

3 “(II) the Secretary may not, during a period of
4 at least 1 year, approve a petition for that employer
5 to employ 1 or more aliens as such nonimmigrants;
6 and

7 “(III) in the case of a violation of subparagraph
8 (J) or (L), the employer shall be liable to the em-
9 ployees harmed by such violation for lost wages and
10 benefits.

11 “(ii) If the Secretary finds, after notice and an oppor-
12 tunity for a hearing, a willful failure by an employer to
13 meet a condition under subparagraph (F), (G), (J), or (L)
14 or a willful misrepresentation of material fact in a petition
15 to employ 1 or more aliens as nonimmigrants described
16 in section 101(a)(15)(L)—

17 “(I) the Secretary shall impose such adminis-
18 trative remedies (including civil monetary penalties
19 in an amount not to exceed \$10,000 per violation)
20 as the Secretary determines to be appropriate;

21 “(II) the Secretary may not, during a period of
22 at least 2 years, approve a petition filed for that em-
23 ployer to employ 1 or more aliens as such non-
24 immigrants; and

1 “(III) in the case of a violation of subparagraph
2 (J) or (L), the employer shall be liable to the em-
3 ployees harmed by such violation for lost wages and
4 benefits.”.

5 **SEC. 567. PROHIBITION ON RETALIATION AGAINST L-1**
6 **NONIMMIGRANTS.**

7 Section 214(c)(2) of the Immigration and Nationality
8 Act (8 U.S.C. 1184(c)(2)), as amended by section 202,
9 203, 204, 205, and 206, is further amended by adding
10 at the end the following:

11 “(L)(i) It is a violation of this subparagraph for an
12 employer who has filed a petition to import 1 or more
13 aliens as nonimmigrants described in section
14 101(a)(15)(L) to take, fail to take, or threaten to take
15 or fail to take, a personnel action, or to intimidate, threat-
16 en, restrain, coerce, blacklist, discharge, or discriminate
17 in any other manner against an employee because the em-
18 ployee—

19 “(I) has disclosed information that the em-
20 ployee reasonably believes evidences a violation of
21 this subsection, or any rule or regulation pertaining
22 to this subsection; or

23 “(II) cooperates or seeks to cooperate with the
24 requirements of this subsection, or any rule or regu-
25 lation pertaining to this subsection.

1 “(ii) In this subparagraph, the term ‘employee’ in-
2 cludes—

3 “(I) a current employee;

4 “(II) a former employee; and

5 “(III) an applicant for employment.”.

6 **SEC. 568. TECHNICAL AMENDMENTS.**

7 Section 214(c)(2) of the Immigration and Nationality
8 Act (8 U.S.C. 1184(c)(2)) is amended by striking “Attor-
9 ney General” each place it appears and inserting “Sec-
10 retary of Homeland Security”.

11 **SEC. 569. REPORTS ON L-1 NONIMMIGRANTS.**

12 Section 214(c)(8) of the Immigration and Nationality
13 Act (8 U.S.C. 1184(c)(8)) is amended by inserting “(L),”
14 after “(H),”.

15 **SEC. 570. APPLICATION.**

16 The amendments made by sections 201 through 207
17 shall apply to applications filed on or after the date of
18 the enactment of this Act.

19 **SEC. 571. REPORT ON L-1 BLANKET PETITION PROCESS.**

20 (a) REQUIREMENT FOR REPORT.—Not later than 6
21 months after the date of the enactment of this Act, the
22 Inspector General of the Department of Homeland Secu-
23 rity shall submit to the appropriate committees of Con-
24 gress a report regarding the use of blanket petitions under
25 section 214(c)(2)(A) of the Immigration and Nationality

1 Act (8 U.S.C. 1184(c)(2)(A)). Such report shall assess the
2 efficiency and reliability of the process for reviewing such
3 blanket petitions, including whether the process includes
4 adequate safeguards against fraud and abuse.

5 (b) APPROPRIATE COMMITTEES OF CONGRESS.—In
6 this section the term “appropriate committees of Con-
7 gress” means—

8 (1) the Committee on Homeland Security and
9 Governmental Affairs of the Senate;

10 (2) the Committee on the Judiciary of the Sen-
11 ate;

12 (3) the Committee on Homeland Security of the
13 House of Representatives; and

14 (4) the Committee on the Judiciary of the
15 House of Representatives.

16 **SEC. 572. REQUIREMENTS FOR INFORMATION FOR H-1B**
17 **AND L-1 NONIMMIGRANTS.**

18 Section 214 of the Immigration and Nationality Act
19 (8 U.S.C. 1184) is amended by adding at the end the fol-
20 lowing:

21 “(s) REQUIREMENTS FOR INFORMATION FOR H-1B
22 AND L-1 NONIMMIGRANTS.—

23 “(1) IN GENERAL.—Upon issuing a visa to an
24 applicant for nonimmigrant status pursuant to sub-
25 paragraph (H)(i)(b) or (L) of section 101(a)(15)

1 who is outside the United States, the issuing office
2 shall provide the applicant with—

3 “(A) a brochure outlining the obligations
4 of the applicant’s employer and the rights of
5 the applicant with regard to employment under
6 Federal law, including labor and wage protec-
7 tions;

8 “(B) the contact information for appro-
9 priate Federal agencies or departments that
10 offer additional information or assistance in
11 clarifying such obligations and rights; and

12 “(C) a copy of the application submitted
13 for the nonimmigrant under section 212(n) or
14 the petition submitted for the nonimmigrant
15 under subsection (c)(2)(A), as appropriate.

16 “(2) Upon the issuance of a visa to an appli-
17 cant referred to in paragraph (1) who is inside the
18 United States, the issuing officer of the Department
19 of Homeland Security shall provide the applicant
20 with the material described in clauses (i), (ii), and
21 (iii) of subparagraph (A).”.

**CHAPTER 3—PROTECTION OF H-2B
NONIMMIGRANTS**

**SEC. 581. ENFORCEMENT OF FEDERAL LABOR LAWS RE-
LATING TO H-2B NONAGRICULTURAL GUEST
WORKERS.**

(a) IN GENERAL.—Section 214(c)(14) of the Immi-
gration and Nationality Act (8 U.S.C. 1184(c)(14)) is
amended—

(1) in subparagraph (A), by striking “of Home-
land Security” each place it appears and inserting
“of Labor”;

(2) by striking subparagraph (B);

(3) by redesignating subparagraphs (C) and
(D) as subparagraphs (B) and (C), respectively; and

(4) by adding at the end the following:

“(D) The Secretary of Labor is authorized
to take such actions, including imposing appro-
priate penalties and seeking appropriate injunc-
tive relief and specific performance of contrac-
tual obligations, as may be necessary to assure
employer compliance with the terms and condi-
tions required under this Act for employing
nonimmigrant workers described in section
101(a)(15)(H)(ii)(b), and as required under the
Increasing American Wages and Benefits Act of

1 2007. The authority of the Secretary of Labor
2 under this subparagraph shall not preempt any
3 other rights which affected persons may have
4 under Federal or State law.

5 “(E) Any aggrieved person whose wages or
6 working conditions have been directly and ad-
7 versely affected by an employer in violation of
8 applicable laws and regulations governing the
9 employment of nonimmigrant workers described
10 in section 101(a)(15)(H)(ii)(b), or by a viola-
11 tion of the terms and conditions of employment,
12 may bring a civil action against such employer
13 in the appropriate district court of the United
14 States. Such cause of action shall not be subject
15 to exhaustion of administrative remedies and
16 shall be in addition to any other causes of ac-
17 tion and remedies that may exist.

18 “(F) Notwithstanding any other provision
19 of law, the Legal Services Corporation may pro-
20 vide legal services on behalf of nonimmigrant
21 workers described in section
22 101(a)(15)(H)(ii)(b) regarding the terms and
23 conditions of employment, transportation, and
24 housing and other provisions of law applicable
25 to the employment of such nonimmigrants.”.

1 (b) REPORT.—Section 214(g)(10) of the Immigration
2 and Nationality Act (8 U.S.C. 1184(g)(10)) is amended—

3 (1) by inserting “(A)” after “(10)”; and

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

5 “(B) Each employer that hires a non-
6 immigrant worker described in section
7 101(a)(15)(H)(ii)(b) shall—

8 “(i) notify the Secretary of Labor not
9 later than 30 days after the conclusion of
10 each such nonimmigrant’s term of employ-
11 ment; and

12 “(ii) submit to the Secretary of Labor
13 employment payroll records and similar
14 documentation showing that the employer
15 paid the required prevailing wage and
16 transportation, and other expenses re-
17 quired under this section and section
18 212.”.

19 **SEC. 582. RECRUITMENT OF UNITED STATES WORKERS.**

20 Section 212 of the Immigration and Nationality Act
21 (8 U.S.C. 1182) is amended—

22 (1) in subsection (p)(3), by striking “(a)(5)(A),
23 (n)(1)(A)(i)(II),” and inserting “(n)(1)(A)(i)(II)”;

1 (2) by redesignating subsection (t) (as added by
2 section 1(b)(2)(B) of Public Law 108-449) as sub-
3 section (u); and

4 (3) by adding at the end the following:

5 “(v)(1) Except as provided under paragraph (5), an
6 employer that seeks to employ an alien described in section
7 101(a)(15)(H)(ii)(b) (referred to in this subsection as an
8 ‘H-2B nonimmigrant’) shall take the following steps to re-
9 cruit United States workers for the position for which the
10 alien is sought not later than 14 days before filing an ap-
11 plication under paragraph (3):

12 “(A) The employer shall submit a copy of the
13 job offer, including a description of the wages and
14 other terms and conditions of employment, to the
15 State Workforce Agency that serves the area of em-
16 ployment in the State in which the employer is lo-
17 cated (referred to in this subsection as the ‘SWA’).
18 The SWA shall provide the employer with an ac-
19 knowledgment of receipt of such documentation in
20 accordance with this paragraph.

21 “(B) The employer shall authorize the SWA to
22 post the job opportunity on the Internet through the
23 web site for ‘America’s Job Bank’, with local job
24 banks, and with unemployment agencies and other

1 labor referral and recruitment sources pertinent to
2 such job opportunity.

3 “(C) The employer shall authorize the SWA to
4 provide notification of the job opportunity, and the
5 SWA shall designate that these are job opportunities
6 for which H-2B visas have been requested, to—

7 “(i) the central office of the State Federa-
8 tion of Labor in the State in which the job is
9 located; and

10 “(ii) the office of the local union which
11 represents the employees in the same or sub-
12 stantially equivalent job classification, if appli-
13 cable.

14 “(D) The employer shall post the availability of
15 the job opportunity for which the employer is seek-
16 ing a worker in conspicuous locations at the place of
17 employment for all employees to see.

18 “(E) The employer shall advertise the avail-
19 ability of the job opportunity for which the employer
20 is seeking a worker in a publication with the highest
21 circulation in the labor market that is likely to be
22 patronized by a potential worker for at least 5 con-
23 secutive days.

24 “(F) Based on recommendations by the local
25 job service, the employer shall advertise the avail-

1 ability of the job opportunity in professional, trade,
2 or local minority and ethnic publications that are
3 likely to be patronized by a potential worker.

4 “(2) An employer that seeks to employ an H-2B non-
5 immigrant shall—

6 “(A) first offer the job to any eligible United
7 States worker who—

8 “(i) applies;

9 “(ii) is qualified for the job; and

10 “(iii) is available at the time of need; and

11 “(B) maintain, for at least 3 years after the
12 employment relation is terminated, documentation of
13 recruitment efforts and responses conducted and re-
14 ceived before filing an application with the Depart-
15 ment of Labor, including—

16 “(i) resumes;

17 “(ii) applications; and

18 “(iii) tests of United States workers who
19 applied and were not hired for the job the em-
20 ployer seeks to fill with a nonimmigrant worker,
21 if applicable.

22 “(3) An employer that seeks to hire an H-2B non-
23 immigrant shall submit an application to the Secretary of
24 Labor that includes a certification, under penalty of per-
25 jury, that—

1 “(A) the employer has not made a job offer to
2 a United States worker, which imposed restrictions
3 or obligations that will not be imposed on an H-2B
4 nonimmigrant;

5 “(B) the employer has complied with the re-
6 cruitment requirements under paragraph (1);

7 “(C) the employer will offer an H-2B non-
8 immigrant not less than the same benefits and work-
9 ing conditions provided to United States workers
10 similarly employed in the same occupational classi-
11 fication at the same actual place of employment in
12 addition to paying an H-2B nonimmigrant a pre-
13 vailing wage rate not less than the wage rate offered
14 to United States workers;

15 “(D) there is currently no strike, lockout, or
16 labor dispute (as defined in section 2(9) of the
17 Labor-Management Relations Act (29 U.S.C.
18 152(9)), at the same place of employment, which af-
19 fects employees in the same occupational classifica-
20 tion in which an H-2B nonimmigrant will be em-
21 ployed;

22 “(E) the employer will comply with all applica-
23 ble laws and regulations relating to the right of
24 workers to join or organize a union (including rights

1 protected under section 7 of the Labor-Management
2 Relations Act (29 U.S.C. 157));

3 “(F) the employer has—

4 “(i) provided notice of the filing of an ap-
5 plication to the bargaining representative of em-
6 ployees, if any, working in the same occupa-
7 tional classification at the place of employment
8 as an H-2B nonimmigrant who the employer in-
9 tends to employ; or

10 “(ii) if there is no such bargaining rep-
11 resentative, posted notice of filing such applica-
12 tion in conspicuous locations at the place of em-
13 ployment for all employees to see for not fewer
14 than 14 business days; and

15 “(G) the requirements applicable to the job,
16 which the employer intends to hire an H-2B non-
17 immigrant to perform, represent the actual min-
18 imum requirements applicable to that job and the
19 employer will not hire an H-2B nonimmigrant to
20 perform the job who has less training or experience
21 than the employer’s other employees.

22 “(4)(A) An employer that applies to hire an H-2B
23 nonimmigrant shall hire any qualified United States work-
24 er who applies for the job for which such nonimmigrant
25 was intended to be employed if such United States worker

1 applies before the date that is 30 days before the date
2 on which the last such H-2B nonimmigrant is scheduled
3 to begin work for such employer.

4 “(B) The Secretary of Labor, through the workforce
5 agency of a State, as appropriate, shall provide informa-
6 tion about applications for H-2B nonimmigrants, includ-
7 ing information about domestic workers who apply for jobs
8 but are not hired, to a United States worker, nonprofit
9 organization, or union not later than 48 hours after such
10 worker, organization, or union requests such informa-
11 tion.”.

12 **SEC. 583. PREVAILING WAGES FOR UNITED STATES WORK-**
13 **ERS AND H-2B WORKERS.**

14 Section 212 of the Immigration and Nationality Act
15 (8 U.S.C. 1182), as amended by section 102, is further
16 amended by adding at the end the following:

17 “(w)(1) No alien may be admitted or provided status
18 as a nonimmigrant under section 101(a)(15)(H)(ii)(b) in
19 an occupational classification unless the Secretary of
20 Labor certifies that the employer—

21 “(A) is offering and will offer during the period
22 of authorized employment to aliens admitted or pro-
23 vided such status the wage rate set forth in the col-
24 lective bargaining agreement, if the job opportunity
25 is covered by a collective bargaining agreement;

1 “(B) if the job opportunity is not covered by a
2 collective bargaining agreement, the wage the em-
3 ployer is offering and will offer, to any alien or
4 United States worker employed by or offered em-
5 ployment by the employer, during the period of au-
6 thorized employment for aliens admitted or provided
7 such status, wages that are not less than the higher
8 of—

9 “(i) the wage determination, if any, issued
10 pursuant to subchapter IV of chapter 31 of title
11 40, United States Code (commonly known as
12 the ‘Davis-Bacon Act’);

13 “(ii) the wage determination, if any, issued
14 pursuant to the Service Contract Act of 1965
15 (41 U.S.C. 351 et seq.);

16 “(iii) the median rate of the highest 66
17 percent of the wage data applicable to such oc-
18 cupational classification under the most recently
19 published Occupational Employment Statistics
20 Survey, compiled by the Bureau of Labor Sta-
21 tistics; or

22 “(iv) a wage that is not less than 150 per-
23 cent of the Federal minimum wage in effect
24 under the Fair Labor Standards Act (29 U.S.C.
25 201 et seq.); and

1 “(C) will provide working conditions for such
2 alien that will not adversely affect the working con-
3 ditions of workers similarly employed.

4 “(2) An employer may not appeal a decision of the
5 Secretary of Labor concerning the wages required to be
6 paid under paragraph (1)(A) unless United States workers
7 and their labor representatives are given the opportunity
8 to submit contrary evidence or appeal that such required
9 wages are too low.

10 “(3) An employer may not hire a nonimmigrant de-
11 scribed in section 101(a)(15)(H)(ii)(b) unless—

12 “(A) real prevailing wages in the occupational
13 classification in which such nonimmigrant is to be
14 hired are at least 3 percent higher than such wages
15 during the preceding year under the Occupational
16 Employment Statistics Survey compiled by the Bu-
17 reau of Labor Statistics; or

18 “(B) the employer offers to pay the H-2B
19 worker or a United States worker a wage in the oc-
20 cupational classification in which such worker is to
21 be hired that is at least 3 percent higher during the
22 preceding year, after adjusting for inflation under
23 the Occupational Employment Survey.”.

1 **SEC. 584. CERTIFICATION REQUIREMENT.**

2 Section 214(c)(14) of the Immigration and Nation-
3 ality Act, as amended by section 101, is further amended
4 by adding at the end the following:

5 “(G) A petition by an employer seeking to hire an
6 alien described in section 101(a)(15)(H)(ii)(b) shall not
7 be approved until the employer has provided written cer-
8 tification, under penalty of perjury, to the Secretary of
9 Labor that—

10 “(i) the employer has not been required under
11 law to provide a notice of a mass layoff pursuant to
12 the Worker Adjustment and Retraining Notification
13 Act (29 U.S.C. 2101 et seq.) during the 12-month
14 period immediately preceding the date on which the
15 alien is to be hired; and

16 “(ii) the employer does not intend to provide a
17 notice of a mass layoff pursuant to such Act.

18 “(H) If an employer is required under law to provide
19 a notice of a mass layoff pursuant to such Act after hiring
20 nonimmigrants granted status under section
21 101(a)(15)(H)(ii)(b), the status of such nonimmigrants
22 shall expire on the date that is 60 days after the date
23 on which such notice is provided.

24 “(I) An employer shall be exempt from the require-
25 ments under subparagraphs (G) and (H) if the employer
26 provides written certification, under penalty of perjury,

1 that the total number of the employer’s employees in the
2 United States will not be reduced as a result of a mass
3 layoff.”.

4 **SEC. 585. PROTECTIONS FOR WORKERS.**

5 Section 214(c)(14) of the Immigration and Nation-
6 ality Act, as amended by section 104, is further amended
7 by adding at the end the following:

8 “(J) Employers who hire nonimmigrants
9 described in section 101(a)(15)(H)(ii)(b) shall
10 reimburse the nonimmigrants for the reasonable
11 transportation costs incurred by such non-
12 immigrants and United States workers to ini-
13 tially reach the job site and, once the period of
14 employment for the job opportunity is com-
15 pleted, to return to their countries of origin or
16 to the next place of employment, if the worker
17 has contracted with a subsequent employer who
18 has not agreed to provide or pay for the work-
19 er’s transportation to such subsequent employ-
20 er’s place of employment. The amount of reim-
21 bursement for such transportation expenses
22 shall not exceed the lesser of—

23 “(i) the actual cost to the worker or
24 alien of the transportation and subsistence
25 involved; or

1 “(ii) the most economical and reason-
2 able common carrier transportation
3 charges and subsistence costs for the dis-
4 tance involved.

5 “(K)(i) Employers who hire non-
6 immigrants described in section
7 101(a)(15)(H)(ii)(b) shall guarantee to offer
8 the worker employment for at least 75 percent
9 of the workdays of the total periods during
10 which the work contract and all extensions of
11 such contract are in effect, beginning with the
12 first workday after the arrival of the worker at
13 the place of employment and ending on the ex-
14 piration date specified in the work contract or
15 in its extensions, if any.

16 “(ii) If the employer affords a worker dur-
17 ing the total work contract period less employ-
18 ment than that required under this subpara-
19 graph, the employer shall pay the worker the
20 amount which the worker would have earned
21 had the worker worked for the guaranteed num-
22 ber of days.

23 “(iii) In this subparagraph, the term
24 ‘workday’—

1 “(I) means a day in which the worker
2 is offered the number of hours stated in
3 the job order; and

4 “(II) excludes the worker’s Sabbath
5 and Federal holidays.

6 “(iv) A work guarantee does not meet the
7 requirements under this subparagraph unless
8 the number of hours of work offered by the em-
9 ployer is equal to not less than the product of—

10 “(I) 75 percent of the workdays; mul-
11 tiplied by

12 “(II) the average number of hours per
13 day stated in the job order.

14 “(v) A worker may be offered more than
15 the specified hours of work on a single workday.

16 “(vi) The employer may not require, for
17 purposes of meeting the work guarantee, that
18 the worker work longer than the number of
19 hours specified in the job order on a workday,
20 the worker’s Sabbath, or a Federal holiday.

21 “(L) If the job opportunity is not covered
22 by the State workers’ compensation law, the
23 employer will provide, at no cost to the worker,
24 insurance covering injury and disease arising
25 out of, and in the course of, the worker’s em-

1 ployment which will provide benefits at least
2 equal to those provided under the State’s work-
3 ers’ compensation law for comparable employ-
4 ment.”.

5 **SEC. 586. PETITIONS BY EMPLOYERS THAT HAVE SIGNED**
6 **LABOR AGREEMENTS WITH UNIONS THAT OP-**
7 **ERATE HIRING HALLS.**

8 Section 212(v) of the Immigration and Nationality
9 Act, as added by section 102, is amended by adding at
10 the end the following:

11 “(5) An employer that seeks to hire an H-2B
12 nonimmigrant may file an application with the Sec-
13 retary of Labor in accordance with this paragraph,
14 instead of complying with paragraphs (1) through
15 (4), if—

16 “(A) the employer has signed a labor
17 agreement with a labor organization (as defined
18 in section 2(5) of the Labor-Management Rela-
19 tions Act (29 U.S.C. 152(5)) under which the
20 labor organization is responsible for referring
21 applicants for employment to the employer
22 under a procedure commonly known as a ‘hiring
23 hall’ or ‘referral hall’; and

1 “(B) the application is accompanied by a
2 written statement prepared by the labor organi-
3 zation attesting that—

4 “(i) the labor organization operates a
5 hiring hall that, pursuant to contractual
6 agreement and actual practice, is a source
7 of employees in the same or substantially
8 equivalent occupational classification in
9 which the employer seeks to employ an H-
10 2B nonimmigrant;

11 “(ii) the labor organization does not
12 have a sufficient number of qualified appli-
13 cants available for referral in the same or
14 substantially equivalent occupational classi-
15 fication in which the employer seeks to em-
16 ploy an H-2B nonimmigrant;

17 “(iii) the labor organization has ad-
18 vertised, for at least 5 consecutive days,
19 the availability of the job opportunity for
20 which the employer is seeking to employ an
21 H-2B nonimmigrant in the publication
22 with the highest circulation in the labor
23 market that is likely to be patronized by
24 potential applicants;

“(iv) the employer is contractually obligated to pay all employees, in the same or substantially equivalent occupational classification in which the employer seeks to employ an H-2B nonimmigrant, wages and benefits set forth in a labor agreement with the labor organization, which equals or exceeds the prevailing wage rate the employer would be obligated to pay; and

“(v) the H-2B nonimmigrants who the employer seeks to employ will be paid not less than the same wages and benefits and be subject to the same terms and conditions of employment set forth in the employer’s labor agreement with the labor organization.”.

SEC. 587. H-2B NONIMMIGRANT LABOR CERTIFICATION APPLICATION FEES.

(a) ESTABLISHMENT OF FEES.—Section 212(a)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)(A)) is amended by adding the following:

“(v) ESTABLISHMENT OF H-2B EMPLOYMENT CERTIFICATION APPLICATION FEE.—

1 “(I) IN GENERAL.—The Sec-
2 retary of Labor shall impose a fee on
3 an employer that submits an applica-
4 tion for an employment certification
5 for aliens granted nonimmigrant sta-
6 tus under section 101(a)(15)(H)(ii)(b)
7 to the Secretary of Labor under this
8 subparagraph on or after the date
9 that is 30 days after the date of en-
10 actment of the Increasing American
11 Wages and Benefits Act of 2007.

12 “(II) FEE DURING INITIAL
13 YEAR.—During the period beginning
14 30 days after the date of enactment of
15 the Increasing American Wages and
16 Benefits Act of 2007 and ending 1
17 year after such date, the fee imposed
18 under subclause (I) shall be \$800 for
19 each application.

20 “(III) FEE AFTER INITIAL
21 YEAR.—After the date that is one
22 year after the date of enactment of
23 the Increasing American Wages and
24 Benefits Act of 2007, the fee imposed
25 under subclause (I) shall be set at a

1 level the Secretary of Labor deter-
2 mines will ensure recovery of the full
3 costs of carrying out labor certifi-
4 cation activities under this subpara-
5 graph and will recover any additional
6 costs associated with the administra-
7 tion of the fees collected.

8 “(IV) PROHIBITION ON EM-
9 PLOYER ACCEPTING REIMBURSEMENT
10 OF FEE.—

11 “(aa) IN GENERAL.—An em-
12 ployer subject to a fee under this
13 clause shall not require or accept
14 reimbursement, directly or indi-
15 rectly, of or other compensation
16 for all or part of the cost of such
17 fee.

18 “(bb) CIVIL PENALTY.—If
19 the Secretary of Labor deter-
20 mines, after notice and oppor-
21 tunity for a hearing, that a viola-
22 tion of item (aa) has occurred,
23 the Secretary of Labor may im-
24 pose a civil penalty in an amount

1 not to exceed \$5,000 per viola-
2 tion.

3 “(V) DEPOSIT OF FEES AND
4 PENALTIES.—Fees and civil penalties
5 collected under this clause shall be de-
6 posited in the ‘H-2B Employment
7 Certification Application Fee Account’
8 established under section 286(x).”.

9 (b) ESTABLISHMENT OF ACCOUNT AND USE OF
10 FUND.—Section 286 of the Immigration and Nationality
11 Act (8 U.S.C. 1356) is amended by adding at the end the
12 following:

13 “(x) H-2B EMPLOYMENT CERTIFICATION APPLICA-
14 TION FEE ACCOUNT.—

15 “(1) ESTABLISHMENT OF ACCOUNT.—There is
16 established in the general fund of the Treasury a
17 separate account, which shall be known as the ‘H-
18 2B Employment Certification Application Fee Ac-
19 count’. Notwithstanding any other provision of this
20 title, there shall be deposited as offsetting receipts
21 into the account all amounts from the fees and civil
22 penalties collected under section 212(a)(5)(A)(v).

23 “(2) USE OF FEES.—Of the amounts deposited
24 into the H-2B Employment Certification Application
25 Fee Account under this subsection in each fiscal

1 year, the Secretary of Labor shall use such amounts
2 as the Secretary of Labor determines are necessary
3 for the costs of Federal administration, including
4 personnel, in carrying out labor certification activi-
5 ties under section 212(a)(5)(A), and to assist the
6 States, as appropriate, in the determination of pre-
7 vailing wages for purposes of carrying out such sec-
8 tion.

9 “(3) AVAILABILITY OF FUNDS.—The fees de-
10 posited into the H-2B Employment Certification Ap-
11 plication Fee Account under this subsection shall re-
12 main available until expended for the activities de-
13 scribed in paragraph (2).”.

14 (c) PROGRAM INTEGRITY.—Section 212(a)(5)(A) of
15 the Immigration and Nationality Act (8 U.S.C.
16 1182(a)(5)(A)), as amended by subsection (a), is further
17 amended by adding at the end the following:

18 “(vi) PROGRAM INTEGRITY REGULA-
19 TIONS.—The Secretary of Labor may pre-
20 scribe such regulations as may be nec-
21 essary to ensure the integrity of the labor
22 certification process carried out under this
23 subparagraph. Such regulations may in-
24 clude standards and procedures under
25 which employers and their representatives

1 are excluded from participation in the
 2 labor certification process under this sub-
 3 paragraph.”.

4 **CHAPTER 4—ADJUSTMENTS TO THE EB-5**
 5 **VISA PROGRAM**

6 **SEC. 591. PERMANENT REAUTHORIZATION OF EB-5 RE-**
 7 **GIONAL CENTER PROGRAM; APPLICATION**
 8 **FEE.**

9 (a) IN GENERAL.—Section 610 of the Departments
 10 of Commerce, Justice, and State, the Judiciary, and Re-
 11 lated Agencies Appropriations Act, 1993 (8 U.S.C. 1153
 12 note) is amended—

13 (1) by striking “pilot” each place it appears;

14 (2) in subsection (b), by striking “for 15
 15 years”; and

16 (3) by adding at the end the following:

17 “(e) In addition to any other fees authorized by law,
 18 the Secretary of Homeland Security shall impose a fee of
 19 \$2,500 to apply for designation as a regional center under
 20 this section. Fees collected under this subsection shall be
 21 deposited in the Treasury in accordance with section
 22 286(y) of the Immigration and Nationality Act (8 U.S.C.
 23 1356(y)).”.

24 (b) ESTABLISHMENT OF ACCOUNT; USE OF FEES.—

25 Section 286 of the Immigration and Nationality Act (8

1 U.S.C. 1356) is amended by adding at the end the fol-
2 lowing:

3 “(y) IMMIGRANT ENTREPRENEUR REGIONAL CEN-
4 TER ACCOUNT.—

5 “(1) IN GENERAL.—There is established in the
6 general fund of the Treasury a separate account,
7 which shall be known as the ‘Immigrant Entre-
8 preneur Regional Center Account’. Notwithstanding
9 any other provision of law, there shall be deposited
10 as offsetting receipts into the account all fees col-
11 lected under section 610(b) of the Departments of
12 Commerce, Justice, and State, the Judiciary, and
13 Related Agencies Appropriations Act, 1993 (8
14 U.S.C. 1153 note) and any fees collected in connec-
15 tion with forms I-526 or I-829.

16 “(2) USE OF FEES.—Fees collected under this
17 section may only be used by the Secretary of Home-
18 land Security to administer and operate the employ-
19 ment creation program described in section
20 203(b)(5).”.

21 (c) RULEMAKING.—Not later than 120 days after the
22 date of the enactment of this Act, the Secretary of Home-
23 land Security shall prescribe regulations to implement the
24 amendments made by this section.

1 (d) EFFECTIVE DATE.—The amendments made by
2 subsections (a)(3) and (b) shall take effect on the effective
3 date of the regulations prescribed pursuant to subsection
4 (c). The remaining amendments made by this section shall
5 take effect on the date of the enactment of this Act.

6 **SEC. 592. PREMIUM PROCESSING FEE FOR EB-5 IMMI-**
7 **GRANT INVESTORS.**

8 Section 286(u) of the Immigration and Nationality
9 Act (8 U.S.C. 1356(u)) is amended by adding at the end
10 the following: “In the case of a petition filed under section
11 204(a)(1)(H) for classification under section 203(b)(5), if
12 the petitioner desires a guarantee of a decision on the peti-
13 tion in 60 days or less, the premium fee under this sub-
14 section shall be set at \$2,500 and shall be deposited as
15 offsetting receipts in the Immigrant Entrepreneur Re-
16 gional Center Account established under subsection (y).”.

17 **SEC. 593. CONCURRENT FILING OF EB-5 PETITIONS AND**
18 **APPLICATIONS FOR ADJUSTMENT OF STA-**
19 **TUS.**

20 Section 245 of the Immigration and Nationality Act
21 (8 U.S.C. 1255) is amended by adding at the end the fol-
22 lowing:

23 “(n) If, at the time a petition is filed for classification
24 through a regional center under section 203(b)(5), ap-
25 proval of the petition would make a visa immediately avail-

1 able to the alien beneficiary, the alien beneficiary’s adjust-
2 ment application under this section shall be considered to
3 be properly filed whether the application is submitted con-
4 currently with, or subsequent to, the visa petition.”.

5 **SEC. 594. IMPROVED SET-ASIDE FOR TARGETED EMPLOY-**
6 **MENT AREAS.**

7 Section 203(b)(5)(B) of the Immigration and Nation-
8 ality Act (8 U.S.C. 1153(b)(5)(B)) is amended as follows:

9 (1) TARGETED EMPLOYMENT AREA DEFINED.—

10 Clause (ii) is amended to read as follows:

11 “(ii) TARGETED EMPLOYMENT AREA
12 DEFINED.—In this paragraph, the term
13 ‘targeted employment area’ means, at the
14 time a petition for classification under this
15 paragraph is filed, any of the following:

16 “(I) A rural area.

17 “(II) An area that has experi-
18 enced high unemployment (of at least
19 150 percent of the national average
20 rate).

21 “(III) A county that has had a
22 20 percent or more decrease in popu-
23 lation since 1970.

24 “(IV) An area that is within the
25 boundaries established for purposes of

1 a State or Federal economic develop-
2 ment incentive program, including
3 areas defined as Enterprise Zones,
4 Renewal Communities and Empower-
5 ment Zones.

6 “(V) An area designated by a
7 State agency to which the Governor
8 has delegated the authority to des-
9 ignate targeted employment areas
10 within the State.”.

11 (2) RURAL AREA DEFINED.—Clause (iii) is
12 amended by striking “other than an area within a
13 metropolitan statistical area or”.

14 (3) EFFECT OF PRIOR DETERMINATION.—Such
15 section is amended by adding at the end the fol-
16 lowing:

17 “(iv) EFFECT OF PRIOR DETERMINA-
18 TION.—In a case in which a geographic
19 area is determined under clause (ii) to be
20 a targeted employment area, such deter-
21 mination shall remain in effect during the
22 2-year period beginning on the date of the
23 determination for purposes of any alien
24 seeking a visa reserved under this subpara-
25 graph.”.

1 **SEC. 595. SET-ASIDE OF VISAS FOR REGIONAL CENTER**
2 **PROGRAM.**

3 Section 610(b) of the Departments of Commerce,
4 Justice, and State, the Judiciary, and Related Agencies
5 Appropriations Act, 1993 (8 U.S.C. 1153 note) is amend-
6 ed by striking “3,000” and inserting “10,000”.

7 **SEC. 596. EXTENSION.**

8 Subparagraph (A) of section 216A(d)(2) of the Immi-
9 gration and Nationality Act (8 U.S.C. 1186b(d)(2)(A)) is
10 amended by adding at the end the following: “A date spec-
11 ified by the applicant (but not later than the fourth anni-
12 versary) shall be substituted for the second anniversary
13 in applying the preceding sentence if the applicant dem-
14 onstrates that the applicant has attempted to follow his
15 business model in good faith, provides an explanation for
16 the delay in filing the petition that is based on cir-
17 cumstances outside of the applicant’s control, and dem-
18 onstrates that such circumstances will be able to be re-
19 solved within the specified period.”.

20 **SEC. 597. STUDY.**

21 (a) IN GENERAL.—The Secretary of the Department
22 of Homeland Security, in appropriate consultation with
23 the Secretary of Commerce and other interested parties,
24 shall conduct a study concerning the following:

25 (1) Current job creation counting methodology
26 and initial projections under section 203(b)(5) of the

1 Immigration and Nationality Act (8 U.S.C.
2 1153(b)(5)).

3 (2) How best to promote the employment cre-
4 ation program described in such section overseas to
5 potential immigrant investors.

6 (b) REPORT.—The Secretary of Homeland Security
7 shall submit a report to the Congress not later than 1
8 year after the date of the enactment of this Act containing
9 the results of the study conducted under subsection (a).

10 **SEC. 598. FULL-TIME EQUIVALENTS.**

11 (a) IN GENERAL.—Section 203(b)(5)(A)(ii) of the
12 Immigration and Nationality Act (8 U.S.C.
13 1153(b)(5)(A)(ii)) is amended by inserting “(or full-time
14 equivalent)” after “full-time”.

15 (b) DEFINITION.—Section 203(b)(5)(D) of such Act
16 (8 U.S.C. 1153(b)(5)(D)) is amended to read as follows:

17 “(D) EMPLOYMENT-RELATED DEFINI-
18 TIONS.—

19 “(i) FULL-TIME EMPLOYMENT DE-
20 FINED.—In this paragraph, the term ‘full-
21 time employment’ means employment in a
22 position that requires at least 35 hours of
23 service per week at any time, regardless of
24 who fills the position.

1 “(ii) FULL-TIME EQUIVALENT EM-
 2 PLOYMENT DEFINED.—In this paragraph,
 3 the term ‘full-time equivalent employment’
 4 means employment representing the num-
 5 ber of full-time employees that could have
 6 been employed if the reported number of
 7 hours worked by part-time employees had
 8 been worked by full-time employees. This
 9 shall be calculated by dividing the part-
 10 time hours paid by the standard number of
 11 hours for full-time employees.”.

12 **SEC. 599. ELIGIBILITY FOR ADJUSTMENT OF STATUS.**

13 Section 245(k) of the Immigration and Nationality
 14 Act (8 U.S.C. 1255(k)) is amended, in the matter pre-
 15 ceding paragraph (1), by striking “(1), (2), or (3)” and
 16 inserting “(1), (2), (3), or (5)”.

17 **SEC. 599A. EXPANSION OF EB-5 ELIGIBILITY TO INCLUDE**
 18 **QUALIFIED IMMIGRANTS WHO COMPLETE IN-**
 19 **VESTMENT AGREEMENTS.**

20 (a) CHANGES TO INVESTMENT CRITERIA.—Section
 21 203(b)(5)(A) of the Immigration and Nationality Act (8
 22 U.S.C. 1153(b)(5)(A)) is amended—

23 (1) in the matter preceding clause (i), by strik-
 24 ing “partnership)—” and inserting “partnership) as
 25 follows:”

1 (2) in clause (i)—

2 (A) by striking “(i) in which” and insert-
3 ing the following:

4 “(i) A new commercial enterprise—
5 “(I) in which”;

6 (B) by striking “, and” at the end and in-
7 serting a semicolon; and

8 (C) by adding at the end the following:

9 “(II) with respect to which such
10 alien has completed an investment
11 agreement with a qualified venture
12 capital operating company for an in-
13 vestment in the enterprise of an
14 amount not less than the amount
15 specified in subparagraph (C); or

16 “(III) with respect to which such
17 alien has completed an investment
18 agreement with 1 or more angel inves-
19 tors for an investment in the enter-
20 prise of an amount not less than the
21 amount specified in subparagraph
22 (C).”; and

23 (3) in clause (ii)—

24 (A) by striking “(ii) which will” and insert-
25 ing the following:

1 “(ii) In the case of an enterprise—

2 “(I) described in clause (i)(I),
3 which will”;

4 (B) by striking the period at the end and
5 inserting “; or”; and

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

7 “(II) described in subparagraph
8 (II) or (III) of clause (i), which will
9 benefit the United States economy
10 and create full-time employment for
11 not fewer than 5 United States citi-
12 zens or aliens lawfully admitted for
13 permanent residence or other immi-
14 grants lawfully authorized to be em-
15 ployed in the United States (other
16 than the immigrant and the immi-
17 grant’s spouse, sons, or daughters).”.

18 (b) CHANGES TO CAPITAL REQUIREMENTS.—Section
19 203(b)(5)(C)(i) of such Act (8 U.S.C. 1153(b)(5)(C)(i))
20 is amended by inserting after “\$1,000,000” the following:
21 “in the case of an enterprise described in subparagraph
22 (A)(i)(I), \$500,000 in the case of an enterprise described
23 in subparagraph (A)(i)(II), and \$500,000 in the case of
24 an enterprise described in subparagraph (A)(i)(III)”.

1 (c) DEFINITIONS.—Section 203(b)(5) of such Act (8
2 U.S.C. 1153(b)(5)) is amended by adding at the end the
3 following:

4 “(E) QUALIFIED VENTURE CAPITAL OPER-
5 ATING COMPANY DEFINED.—In this paragraph,
6 the term ‘qualified venture capital operating
7 company’ means an entity that—

8 “(i) is registered under the Invest-
9 ment Company Act of 1940 (15 U.S.C.
10 80a-1 et seq.); or

11 “(ii) is an investment company, as de-
12 fined in subsection (a)(1) of section 3 of
13 such Act (15 U.S.C. 80a-3), that is exempt
14 from registration under subsection (c)(1)
15 or (c)(7) of such section, is not registered,
16 and—

17 “(I) is organized or incorporated,
18 and domiciled, in the United States,
19 and the majority ownership of which
20 is composed of United States citizens
21 or aliens lawfully admitted to the
22 United States for permanent resi-
23 dence; or

24 “(II) is owned or controlled by an
25 entity that is organized or incor-

1 porated, and domiciled, in the United
2 States, and the majority ownership of
3 that entity is composed of United
4 States citizens or aliens lawfully ad-
5 mitted to the United States for per-
6 manent residence.

7 “(F) ANGEL INVESTOR DEFINED.—In this
8 paragraph, the term ‘angel investor’ means—

9 “(i) any individual who is a United
10 States citizen or an alien lawfully admitted
11 to the United States for permanent resi-
12 dence, or any entity wholly owned and con-
13 trolled by United States citizens or aliens
14 lawfully admitted to the United States for
15 permanent residence; or

16 “(ii) any entity that has made at least
17 5 angel investments totaling at least
18 \$500,000 during the 3 years preceding the
19 completion of an investment agreement de-
20 scribed in subparagraph (A)(i)(III).

21 “(G) ANGEL INVESTMENT.—In this para-
22 graph, the term ‘angel investment’ means an in-
23 vestment made in a commercial enterprise that,
24 prior to such investment, was not owned or con-
25 trolled by—

1 “(i) the investor;

2 “(ii) any member of the immediate
3 family of the investor; or

4 “(iii) any entity owned or controlled
5 by any member of the immediate family of
6 the investor.”.

7 (d) CONFORMING AMENDMENTS TO CONDITIONAL
8 PERMANENT STATUS PROVISIONS.—

9 (1) TERMINATION OF STATUS IF FINDING THAT
10 QUALIFYING ENTREPRENEURSHIP IMPROPER.—Sec-
11 tion 216A(b)(1)(B) of such Act (8 U.S.C.
12 1186b(b)(1)(B)) is amended to read as follows:

13 “(B)(i) the alien—

14 “(I) did not invest, or was not actively
15 in the process of investing, the requisite
16 capital described in section
17 203(b)(5)(A)(i)(I), or was not sustaining
18 such actions throughout the period of the
19 alien’s residence in the United States; or

20 “(II) did not complete an investment
21 agreement described in subclause (II) or
22 (III) of section 203(b)(5)(A)(i), or such
23 agreement was not carried out or was not
24 actively in the process of being carried out;
25 or

1 “(ii) the commercial enterprise did not—

2 “(I) create the minimum number of
3 jobs required to be created under section
4 203(b)(5)(A)(ii); or

5 “(II) generate a profit and at least
6 \$1,000,000 in revenue; or”.

7 (2) CONTENTS OF PETITION.—Section
8 216A(d)(1) of such Act (8 U.S.C. 1186b(d)(1)) is
9 amended—

10 (A) in the matter preceding subparagraph
11 (A), by striking “that the alien—” and insert-
12 ing “that—”;

13 (B) by amending subparagraph (A) to read
14 as follows:

15 “(A)(i) the alien—

16 “(I) invested, or was actively in the
17 process of investing, the requisite capital
18 described in section 203(b)(5)(A)(i)(I), and
19 sustained such actions throughout the pe-
20 riod of the alien’s residence in the United
21 States; or

22 “(II) completed an investment agree-
23 ment described in subclause (II) or (III) of
24 section 203(b)(5)(A)(i), and such agree-

1 ment was carried out or was actively in the
 2 process of being carried out; and
 3 “(ii) the commercial enterprise—
 4 “(I) created the minimum number of
 5 jobs required to be created under section
 6 203(b)(5)(A)(ii); or
 7 “(II) generated a profit and at least
 8 \$1,000,000 in revenue; and”; and
 9 (C) in subparagraph (B), by inserting “the
 10 alien” before “is otherwise”.

11 **CHAPTER 5—EFFECTIVE DATE**

12 **SEC. 599B. APPLICATION.**

13 Except as specifically otherwise provided, the amend-
 14 ments made by this title shall apply to applications filed
 15 on or after the date of the enactment of this Act.

16 **TITLE VI—INTEGRATION OF** 17 **NEW AMERICANS**

18 **Subtitle A—Citizenship Promotion**

19 **SEC. 601. IMMIGRATION SERVICE FEES.**

20 (a) IN GENERAL.—Subsection (m) of section 286 of
 21 the Immigration and Nationality Act (8 U.S.C. 1356(m))
 22 is amended to read as follows:

23 “(m) IMMIGRATION SERVICE FEES.—

24 “(1) IN GENERAL.—Except as provided in para-
 25 graph (2) and notwithstanding any other provision

1 of law, all adjudication fees as are designated by the
2 Secretary of Homeland Security in regulations shall
3 be deposited as offsetting receipts into a separate ac-
4 count entitled ‘Immigration Examinations Fee Ac-
5 count’ in the Treasury of the United States, whether
6 collected directly by the Secretary or through clerks
7 of courts.

8 “(2) VIRGIN ISLANDS AND GUAM.—All fees re-
9 ceived by the Secretary of Homeland Security from
10 applicants residing in the Virgin Islands of the
11 United States, or in Guam, under this subsection
12 shall be paid over to the treasury of the Virgin Is-
13 lands or to the treasury of Guam, respectively.

14 “(3) FEES FOR IMMIGRATION SERVICES.—

15 “(A) IN GENERAL.—Subject to subpara-
16 graph (B), the Secretary of Homeland Security
17 may set fees for providing immigration services
18 at a level that will—

19 “(i) ensure recovery of the full costs
20 of providing such services, or a portion
21 thereof, including the costs of similar serv-
22 ices provided without charge to asylum ap-
23 plicants or other immigrants; and

1 “(ii) recover the full cost of admin-
2 istering the collection of fees under this
3 paragraph, or a portion thereof.

4 “(B) REPORT REQUIREMENT.—The Sec-
5 retary of Homeland Security may not increase
6 any fee under this paragraph above the level of
7 such fee on the day before the date of the intro-
8 duction of the Citizenship Promotion Act of
9 2009, until—

10 “(i) the Secretary submits to the
11 Committee on the Judiciary of the Senate
12 and the Committee on the Judiciary of the
13 House of Representatives a report that—

14 “(I) identifies the direct and
15 overhead costs associated with pro-
16 viding immigration services, and dis-
17 tinguishes such costs from immigra-
18 tion enforcement and national security
19 costs;

20 “(II) identifies the costs allocable
21 to providing the premium processing
22 services to business customers pre-
23 scribed by section 286(u) of this Act;
24 describes the extent to which the fee
25 prescribed in that section is set at a

1 level that ensures recovery of those
2 costs; and identifies the amount of
3 funding that is being allocated for the
4 infrastructure improvements in the
5 adjudications and customer-service
6 processes as prescribed by that sec-
7 tion; and

8 “(III) contains information re-
9 garding the amount the fee will be in-
10 creased; and

11 “(ii) a period of 45 days has expired
12 beginning on the date that the report in
13 clause (i) is received by the committees de-
14 scribed in such clause.

15 “(4) WAIVERS OF FEES FOR IMMIGRATION
16 SERVICES.—

17 “(A) Except as otherwise provided in this
18 paragraph, any of the fees for immigration
19 services described in paragraph (3)(A) of this
20 section may be waived by the Department of
21 Homeland Security in any case under its juris-
22 diction in which the alien or other party af-
23 fected is able to substantiate that he or she is
24 unable to pay the prescribed fee. The person
25 seeking a fee waiver must file his or her affi-

1 davit, or unsworn declaration made pursuant to
2 section 1746 of title 28, United States Code,
3 asking for permission to prosecute without pay-
4 ment of fee of the application, petition, appeal,
5 motion, or request, and stating his or her belief
6 that he or she is entitled to or deserving of the
7 benefit requested and the reasons for his or her
8 inability to pay. The officer of the Department
9 of Homeland Security having jurisdiction to
10 render a decision on the application, petition,
11 appeal, motion, or request may, in his or her
12 discretion, grant the waiver of fee. The payment
13 of the additional sum prescribed by section
14 245(i) of the Act when applying for adjustment
15 of status under section 245 of the Act may not
16 be waived. The fee for the employment-based
17 petitions and applications prescribed by section
18 286(u) of the Act may not be waived.

19 “(B) The Secretary of Homeland Security
20 shall prescribe by regulations the criteria that
21 applicants must meet for the approval of the
22 waivers of fees in subparagraph (A), and the
23 documentation that applicants must submit to
24 substantiate that they meet such criteria. The
25 regulations shall include a form for the affidavit

1 or declaration described in subparagraph (A)
2 that must be completed by applicants for the
3 waivers of fees. An applicant shall be deemed to
4 have substantiated that he or she is unable to
5 pay the prescribed fee if—

6 “(i) the individual has demonstrated
7 that within 180 days of the receipt of the
8 application, he or she qualified for or re-
9 ceived any public benefit funded in whole
10 or in part by funds provided by the Fed-
11 eral Government that the Federal agency
12 administering the Federal funds has deter-
13 mined to be a Federal ‘means-tested public
14 benefit’ under the Personal Responsibility
15 and Work Opportunity Reconciliation Act
16 of 1996, Public Law 104–193; or

17 “(ii) the individual has demonstrated
18 that his or her annual household income is
19 at or below 125 percent of the poverty
20 level, as indicated in the most recent Fed-
21 eral poverty guidelines set by the Secretary
22 of Health and Human Services.”.

23 (b) SENSE OF CONGRESS.—It is the sense of Con-
24 gress that—

1 (1) the Secretary of Homeland Security should
2 set fees under section 286(m)(3) of the Immigration
3 and Nationality Act (8 U.S.C. 1356(m)(3)), as
4 amended by subsection (a) of this section, at a level
5 that ensures recovery of only the direct costs associ-
6 ated with the services described in such section
7 286(m)(3); and

8 (2) Congress should appropriate to the Sec-
9 retary of Homeland Security such funds as may be
10 necessary to cover the indirect costs associated with
11 the services described in such section 286(m)(3).

12 (c) TECHNICAL AMENDMENT.—Section 286 of the
13 Immigration and Nationality Act (8 U.S.C. 1356) is
14 amended—

15 (1) in subsections (d), (e), (f), (h), (i), (j), (k),
16 (l), (n), (o), (q), (t), and (u), by striking “Attorney
17 General” each place it appears and inserting “Sec-
18 retary of Homeland Security”;

19 (2) in subsection (i) of such section, by striking
20 “Attorney General’s” and inserting “Secretary’s”;
21 and

22 (3) in subsection (r)—

23 (A) in paragraph (2), by striking “Depart-
24 ment of Justice” and inserting “Department of
25 Homeland Security”; and

1 (B) in paragraphs (3) and (4), by striking
2 “Attorney General” each place it appears and
3 inserting “Secretary of Homeland Security”.

4 (d) FUNDING.—Fees and fines deposited in the Secu-
5 rity and Prosperity Account under section 286(w)(3)(B)
6 of the Immigration and Nationality Act may be used to
7 carry out this section.

8 **SEC. 602. ADMINISTRATION OF TESTS FOR NATURALIZA-**
9 **TION; FULFILLMENT BY ELDERLY PERSONS**
10 **OF REQUIREMENT FOR NATURALIZATION RE-**
11 **LATING TO KNOWLEDGE OF ENGLISH LAN-**
12 **GUAGE.**

13 (a) IN GENERAL.—Subsection (a) of section 312 of
14 the Immigration and Nationality Act (8 U.S.C. 1423) is
15 amended to read as follows:

16 “(a) NATURALIZATION TEST.—

17 “(1) REQUIREMENTS.—Except as otherwise
18 provided in this title, a person may not be natural-
19 ized as a citizen of the United States upon the appli-
20 cation of such person if such person cannot dem-
21 onstrate the following:

22 “(A) An understanding of the English lan-
23 guage, including an ability to read, write, and
24 speak words in the ordinary usage in the
25 English language.

1 “(B) A knowledge and understanding of—

2 “(i) the fundamentals of the history of
3 the United States; and

4 “(ii) the principles and form of gov-
5 ernment of the United States.

6 “(2) TESTING.—

7 “(A) UNIFORMITY OF TEST ADMINISTRA-
8 TION.—The Secretary of Homeland Security, in
9 administering any test that the Secretary uses
10 to determine whether an applicant for natu-
11 ralization as a citizen of the United States has
12 the proficiency and knowledge sufficient to meet
13 the requirements of paragraph (1), shall admin-
14 ister such test uniformly throughout the United
15 States, including the application of the criteria
16 set forth in subparagraph (B).

17 “(B) CONSIDERATION.—In selecting and
18 phrasing items in the administration of a test
19 described in subparagraph (A) and in evalu-
20 ating the performance of an applicant on such
21 test, the Secretary shall consider the following:

22 “(i) The age of the applicant.

23 “(ii) The education level of the appli-
24 cant.

1 “(iii) The amount of time the appli-
2 cant has resided in the United States.

3 “(iv) The efforts made by the appli-
4 cant, and the opportunities available to the
5 applicant, to acquire the knowledge and
6 proficiencies required by paragraph (1).

7 “(v) Such other factors as the Sec-
8 retary considers appropriate.

9 “(C) ENGLISH LANGUAGE TESTING.—The
10 requirement in paragraph (1)(A) shall be satis-
11 factorily met if an applicant can—

12 “(i) speak words in ordinary usage in
13 the English language; and

14 “(ii) read or write simple words and
15 phrases in ordinary usage in the English
16 language.

17 “(D) PROHIBITION ON EXTRAORDINARY
18 AND UNREASONABLE CONDITIONS.—The Sec-
19 retary may not impose any extraordinary or un-
20 reasonable condition on any applicant seeking
21 to meet the requirements of paragraph (1).”.

22 (b) PROMOTING CITIZENSHIP AMONG THE ELDER-
23 LY.—Subsection (b) of such section is amended—

24 (1) in paragraph (1), by striking “subsection
25 (a)” and inserting “subsection (a)(1)”;

1 (2) by amending paragraph (2) to read as fol-
2 lows:

3 “(2) The requirement of subsection (a)(1)(A)
4 shall not apply to any person who, on the date of the
5 filing of the person’s application for naturalization
6 as provided in section 334—

7 “(A) is over 50 years of age and has been
8 living in the United States for periods totaling
9 at least twenty years subsequent to a lawful ad-
10 mission for permanent residence,

11 “(B) is over 55 years of age and has been
12 living in the United States for periods totaling
13 at least 15 years subsequent to a lawful admis-
14 sion for permanent residence; or

15 “(C) is over 60 years of age and has been
16 living in the United States for periods totaling
17 at least 5 years subsequent to a lawful admis-
18 sion for permanent residence.”.

19 **SEC. 603. VOLUNTARY ELECTRONIC FILING OF APPLICA-**
20 **TIONS.**

21 The Secretary of Homeland Security may not require
22 that an applicant or petitioner for permanent residence or
23 citizenship of the United States use an electronic method
24 to file any application to, or access a customer account.

1 **SEC. 604. TIMELY BACKGROUND CHECKS.**

2 (a) STUDY.—

3 (1) IN GENERAL.—The Comptroller General of
4 the United States shall conduct a study on the proc-
5 ess used by the Department of Justice or the De-
6 partment of Homeland Security on the day before
7 the date of the enactment of this Act to conduct a
8 background check on an applicant for citizenship of
9 the United States.

10 (2) REPORT.—Not later than 1 year after the
11 date of the enactment of this Act and annually
12 thereafter, the Comptroller General of the United
13 States shall report to Congress on the findings of
14 the study required by paragraph (1).

15 (3) CONTENTS OF REPORT.—The report re-
16 quired by paragraph (2) shall include the following
17 information with respect to the calendar year pre-
18 ceding the date on which the report is filed:

19 (A) The number of background checks con-
20 ducted by the Department of Justice or the De-
21 partment of Homeland Security on applicants
22 for citizenship of the United States.

23 (B) The types of such background checks
24 conducted.

25 (C) The average time spent on each such
26 type of background check.

1 (D) A description of the obstacles that im-
2 pede the timely completion of such background
3 checks.

4 (4) EXAMINATION OF NAME CHECK CON-
5 DUCTED BY THE DEPARTMENT OF JUSTICE.—The
6 first report required by paragraph (2) shall also in-
7 clude an examination of the name check conducted
8 by the Department of Justice to assess the extent to
9 which the name check provides information relating
10 to the eligibility of applicants for citizenship of the
11 United States that is not otherwise provided by
12 other background checks conducted by the Depart-
13 ment of Justice or the Department of Homeland Se-
14 curity.

15 (b) TIMELY COMPLETION OF BACKGROUND
16 CHECKS.—

17 (1) ATTORNEY GENERAL BACKGROUND
18 CHECKS.—With respect to a request submitted to
19 the Attorney General by the Secretary of Homeland
20 Security for a background check on an applicant for
21 temporary or permanent residence or citizenship of
22 the United States, the Attorney General shall make
23 a reasonable effort to complete a background check
24 on such applicant not later than 90 days after the

1 Attorney General receives such request from the
2 Secretary of Homeland Security.

3 (2) DEPARTMENT OF HOMELAND SECURITY
4 BACKGROUND CHECKS.—With respect to background
5 checks on an applicant for temporary or permanent
6 residence or citizenship of the United States, the
7 Secretary of Homeland Security shall make a rea-
8 sonable effort to complete the background check on
9 such applicant not later than 90 days after the date
10 the application is received by the Department of
11 Homeland Security.

12 (3) DELAYS ON ATTORNEY GENERAL BACK-
13 GROUND CHECKS.—If a background check described
14 in paragraph (1) is not completed by the Attorney
15 General before the date that is 91 days after the
16 date that the Attorney General receives a request de-
17 scribed in paragraph (1)—

18 (A) the Attorney General shall document
19 the reason why such background check was not
20 completed before such date; and

21 (B) if such background check is not com-
22 pleted before the date that is 181 days after the
23 date of such receipt, then the Attorney General
24 shall, not later than 210 days after the date of
25 such receipt, submit to the appropriate congres-

1 sional committees and the Secretary of Home-
2 land Security a report that describes—

3 (i) the reason that such background
4 check was not completed within 180 days;
5 and

6 (ii) the earliest date on which the At-
7 torney General is certain the background
8 check will be completed.

9 (4) DELAYS ON DEPARTMENT OF HOMELAND
10 SECURITY BACKGROUND CHECKS.—If a background
11 check described in paragraph (2) is not completed by
12 the Secretary of Homeland Security before the date
13 that is 91 days after the date that the Department
14 of Homeland Security receives the application de-
15 scribed in paragraph (2)—

16 (A) the Secretary of Homeland Security
17 shall document the reason why such back-
18 ground check was not completed before such
19 date; and

20 (B) if such background check is not com-
21 pleted before the date that is 181 days after the
22 date of such receipt, then the Secretary of
23 Homeland Security shall, not later than 210
24 days after the date of such receipt, submit to

1 the appropriate congressional committees a re-
2 port that describes—

3 (i) the reason that such background
4 check was not completed within 180 days;
5 and

6 (ii) the earliest date on which the Sec-
7 retary of Homeland Security is certain the
8 background check will be completed.

9 (5) ANNUAL REPORT ON DELAYED ATTORNEY
10 GENERAL BACKGROUND CHECKS.—Not later than
11 the end of each fiscal year, the Attorney General
12 shall submit to the appropriate congressional com-
13 mittees a report containing, with respect to that fis-
14 cal year—

15 (A) the number of background checks de-
16 scribed in subparagraph (B) of paragraph (3);

17 (B) the time taken to complete each such
18 background check;

19 (C) a statistical analysis of the causes of
20 the delays in completing such background
21 checks; and

22 (D) a description of the efforts being made
23 by the Attorney General to address each such
24 cause.

1 (6) NOTIFICATION TO APPLICANT.—If, with re-
2 spect to a background check on an applicant de-
3 scribed in paragraph (2), the Secretary of Homeland
4 Security is required to furnish a report under para-
5 graph (3)(B), then the Secretary shall provide to
6 such applicant a copy of such report, redacted to re-
7 move any classified information contained therein.

8 (7) ANNUAL REPORT ON DELAYED HOMELAND
9 SECURITY BACKGROUND CHECKS.—Not later than
10 the end of each fiscal year, the Secretary of Home-
11 land Security shall submit to the appropriate con-
12 gressional committees a report containing, with re-
13 spect to that fiscal year—

14 (A) the number of background checks de-
15 scribed in subparagraph (B) of paragraph (4);

16 (B) the time taken to complete each such
17 background check;

18 (C) a statistical analysis of the causes of
19 the delays in completing such background
20 checks; and

21 (D) a description of the efforts being made
22 by the Secretary of Homeland Security to ad-
23 dress each such cause.

24 (8) NOTIFICATION TO APPLICANT.—If, with re-
25 spect to a background check on an applicant de-

scribed in paragraph (2), the Secretary of Homeland Security is required to furnish a report to the appropriate congressional committees under subsection (b)(4)(B), then the Secretary shall provide to such applicant a copy of such report, redacted to remove any classified information contained therein.

(9) APPROPRIATE CONGRESSIONAL COMMITTEES.—In this subsection, the term “appropriate congressional committees” means the following:

(A) The Committee on the Judiciary of the Senate.

(B) The Committee on Homeland Security and Governmental Affairs of the Senate.

(C) The Committee on the Judiciary of the House of Representatives.

(D) The Committee on Homeland Security of the House of Representatives.

(10) FUNDING.—Fees and fines deposited in the Security and Prosperity Account under section 286(w)(3)(B) of the Immigration and Nationality Act may be used to carry out this section.

SEC. 605. NATIONAL CITIZENSHIP PROMOTION PROGRAM.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Not later than 6 months following the date of enactment of this Act, the Sec-

1 retary of Homeland Security shall establish a pro-
2 gram to assist aliens who have been lawfully admit-
3 ted for permanent residence in becoming citizens of
4 the United States.

5 (2) DESIGNATION.—The program required by
6 paragraph (1) shall be known as the “New Ameri-
7 cans Initiative” (in this section referred to as the
8 “Program”).

9 (b) PROGRAM ACTIVITIES.—As part of the Program
10 required by subsection (a), the Secretary of Homeland Se-
11 curity shall—

12 (1) award grants in accordance with subsection
13 (c); and

14 (2) carry out outreach activities in accordance
15 with subsection (d).

16 (c) GRANTS TO SUPPORT NATURALIZATION EF-
17 FORTS.—

18 (1) IN GENERAL.—The Secretary of Homeland
19 Security shall award grants to eligible entities to as-
20 sist aliens who have been lawfully admitted for per-
21 manent residence in becoming citizens of the United
22 States.

23 (2) ELIGIBLE ENTITY DEFINED.—In this sub-
24 section, the term “eligible entity” means a not-for-

1 profit organization that has experience working with
2 immigrant communities.

3 (3) USE OF FUNDS.—Grants awarded under
4 this subsection shall be used for activities to assist
5 aliens who have been lawfully admitted for perma-
6 nent residence in becoming citizens of the United
7 States, including—

8 (A) conducting English language and citi-
9 zenship classes for such aliens;

10 (B) providing legal assistance, by attorneys
11 or entities recognized by the Board of Immigra-
12 tion Appeals, to such aliens to assist such aliens
13 in becoming citizens of the United States;

14 (C) carrying out outreach activities and
15 providing education to immigrant communities
16 to assist such aliens in becoming citizens of the
17 United States; and

18 (D) assisting such aliens with applications
19 to become citizens of the United States, as al-
20 lowed by Federal and State law.

21 (4) APPLICATION FOR GRANT.—

22 (A) IN GENERAL.—Each eligible entity
23 seeking a grant under this subsection shall sub-
24 mit an application to the Secretary of Home-
25 land Security at such time, in such manner,

1 and accompanied by such information as the
2 Secretary shall require.

3 (B) CONTENTS.—Each application sub-
4 mitted pursuant to subparagraph (A) shall in-
5 clude a description of—

6 (i) the activities for which a grant
7 under this section is sought;

8 (ii) the manner in which the entity
9 plans to leverage available private and
10 State and local government resources to
11 assist aliens who have been lawfully admit-
12 ted for permanent residence in becoming
13 citizens of the United States;

14 (iii) the experience of the entity in
15 carrying out the activities for which a
16 grant under this section is sought, includ-
17 ing the number of aliens and geographic
18 regions served by such entity; and

19 (iv) the manner in which the entity
20 plans to employ best practices developed by
21 adult educators, State and local govern-
22 ments, and community organizations—

23 (I) to promote citizenship and
24 civic participation by such aliens; and

1 (II) to provide assistance to such
2 aliens with the process of becoming
3 citizens of the United States.

4 (d) OUTREACH.—The Secretary of Homeland Secu-
5 rity shall—

6 (1) develop outreach materials targeted to
7 aliens who have been lawfully admitted for perma-
8 nent residence to encourage such aliens to apply to
9 become citizens of the United States; and

10 (2) make such outreach materials available
11 through—

12 (A) public service announcements;

13 (B) advertisements; and

14 (C) such other media as the Secretary de-
15 termines is appropriate.

16 (e) FUNDING.—Fees and fines deposited in the Secu-
17 rity and Prosperity Account under section 286(w)(3)(B)
18 of the Immigration and Nationality Act may be used to
19 carry out this section.

20 **SEC. 606. EFFECTIVE DATE.**

21 The amendments made by this title shall take effect
22 on the date of the enactment of this Act and shall apply
23 to applications for naturalization pending on or after such
24 date.

Subtitle B—Miscellaneous

SEC. 611. GRANTS TO SUPPORT PUBLIC EDUCATION AND COMMUNITY TRAINING.

(a) GRANTS AUTHORIZED.—The Assistant Attorney General, Office of Justice Programs, may award grants to qualified nonprofit community organizations to educate, train, and support non-profit agencies, immigrant communities, and other interested entities regarding the provisions of this Act and the amendments made by this Act.

(b) USE OF FUNDS.—

(1) IN GENERAL.—Grants awarded under this section shall be used—

(A) for public education, training, technical assistance, government liaison, and all related costs (including personnel and equipment) incurred by the grantee in providing services related to this Act; and

(B) to educate, train, and support nonprofit organizations, immigrant communities, and other interested parties regarding this Act and the amendments made by this Act and on matters related to its implementation.

(2) EDUCATION.—In addition to the purposes described in paragraph (1), grants awarded under this section shall be used to—

1 (A) educate immigrant communities and
2 other interested entities regarding—

3 (i) the individuals and organizations
4 that can provide authorized legal represen-
5 tation in immigration matters under regu-
6 lations prescribed by the Secretary; and

7 (ii) the dangers of securing legal ad-
8 vice and assistance from those who are not
9 authorized to provide legal representation
10 in immigration matters;

11 (B) educate interested entities regarding
12 the requirements for obtaining nonprofit rec-
13 ognition and accreditation to represent immi-
14 grants under regulations prescribed by the Sec-
15 retary;

16 (C) provide nonprofit agencies with train-
17 ing and technical assistance on the recognition
18 and accreditation process; and

19 (D) educate nonprofit community organi-
20 zations, immigrant communities, and other in-
21 terested entities regarding—

22 (i) the process for obtaining benefits
23 under this Act or under an amendment
24 made by this Act; and

1 (ii) the availability of authorized legal
2 representation for low-income persons who
3 may qualify for benefits under this Act or
4 under an amendment made by this Act.

5 (c) DIVERSITY.—The Assistant Attorney General
6 shall ensure, to the extent possible, that the nonprofit
7 community organizations receiving grants under this sec-
8 tion serve geographically diverse locations and ethnically
9 diverse populations who may qualify for benefits under the
10 Act.

11 (d) FUNDING.—Fees and fines deposited in the Secu-
12 rity and Prosperity Account under section 286(w)(3)(B)
13 of the Immigration and Nationality Act may be used to
14 carry out this section.

15 **SEC. 612. GRANT PROGRAM TO ASSIST APPLICANTS FOR**
16 **NATURALIZATION.**

17 (a) PURPOSE.—The purpose of this section is to es-
18 tablish a grant program within United States Citizenship
19 and Immigration Services that provides funding to com-
20 munity-based organizations, including community-based
21 legal service organizations, as appropriate, to develop and
22 implement programs to assist eligible applicants for natu-
23 ralization.

24 (b) DEFINITIONS.—In this section:

1 (1) COMMUNITY-BASED ORGANIZATION.—The
2 term “community-based organization” means a non-
3 profit, tax-exempt organization, including a faith-
4 based organization, whose staff has experience and
5 expertise in meeting the legal, social, educational,
6 cultural educational, or cultural needs of immi-
7 grants, refugees, persons granted asylum, or persons
8 applying for such statuses.

9 (2) IEACA GRANT.—The term “IEACA grant”
10 means an Initial Entry, Adjustment, and Citizenship
11 Assistance Grant authorized under subsection (c).

12 (c) ESTABLISHMENT OF INITIAL ENTRY, ADJUST-
13 MENT, AND CITIZENSHIP ASSISTANCE GRANT PRO-
14 GRAM.—

15 (1) GRANTS AUTHORIZED.—The Secretary,
16 working through the Director of United States Citi-
17 zenship and Immigration Services, may award
18 IEACA grants to community-based organizations.

19 (2) USE OF FUNDS.—Grants awarded under
20 this section may be used for the design and imple-
21 mentation of programs to provide the following serv-
22 ices:

23 (A) INITIAL APPLICATION.—Assistance
24 and instruction, including legal assistance, to
25 aliens making initial application for conditional

1 nonimmigrant or conditional nonimmigrant de-
2 pendent classification under section 401. Such
3 assistance may include assisting applicants in—

4 (i) screening to assess prospective ap-
5 plicants' potential eligibility for partici-
6 pating in such program;

7 (ii) filling out applications for such
8 program;

9 (iii) gathering proof of identification,
10 employment, residence, and tax payment;

11 (iv) gathering proof of relationships of
12 eligible family members;

13 (v) applying for any waivers for which
14 applicants and qualifying family members
15 may be eligible; and

16 (vi) any other assistance that the Sec-
17 retary or grantee considers useful to aliens
18 who are interested in filing applications for
19 treatment under section 401.

20 (B) ADJUSTMENT OF STATUS.—Assistance
21 and instruction, including legal assistance, to
22 aliens seeking to adjust their status in accord-
23 ance with section 402 of this Act or section 245
24 of the Immigration and Nationality Act (8
25 U.S.C. 1255).

1 (C) CITIZENSHIP.—Assistance and instruc-
2 tion to applicants on—

3 (i) the rights and responsibilities of
4 United States citizenship;

5 (ii) English as a second language;

6 (iii) civics; or

7 (iv) applying for United States citi-
8 zenship.

9 (3) DURATION AND RENEWAL.—

10 (A) DURATION.—Subject to subparagraph

11 (B), each grant awarded under this section
12 shall be awarded for a period of not more than
13 3 years.

14 (B) RENEWAL.—The Secretary may renew
15 any grant awarded under this section in 1-year
16 increments.

17 (4) APPLICATION FOR GRANTS.—Each entity
18 desiring an IEACA grant under this section shall
19 submit an application to the Secretary at such time,
20 in such manner, and accompanied by such informa-
21 tion as the Secretary may require.

22 (5) ELIGIBLE ORGANIZATIONS.—A community-
23 based organization applying for a grant under this
24 section to provide services described in subparagraph

1 (A), (B), or (C)(iv) of paragraph (2) may not receive
2 such a grant unless the organization is—

3 (A) recognized by the Board of Immigra-
4 tion Appeals under section 292.2 of title 8,
5 Code of Federal Regulations; or

6 (B) otherwise directed by an attorney.

7 (6) SELECTION OF GRANTEES.—Grants award-
8 ed under this section shall be awarded on a competi-
9 tive basis.

10 (7) GEOGRAPHIC DISTRIBUTION OF GRANTS.—
11 The Secretary shall approve applications under this
12 section in a manner that ensures, to the greatest ex-
13 tent practicable, that—

14 (A) not less than 50 percent of the funding
15 for grants under this section are awarded to
16 programs located in the 10 States with the
17 highest percentage of residents who were born
18 in foreign countries; and

19 (B) not less than 20 percent of the funding
20 for grants under this section are awarded to
21 programs located in States that are not de-
22 scribed in subparagraph (A).

23 (8) ETHNIC DIVERSITY.—The Secretary shall
24 ensure that community-based organizations receiving
25 grants under this section provide services to an eth-

1 nically diverse population, to the greatest extent pos-
2 sible.

3 (d) LIAISON BETWEEN USCIS AND GRANTEES.—

4 The Secretary shall establish a liaison between United
5 States Citizenship and Immigration Services and the com-
6 munity of providers of services under this section to assure
7 quality control, efficiency, and greater client willingness
8 to come forward.

9 (e) REPORTS TO CONGRESS.—Not later than 180
10 days after the date of enactment of this Act, and July
11 1 of each subsequent year, the Secretary shall submit a
12 report to Congress that includes information regarding—

13 (1) the status of the implementation of this sec-
14 tion;

15 (2) the grants issued pursuant to this section;
16 and

17 (3) the activities carried out with such grants.

18 (f) SOURCE OF GRANT FUNDS.—

19 (1) APPLICATION FEES.—The Secretary may
20 use funds made available under section 401(g)(2)(A)
21 of this Act and section 218A(b)(3) of the Immigra-
22 tion and Nationality Act, as added by this Act, to
23 carry out this section.

24 (2) FUNDING.—Fees and fines deposited in the
25 Security and Prosperity Account under section

1 286(w)(3)(B) of the Immigration and Nationality
2 Act may be used to carry out this section.

3 (g) DISTRIBUTION OF CONDITIONAL NONIMMIGRANT
4 VISA FEES AND FINES.—Notwithstanding section
5 401(g)(2)(B), 2 percent of the fees and fines collected
6 under section 401 shall be made available for grants under
7 the Initial Entry, Adjustment, and Citizenship Assistance
8 Grant Program established under this section.

9 **SEC. 613. NATURALIZATION FOR CERTAIN U.S. HIGH**
10 **SCHOOL GRADUATES.**

11 (a) IN GENERAL.—Title III of the Immigration and
12 Nationality Act (8 U.S.C. 1401 et seq.) is amended by
13 inserting after section 320 the following:

14 **“SEC. 321. CITIZENSHIP FOR CERTAIN U.S. HIGH SCHOOL**
15 **GRADUATES.**

16 “(a) REQUIREMENTS DEEMED SATISFIED.—In the
17 case of an alien described in subsection (b), the alien shall
18 be deemed to have satisfied the requirements of section
19 312(a).

20 “(b) ALIENS DESCRIBED.—An alien is described in
21 this subsection if the alien is under 25 years of age on
22 the date on which the alien submits an application for nat-
23 uralization under section 334 that contains the following:

24 “(1) Transcripts from public or private schools
25 in the United States that demonstrate the following:

1 “(A) The alien completed grades 6 through
2 12 in the United States and was graduated
3 with a high school diploma.

4 “(B) The alien completed a curriculum
5 that reflects knowledge of United States his-
6 tory, Government, and civics.

7 “(2) A copy of the alien’s high school diploma.

8 “(c) REDUCED FEE.—The Secretary of Homeland
9 Security shall reduce the naturalization application fee for
10 an alien described in subsection (b) by 50 percent.”.

11 (b) CLERICAL AMENDMENT.—The table of contents
12 for the Immigration and Nationality Act is amended by
13 inserting after the item relating to section 320 the fol-
14 lowing:

 “Sec. 321. Citizenship for certain U.S. high school graduates.”.

15 (c) APPLICABILITY.—The amendments made by this
16 Section shall take effect on the date of the enactment of
17 this Act and shall apply to applicants for naturalization
18 who apply for naturalization on or after such date.

19 (d) REGULATIONS.—The Secretary of Homeland Se-
20 curity shall promulgate regulations to carry out this Sec-
21 tion and the amendments made by this Section not later
22 than 180 days after the date of the enactment of this Act.

23 **SEC. 614. FAMILY INTEGRATION.**

24 Section 201 of the Immigration and Nationality Act
25 (8 U.S.C. 1151) is amended by striking in subsection

1 (b)(2)(A)(i) the number “21” and inserting the number
2 “18”.

3 **SEC. 615. CONSIDERATION FOR DOMESTIC RESETTLEMENT**
4 **OF REFUGEES.**

5 Section 412 is amended as follows:

6 (1) In subsection (a)(2)(C)(i) strike “insure”
7 and insert “ensure”.

8 (2) At the end, add the following:

9 “(V) the geography, climate and
10 environmental composition of the pro-
11 posed resettlement area compared
12 with that of the geography, climate
13 and environmental composition of
14 their country of origin.”.

15 **SEC. 616. CREDITS FOR TEACHERS OF ENGLISH LANGUAGE**
16 **LEARNERS.**

17 (a) IN GENERAL.—Subpart A of part IV of sub-
18 chapter A of chapter 1 of the Internal Revenue Code of
19 1986 (relating to nonrefundable personal credits) is
20 amended by inserting after section 25D the following new
21 section:

22 **“SEC. 25E. TEACHERS OF ENGLISH LANGUAGE LEARNERS.**

23 “(a) IN GENERAL.—In the case of an eligible teacher,
24 there shall be allowed a credit against the tax imposed
25 by this chapter for the taxable year an amount equal to—

1 “(1) \$1,500, for each of the first 5 taxable
2 years for which the taxpayer is allowed a credit
3 under this section; and

4 “(2) \$1,000, for any other taxable year.

5 “(b) CREDIT ALLOWED ONLY FOR 10 TAXABLE
6 YEARS.—No credit shall be allowed under this section
7 with respect to a taxpayer for any taxable year after the
8 10th taxable year for which such taxpayer is allowed a
9 credit under this section.

10 “(c) ELIGIBLE TEACHER.—For purposes of this sec-
11 tion—

12 “(1) IN GENERAL.—Except as provided in para-
13 graph (2), the term ‘eligible teacher’ means, with re-
14 spect to a taxable year, any individual who is—

15 “(A) a full-time teacher of English as a
16 second language or bilingual instruction for the
17 academic year ending in such taxable year, or

18 “(B) an eligible part-time teacher of
19 English as a second language or bilingual in-
20 struction for the academic year ending in such
21 taxable year.

22 “(2) ELIGIBLE PART-TIME TEACHER.—The
23 term ‘eligible part-time teacher’ means, with respect
24 to a taxable year, an individual who teaches at least
25 20 hours per week during the academic year ending

1 in such taxable year. Such term does not include any
 2 individual who is a full-time teacher of English as a
 3 second language during such academic year.

4 “(3) SPECIAL RULE.—In the case of an eligible
 5 part-time teacher, subsection (a) shall be applied by
 6 substituting ‘\$375’ for ‘\$750’ and by substituting
 7 ‘\$250’ for ‘\$500’.”.

8 (b) CLERICAL AMENDMENT.—The table of sections
 9 for such subpart is amended by inserting after the item
 10 relating to section 25D the following new item:

“Sec. 25E. Teachers of English language learners.”.

11 (c) TEACHER CERTIFICATION EXPENSES.—Part VII
 12 of subchapter B of chapter 1 of the Internal Revenue Code
 13 of 1986 (relating to additional itemized deductions for in-
 14 dividuals) is amended by redesignating section 224 as sec-
 15 tion 225 and by inserting after section 223 the following
 16 new section:

17 **“SEC. 224. CERTIFICATION EXPENSES FOR TEACHERS OF**
 18 **ENGLISH LANGUAGE LEARNERS.**

19 “(a) IN GENERAL.—In the case of an individual,
 20 there shall be allowed a deduction for eligible teacher cer-
 21 tification expenses paid or incurred by the taxpayer for
 22 the taxable year.

23 “(b) ELIGIBLE TEACHER CERTIFICATION EX-
 24 PENSES.—The term ‘eligible teacher certification ex-
 25 penses’—

1 “(1) means the tuition and fees required for the
 2 enrollment or attendance of the taxpayer at an eligi-
 3 ble educational institution (as defined in section
 4 25A) for a course which is required for certification
 5 or licensure of such individual as qualified to provide
 6 English as a second language or bilingual instruction
 7 to elementary or secondary school students who are
 8 limited English proficient (as defined in section
 9 9901 of the Elementary and Secondary Education
 10 Act of 1965); and

11 “(2) shall not include any amounts that are—

12 “(A) used for a course that is part of the
 13 individual’s degree program; or

14 “(B) funded by another person or any gov-
 15 ernmental entity.

16 “(c) DENIAL OF DOUBLE BENEFIT.—No deduction
 17 shall be allowed under this section for any expense for
 18 which a deduction or credit is allowed under any other
 19 provision of this chapter.

20 “(d) TERMINATION.—This section shall not apply to
 21 expenses paid or incurred after December 31, 2014.”.

22 (d) CERTIFICATION DEDUCTION ALLOWED WHETH-
 23 ER OR NOT TAXPAYER ITEMIZES OTHER DEDUCTIONS.—
 24 Subsection (a) of section 62 of such Code is amended by

1 inserting after paragraph (21) the following new para-
 2 graph:

3 “(22) TEACHER CERTIFICATION EXPENSES.—
 4 The deduction allowed by section 224.”.

5 (e) CLERICAL AMENDMENT.—The table of sections
 6 for part VII of subchapter B of chapter 1 of such Code
 7 is amended by striking the last item and inserting the fol-
 8 lowing new item:

 “Sec. 224. Certification expenses for teachers of English language learners.”.

9 (f) REGULATIONS.—Not later than 180 days after
 10 the date of the enactment of this Act, the Secretary of
 11 the Treasury shall promulgate regulations implementing
 12 the provisions of this section.

13 (g) EFFECTIVE DATE.—The amendments made by
 14 this section shall apply to taxable years beginning after
 15 December 31, 2009.

16 **SEC. 617. CREDITS FOR EMPLOYER-PROVIDED ADULT**
 17 **ENGLISH LITERACY AND BASIC EDUCATION**
 18 **PROGRAMS.**

19 (a) IN GENERAL.—Subpart D of part IV of sub-
 20 chapter A of chapter 1 of the Internal Revenue Code of
 21 1986 (relating to business related credits) is amended by
 22 adding at the end the following:

1 **“SEC. 45R. EMPLOYER-PROVIDED ADULT ENGLISH LIT-**
2 **ERACY AND BASIC EDUCATION PROGRAMS.**

3 “(a) IN GENERAL.—For the purposes of section 38,
4 the credit determined under this section with respect to
5 any employer for the taxable year is an amount equal to
6 20 percent of qualified education program expenses, but
7 in no case shall the employer receive a credit in an amount
8 of more than \$1,000 per full-time employee participating
9 in the qualified education program.

10 “(b) QUALIFIED EDUCATION PROGRAM EX-
11 PENSES.—For purposes of this section—

12 “(1) IN GENERAL.—The term ‘qualified edu-
13 cation program expenses’ means expenses paid or in-
14 curred by an employer to make available qualified
15 education to employees of the employer, who—

16 “(A) are English language learners; and

17 “(B)(i) have not received a secondary
18 school diploma, or its recognized equivalent; or

19 “(ii) lack sufficient mastery of basic edu-
20 cational skills, including financial literacy, to
21 enable the individuals to function effectively in
22 society.

23 “(2) QUALIFIED EDUCATION.—The term ‘quali-
24 fied education’ means adult education and literacy
25 activities provided—

1 “(A) by an eligible provider which for the
2 fiscal year ending during the employer’s taxable
3 year receives or is eligible to receive Federal
4 funds under section 231 of the Adult Education
5 and Family Literacy Act for adult education
6 and literacy activities; or

7 “(B) in curriculum approved by the De-
8 partment of Education, the Employment and
9 Training Administration of the Department of
10 Labor, or in current use by a Federal agency.

11 “(3) ELIGIBLE PROVIDER; ADULT EDUCATION
12 AND LITERACY ACTIVITIES.—The terms ‘eligible pro-
13 vider’ and ‘adult education and literacy activities’
14 shall have the respective meanings given to such
15 terms in section 203 of the Adult Education and
16 Family Literacy Act.

17 “(4) ENGLISH LANGUAGE LEARNER.—The term
18 ‘English language learner’ shall have the same
19 meaning given to such term in section 9101(25) of
20 the Elementary and Secondary Education Act of
21 1965.

22 “(c) SPECIAL RULES.—For purposes of this sec-
23 tion—

24 “(1) FULL-TIME EMPLOYMENT.—An employee
25 shall be considered full-time if such employee is em-

1 employed at least 30 hours per week for 25 or more
2 calendar weeks in the taxable year.

3 “(2) AGGREGATION RULE.—All persons treated
4 as a single employer under subsection (a) or (b) or
5 section 52, or subsection (m) or (o) of section 414,
6 shall be treated as 1 person.

7 “(d) DENIAL OF DOUBLE BENEFIT.—No deduction
8 or credit shall be allowed under any other provision of this
9 chapter for any amount taken into account in determining
10 the credit under this section.

11 “(e) TERMINATION.—This section shall not apply to
12 expenses paid or incurred after December 31, 2014.”.

13 (b) CREDIT TO BE PART OF GENERAL BUSINESS
14 CREDIT.—Subsection (b) of section 38 of such Code (re-
15 lating to the current year business credit) is amended—

16 (1) by striking “plus” at the end of paragraph
17 (34);

18 (2) by striking the period at the end of para-
19 graph (35) and inserting “, plus”; and

20 (3) by adding at the end the following new
21 paragraph:

22 “(36) the adult English literacy and basic edu-
23 cation programs credit determined under section
24 45R.”.

1 (c) CLERICAL AMENDMENT.—The table of sections
 2 for subpart D of part IV of subchapter A of chapter 1
 3 of the such Code is amended by adding at the end the
 4 following new item:

“Sec. 45R. Employer-provided adult English literacy and basic education programs.”.

5 (d) REGULATIONS.—Not later than 180 days after
 6 the date of the enactment of this Act, the Secretary of
 7 the Treasury shall promulgate regulations implementing
 8 the provisions of this section.

9 (e) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply to taxable years beginning after
 11 December 31, 2009.

12 **SEC. 618. GRANTS TO STATES TO FORM NEW AMERICAN**
 13 **COUNCILS.**

14 (a) AUTHORITY TO PROVIDE GRANTS.—Subject to
 15 subsections (c) and (d), the Chief of the Office of Citizen-
 16 ship and Immigrant Integration is authorized to provide
 17 competitive grants to States to form State New American
 18 Councils as described in subsection (b) to carry out activi-
 19 ties described in section 303.

20 (b) STATE NEW AMERICAN COUNCILS.—A State
 21 New American Council shall consist of not less than 15
 22 and not more than 19 individuals from the State and shall
 23 include, to the extent practicable, representatives from the
 24 following sectors:

1 (1) Business.

2 (2) Faith-based organizations.

3 (3) Civic organizations.

4 (4) Philanthropic leaders.

5 (5) Nonprofit organizations, including those
6 with experience working with immigrant commu-
7 nities.

8 (6) Representatives from key education stake-
9 holders, such as State educational agencies, local
10 educational agencies, community colleges, teachers,
11 or organizations representing teachers and other em-
12 ployees.

13 (7) Representatives of State adult education of-
14 fices.

15 (8) Representatives of State or local public li-
16 braries.

17 (9) Representatives of statewide or local govern-
18 ment officials.

19 (c) WAIVER OF REQUIREMENT.—

20 (1) AUTHORITY TO GRANT.—The Chief of the
21 Office of Citizenship and Immigrant Integration
22 may award a grant under subsection (a) to a State
23 without requiring the State to form a State New
24 American Council if the Chief determines that the
25 State is carrying out similar statewide initiatives to

1 introduce immigrants into the State and into the
2 United States.

3 (2) GUIDELINES.—The Chief shall establish
4 guidelines for awarding grants to States described in
5 paragraph (1).

6 (d) GRANTS TO LOCAL GOVERNMENTS.—The Chief
7 of the Office of Citizenship and Immigrant Integration
8 may provide a grant under subsection (a) to a local gov-
9 ernment at the discretion of the Chief.

10 (e) APPLICATION.—To be eligible to receive a grant
11 under this section, an applicant shall submit an applica-
12 tion to the Chief of the Office of Citizenship and Immi-
13 grant Integration at such time, in such manner, and con-
14 taining such information as the Chief may reasonably re-
15 quire. Such application shall include—

16 (1) if the applicant is a State seeking to form
17 a State New American Council, an assurance that
18 such State New American Council will meet the re-
19 quirements of subsection (b);

20 (2) the number of immigrants in the State in
21 which the applicant is located;

22 (3) a description of the challenges in intro-
23 ducing new Americans in the State and local com-
24 munity; and

1 (4) any other information that the Chief may
2 reasonably require.

3 (f) DURATION.—A grant awarded under subsection
4 (a) shall be for a period of 5 years.

5 (g) PRIORITY.—Priority shall be given to grant appli-
6 cations that—

7 (1) use matching funds, from non-Federal
8 sources, which may include in-kind contributions;
9 and

10 (2) demonstrate collaboration with private enti-
11 ties to achieve the goals of their comprehensive plan.

12 (h) ADDITIONAL CONSIDERATION.—Additional con-
13 sideration shall be given to grant applications submitted
14 by States with a large increase in the population of immi-
15 grants over the previous 10 years relative to past migra-
16 tion patterns, based on data compiled by the Office of Im-
17 migration Statistics of the Department of Homeland Secu-
18 rity.

19 (i) GRANT AMOUNT.—The amount of a grant award-
20 ed under subsection (a) shall be not less than \$500,000
21 and not more than \$5,000,000 for each fiscal year.

22 (j) RESERVATIONS.—

23 (1) NATIONAL.—The Chief of the Office of Citi-
24 zenship and Immigrant Integration shall reserve not
25 more than 1 percent of the amount appropriated to

1 carry out this section for such Office, including the
2 evaluation of funds distributed.

3 (2) STATES.—A State awarded a grant under
4 subsection (a) may reserve not more than 10 percent
5 of such grant amount for the creation and operation
6 of the State New American Council.

7 (k) FUNDING.—Fees and fines deposited in the Secu-
8 rity and Prosperity Account under section 286(w)(3)(B)
9 of the Immigration and Nationality Act may be used to
10 carry out this section.

11 **SEC. 619. INDEPENDENCE DAY CEREMONIES FOR OATHS**
12 **OF ALLEGIANCE.**

13 (a) IN GENERAL.—The Secretary of Homeland Secu-
14 rity shall make available funds each fiscal year to the Di-
15 rector of U.S. Citizenship and Immigration Services or to
16 public or private nonprofit entities to support public cere-
17 monies for administering oaths of allegiance under section
18 337(a) of the Immigration and Nationality Act (8 U.S.C.
19 1448(a)) to legal immigrants whose applications for natu-
20 ralization have been approved.

21 (b) CEREMONIES.—A ceremony conducted with funds
22 under this section—

23 (1) shall be held on a date that is on or near
24 Independence Day; and

1 (2) shall include appropriate outreach, ceremo-
2 nial, and celebratory activities.

3 (c) SELECTION OF SITES.—

4 (1) IN GENERAL.—The Secretary of Homeland
5 Security shall select the site for each ceremony con-
6 ducted with funds under this section.

7 (2) SELECTION PROCESS.—In selecting a site
8 under paragraph (1), the Secretary of Homeland Se-
9 curity should consider—

10 (A) the number of naturalization appli-
11 cants living in proximity to the site; and

12 (B) the degree of participation in and sup-
13 port for the ceremony by the local community
14 at the site.

15 (d) AMOUNTS AVAILABLE; USE OF FUNDS.—

16 (1) AMOUNTS AVAILABLE.—Amounts made
17 available under this section for each ceremony shall
18 not exceed \$5,000.

19 (2) USE OF FUNDS.—Funds made available
20 under this section may be used only for the fol-
21 lowing:

22 (A) Costs of personnel of the Department
23 of Homeland Security and the Federal judiciary
24 (including travel and overtime expenses).

1 (B) Site rental, including audio equipment
2 rental.

3 (C) Logistical requirements, including
4 sanitation.

5 (D) Costs for printing brochures about the
6 naturalization participants and the naturaliza-
7 tion process.

8 (3) FUNDING.—Fees and fines deposited in the
9 Security and Prosperity Account under section
10 286(w)(3)(B) of the Immigration and Nationality
11 Act may be used to carry out this section.

12 (e) APPLICATION.—No amount may be made avail-
13 able under this section to an entity that is not part of
14 the Department of Homeland Security, for supporting a
15 ceremony described in subsection (b), unless—

16 (1) the entity submits an application to the Sec-
17 retary of Homeland Security, in a form and manner
18 specified by the Secretary of Homeland Security;
19 and

20 (2) the Secretary of Homeland Security ap-
21 proves the application.

○