

113TH CONGRESS
1ST SESSION

H. R. 15

To provide for comprehensive immigration reform and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 2, 2013

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Homeland Security, Ways and Means, Armed Services, Natural Resources, Agriculture, Education and the Workforce, Energy and Commerce, Oversight and Government Reform, the Budget, Science, Space, and Technology, Financial Services, and Transportation and Infrastructure, 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 “Border Security, Economic Opportunity, and Immigra-
 6 tion Modernization Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Statement of congressional findings.
- Sec. 3. Reports on current border security status.
- Sec. 4. Border security metrics and goals.
- Sec. 5. Southern Border Security Commission.
- Sec. 6. Border Security Results Strategy.
- Sec. 7. US–VISIT Implementation.
- Sec. 8. Alternate model for border security strategy development.
- Sec. 9. Comprehensive Immigration Reform Funds.
- Sec. 10. Reference to the Immigration and Nationality Act.
- Sec. 11. Definitions.
- Sec. 12. Grant accountability.

TITLE I—BORDER SECURITY

- Sec. 1101. Definitions.
- Sec. 1102. Additional U.S. Customs and Border Protection officers.
- Sec. 1103. National Guard support to secure the Southern border.
- Sec. 1104. Enhancement of existing border security operations.

- Sec. 1105. Border security on certain Federal land.
- Sec. 1106. Equipment and technology.
- Sec. 1107. Access to emergency personnel.
- Sec. 1108. Southwest Border Region Prosecution Initiative.
- Sec. 1109. Interagency collaboration.
- Sec. 1110. State Criminal Alien Assistance Program.
- Sec. 1111. Use of force.
- Sec. 1112. Training for border security and immigration enforcement officers.
- Sec. 1113. Department of Homeland Security Border Oversight Task Force.
- Sec. 1114. Ombudsman for Immigration Related Concerns of the Department of Homeland Security.
- Sec. 1115. Protection of family values in apprehension programs.
- Sec. 1116. Reports.
- Sec. 1117. Severability and delegation.
- Sec. 1118. Prohibition on land border crossing fees.
- Sec. 1119. Human Trafficking Reporting.
- Sec. 1120. Rule of construction.
- Sec. 1121. Limitations on dangerous deportation practices.
- Sec. 1122. Maximum allowable costs of salaries of contractor employees.

TITLE II—IMMIGRANT VISAS

Subtitle A—Registration and Adjustment of Registered Provisional Immigrants

- Sec. 2101. Registered provisional immigrant status.
- Sec. 2102. Adjustment of status of registered provisional immigrants.
- Sec. 2103. The DREAM Act.
- Sec. 2104. Additional requirements.
- Sec. 2105. Criminal penalty.
- Sec. 2106. Grant program to assist eligible applicants.
- Sec. 2107. Conforming amendments to the Social Security Act.
- Sec. 2108. Government contracting and acquisition of real property interest.
- Sec. 2109. Long-term legal residents of the Commonwealth of the Northern Mariana Islands.
- Sec. 2110. Rulemaking.
- Sec. 2111. Statutory construction.

Subtitle B—Agricultural Worker Program

- Sec. 2201. Short title.
- Sec. 2202. Definitions.

CHAPTER 1—PROGRAM FOR EARNED STATUS ADJUSTMENT OF AGRICULTURAL WORKERS

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- Sec. 2211. Requirements for blue card status.
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- Sec. 2213. Use of information.
- Sec. 2214. Reports on blue cards.
- Sec. 2215. Authorization of appropriations.

SUBCHAPTER B—CORRECTION OF SOCIAL SECURITY RECORDS

- Sec. 2221. Correction of social security records.

CHAPTER 2—NONIMMIGRANT AGRICULTURAL VISA PROGRAM

- Sec. 2231. Nonimmigrant classification for nonimmigrant agricultural workers.
- Sec. 2232. Establishment of nonimmigrant agricultural worker program.
- Sec. 2233. Transition of H-2A Worker Program.
- Sec. 2234. Reports to Congress on nonimmigrant agricultural workers.

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- Sec. 2242. Reports to Congress.
- Sec. 2243. Benefits integrity programs.
- Sec. 2244. Effective date.

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- Sec. 2302. Merit-based track two.
- Sec. 2303. Repeal of the diversity visa program.
- Sec. 2304. Worldwide levels and recapture of unused immigrant visas.
- Sec. 2305. Reclassification of spouses and minor children of lawful permanent residents as immediate relatives.
- Sec. 2306. Numerical limitations on individual foreign states.
- Sec. 2307. Allocation of immigrant visas.
- Sec. 2308. Inclusion of communities adversely affected by a recommendation of the Defense Base Closure and Realignment Commission as targeted employment areas.
- Sec. 2309. V nonimmigrant visas.
- Sec. 2310. Fiancée and fiancé child status protection.
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- Sec. 2318. Extension and improvement of the Iraqi special immigrant visa program.
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- Sec. 2402. Retaining physicians who have practiced in medically underserved communities.
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- Sec. 3303. Mandatory exit system.
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- Sec. 4406. Nonimmigrant elementary and secondary school students.
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- Sec. 4408. J visa eligibility for speakers of certain foreign languages.
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- Sec. 4410. Pilot program for remote B nonimmigrant visa interviews.
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- Sec. 4412. Visa revocation information.
- Sec. 4413. Status for certain battered spouses and children.
- Sec. 4414. Nonimmigrant crewmen landing temporarily in Hawaii.
- Sec. 4415. Treatment of compact of free association migrants.

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- Sec. 4602. Other requirements for H-2B employers.
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- Sec. 4605. Nonimmigrants participating in relief operations.
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- Sec. 4701. Bureau of Immigration and Labor Market Research.
- Sec. 4702. Nonimmigrant classification for W nonimmigrants.
- Sec. 4703. Admission of W nonimmigrant workers.

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- Sec. 4901. Short title.
- Sec. 4902. SEVIS and SEVP defined.
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Sec. 4912. Implementation of GAO recommendations.

Sec. 4913. Implementation of SEVIS II.

1 **SEC. 2. STATEMENT OF CONGRESSIONAL FINDINGS.**

2 Congress makes the following findings:

3 (1) The passage of this Act recognizes that the
4 primary tenets of its success depend on securing the
5 sovereignty of the United States of America and es-
6 tablishing a coherent and just system for integrating
7 those who seek to join American society.

8 (2) We have a right, and duty, to maintain and
9 secure our borders, and to keep our country safe and
10 prosperous. As a Nation founded, built and sus-
11 tained by immigrants we also have a responsibility
12 to harness the power of that tradition in a balanced
13 way that secures a more prosperous future for
14 America.

15 (3) We have always welcomed newcomers to the
16 United States and will continue to do so. But in
17 order to qualify for the honor and privilege of even-
18 tual citizenship, our laws must be followed. The
19 world depends on America to be strong—economy-
20 cally, militarily and ethically. The establishment of a
21 stable, just, and efficient immigration system only
22 supports those goals. As a Nation, we have the right
23 and responsibility to make our borders safe, to es-
24 tablish clear and just rules for seeking citizenship, to

1 control the flow of legal immigration, and to elimi-
2 nate illegal immigration, which in some cases has be-
3 come a threat to our national security.

4 (4) All parts of this Act are premised on the
5 right and need of the United States to achieve these
6 goals, and to protect its borders and maintain its
7 sovereignty.

8 **SEC. 3. REPORTS ON CURRENT BORDER SECURITY STATUS.**

9 (a) IN GENERAL.—Not later than 90 days after the
10 date of the enactment of this Act, every 180 days there-
11 after until the Comptroller General of the United States
12 reports on the results of the review described in section
13 4(c)(7)(B)(ii), and every 365 days after the date of such
14 report, the Secretary of Homeland Security shall submit
15 to the appropriate congressional committees and the Gov-
16 ernment Accountability Office a report that assesses and
17 describes the state of situational awareness and oper-
18 ational control. Such reports shall include an identification
19 of the high traffic areas and the illegal border crossing
20 effectiveness rate for each sector along the northern and
21 southern borders of the United States that are within the
22 responsibility of the Border Patrol.

23 (b) GAO REPORT.—Not later than 90 days after re-
24 ceiving the initial report required under subsection (a), the
25 Comptroller General of the United States shall report to

1 the appropriate congressional committees regarding the
2 verification of the data and methodology used to determine
3 high traffic areas and the illegal border crossing effective-
4 ness rate.

5 **SEC. 4. BORDER SECURITY METRICS AND GOALS.**

6 (a) DEFINITIONS.—In this section:

7 (1) APPROPRIATE CONGRESSIONAL COMMIT-
8 TEES.—The term “appropriate congressional com-
9 mittees” means the Committee on Homeland Secu-
10 rity of the House of Representatives and the Com-
11 mittee on Homeland Security and Governmental Af-
12 fairs of the Senate.

13 (2) BORDER SECURITY RESULTS STRATEGY.—
14 The term “Border Security Results Strategy” means
15 the strategy established by the Secretary pursuant
16 to section 6.

17 (3) COCAINE REMOVAL EFFECTIVENESS
18 RATE.—The term “cocaine removal effectiveness
19 rate” means the percentage that results from divid-
20 ing the amount of cocaine removed by the Depart-
21 ment of Homeland Security’s maritime security com-
22 ponents inside or outside a transit zone, as the case
23 may be, by the total documented cocaine flow rate
24 as contained in Federal drug databases.

1 (4) CONSEQUENCE DELIVERY SYSTEM.—The
2 term “Consequence Delivery System” means the se-
3 ries of consequences applied to persons illegally en-
4 tering the United States by the Border Patrol to
5 prevent illegal border crossing recidivism.

6 (5) GOT AWAY.—The term “got away” means
7 an illegal border crosser who, after making an illegal
8 entry into the United States, is not turned back or
9 apprehended.

10 (6) HIGH TRAFFIC AREAS.—The term “high
11 traffic areas” means sectors along the northern and
12 southern borders of the United States that are with-
13 in the responsibility of the Border Patrol that have
14 the most illicit cross-border activity, informed
15 through situational awareness.

16 (7) ILLEGAL BORDER CROSSING EFFECTIVE-
17 NESS RATE.—The term “illegal border crossing ef-
18 fectiveness rate” means the percentage that results
19 from dividing the number of apprehensions and turn
20 backs by the number of apprehensions, turn backs,
21 and got aways. The data used by the Secretary of
22 Homeland Security to determine such rate shall be
23 collected and reported in a consistent and standard-
24 ized manner across all Border Patrol sectors.

1 (8) MAJOR VIOLATOR.—The term “major viola-
2 tor” means a person or entity that has engaged in
3 serious criminal activities at any land, air, or sea
4 port of entry, including possession of illicit drugs,
5 smuggling of prohibited products, human smuggling,
6 weapons possession, use of fraudulent United States
7 documents, or other offenses serious enough to re-
8 sult in arrest.

9 (9) OPERATIONAL CONTROL.—The term “oper-
10 ational control” means a condition in which there is
11 a not lower than 90 percent illegal border crossing
12 effectiveness rate, informed by situational awareness,
13 and a significant reduction in the movement of illicit
14 drugs and other contraband through such areas is
15 being achieved.

16 (10) SITUATIONAL AWARENESS.—The term
17 “situational awareness” means knowledge and an
18 understanding of current illicit cross-border activity,
19 including cross-border threats and trends concerning
20 illicit trafficking and unlawful crossings along the
21 international borders of the United States and in the
22 maritime environment, and the ability to forecast fu-
23 ture shifts in such threats and trends.

24 (11) TRANSIT ZONE.—The term “transit zone”
25 means the sea corridors of the western Atlantic

1 Ocean, the Gulf of Mexico, the Caribbean Sea, and
2 the eastern Pacific Ocean through which undocu-
3 mented migrants and illicit drugs transit, either di-
4 rectly or indirectly, to the United States.

5 (12) TURN BACK.—The term “turn back”
6 means an illegal border crosser who, after making
7 an illegal entry into the United States, returns to
8 the country from which such crosser entered.

9 (b) BORDER SECURITY GOAL.—The Department’s
10 border security goal is to gain and maintain situational
11 awareness, and operational control of high traffic areas
12 and operational control along the southwest border of the
13 United States.

14 (c) METRICS.—

15 (1) METRICS FOR SECURING THE BORDER BE-
16 TWEEN PORTS OF ENTRY.—Not later than 120 days
17 after the date of the enactment of this Act, the Sec-
18 retary of Homeland Security shall implement
19 metrics, informed by situational awareness, to meas-
20 ure the effectiveness of security between ports of
21 entry, which shall include, at a minimum, the fol-
22 lowing:

23 (A) An illegal border crossing effectiveness
24 rate, informed by situational awareness.

1 (B) An illicit drugs seizure rate which
2 measures the amount and type of illicit drugs
3 seized by the Border Patrol in any fiscal year
4 compared to an average of the amount and type
5 of illicit drugs seized by the Border Patrol for
6 the immediately preceding five fiscal years.

7 (C) A cocaine seizure effectiveness rate
8 measured as a percentage that results from di-
9 viding the amount of cocaine seized by the Bor-
10 der Patrol by the total documented cocaine flow
11 rate as contained in Federal drug databases.

12 (D) Estimates, using alternative meth-
13 odologies, including recidivism data, survey
14 data, known-flow data, and technologically
15 measured data, of total attempted illegal border
16 crossings, total deaths and injuries resulting
17 from such attempted illegal border crossings,
18 the rate of apprehension of attempted illegal
19 border crossers, and the inflow into the United
20 States of illegal border crossers who evade ap-
21 prehension.

22 (E) Estimates of the impact of the Border
23 Patrol's Consequence Delivery System on the
24 rate of recidivism of illegal border crossers.

1 (2) METRICS FOR SECURING THE BORDER AT
2 PORTS OF ENTRY.—

3 (A) IN GENERAL.—Not later than 120
4 days after the date of the enactment of this
5 Act, the Secretary of Homeland Security shall
6 implement metrics, informed by situational
7 awareness, to measure the effectiveness of secu-
8 rity at ports of entry, which shall include, at a
9 minimum, the following:

10 (i) An inadmissible border crossing
11 rate which measures the number of known
12 inadmissible border crossers who are ap-
13 prehended, excluding those border crossers
14 who voluntarily withdraw their applications
15 for admission, against the total estimated
16 number of inadmissible border crossers
17 U.S. Customs and Border Protection fails
18 to apprehend.

19 (ii) An illicit drugs seizure rate which
20 measures the amount and type of illicit
21 drugs seized by U.S. Customs and Border
22 Protection in any fiscal year compared to
23 an average of the amount and type of illicit
24 drugs seized by U.S. Customs and Border

1 Protection for the immediately preceding
2 five fiscal years.

3 (iii) A cocaine seizure effectiveness
4 rate measured as a percentage that results
5 from dividing the amount of cocaine seized
6 by U.S. Customs and Border Protection by
7 the total documented cocaine flow rate as
8 contained in Federal drug databases.

9 (iv) Estimates, using alternative
10 methodologies, including survey data and
11 randomized secondary screening data, of
12 total attempted inadmissible border cross-
13 ers, the rate of apprehension of attempted
14 inadmissible border crossers, and the in-
15 flow into the United States of inadmissible
16 border crossers who evade apprehension.

17 (v) The number of infractions related
18 to personnel and cargo committed by
19 major violators who are apprehended by
20 U.S. Customs and Border Protection at
21 ports of entry, and the estimated number
22 of such infractions committed by major
23 violators who are not so apprehended.

24 (vi) A measurement of how border se-
25 curity operations affect crossing times.

1 (B) COVERT TESTING.—The Inspector
2 General of the Department of Homeland Secu-
3 rity shall carry out covert testing at ports of
4 entry and submit to the Secretary of Homeland
5 Security and the appropriate congressional com-
6 mittees a report that contains the results of
7 such testing. The Secretary shall use such re-
8 sults to inform activities under this subsection.

9 (3) METRICS FOR SECURING THE MARITIME
10 BORDER.—Not later than 120 days after the date of
11 the enactment of this Act, the Secretary of Home-
12 land Security shall implement metrics, informed by
13 situational awareness, to measure the effectiveness
14 of security in the maritime environment, which shall
15 include, at a minimum, the following:

16 (A) An estimate of the total number of un-
17 documented migrants the Department of Home-
18 land Security’s maritime security components
19 fail to interdict.

20 (B) An undocumented migrant interdiction
21 rate which measures the number of undocu-
22 mented migrants interdicted against the total
23 estimated number of undocumented migrants
24 the Department of Homeland Security’s mari-
25 time security components fail to interdict.

1 (C) An illicit drugs removal rate which
2 measures the amount and type of illicit drugs
3 removed by the Department of Homeland Secu-
4 rity's maritime security components inside a
5 transit zone in any fiscal year compared to an
6 average of the amount and type of illicit drugs
7 removed by the Department of Homeland Secu-
8 rity's maritime security components inside a
9 transit zone for the immediately preceding five
10 fiscal years.

11 (D) An illicit drugs removal rate which
12 measures the amount of illicit drugs removed by
13 the Department of Homeland Security's mari-
14 time security components outside a transit zone
15 in any fiscal year compared to an average of
16 the amount of illicit drugs removed by the De-
17 partment of Homeland Security's maritime se-
18 curity components outside a transit zone for the
19 immediately preceding five fiscal years.

20 (E) A cocaine removal effectiveness rate
21 inside a transit zone.

22 (F) A cocaine removal effectiveness rate
23 outside a transit zone.

24 (G) A response rate which measures the
25 Department of Homeland Security's ability to

1 respond to and resolve known maritime threats,
2 both inside and outside a transit zone, by plac-
3 ing assets on-scene, compared to the total num-
4 ber of events with respect to which the Depart-
5 ment has known threat information.

6 (4) COLLABORATION.—The Secretary of Home-
7 land Security shall collaborate with the head of a na-
8 tional laboratory within the Department of Home-
9 land Security laboratory network with prior exper-
10 tise in border security and the head of a border se-
11 curity university-based center within the Department
12 of Homeland Security centers of excellence network
13 to develop the metrics required under paragraphs
14 (1), (2), and (3) to ensure the suitability and statis-
15 tical validity of each such metric. Such collaboration
16 shall also include consultation by the Secretary with
17 the Governors of every border State and representa-
18 tives of the Border Patrol and U.S. Customs and
19 Border Protection.

20 (5) RECOMMENDATIONS RELATING TO CERTAIN
21 OTHER METRICS.—In carrying out paragraph (4),
22 the head of the national laboratory and the head of
23 a border security university-based center referred to
24 in such subsection shall make recommendations to
25 the Secretary of Homeland Security for other suit-

1 able metrics that may be used to measure the effec-
2 tiveness of border security.

3 (6) EVALUATION BY THE GOVERNMENT AC-
4 COUNTABILITY OFFICE.—

5 (A) IN GENERAL.—The Secretary of
6 Homeland Security shall make available to the
7 Government Accountability Office the data and
8 methodology used to develop the metrics imple-
9 mented under paragraphs (1), (2), and (3).

10 (B) REPORT.—Not later than 270 days
11 after receiving the data and methodology re-
12 ferred to in subparagraph (A), the Comptroller
13 General of the United States shall submit to
14 the appropriate congressional committees a re-
15 port on the suitability and statistical validity of
16 such data and methodology.

17 (7) CERTIFICATIONS AND REPORTS RELATING
18 TO OPERATIONAL CONTROL.—

19 (A) BY THE SECRETARY OF HOMELAND
20 SECURITY.—

21 (i) TWO YEARS.—If the Secretary of
22 Homeland Security determines that situa-
23 tional awareness and operational control of
24 high traffic areas have been achieved by
25 the date that is not later than two years

1 after the date of the submission of the im-
2 plementation plan required under section
3 6(c), the Secretary shall submit to the ap-
4 propriate congressional committees and the
5 Comptroller General of the United States a
6 certification that so attests.

7 (ii) FIVE YEARS.—If the Secretary of
8 Homeland Security determines that oper-
9 ational control along the southwest border
10 of the United States has been achieved by
11 the date that is not later than five years
12 after the date of the submission of the im-
13 plementation plan required under section
14 6(c), the Secretary shall submit to the ap-
15 propriate congressional committees and the
16 Comptroller General of the United States a
17 certification that so attests.

18 (iii) ANNUAL UPDATES.—Every year
19 beginning with the year after the Secretary
20 of Homeland Security submits the certifi-
21 cation under clause (ii), if the Secretary
22 determines that operational control along
23 the southwest border of the United States
24 is being maintained, the Secretary shall
25 submit to the appropriate congressional

1 committees and the Comptroller General of
2 the United States a certification that so
3 attests.

4 (B) BY THE COMPTROLLER GENERAL.—

5 (i) REVIEWS.—The Comptroller Gen-
6 eral of the United States shall review the
7 certifications of the Secretary of Homeland
8 Security under clauses (i), (ii), and (iii) of
9 subparagraph (A) to assess the certifi-
10 cations of the Secretary relating to the
11 achievement of situational awareness, oper-
12 ational control, or both, as the case may
13 be, in accordance with such clauses.

14 (ii) REPORTS.—Not later than 120
15 days after conducting the reviews described
16 in clause (i), the Comptroller General of
17 the United States shall submit to the ap-
18 propriate congressional committees a re-
19 port on the results of each such review.

20 (8) FAILURE TO ACHIEVE SITUATIONAL AWARE-
21 NESS OR OPERATIONAL CONTROL.—If the Secretary
22 of Homeland Security determines that situational
23 awareness, operational control, or both, as the case
24 may be, has not been achieved by the dates referred
25 to in clauses (i) and (ii) of paragraph (7)(A), as the

1 case may be, or if the Secretary determines that
2 operational control is not being annually maintained
3 pursuant to clause (iii) of such paragraph, the Sec-
4 retary shall, not later than 60 days after such dates,
5 submit to the appropriate congressional committees
6 a report that describes why situational awareness or
7 operational control, or both, as the case may be, was
8 not achieved. Such report shall include, at a min-
9 imum, impediments incurred, potential remedies,
10 and recommendations to achieve situational aware-
11 ness, operational control, or both, as the case may
12 be.

13 (9) GOVERNMENT ACCOUNTABILITY OFFICE RE-
14 PORT ON BORDER SECURITY DUPLICATION AND
15 COST EFFECTIVENESS.—Not later than one year
16 after the date of the enactment of this Act, the
17 Comptroller General of the United States shall sub-
18 mit to the appropriate congressional committees a
19 report addressing areas of overlap in responsibilities
20 within the border security functions of the Depart-
21 ment of Homeland Security and the relative cost ef-
22 fectiveness of border security strategies, including
23 deployment of additional personnel and technology,
24 and construction of virtual and physical barriers.

1 **SEC. 5. SOUTHERN BORDER SECURITY COMMISSION.**

2 (a) ESTABLISHMENT.—If the Secretary certifies that
3 the Department has not achieved the border security goal
4 described in section 4(b) during any fiscal year beginning
5 before the date that is 5 years after the date of the enact-
6 ment of this Act, not later than 60 days after such certifi-
7 cation, there shall be established a commission to be
8 known as the “Southern Border Security Commission”
9 (referred to in this section as the “Commission”).

10 (b) COMPOSITION.—

11 (1) IN GENERAL.—The Commission shall be
12 composed of—

13 (A) 2 members who shall be appointed by
14 the President;

15 (B) 2 members who shall be appointed by
16 the President pro tempore of the Senate, of
17 which—

18 (i) 1 shall be appointed upon the rec-
19 ommendation of the leader in the Senate of
20 the political party that is not the political
21 party of the President; and

22 (ii) 1 shall be appointed upon the rec-
23 ommendation of the leader in the Senate of
24 the other political party;

1 (C) 2 members who shall be appointed by
2 the Speaker of the House of Representatives, of
3 which—

4 (i) 1 shall be appointed upon the rec-
5 ommendation of the leader in the House of
6 Representatives of the political party that
7 is not the political party of the President;
8 and

9 (ii) 1 shall be appointed upon the rec-
10 ommendation of the leader in the House of
11 Representatives of the other political party;
12 and

13 (D) 4 members, consisting of 1 member
14 from each of the States along the Southern bor-
15 der, who shall be—

16 (i) the Governor of such State; or

17 (ii) appointed by the Governor of each
18 such State.

19 (2) QUALIFICATION FOR APPOINTMENT.—Ap-
20 pointed members of the Commission shall be distin-
21 guished individuals noted for their knowledge and
22 experience in the field of border security at the Fed-
23 eral, State, or local level.

24 (3) TIME OF APPOINTMENT.—The appoint-
25 ments required by paragraph (1) shall be made not

1 later than 60 days after the Secretary makes a cer-
2 tification described in subsection (a).

3 (4) CHAIR.—At the first meeting of the Com-
4 mission, a majority of the members of the Commis-
5 sion present and voting shall elect the Chair of the
6 Commission.

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

11 (6) RULES.—The Commission shall establish
12 the rules and procedures of the Commission which
13 shall require the approval of at least 6 members of
14 the Commission.

15 (c) DUTIES.—The Commission’s primary responsi-
16 bility shall be to make recommendations to the President,
17 the Secretary, and Congress on policies to achieve and
18 maintain the border security goal specified in section 3(b)
19 by achieving and maintaining—

20 (1) the capability to engage in, and engaging in,
21 persistent surveillance in border sectors along the
22 Southern border; and

23 (2) an effectiveness rate of 90 percent or higher
24 in all border sectors along the Southern border.

1 (d) REPORT.—Not later than 180 days after the end
2 of the 5-year period described in subsection (a), the Com-
3 mission shall submit to the President, the Secretary, and
4 Congress a report setting forth specific recommendations
5 for policies for achieving and maintaining the border secu-
6 rity goals specified in subsection (c). The report shall in-
7 clude, at a minimum, recommendations for the personnel,
8 infrastructure, technology, and other resources required to
9 achieve and maintain an effectiveness rate of 90 percent
10 or higher in all border sectors.

11 (e) TRAVEL EXPENSES.—Members of the Commis-
12 sion shall be allowed travel expenses, including per diem
13 in lieu of subsistence rates authorized for employees of
14 agencies under subchapter I of chapter 57 of title 5,
15 United States Code, while away from their homes or reg-
16 ular places of business in the performance of services for
17 the Commission.

18 (f) ADMINISTRATIVE SUPPORT.—The Secretary shall
19 provide the Commission such staff and administrative
20 services as may be necessary and appropriate for the Com-
21 mission to perform its functions. Any employee of the ex-
22 ecutive branch of Government may be detailed to the Com-
23 mission without reimbursement to the agency of that em-
24 ployee and such detail shall be without interruption or loss
25 of civil service or status or privilege.

1 (g) COMPTROLLER GENERAL REVIEW.—The Comp-
2 troller General of the United States shall review the rec-
3 ommendations in the report submitted under subsection
4 (d) in order to determine—

5 (1) whether any of the recommendations are
6 likely to achieve effective control in all border sec-
7 tors;

8 (2) which recommendations are most likely to
9 achieve effective control; and

10 (3) whether such recommendations are feasible
11 within existing budget constraints.

12 (h) TERMINATION.—The Commission shall terminate
13 30 days after the date on which the report is submitted
14 under subsection (d).

15 **SEC. 6. BORDER SECURITY RESULTS STRATEGY.**

16 (a) STRATEGY TO SECURE THE BORDER.—Not later
17 than 180 days after the date of the enactment of this Act,
18 the Secretary of Homeland Security shall submit to the
19 appropriate congressional committees a comprehensive
20 strategy for gaining and maintaining situational aware-
21 ness, and operational control of high traffic areas, by the
22 date that is not later than two years after the date of the
23 submission of the implementation plan required under
24 subsection (c), and operational control along the southwest

1 border of the United States by the date that is not later
2 than five years after such date of submission.

3 (b) CONTENTS OF STRATEGY.—The strategy re-
4 quired under subsection (a) shall include, at a minimum,
5 a consideration of the following:

6 (1) An assessment of principal border security
7 threats, including threats relating to the smuggling
8 and trafficking of humans, weapons, and illicit
9 drugs.

10 (2) Efforts to analyze and disseminate border
11 security and border threat information between De-
12 partment of Homeland Security border security com-
13 ponents and with other appropriate Federal depart-
14 ments and agencies with missions associated with
15 the border.

16 (3) Efforts to increase situational awareness, in
17 accordance with privacy, civil liberties, and civil
18 rights protections, including—

19 (A) surveillance capabilities developed or
20 utilized by the Department of Defense, includ-
21 ing any technology determined to be excess by
22 the Department of Defense; and

23 (B) use of manned aircraft and unmanned
24 aerial systems, including camera and sensor
25 technology deployed on such assets.

1 (4) Efforts to detect and prevent terrorists and
2 instruments of terrorism from entering the United
3 States.

4 (5) Efforts to ensure that any new border secu-
5 rity technology can be operationally integrated with
6 existing technologies in use by the Department of
7 Homeland Security.

8 (6) An assessment of existing efforts and tech-
9 nologies used for border security and the effect of
10 the use of such efforts and technologies on civil
11 rights, private property rights, privacy rights, and
12 civil liberties.

13 (7) Technology required to maintain, support,
14 and enhance security and facilitate trade at ports of
15 entry, including nonintrusive detection equipment,
16 radiation detection equipment, biometric technology,
17 surveillance systems, and other sensors and tech-
18 nology that the Secretary of Homeland Security de-
19 termines necessary.

20 (8) Operational coordination of Department of
21 Homeland Security border security components.

22 (9) Lessons learned from Operation Jumpstart
23 and Operation Phalanx.

24 (10) Cooperative agreements and information
25 sharing with State, local, tribal, territorial, and

1 other Federal law enforcement agencies that have
2 jurisdiction on the northern or southern borders, or
3 in the maritime environment.

4 (11) Border security information received from
5 consultation with State, local, tribal, and Federal
6 law enforcement agencies that have jurisdiction on
7 the northern or southern border, or in the maritime
8 environment, and from border community stake-
9 holders (including through public meetings with such
10 stakeholders), including representatives from border
11 agricultural and ranching organizations and rep-
12 resentatives from business and civic organizations
13 along the northern or southern border.

14 (12) Agreements with foreign governments that
15 support the border security efforts of the United
16 States, including coordinated installation of stand-
17 ardized land border inspection technology, such as li-
18 cense plate readers and RFID readers.

19 (13) Staffing requirements for all border secu-
20 rity functions.

21 (14) A prioritized list of research and develop-
22 ment objectives to enhance the security of the inter-
23 national land and maritime borders of the United
24 States.

1 (15) An assessment of training programs, in-
2 cluding training programs regarding—

3 (A) identifying and detecting fraudulent
4 documents;

5 (B) protecting the civil, constitutional,
6 human, and privacy rights of individuals;

7 (C) understanding the scope of enforce-
8 ment authorities and the use of force policies;

9 (D) screening, identifying, and addressing
10 vulnerable populations, such as children and
11 victims of human trafficking; and

12 (E) social and cultural sensitivity toward
13 border communities.

14 (16) Local crime indices of municipalities and
15 counties along the Southern border.

16 (17) An assessment of how border security op-
17 erations affect crossing times.

18 (18) Metrics required under paragraphs (1),
19 (2), and (3) of section 4(c).

20 (c) IMPLEMENTATION PLAN.—

21 (1) IN GENERAL.—Not later than 90 days after
22 the submission of the strategy required under sub-
23 section (a), the Secretary of Homeland Security
24 shall submit to the appropriate congressional com-
25 mittees and the Government Accountability Office

1 an implementation plan for each of the Department
2 of Homeland Security border security components to
3 carry out such strategy. Such implementation plan
4 shall, at a minimum—

5 (A) specify what protections will be put in
6 place to ensure that staffing and resources nec-
7 essary for the maintenance of operations at
8 ports of entry are not diverted to the detriment
9 of such operations in favor of operations be-
10 tween ports of entry;

11 (B) include—

12 (i) an integrated master schedule and
13 cost estimate, including lifecycle costs, for
14 the activities contained in such implemen-
15 tation plan; and

16 (ii) a comprehensive border security
17 technology plan to improve surveillance ca-
18 pabilities that includes—

19 (I) a documented justification
20 and rationale for technology choices;

21 (II) deployment locations;

22 (III) fixed versus mobile assets;

23 (IV) a timetable for procurement
24 and deployment;

1 (V) estimates of operation and
2 maintenance costs;

3 (VI) an identification of any im-
4 pediments to the deployment of such
5 technologies; and

6 (VII) estimates of the relative
7 cost effectiveness of various border se-
8 curity strategies and operations, in-
9 cluding deployment of personnel and
10 technology, and construction of new
11 physical and virtual barriers; and

12 (C) require consultation with the Secretary
13 of the Interior, the Secretary of Agriculture,
14 States, local governments, and property owners
15 in the United States to minimize the impact on
16 the environment, culture, commerce, and qual-
17 ity of life for the communities and residents lo-
18 cated near implementation sites.

19 (2) GOVERNMENT ACCOUNTABILITY OFFICE RE-
20 VIEW.—Not later than 90 days after receiving the
21 implementation plan in accordance with paragraph
22 (1), the Comptroller General of the United States
23 shall submit to the appropriate congressional com-
24 mittees a report on such plan.

1 (3) SAVINGS PROVISION.—Nothing in para-
2 graph (1) may be construed to—

3 (A) create or negate any right of action for
4 a State or local government or other person or
5 entity affected by that paragraph; or

6 (B) affect the eminent domain laws of the
7 United States or of any State.

8 (4) LIMITATION ON REQUIREMENTS.—Notwith-
9 standing paragraph (1)(B)(ii)(VII) of this sub-
10 section, nothing in this subsection shall require the
11 Secretary to install fencing, or infrastructure that
12 directly results from the installation of such fencing,
13 in a particular location along the Southern border,
14 if the Secretary determines that the use or place-
15 ment of such resources is not the most appropriate
16 means to achieve and maintain effective control over
17 the Southern border at such location.

18 (d) PERIODIC UPDATES.—Not later than 180 days
19 after the submission of each Quadrennial Homeland Secu-
20 rity Review required under section 707 of the Homeland
21 Security Act of 2002 (6 U.S.C. 347) beginning with the
22 first such Review that is due after the implementation
23 plan is submitted under subsection (c), the Secretary of
24 Homeland Security shall submit to the appropriate con-
25 gressional committees an updated—

1 (1) strategy under subsection (a); and

2 (2) implementation plan under subsection (c).

3 (e) REPORTS.—Not later than 60 days after the date
4 of the enactment of this Act and annually thereafter, the
5 Secretary of Homeland Security shall submit to the appro-
6 priate congressional committees a report on the following:

7 (1) A resource allocation model for current and
8 future year staffing requirements that includes opti-
9 mal staffing levels at all land, air, and sea ports of
10 entry, and an explanation of U.S. Customs and Bor-
11 der Protection methodology for aligning staffing lev-
12 els and workload to threats and vulnerabilities and
13 their effects on cross border trade and passenger
14 travel across all mission areas.

15 (2) Detailed information on the level of man-
16 power available at all land, air, and sea ports of
17 entry and between ports of entry, including the num-
18 ber of canine and agricultural specialists assigned to
19 each such port of entry.

20 (3) Detailed information that describes the dif-
21 ference between the staffing the model suggests and
22 the actual staffing at each port of entry and between
23 the ports of entry.

24 (4) Detailed information that examines both the
25 security impacts and competitive impacts of entering

1 into a reimbursement agreement with foreign gov-
2 ernments for U.S. Customs and Border Protection
3 preclearance facilities.

4 (f) DEFINITIONS.—The terms in this section have the
5 meanings given those terms in section 4.

6 **SEC. 7. US-VISIT IMPLEMENTATION.**

7 Not later than 180 days after the date of the enact-
8 ment of this Act, the Secretary of Homeland Security shall
9 submit to the appropriate congressional committees a plan
10 to implement immediately a biometric exit capability at
11 ports of entry under the US-VISIT program, in accord-
12 ance with the Enhanced Security and Visa Entry Reform
13 Act of 2002 (Public Law 107-173). If the Secretary deter-
14 mines that development of such a system is not feasible,
15 the Secretary shall, not later than 180 days after the date
16 of the enactment of this Act, submit to the appropriate
17 congressional committees a plan to implement, not later
18 than two years after such date of enactment, an alter-
19 native program to provide the same level of security.

20 **SEC. 8. ALTERNATE MODEL FOR BORDER SECURITY STRAT-**
21 **EGY DEVELOPMENT.**

22 (a) EFFECTIVE DATE TRIGGERS.—

23 (1) DEFINITIONS.—In this section:

1 (A) COMMISSION.—The term “Commis-
2 sion” means the Southern Border Security
3 Commission established pursuant to section 5.

4 (B) COMPREHENSIVE SOUTHERN BORDER
5 SECURITY STRATEGY.—The term “Comprehen-
6 sive Southern Border Security Strategy” means
7 the strategy established by the Secretary pursu-
8 ant to subsection (b)(1) to achieve and main-
9 tain an effectiveness rate of 90 percent or high-
10 er in all border sectors.

11 (C) EFFECTIVE CONTROL.—The term “ef-
12 fective control” means the ability to achieve and
13 maintain, in a Border Patrol sector—

14 (i) persistent surveillance; and
15 (ii) an effectiveness rate of 90 percent
16 or higher.

17 (D) EFFECTIVENESS RATE.—The term
18 “effectiveness rate”, in the case of a border sec-
19 tor, is the percentage calculated by dividing the
20 number of apprehensions and turn backs in the
21 sector during a fiscal year by the total number
22 of illegal entries in the sector during such fiscal
23 year.

1 (E) SOUTHERN BORDER.—The term
2 “Southern border” means the international bor-
3 der between the United States and Mexico.

4 (F) SOUTHERN BORDER FENCING STRAT-
5 EGY.—The term “Southern Border Fencing
6 Strategy” means the strategy established by the
7 Secretary pursuant to subsection (b)(2) that
8 identifies where fencing (including double-layer
9 fencing), infrastructure, and technology, includ-
10 ing at ports of entry, should be deployed along
11 the Southern border.

12 (2) BORDER SECURITY GOAL.—The Depart-
13 ment’s border security goal is to achieve and main-
14 tain effective control in all border sectors along the
15 Southern border.

16 (3) TRIGGERS.—

17 (A) PROCESSING OF APPLICATIONS FOR
18 REGISTERED PROVISIONAL IMMIGRANT STA-
19 TUS.—Not earlier than the date upon which the
20 Secretary has submitted to Congress the Notice
21 of Commencement of implementation of the
22 Comprehensive Southern Border Security Strat-
23 egy and the Southern Border Fencing Strategy
24 under section 5 of this Act, the Secretary may
25 commence processing applications for registered

1 provisional immigrant status pursuant to sec-
2 tion 245B of the Immigration and Nationality
3 Act, as added by section 2101 of this Act.

4 (B) ADJUSTMENT OF STATUS OF REG-
5 ISTERED PROVISIONAL IMMIGRANTS.—

6 (i) IN GENERAL.—Except as provided
7 in clause (ii), the Secretary may not adjust
8 the status of aliens who have been granted
9 registered provisional immigrant status,
10 except for aliens granted blue card status
11 under section 2201 of this Act or described
12 in section 245D(b) of the Immigration and
13 Nationality Act, until the Secretary, after
14 consultation with the Comptroller General
15 of the United States, submits to the Presi-
16 dent and Congress a written certification
17 that—

18 (I) the Comprehensive Southern
19 Border Security Strategy has been
20 submitted to Congress and is substan-
21 tially deployed and substantially oper-
22 ational;

23 (II) the Southern Border Fenc-
24 ing Strategy has been submitted to

1 Congress, implemented, and is sub-
2 stantially completed;

3 (III) the Secretary has imple-
4 mented the mandatory employment
5 verification system required by section
6 274A of the Immigration and Nation-
7 ality Act (8 U.S.C.1324a), as amend-
8 ed by section 3101, for use by all em-
9 ployers to prevent unauthorized work-
10 ers from obtaining employment in the
11 United States; and

12 (IV) the Secretary is using an
13 electronic exit system at air and sea
14 ports of entry that operates by col-
15 lecting machine readable visa or pass-
16 port information from air and vessel
17 carriers.

18 (ii) EXCEPTION.—The Secretary shall
19 permit registered provisional immigrants to
20 apply for an adjustment to lawful perma-
21 nent resident status if—

22 (I)(aa) litigation or a force
23 majeure has prevented 1 or more of
24 the conditions described in subclauses

1 (I) through (IV) of clause (i) from
2 being implemented; or

3 (bb) the implementation of clause
4 (i) has been held unconstitutional by
5 the Supreme Court of the United
6 States or the Supreme Court has
7 granted certiorari to the litigation on
8 the constitutionality of implementa-
9 tion of clause (i); and

10 (II) 10 years have elapsed since
11 the date of the enactment of this Act.

12 (4) WAIVER OF LEGAL REQUIREMENTS NEC-
13 ESSARY FOR IMPROVEMENT AT BORDERS.—Notwith-
14 standing any other provision of law, the Secretary is
15 authorized to waive all legal requirements that the
16 Secretary determines to be necessary to ensure expe-
17 ditious construction of the barriers, roads, or other
18 physical tactical infrastructure needed to fulfill the
19 requirements under this section. Any determination
20 by the Secretary under this section shall be effective
21 upon publication in the Federal Register of a notice
22 that specifies each law that is being waived and the
23 Secretary's explanation for the determination to
24 waive that law. The waiver shall expire on the later
25 of the date on which the Secretary submits the writ-

1 ten certification that the Southern Border Fencing
2 Strategy is substantially completed as specified in
3 paragraph (3)(B)(i)(II) or the date that the Sec-
4 retary submits the written certification that the
5 Comprehensive Southern Border Security Strategy is
6 substantially deployed and substantially operational
7 as specified in paragraph (3)(B)(i)(I).

8 (5) FEDERAL COURT REVIEW.—

9 (A) IN GENERAL.—The district courts of
10 the United States shall have exclusive jurisdic-
11 tion to hear all causes or claims arising from
12 any action undertaken, or any decision made,
13 by the Secretary under paragraph (4). A cause
14 of action or claim may only be brought alleging
15 a violation of the Constitution of the United
16 States. The court does not have jurisdiction to
17 hear any claim not specified in this subpara-
18 graph.

19 (B) TIME FOR FILING COMPLAINT.—If a
20 cause or claim under subparagraph (A) is not
21 filed within 60 days after the date of the con-
22 tested action or decision by the Secretary, the
23 claim shall be barred.

24 (C) APPELLATE REVIEW.—An interlocu-
25 tory or final judgment, decree, or order of the

1 district court may be reviewed only upon peti-
2 tion for a writ of certiorari to the Supreme
3 Court of the United States.

4 (b) COMPREHENSIVE SOUTHERN BORDER SECURITY
5 STRATEGY AND SOUTHERN BORDER FENCING STRAT-
6 EGY.—

7 (1) COMPREHENSIVE SOUTHERN BORDER SECU-
8 RITY STRATEGY.—

9 (A) IN GENERAL.—Not later than 180
10 days after the date of the enactment of this
11 Act, the Secretary shall submit a strategy, to be
12 known as the “Comprehensive Southern Border
13 Security Strategy”, for achieving and maintain-
14 ing effective control between the ports of entry
15 in all border sectors along the Southern border,
16 to—

17 (i) the Committee on Homeland Secu-
18 rity and Governmental Affairs of the Sen-
19 ate;

20 (ii) the Committee on Homeland Se-
21 curity of the House of Representatives;

22 (iii) the Committee on Appropriations
23 of the Senate;

24 (iv) the Committee on Appropriations
25 of the House of Representatives;

1 (v) the Committee on the Judiciary of
2 the Senate;

3 (vi) the Committee on the Judiciary of
4 the House of Representatives; and

5 (vii) the Comptroller General of the
6 United States.

7 (B) ELEMENTS.—The Comprehensive
8 Southern Border Security Strategy shall speci-
9 fy—

10 (i) the priorities that must be met for
11 the strategy to be successfully executed;

12 (ii) the capabilities that must be ob-
13 tained to meet each of the priorities re-
14 ferred to in clause (i), including—

15 (I) surveillance and detection ca-
16 pabilities developed or used by the De-
17 partment of Defense to increase situa-
18 tional awareness; and

19 (II) the requirement for sta-
20 tioning sufficient Border Patrol
21 agents and Customs and Border Pro-
22 tection officers between and at ports
23 of entry along the Southern border;
24 and

1 (iii) the resources, including per-
2 sonnel, infrastructure, and technology that
3 must be procured and successfully de-
4 ployed to obtain the capabilities referred to
5 in clause (ii), including—

6 (I) fixed, mobile, and agent port-
7 able surveillance systems; and

8 (II) unarmed, unmanned aerial
9 systems and unarmed, fixed-wing air-
10 craft and necessary and qualified staff
11 and equipment to fully utilize such
12 systems.

13 (C) ADDITIONAL ELEMENTS REGARDING
14 EXECUTION.—The Comprehensive Southern
15 Border Security Strategy shall describe—

16 (i) how the resources referred to in
17 subparagraph (B)(iii) will be properly
18 aligned with the priorities referred to in
19 subparagraph (B)(i) to ensure that the
20 strategy will be successfully executed;

21 (ii) the interim goals that must be ac-
22 complished to successfully implement the
23 strategy; and

24 (iii) the schedule and supporting mile-
25 stones under which the Department will

1 accomplish the interim goals referred to in
2 clause (ii).

3 (D) IMPLEMENTATION.—

4 (i) IN GENERAL.—The Secretary shall
5 commence the implementation of the Com-
6 prehensive Southern Border Security
7 Strategy immediately after submitting the
8 strategy under subparagraph (A).

9 (ii) NOTICE OF COMMENCEMENT.—

10 Upon commencing the implementation of
11 the strategy, the Secretary shall submit a
12 notice of commencement of such implemen-
13 tation to—

14 (I) Congress; and

15 (II) the Comptroller General of
16 the United States.

17 (E) SEMIANNUAL REPORTS.—

18 (i) IN GENERAL.—Not later than 180
19 days after the Comprehensive Southern
20 Border Security Strategy is submitted
21 under subparagraph (A), and every 180
22 days thereafter, the Secretary shall submit
23 a report on the status of the Department's
24 implementation of the strategy to—

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

4 (II) the Committee on Homeland
5 Security of the House of Representa-
6 tives;

7 (III) the Committee on Appro-
8 priations of the Senate;

9 (IV) the Committee on Appro-
10 priations of the House of Representa-
11 tives;

12 (V) the Committee on the Judici-
13 ary of the Senate;

14 (VI) the Committee on the Judi-
15 ciary of the House of Representatives;
16 and

17 (VII) the Comptroller General of
18 the United States.

19 (ii) ELEMENTS.—Each report sub-
20 mitted under clause (i) shall include—

21 (I) a detailed description of the
22 steps the Department has taken, or
23 plans to take, to execute the strategy
24 submitted under subparagraph (A),
25 including the progress made toward

1 achieving the interim goals and mile-
2 stone schedule established pursuant to
3 clauses (ii) and (iii) of subparagraph
4 (C);

5 (II) a detailed description of—

6 (aa) any impediments identi-
7 fied in the Department’s efforts
8 to execute the strategy;

9 (bb) the actions the Depart-
10 ment has taken, or plans to take,
11 to address such impediments;
12 and

13 (cc) any additional measures
14 developed by the Department to
15 measure the state of security
16 along the Southern border; and

17 (III) for each Border Patrol sec-
18 tor along the Southern border—

19 (aa) the effectiveness rate
20 for each individual Border Patrol
21 sector and the aggregated effec-
22 tiveness rate;

23 (bb) the number of recidivist
24 apprehensions, sorted by Border
25 Patrol sector; and

1 (cc) the recidivism rate for
2 all unique subjects that received.

3 (iii) ANNUAL REVIEW.—The Comp-
4 troller General of the United States shall
5 conduct an annual review of the informa-
6 tion contained in the semiannual reports
7 submitted by the Secretary under this
8 paragraph and submit an assessment of
9 the status and progress of the Southern
10 Border Security Strategy to the commit-
11 tees set forth in clause (i).

12 (2) SOUTHERN BORDER FENCING STRATEGY.—

13 (A) ESTABLISHMENT.—Not later than 180
14 days after the date of the enactment of this
15 Act, the Secretary shall establish a strategy, to
16 be known as the “Southern Border Fencing
17 Strategy”, to identify where fencing (including
18 double-layer fencing), infrastructure, and tech-
19 nology, including at ports of entry, should be
20 deployed along the Southern border.

21 (B) SUBMISSION.—The Secretary shall
22 submit the Southern Border Fencing Strategy
23 to Congress and the Comptroller General of the
24 United States for review.

1 (C) NOTICE OF COMMENCEMENT.—Upon
2 commencing the implementation of the South-
3 ern Border Fencing Strategy, the Secretary
4 shall submit a notice of commencement of the
5 implementation of the Strategy to Congress and
6 the Comptroller General of the United States.

7 (D) CONSULTATION.—

8 (i) IN GENERAL.—In implementing
9 the Southern Border Fencing Strategy re-
10 quired by this paragraph, the Secretary
11 shall consult with the Secretary of the In-
12 terior, the Secretary of Agriculture, States,
13 local governments, Indian tribes, and prop-
14 erty owners in the United States to mini-
15 mize the impact on the environment, cul-
16 ture, commerce, and quality of life for the
17 communities and residents located near the
18 sites at which such fencing is to be con-
19 structed.

20 (ii) SAVINGS PROVISION.—Nothing in
21 this subparagraph may be construed to—

22 (I) create or negate any right of
23 action for a State or local government
24 or other person or entity affected by
25 this subsection; or

1 (II) affect the eminent domain
2 laws of the United States or of any
3 State.

4 (E) LIMITATION ON REQUIREMENTS.—
5 Notwithstanding subparagraph (A), nothing in
6 this subsection shall require the Secretary to in-
7 stall fencing, or infrastructure that directly re-
8 sults from the installation of such fencing, in a
9 particular location along the Southern border, if
10 the Secretary determines that the use or place-
11 ment of such resources is not the most appro-
12 priate means to achieve and maintain effective
13 control over the Southern border at such loca-
14 tion.

15 **SEC. 9. COMPREHENSIVE IMMIGRATION REFORM FUNDS.**

16 (a) COMPREHENSIVE IMMIGRATION REFORM TRUST
17 FUND.—

18 (1) ESTABLISHMENT.—There is established in
19 the Treasury a separate account, to be known as the
20 Comprehensive Immigration Reform Trust Fund
21 (referred to in this section as the “Trust Fund”),
22 consisting of—

23 (A) amounts transferred from the general
24 fund of the Treasury under paragraph (2)(A);
25 and

1 (B) proceeds from the fees described in
2 paragraph (2)(B).

3 (2) DEPOSITS.—

4 (A) INITIAL FUNDING.—On the later of
5 the date of the enactment of this Act or Octo-
6 ber 1, 2013, \$8,300,000,000 shall be trans-
7 ferred from the general fund of the Treasury to
8 the Trust Fund.

9 (B) ONGOING FUNDING.—Notwithstanding
10 section 3302 of title 31, United States Code, in
11 addition to the funding described in subpara-
12 graph (A), and subject to paragraphs (3)(B)
13 and (4), the following amounts shall be depos-
14 ited in the Trust Fund:

15 (i) ELECTRONIC TRAVEL AUTHORIZA-
16 TION SYSTEM FEES.—Fees collected under
17 section 217(h)(3)(B)(i)(II) of the Immigra-
18 tion and Nationality Act, as added by sec-
19 tion 1102(c).

20 (ii) REGISTERED PROVISIONAL IMMI-
21 GRANT PENALTIES.—Penalties collected
22 under section 245B(c)(10)(C) of the Immi-
23 gration and Nationality Act, as added by
24 section 2101.

1 (iii) BLUE CARD PENALTY.—Penalties
2 collected under section 2211(b)(9)(C).

3 (iv) FINE FOR ADJUSTMENT FROM
4 BLUE CARD STATUS.—Fines collected
5 under section 245F(a)(5) of the Immigra-
6 tion and Nationality Act, as added by sec-
7 tion 2212(a).

8 (v) PENALTIES FOR FALSE STATE-
9 MENTS IN APPLICATIONS.—Fines collected
10 under section 245F(f) of the Immigration
11 and Nationality Act, as added by section
12 2212(a).

13 (vi) MERIT SYSTEM GREEN CARD
14 FEES.—Fees collected under section
15 203(e)(6) of the Immigration and Nation-
16 ality Act, as amended by section
17 2301(a)(2).

18 (vii) H-1B AND L VISA FEES.—Fees
19 collected under section 281(d) of the Immi-
20 gration and Nationality Act, as added by
21 section 4105.

22 (viii) H-1B OUTPLACEMENT FEE.—
23 Fees collected under section
24 212(n)(1)(F)(ii) of the Immigration and

1 Nationality Act, as amended by section
2 4211(d).

3 (ix) H-1B NONIMMIGRANT DEPEND-
4 ENT EMPLOYER FEES.—Fees collected
5 under section 4233(a)(2).

6 (x) L NONIMMIGRANT DEPENDENT
7 EMPLOYER FEES.—Fees collected under
8 section 4305(a)(2).

9 (xi) J-1 VISA MITIGATION FEES.—
10 Fees collected under section 281(e) of the
11 Immigration and Nationality Act, as added
12 by section 4407.

13 (xii) F-1 VISA FEES.—Fees collected
14 under section 281(f) of the Immigration
15 and Nationality Act, as added by section
16 4408.

17 (xiii) RETIREE VISA FEES.—Fees col-
18 lected under section 214(w)(1)(B) of the
19 Immigration and Nationality Act, as added
20 by section 4504(b).

21 (xiv) VISITOR VISA FEES.—Fees col-
22 lected under section 281(g) of the Immi-
23 gration and Nationality Act, as added by
24 section 4509.

1 (xv) H-2B VISA FEES.—Fees col-
2 lected under section 214(x)(5)(A) of the
3 Immigration and Nationality Act, as added
4 by section 4602(a).

5 (xvi) NONIMMIGRANTS PERFORMING
6 MAINTENANCE ON COMMON CARRIERS.—
7 Fees collected under section 214(z) of the
8 Immigration and Nationality Act, as added
9 by section 4604.

10 (xvii) X-1 VISA FEES.—Fees collected
11 under section 214(s)(6) of the Immigration
12 and Nationality Act, as added by section
13 4801.

14 (xviii) PENALTY FOR ADJUSTMENT
15 FROM REGISTERED PROVISIONAL IMMI-
16 GRANT STATUS.—Penalties collected under
17 section 245C(c)(5)(B) of the Immigration
18 and Nationality Act, as added by section
19 2102.

20 (C) AUTHORITY TO ADJUST FEES.—As
21 necessary to carry out the purposes of this Act,
22 the Secretary may adjust the amounts of the
23 fees and penalties set out under subparagraph
24 (B), except for the fines and penalties referred

1 to in clauses (ii), (iii), (iv), or (xviii) of such
2 subparagraph.

3 (3) USE OF FUNDS.—

4 (A) INITIAL FUNDING.—Of the amounts
5 transferred to the Trust Fund pursuant to
6 paragraph (2)(A)—

7 (i) \$3,000,000,000 shall remain avail-
8 able for the 5-year period beginning on the
9 date specified in paragraph (2)(A) for use
10 by the Secretary to carry out the Border
11 Security Results Strategy;

12 (ii) \$2,000,000,000 shall remain
13 available for the 10-year period beginning
14 on the date specified in paragraph (2)(A)
15 for use by the Secretary to carry out pro-
16 grams, projects, and activities rec-
17 ommended by the Commission pursuant to
18 section 5(d) to achieve and maintain the
19 border security goal specified in section
20 4(b);

21 (iii) \$1,500,000,000 shall be made
22 available to the Secretary, during the 5-
23 year period beginning on the date of the
24 enactment of this Act, to procure and de-
25 ploy fencing, infrastructure, personnel, and

1 technology in accordance with the Border
2 Security Results Strategy established pur-
3 suant to section 6, not less than
4 \$1,000,000,000 of which shall be used for
5 fencing, infrastructure, personnel, and
6 technology at ports of entry in accordance
7 with section 6(c)(1)(A);

8 (iv) \$750,000,000 shall remain avail-
9 able for the 6-year period beginning on the
10 date specified in paragraph (2)(A) for use
11 by the Secretary to expand and implement
12 the mandatory employment verification
13 system, which shall be used as required by
14 section 274A of the Immigration and Na-
15 tionality Act (8 U.S.C. 1324a), as amend-
16 ed by section 3101;

17 (v) \$900,000,000 shall remain avail-
18 able for the 8-year period beginning on the
19 date specified in paragraph (2)(A) for use
20 by the Secretary of State to pay for one-
21 time and startup costs necessary to imple-
22 ment this Act; and

23 (vi) \$150,000,000 shall remain avail-
24 able for the 2-year period beginning on the
25 date specified in paragraph (2)(A) for use

1 by the Secretary for transfer to the Sec-
2 retary of Labor, the Secretary of Agri-
3 culture, or the Attorney General, for initial
4 costs of implementing this Act.

5 (B) REPAYMENT OF TRUST FUND EX-
6 PENSES.—The first \$8,300,000,000 collected
7 pursuant to the fees, penalties, and fines re-
8 ferred to in clauses (ii), (iii), (iv), (vi), (xiii),
9 (xvii), and (xviii) of paragraph (2)(B) shall be
10 collected, deposited in the general fund of the
11 Treasury, and used for Federal budget deficit
12 reduction. Collections in excess of
13 \$8,300,000,000 shall be deposited into the
14 Trust Fund, as specified in paragraph (2)(B).

15 (C) PROGRAM IMPLEMENTATION.—
16 Amounts deposited into the Trust Fund pursu-
17 ant to paragraph (2)(B) shall be available dur-
18 ing each of fiscal years 2014 through 2018 as
19 follows:

20 (i) \$50,000,000 to carry out the ac-
21 tivities referenced in section 1104(a)(1).

22 (ii) \$50,000,000 to carry out the ac-
23 tivities referenced in section 1104(b).

24 (D) ONGOING FUNDING.—Subject to the
25 availability of appropriations, amounts depos-

1 ited in the Trust Fund pursuant to paragraph
2 (2)(B) are authorized to be appropriated as fol-
3 lows:

4 (i) Such sums as may be necessary to
5 carry out the authorizations included in
6 this Act.

7 (ii) Such sums as may be necessary to
8 carry out the operations and maintenance
9 of border security and immigration en-
10 forcement investments referenced in sub-
11 paragraph (A).

12 (E) EXPENDITURE PLAN.—The Secretary,
13 in consultation with the Attorney General and
14 the Secretary of Defense, shall submit to the
15 Committee on Appropriations of the Senate, the
16 Committee on the Judiciary of the Senate, the
17 Committee on Appropriations of the House of
18 Representatives, and the Committee on the Ju-
19 diciary of the House of Representatives, in con-
20 junction with the Border Security Results
21 Strategy, a plan for expenditure that de-
22 scribes—

23 (i) the types and planned deployment
24 of fixed, mobile, video, and agent and offi-
25 cer portable surveillance and detection

1 equipment, including those recommended
2 or provided by the Department of Defense;

3 (ii) the number of Border Patrol
4 agents and Customs and Border Protection
5 officers to be hired, including a detailed
6 description of which Border Patrol sectors
7 and which land border ports of entry they
8 will be stationed;

9 (iii) the numbers and type of un-
10 armed, unmanned aerial systems and un-
11 armed, fixed-wing and rotary aircraft, in-
12 cluding pilots, air interdiction agents, and
13 support staff to fly or otherwise operate
14 and maintain the equipment;

15 (iv) the numbers, types, and planned
16 deployment of marine and riverine vessels,
17 if any, including marine interdiction agents
18 and support staff to operate and maintain
19 the vessels;

20 (v) the locations, amount, and
21 planned deployment of fencing, including
22 double layer fencing, tactical and other in-
23 frastructure, and technology, including but
24 not limited to fixed towers, sensors, cam-
25 eras, and other detection technology;

1 (vi) the numbers, types, and planned
2 deployment of ground-based mobile surveil-
3 lance systems;

4 (vii) the numbers, types, and planned
5 deployment of tactical and other interoper-
6 able law enforcement communications sys-
7 tems and equipment;

8 (viii) required construction, including
9 repairs, expansion, and maintenance, and
10 location of additional checkpoints, Border
11 Patrol stations, and forward operating
12 bases;

13 (ix) the number of additional attor-
14 neys and support staff for the Office of the
15 United States Attorney for Tucson;

16 (x) the number of additional support
17 staff and interpreters in the Office of the
18 Clerk of the Court for Tucson;

19 (xi) the number of additional per-
20 sonnel, including Marshals and Deputy
21 Marshals for the United States Marshals
22 Office for Tucson;

23 (xii) the number of additional mag-
24 istrate judges for the southern border
25 United States District Courts;

1 (xiii) activities to be funded by the
2 Homeland Security Border Oversight Task
3 Force;

4 (xiv) amounts and types of grants to
5 States and other entities;

6 (xv) amounts and activities necessary
7 to hire additional personnel and for start-
8 up costs related to upgrading software and
9 information technology necessary to transi-
10 tion from a voluntary E-Verify system to
11 mandatory employment verification system
12 under section 274A of the Immigration
13 and Nationality Act (8 U.S.C. 1324a)
14 within 5 years;

15 (xvi) the number of additional per-
16 sonnel and other costs associated with im-
17 plementing the immigration courts and re-
18 moval proceedings mandated in subtitle E
19 of title III;

20 (xvii) the steps the Commissioner of
21 Social Security plans to take to create a
22 fraud-resistant, tamper-resistant, wear-re-
23 sistant, and identity-theft resistant Social
24 Security card, including—

1 (I) the types of equipment need-
2 ed to create the card;

3 (II) the total estimated costs for
4 completion that clearly delineates
5 costs associated with the acquisition
6 of equipment and transition to oper-
7 ation, subdivided by fiscal year and
8 including a description of the purpose
9 by fiscal year for design, pre-acquisi-
10 tion activities, production, and transi-
11 tion to operation;

12 (III) the number and type of per-
13 sonnel, including contract personnel,
14 required to research, design, test, and
15 produce the card; and

16 (IV) a detailed schedule for pro-
17 duction of the card, including an esti-
18 mated completion date at the pro-
19 jected funding level provided in this
20 Act; and

21 (xviii) the operations and maintenance
22 costs associated with the implementation of
23 clauses (i) through (xvii).

24 (F) ANNUAL REVISION.—The expenditure
25 plan required in (E) shall be revised and sub-

1 mitted with the President’s budget proposals
2 for fiscal year 2016, 2017, 2018, and 2019
3 pursuant to the requirements of section 1105(a)
4 of title 31, United States Code.

5 (G) COMMISSION EXPENDITURE PLAN.—

6 (i) REQUIREMENT FOR PLAN.—South-
7 ern Border Security Commission ref-
8 erenced in section 5 is established, the Sec-
9 retary shall submit to the appropriate com-
10 mittees of Congress, not later than 60 days
11 after the submission of the review required
12 by section 5(g), a plan for expenditure that
13 achieves the recommendations in the report
14 required by section 5(d) and the review re-
15 quired by section 5(g).

16 (ii) APPROPRIATE COMMITTEES OF
17 CONGRESS DEFINED.—clause (i), the term
18 “appropriate committees of Congress”
19 means—

20 (I) the Committee on Appropria-
21 tions, the Committee on the Judiciary,
22 and the Committee on Finance of the
23 Senate; and

24 (II) the Committee on Appropria-
25 tions, the Committee on the Judiciary,

1 and the Committee on Ways and
2 Means of the House of Representa-
3 tives.

4 (4) LIMITATION ON COLLECTION.—

5 (A) IN GENERAL.—No fee deposited in the
6 Trust Fund may be collected except to the ex-
7 tent that the expenditure of the fee is provided
8 for in advance in an appropriations Act only to
9 pay the costs of activities and services for which
10 appropriations are authorized to be funded
11 from the Trust Fund.

12 (B) RECEIPTS COLLECTED AS OFFSETTING
13 RECEIPTS.—Until the date of the enactment of
14 an Act making appropriations for the activities
15 authorized under this Act through September
16 30, 2014, the fees authorized by paragraph
17 (2)(B) that are not deposited into the general
18 fund pursuant to paragraph (3)(B) may be col-
19 lected and shall be credited as to the Trust
20 Fund to remain available until expended only to
21 pay the costs of activities and services for which
22 appropriations are authorized to be funded
23 from the Trust Fund.

24 (b) COMPREHENSIVE IMMIGRATION REFORM START-
25 UP ACCOUNT.—

1 (1) ESTABLISHMENT.—There is established in
2 the Treasury a separate account, to be known as the
3 “Comprehensive Immigration Reform Startup Ac-
4 count,” (referred to in this section as the “Startup
5 Account”), consisting of amounts transferred from
6 the general fund of the Treasury under paragraph
7 (2).

8 (2) DEPOSITS.—There is appropriated to the
9 Startup Account, out of any funds in the Treasury
10 not otherwise appropriated, \$3,000,000,000, to re-
11 main available until expended on the later of the
12 date that is—

13 (A) the date of the enactment of this Act;

14 or

15 (B) October 1, 2013.

16 (3) REPAYMENT OF STARTUP COSTS.—

17 (A) IN GENERAL.—Notwithstanding sec-
18 tion 286(m) of the Immigration and Nationality
19 Act (8 U.S.C. 1356(m)), 50 percent of fees col-
20 lected under section 245B(c)(10)(A) of the Im-
21 migration and Nationality Act, as added by sec-
22 tion 2101 of this Act, shall be deposited month-
23 ly in the general fund of the Treasury and used
24 for Federal budget deficit reduction until the

1 funding provided by paragraph (2) has been re-
2 paid.

3 (B) DEPOSIT IN THE IMMIGRATION EXAMI-
4 NATIONS FEE ACCOUNT.—Fees collected in ex-
5 cess of the amount referenced in subparagraph
6 (A) shall be deposited in the Immigration Ex-
7 aminations Fee Account, pursuant to section
8 286(m) of the Immigration and Nationality Act
9 (8 U.S.C. 1356(m)), and shall remain available
10 until expended pursuant to section 286(n) of
11 the Immigration and Nationality Act (8 U.S.C.
12 1356(n)).

13 (4) USE OF FUNDS.—The Secretary shall use
14 the amounts transferred to the Startup Account to
15 pay for one-time and startup costs necessary to im-
16 plement this Act, including—

17 (A) equipment, information technology sys-
18 tems, infrastructure, and human resources;

19 (B) outreach to the public, including devel-
20 opment and promulgation of any regulations,
21 rules, or other public notice;

22 (C) grants to community and faith-based
23 organizations; and

24 (D) anti-fraud programs and actions re-
25 lated to implementation of this Act.

1 (5) EXPENDITURE PLAN.—Not later than 90
2 days after the date of the enactment of this Act, the
3 Secretary, in consultation with the Attorney General
4 and the Secretary of Defense, shall submit to the
5 Committee on Appropriations and the Committee on
6 the Judiciary of the Senate and the Committee on
7 Appropriations and the Committee on the Judiciary
8 of the House of Representatives, a plan for expendi-
9 ture of the one-time and startup funds in the Start-
10 up Account that provides details on—

11 (A) the types of equipment, information
12 technology systems, infrastructure, and human
13 resources;

14 (B) the plans for outreach to the public,
15 including development and promulgation of any
16 regulations, rules, or other public notice;

17 (C) the types and amounts of grants to
18 community and faith-based organizations; and

19 (D) the anti-fraud programs and actions
20 related to implementation of this Act.

21 (c) ANNUAL AUDITS.—

22 (1) AUDITS REQUIRED.—Not later than Octo-
23 ber 1 each year beginning on or after the date of the
24 enactment of this Act, the Chief Financial Officer of
25 the Department of Homeland Security shall, in con-

1 junction with the Inspector General of the Depart-
2 ment of Homeland Security, conduct an audit of the
3 Trust Fund.

4 (2) REPORTS.—Upon completion of each audit
5 of the Trust Fund under paragraph (1), the Chief
6 Financial Officer shall, in conjunction with the In-
7 specter General, submit to Congress, and make
8 available to the public on an Internet website of the
9 Department available to the public, a jointly audited
10 financial statement concerning the Trust Fund.

11 (3) ELEMENTS.—Each audited financial state-
12 ment under paragraph (2) shall include the fol-
13 lowing:

14 (A) The report of an independent certified
15 public accountant.

16 (B) A balance sheet reporting admitted as-
17 sets, liabilities, capital and surplus.

18 (C) A statement of cash flow.

19 (D) Such other information on the Trust
20 Fund as the Chief Financial Officer, the In-
21 specter General, or the independent certified
22 public accountant considers appropriate to fa-
23 cilitate a comprehensive understanding of the
24 Trust Fund during the year covered by the fi-
25 nancial statement.

1 (d) DETERMINATION OF BUDGETARY EFFECTS.—

2 (1) EMERGENCY DESIGNATION FOR CONGRES-
3 SIONAL ENFORCEMENT.—In the Senate, amounts
4 appropriated by or deposited in the general fund of
5 the Treasury pursuant to this section are designated
6 as an emergency requirement pursuant to section
7 403(a) of S. Con. Res. 13 (111th Congress), the
8 concurrent resolution on the budget for fiscal year
9 2010.

10 (2) EMERGENCY DESIGNATION FOR STATUTORY
11 PAYGO.—Amounts appropriated by or deposited in
12 the general fund of the Treasury pursuant to this
13 section are designated as an emergency requirement
14 under section 4(g) of the Statutory Pay-As-You-Go
15 Act of 2010 (Public Law 111–139; 2 U.S.C.
16 933(g)).

17 **SEC. 10. REFERENCE TO THE IMMIGRATION AND NATION-**
18 **ALITY ACT.**

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

1 **SEC. 11. DEFINITIONS.**

2 In this Act:

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

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

9 **SEC. 12. GRANT ACCOUNTABILITY.**

10 (a) DEFINITIONS.—In this section:

11 (1) AWARDING ENTITIES.—The term “awarding
12 entities” means the Secretary of Homeland Security,
13 the Director of the Federal Emergency Management
14 Agency (FEMA), the Chief of the Office of Citizen-
15 ship and New Americans, as designated by this Act,
16 and the Director of the National Science Founda-
17 tion.

18 (2) NONPROFIT ORGANIZATION.—The term
19 “nonprofit organization” means an organization that
20 is described in section 501(c)(3) of the Internal Rev-
21 enue Code of 1986 and is exempt from taxation
22 under section 501(a) of such Code.

23 (3) UNRESOLVED AUDIT FINDING.—The term
24 “unresolved audit finding” means a finding in a
25 final audit report conducted by the Inspector Gen-
26 eral of the Department of Homeland Security, or the

1 Inspector General for the National Science Founda-
2 tion for grants awarded by the Director of the Na-
3 tional Science Foundation, that the audited grantee
4 has utilized grant funds for an unauthorized expend-
5 iture or otherwise unallowable cost that is not closed
6 or resolved within 1 year from the date when the
7 final audit report is issued.

8 (b) ACCOUNTABILITY.—All grants awarded by
9 awarding entities pursuant to this Act shall be subject to
10 the following accountability provisions:

11 (1) AUDIT REQUIREMENT.—

12 (A) AUDITS.—Beginning in the first fiscal
13 year beginning after the date of the enactment
14 of this section, and in each fiscal year there-
15 after, the Inspector General of the Department
16 of Homeland Security, or the Inspector General
17 for the National Science Foundation for grants
18 awarded by the Director of the National
19 Science Foundation, shall conduct audits of re-
20 cipients of grants under this Act to prevent
21 waste, fraud, and abuse of funds by grantees.
22 The Inspector Generals shall determine the ap-
23 propriate number of grantees to be audited
24 each year.

1 (B) MANDATORY EXCLUSION.—A recipient
2 of grant funds under this Act that is found to
3 have an unresolved audit finding shall not be el-
4 igible to receive grant funds under this Act dur-
5 ing the first 2 fiscal years beginning after the
6 end of the 1-year period described in subsection
7 (a)(3).

8 (C) PRIORITY.—In awarding grants under
9 this Act, the awarding entities shall give pri-
10 ority to eligible applicants that did not have an
11 unresolved audit finding during the 3 fiscal
12 years before submitting an application for a
13 grant under this Act.

14 (D) REIMBURSEMENT.—If an entity is
15 awarded grant funds under this Act during the
16 2-fiscal-year period during which the entity is
17 barred from receiving grants under subpara-
18 graph (B), the awarding entity shall—

19 (i) deposit an amount equal to the
20 amount of the grant funds that were im-
21 properly awarded to the grantee into the
22 General Fund of the Treasury; and

23 (ii) seek to recoup the costs of the re-
24 payment to the fund from the grant recipi-

1 ent that was erroneously awarded grant
2 funds.

3 (2) NONPROFIT ORGANIZATION REQUIRE-
4 MENTS.—

5 (A) PROHIBITION.—An awarding entity
6 may not award a grant under this Act to a non-
7 profit organization that holds money in offshore
8 accounts for the purpose of avoiding paying the
9 tax described in section 511(a) of the Internal
10 Revenue Code of 1986.

11 (B) DISCLOSURE.—Each nonprofit organi-
12 zation that is awarded a grant under this Act
13 and uses the procedures prescribed in regula-
14 tions to create a rebuttable presumption of rea-
15 sonableness for the compensation of its officers,
16 directors, trustees, and key employees, shall dis-
17 close to the awarding entity, in the application
18 for the grant, the process for determining such
19 compensation, including the independent per-
20 sons involved in reviewing and approving such
21 compensation, the comparability data used, and
22 contemporaneous substantiation of the delibera-
23 tion and decision. Upon request, the awarding
24 entity shall make the information disclosed

1 under this subparagraph available for public in-
2 spection.

3 (3) CONFERENCE EXPENDITURES.—

4 (A) LIMITATION.—No amounts authorized
5 to be appropriated to the Department of Home-
6 land Security or the National Science Founda-
7 tion for grant programs under this Act may be
8 used by an awarding entity or by any individual
9 or entity awarded discretionary funds through a
10 cooperative agreement under this Act to host or
11 support any expenditure for conferences that
12 uses more than \$20,000 in funds made avail-
13 able by the Department of Homeland Security
14 or the National Science Foundation unless the
15 Deputy Secretary for Homeland Security, or
16 the Deputy Director of the National Science
17 Foundation, or their designee, provides prior
18 written authorization that the funds may be ex-
19 pended to host the conference.

20 (B) WRITTEN APPROVAL.—Written ap-
21 proval under subparagraph (A) shall include a
22 written estimate of all costs associated with the
23 conference, including the cost of all food, bev-
24 erages, audio-visual equipment, honoraria for
25 speakers, and entertainment.

1 (C) REPORT.—The Deputy Secretary of
2 Homeland Security and the Deputy Director of
3 the National Science Foundation shall submit
4 an annual report to Congress on all conference
5 expenditures approved under this paragraph.

6 (4) ANNUAL CERTIFICATION.—Beginning in the
7 first fiscal year beginning after the date of the en-
8 actment of this subsection, each awarding entity
9 shall submit to Congress a report—

10 (A) indicating whether—

11 (i) all audits issued by the Offices of
12 the Inspector General under paragraph (1)
13 have been completed and reviewed by the
14 appropriate individuals;

15 (ii) all mandatory exclusions required
16 under paragraph (1)(B) have been issued;
17 and

18 (iii) all reimbursements required
19 under paragraph (1)(D) have been made;
20 and

21 (B) including a list of any grant recipients
22 excluded under paragraph (1) from the previous
23 year.

1 progress in increasing such number of officers during each
2 of the fiscal years 2014 through 2017.

3 (b) CONSTRUCTION.—Nothing in subsection (a) may
4 be construed to preclude the Secretary from reassigning
5 or stationing U.S. Customs and Border Protection Offi-
6 cers and U.S. Border Patrol Agents from the Northern
7 border to the Southern border.

8 (c) FUNDING.—Section 217(h)(3)(B) (8 U.S.C.
9 1187(h)(3)(B)) is amended—

10 (1) in clause (i)—

11 (A) by striking “No later than 6 months
12 after the date of enactment of the Travel Pro-
13 motion Act of 2009, the” and inserting “The”;

14 (B) in subclause (I), by striking “and” at
15 the end;

16 (C) by redesignating subclause (II) as sub-
17 clause (III); and

18 (D) by inserting after subclause (I) the fol-
19 lowing:

20 “(II) \$16 for border processing;
21 and”;

22 (2) in clause (ii), by striking “Amounts col-
23 lected under clause (i)(II)” and inserting “Amounts
24 collected under clause (i)(II) shall be deposited into
25 the Comprehensive Immigration Reform Trust Fund

1 established under section 9(a)(1) of the Border Se-
2 curity, Economic Opportunity, and Immigration
3 Modernization Act. Amounts collected under clause
4 (i)(III)”; and

5 (3) by striking clause (iii).

6 (d) CORPORATION FOR TRAVEL PROMOTION.—Sec-
7 tion 9(d)(2)(B) of the Travel Promotion Act of 2009 (22
8 U.S.C. 2131(d)(2)(B)) is amended by striking “For each
9 of fiscal years 2012 through 2015,” and inserting “For
10 each fiscal year after 2012,”.

11 (e) RECRUITMENT OF FORMER MEMBERS OF THE
12 ARMED FORCES AND MEMBERS OF RESERVE COMPO-
13 NENTS OF THE ARMED FORCES.—

14 (1) REQUIREMENT FOR PROGRAM.—The Sec-
15 retary, in conjunction with the Secretary of Defense,
16 shall establish a program to actively recruit members
17 of the reserve components of the Armed Forces and
18 former members of the Armed Forces, including the
19 reserve components, to serve in United States Cus-
20 toms and Border Protection and United States Im-
21 migration and Customs Enforcement.

22 (2) RECRUITMENT INCENTIVES.—

23 (A) STUDENT LOAN REPAYMENTS FOR
24 UNITED STATES BORDER PATROL AGENTS WITH
25 A THREE-YEAR COMMITMENT.—Section 5379(b)

1 of title 5, United States Code, is amended by
2 adding at the end the following new paragraph:

3 “(4) In the case of an employee who is otherwise eligi-
4 ble for benefits under this section and who is serving as
5 a full-time active-duty United States border patrol agent
6 within the Department of Homeland Security—

7 “(A) paragraph (2)(A) shall be applied by sub-
8 stituting ‘\$20,000’ for ‘\$10,000’; and

9 “(B) paragraph (2)(B) shall be applied by sub-
10 stituting ‘\$80,000’ for ‘\$60,000’.”.

11 (B) RECRUITMENT AND RELOCATION BO-
12 NUSES AND RETENTION ALLOWANCES FOR PER-
13 SONNEL OF THE DEPARTMENT OF HOMELAND
14 SECURITY.—The Secretary of Homeland Secu-
15 rity shall ensure that the authority to pay re-
16 cruitment and relocation bonuses under section
17 5753 of title 5, United States Code, the author-
18 ity to pay retention bonuses under section 5754
19 of such title, and any other similar authorities
20 available under any other provision of law, rule,
21 or regulation, are exercised to the fullest extent
22 allowable in order to encourage service in the
23 Department of Homeland Security.

24 (3) REPORT ON RECRUITMENT INCENTIVES.—

1 (A) IN GENERAL.—Not later than 90 days
2 after the date of the enactment of this Act, the
3 Secretary and the Secretary of Defense shall
4 jointly submit to the appropriate committees of
5 Congress a report including an assessment of
6 the desirability and feasibility of offering incen-
7 tives to members of the reserve components of
8 the Armed Forces and former members of the
9 Armed Forces, including the reserve compo-
10 nents, for the purpose of encouraging such
11 members to serve in United States Customs
12 and Border Protection and Immigration and
13 Customs Enforcement.

14 (B) CONTENT.—The report required by
15 subparagraph (A) shall include—

16 (i) a description of various monetary
17 and non-monetary incentives considered for
18 purposes of the report; and

19 (ii) an assessment of the desirability
20 and feasibility of utilizing any such incen-
21 tive.

22 (4) APPROPRIATE COMMITTEES OF CONGRESS
23 DEFINED.—The term “appropriate committees of
24 Congress” means—

1 (A) the Committee on Appropriations, the
2 Committee on Armed Services, and the Com-
3 mittee on Homeland Security and Govern-
4 mental Affairs of the Senate; and

5 (B) the Committee on Appropriations, the
6 Committee on Armed Services, and the Com-
7 mittee on Homeland Security of the House of
8 Representatives.

9 **SEC. 1103. NATIONAL GUARD SUPPORT TO SECURE THE**
10 **SOUTHERN BORDER.**

11 (a) IN GENERAL.—With the approval of the Sec-
12 retary of Defense, the Governor of a State may order any
13 unit or personnel of the National Guard of such State to
14 perform operations and missions under section 502(f) of
15 title 32, United States Code, in the Southwest Border re-
16 gion for the purposes of assisting U.S. Customs and Bor-
17 der Protection in securing the Southern border.

18 (b) ASSIGNMENT OF OPERATIONS AND MISSIONS.—

19 (1) IN GENERAL.—National Guard units and
20 personnel deployed under subsection (a) may be as-
21 signed such operations and missions specified in sub-
22 section (c) as may be necessary to secure the South-
23 ern border.

24 (2) NATURE OF DUTY.—The duty of National
25 Guard personnel performing operations and missions

1 described in paragraph (1) shall be full-time duty
2 under title 32, United States Code.

3 (c) RANGE OF OPERATIONS AND MISSIONS.—The op-
4 erations and missions assigned under subsection (b) shall
5 include the temporary authority—

6 (1) to construct fencing, including double-layer
7 and triple-layer fencing;

8 (2) to increase ground-based mobile surveillance
9 systems;

10 (3) to deploy additional unmanned aerial sys-
11 tems and manned aircraft sufficient to maintain
12 continuous surveillance of the Southern border;

13 (4) to deploy and provide capability for radio
14 communications interoperability between U.S. Cus-
15 toms and Border Protection and State, local, and
16 tribal law enforcement agencies;

17 (5) to construct checkpoints along the Southern
18 border to bridge the gap to long-term permanent
19 checkpoints; and

20 (6) to provide assistance to U.S. Customs and
21 Border Protection, particularly in rural, high-traf-
22 ficked areas, as designated by the Commissioner of
23 U.S. Customs and Border Protection.

24 (d) MATERIEL AND LOGISTICAL SUPPORT.—The
25 Secretary of Defense shall deploy such materiel and equip-

1 ment and logistical support as may be necessary to ensure
2 success of the operations and missions conducted by the
3 National Guard under this section.

4 (e) EXCLUSION FROM NATIONAL GUARD PER-
5 SONNEL STRENGTH LIMITATIONS.—National Guard per-
6 sonnel deployed under subsection (a) shall not be included
7 in—

8 (1) the calculation to determine compliance
9 with limits on end strength for National Guard per-
10 sonnel; or

11 (2) limits on the number of National Guard
12 personnel that may be placed on active duty for
13 operational support under section 115 of title 10,
14 United States Code.

15 **SEC. 1104. ENHANCEMENT OF EXISTING BORDER SECURITY**
16 **OPERATIONS.**

17 (a) BORDER CROSSING PROSECUTIONS.—

18 (1) IN GENERAL.—From the amounts made
19 available pursuant to the appropriations in para-
20 graph (3), funds shall be made available—

21 (A) to increase the number of border cross-
22 ing prosecutions in the Tucson Sector of the
23 Southwest border region to up to 210 prosecu-
24 tions per day through increasing funding avail-
25 able for—

- 1 (i) attorneys and administrative sup-
2 port staff in the Office of the United
3 States Attorney for Tucson;
- 4 (ii) support staff and interpreters in
5 the Office of the Clerk of the Court for
6 Tucson;
- 7 (iii) pre-trial services;
- 8 (iv) activities of the Federal Public
9 Defender Office for Tucson; and
- 10 (v) additional personnel, including
11 Deputy United States Marshals in the
12 United States Marshals Office for Tucson
13 to perform intake, coordination, transpor-
14 tation, and court security; and
- 15 (B) reimburse Federal, State, local, and
16 tribal law enforcement agencies for any deten-
17 tion costs related to the border crossing pros-
18 ecutions carried out pursuant to subparagraph
19 (A).
- 20 (2) ADDITIONAL MAGISTRATE JUDGES TO AS-
21 SIST WITH INCREASED CASELOAD.—The chief judge
22 of the United States District Court for the District
23 of Arizona is authorized to appoint additional full-
24 time magistrate judges, who, consistent with the
25 Constitution and laws of the United States, shall

1 have the authority to hear cases and controversies in
2 the judicial district in which the respective judges
3 are appointed.

4 (3) FUNDING.—There are authorized to be ap-
5 propriated, from the Comprehensive Immigration
6 Reform Trust Fund established under section
7 9(a)(1), such sums as may be necessary to carry out
8 this subsection.

9 (b) OPERATION STONEGARDEN.—

10 (1) IN GENERAL.—The Federal Emergency
11 Management Agency shall enhance law enforcement
12 preparedness and operational readiness along the
13 borders of the United States through Operation
14 Stonegarden. The amounts available under this
15 paragraph are in addition to any other amounts oth-
16 erwise made available for Operation Stonegarden.
17 Not less than 90 percent of the amounts made avail-
18 able under section 9(a)(3)(C)(ii) shall be allocated
19 for grants and reimbursements to law enforcement
20 agencies in the States in the Southwest border re-
21 gion for personnel, overtime, travel, and other costs
22 related to combating illegal immigration and drug
23 smuggling in the Southwest border region. Alloca-
24 tions for grants and reimbursements to law enforce-
25 ment agencies under this paragraph shall be made

1 by the Federal Emergency Management Agency
2 through a competitive process.

3 (2) FUNDING.—There are authorized to be ap-
4 propriated, from the amounts made available under
5 section 9(a)(3)(A)(i), such sums as may be nec-
6 essary to carry out this subsection.

7 (c) INFRASTRUCTURE IMPROVEMENTS.—

8 (1) BORDER PATROL STATIONS.—The Secretary
9 shall—

10 (A) construct additional Border Patrol sta-
11 tions in the Southwest border region that U.S.
12 Border Patrol determines are needed to provide
13 full operational support in rural, high-trafficked
14 areas; and

15 (B) analyze the feasibility of creating addi-
16 tional Border Patrol sectors along the Southern
17 border to interrupt drug trafficking operations.

18 (2) FORWARD OPERATING BASES.—The Sec-
19 retary shall enhance the security of the Southwest
20 border region by—

21 (A) establishing additional permanent for-
22 ward operating bases for the U.S. Border Pa-
23 trol, as needed;

1 (B) upgrading the existing forward oper-
2 ating bases to include modular buildings, elec-
3 tricity, and potable water; and

4 (C) ensuring that forward operating bases
5 surveil and interdict individuals entering the
6 United States unlawfully immediately after
7 such individuals cross the Southern border.

8 (3) SAFE AND SECURE BORDER INFRASTRUC-
9 TURE.—The Secretary and the Secretary of Trans-
10 portation, in consultation with the governors of the
11 States in the Southwest border region and the
12 Northern border region, shall establish a grant pro-
13 gram, which shall be administered by the Secretary
14 of Transportation and the General Services Adminis-
15 tration, to construct transportation and supporting
16 infrastructure improvements at existing and new
17 international border crossings necessary to facilitate
18 safe, secure, and efficient cross border movement of
19 people, motor vehicles, and cargo.

20 (4) AUTHORIZATION OF APPROPRIATIONS.—
21 There is authorized to be appropriated for each of
22 fiscal years 2014 through 2018 such sums as may
23 be necessary to carry out this subsection.

24 (d) ADDITIONAL PERMANENT DISTRICT COURT
25 JUDGESHIPS IN SOUTHWEST BORDER STATES.—

1 (1) IN GENERAL.—The President shall appoint,
2 by and with the advice and consent of the Senate—

3 (A) 2 additional district judges for the dis-
4 trict of Arizona;

5 (B) 3 additional district judges for the
6 eastern district of California;

7 (C) 2 additional district judges for the
8 western district of Texas; and

9 (D) 1 additional district judge for the
10 southern district of Texas.

11 (2) CONVERSIONS OF TEMPORARY DISTRICT
12 COURT JUDGESHIPS.—The existing judgeships for
13 the district of Arizona and the central district of
14 California authorized by section 312(c) of the 21st
15 Century Department of Justice Appropriations Au-
16 thorization Act (28 U.S.C. 133 note; Public Law
17 107–273; 116 Stat. 1788), as of the effective date
18 of this Act, shall be authorized under section 133 of
19 title 28, United States Code, and the incumbents in
20 those offices shall hold the office under section 133
21 of title 28, United States Code, as amended by this
22 Act.

23 (3) TECHNICAL AND CONFORMING AMEND-
24 MENTS.—The table contained in section 133(a) of
25 title 28, United States Code, is amended—

1 (A) by striking the item relating to the dis-
 2 trict of Arizona and inserting the following:

“Arizona 15”;

3 (B) by striking the item relating to Cali-
 4 fornia and inserting the following:

“California:
 Northern 14
 Eastern 9
 Central 28
 Southern 13”;

5 and

6 (C) by striking the item relating to Texas
 7 and inserting the following:

“Texas:
 Northern 12
 Southern 20
 Eastern 7
 Western 15”.

8 (4) INCREASE IN FILING FEES.—

9 (A) IN GENERAL.—Section 1914(a) of title
 10 28, United States Code, is amended by striking
 11 “\$350” and inserting “\$360”.

12 (B) EXPENDITURE LIMITATION.—Incre-
 13 mental amounts collected by reason of the en-
 14 actment of this paragraph shall be deposited as
 15 offsetting receipts in the “Judiciary Filing Fee”
 16 special fund of the Treasury established under
 17 section 1931 of title 28, United States Code.
 18 Such amounts shall be available solely for the

1 purpose of facilitating the processing of civil
2 cases, but only to the extent specifically appro-
3 priated by an Act of Congress enacted after the
4 date of the enactment of this Act.

5 (5) WHISTLEBLOWER PROTECTION.—

6 (A) IN GENERAL.—No officer, employee,
7 agent, contractor, or subcontractor of the judi-
8 cial branch may discharge, demote, threaten,
9 suspend, harass, or in any other manner dis-
10 criminate against an employee in the terms and
11 conditions of employment because of any lawful
12 act done by the employee to provide informa-
13 tion, cause information to be provided, or other-
14 wise assist in an investigation regarding any
15 possible violation of Federal law or regulation,
16 or misconduct, by a judge, justice, or any other
17 employee in the judicial branch, which may as-
18 sist in the investigation of the possible violation
19 or misconduct.

20 (B) CIVIL ACTION.—An employee injured
21 by a violation of subparagraph (A) may, in a
22 civil action, obtain appropriate relief.

23 **SEC. 1105. BORDER SECURITY ON CERTAIN FEDERAL LAND.**

24 (a) DEFINITIONS.—In this section:

1 (1) FEDERAL LANDS.—The term “Federal
2 lands” includes all land under the control of the Sec-
3 retary concerned that is located within the South-
4 west border region in the State of Arizona along the
5 international border between the United States and
6 Mexico.

7 (2) SECRETARY CONCERNED.—The term “Sec-
8 retary concerned” means—

9 (A) with respect to land under the jurisdic-
10 tion of the Secretary of Agriculture, the Sec-
11 retary of Agriculture; and

12 (B) with respect to land under the jurisdic-
13 tion of the Secretary of the Interior, the Sec-
14 retary of the Interior.

15 (b) SUPPORT FOR BORDER SECURITY NEEDS.—To
16 achieve effective control of Federal lands—

17 (1) the Secretary concerned, notwithstanding
18 any other provision of law, shall authorize and pro-
19 vide U.S. Customs and Border Protection personnel
20 with immediate access to Federal lands for security
21 activities, including—

22 (A) routine motorized patrols; and

23 (B) the deployment of communications,
24 surveillance, and detection equipment;

1 (2) the security activities described in para-
2 graph (1) shall be conducted, to the maximum ex-
3 tent practicable, in a manner that the Secretary de-
4 termines will best protect the natural and cultural
5 resources on Federal lands; and

6 (3) the Secretary concerned may provide edu-
7 cation and training to U.S. Customs and Border
8 Protection personnel on the natural and cultural re-
9 sources present on individual Federal land units.

10 (c) PROGRAMMATIC ENVIRONMENTAL IMPACT
11 STATEMENT.—

12 (1) IN GENERAL.—After implementing sub-
13 section (b), the Secretary, in consultation with the
14 Secretaries concerned, shall prepare and publish in
15 the Federal Register a notice of intent to prepare a
16 programmatic environmental impact statement in
17 accordance with the National Environmental Policy
18 Act of 1969 (42 U.S.C. 4321 et seq.) to analyze the
19 impacts of the activities described in subsection (b).

20 (2) EFFECT ON PROCESSING APPLICATION AND
21 SPECIAL USE PERMITS.—The pending completion of
22 a programmatic environmental impact statement
23 under this section shall not result in any delay in the
24 processing or approving of applications or special

1 use permits by the Secretaries concerned for the ac-
2 tivities described in subsection (b).

3 (3) AMENDMENT OF LAND USE PLANS.—The
4 Secretaries concerned shall amend any land use
5 plans, as appropriate, upon completion of the pro-
6 grammatic environmental impact statement de-
7 scribed in subsection (b).

8 (4) SCOPE OF PROGRAMMATIC ENVIRONMENTAL
9 IMPACT STATEMENT.—The programmatic environ-
10 mental impact statement described in paragraph
11 (1)—

12 (A) may be used to advise the Secretary on
13 the impact on natural and cultural resources on
14 Federal lands; and

15 (B) shall not control, delay, or restrict ac-
16 tions by the Secretary to achieve effective con-
17 trol on Federal lands.

18 (d) INTERMINGLED STATE AND PRIVATE LAND.—
19 This section shall not apply to any private or State-owned
20 land within the boundaries of Federal lands.

21 **SEC. 1106. EQUIPMENT AND TECHNOLOGY.**

22 (a) ENHANCEMENTS.—The Commissioner of U.S.
23 Customs and Border Protection, working through U.S.
24 Border Patrol, shall—

1 (1) deploy additional mobile, video, and agent-
2 portable surveillance systems, and unarmed, un-
3 manned aerial vehicles in the Southwest border re-
4 gion as necessary to provide 24-hour operation and
5 surveillance;

6 (2) operate unarmed unmanned aerial vehicles
7 along the Southern border for 24 hours per day and
8 for 7 days per week;

9 (3) deploy unarmed additional fixed-wing air-
10 craft and helicopters along the Southern border;

11 (4) acquire new rotorcraft and make upgrades
12 to the existing helicopter fleet;

13 (5) increase horse patrols in the Southwest bor-
14 der region; and

15 (6) acquire and deploy watercraft and other
16 equipment to provide support for border-related
17 maritime anti-crime activities.

18 (b) LIMITATION.—

19 (1) IN GENERAL.—Notwithstanding paragraphs
20 (1) and (2) of subsection (a), and except as provided
21 in paragraph (2), U.S. Border Patrol may not oper-
22 ate unarmed, unmanned aerial vehicles in the San
23 Diego and El Centro Sectors, except within 3 miles
24 of the Southern border.

1 (2) EXCEPTION.—The limitation under this
2 subsection shall not restrict the maritime operations
3 of U.S. Customs and Border Protection.

4 (c) AUTHORIZATION OF APPROPRIATIONS.—In addi-
5 tion to amounts otherwise authorized to be appropriated,
6 there is authorized to be appropriated to U.S. Customs
7 and Border Protection such sums as may be necessary to
8 carry out subsection (a) during fiscal years 2014 through
9 2018.

10 **SEC. 1107. ACCESS TO EMERGENCY PERSONNEL.**

11 (a) SOUTHWEST BORDER REGION EMERGENCY COM-
12 MUNICATIONS GRANTS.—

13 (1) IN GENERAL.—The Secretary, in consulta-
14 tion with the governors of the States in the South-
15 west border region, shall establish a 2-year grant
16 program, to be administered by the Secretary, to im-
17 prove emergency communications in the Southwest
18 border region.

19 (2) ELIGIBILITY FOR GRANTS.—An individual
20 is eligible to receive a grant under this subsection if
21 the individual demonstrates that he or she—

22 (A) regularly resides or works in the
23 Southwest border region;

24 (B) is at greater risk of border violence
25 due to the lack of cellular service at his or her

1 residence or business and his or her proximity
2 to the Southern border.

3 (3) USE OF GRANTS.—Grants awarded under
4 this subsection may be used to purchase satellite
5 telephone communications systems and service
6 that—

7 (A) can provide access to 9–1–1 service;
8 and

9 (B) are equipped with global positioning
10 systems.

11 (4) AUTHORIZATION OF APPROPRIATIONS.—
12 There is authorized to be appropriated such sums as
13 may be necessary to carry out the grant program es-
14 tablished under this subsection.

15 (b) INTEROPERABLE COMMUNICATIONS FOR LAW
16 ENFORCEMENT.—

17 (1) FEDERAL LAW ENFORCEMENT.—There are
18 authorized to be appropriated, to the Department,
19 the Department of Justice, and the Department of
20 the Interior, during the 5-year period beginning on
21 the date of the enactment of this Act, such sums as
22 may be necessary—

23 (A) to purchase, through a competitive
24 procurement process, P25-compliant radios,
25 which may include a multi-band option, for

1 Federal law enforcement agents working in the
2 Southwest border region in support of the ac-
3 tivities of U.S. Customs and Border Protection
4 and U.S. Immigration and Customs Enforce-
5 ment, including law enforcement agents of the
6 Drug Enforcement Administration, the Bureau
7 of Alcohol, Tobacco, Firearms and Explosives,
8 the Department of the Interior, and the Forest
9 Service; and

10 (B) to upgrade, through a competitive pro-
11 curement process, the communications network
12 of the Department of Justice to ensure coverage
13 and capacity, particularly when immediate ac-
14 cess is needed in times of crisis, in the South-
15 west Border region for appropriate law enforce-
16 ment personnel of the Department of Justice
17 (including the Drug Enforcement Administra-
18 tion and the Bureau of Alcohol, Tobacco, Fire-
19 arms and Explosives), the Department (includ-
20 ing U.S. Immigration and Customs Enforce-
21 ment and U.S. Customs and Border Protec-
22 tion), the United States Marshals Service, other
23 Federal agencies, the State of Arizona, tribes,
24 and local governments.

25 (2) STATE AND LOCAL LAW ENFORCEMENT.—

1 (A) AUTHORIZATION OF APPROPRIA-
2 TIONS.—There is authorized to be appropriated
3 to the Department of Justice, during the 5-year
4 period beginning on the date of the enactment
5 of this Act, such sums as may be necessary to
6 purchase, through a competitive procurement
7 process, P25-compliant radios, which may in-
8 clude a multi-band option, for State and local
9 law enforcement agents working in the South-
10 west border region.

11 (B) ACCESS TO FEDERAL SPECTRUM.—If
12 a State, tribal, or local law enforcement agency
13 in the Southwest border region experiences an
14 emergency situation that necessitates immediate
15 communication with the Department of Justice,
16 the Department, the Department of the Inte-
17 rior, or any of their respective subagencies,
18 such law enforcement agency shall have access
19 to the spectrum assigned to such Federal agen-
20 cy for the duration of such emergency situation.

21 **SEC. 1108. SOUTHWEST BORDER REGION PROSECUTION**
22 **INITIATIVE.**

23 (a) REIMBURSEMENT TO STATE AND LOCAL PROS-
24 ECUTORS FOR FEDERALLY INITIATED CRIMINAL
25 CASES.—The Attorney General shall reimburse State,

1 county, tribal, and municipal governments for costs associ-
2 ated with the prosecution, pretrial services and detention,
3 clerical support, and public defenders' services associated
4 with the prosecution of federally initiated immigration-re-
5 lated criminal cases declined by local offices of the United
6 States Attorneys.

7 (b) EXCEPTION.—Reimbursement under subsection
8 (a) shall not be available, at the discretion of the Attorney
9 General, if the Attorney General determines that there is
10 reason to believe that the jurisdiction seeking reimburse-
11 ment has engaged in unlawful conduct in connection with
12 immigration-related apprehensions.

13 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
14 authorized to be appropriated such sums as may be nec-
15 essary to carry out subsection (a) during fiscal years 2014
16 through 2018.

17 **SEC. 1109. INTERAGENCY COLLABORATION.**

18 The Assistant Secretary of Defense for Research and
19 Engineering shall collaborate with the Under Secretary of
20 Homeland Security for Science and Technology to identify
21 equipment and technology used by the Department of De-
22 fense that could be used by U.S. Customs and Border Pro-
23 tection to improve the security of the Southern border
24 by—

25 (1) detecting border tunnels;

- 1 (2) detecting the use of ultralight aircraft;
2 (3) enhancing wide aerial surveillance; and
3 (4) otherwise improving the enforcement of
4 such border.

5 **SEC. 1110. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM.**

6 (a) SCAAP REAUTHORIZATION.—Section
7 241(i)(5)(C) (8 U.S.C. 1231(i)(5)) is amended by striking
8 “2011.” and inserting “2015.”.

9 (b) SCAAP ASSISTANCE FOR STATES.—

10 (1) ASSISTANCE FOR STATES INCARCERATING
11 UNDOCUMENTED ALIENS CHARGED WITH CERTAIN
12 CRIMES.—Section 241(i)(3)(A) (8 U.S.C.
13 1231(i)(3)(A)) is amended by inserting “charged
14 with or” before “convicted”.

15 (2) ASSISTANCE FOR STATES INCARCERATING
16 UNVERIFIED ALIENS.—Section 241(i) (8 U.S.C.
17 1231(i)), as amended by subsection (a), is further
18 amended—

19 (A) by redesignating paragraphs (4), (5),
20 and (6), as paragraphs (5), (6), and (7), re-
21 spectively;

22 (B) in paragraph (7), as so redesignated,
23 by striking “(5)” and inserting “(6)”; and

24 (C) by adding after paragraph (3) the fol-
25 lowing:

1 “(4) In the case of an alien whose immigration
2 status is unable to be verified by the Secretary of
3 Homeland Security, and who would otherwise be an
4 undocumented criminal alien if the alien is unlaw-
5 fully present in the United States, the Attorney Gen-
6 eral shall compensate the State or political subdivi-
7 sion of the State for incarceration of the alien, con-
8 sistent with subsection (i)(2).”.

9 **SEC. 1111. USE OF FORCE.**

10 Not later than 180 days after the date of the enact-
11 ment of this Act, the Secretary, in consultation with the
12 Assistant Attorney General for the Civil Rights Division
13 of the Department of Justice, shall issue policies gov-
14 erning the use of force by all Department personnel that—

15 (1) require all Department personnel to report
16 each use of force; and

17 (2) establish procedures for—

18 (A) accepting and investigating complaints
19 regarding the use of force by Department per-
20 sonnel;

21 (B) disciplining Department personnel who
22 violate any law or Department policy relating to
23 the use of force; and

1 (C) reviewing all uses of force by Depart-
2 ment personnel to determine whether the use of
3 force—

4 (i) complied with Department policy;

5 or

6 (ii) demonstrates the need for changes
7 in policy, training, or equipment.

8 **SEC. 1112. TRAINING FOR BORDER SECURITY AND IMMI-**
9 **GRATION ENFORCEMENT OFFICERS.**

10 (a) IN GENERAL.—The Secretary shall ensure that
11 U.S. Customs and Border Protection officers, U.S. Border
12 Patrol agents, U.S. Immigration and Customs Enforce-
13 ment officers and agents, United States Air and Marine
14 Division agents, and agriculture specialists stationed with-
15 in 100 miles of any land or marine border of the United
16 States or at any United States port of entry receive appro-
17 priate training, which shall be prepared in collaboration
18 with the Assistant Attorney General for the Civil Rights
19 Division of the Department of Justice, in—

20 (1) identifying and detecting fraudulent travel
21 documents;

22 (2) civil, constitutional, human, and privacy
23 rights of individuals;

1 (3) the scope of enforcement authorities, includ-
2 ing interrogations, stops, searches, seizures, arrests,
3 and detentions;

4 (4) the use of force policies issued by the Sec-
5 retary pursuant to section 1111;

6 (5) immigration laws, including screening, iden-
7 tifying, and addressing vulnerable populations, such
8 as children, victims of crime and human trafficking,
9 and individuals fleeing persecution or torture;

10 (6) social and cultural sensitivity toward border
11 communities;

12 (7) the impact of border operations on commu-
13 nities; and

14 (8) any particular environmental concerns in a
15 particular area.

16 (b) TRAINING FOR BORDER COMMUNITY LIAISON
17 OFFICERS.—The Secretary shall ensure that border com-
18 munities liaison officers in Border Patrol sectors along the
19 international borders between the United States and Mex-
20 ico and between the United States and Canada receive
21 training to better—

22 (1) act as a liaison between border communities
23 and the Office for Civil Rights and Civil Liberties of
24 the Department and the Civil Rights Division of the
25 Department of Justice;

1 (2) foster and institutionalize consultation with
2 border communities;

3 (3) consult with border communities on Depart-
4 ment programs, policies, strategies, and directives;
5 and

6 (4) receive Department performance assess-
7 ments from border communities.

8 (c) HUMANE CONDITIONS OF CONFINEMENT FOR
9 CHILDREN IN U.S. CUSTOMS AND BORDER PROTECTION
10 CUSTODY.—Not later than 90 days after the date of the
11 enactment of this Act, the Secretary shall establish stand-
12 ards to ensure that children in the custody of U.S. Cus-
13 toms and Border Protection—

14 (1) are afforded adequate medical and mental
15 health care, including emergency medical and mental
16 health care, when necessary;

17 (2) receive adequate nutrition;

18 (3) are provided with climate-appropriate cloth-
19 ing, footwear, and bedding;

20 (4) have basic personal hygiene and sanitary
21 products; and

22 (5) are permitted to make supervised phone
23 calls to family members.

1 **SEC. 1113. DEPARTMENT OF HOMELAND SECURITY BOR-**
2 **DER OVERSIGHT TASK FORCE.**

3 (a) ESTABLISHMENT.—

4 (1) IN GENERAL.—There is established an inde-
5 pendent task force, which shall be known as the De-
6 partment of Homeland Security Border Oversight
7 Task Force (referred to in this section as the “DHS
8 Task Force”).

9 (2) DUTIES.—The DHS Task Force shall—

10 (A) review and make recommendations re-
11 garding immigration and border enforcement
12 policies, strategies, and programs that take into
13 consideration their impact on border and tribal
14 communities;

15 (B) recommend ways in which the Border
16 Communities Liaison Offices can strengthen re-
17 lations and collaboration between communities
18 in the border regions and the Department, the
19 Department of Justice, and other Federal agen-
20 cies that carry out such policies, strategies, and
21 programs;

22 (C) evaluate how the policies, strategies,
23 and programs of Federal agencies operating
24 along the international borders between the
25 United States and Mexico and between the
26 United States and Canada protect the due proc-

1 ess, civil, and human rights of border residents,
2 visitors, and migrants at and near such borders;
3 and

4 (D) evaluate and make recommendations
5 regarding the training of border enforcement
6 personnel described in section 1112.

7 (3) MEMBERSHIP.—

8 (A) IN GENERAL.—The DHS Task Force
9 shall be composed of 33 members, appointed by
10 the President, who have expertise in migration,
11 local crime indices, civil and human rights,
12 community relations, cross-border trade and
13 commerce, quality of life indicators, or other
14 pertinent experience, of whom—

15 (i) 14 members shall be from the
16 Northern border region and shall include—

17 (I) 2 local government elected of-
18 ficials;

19 (II) 2 local law enforcement offi-
20 cials;

21 (III) 2 tribal government offi-
22 cials;

23 (IV) 2 civil rights advocates;

24 (V) 1 business representative;

1 (VI) 1 higher education rep-
2 resentative;

3 (VII) 1 private land owner rep-
4 resentative;

5 (VIII) 1 representative of a faith
6 community; and

7 (IX) 2 representatives of U.S.
8 Border Patrol; and

9 (ii) 19 members shall be from the
10 Southern border region and include—

11 (I) 3 local government elected of-
12 ficials;

13 (II) 3 local law enforcement offi-
14 cials;

15 (III) 2 tribal government offi-
16 cials;

17 (IV) 3 civil rights advocates;

18 (V) 2 business representatives;

19 (VI) 1 higher education rep-
20 resentative;

21 (VII) 2 private land owner rep-
22 resentatives;

23 (VIII) 1 representative of a faith
24 community; and

1 (IX) 2 representatives of U.S.
2 Border Patrol.

3 (B) TERM OF SERVICE.—Members of the
4 Task Force shall be appointed for the shorter
5 of—

6 (i) 3 years; or

7 (ii) the life of the DHS Task Force.

8 (C) CHAIR, VICE CHAIR.—The members of
9 the DHS Task Force shall elect a Chair and a
10 Vice Chair from among its members, who shall
11 serve in such capacities for the life of the DHS
12 Task Force or until removed by the majority
13 vote of at least 16 members.

14 (b) OPERATIONS.—

15 (1) HEARINGS.—The DHS Task Force may,
16 for the purpose of carrying out its duties, hold hear-
17 ings, sit and act, take testimony, receive evidence,
18 and administer oaths.

19 (2) RECOMMENDATIONS.—The DHS Task
20 Force may make findings or recommendations to the
21 Secretary related to the duties described in sub-
22 section (a)(2).

23 (3) RESPONSE.—Not later than 180 days after
24 receiving the findings and recommendations from
25 the DHS Task Force under paragraph (2), the Sec-

1 retary shall issue a response that describes how the
2 Department has addressed, or will address, such
3 findings and recommendations. If the Secretary dis-
4 agrees with any finding of the DHS Task Force, the
5 Secretary shall provide an explanation for the dis-
6 agreement.

7 (4) INFORMATION FROM FEDERAL AGENCIES.—
8 The Chair, or 16 members of the DHS Task Force,
9 may request statistics relating to the duties de-
10 scribed in subsection (a)(2) directly from any Fed-
11 eral agency, which shall, to the extent authorized by
12 law, furnish such information, suggestions, esti-
13 mates, and statistics directly to the DHS Task
14 Force.

15 (5) COMPENSATION.—Members of the DHS
16 Task Force shall serve without pay, but shall be re-
17 imbursed for reasonable travel and subsistence ex-
18 penses incurred in the performance of their duties.

19 (c) REPORT.—Not later than 2 years after its first
20 meeting, the DHS Task Force shall submit a final report
21 to the President, Congress, and the Secretary that con-
22 tains—

23 (1) findings with respect to the duties of the
24 DHS Task Force; and

1 (2) recommendations regarding border and im-
2 migration enforcement policies, strategies, and pro-
3 grams, including—

4 (A) a recommendation as to whether the
5 DHS Task Force should continue to operate;
6 and

7 (B) a description of any duties for which
8 the DHS Task Force should be responsible
9 after the termination date described in sub-
10 section (e).

11 (d) **AUTHORIZATION OF APPROPRIATIONS.**—There
12 are authorized to be appropriated such sums as may be
13 necessary to carry out this section for each of the fiscal
14 years 2014 through 2017.

15 (e) **SUNSET.**—The DHS Task Force shall terminate
16 operations 60 days after the date on which the DHS Task
17 Force submits the report described in subsection (c).

18 **SEC. 1114. OMBUDSMAN FOR IMMIGRATION RELATED CON-**
19 **CERNS OF THE DEPARTMENT OF HOMELAND**
20 **SECURITY.**

21 (a) **ESTABLISHMENT.**—Title I of the Homeland Se-
22 curity Act of 2002 (6 U.S.C. 111 et seq.) is amended by
23 adding at the end the following new section:

1 **“SEC. 104. OMBUDSMAN FOR IMMIGRATION RELATED CON-**
2 **CERNS.**

3 “(a) IN GENERAL.—There shall be within the De-
4 partment an Ombudsman for Immigration Related Con-
5 cerns (in this section referred to as the ‘Ombudsman’).
6 The individual appointed as Ombudsman shall have a
7 background in immigration law as well as civil and human
8 rights law. The Ombudsman shall report directly to the
9 Deputy Secretary.

10 “(b) FUNCTIONS.—The functions of the Ombudsman
11 shall be as follows:

12 “(1) To receive and resolve complaints from in-
13 dividuals and employers and assist in resolving prob-
14 lems with the immigration components of the De-
15 partment.

16 “(2) To conduct inspections of the facilities or
17 contract facilities of the immigration components of
18 the Department.

19 “(3) To assist individuals and families who
20 have been the victims of crimes committed by aliens
21 or violence near the United States border.

22 “(4) To identify areas in which individuals and
23 employers have problems in dealing with the immi-
24 gration components of the Department.

25 “(5) To the extent practicable, to propose
26 changes in the administrative practices of the immi-

1 gration components of the Department to mitigate
2 problems identified under paragraph (4).

3 “(6) To review, examine, and make rec-
4 ommendations regarding the immigration and en-
5 forcement policies, strategies, and programs of U.S.
6 Customs and Border Protection, U.S. Immigration
7 and Customs Enforcement, and U.S. Citizenship and
8 Immigration Services.

9 “(c) OTHER RESPONSIBILITIES.—In addition to the
10 functions specified in subsection (b), the Ombudsman
11 shall—

12 “(1) monitor the coverage and geographic allo-
13 cation of local offices of the Ombudsman, including
14 appointing a local ombudsman for immigration re-
15 lated concerns; and

16 “(2) evaluate and take personnel actions (in-
17 cluding dismissal) with respect to any employee of
18 the Ombudsman.

19 “(d) REQUEST FOR INVESTIGATIONS.—The Ombuds-
20 man shall have the authority to request the Inspector Gen-
21 eral of the Department of Homeland Security to conduct
22 inspections, investigations, and audits.

23 “(e) COORDINATION WITH DEPARTMENT COMPO-
24 NENTS.—The Director of U.S. Citizenship and Immigra-
25 tion Services, the Assistant Secretary of Immigration and

1 Customs Enforcement, and the Commissioner of Customs
2 and Border Protection shall each establish procedures to
3 provide formal responses to recommendations submitted
4 to such official by the Ombudsman.

5 “(f) ANNUAL REPORTS.—Not later than June 30 of
6 each year, the Ombudsman shall submit a report to the
7 Committee on the Judiciary of the Senate and the Com-
8 mittee on the Judiciary of the House of Representatives
9 on the objectives of the Ombudsman for the fiscal year
10 beginning in such calendar year. Each report shall contain
11 full and substantive analysis, in addition to statistical in-
12 formation, and shall set forth any recommendations the
13 Ombudsman has made on improving the services and re-
14 sponsiveness of U.S. Citizenship and Immigration Serv-
15 ices, U.S. Immigration and Customs Enforcement, and
16 U.S. Customs and Border Protection and any responses
17 received from the Department regarding such rec-
18 ommendations.”.

19 (b) REPEAL OF SUPERSEDED AUTHORITY.—Section
20 452 of the Homeland Security Act of 2002 (6 U.S.C. 272)
21 is repealed.

22 (c) CLERICAL AMENDMENTS.—The table of contents
23 for the Homeland Security Act of 2002 is amended—

24 (1) by inserting after the item relating to sec-
25 tion 103 the following new item:

“Sec. 104. Ombudsman for Immigration Related Concerns.”;

1 and

2 (2) by striking the item relating to section 452.

3 **SEC. 1115. PROTECTION OF FAMILY VALUES IN APPREHEN-**
4 **SION PROGRAMS.**

5 (a) DEFINITIONS.—In this section:

6 (1) APPREHENDED INDIVIDUAL.—The term
7 “apprehended individual” means an individual ap-
8 prehended by personnel of the Department of Home-
9 land Security or of a cooperating entity pursuant to
10 a migration deterrence program carried out at a bor-
11 der.

12 (2) BORDER.—The term “border” means an
13 international border of the United States.

14 (3) CHILD.—Except as otherwise specifically
15 provided, the term “child” has the meaning given to
16 the term in section 101(b)(1) of the Immigration
17 and Nationality Act (8 U.S.C. 1101(b)(1)).

18 (4) COOPERATING ENTITY.—The term “cooper-
19 ating entity” means a State or local entity acting
20 pursuant to an agreement with the Secretary.

21 (5) MIGRATION DETERRENCE PROGRAM.—The
22 term “migration deterrence program” means an ac-
23 tion related to the repatriation or referral for pros-
24 ecution of 1 or more apprehended individuals for a
25 suspected or confirmed violation of the Immigration

1 and Nationality Act (8 U.S.C. 1001 et seq.) by the
2 Secretary or a cooperating entity.

3 (b) PROCEDURES FOR MIGRATION DETERRENCE
4 PROGRAMS AT THE BORDER.—

5 (1) PROCEDURES.—In any migration deterrence
6 program carried out at a border, the Secretary and
7 cooperating entities shall for each apprehended indi-
8 vidual—

9 (A) as soon as practicable after such indi-
10 vidual is apprehended—

11 (i) inquire as to whether the appre-
12 hended individual is—

13 (I) a parent, legal guardian, or
14 primary caregiver of a child; or

15 (II) traveling with a spouse or
16 child; and

17 (ii) ascertain whether repatriation of
18 the apprehended individual presents any
19 humanitarian concern or concern related to
20 such individual's physical safety; and

21 (B) ensure that, with respect to a decision
22 related to the repatriation or referral for pros-
23 ecution of the apprehended individual, due con-
24 sideration is given—

1 (i) to the best interests of such indi-
2 vidual's child, if any;

3 (ii) to family unity whenever possible;

4 and

5 (iii) to other public interest factors,
6 including humanitarian concerns and con-
7 cerns related to the apprehended individ-
8 ual's physical safety.

9 (c) MANDATORY TRAINING.—The Secretary, in con-
10 sultation with the Secretary of Health and Human Serv-
11 ices, the Attorney General, the Secretary of State, and
12 independent immigration, child welfare, family law, and
13 human rights law experts, shall—

14 (1) develop and provide specialized training for
15 all personnel of U.S. Customs and Border Protection
16 and cooperating entities who come into contact with
17 apprehended individuals in all legal authorities, poli-
18 cies, and procedures relevant to the preservation of
19 a child's best interest, family unity, and other public
20 interest factors, including those described in this
21 Act; and

22 (2) require border enforcement personnel to un-
23 dertake periodic and continuing training on best
24 practices and changes in relevant legal authorities,
25 policies, and procedures pertaining to the preserva-

1 tion of a child’s best interest, family unity, and other
2 public interest factors, including those described in
3 this Act.

4 (d) ANNUAL REPORT ON THE IMPACT OF MIGRATION
5 DETERRENCE PROGRAMS AT THE BORDER.—

6 (1) REQUIREMENT FOR ANNUAL REPORT.—Not
7 later than 1 year after the date of the enactment of
8 this Act, and annually thereafter, the Secretary shall
9 submit to Congress a report that describes the im-
10 pact of migration deterrence programs on parents,
11 legal guardians, primary caregivers of a child, indi-
12 viduals traveling with a spouse or child, and individ-
13 uals who present humanitarian considerations or
14 concerns related to the individual’s physical safety.

15 (2) CONTENTS.—Each report submitted under
16 paragraph (1) shall include for the previous 1-year
17 period an assessment of—

18 (A) the number of apprehended individuals
19 removed, repatriated, or referred for prosecu-
20 tion who are the parent, legal guardian, or pri-
21 mary caregiver of a child who is a citizen of the
22 United States;

23 (B) the number of occasions in which both
24 parents, or the primary caretaker of such a
25 child was removed, repatriated, or referred for

1 prosecution as part of a migration deterrence
2 program;

3 (C) the number of apprehended individuals
4 traveling with close family members who are re-
5 moved, repatriated, or referred for prosecution.

6 (D) the impact of migration deterrence
7 programs on public interest factors, including
8 humanitarian concerns and physical safety.

9 (e) REGULATIONS.—Not later than 120 days after
10 the date of the enactment of this Act, the Secretary shall
11 promulgate regulations to implement this section.

12 **SEC. 1116. REPORTS.**

13 (a) REPORT ON CERTAIN BORDER MATTERS.—The
14 Secretary shall submit a report to the Committee on
15 Homeland Security and Governmental Affairs of the Sen-
16 ate, the Committee on Homeland Security of the House
17 of Representatives, the Committee on the Judiciary of the
18 Senate, and the Committee on the Judiciary of the House
19 of Representatives that sets forth—

20 (1) the effectiveness rate (as defined in section
21 2(a)(4)) for each Border Patrol sector along the
22 Northern border and the Southern border;

23 (2) the number of miles along the Southern
24 border that are under persistent surveillance;

1 (3) the monthly wait times per passenger, in-
2 cluding data on averages and peaks, for crossing the
3 Northern border and the Southern border, and the
4 staffing of such border crossings; and

5 (4) the allocations at each port of entry along
6 the Northern border and the Southern border.

7 (b) REPORT ON INTERAGENCY COLLABORATION.—
8 The Under Secretary of Defense for Acquisition, Tech-
9 nology, and Logistics and the Under Secretary of Home-
10 land Security for Science and Technology shall jointly sub-
11 mit a report on the results of the interagency collaboration
12 under section 1109 to—

13 (1) the Committee on Armed Services of the
14 Senate;

15 (2) the Committee on Homeland Security and
16 Governmental Affairs of the Senate;

17 (3) the Committee on the Judiciary of the Sen-
18 ate;

19 (4) the Committee on Armed Services of the
20 House of Representatives;

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

23 (6) the Committee on the Judiciary of the
24 House of Representatives.

1 **SEC. 1117. SEVERABILITY AND DELEGATION.**

2 (a) SEVERABILITY.—If any provision of this Act or
3 any amendment made by this Act, or any application of
4 such provision or amendment to any person or cir-
5 cumstance, is held to be unconstitutional, the remainder
6 of the provisions of this Act and the amendments made
7 by this Act and the application of the provision or amend-
8 ment to any other person or circumstance shall not be af-
9 fected.

10 (b) DELEGATION.—The Secretary may delegate any
11 authority provided to the Secretary under this Act or an
12 amendment made by this Act to the Secretary of Agri-
13 culture, the Attorney General, the Secretary of Defense,
14 the Secretary of Health and Human Services, the Sec-
15 retary of State, or the Commissioner of Social Security.

16 **SEC. 1118. PROHIBITION ON LAND BORDER CROSSING**
17 **FEEES.**

18 The Secretary shall not establish, collect, or otherwise
19 impose a border crossing fee for pedestrians or passenger
20 vehicles at land ports of entry along the Southern border
21 or the Northern border, nor conduct any study relating
22 to the imposition of such a fee.

23 **SEC. 1119. HUMAN TRAFFICKING REPORTING.**

24 (a) SHORT TITLE.—This section may be cited as the
25 “Human Trafficking Reporting Act of 2013”.

26 (b) FINDINGS.—Congress finds the following:

1 (1) Human trafficking is a form of modern-day
2 slavery.

3 (2) According to the Trafficking Victims Pro-
4 tection Act of 2000 “severe forms of trafficking in
5 persons” means—

6 (A) sex trafficking in which a commercial
7 sex act is induced by force, fraud, or coercion,
8 or in which the person induced to perform such
9 act has not attained 18 years of age; or

10 (B) the recruitment, harboring, transpor-
11 tation, provision, or obtaining of a person for
12 labor or services, through the use of force,
13 fraud, or coercion for the purpose of subjection
14 to involuntary servitude, peonage, debt bondage,
15 or slavery.

16 (3) There is an acute need for better data col-
17 lection of incidents of human trafficking across the
18 United States in order to effectively combat severe
19 forms of trafficking in persons.

20 (4) The State Department’s 2012 Trafficking
21 in Persons report found that—

22 (A) the United States is a “source, transit
23 and destination country for men, women, and
24 children, subjected to forced labor, debt bond-

1 age, domestic servitude and sex trafficking,”;
2 and

3 (B) the United States needs to “improve
4 data collection on human trafficking cases at
5 the federal, state and local levels”.

6 (5) The International Organization for Migra-
7 tion has reported that in order to effectively combat
8 human trafficking there must be reliable and stand-
9 ardized data, however, the following barriers for
10 data collection exist:

11 (A) The illicit and underground nature of
12 human trafficking.

13 (B) The reluctance of victims to share in-
14 formation with authorities.

15 (C) Insufficient human trafficking data
16 collection and research efforts by governments
17 worldwide.

18 (6) A 2009 report to the Department of Health
19 and Human Services entitled Human Trafficking
20 Into and Within the United States: A Review of the
21 Literature found that “the data and methodologies
22 for estimating the prevalence of human trafficking
23 globally and nationally are not well developed, and
24 therefore estimates have varied widely and changed
25 significantly over time”.

1 (7) The Federal Bureau of Investigation com-
2 piles national crime statistics through the Uniform
3 Crime Reporting Program.

4 (8) Under current law, State and local govern-
5 ments receiving Edward Byrne Memorial Justice As-
6 sistance grants are required to share data on part
7 1 violent crimes with the Federal Bureau of Inves-
8 tigation for inclusion in the Uniform Crime Report-
9 ing Program.

10 (9) The addition of severe forms of trafficking
11 in persons to the definition of part 1 violent crimes
12 will ensure that statistics on this heinous crime will
13 be compiled and available through the Federal Bu-
14 reau of Investigation’s Uniform Crime Report.

15 (c) HUMAN TRAFFICKING TO BE INCLUDED IN PART
16 1 VIOLENT CRIMES FOR PURPOSES OF BYRNE GRANTS.—
17 Section 505 of the Omnibus Crime Control and Safe
18 Streets Act of 1968 (42 U.S.C. 3755) is amended by add-
19 ing at the end the following new subsection:

20 “(i) PART 1 VIOLENT CRIMES TO INCLUDE HUMAN
21 TRAFFICKING.—For purposes of this section, the term
22 ‘part 1 violent crimes’ shall include severe forms of traf-
23 ficking in persons, as defined in section 103(8) of the
24 Trafficking Victims Protection Act of 2000 (22 U.S.C.
25 7102(8)).”.

1 **SEC. 1120. RULE OF CONSTRUCTION.**

2 Nothing in this Act may be construed to authorize
3 the deployment, procurement, or construction of fencing
4 along the Northern border.

5 **SEC. 1121. LIMITATIONS ON DANGEROUS DEPORTATION**
6 **PRACTICES.**

7 (a) **CERTIFICATION REQUIRED.—**

8 (1) **IN GENERAL.—**Not later than 1 year after
9 the date of the enactment of this Act, and every 180
10 days thereafter, the Secretary, except as provided in
11 paragraph (2), shall submit written certification to
12 Congress that the Department has only deported or
13 otherwise removed a migrant from the United States
14 through an entry or exit point on the Southern bor-
15 der during daylight hours.

16 (2) **EXCEPTION.—**The certification required
17 under paragraph (1) shall not apply to the deporta-
18 tion or removal of a migrant otherwise described in
19 that paragraph if—

20 (A) the manner of the deportation or re-
21 moval is justified by a compelling governmental
22 interest;

23 (B) the manner of the deportation or re-
24 moval is in accordance with an applicable Local
25 Arrangement for the Repatriation of Mexican

1 Nationals entered into by the appropriate Mexi-
2 can Consulate; or

3 (C) the migrant is not an unaccompanied
4 minor and the migrant—

5 (i) is deported or removed through an
6 entry or exit point in the same sector as
7 the place where the migrant was appre-
8 hended; or

9 (ii) agrees to be deported or removed
10 in such manner after being notified of the
11 intended manner of deportation or re-
12 moval.

13 (b) **ADDITIONAL INFORMATION REQUIRED.**—Not
14 later than 1 year after the date of the enactment of this
15 Act, the Secretary shall submit to Congress a study of the
16 Alien Transfer Exit Program, which shall include—

17 (1) the specific locations on the Southern bor-
18 der where lateral repatriations have occurred during
19 the 1-year period preceding the submission of the
20 study;

21 (2) the performance measures developed by
22 U.S. Customs and Border Protection to determine if
23 the Alien Transfer Exit Program is deterring mi-
24 grants from repeatedly crossing the border or other-
25 wise reducing recidivism; and

1 (3) the consideration given, if any, to the rates
2 of violent crime and the availability of infrastructure
3 and social services in Mexico near such locations.

4 (c) PROHIBITION ON CONFISCATION OF PROP-
5 ERTY.—Notwithstanding any other provision of law, law-
6 ful, nonperishable belongings of a migrant that are con-
7 fiscated by personnel operating under Federal authority
8 shall be returned to the migrant before repatriation, to
9 the extent practicable.

10 **SEC. 1122. MAXIMUM ALLOWABLE COSTS OF SALARIES OF**
11 **CONTRACTOR EMPLOYEES.**

12 Section 4304(a)(16) of title 41, United States Code,
13 is amended by inserting before the period at the end the
14 following: “, except that in the case of contracts with the
15 Department of Homeland Security or the National Guard
16 while operating in Federal status that relate to border se-
17 curity, the limit on the costs of compensation of all execu-
18 tives and employees of contractors is the annual amount
19 payable under the aggregate limitation on pay as estab-
20 lished by the Office of Management and Budget (currently
21 \$230,700)”.

1 **TITLE II—IMMIGRANT VISAS**
2 **Subtitle A—Registration and Ad-**
3 **justment of Registered Provi-**
4 **sional Immigrants**

5 **SEC. 2101. REGISTERED PROVISIONAL IMMIGRANT STATUS.**

6 (a) AUTHORIZATION.—Chapter 5 of title II (8 U.S.C.
7 1255 et seq.) is amended by inserting after section 245A
8 the following:

9 **“SEC. 245B. ADJUSTMENT OF STATUS OF ELIGIBLE EN-**
10 **TRANTS BEFORE DECEMBER 31, 2011, TO**
11 **THAT OF REGISTERED PROVISIONAL IMMI-**
12 **GRANT.**

13 “(a) IN GENERAL.—Notwithstanding any other pro-
14 vision of law, the Secretary of Homeland Security (re-
15 ferred to in this section and in sections 245C through
16 245F as the ‘Secretary’), after conducting the national se-
17 curity and law enforcement clearances required under sub-
18 section (c)(8), may grant registered provisional immigrant
19 status to an alien who—

20 “(1) meets the eligibility requirements set forth
21 in subsection (b);

22 “(2) submits a completed application before the
23 end of the period set forth in subsection (c)(3); and

1 “(3) has paid the fee required under subsection
2 (c)(10)(A) and the penalty required under sub-
3 section (c)(10)(C), if applicable.

4 “(b) ELIGIBILITY REQUIREMENTS.—

5 “(1) IN GENERAL.—An alien is not eligible for
6 registered provisional immigrant status unless the
7 alien establishes, by a preponderance of the evidence,
8 that the alien meets the requirements set forth in
9 this subsection.

10 “(2) PHYSICAL PRESENCE.—

11 “(A) IN GENERAL.—The alien—

12 “(i) shall be physically present in the
13 United States on the date on which the
14 alien submits an application for registered
15 provisional immigrant status;

16 “(ii) shall have been physically
17 present in the United States on or before
18 December 31, 2011; and

19 “(iii) shall have maintained contin-
20 uous physical presence in the United
21 States from December 31, 2011, until the
22 date on which the alien is granted status
23 as a registered provisional immigrant
24 under this section.

25 “(B) BREAK IN PHYSICAL PRESENCE.—

1 “(i) IN GENERAL.—Except as pro-
2 vided in clause (ii), an alien who is absent
3 from the United States without authoriza-
4 tion after the date of the enactment of the
5 Border Security, Economic Opportunity,
6 and Immigration Modernization Act does
7 not meet the continuous physical presence
8 requirement set forth in subparagraph
9 (A)(iii).

10 “(ii) EXCEPTION.—An alien who de-
11 parted from the United States after De-
12 cember 31, 2011, will not be considered to
13 have failed to maintain continuous pres-
14 ence in the United States if the alien’s ab-
15 sences from the United States are brief,
16 casual, and innocent whether or not such
17 absences were authorized by the Secretary.

18 “(3) GROUNDS FOR INELIGIBILITY.—

19 “(A) IN GENERAL.—Except as provided in
20 subparagraph (B), an alien is ineligible for reg-
21 istered provisional immigrant status if the Sec-
22 retary determines that the alien—

23 “(i) has a conviction for—

24 “(I) an offense classified as a fel-
25 ony in the convicting jurisdiction

1 (other than a State or local offense
2 for which an essential element was the
3 alien's immigration status, or a viola-
4 tion of this Act);

5 “(II) an aggravated felony (as
6 defined in section 101(a)(43) at the
7 time of the conviction);

8 “(III) 3 or more misdemeanor of-
9 fenses (other than minor traffic of-
10 fenses or State or local offenses for
11 which an essential element was the
12 alien's immigration status, or viola-
13 tions of this Act) if the alien was con-
14 victed on different dates for each of
15 the 3 offenses;

16 “(IV) any offense under foreign
17 law, except for a purely political of-
18 fense, which, if the offense had been
19 committed in the United States,
20 would render the alien inadmissible
21 under section 212(a) (excluding the
22 paragraphs set forth in clause (ii)) or
23 removable under section 237(a), ex-
24 cept as provided in paragraph (3) of
25 section 237(a);

1 “(V) unlawful voting (as defined
2 in section 237(a)(6));

3 “(ii) is inadmissible under section
4 212(a), except that in determining an
5 alien’s inadmissibility—

6 “(I) paragraphs (4), (5), (7), and
7 (9)(B) of section 212(a) shall not
8 apply;

9 “(II) subparagraphs (A), (C),
10 (D), (F), and (G) of section 212(a)(6)
11 and paragraphs (9)(C) and (10)(B) of
12 section 212(a) shall not apply unless
13 based on the act of unlawfully enter-
14 ing the United States after the date
15 of the enactment of the Border Secu-
16 rity, Economic Opportunity, and Im-
17 migration Modernization Act; and

18 “(III) paragraphs (6)(B) and
19 (9)(A) of section 212(a) shall not
20 apply unless the relevant conduct
21 began on or after the date on which
22 the alien files an application for reg-
23 istered provisional immigrant status
24 under this section;

1 “(iii) is an alien who the Secretary
2 knows or has reasonable grounds to be-
3 lieve, is engaged in or is likely to engage
4 after entry in any terrorist activity (as de-
5 fined in section 212(a)(3)(B)(iv)); or

6 “(iv) was, on April 16, 2013—

7 “(I) an alien lawfully admitted
8 for permanent residence;

9 “(II) an alien admitted as a ref-
10 ugee under section 207 or granted
11 asylum under section 208; or

12 “(III) an alien who, according to
13 the records of the Secretary or the
14 Secretary of State, is lawfully present
15 in the United States in any non-
16 immigrant status (other than an alien
17 considered to be a nonimmigrant sole-
18 ly due to the application of section
19 244(f)(4) or the amendment made by
20 section 702 of the Consolidated Nat-
21 ural Resources Act of 2008 (Public
22 Law 110–229)), notwithstanding any
23 unauthorized employment or other
24 violation of nonimmigrant status.

25 “(B) WAIVER.—

1 “(i) IN GENERAL.—The Secretary
2 may waive the application of subparagraph
3 (A)(i)(III) or any provision of section
4 212(a) that is not listed in clause (ii) on
5 behalf of an alien for humanitarian pur-
6 poses, to ensure family unity, or if such a
7 waiver is otherwise in the public interest.
8 Any discretionary authority to waive
9 grounds of inadmissibility under section
10 212(a) conferred under any other provision
11 of this Act shall apply equally to aliens
12 seeking registered provisional status under
13 this section.

14 “(ii) EXCEPTIONS.—The discretionary
15 authority under clause (i) may not be used
16 to waive—

17 “(I) subparagraph (B), (C),
18 (D)(ii), (E), (G), (H), or (I) of section
19 212(a)(2);

20 “(II) section 212(a)(3);

21 “(III) subparagraph (A), (C),
22 (D), or (E) of section 212(a)(10); or

23 “(IV) with respect to misrepre-
24 sentations relating to the application

1 for registered provisional immigrant
2 status, section 212(a)(6)(C)(i).

3 “(C) CONVICTION EXPLAINED.—For pur-
4 poses of this paragraph, the term ‘conviction’
5 does not include a judgment that has been ex-
6 punged, set aside, or the equivalent.

7 “(D) RULE OF CONSTRUCTION.—Nothing
8 in this paragraph may be construed to require
9 the Secretary to commence removal proceedings
10 against an alien.

11 “(4) APPLICABILITY OF OTHER PROVISIONS.—
12 Sections 208(d)(6) and 240B(d) shall not apply to
13 any alien filing an application for registered provi-
14 sional immigrant status under this section.

15 “(5) DEPENDENT SPOUSE AND CHILDREN.—

16 “(A) IN GENERAL.—Notwithstanding any
17 other provision of law, the Secretary may clas-
18 sify the spouse or child of a registered provi-
19 sional immigrant as a registered provisional im-
20 migrant dependent if the spouse or child—

21 “(i) was physically present in the
22 United States on or before December 31,
23 2012, and has maintained continuous pres-
24 ence in the United States from that date
25 until the date on which the registered pro-

1 visional immigrant is granted such status,
2 with the exception of absences from the
3 United States that are brief, casual, and
4 innocent, whether or not such absences
5 were authorized by the Secretary; and

6 “(ii) meets all of the eligibility re-
7 quirements set forth in this subsection,
8 other than the requirements of clause (ii)
9 or (iii) of paragraph (2)(A).

10 “(B) EFFECT OF TERMINATION OF LEGAL
11 RELATIONSHIP OR DOMESTIC VIOLENCE.—If
12 the spousal or parental relationship between an
13 alien who is granted registered provisional im-
14 migrant status under this section and the
15 alien’s spouse or child is terminated due to
16 death or divorce or the spouse or child has been
17 battered or subjected to extreme cruelty by the
18 alien (regardless of whether the legal relation-
19 ship terminates), the spouse or child may apply
20 for classification as a registered provisional im-
21 migrant.

22 “(C) EFFECT OF DISQUALIFICATION OF
23 PARENT.—Notwithstanding subsection (c)(3), if
24 the application of a spouse or parent for reg-
25 istered provisional immigrant status is termi-

1 nated or revoked, the husband, wife, or child of
2 that spouse or parent shall be eligible to apply
3 for registered provisional immigrant status
4 independent of the parent or spouse.

5 “(c) APPLICATION PROCEDURES.—

6 “(1) IN GENERAL.—An alien, or the dependent
7 spouse or child of such alien, who meets the eligi-
8 bility requirements set forth in subsection (b) may
9 apply for status as a registered provisional immi-
10 grant or a registered provisional immigrant depend-
11 ent, as applicable, by submitting a completed appli-
12 cation form to the Secretary during the application
13 period set forth in paragraph (3), in accordance with
14 the final rule promulgated by the Secretary under
15 the Border Security, Economic Opportunity, and
16 Immigration Modernization Act. An applicant for
17 registered provisional immigrant status shall be
18 treated as an applicant for admission.

19 “(2) PAYMENT OF TAXES.—

20 “(A) IN GENERAL.—An alien may not file
21 an application for registered provisional immi-
22 grant status under paragraph (1) unless the ap-
23 plicant has satisfied any applicable Federal tax
24 liability.

1 “(B) DEFINITION OF APPLICABLE FED-
2 ERAL TAX LIABILITY.—In this paragraph, the
3 term ‘applicable Federal tax liability’ means all
4 Federal income taxes assessed in accordance
5 with section 6203 of the Internal Revenue Code
6 of 1986.

7 “(C) DEMONSTRATION OF COMPLIANCE.—
8 An applicant may demonstrate compliance with
9 this paragraph by submitting appropriate docu-
10 mentation, in accordance with regulations pro-
11 mulgated by the Secretary, in consultation with
12 the Secretary of the Treasury.

13 “(3) APPLICATION PERIOD.—

14 “(A) INITIAL PERIOD.—Except as provided
15 in subparagraph (B), the Secretary may only
16 accept applications for registered provisional
17 immigrant status from aliens in the United
18 States during the 1-year period beginning on
19 the date on which the final rule is published in
20 the Federal Register pursuant to paragraph
21 (1).

22 “(B) EXTENSION.—If the Secretary deter-
23 mines, during the initial period described in
24 subparagraph (A), that additional time is re-
25 quired to process applications for registered

1 provisional immigrant status or for other good
2 cause, the Secretary may extend the period for
3 accepting applications for such status for an
4 additional 18 months.

5 “(4) APPLICATION FORM.—

6 “(A) REQUIRED INFORMATION.—

7 “(i) IN GENERAL.—The application
8 form referred to in paragraph (1) shall col-
9 lect such information as the Secretary de-
10 termines to be necessary and appropriate,
11 including, for the purpose of understanding
12 immigration trends—

13 “(I) an explanation of how, when,
14 and where the alien entered the
15 United States;

16 “(II) the country in which the
17 alien resided before entering the
18 United States; and

19 “(III) other demographic infor-
20 mation specified by the Secretary.

21 “(ii) PRIVACY PROTECTIONS.—Infor-
22 mation described in subclauses (I) through
23 (III) of clause (i), which shall be provided
24 anonymously by the applicant on the appli-
25 cation form referred to in paragraph (1),

1 shall be subject to the same confidentiality
2 provisions as those set forth in section 9 of
3 title 13, United States Code.

4 “(iii) REPORT.—The Secretary shall
5 submit a report to Congress that contains
6 a summary of the statistical data about
7 immigration trends collected pursuant to
8 clause (i).

9 “(B) FAMILY APPLICATION.—The Sec-
10 retary shall establish a process through which
11 an alien may submit a single application under
12 this section on behalf of the alien, his or her
13 spouse, and his or her children who are residing
14 in the United States.

15 “(C) INTERVIEW.—The Secretary may
16 interview applicants for registered provisional
17 immigrant status under this section to deter-
18 mine whether they meet the eligibility require-
19 ments set forth in subsection (b).

20 “(5) ALIENS APPREHENDED BEFORE OR DUR-
21 ING THE APPLICATION PERIOD.—If an alien who is
22 apprehended during the period beginning on the
23 date of the enactment of the Border Security, Eco-
24 nomic Opportunity, and Immigration Modernization
25 Act and the end of the application period described

1 in paragraph (3) appears prima facie eligible for
2 registered provisional immigrant status, to the satis-
3 faction of the Secretary, the Secretary—

4 “(A) shall provide the alien with a reason-
5 able opportunity to file an application under
6 this section during such application period; and

7 “(B) may not remove the individual until
8 a final administrative determination is made on
9 the application.

10 “(6) ELIGIBILITY AFTER DEPARTURE.—

11 “(A) IN GENERAL.—An alien who departed
12 from the United States while subject to an
13 order of exclusion, deportation, or removal, or
14 pursuant to an order of voluntary departure
15 and who is outside of the United States, or who
16 has reentered the United States illegally after
17 December 31, 2011 without receiving the Sec-
18 retary’s consent to reapply for admission under
19 section 212(a)(9), shall not be eligible to file an
20 application for registered provisional immigrant
21 status.

22 “(B) WAIVER.—The Secretary, in the Sec-
23 retary’s sole and unreviewable discretion, sub-
24 ject to subparagraph (D), may waive the appli-

1 cation of subparagraph (A) on behalf of an
2 alien if the alien—

3 “(i) is the spouse or child of a United
4 States citizen or lawful permanent resi-
5 dent;

6 “(ii) is the parent of a child who is a
7 United States citizen or lawful permanent
8 resident;

9 “(iii) meets the requirements set forth
10 in clauses (ii) and (iii) of section
11 245D(b)(1)(A); or

12 “(iv) meets the requirements set forth
13 in section 245D(b)(1)(A)(ii), is 16 years or
14 older on the date on which the alien ap-
15 plies for registered provisional immigrant
16 status, and was physically present in the
17 United States for an aggregate period of
18 not less than 3 years during the 6-year pe-
19 riod immediately preceding the date of the
20 enactment of the Border Security, Eco-
21 nomic Opportunity, and Immigration Mod-
22 ernization Act.

23 “(C) ELIGIBILITY.—Subject to subpara-
24 graph (D) and notwithstanding subsection
25 (b)(2), section 241(a)(5), or a prior order of ex-

1 clusion, deportation, or removal, an alien de-
2 scribed in subparagraph (B) who is otherwise
3 eligible for registered provisional immigrant sta-
4 tus may file an application for such status.

5 “(D) CRIME VICTIMS’ RIGHTS TO NOTICE
6 AND CONSULTATION.—Prior to applying, or ex-
7 ercising, any authority under this paragraph, or
8 ruling upon an application allowed under sub-
9 paragraph (C) the Secretary shall—

10 “(i) determine whether or not an alien
11 described under subparagraph (B) or (C)
12 has a conviction for any criminal offense;

13 “(ii) in consultation with the agency
14 that prosecuted the criminal offense under
15 clause (i), if the agency, in the sole discre-
16 tion of the agency, is willing to cooperate
17 with the Secretary, make all reasonable ef-
18 forts to identify each victim of a crime for
19 which an alien determined to be a criminal
20 under clause (i) has a conviction;

21 “(iii) in consultation with the agency
22 that prosecuted the criminal offense under
23 clause (i), if the agency, in the sole discre-
24 tion of the agency, is willing to cooperate
25 with the Secretary, make all reasonable ef-

1 forts to provide each victim identified
2 under clause (ii) with written notice that
3 the alien is being considered for a waiver
4 under this paragraph, specifying in such
5 notice that the victim may—

6 “(I) take no further action;

7 “(II) request written notification
8 by the Secretary of any subsequent
9 application for waiver filed by the
10 criminal alien under this paragraph
11 and of the final determination of the
12 Secretary regarding such application;
13 or

14 “(III) not later than 60 days
15 after the date on which the victim re-
16 ceives written notice under this clause,
17 request a consultation with the Sec-
18 retary relating to whether the applica-
19 tion of the offender should be granted
20 and if the victim cannot be located or
21 if no response is received from the vic-
22 tim within the designated time period,
23 the Secretary shall proceed with adju-
24 dication of the application; and

1 “(iv) at the request of a victim under
2 clause (iii), consult with the victim to de-
3 termine whether or not the Secretary
4 should, in the case of an alien who is de-
5 termined under clause (i) to have a convic-
6 tion for any criminal offense, exercise waiv-
7 er authority for an alien described under
8 subparagraph (B), or grant the application
9 of an alien described under subparagraph
10 (C).

11 “(E) CRIME VICTIMS’ RIGHT TO INTER-
12 VENTION.—In addition to the victim notifica-
13 tion and consultation provided for in subpara-
14 graph (D), the Secretary shall allow the victim
15 of a criminal alien described under subpara-
16 graph (B) or (C) to request consultation re-
17 garding, or notice of, any application for waiver
18 filed by the criminal alien under this paragraph,
19 including the final determination of the Sec-
20 retary regarding such application.

21 “(F) CONFIDENTIALITY PROTECTIONS FOR
22 CRIME VICTIMS.—The Secretary and the Attor-
23 ney General may not make an adverse deter-
24 mination of admissibility or deportability of any
25 alien who is a victim and not lawfully present

1 in the United States based solely on informa-
2 tion supplied or derived in the process of identi-
3 fication, notification, or consultation under this
4 paragraph.

5 “(G) REPORTS REQUIRED.—Not later than
6 September 30 of each fiscal year in which the
7 Secretary exercises authority under this para-
8 graph to rule upon the application of a criminal
9 offender allowed under subparagraph (C), the
10 Secretary shall submit to the Committee on the
11 Judiciary of the Senate and the Committee on
12 the Judiciary of the House of Representatives a
13 report detailing the execution of the victim
14 identification and notification process required
15 under subparagraph (D), which shall include—

16 “(i) the total number of criminal of-
17 fenders who have filed an application
18 under subparagraph (C) and the crimes
19 committed by such offenders;

20 “(ii) the total number of criminal of-
21 fenders whose application under subpara-
22 graph (C) has been granted and the crimes
23 committed by such offenders; and

24 “(iii) the total number of victims of
25 criminal offenders under clause (ii) who

1 were not provided with written notice of
2 the offender’s application and the crimes
3 committed against the victims.

4 “(H) DEFINITION.—In this paragraph, the
5 term ‘victim’ has the meaning given the term in
6 section 503(e) of the Victims’ Rights and Res-
7 titution Act of 1990 (42 U.S.C. 10607(e)).

8 “(7) SUSPENSION OF REMOVAL DURING APPLI-
9 CATION PERIOD.—

10 “(A) PROTECTION FROM DETENTION OR
11 REMOVAL.—A registered provisional immigrant
12 may not be detained by the Secretary or re-
13 moved from the United States, unless—

14 “(i) the Secretary determines that—

15 “(I) such alien is, or has become,
16 ineligible for registered provisional im-
17 migrant status under subsection
18 (b)(3); or

19 “(II) the alien’s registered provi-
20 sional immigrant status has been re-
21 voked under subsection (d)(2).

22 “(B) ALIENS IN REMOVAL PRO-
23 CEEDINGS.—Notwithstanding any other provi-
24 sion of this Act—

1 “(i) if the Secretary determines that
2 an alien, during the period beginning on
3 the date of the enactment of this section
4 and ending on the last day of the applica-
5 tion period described in paragraph (3), is
6 in removal, deportation, or exclusion pro-
7 ceedings before the Executive Office for
8 Immigration Review and is prima facie eli-
9 gible for registered provisional immigrant
10 status under this section—

11 “(I) the Secretary shall provide
12 the alien with the opportunity to file
13 an application for such status; and

14 “(II) upon motion by the Sec-
15 retary and with the consent of the
16 alien or upon motion by the alien, the
17 Executive Office for Immigration Re-
18 view shall—

19 “(aa) terminate such pro-
20 ceedings without prejudice to fu-
21 ture proceedings on any basis;
22 and

23 “(bb) provide the alien a
24 reasonable opportunity to apply
25 for such status; and

1 “(ii) if the Executive Office for Immi-
2 gration Review determines that an alien,
3 during the period beginning on the date of
4 the enactment of this section and ending
5 on the last day of the application period
6 described in paragraph (3), is in removal,
7 deportation, or exclusion proceedings be-
8 fore the Executive Office for Immigration
9 Review and is prima facie eligible for reg-
10 istered provisional immigrant status under
11 this section—

12 “(I) the Executive Office of Im-
13 migration Review shall notify the Sec-
14 retary of such determination; and

15 “(II) if the Secretary does not
16 dispute the determination of prima
17 facie eligibility within 7 days after
18 such notification, the Executive Office
19 for Immigration Review, upon consent
20 of the alien, shall—

21 “(aa) terminate such pro-
22 ceedings without prejudice to fu-
23 ture proceedings on any basis;
24 and

1 “(bb) permit the alien a rea-
2 sonable opportunity to apply for
3 such status.

4 “(C) TREATMENT OF CERTAIN ALIENS.—

5 “(i) IN GENERAL.—If an alien who
6 meets the eligibility requirements set forth
7 in subsection (b) is present in the United
8 States and has been ordered excluded, de-
9 ported, or removed, or ordered to depart
10 voluntarily from the United States under
11 any provision of this Act—

12 “(I) notwithstanding such order
13 or section 241(a)(5), the alien may
14 apply for registered provisional immi-
15 grant status under this section; and

16 “(II) if the alien is granted such
17 status, the alien shall file a motion to
18 reopen the exclusion, deportation, re-
19 moval, or voluntary departure order,
20 which motion shall be granted unless
21 1 or more of the grounds of ineligi-
22 bility is established by clear and con-
23 vincing evidence.

24 “(ii) LIMITATIONS ON MOTIONS TO
25 REOPEN.—The limitations on motions to

1 reopen set forth in section 240(c)(7) shall
2 not apply to motions filed under clause
3 (i)(II).

4 “(D) PERIOD PENDING ADJUDICATION OF
5 APPLICATION.—

6 “(i) IN GENERAL.—During the period
7 beginning on the date on which an alien
8 applies for registered provisional immi-
9 grant status under paragraph (1) and the
10 date on which the Secretary makes a final
11 decision regarding such application, the
12 alien—

13 “(I) may receive advance parole
14 to reenter the United States if urgent
15 humanitarian circumstances compel
16 such travel;

17 “(II) may not be detained by the
18 Secretary or removed from the United
19 States unless the Secretary makes a
20 prima facie determination that such
21 alien is, or has become, ineligible for
22 registered provisional immigrant sta-
23 tus under subsection (b)(3);

1 “(III) shall not be considered un-
2 lawfully present for purposes of sec-
3 tion 212(a)(9)(B); and

4 “(IV) shall not be considered an
5 unauthorized alien (as defined in sec-
6 tion 274A(h)(3)).

7 “(ii) EVIDENCE OF APPLICATION FIL-
8 ING.—As soon as practicable after receiv-
9 ing each application for registered provi-
10 sional immigrant status, the Secretary
11 shall provide the applicant with a docu-
12 ment acknowledging the receipt of such ap-
13 plication.

14 “(iii) CONTINUING EMPLOYMENT.—
15 An employer who knows that an alien em-
16 ployee is an applicant for registered provi-
17 sional immigrant status or will apply for
18 such status once the application period
19 commences is not in violation of section
20 274A(a)(2) if the employer continues to
21 employ the alien pending the adjudication
22 of the alien employee’s application.

23 “(iv) EFFECT OF DEPARTURE.—Sec-
24 tion 101(g) shall not apply to an alien
25 granted—

1 “(I) advance parole under clause
2 (i)(I) to reenter the United States; or
3 “(II) registered provisional immi-
4 grant status.

5 “(8) SECURITY AND LAW ENFORCEMENT
6 CLEARANCES.—

7 “(A) BIOMETRIC AND BIOGRAPHIC
8 DATA.—The Secretary may not grant registered
9 provisional immigrant status to an alien or an
10 alien dependent spouse or child under this sec-
11 tion unless such alien submits biometric and
12 biographic data in accordance with procedures
13 established by the Secretary.

14 “(B) ALTERNATIVE PROCEDURES.—The
15 Secretary shall provide an alternative procedure
16 for applicants who cannot provide the biometric
17 data required under subparagraph (A) because
18 of a physical impairment.

19 “(C) CLEARANCES.—

20 “(i) DATA COLLECTION.—The Sec-
21 retary shall collect, from each alien apply-
22 ing for status under this section, biometric,
23 biographic, and other data that the Sec-
24 retary determines to be appropriate—

1 “(I) to conduct national security
2 and law enforcement clearances; and

3 “(II) to determine whether there
4 are any national security or law en-
5 forcement factors that would render
6 an alien ineligible for such status.

7 “(ii) ADDITIONAL SECURITY SCREEN-
8 ING.—The Secretary, in consultation with
9 the Secretary of State and other inter-
10 agency partners, shall conduct an addi-
11 tional security screening upon determining,
12 in the Secretary’s opinion based upon in-
13 formation related to national security, that
14 an alien or alien dependent spouse or child
15 is or was a citizen or long-term resident of
16 a region or country known to pose a
17 threat, or that contains groups or organi-
18 zations that pose a threat, to the national
19 security of the United States.

20 “(iii) PREREQUISITE.—The required
21 clearances and screenings described in
22 clauses (i)(I) and (ii) shall be completed
23 before the alien may be granted registered
24 provisional immigrant status.

25 “(9) DURATION OF STATUS AND EXTENSION.—

1 “(A) IN GENERAL.—The initial period of
2 authorized admission for a registered provi-
3 sional immigrant—

4 “(i) shall remain valid for 6 years un-
5 less revoked pursuant to subsection (d)(2);
6 and

7 “(ii) may be extended for additional
8 6-year terms if—

9 “(I) the alien remains eligible for
10 registered provisional immigrant sta-
11 tus;

12 “(II) the alien meets the employ-
13 ment requirements set forth in sub-
14 paragraph (B);

15 “(III) the alien has successfully
16 passed background checks that are
17 equivalent to the background checks
18 described in section 245D(b)(1)(E);
19 and

20 “(IV) such status was not re-
21 voked by the Secretary for any reason.

22 “(B) EMPLOYMENT OR EDUCATION RE-
23 QUIREMENT.—Except as provided in subpara-
24 graphs (D) and (E) of section 245C(b)(3), an
25 alien may not be granted an extension of reg-

1 istered provisional immigrant status under this
2 paragraph unless the alien establishes that,
3 during the alien’s period of status as a reg-
4 istered provisional immigrant, the alien—

5 “(i)(I) was regularly employed
6 throughout the period of admission as a
7 registered provisional immigrant, allowing
8 for brief periods lasting not more than 60
9 days; and

10 “(II) is not likely to become a public
11 charge (as determined under section
12 212(a)(4)); or

13 “(ii) is able to demonstrate average
14 income or resources that are not less than
15 100 percent of the Federal poverty level
16 throughout the period of admission as a
17 registered provisional immigrant.

18 “(C) PAYMENT OF TAXES.—An applicant
19 may not be granted an extension of registered
20 provisional immigrant status under subpara-
21 graph (A)(ii) unless the applicant has satisfied
22 any applicable Federal tax liability in accord-
23 ance with paragraph (2).

24 “(10) FEES AND PENALTIES.—

25 “(A) STANDARD PROCESSING FEE.—

1 “(i) IN GENERAL.—Aliens who are 16
2 years of age or older and are applying for
3 registered provisional immigrant status
4 under paragraph (1), or for an extension
5 of such status under paragraph (9)(A)(ii),
6 shall pay a processing fee to the Depart-
7 ment of Homeland Security in an amount
8 determined by the Secretary.

9 “(ii) RECOVERY OF COSTS.—The
10 processing fee authorized under clause (i)
11 shall be set at a level that is sufficient to
12 recover the full costs of processing the ap-
13 plication, including any costs incurred—

14 “(I) to adjudicate the application;

15 “(II) to take and process bio-
16 metrics;

17 “(III) to perform national secu-
18 rity and criminal checks, including ad-
19 judication;

20 “(IV) to prevent and investigate
21 fraud; and

22 “(V) to administer the collection
23 of such fee.

24 “(iii) AUTHORITY TO LIMIT FEES.—
25 The Secretary, by regulation, may—

1 “(I) limit the maximum proc-
2 essing fee payable under this subpara-
3 graph by a family, including spouses
4 and unmarried children younger than
5 21 years of age; and

6 “(II) exempt defined classes of
7 individuals, including individuals de-
8 scribed in section 245B(c)(13), from
9 the payment of the fee authorized
10 under clause (i).

11 “(B) DEPOSIT AND USE OF PROCESSING
12 FEES.—Fees collected under subparagraph
13 (A)(i)—

14 “(i) shall be deposited into the Immi-
15 gration Examinations Fee Account pursu-
16 ant to section 286(m); and

17 “(ii) shall remain available until ex-
18 pended pursuant to section 286(n).

19 “(C) PENALTY.—

20 “(i) PAYMENT.—In addition to the
21 processing fee required under subpara-
22 graph (A), aliens not described in section
23 245D(b)(A)(ii) who are 21 years of age or
24 older and are filing an application under

1 this subsection shall pay a \$1,000 penalty
2 to the Department of Homeland Security.

3 “(ii) INSTALLMENTS.—The Secretary
4 shall establish a process for collecting pay-
5 ments required under clause (i) that per-
6 mits the penalty under that clause to be
7 paid in periodic installments that shall be
8 completed before the alien may be granted
9 an extension of status under paragraph
10 (9)(A)(ii).

11 “(iii) DEPOSIT.—Penalties collected
12 pursuant to this subparagraph shall be de-
13 posited into the Comprehensive Immigra-
14 tion Reform Trust Fund established under
15 section 9(a)(1) of the Border Security,
16 Economic Opportunity, and Immigration
17 Modernization Act.

18 “(11) ADJUDICATION.—

19 “(A) FAILURE TO SUBMIT SUFFICIENT
20 EVIDENCE.—The Secretary shall deny an appli-
21 cation submitted by an alien who fails to sub-
22 mit—

23 “(i) requested initial evidence, includ-
24 ing requested biometric data; or

1 “(ii) any requested additional evidence
2 by the date required by the Secretary.

3 “(B) AMENDED APPLICATION.—An alien
4 whose application for registered provisional im-
5 migrant status is denied under subparagraph
6 (A) may file an amended application for such
7 status to the Secretary if the amended applica-
8 tion—

9 “(i) is filed within the application pe-
10 riod described in paragraph (3); and

11 “(ii) contains all the required informa-
12 tion and fees that were missing from the
13 initial application.

14 “(12) EVIDENCE OF REGISTERED PROVISIONAL
15 IMMIGRANT STATUS.—

16 “(A) IN GENERAL.—The Secretary shall
17 issue documentary evidence of registered provi-
18 sional immigrant status to each alien whose ap-
19 plication for such status has been approved.

20 “(B) DOCUMENTATION FEATURES.—Docu-
21 mentary evidence provided under subparagraph
22 (A)—

23 “(i) shall be machine-readable and
24 tamper-resistant, and shall contain a
25 digitized photograph;

1 “(ii) shall, during the alien’s author-
2 ized period of admission, and any exten-
3 sion of such authorized admission, serve as
4 a valid travel and entry document for the
5 purpose of applying for admission to the
6 United States;

7 “(iii) may be accepted during the pe-
8 riod of its validity by an employer as evi-
9 dence of employment authorization and
10 identity under section 274A(b)(1)(B);

11 “(iv) shall indicate that the alien is
12 authorized to work in the United States
13 for up to 3 years; and

14 “(v) shall include such other features
15 and information as may be prescribed by
16 the Secretary.

17 “(13) DACA RECIPIENTS.—Unless the Sec-
18 retary determines that an alien who was granted De-
19 ferred Action for Childhood Arrivals (referred to in
20 this paragraph as ‘DACA’) pursuant to the Sec-
21 retary’s memorandum of June 15, 2012, has en-
22 gaged in conduct since the alien was granted DACA
23 that would make the alien ineligible for registered
24 provisional immigrant status, the Secretary may
25 grant such status to the alien if renewed national se-

1 security and law enforcement clearances have been
2 completed on behalf of the alien.

3 “(d) TERMS AND CONDITIONS OF REGISTERED PRO-
4 VISIONAL IMMIGRANT STATUS.—

5 “(1) CONDITIONS OF REGISTERED PROVISIONAL
6 IMMIGRANT STATUS.—

7 “(A) EMPLOYMENT.—Notwithstanding any
8 other provision of law, including section
9 241(a)(7), a registered provisional immigrant
10 shall be authorized to be employed in the
11 United States while in such status.

12 “(B) TRAVEL OUTSIDE THE UNITED
13 STATES.—A registered provisional immigrant
14 may travel outside of the United States and
15 may be admitted, if otherwise admissible, upon
16 returning to the United States without having
17 to obtain a visa if—

18 “(i) the alien is in possession of—

19 “(I) valid, unexpired documen-
20 tary evidence of registered provisional
21 immigrant status that complies with
22 subsection (c)(12); or

23 “(II) a travel document, duly ap-
24 proved by the Secretary, that was
25 issued to the alien after the alien’s

1 original documentary evidence was
2 lost, stolen, or destroyed;

3 “(ii) the alien’s absence from the
4 United States did not exceed 180 days, un-
5 less the alien’s failure to timely return was
6 due to extenuating circumstances beyond
7 the alien’s control;

8 “(iii) the alien meets the requirements
9 for an extension as described in subclauses
10 (I) and (III) of paragraph (9)(A); and

11 “(iv) the alien establishes that the
12 alien is not inadmissible under subpara-
13 graph (A)(i), (A)(iii), (B), or (C) of section
14 212(a)(3).

15 “(C) ADMISSION.—An alien granted reg-
16 istered provisional immigrant status under this
17 section shall be considered to have been admit-
18 ted and lawfully present in the United States in
19 such status as of the date on which the alien’s
20 application was filed.

21 “(D) CLARIFICATION OF STATUS.—An
22 alien granted registered provisional immigrant
23 status—

24 “(i) is lawfully admitted to the United
25 States; and

1 “(ii) may not be classified as a non-
2 immigrant or as an alien who has been
3 lawfully admitted for permanent residence.

4 “(2) REVOCATION.—

5 “(A) IN GENERAL.—The Secretary may re-
6 voke the status of a registered provisional immi-
7 grant at any time after providing appropriate
8 notice to the alien, and after the exhaustion or
9 waiver of all applicable administrative review
10 procedures under section 245E(c), if the
11 alien—

12 “(i) no longer meets the eligibility re-
13 quirements set forth in subsection (b);

14 “(ii) knowingly used documentation
15 issued under this section for an unlawful
16 or fraudulent purpose;

17 “(iii) is convicted of fraudulently
18 claiming or receiving a Federal means-test-
19 ed benefit (as defined and implemented in
20 section 403 of the Personal Responsibility
21 and Work Opportunity Reconciliation Act
22 of 1996 (8 U.S.C. 1613)) after being
23 granted registered provisional immigrant
24 status; or

1 “(iv) was absent from the United
2 States—

3 “(I) for any single period longer
4 than 180 days in violation of the re-
5 quirements set forth in paragraph
6 (1)(B)(ii); or

7 “(II) for more than 180 days in
8 the aggregate during any calendar
9 year, unless the alien’s failure to time-
10 ly return was due to extenuating cir-
11 cumstances beyond the alien’s control.

12 “(B) ADDITIONAL EVIDENCE.—In deter-
13 mining whether to revoke an alien’s status
14 under subparagraph (A), the Secretary may re-
15 quire the alien—

16 “(i) to submit additional evidence; or

17 “(ii) to appear for an interview.

18 “(C) INVALIDATION OF DOCUMENTA-
19 TION.—If an alien’s registered provisional im-
20 migrant status is revoked under subparagraph
21 (A), any documentation issued by the Secretary
22 to such alien under subsection (c)(12) shall
23 automatically be rendered invalid for any pur-
24 pose except for departure from the United
25 States.

1 “(3) INELIGIBILITY FOR PUBLIC BENEFITS.—

2 “(A) IN GENERAL.—An alien who has been
3 granted registered provisional immigrant status
4 under this section is not eligible for any Federal
5 means-tested public benefit (as defined and im-
6 plemented in section 403 of the Personal Re-
7 sponsibility and Work Opportunity Reconcili-
8 ation Act of 1996 (8 U.S.C. 1613)).

9 “(B) AUDITS.—The Secretary of Health
10 and Human Services shall conduct regular au-
11 dits to ensure that registered provisional immi-
12 grants are not fraudulently receiving any of the
13 benefits described in subparagraph (A).

14 “(4) TREATMENT OF REGISTERED PROVISIONAL
15 IMMIGRANTS.—A noncitizen granted registered pro-
16 visional immigrant status under this section shall be
17 considered lawfully present in the United States for
18 all purposes while such noncitizen remains in such
19 status, except that the noncitizen—

20 “(A) is not entitled to the premium assist-
21 ance tax credit authorized under section 36B of
22 the Internal Revenue Code of 1986 for his or
23 her coverage;

1 “(B) shall be subject to the rules applica-
2 ble to individuals not lawfully present that are
3 set forth in subsection (e) of such section;

4 “(C) shall be subject to the rules applicable
5 to individuals not lawfully present that are set
6 forth in section 1402(e) of the Patient Protec-
7 tion and Affordable Care Act (42 U.S.C.
8 18071); and

9 “(D) shall be subject to the rules applica-
10 ble to individuals not lawfully present set forth
11 in section 5000A(d)(3) of the Internal Revenue
12 Code of 1986.

13 “(5) ASSIGNMENT OF SOCIAL SECURITY NUM-
14 BER.—

15 “(A) IN GENERAL.—The Commissioner of
16 Social Security, in coordination with the Sec-
17 retary, shall implement a system to allow for
18 the assignment of a Social Security number and
19 the issuance of a Social Security card to each
20 alien who has been granted registered provi-
21 sional immigrant status under this section.

22 “(B) USE OF INFORMATION.—The Sec-
23 retary shall provide the Commissioner of Social
24 Security with information from the applications
25 filed by aliens granted registered provisional im-

1 migrant status under this section and such
2 other information as the Commissioner deter-
3 mines to be necessary to assign a Social Secu-
4 rity account number to such aliens. The Com-
5 missioner may use information received from
6 the Secretary under this subparagraph to as-
7 sign Social Security account numbers to such
8 aliens and to administer the programs of the
9 Social Security Administration. The Commis-
10 sioner may maintain, use, and disclose such in-
11 formation only as permitted under section 552a
12 of title 5, United States Code (commonly known
13 as the Privacy Act of 1974) and other applica-
14 ble Federal laws.

15 “(e) DISSEMINATION OF INFORMATION ON REG-
16 ISTERED PROVISIONAL IMMIGRANT PROGRAM.—As soon
17 as practicable after the date of the enactment of the Bor-
18 der Security, Economic Opportunity, and Immigration
19 Modernization Act, the Secretary, in cooperation with en-
20 tities approved by the Secretary, and in accordance with
21 a plan adopted by the Secretary, shall broadly dissemi-
22 nate, in the most common languages spoken by aliens who
23 would qualify for registered provisional immigrant status
24 under this section, to television, radio, print, and social
25 media to which such aliens would likely have access—

1 isfies the eligibility requirements set forth in subsection
2 (b).

3 “(b) ELIGIBILITY REQUIREMENTS.—

4 “(1) REGISTERED PROVISIONAL IMMIGRANT
5 STATUS.—

6 “(A) IN GENERAL.—The alien was granted
7 registered provisional immigrant status under
8 section 245B and remains eligible for such sta-
9 tus.

10 “(B) CONTINUOUS PHYSICAL PRESENCE.—
11 The alien establishes, to the satisfaction of the
12 Secretary, that the alien was not continuously
13 absent from the United States for more than
14 180 days in any calendar year during the pe-
15 riod of admission as a registered provisional im-
16 migrant, unless the alien’s absence was due to
17 extenuating circumstances beyond the alien’s
18 control.

19 “(C) MAINTENANCE OF WAIVERS OF INAD-
20 MISSIBILITY.—The grounds of inadmissibility
21 set forth in section 212(a) that were previously
22 waived for the alien or made inapplicable under
23 section 245B(b) shall not apply for purposes of
24 the alien’s adjustment of status under this sec-
25 tion.

1 “(D) PENDING REVOCATION PRO-
2 CEEDINGS.—If the Secretary has notified the
3 applicant that the Secretary intends to revoke
4 the applicant’s registered provisional immigrant
5 status under section 245B(d)(2)(A), the Sec-
6 retary may not approve an application for ad-
7 justment of status under this section unless the
8 Secretary makes a final determination not to
9 revoke the applicant’s status.

10 “(2) PAYMENT OF TAXES.—

11 “(A) IN GENERAL.—An applicant may not
12 file an application for adjustment of status
13 under this section unless the applicant has sat-
14 isfied any applicable Federal tax liability.

15 “(B) DEFINITION OF APPLICABLE FED-
16 ERAL TAX LIABILITY.—In subparagraph (A),
17 the term ‘applicable Federal tax liability’ means
18 all Federal income taxes assessed in accordance
19 with section 6203 of the Internal Revenue Code
20 of 1986 since the date on which the applicant
21 was authorized to work in the United States as
22 a registered provisional immigrant under sec-
23 tion 245B(a).

24 “(C) COMPLIANCE.—The applicant may
25 demonstrate compliance with subparagraph (A)

1 by submitting such documentation as the Sec-
2 retary, in consultation with the Secretary of the
3 Treasury, may require by regulation.

4 “(3) EMPLOYMENT REQUIREMENT.—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraphs (D) and (E), an alien applying
7 for adjustment of status under this section shall
8 establish that, during his or her period of status
9 as a registered provisional immigrant, he or
10 she—

11 “(i)(I) was regularly employed
12 throughout the period of admission as a
13 registered provisional immigrant, allowing
14 for brief periods lasting not more than 60
15 days; and

16 “(II) is not likely to become a public
17 charge (as determined under section
18 212(a)(4)); or

19 “(ii) can demonstrate average income
20 or resources that are not less than 125
21 percent of the Federal poverty level
22 throughout the period of admission as a
23 registered provisional immigrant.

24 “(B) EVIDENCE OF EMPLOYMENT.—

1 “(i) DOCUMENTS.—An alien may sat-
2 isfy the employment requirement under
3 subparagraph (A)(i) by submitting, to the
4 Secretary, records that—

5 “(I) establish, by the preponder-
6 ance of the evidence, compliance with
7 such employment requirement; and

8 “(II) have been maintained by
9 the Social Security Administration,
10 the Internal Revenue Service, or any
11 other Federal, State, or local govern-
12 ment agency.

13 “(ii) OTHER DOCUMENTS.—An alien
14 who is unable to submit the records de-
15 scribed in clause (i) may satisfy the em-
16 ployment or education requirement under
17 subparagraph (A) by submitting to the
18 Secretary at least 2 types of reliable docu-
19 ments not described in clause (i) that pro-
20 vide evidence of employment or education,
21 including—

22 “(I) bank records;

23 “(II) business records;

24 “(III) employer records;

1 “(IV) records of a labor union,
2 day labor center, or organization that
3 assists workers in employment;

4 “(V) sworn affidavits from non-
5 relatives who have direct knowledge of
6 the alien’s work or education, that
7 contain—

8 “(aa) the name, address,
9 and telephone number of the affi-
10 ant;

11 “(bb) the nature and dura-
12 tion of the relationship between
13 the affiant and the alien; and

14 “(cc) other verification or
15 information;

16 “(VI) remittance records; and

17 “(VII) school records from insti-
18 tutions described in subparagraph
19 (D).

20 “(iii) ADDITIONAL DOCUMENTS AND
21 RESTRICTIONS.—The Secretary may—

22 “(I) designate additional docu-
23 ments that may be used to establish
24 compliance with the requirement
25 under subparagraph (A); and

1 “(II) set such terms and condi-
2 tions on the use of affidavits as may
3 be necessary to verify and confirm the
4 identity of any affiant or to otherwise
5 prevent fraudulent submissions.

6 “(C) SATISFACTION OF EMPLOYMENT RE-
7 QUIREMENT.—An alien may not be required to
8 satisfy the employment requirements under this
9 section with a single employer.

10 “(D) EDUCATION PERMITTED.—An alien
11 may satisfy the requirement under subpara-
12 graph (A), in whole or in part, by providing evi-
13 dence of full-time attendance at—

14 “(i) an institution of higher education
15 (as defined in section 102(a) of the Higher
16 Education Act of 1965 (20 U.S.C.
17 1002(a)));

18 “(ii) a secondary school, including a
19 public secondary school (as defined in sec-
20 tion 9101 of the Elementary and Sec-
21 ondary Education Act of 1965 (20 U.S.C.
22 7801));

23 “(iii) an education, literacy, or career
24 and technical training program (including
25 vocational training) that is designed to

1 lead to placement in postsecondary edu-
2 cation, job training, or employment
3 through which the alien is working toward
4 such placement; or

5 “(iv) an education program assisting
6 students either in obtaining a high school
7 equivalency diploma, certificate, or its rec-
8 ognized equivalent under State law (includ-
9 ing a certificate of completion, certificate
10 of attendance, or alternate award), or in
11 passing a General Educational Develop-
12 ment exam or other equivalent State-au-
13 thorized exam or completed other applica-
14 ble State requirements for high school
15 equivalency.

16 “(E) AUTHORIZATION OF EXCEPTIONS
17 AND WAIVERS.—

18 “(i) EXCEPTIONS BASED ON AGE OR
19 DISABILITY.—The employment and edu-
20 cation requirements under this paragraph
21 shall not apply to any alien who—

22 “(I) is younger than 21 years of
23 age on the date on which the alien
24 files an application for the first exten-
25 sion of the initial period of authorized

1 admission as a registered provisional
2 immigrant;

3 “(II) is at least 60 years of age
4 on the date on which the alien files an
5 application for an extension of reg-
6 istered provisional immigrant status
7 or at least 65 years of age on the date
8 on which the alien’s application for
9 adjustment of status is filed under
10 this section; or

11 “(III) has a physical or mental
12 disability (as defined in section 3(2)
13 of the Americans with Disabilities Act
14 of 1990 (42 U.S.C. 12102(2))) or as
15 a result of pregnancy if such condition
16 is evidenced by the submission of doc-
17 umentation prescribed by the Sec-
18 retary.

19 “(ii) FAMILY EXCEPTIONS.—The em-
20 ployment and education requirements
21 under this paragraph shall not apply to
22 any alien who is a dependent registered
23 provisional immigrant under subsection
24 (b)(5).

1 “(iii) TEMPORARY EXCEPTIONS.—The
2 employment and education requirements
3 under this paragraph shall not apply dur-
4 ing any period during which the alien—

5 “(I) was on medical leave, mater-
6 nity leave, or other employment leave
7 authorized by Federal law, State law,
8 or the policy of the employer;

9 “(II) is or was the primary care-
10 taker of a child or another person who
11 requires supervision or is unable to
12 care for himself or herself; or

13 “(III) was unable to work due to
14 circumstances outside the control of
15 the alien.

16 “(iv) WAIVER.—The Secretary may
17 waive the employment or education re-
18 quirements under this paragraph with re-
19 spect to any individual alien who dem-
20 onstrates extreme hardship to himself or
21 herself or to a spouse, parent, or child who
22 is a United States citizen or lawful perma-
23 nent resident.

24 “(4) ENGLISH SKILLS.—

1 “(A) IN GENERAL.—Except as provided
2 under subparagraph (C), a registered provi-
3 sional immigrant who is 16 years of age or
4 older shall establish that he or she—

5 “(i) meets the requirements set forth
6 in section 312; or

7 “(ii) is satisfactorily pursuing a
8 course of study, pursuant to standards es-
9 tablished by the Secretary of Education, in
10 consultation with the Secretary, to achieve
11 an understanding of English and knowl-
12 edge and understanding of the history and
13 Government of the United States, as de-
14 scribed in section 312(a).

15 “(B) RELATION TO NATURALIZATION EX-
16 AMINATION.—A registered provisional immi-
17 grant who demonstrates that he or she meets
18 the requirements set forth in section 312 may
19 be considered to have satisfied such require-
20 ments for purposes of becoming naturalized as
21 a citizen of the United States.

22 “(C) EXCEPTIONS.—

23 “(i) MANDATORY.—Subparagraph (A)
24 shall not apply to any person who is unable
25 to comply with the requirements under

1 that subparagraph because of a physical or
2 developmental disability or mental impair-
3 ment.

4 “(ii) DISCRETIONARY.—The Secretary
5 may waive all or part of subparagraph (A)
6 for a registered provisional immigrant who
7 is 70 years of age or older on the date on
8 which an application is filed for adjust-
9 ment of status under this section.

10 “(5) MILITARY SELECTIVE SERVICE.—The alien
11 shall provide proof of registration under the Military
12 Selective Service Act (50 U.S.C. App. 451 et seq.),
13 if the alien is subject to such registration on or after
14 the date on which the alien’s application for reg-
15 istered provisional immigrant status is granted.

16 “(c) APPLICATION PROCEDURES.—

17 “(1) IN GENERAL.—Beginning on the date de-
18 scribed in paragraph (2), a registered provisional im-
19 migrant, or a registered provisional immigrant de-
20 pendent, who meets the eligibility requirements set
21 forth in subsection (b) may apply for adjustment of
22 status to that of an alien lawfully admitted for per-
23 manent residence by submitting an application to
24 the Secretary that includes the evidence required, by

1 regulation, to demonstrate the applicant's eligibility
2 for such adjustment.

3 “(2) BACK OF THE LINE.—The status of a reg-
4 istered provisional immigrant may not be adjusted to
5 that of an alien lawfully admitted for permanent res-
6 idence under this section until after the Secretary of
7 State certifies that immigrant visas have become
8 available for all approved petitions for immigrant
9 visas that were filed under sections 201 and 203 be-
10 fore the date of the enactment of the Border Secu-
11 rity, Economic Opportunity, and Immigration Mod-
12 ernization Act.

13 “(3) INTERVIEW.—The Secretary may interview
14 applicants for adjustment of status under this sec-
15 tion to determine whether they meet the eligibility
16 requirements set forth in subsection (b).

17 “(4) SECURITY AND LAW ENFORCEMENT
18 CLEARANCES.—The Secretary may not adjust the
19 status of a registered provisional immigrant under
20 this section until renewed national security and law
21 enforcement clearances have been completed with re-
22 spect to the registered provisional immigrant, to the
23 satisfaction of the Secretary.

24 “(5) FEES AND PENALTIES.—

25 “(A) PROCESSING FEES.—

1 “(i) IN GENERAL.—The Secretary
2 shall impose a processing fee on applicants
3 for adjustment of status under this section
4 at a level sufficient to recover the full cost
5 of processing such applications, including
6 costs associated with—

7 “(I) adjudicating the applica-
8 tions;

9 “(II) taking and processing bio-
10 metrics;

11 “(III) performing national secu-
12 rity and criminal checks, including ad-
13 judication;

14 “(IV) preventing and inves-
15 tigating fraud; and

16 “(V) the administration of the
17 fees collected.

18 “(ii) AUTHORITY TO LIMIT FEES.—
19 The Secretary, by regulation, may—

20 “(I) limit the maximum proc-
21 essing fee payable under this subpara-
22 graph by a family, including spouses
23 and children; and

1 “(II) exempt other defined class-
2 es of individuals from the payment of
3 the fee authorized under clause (i).

4 “(iii) DEPOSIT AND USE OF FEES.—
5 Fees collected under this subparagraph—

6 “(I) shall be deposited into the
7 Immigration Examinations Fee Ac-
8 count pursuant to section 286(m);
9 and

10 “(II) shall remain available until
11 expended pursuant to section 286(n).

12 “(B) PENALTIES.—

13 “(i) IN GENERAL.—In addition to the
14 processing fee required under subpara-
15 graph (A) and the penalty required under
16 section 245B(c)(6)(D), an alien who was
17 21 years of age or older on the date on
18 which the Border Security, Economic Op-
19 portunity, and Immigration Modernization
20 Act was originally introduced in the Senate
21 and is filing an application for adjustment
22 of status under this section shall pay a
23 \$1,000 penalty to the Secretary unless the
24 alien meets the requirements under section
25 245D(b).

1 “(ii) INSTALLMENTS.—The Secretary
2 shall establish a process for collecting pay-
3 ments required under clause (i) through
4 periodic installments.

5 “(iii) DEPOSIT, ALLOCATION, AND
6 SPENDING OF PENALTIES.—Penalties col-
7 lected under this subparagraph—

8 “(I) shall be deposited into the
9 Comprehensive Immigration Trust
10 Fund established under section
11 9(a)(1) of the Border Security, Eco-
12 nomic Opportunity, and Immigration
13 Modernization Act; and

14 “(II) may be used for the pur-
15 poses set forth in section 9(a)(3)(B)
16 of such Act.”.

17 (b) LIMITATION ON REGISTERED PROVISIONAL IMMI-
18 GRANTS.—An alien admitted as a registered provisional
19 immigrant under section 245B of the Immigration and
20 Nationality Act, as added by subsection (a), may only ad-
21 just status to an alien lawfully admitted for permanent
22 resident status under section 245C or 245D of such Act
23 or section 2302.

24 (c) NATURALIZATION.—Section 319 (8 U.S.C. 1430)
25 is amended—

1 (1) in the section heading, by striking “**AND**
2 **EMPLOYEES OF CERTAIN NONPROFIT ORGANI-**
3 **ZATIONS**” and inserting “**, EMPLOYEES OF CER-**
4 **TAIN NONPROFIT ORGANIZATIONS, AND OTHER**
5 **LONG-TERM LAWFUL RESIDENTS**”; and

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

7 “(f) Any lawful permanent resident who was lawfully
8 present in the United States and eligible for work author-
9 ization for not less than 10 years before becoming a lawful
10 permanent resident may be naturalized upon compliance
11 with all the requirements under this title except the provi-
12 sions of section 316(a)(1) if such person, immediately pre-
13 ceding the date on which the person filed an application
14 for naturalization—

15 “(1) has resided continuously within the United
16 States, after being lawfully admitted for permanent
17 residence, for at least 3 years;

18 “(2) during the 3-year period immediately pre-
19 ceding such filing date, has been physically present
20 in the United States for periods totaling at least 50
21 percent of such period; and

22 “(3) has resided within the State or in the ju-
23 risdiction of the U.S. Citizenship and Immigration
24 Services field office in the United States in which

1 the applicant filed such application for at least 3
2 months.”.

3 **SEC. 2103. THE DREAM ACT.**

4 (a) **SHORT TITLE.**—This section may be cited as the
5 “Development, Relief, and Education for Alien Minors Act
6 of 2013” or the “DREAM Act 2013”.

7 (b) **ADJUSTMENT OF STATUS FOR CERTAIN ALIENS
8 WHO ENTERED THE UNITED STATES AS CHILDREN.**—
9 Chapter 5 of title II (8 U.S.C. 1255 et seq.) is amended
10 by inserting after section 245C, as added by section 2102
11 of this title, the following:

12 **“SEC. 245D. ADJUSTMENT OF STATUS FOR CERTAIN ALIENS
13 WHO ENTERED THE UNITED STATES AS CHIL-
14 DREN.**

15 “(a) **DEFINITIONS.**—In this section:

16 “(1) **INSTITUTION OF HIGHER EDUCATION.**—
17 The term ‘institution of higher education’ has the
18 meaning given such term in section 102 of the High-
19 er Education Act of 1965 (20 U.S.C. 1002), except
20 that the term does not include institutions described
21 in subsection (a)(1)(C) of such section.

22 “(2) **SECRETARY.**—The term ‘Secretary’ means
23 the Secretary of Homeland Security.

24 “(3) **UNIFORMED SERVICES.**—The term ‘Uni-
25 formed Services’ has the meaning given the term

1 ‘uniformed services’ in section 101(a)(5) of title 10,
2 United States Code.

3 “(b) ADJUSTMENT OF STATUS FOR CERTAIN ALIENS
4 WHO ENTERED THE UNITED STATES AS CHILDREN.—

5 “(1) REQUIREMENTS.—

6 “(A) IN GENERAL.—The Secretary may
7 adjust the status of a registered provisional im-
8 migrant to the status of a lawful permanent
9 resident if the immigrant demonstrates that he
10 or she—

11 “(i) has been a registered provisional
12 immigrant for at least 5 years;

13 “(ii) was younger than 16 years of
14 age on the date on which the alien initially
15 entered the United States;

16 “(iii) has earned a high school di-
17 ploma, a commensurate alternative award
18 from a public or private high school or sec-
19 ondary school, or has obtained a general
20 education development certificate recog-
21 nized under State law, or a high school
22 equivalency diploma in the United States;

23 “(iv)(I) has acquired a degree from an
24 institution of higher education or has com-
25 pleted at least 2 years, in good standing,

1 in a program for a bachelor's degree or
2 higher degree in the United States; or

3 “(II) has served in the Uniformed
4 Services for at least 4 years and, if dis-
5 charged, received an honorable discharge;
6 and

7 “(v) has provided a list of each sec-
8 ondary school (as that term is defined in
9 section 9101 of the Elementary and Sec-
10 ondary Education Act of 1965 (20 U.S.C.
11 7801)) that the alien attended in the
12 United States.

13 “(B) HARDSHIP EXCEPTION.—

14 “(i) IN GENERAL.—The Secretary
15 may adjust the status of a registered provi-
16 sional immigrant to the status of a lawful
17 permanent resident if the alien—

18 “(I) satisfies the requirements
19 under clauses (i), (ii), (iii), and (v) of
20 subparagraph (A); and

21 “(II) demonstrates compelling
22 circumstances for the inability to sat-
23 isfy the requirement under subpara-
24 graph (A)(iv).

25 “(C) CITIZENSHIP REQUIREMENT.—

1 “(i) IN GENERAL.—Except as pro-
2 vided in clause (ii), the Secretary may not
3 adjust the status of an alien to lawful per-
4 manent resident status under this section
5 unless the alien demonstrates that the
6 alien satisfies the requirements under sec-
7 tion 312(a).

8 “(ii) EXCEPTION.—Clause (i) shall
9 not apply to an alien whose physical or de-
10 velopmental disability or mental impair-
11 ment prevents the alien from meeting the
12 requirements such section.

13 “(D) SUBMISSION OF BIOMETRIC AND BIO-
14 GRAPHIC DATA.—The Secretary may not adjust
15 the status of an alien to lawful permanent resi-
16 dent status unless the alien—

17 “(i) submits biometric and biographic
18 data, in accordance with procedures estab-
19 lished by the Secretary; or

20 “(ii) complies with an alternative pro-
21 cedure prescribed by the Secretary, if the
22 alien is unable to provide such biometric
23 data because of a physical impairment.

24 “(E) BACKGROUND CHECKS.—

1 “(i) REQUIREMENT FOR BACKGROUND
2 CHECKS.—The Secretary shall utilize bio-
3 metric, biographic, and other data that the
4 Secretary determines appropriate—

5 “(I) to conduct national security
6 and law enforcement background
7 checks of an alien applying for lawful
8 permanent resident status under this
9 section; and

10 “(II) to determine whether there
11 is any criminal, national security, or
12 other factor that would render the
13 alien ineligible for such status.

14 “(ii) COMPLETION OF BACKGROUND
15 CHECKS.—The Secretary may not adjust
16 an alien’s status to the status of a lawful
17 permanent resident under this subsection
18 until the national security and law enforce-
19 ment background checks required under
20 clause (i) have been completed with respect
21 to the alien, to the satisfaction of the Sec-
22 retary.

23 “(2) APPLICATION FOR LAWFUL PERMANENT
24 RESIDENT STATUS.—

1 “(A) IN GENERAL.—A registered provi-
2 sional immigrant seeking lawful permanent resi-
3 dent status shall file an application for such
4 status in such manner as the Secretary may re-
5 quire.

6 “(B) ADJUDICATION.—

7 “(i) IN GENERAL.—The Secretary
8 shall evaluate each application filed by a
9 registered provisional immigrant under this
10 paragraph to determine whether the alien
11 meets the requirements under paragraph
12 (1).

13 “(ii) ADJUSTMENT OF STATUS IF FA-
14 VORABLE DETERMINATION.—If the Sec-
15 retary determines that the alien meets the
16 requirements under paragraph (1), the
17 Secretary shall notify the alien of such de-
18 termination and adjust the status of the
19 alien to lawful permanent resident status,
20 effective as of the date of such determina-
21 tion.

22 “(iii) ADVERSE DETERMINATION.—If
23 the Secretary determines that the alien
24 does not meet the requirements under

1 paragraph (1), the Secretary shall notify
2 the alien of such determination.

3 “(C) DACA RECIPIENTS.—The Secretary
4 may adopt streamlined procedures for appli-
5 cants for adjustment to lawful permanent resi-
6 dent status under this section who were granted
7 Deferred Action for Childhood Arrivals pursu-
8 ant to the Secretary’s memorandum of June
9 15, 2012.

10 “(3) TREATMENT FOR PURPOSES OF NATU-
11 RALIZATION.—

12 “(A) IN GENERAL.—An alien granted law-
13 ful permanent resident status under this section
14 shall be considered, for purposes of title III—

15 “(i) to have been lawfully admitted for
16 permanent residence; and

17 “(ii) to have been in the United
18 States as an alien lawfully admitted to the
19 United States for permanent residence
20 during the period the alien was a reg-
21 istered provisional immigrant.

22 “(B) LIMITATION ON APPLICATION FOR
23 NATURALIZATION.—An alien may not apply for
24 naturalization while the alien is in registered
25 provisional immigrant status, except for an

1 alien described in paragraph (1)(A)(ii) pursuant
2 to section 328 or 329.”.

3 (c) EXEMPTION FROM NUMERICAL LIMITATIONS.—

4 Section 201(b)(1) (8 U.S.C. 1151(b)(1)) is amended—

5 (1) by redesignating subparagraph (E) as sub-
6 paragraph (F); and

7 (2) by inserting after subparagraph (D) the fol-
8 lowing:

9 “(E) Aliens whose status is adjusted to perma-
10 nent resident status under section 245C or 245D.”.

11 (d) RESTORATION OF STATE OPTION TO DETER-
12 MINE RESIDENCY FOR PURPOSES OF HIGHER EDU-
13 CATION.—

14 (1) REPEAL.—Section 505 of the Illegal Immi-
15 gration Reform and Immigrant Responsibility Act of
16 1996 (8 U.S.C. 1623) is repealed.

17 (2) EFFECTIVE DATE.—The repeal under para-
18 graph (1) shall take effect as if included in the origi-
19 nal enactment of the Illegal Immigration Reform
20 and Immigrant Responsibility Act of 1996 (division
21 C of Public Law 104–208).

22 (e) NATURALIZATION.—Section 328(a) (8 U.S.C.
23 1439(a)) is amended by inserting “, without having been
24 lawfully admitted to the United States for permanent resi-
25 dent, and” after “naturalized”.

1 (f) LIMITATION ON FEDERAL STUDENT ASSIST-
2 ANCE.—Notwithstanding any other provision of law, aliens
3 granted registered provisional immigrant status and who
4 initially entered the United States before reaching 16
5 years of age and aliens granted blue card status shall be
6 eligible only for the following assistance under title IV of
7 the Higher Education Act of 1965 (20 U.S.C. 1070 et
8 seq.):

9 (1) Student loans under parts D and E of such
10 title IV (20 U.S.C. 1087a et seq. and 1087aa et
11 seq.), subject to the requirements of such parts.

12 (2) Federal work-study programs under part C
13 of such title IV (42 U.S.C. 2751 et seq.), subject to
14 the requirements of such part.

15 (3) Services under such title IV (20 U.S.C.
16 1070 et seq.), subject to the requirements for such
17 services.

18 **SEC. 2104. ADDITIONAL REQUIREMENTS.**

19 (a) IN GENERAL.—Chapter 5 of title II (8 U.S.C.
20 1255 et seq.) is amended by inserting after section 245C,
21 as added by section 2102 of this title, the following:

22 **“SEC. 245E. ADDITIONAL REQUIREMENTS RELATING TO**
23 **REGISTERED PROVISIONAL IMMIGRANTS**
24 **AND OTHERS.**

25 “(a) DISCLOSURES.—

1 “(1) PROHIBITED DISCLOSURES.—Except as
2 otherwise provided in this subsection, no officer or
3 employee of any Federal agency may—

4 “(A) use the information furnished in an
5 application for lawful status under section
6 245B, 245C, or 245D for any purpose other
7 than to make a determination on any applica-
8 tion by the alien for any immigration benefit or
9 protection;

10 “(B) make any publication through which
11 information furnished by any particular appli-
12 cant can be identified; or

13 “(C) permit anyone other than the sworn
14 officers, employees, and contractors of such
15 agency or of another entity approved by the
16 Secretary to examine any individual application
17 for lawful status under section 245B, 245C, or
18 245D.

19 “(2) REQUIRED DISCLOSURES.—The Secretary
20 shall provide the information furnished in an appli-
21 cation filed under section 245B, 245C, or 245D and
22 any other information derived from such furnished
23 information to—

24 “(A) a law enforcement agency, intel-
25 ligence agency, national security agency, a com-

1 ponent of the Department of Homeland Secu-
2 rity, court, or grand jury, consistent with law,
3 in connection with—

4 “(i) a criminal investigation or pros-
5 ecution of any felony not related to the ap-
6 plicant’s immigration status; or

7 “(ii) a national security investigation
8 or prosecution; and

9 “(B) an official coroner for purposes of af-
10 firmatively identifying a deceased individual,
11 whether or not the death of such individual re-
12 sulted from a crime.

13 “(3) AUDITING AND EVALUATION OF INFORMA-
14 TION.—The Secretary may—

15 “(A) audit and evaluate information fur-
16 nished as part of any application filed under
17 section 245B, 245C, or 245D for purposes of
18 identifying immigration fraud or fraud schemes;
19 and

20 “(B) use any evidence detected by means
21 of audits and evaluations for purposes of inves-
22 tigating, prosecuting, referring for prosecution,
23 or denying or terminating immigration benefits.

24 “(b) EMPLOYER PROTECTIONS.—

1 “(1) USE OF EMPLOYMENT RECORDS.—Copies
2 of employment records or other evidence of employ-
3 ment provided by an alien or by an alien’s employer
4 in support of an alien’s application for registered
5 provisional immigrant status under section 245B
6 may not be used in a civil or criminal prosecution
7 or investigation of that employer under section 274A
8 or the Internal Revenue Code of 1986 for the prior
9 unlawful employment of that alien regardless of the
10 adjudication of such application or reconsideration
11 by the Secretary of such alien’s prima facie eligi-
12 bility determination. Employers that provide unau-
13 thorized aliens with copies of employment records or
14 other evidence of employment pursuant to an appli-
15 cation for registered provisional immigrant status
16 shall not be subject to civil and criminal liability
17 pursuant to section 274A for employing such unau-
18 thorized aliens.

19 “(2) LIMIT ON APPLICABILITY.—The protec-
20 tions for employers and aliens under paragraph (1)
21 shall not apply if the aliens or employers submit em-
22 ployment records that are deemed to be fraudulent.

23 “(c) ADMINISTRATIVE REVIEW.—

24 “(1) EXCLUSIVE ADMINISTRATIVE REVIEW.—
25 Administrative review of a determination respecting

1 an application for status under section 245B, 245C,
2 245D, or 245F or section 2211 of the Agricultural
3 Worker Program Act of 2013 shall be conducted
4 solely in accordance with this subsection.

5 “(2) ADMINISTRATIVE APPELLATE REVIEW.—

6 “(A) ESTABLISHMENT OF ADMINISTRA-
7 TIVE APPELLATE AUTHORITY.—The Secretary
8 shall establish or designate an appellate author-
9 ity to provide for a single level of administrative
10 appellate review of a determination with respect
11 to applications for, or revocation of, status
12 under sections 245B, 245C, and 245D.

13 “(B) SINGLE APPEAL FOR EACH ADMINIS-
14 TRATIVE DECISION.—

15 “(i) IN GENERAL.—An alien in the
16 United States whose application for status
17 under section 245B, 245C, or 245D has
18 been denied or revoked may file with the
19 Secretary not more than 1 appeal of each
20 decision to deny or revoke such status.

21 “(ii) NOTICE OF APPEAL.—A notice of
22 appeal filed under this subparagraph shall
23 be filed not later than 90 days after the
24 date of service of the decision of denial or

1 revocation, unless the delay was reasonably
2 justifiable.

3 “(C) REVIEW BY SECRETARY.—Nothing in
4 this paragraph may be construed to limit the
5 authority of the Secretary to certify appeals for
6 review and final administrative decision.

7 “(D) DENIAL OF PETITIONS FOR DEPEND-
8 ENTS.—Appeals of a decision to deny or revoke
9 a petition filed by a registered provisional immi-
10 grant pursuant to regulations promulgated
11 under section 245B to classify a spouse or child
12 of such alien as a registered provisional immi-
13 grant shall be subject to the administrative ap-
14 pellate authority described in subparagraph (A).

15 “(E) STAY OF REMOVAL.—Aliens seeking
16 administrative review shall not be removed from
17 the United States until a final decision is ren-
18 dered establishing ineligibility for status under
19 section 245B, 245C, or 245D.

20 “(3) RECORD FOR REVIEW.—Administrative ap-
21 pellate review under paragraph (2) shall be de novo
22 and based solely upon—

23 “(A) the administrative record established
24 at the time of the determination on the applica-
25 tion; and

1 “(B) any additional newly discovered or
2 previously unavailable evidence.

3 “(4) UNLAWFUL PRESENCE.—During the pe-
4 riod in which an alien may request administrative
5 review under this subsection, and during the period
6 that any such review is pending, the alien shall not
7 be considered ‘unlawfully present in the United
8 States’ for purposes of section 212(a)(9)(B).

9 “(d) PRIVACY AND CIVIL LIBERTIES.—

10 “(1) IN GENERAL.—The Secretary, in accord-
11 ance with subsection (a)(1), shall require appro-
12 priate administrative and physical safeguards to pro-
13 tect the security, confidentiality, and integrity of
14 personally identifiable information collected, main-
15 tained, and disseminated pursuant to sections 245B,
16 245C, and 245D.

17 “(2) ASSESSMENTS.—Notwithstanding the pri-
18 vacy requirements set forth in section 222 of the
19 Homeland Security Act (6 U.S.C. 142) and the E-
20 Government Act of 2002 (Public Law 107–347), the
21 Secretary shall conduct a privacy impact assessment
22 and a civil liberties impact assessment of the legal-
23 ization program established under sections 245B,
24 245C, and 245D during the pendency of the interim
25 final regulations required to be issued under section

1 2110 of the Border Security, Economic Opportunity,
2 and Immigration Modernization Act.”.

3 (b) JUDICIAL REVIEW.—Section 242 (8 U.S.C. 1252)
4 is amended—

5 (1) in subsection (a)(2)—

6 (A) in subparagraph (B), by inserting “the
7 exercise of discretion arising under” after “no
8 court shall have jurisdiction to review”;

9 (B) in subparagraph (D), by striking
10 “raised upon a petition for review filed with an
11 appropriate court of appeals in accordance with
12 this section”;

13 (2) in subsection (b)(2), by inserting “or, in the
14 case of a decision rendered under section 245E(c),
15 in the judicial circuit in which the petitioner resides”
16 after “proceedings”; and

17 (3) by adding at the end the following:

18 “(h) JUDICIAL REVIEW OF ELIGIBILITY DETERMINA-
19 TIONS RELATING TO STATUS UNDER CHAPTER 5.—

20 “(1) DIRECT REVIEW.—If an alien’s application
21 under section 245B, 245C, 245D, or 245F or sec-
22 tion 2211 of the Agricultural Worker Program Act
23 of 2013 is denied, or is revoked after the exhaustion
24 of administrative appellate review under section
25 245E(c), the alien may seek review of such decision,

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

4 “(2) STATUS DURING REVIEW.—While a review
5 described in paragraph (1) is pending—

6 “(A) the alien shall not be deemed to ac-
7 crue unlawful presence for purposes of section
8 212(a)(9);

9 “(B) any unexpired grant of voluntary de-
10 parture under section 240B shall be tolled; and

11 “(C) the court shall have the discretion to
12 stay the execution of any order of exclusion, de-
13 portation, or removal.

14 “(3) REVIEW AFTER REMOVAL PRO-
15 CEEDINGS.—An alien may seek judicial review of a
16 denial or revocation of approval of the alien’s appli-
17 cation under section 245B, 245C, or 245D in the
18 appropriate United States court of appeal in con-
19 junction with the judicial review of an order of re-
20 moval, deportation, or exclusion if the validity of the
21 denial has not been upheld in a prior judicial pro-
22 ceeding under paragraph (1).

23 “(4) STANDARD FOR JUDICIAL REVIEW.—

24 “(A) BASIS.—Judicial review of a denial,
25 or revocation of an approval, of an application

1 under section 245B, 245C, or 245D shall be
2 based upon the administrative record estab-
3 lished at the time of the review.

4 “(B) AUTHORITY TO REMAND.—The re-
5 viewing court may remand a case under this
6 subsection to the Secretary for consideration of
7 additional evidence if the court finds that—

8 “(i) the additional evidence is mate-
9 rial; and

10 “(ii) there were reasonable grounds
11 for failure to adduce the additional evi-
12 dence before the Secretary.

13 “(C) SCOPE OF REVIEW.—Notwithstanding
14 any other provision of law, judicial review of all
15 questions arising from a denial, or revocation of
16 an approval, of an application under section
17 245B, 245C, or 245D shall be governed by the
18 standard of review set forth in section 706 of
19 title 5, United States Code.

20 “(5) REMEDIAL POWERS.—

21 “(A) JURISDICTION.—Notwithstanding any
22 other provision of law, the United States dis-
23 trict courts shall have jurisdiction over any
24 cause or claim arising from a pattern or prac-
25 tice of the Secretary in the operation or imple-

1 mentation of the Border Security, Economic
2 Opportunity, and Immigration Modernization
3 Act, or the amendments made by such Act, that
4 is arbitrary, capricious, or otherwise contrary to
5 law.

6 “(B) SCOPE OF RELIEF.—The United
7 States district courts may order any appro-
8 priate relief in a clause or claim described in
9 subparagraph (A) without regard to exhaustion,
10 ripeness, or other standing requirements (other
11 than constitutionally mandated requirements),
12 if the court determines that—

13 “(i) the resolution of such cause or
14 claim will serve judicial and administrative
15 efficiency; or

16 “(ii) a remedy would otherwise not be
17 reasonably available or practicable.

18 “(6) CHALLENGES TO THE VALIDITY OF THE
19 SYSTEM.—

20 “(A) IN GENERAL.—Except as provided in
21 paragraph (5), any claim that section 245B,
22 245C, 245D, or 245E or any regulation, writ-
23 ten policy, or written directive, issued or un-
24 written policy or practice initiated by or under
25 the authority of the Secretary to implement

1 such sections, violates the Constitution of the
2 United States or is otherwise in violation of law
3 is available exclusively in an action instituted in
4 United States District Court in accordance with
5 the procedures prescribed in this paragraph.

6 “(B) SAVINGS PROVISION.—Except as pro-
7 vided in subparagraph (C), nothing in subpara-
8 graph (A) may be construed to preclude an ap-
9 plicant under 245B, 245C, or 245D from as-
10serting that an action taken or a decision made
11 by the Secretary with respect to the applicant’s
12 status was contrary to law.

13 “(C) CLASS ACTIONS.—Any claim de-
14 scribed in subparagraph (A) that is brought as
15 a class action shall be brought in conformity
16 with—

17 “(i) the Class Action Fairness Act of
18 2005 (Public Law 109–2); and

19 “(ii) the Federal Rules of Civil Proce-
20 dure.

21 “(D) PRECLUSIVE EFFECT.—The final dis-
22 position of any claim brought under subpara-
23 graph (A) shall be preclusive of any such claim
24 asserted by the same individual in a subsequent
25 proceeding under this subsection.

1 “(E) EXHAUSTION AND STAY OF PRO-
2 CEEDINGS.—

3 “(i) IN GENERAL.—No claim brought
4 under this paragraph shall require the
5 plaintiff to exhaust administrative rem-
6 edies under section 245E(c).

7 “(ii) STAY AUTHORIZED.—Nothing in
8 this paragraph may be construed to pre-
9 vent the court from staying proceedings
10 under this paragraph to permit the Sec-
11 retary to evaluate an allegation of an un-
12 written policy or practice or to take correc-
13 tive action. In determining whether to
14 issue such a stay, the court shall take into
15 account any harm the stay may cause to
16 the claimant.”.

17 (c) RULE OF CONSTRUCTION.—Section 244(h) of the
18 Immigration and Nationality Act (8 U.S.C. 1254a(h))
19 shall not limit the authority of the Secretary to adjust the
20 status of an alien under section 245C or 245D of the Im-
21 migration and Nationality Act, as added by this subtitle.

22 (d) EFFECT OF FAILURE TO REGISTER ON ELIGI-
23 BILITY FOR IMMIGRATION BENEFITS.—Failure to comply
24 with section 264.1(f) of title 8, Code of Federal Regula-
25 tions or with removal orders or voluntary departure agree-

1 ments based on such section for acts committed before the
2 date of the enactment of this Act shall not affect the eligi-
3 bility of an alien to apply for a benefit under the Immigra-
4 tion and Nationality Act (8 U.S.C. 1101 et seq.).

5 (e) CLERICAL AMENDMENT.—The table of contents
6 is amended by inserting after the item relating to section
7 245A the following:

“Sec. 245E. Additional requirements relating to registered provi-
sional immigrants and others.”.

8 **SEC. 2105. CRIMINAL PENALTY.**

9 (a) IN GENERAL.—Chapter 69 of title 18, United
10 States Code, is amended by adding at the end the fol-
11 lowing:

12 **“§ 1430. Improper use of information relating to reg-**
13 **istered provisional immigrant applica-**
14 **tions**

15 “Any person who knowingly uses, publishes, or per-
16 mits information described in section 245E(a) of the Im-
17 migration and Nationality Act to be examined in violation
18 of such section shall be fined not more than \$10,000.”.

19 (b) DEPOSIT OF FINES.—All criminal penalties col-
20 lected under section 1430 of title 18, United States Code,
21 as added by subsection (a), shall be deposited into the
22 Comprehensive Immigration Reform Trust Fund estab-
23 lished under section 9(a)(1).

1 (c) CLERICAL AMENDMENT.—The table of sections
2 in chapter 69 of title 18, United States Code, is amended
3 by adding at the end the following:

“1430. Improper use of information relating to registered provisional immigrant
applications.”.

4 **SEC. 2106. GRANT PROGRAM TO ASSIST ELIGIBLE APPLI-**
5 **CANTS.**

6 (a) ESTABLISHMENT.—The Secretary may establish,
7 within U.S. Citizenship and Immigration Services, a pro-
8 gram to award grants, on a competitive basis, to eligible
9 nonprofit organizations that will use the funding to assist
10 eligible applicants under section 245B, 245C, 245D, or
11 245F of the Immigration and Nationality Act or section
12 2211 of this Act by providing them with the services de-
13 scribed in subsection (c).

14 (b) ELIGIBLE NONPROFIT ORGANIZATION.—The
15 term “eligible nonprofit organization” means a nonprofit,
16 tax-exempt organization, including a community, faith-
17 based or other immigrant-serving organization, whose
18 staff has demonstrated qualifications, experience, and ex-
19 pertise in providing quality services to immigrants, refu-
20 gees, persons granted asylum, or persons applying for
21 such statuses.

22 (c) USE OF FUNDS.—Grant funds awarded under
23 this section may be used for the design and implementa-
24 tion of programs that provide—

1 (1) information to the public regarding the eli-
2 gibility and benefits of registered provisional immi-
3 grant status authorized under section 245B of the
4 Immigration and Nationality Act and blue card sta-
5 tus authorized under section 2211, particularly to
6 individuals potentially eligible for such status;

7 (2) assistance, within the scope of authorized
8 practice of immigration law, to individuals submit-
9 ting applications for registered provisional immi-
10 grant status or blue card status, including—

11 (A) screening prospective applicants to as-
12 sess their eligibility for such status;

13 (B) completing applications and petitions,
14 including providing assistance in obtaining the
15 requisite documents and supporting evidence;

16 (C) applying for any waivers for which ap-
17 plicants and qualifying family members may be
18 eligible; and

19 (D) providing any other assistance that the
20 Secretary or grantees consider useful or nec-
21 essary to apply for registered provisional immi-
22 grant status or blue card status;

23 (3) assistance, within the scope of authorized
24 practice of immigration law, to individuals seeking to
25 adjust their status to that of an alien admitted for

1 permanent residence under section 245C or 245F of
2 the Immigration and Nationality Act; and

3 (4) assistance, within the scope of authorized
4 practice of immigration law, and instruction, to indi-
5 viduals—

6 (A) on the rights and responsibilities of
7 United States citizenship;

8 (B) in civics and civics-based English as a
9 second language; and

10 (C) in applying for United States citizen-
11 ship.

12 (d) SOURCE OF GRANT FUNDS.—

13 (1) APPLICATION FEES.—The Secretary may
14 use up to \$50,000,000 from the Comprehensive Im-
15 migration Reform Trust Fund established under sec-
16 tion 9(a)(1) to carry out this section.

17 (2) AUTHORIZATION OF APPROPRIATIONS.—

18 (A) AMOUNTS AUTHORIZED.—In addition
19 to the amounts made available under paragraph
20 (1), there are authorized to be appropriated
21 such sums as may be necessary for each of the
22 fiscal years 2014 through 2018 to carry out
23 this section.

1 (B) AVAILABILITY.—Any amounts appro-
2 priated pursuant to subparagraph (A) shall re-
3 main available until expended.

4 **SEC. 2107. CONFORMING AMENDMENTS TO THE SOCIAL SE-**
5 **CURITY ACT.**

6 (a) CORRECTION OF SOCIAL SECURITY RECORDS.—

7 (1) IN GENERAL.—Section 208(e)(1) of the So-
8 cial Security Act (42 U.S.C. 408(e)(1)) is amend-
9 ed—

10 (A) in subparagraph (B)(ii), by striking
11 “or” at the end;

12 (B) in subparagraph (C), by striking the
13 comma at the end and inserting a semicolon;

14 (C) by inserting after subparagraph (C)
15 the following:

16 “(D) who is granted status as a registered
17 provisional immigrant under section 245B or
18 245D of the Immigration and Nationality Act;
19 or

20 “(E) whose status is adjusted to that of
21 lawful permanent resident under section 245C
22 of the Immigration and Nationality Act,”; and

23 (D) in the undesignated matter at the end,
24 by inserting “, or in the case of an alien de-
25 scribed in subparagraph (D) or (E), if such

1 conduct is alleged to have occurred before the
2 date on which the alien submitted an applica-
3 tion under section 245B of such Act for classi-
4 fication as a registered provisional immigrant”
5 before the period at the end.

6 (2) EFFECTIVE DATE.—The amendments made
7 by paragraph (1) shall take effect on the first day
8 of the tenth month that begins after the date of the
9 enactment of this Act.

10 (b) STATE DISCRETION REGARDING TERMINATION
11 OF PARENTAL RIGHTS.—

12 (1) IN GENERAL.—A compelling reason for a
13 State not to file (or to join in the filing of) a petition
14 to terminate parental rights under section 475(5)(E)
15 of the Social Security Act (42 U.S.C. 675(5)(E))
16 shall include—

17 (A) the removal of the parent from the
18 United States, unless the parent is unfit or un-
19 willing to be a parent of the child; or

20 (B) the involvement of the parent in (in-
21 cluding detention pursuant to) an immigration
22 proceeding, unless the parent is unfit or unwill-
23 ing to be a parent of the child.

24 (2) CONDITIONS.—Before a State may file to
25 terminate the parental rights under such section

1 475(5)(E), the State (or the county or other political
2 subdivision of the State, as applicable) shall make
3 reasonable efforts—

4 (A) to identify, locate, and contact (includ-
5 ing, if appropriate, through the diplomatic or
6 consular offices of the country to which the par-
7 ent was removed or in which a parent or rel-
8 ative resides)—

9 (i) any parent of the child who is in
10 immigration detention;

11 (ii) any parent of the child who has
12 been removed from the United States; and

13 (iii) if possible, any potential adult
14 relative of the child (as described in section
15 471(a)(29));

16 (B) to notify such parent or relative of the
17 intent of the State (or the county or other polit-
18 ical subdivision of the State, as applicable) to
19 file (or to join in the filing of) a petition re-
20 ferred to in paragraph (1); or

21 (C) to reunify the child with any such par-
22 ent or relative; and

23 (D) to provide and document appropriate
24 services to the parent or relative.

1 (3) CONFORMING AMENDMENT.—Section
2 475(5)(E)(ii) of the Social Security Act (42 U.S.C.
3 675(5)(E)) is amended by inserting “, including the
4 reason set forth in section 2107(b)(1) of the Border
5 Security, Economic Opportunity, and Immigration
6 Modernization Act” after “child”.

7 (c) CHILDREN SEPARATED FROM PARENTS AND
8 CAREGIVERS.—

9 (1) STATE PLAN FOR FOSTER CARE AND ADOPT-
10 TION ASSISTANCE.—Section 471(a) of the Social Se-
11 curity Act (42 U.S.C. 671(a)) is amended—

12 (A) by amending paragraph (19) to read
13 as follows:

14 “(19) provides that the State shall give pref-
15 erence to an adult relative over a nonrelated care-
16 giver when determining a placement for a child if—

17 “(A) the relative caregiver meets all rel-
18 evant State child protection standards; and

19 “(B) the standards referred to in subpara-
20 graph (A) ensure that the immigration status
21 alone of a parent, legal guardian, or relative
22 shall not disqualify the parent, legal guardian,
23 or relative from being a placement for a child;”;
24 and

1 (B) in paragraph (32), by striking “and”
2 at the end;

3 (C) in paragraph (33), by striking the pe-
4 riod at the end and inserting “; and”; and

5 (D) by adding at the end the following:

6 “(34) provides that the State shall—

7 “(A) ensure that the case manager for a
8 separated child is capable of communicating in
9 the native language of such child and of the
10 family of such child, or an interpreter who is so
11 capable is provided to communicate with such
12 child and the family of such child at no cost to
13 the child or to the family of such child;

14 “(B) coordinate with the Department of
15 Homeland Security to ensure that parents who
16 wish for their child to accompany them to their
17 country of origin are given adequate time and
18 assistance to obtain a passport and visa, and to
19 collect all relevant vital documents, such as
20 birth certificate, health, and educational records
21 and other information;

22 “(C) coordinate with State agencies re-
23 garding alternate documentation requirements
24 for a criminal records check or a fingerprint-

1 based check for a caregiver that does not have
2 Federal or State-issued identification;

3 “(D) preserve, to the greatest extent prac-
4 ticable, the privacy and confidentiality of all in-
5 formation gathered in the course of admin-
6 istering the care, custody, and placement of,
7 and follow up services provided to, a separated
8 child, consistent with the best interest of such
9 child, by not disclosing such information to
10 other government agencies or persons (other
11 than a parent, legal guardian, or relative care-
12 giver or such child), except that the head of the
13 State agency (or the county or other political
14 subdivision of the State, as applicable) may dis-
15 close such information, after placing a written
16 record of the disclosure in the file of the child—

17 “(i) to a consular official for the pur-
18 pose of reunification of a child with a par-
19 ent, legal guardian, or relative caregiver
20 who has been removed or is involved in an
21 immigration proceeding, unless the child
22 has refused contact with, or the sharing of
23 personal or identifying information with,
24 the government of his or her country of or-
25 igin;

1 “(ii) when authorized to do so by the
2 child (if the child has attained 18 years of
3 age) if the disclosure is consistent with the
4 best interest of the child; or

5 “(iii) to a law enforcement agency if
6 the disclosure would prevent imminent and
7 serious harm to another individual; and

8 “(E) not less frequently than annually,
9 compile, update, and publish a list of entities in
10 the State that are qualified to provide legal rep-
11 resentation services for a separated child, in a
12 language such that a child can read and under-
13 stand.”.

14 (2) ADDITIONAL INFORMATION TO BE IN-
15 CLUDED IN CASE PLAN.—Section 475 of such Act
16 (42 U.S.C. 675) is amended—

17 (A) in paragraph (1), by adding at the end
18 the following:

19 “(H) In the case of a separated child with
20 respect to whom the State plan requires the
21 State to provide services under section
22 471(a)(34)—

23 “(i) the location of the parent or legal
24 guardian described in paragraph (9)(A)

1 from whom the child has been separated;
2 and

3 “(ii) a written record of each disclo-
4 sure to a government agency or person
5 (other than such a parent, legal guardian,
6 or relative) of information gathered in the
7 course of tracking the care, custody, and
8 placement of, and follow-up services pro-
9 vided to, the child.”; and

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

11 “(9) The term ‘separated child’ means an indi-
12 vidual who—

13 “(A) has a parent or legal guardian who
14 has been—

15 “(i) detained by a Federal, State, or
16 local law enforcement agency in the en-
17 forcement of an immigration law; or

18 “(ii) removed from the United States
19 as a result of a violation of such a law; and

20 “(B) is in foster care under the responsi-
21 bility of a State.”.

22 (3) EFFECTIVE DATE.—The amendments made
23 by this subsection shall take effect on the 1st day
24 of the 1st calendar quarter that begins after the 1-

1 year period that begins on the date of the enactment
2 of this Act.

3 **SEC. 2108. GOVERNMENT CONTRACTING AND ACQUISITION**
4 **OF REAL PROPERTY INTEREST.**

5 (a) EXEMPTION FROM GOVERNMENT CONTRACTING
6 AND HIRING RULES.—

7 (1) IN GENERAL.—A determination by a Fed-
8 eral agency to use a procurement competition ex-
9 emption under section 253(c) of title 41, United
10 States Code, or to use the authority granted in para-
11 graph (2), for the purpose of implementing this title
12 and the amendments made by this title is not sub-
13 ject to challenge by protest to the Government Ac-
14 countability Office under sections 3551 and 3556 of
15 title 31, United States Code, or to the Court of Fed-
16 eral Claims, under section 1491 of title 28, United
17 States Code. An agency shall immediately advise the
18 Congress of the exercise of the authority granted
19 under this paragraph.

20 (2) GOVERNMENT CONTRACTING EXEMPTION.—
21 The competition requirement under section 253(a)
22 of title 41, United States Code, may be waived or
23 modified by a Federal agency for any procurement
24 conducted to implement this title or the amendments

1 made by this title if the senior procurement execu-
2 tive for the agency conducting the procurement—

3 (A) determines that the waiver or modi-
4 fication is necessary; and

5 (B) submits an explanation for such deter-
6 mination to the Committee on Homeland Secu-
7 rity and Governmental Affairs of the Senate
8 and the Committee on Homeland Security of
9 the House of Representatives.

10 (3) HIRING RULES EXEMPTION.—Notwith-
11 standing any other provision of law, the Secretary is
12 authorized to make term, temporary limited, and
13 part-time appointments of employees who will imple-
14 ment this title and the amendments made by this
15 title without regard to the number of such employ-
16 ees, their ratio to permanent full-time employees,
17 and the duration of their employment. Nothing in
18 chapter 71 of title 5, United States Code, shall af-
19 fect the authority of any Department management
20 official to hire term, temporary limited or part-time
21 employees under this paragraph.

22 (b) AUTHORITY TO WAIVE ANNUITY LIMITATIONS.—
23 Section 824(g)(2)(B) of the Foreign Service Act of 1980
24 (22 U.S.C. 4064(g)(2)(B)) is amended by striking “2009”
25 and inserting “2017”.

1 (c) **AUTHORITY TO ACQUIRE LEASEHOLDS.**—Not-
 2 withstanding any other provision of law, the Secretary
 3 may acquire a leasehold interest in real property, and may
 4 provide in a lease entered into under this subsection for
 5 the construction or modification of any facility on the
 6 leased property, if the Secretary determines that the ac-
 7 quisition of such interest, and such construction or modi-
 8 fication, are necessary in order to facilitate the implemen-
 9 tation of this title and the amendments made by this title.

10 **SEC. 2109. LONG-TERM LEGAL RESIDENTS OF THE COM-**
 11 **MONWEALTH OF THE NORTHERN MARIANA**
 12 **ISLANDS.**

13 Section (6)(e) of the Joint Resolution entitled “A
 14 Joint Resolution to approve the ‘Covenant to Establish a
 15 Commonwealth of the Northern Mariana Islands in Polit-
 16 ical Union with the United States of America’, and for
 17 other purposes”, approved March 24, 1976 (48 U.S.C.
 18 1806(e)), as added by section 702 of the Consolidated
 19 Natural Resources Act of 2008 (Public Law 110–229; 122
 20 Stat. 854), is amended by adding at the end the following:

21 “(6) **SPECIAL PROVISION REGARDING LONG-**
 22 **TERM RESIDENTS OF THE COMMONWEALTH.**—

23 “(A) **CNMI-ONLY RESIDENT STATUS.**—

24 Notwithstanding paragraph (1), an alien de-
 25 scribed in subparagraph (B) may, upon the ap-

1 plication of the alien, be admitted as an immi-
2 grant to the Commonwealth subject to the fol-
3 lowing rules:

4 “(i) The alien shall be treated as an
5 immigrant lawfully admitted for permanent
6 residence in the Commonwealth only, in-
7 cluding permitting entry to and exit from
8 the Commonwealth, until the earlier of the
9 date on which—

10 “(I) the alien ceases to perma-
11 nently reside in the Commonwealth;
12 or

13 “(II) the alien’s status is ad-
14 justed under this paragraph or section
15 245 of the Immigration and Nation-
16 ality Act (8 U.S.C. 1255) to that of
17 an alien lawfully admitted for perma-
18 nent residence in accordance with all
19 applicable eligibility requirements.

20 “(ii) The Secretary of Homeland Se-
21 curity shall establish a process for such
22 aliens to apply for CNMI-only permanent
23 resident status during the 90-day period
24 beginning on the first day of the sixth

1 month after the date of the enactment of
2 this paragraph.

3 “(iii) Nothing in this subparagraph
4 may be construed to provide any alien
5 granted status under this subparagraph
6 with public assistance to which the alien is
7 not otherwise entitled.

8 “(B) ALIENS DESCRIBED.—An alien is de-
9 scribed in this subparagraph if the alien—

10 “(i) is lawfully present in the Com-
11 monwealth under the immigration laws of
12 the United States;

13 “(ii) is otherwise admissible to the
14 United States under the Immigration and
15 Nationality Act (8 U.S.C. 1101 et seq.);

16 “(iii) resided continuously and law-
17 fully in the Commonwealth from November
18 28, 2009, through the date of the enact-
19 ment of this paragraph;

20 “(iv) is not a citizen of the Republic
21 of the Marshall Islands, the Federated
22 States of Micronesia, or the Republic of
23 Palau; and

1 “(v)(I) was born in the Northern
2 Mariana Islands between January 1, 1974
3 and January 9, 1978;

4 “(II) was, on May 8, 2008, and con-
5 tinues to be as of the date of the enact-
6 ment of this paragraph, a permanent resi-
7 dent (as defined in section 4303 of title 3
8 of the Northern Mariana Islands Common-
9 wealth Code, in effect on May 8, 2008);

10 “(III) is the spouse or child (as de-
11 fined in section 101(b)(1) of the Immigra-
12 tion and Nationality Act (8 U.S.C.
13 1101(b)(1))), of an alien described in sub-
14 clauses (I) or (II);

15 “(IV) was, on May 8, 2008, an imme-
16 diate relative (as defined in section 4303 of
17 title 3 of the Northern Mariana Islands
18 Commonwealth Code, in effect on May 8,
19 2008, of a United States citizen, notwith-
20 standing the age of the United States cit-
21 izen, and continues to be such an imme-
22 diate relative on the date of the application
23 described in subparagraph (A);

24 “(V) resided in the Northern Mariana
25 Islands as a guest worker under Common-

1 wealth immigration law for at least 5 years
2 before May 8, 2008 and is presently resi-
3 dent under CW-1 status; or

4 “**(VI)** is the spouse or child (as de-
5 fined in section 101(b)(1) of the Immigra-
6 tion and Nationality Act (8 U.S.C.
7 1101(b)(1))), of the alien guest worker de-
8 scribed in subclause (V) and is presently
9 resident under CW-2 status.

10 “**(C) ADJUSTMENT FOR LONG TERM AND**
11 **PERMANENT RESIDENTS.**—Beginning on the
12 date that is 5 years after the date of the enact-
13 ment of the Border Security, Economic Oppor-
14 tunity, and Immigration Modernization Act, an
15 alien described in subparagraph (B) may apply
16 to receive an immigrant visa or to adjust his or
17 her status to that of an alien lawfully admitted
18 for permanent residence.”.

19 **SEC. 2110. RULEMAKING.**

20 (a) **IN GENERAL.**—Not later than 1 year after the
21 date of the enactment of this Act, the Secretary, the Attor-
22 ney General, and the Secretary of State separately shall
23 issue interim final regulations to implement this subtitle
24 and the amendments made by this subtitle, which shall

1 take effect immediately upon publication in the Federal
2 Register.

3 (b) APPLICATION PROCEDURES; PROCESSING FEES;
4 DOCUMENTATION.—The interim final regulations issued
5 under subsection (a) shall include—

6 (1) the procedures by which an alien, and the
7 dependent spouse and children of such alien may
8 apply for status under section 245B of the Immigra-
9 tion and Nationality Act, as added by section 2101
10 of this Act, as a registered provisional immigrant or
11 a registered provisional immigrant dependent, as ap-
12 plicable, including the evidence required to dem-
13 onstrate eligibility for such status or to be included
14 in each application for such status;

15 (2) the criteria to be used by the Secretary to
16 determine—

17 (A) the maximum processing fee payable
18 under sections 245B(c)(10)(B) and
19 245C(e)(5)(A) of such Act by a family, includ-
20 ing spouses and unmarried children younger
21 than 21 years of age; and

22 (B) which individuals will be exempt from
23 such fees;

1 (3) the documentation required to be submitted
2 by the applicant to demonstrate compliance with sec-
3 tion 245C(b)(3) of such Act; and

4 (4) the procedures for a registered provisional
5 immigrant to apply for adjustment of status under
6 section 245C or 245D of such Act, including the evi-
7 dence required to be submitted with such application
8 to demonstrate the applicant's eligibility for such ad-
9 justment.

10 (c) EXEMPTION FROM NATIONAL ENVIRONMENTAL
11 POLICY ACT.—Any decision by the Secretary concerning
12 any rulemaking action, plan, or program described in this
13 section shall not be considered to be a major Federal ac-
14 tion subject to review under the National Environmental
15 Policy Act of 1969 (42 U.S.C. 4321 et seq.).

16 **SEC. 2111. STATUTORY CONSTRUCTION.**

17 Except as specifically provided, nothing in this sub-
18 title, or any amendment made by this subtitle, may be con-
19 strued to create any substantive or procedural right or
20 benefit that is legally enforceable by any party against the
21 United States or its agencies or officers or any other per-
22 son.

1 **Subtitle B—Agricultural Worker**
2 **Program**

3 **SEC. 2201. SHORT TITLE.**

4 This subtitle may be cited as the “Agricultural Work-
5 er Program Act of 2013”.

6 **SEC. 2202. DEFINITIONS.**

7 In this subtitle:

8 (1) **BLUE CARD STATUS.**—The term “blue card
9 status” means the status of an alien who has been
10 lawfully admitted into the United States for tem-
11 porary residence under section 2211.

12 (2) **AGRICULTURAL EMPLOYMENT.**—The term
13 “agricultural employment” has the meaning given
14 such term in section 3 of the Migrant and Seasonal
15 Agricultural Worker Protection Act (29 U.S.C.
16 1802), without regard to whether the specific service
17 or activity is temporary or seasonal.

18 (3) **CHILD.**—The term “child” has the meaning
19 given the term in section 101(b)(1) of the Immigra-
20 tion and Nationality Act (8 U.S.C. 1101(b)(1)).

21 (4) **EMPLOYER.**—The term “employer” means
22 any person or entity, including any farm labor con-
23 tractor and any agricultural association, that em-
24 ploys workers in agricultural employment.

1 (5) QUALIFIED DESIGNATED ENTITY.—The
2 term “qualified designated entity” means—

3 (A) a qualified farm labor organization or
4 an association of employers designated by the
5 Secretary; or

6 (B) any other entity that the Secretary
7 designates as having substantial experience,
8 demonstrated competence, and a history of
9 long-term involvement in the preparation and
10 submission of application for adjustment of sta-
11 tus under title II of the Immigration and Na-
12 tionality Act (8 U.S.C. 1151 et seq.).

13 (6) WORK DAY.—The term “work day” means
14 any day in which the individual is employed 5.75 or
15 more hours in agricultural employment.

16 **CHAPTER 1—PROGRAM FOR EARNED STA-**
17 **TUS ADJUSTMENT OF AGRICULTURAL**
18 **WORKERS**

19 **Subchapter A—Blue Card Status**

20 **SEC. 2211. REQUIREMENTS FOR BLUE CARD STATUS.**

21 (a) REQUIREMENTS FOR BLUE CARD STATUS.—Not-
22 withstanding any other provision of law, the Secretary,
23 after conducting the national security and law enforce-
24 ment clearances required under section 245B(c)(4), may
25 grant blue card status to an alien who—

1 (1)(A) performed agricultural employment in
2 the United States for not fewer than 575 hours or
3 100 work days during the 2-year period ending on
4 December 31, 2012; or

5 (B) is the spouse or child of an alien described
6 in subparagraph (A) and was physically present in
7 the United States on or before December 31, 2012,
8 and has maintained continuous presence in the
9 United States from that date until the date on which
10 the alien is granted blue card status, with the excep-
11 tion of absences from the United States that are
12 brief, casual, and innocent, whether or not such ab-
13 sences were authorized by the Secretary;

14 (2) submits a completed application before the
15 end of the period set forth in subsection (b)(2); and

16 (3) is not ineligible under paragraph (3) or (4)
17 of section 245B(b) of the Immigration and Nation-
18 ality Act (other than a nonimmigrant alien admitted
19 to the United States for agricultural employment de-
20 scribed in section 101(a)(15)(H)(ii)(a) of such Act.

21 (b) APPLICATION.—

22 (1) IN GENERAL.—An alien who meets the eli-
23 gibility requirements set forth in subsection (a)(1),
24 may apply for blue card status and that alien’s
25 spouse or child may apply for blue card status as a

1 dependent, by submitting a completed application
2 form to the Secretary during the application period
3 set forth in paragraph (2) in accordance with the
4 final rule promulgated by the Secretary pursuant to
5 subsection (e).

6 (2) SUBMISSION.—The Secretary shall provide
7 that the alien shall be able to submit an application
8 under paragraph (1)—

9 (A) if the applicant is represented by an
10 attorney or a nonprofit religious, charitable, so-
11 cial service, or similar organization recognized
12 by the Board of Immigration Appeals under
13 section 292.2 of title 8, Code of Federal Regu-
14 lations; or

15 (B) to a qualified entity if the applicant
16 consents to the forwarding of the application to
17 the Secretary.

18 (3) APPLICATION PERIOD.—

19 (A) INITIAL PERIOD.—Except as provided
20 in subparagraph (B), the Secretary may only
21 accept applications for blue card status for a 1-
22 year period from aliens in the United States be-
23 ginning on the date on which the final rule is
24 published in the Federal Register pursuant to
25 subsection (f), except that qualified non-

1 immigrants who have participated in the H-2A
2 Program may apply from outside of the United
3 States.

4 (B) EXTENSION.—If the Secretary deter-
5 mines, during the initial period described in
6 subparagraph (A), that additional time is re-
7 quired to process applications for blue card sta-
8 tus or for other good cause, the Secretary may
9 extend the period for accepting applications for
10 an additional 18 months.

11 (4) APPLICATION FORM.—

12 (A) REQUIRED INFORMATION.—The appli-
13 cation form referred to in paragraph (1) shall
14 collect such information as the Secretary deter-
15 mines necessary and appropriate.

16 (B) FAMILY APPLICATION.—The Secretary
17 shall establish a process through which an alien
18 may submit a single application under this sec-
19 tion on behalf of the alien, his or her spouse,
20 and his or her children, who are residing in the
21 United States.

22 (C) INTERVIEW.—The Secretary may
23 interview applicants for blue card status to de-
24 termine whether they meet the eligibility re-
25 quirements set forth in subsection (a)(1).

1 (5) ALIENS APPREHENDED BEFORE OR DURING
2 THE APPLICATION PERIOD.—If an alien, who is ap-
3 prehended during the period beginning on the date
4 of the enactment of this Act and ending on the ap-
5 plication period described in paragraph (3), appears
6 prima facie eligible for blue card status, the Sec-
7 retary—

8 (A) shall provide the alien with a reason-
9 able opportunity to file an application under
10 this section during such application period; and

11 (B) may not remove the individual until a
12 final administrative determination is made on
13 the application.

14 (6) SUSPENSION OF REMOVAL DURING APPLI-
15 CATION PERIOD.—

16 (A) PROTECTION FROM DETENTION OR
17 REMOVAL.—An alien granted blue card status
18 may not be detained by the Secretary or re-
19 moved from the United States unless—

20 (i) such alien is, or has become, ineli-
21 gible for blue card status; or

22 (ii) the alien's blue card status has
23 been revoked.

24 (B) ALIENS IN REMOVAL PROCEEDINGS.—

25 Notwithstanding any other provision of the Im-

1 migration and Nationality Act (8 U.S.C. 1101
2 et seq.)—

3 (i) if the Secretary determines that an
4 alien, during the period beginning on the
5 date of the enactment of this section and
6 ending on the last day of the application
7 period described in paragraph (2), is in re-
8 moval, deportation, or exclusion pro-
9 ceedings before the Executive Office for
10 Immigration Review and is prima facie eli-
11 gible for blue card status under this sec-
12 tion—

13 (I) the Secretary shall provide
14 the alien with the opportunity to file
15 an application for such status; and

16 (II) upon motion by the Sec-
17 retary and with the consent of the
18 alien or upon motion by the alien, the
19 Executive Office for Immigration Re-
20 view shall—

21 (aa) terminate such pro-
22 ceedings without prejudice to fu-
23 ture proceedings on any basis;
24 and

1 (bb) provide the alien a rea-
2 sonable opportunity to apply for
3 such status; and

4 (ii) if the Executive Office for Immi-
5 gration Review determines that an alien,
6 during the application period described in
7 paragraph (2), is in removal, deportation,
8 or exclusion proceedings before the Execu-
9 tive Office for Immigration Review and is
10 prima facie eligible for blue card status
11 under this section—

12 (I) the Executive Office of Immi-
13 gration Review shall notify the Sec-
14 retary of such determination; and

15 (II) if the Secretary does not dis-
16 pute the determination of prima facie
17 eligibility within 7 days after such no-
18 tification, the Executive Office for Im-
19 migration Review, upon consent of the
20 alien, shall—

21 (aa) terminate such pro-
22 ceedings without prejudice to fu-
23 ture proceedings on any basis;
24 and

1 (bb) permit the alien a rea-
2 sonable opportunity to apply for
3 such status.

4 (C) TREATMENT OF CERTAIN ALIENS.—

5 (i) IN GENERAL.—If an alien who
6 meets the eligibility requirements set forth
7 in subsection (a) is present in the United
8 States and has been ordered excluded, de-
9 ported, or removed, or ordered to depart
10 voluntarily from the United States under
11 any provision of this Act—

12 (I) notwithstanding such order or
13 section 241(a)(5) of the Immigration
14 and Nationality Act (8 U.S.C.
15 1231(a)(5)), the alien may apply for
16 blue card status under this section;
17 and

18 (II) if the alien is granted such
19 status, the alien shall file a motion to
20 reopen the exclusion, deportation, re-
21 moval, or voluntary departure order,
22 which motion shall be granted unless
23 1 or more of the grounds of ineligi-
24 bility is established by clear and con-
25 vincing evidence.

1 (ii) LIMITATIONS ON MOTIONS TO RE-
2 OPEN.—The limitations on motions to re-
3 open set forth in section 240(c)(7) of the
4 Immigration and Nationality Act (8 U.S.C.
5 1229a(c)(7)) shall not apply to motions
6 filed under clause (i)(II).

7 (D) PERIOD PENDING ADJUDICATION OF
8 APPLICATION.—

9 (i) IN GENERAL.—During the period
10 beginning on the date on which an alien
11 applies for blue card status under this sub-
12 section and the date on which the Sec-
13 retary makes a final decision regarding
14 such application, the alien—

15 (I) may receive advance parole to
16 reenter the United States if urgent
17 humanitarian circumstances compel
18 such travel;

19 (II) may not be detained by the
20 Secretary or removed from the United
21 States unless the Secretary makes a
22 prima facie determination that such
23 alien is, or has become, ineligible for
24 blue card status;

1 (III) shall not be considered un-
2 lawfully present for purposes of sec-
3 tion 212(a)(9)(B) of the Immigration
4 and Nationality Act (8 U.S.C.
5 1182(a)(9)(B)); and

6 (IV) shall not be considered an
7 unauthorized alien (as defined in sec-
8 tion 274A(h)(3) of the Immigration
9 and Nationality Act (8 U.S.C.
10 1324a(h)(3))).

11 (ii) EVIDENCE OF APPLICATION FIL-
12 ING.—As soon as practicable after receiv-
13 ing each application for blue card status,
14 the Secretary shall provide the applicant
15 with a document acknowledging the receipt
16 of such application.

17 (iii) CONTINUING EMPLOYMENT.—An
18 employer who knows an alien employee is
19 an applicant for blue card status or will
20 apply for such status once the application
21 period commences is not in violation of sec-
22 tion 274A(a)(2) of the Immigration and
23 Nationality Act (8 U.S.C. 1324a(a)(2)) if
24 the employer continues to employ the alien

1 pending the adjudication of the alien em-
2 ployee's application.

3 (iv) EFFECT OF DEPARTURE.—Sec-
4 tion 101(g) of the Immigration and Na-
5 tionality Act (8 U.S.C. 1101(g)) shall not
6 apply to an alien granted—

7 (I) advance parole under clause

8 (i)(I) to reenter the United States; or

9 (II) blue card status.

10 (7) SECURITY AND LAW ENFORCEMENT CLEAR-
11 ANCES.—

12 (A) BIOMETRIC AND BIOGRAPHIC DATA.—

13 The Secretary may not grant blue card status
14 to an alien or an alien dependent spouse or
15 child under this section unless such alien sub-
16 mits biometric and biographic data in accord-
17 ance with procedures established by the Sec-
18 retary.

19 (B) ALTERNATIVE PROCEDURES.—The
20 Secretary shall provide an alternative procedure
21 for applicants who cannot provide the standard
22 biometric data required under subparagraph
23 (A) because of a physical impairment.

24 (C) CLEARANCES.—

1 (i) DATA COLLECTION.—The Sec-
2 retary shall collect, from each alien apply-
3 ing for status under this section, biometric,
4 biographic, and other data that the Sec-
5 retary determines to be appropriate—

6 (I) to conduct national security
7 and law enforcement clearances; and

8 (II) to determine whether there
9 are any national security or law en-
10 forcement factors that would render
11 an alien ineligible for such status.

12 (ii) PREREQUISITE.—The required
13 clearances described in clause (i)(I) shall
14 be completed before the alien may be
15 granted blue card status.

16 (8) DURATION OF STATUS.—After the date that
17 is 8 years after the date regulations are published
18 under this section, no alien may remain in blue card
19 status.

20 (9) FEES AND PENALTIES.—

21 (A) STANDARD PROCESSING FEE.—

22 (i) IN GENERAL.—Aliens who are 16
23 years of age or older and are applying for
24 blue card status under paragraph (2), or
25 for an extension of such status, shall pay

1 a processing fee to the Department in an
2 amount determined by the Secretary.

3 (ii) RECOVERY OF COSTS.—The proc-
4 essing fee authorized under clause (i) shall
5 be set at a level that is sufficient to recover
6 the full costs of processing the application,
7 including any costs incurred—

8 (I) to adjudicate the application;

9 (II) to take and process bio-
10 metrics;

11 (III) to perform national security
12 and criminal checks, including adju-
13 dication;

14 (IV) to prevent and investigate
15 fraud; and

16 (V) to administer the collection
17 of such fee.

18 (iii) AUTHORITY TO LIMIT FEES.—
19 The Secretary, by regulation, may—

20 (I) limit the maximum processing
21 fee payable under this subparagraph
22 by a family, including spouses and un-
23 married children younger than 21
24 years of age; and

1 (II) exempt defined classes of in-
2 dividuals from the payment of the fee
3 authorized under clause (i).

4 (B) DEPOSIT AND USE OF PROCESSING
5 FEES.—Fees collected pursuant to subpara-
6 graph (A)(i)—

7 (i) shall be deposited into the Immi-
8 gration Examinations Fee Account pursu-
9 ant to section 286(m); and

10 (ii) shall remain available until ex-
11 pended pursuant to section 286(n).

12 (C) PENALTY.—

13 (i) PAYMENT.—In addition to the
14 processing fee required under subpara-
15 graph (A), aliens who are 21 years of age
16 or older and are applying for blue card sta-
17 tus under paragraph (2) shall pay a \$100
18 penalty to the Department.

19 (ii) DEPOSIT.—Penalties collected
20 pursuant to clause (i) shall be deposited
21 into the Comprehensive Immigration Re-
22 form Trust Fund established under section
23 9(a)(1).

24 (10) ADJUDICATION.—

1 (A) FAILURE TO SUBMIT SUFFICIENT EVI-
2 DENCE.—The Secretary shall deny an applica-
3 tion submitted by an alien who fails to sub-
4 mit—

5 (i) requested initial evidence, includ-
6 ing requested biometric data; or

7 (ii) any requested additional evidence
8 by the date required by the Secretary.

9 (B) AMENDED APPLICATION.—An alien
10 whose application for blue card status is denied
11 under subparagraph (A) may file an amended
12 application for such status to the Secretary if
13 the amended application—

14 (i) is filed within the application pe-
15 riod described in paragraph (3); and

16 (ii) contains all the required informa-
17 tion and fees that were missing from the
18 initial application.

19 (11) EVIDENCE OF BLUE CARD STATUS.—

20 (A) IN GENERAL.—The Secretary shall
21 issue documentary evidence of blue card status
22 to each alien whose application for such status
23 has been approved.

1 (B) DOCUMENTATION FEATURES.—Docu-
2 mentary evidence provided under subparagraph
3 (A)—

4 (i) shall be machine-readable and tam-
5 per-resistant, and shall contain a digitized
6 photograph;

7 (ii) shall, during the alien’s authorized
8 period of admission, and any extension of
9 such authorized admission, serve as a valid
10 travel and entry document for the purpose
11 of applying for admission to the United
12 States;

13 (iii) may be accepted during the pe-
14 riod of its validity by an employer as evi-
15 dence of employment authorization and
16 identity under section 274A(b)(1)(B) of
17 the Immigration and Nationality Act (8
18 U.S.C. 1324a(b)(1)(B)); and

19 (iv) shall include such other features
20 and information as the Secretary may pre-
21 scribe.

22 (c) TERMS AND CONDITIONS OF BLUE CARD STA-
23 TUS.—

24 (1) CONDITIONS OF BLUE CARD STATUS.—

1 (A) EMPLOYMENT.—Notwithstanding any
2 other provision of law, including section
3 241(a)(7) of the Immigration and Nationality
4 Act (8 U.S.C. 1231(a)(7)), an alien with blue
5 card status shall be authorized to be employed
6 in the United States while in such status.

7 (B) TRAVEL OUTSIDE THE UNITED
8 STATES.—An alien with blue card status may
9 travel outside of the United States and may be
10 admitted, if otherwise admissible, upon return-
11 ing to the United States without having to ob-
12 tain a visa if—

13 (i) the alien is in possession of—

14 (I) valid, unexpired documentary
15 evidence of blue card status that com-
16 plies with subsection (b)(11); or

17 (II) a travel document that has
18 been approved by the Secretary and
19 was issued to the alien after the
20 alien's original documentary evidence
21 was lost, stolen, or destroyed;

22 (ii) the alien's absence from the
23 United States did not exceed 180 days, un-
24 less the alien's failure to timely return was

1 due to extenuating circumstances beyond
2 the alien's control; and

3 (iii) the alien establishes that the alien
4 is not inadmissible under subparagraph
5 (A)(i), (A)(iii), (B), or (C) of section
6 212(a)(3) of the Immigration and Nation-
7 ality Act (8 U.S.C. 1182(a)(3)).

8 (C) ADMISSION.—An alien granted blue
9 card status shall be considered to have been ad-
10 mitted in such status as of the date on which
11 the alien's application was filed.

12 (D) CLARIFICATION OF STATUS.—An alien
13 granted blue card status—

14 (i) is lawfully admitted to the United
15 States; and

16 (ii) may not be classified as a non-
17 immigrant or as an alien who has been
18 lawfully admitted for permanent residence.

19 (2) REVOCATION.—

20 (A) IN GENERAL.—The Secretary may re-
21 voke blue card status at any time after pro-
22 viding appropriate notice to the alien, and after
23 the exhaustion or waiver of all applicable ad-
24 ministrative review procedures under section
25 245E(c) of the Immigration and Nationality

1 Act, as added by section 2104(a) of this Act, if
2 the alien—

3 (i) no longer meets the eligibility re-
4 quirements for blue card status;

5 (ii) knowingly used documentation
6 issued under this section for an unlawful
7 or fraudulent purpose; or

8 (iii) was absent from the United
9 States for—

10 (I) any single period longer than
11 180 days in violation of the require-
12 ment under paragraph (1)(B)(ii); or

13 (II) for more than 180 days in
14 the aggregate during any calendar
15 year, unless the alien's failure to time-
16 ly return was due to extenuating cir-
17 cumstances beyond the alien's control.

18 (B) ADDITIONAL EVIDENCE.—

19 (i) IN GENERAL.—In determining
20 whether to revoke an alien's status under
21 subparagraph (A), the Secretary may re-
22 quire the alien—

23 (I) to submit additional evidence;

24 or

25 (II) to appear for an interview.

1 (ii) EFFECT OF NONCOMPLIANCE.—

2 The status of an alien who fails to comply
3 with any requirement imposed by the Sec-
4 retary under clause (i) shall be revoked un-
5 less the alien demonstrates to the Sec-
6 retary's satisfaction that such failure was
7 reasonably excusable.

8 (C) INVALIDATION OF DOCUMENTATION.—

9 If an alien's blue card status is revoked under
10 subparagraph (A), any documentation issued by
11 the Secretary to such alien under subsection
12 (b)(11) shall automatically be rendered invalid
13 for any purpose except for departure from the
14 United States.

15 (3) INELIGIBILITY FOR PUBLIC BENEFITS.—An
16 alien who has been granted blue card status is not
17 eligible for any Federal means-tested public benefit
18 (as such term is defined and implemented in section
19 403 of the Personal Responsibility and Work Oppor-
20 tunity Reconciliation Act of 1996 (8 U.S.C. 1613)).

21 (4) TREATMENT OF BLUE CARD STATUS.—A
22 noncitizen granted blue card status shall be consid-
23 ered lawfully present in the United States for all
24 purposes while such noncitizen remains in such sta-
25 tus, except that the noncitizen—

1 (A) is not entitled to the premium assist-
2 ance tax credit authorized under section 36B of
3 the Internal Revenue Code of 1986 for his or
4 her coverage;

5 (B) shall be subject to the rules applicable
6 to individuals who are not lawfully present set
7 forth in subsection (e) of such section;

8 (C) shall be subject to the rules applicable
9 to individuals who are not lawfully present set
10 forth in section 1402(e) of the Patient Protec-
11 tion and Affordable Care Act (42 U.S.C.
12 18071(e)); and

13 (D) shall be subject to the rules applicable
14 to individuals not lawfully present set forth in
15 section 5000A(d)(3) of the Internal Revenue
16 Code of 1986.

17 (5) ADJUSTMENT TO REGISTERED PROVISIONAL
18 IMMIGRANT STATUS.—The Secretary may adjust the
19 status of an alien who has been granted blue card
20 status to the status of a registered provisional immi-
21 grant under section 245B of the Immigration and
22 Nationality Act if the Secretary determines that the
23 alien is unable to fulfill the agricultural service re-
24 quirement set forth in section 245F(a)(1) of such
25 Act.

1 (d) RECORD OF EMPLOYMENT.—

2 (1) IN GENERAL.—Each employer of an alien
3 granted blue card status shall annually provide—

4 (A) a written record of employment to the
5 alien; and

6 (B) a copy of such record to the Secretary
7 of Agriculture.

8 (2) CIVIL PENALTIES.—

9 (A) IN GENERAL.—If the Secretary finds,
10 after notice and an opportunity for a hearing,
11 that an employer of an alien granted blue card
12 status has knowingly failed to provide the
13 record of employment required under paragraph
14 (1) or has provided a false statement of mate-
15 rial fact in such a record, the employer shall be
16 subject to a civil penalty in an amount not to
17 exceed \$500 per violation.

18 (B) LIMITATION.—The penalty under sub-
19 paragraph (A) for failure to provide employ-
20 ment records shall not apply unless the alien
21 has provided the employer with evidence of em-
22 ployment authorization provided under sub-
23 section (c).

24 (C) DEPOSIT OF CIVIL PENALTIES.—Civil
25 penalties collected under this paragraph shall be

1 deposited in the Comprehensive Immigration
2 Reform Trust Fund established under section
3 9(a)(1).

4 (3) TERMINATION OF OBLIGATION.—The obli-
5 gation under paragraph (1) shall terminate on the
6 date that is 8 years after the date of the enactment
7 of this Act.

8 (4) EMPLOYER PROTECTIONS.—

9 (A) USE OF EMPLOYMENT RECORDS.—
10 Copies of employment records or other evidence
11 of employment provided by an alien or by an
12 alien's employer in support of an alien's appli-
13 cation for blue card status may not be used in
14 a civil or criminal prosecution or investigation
15 of that employer under section 274A of the Im-
16 migration and Nationality Act (8 U.S.C.
17 1324a) or the Internal Revenue Code of 1986
18 for the prior unlawful employment of that alien
19 regardless of the adjudication of such applica-
20 tion or reconsideration by the Secretary of such
21 alien's prima facie eligibility determination.
22 Employers that provide unauthorized aliens
23 with copies of employment records or other evi-
24 dence of employment pursuant to an application
25 for blue card status shall not be subject to civil

1 and criminal liability pursuant to such section
2 274A for employing such unauthorized aliens.

3 (B) LIMIT ON APPLICABILITY.—The pro-
4 tections for employers and aliens under sub-
5 paragraph (A) shall not apply if the aliens or
6 employers submit employment records that are
7 deemed to be fraudulent.

8 (e) RULEMAKING.—Not later than 1 year after the
9 date of the enactment of this Act, the Secretary, in con-
10 sultation with the Secretary of Agriculture, shall issue
11 final regulations to implement this chapter.

12 **SEC. 2212. ADJUSTMENT TO PERMANENT RESIDENT STA-**
13 **TUS.**

14 (a) IN GENERAL.—Chapter 5 of title II (8 U.S.C.
15 1255 et seq.) is amended by inserting after section 245E,
16 as added by section 2104 of this Act, the following:

17 **“SEC. 245F. ADJUSTMENT TO PERMANENT RESIDENT STA-**
18 **TUS FOR AGRICULTURAL WORKERS.**

19 “(a) IN GENERAL.—Except as provided in subsection
20 (b), and not earlier than 5 years after the date of the en-
21 actment of the Border Security, Economic Opportunity,
22 and Immigration Modernization Act, the Secretary shall
23 adjust the status of an alien granted blue card status to
24 that of an alien lawfully admitted for permanent residence

1 if the Secretary determines that the following require-
2 ments are satisfied:

3 “(1) QUALIFYING EMPLOYMENT.—Except as
4 provided in paragraph (3), the alien—

5 “(A) during the 8-year period beginning on
6 the date of the enactment of the Border Secu-
7 rity, Economic Opportunity, and Immigration
8 Modernization Act, performed not less than 100
9 work days of agricultural employment during
10 each of 5 years; or

11 “(B) during the 5-year period beginning on
12 such date of enactment, performed not less
13 than 150 work days of agricultural employment
14 during each of 3 years.

15 “(2) EVIDENCE.—An alien may demonstrate
16 compliance with the requirement under paragraph
17 (1) by submitting—

18 “(A) the record of employment described
19 in section 2211(d) of the Border Security, Eco-
20 nomic Opportunity, and Immigration Mod-
21 ernization Act;

22 “(B) documentation that may be submitted
23 under subsection (e)(4); or

24 “(C) any other documentation designated
25 by the Secretary for such purpose.

1 “(3) EXTRAORDINARY CIRCUMSTANCES.—

2 “(A) IN GENERAL.—In determining wheth-
3 er an alien has met the requirement under
4 paragraph (1), the Secretary may credit the
5 alien with not more than 12 additional months
6 of agricultural employment in the United States
7 to meet such requirement if the alien was un-
8 able to work in agricultural employment due
9 to—

10 “(i) pregnancy, disabling injury, or
11 disease that the alien can establish through
12 medical records;

13 “(ii) illness, disease, or other special
14 needs of a child that the alien can establish
15 through medical records;

16 “(iii) severe weather conditions that
17 prevented the alien from engaging in agri-
18 cultural employment for a significant pe-
19 riod of time; or

20 “(iv) termination from agricultural
21 employment, if the Secretary determines
22 that—

23 “(I) the termination was without
24 just cause; and

1 “(II) the alien was unable to find
2 alternative agricultural employment
3 after a reasonable job search.

4 “(B) EFFECT OF DETERMINATION.—A de-
5 termination under subparagraph (A)(iv), with
6 respect to an alien, shall not be conclusive,
7 binding, or admissible in a separate or subse-
8 quent judicial or administrative action or pro-
9 ceeding between the alien and a current or
10 prior employer of the alien or any other party.

11 “(4) APPLICATION PERIOD.—The alien applies
12 for adjustment of status before the alien’s blue card
13 status expires.

14 “(5) FINE.—The alien pays a fine of \$400 to
15 the Secretary, which shall be deposited into the
16 Comprehensive Immigration Reform Trust Fund es-
17 tablished under section 9(a)(1) of the Border Secu-
18 rity, Economic Opportunity, and Immigration Mod-
19 ernization Act.

20 “(b) GROUNDS FOR DENIAL OF ADJUSTMENT OF
21 STATUS.—

22 “(1) IN GENERAL.—The Secretary may not ad-
23 just the status of an alien granted blue card status
24 if the alien—

1 “(A) is no longer eligible for blue card sta-
2 tus; or

3 “(B) failed to perform the qualifying em-
4 ployment requirement under subsection (a)(1),
5 considering any amount credited by the Sec-
6 retary under subsection (a)(3).

7 “(2) MAINTENANCE OF WAIVERS OF INADMIS-
8 SIBILITY.—The grounds of inadmissibility set forth
9 in section 212(a) that were previously waived for the
10 alien or made inapplicable shall not apply for pur-
11 poses of the alien’s adjustment of status under this
12 section.

13 “(3) PENDING REVOCATION PROCEEDINGS.—If
14 the Secretary has notified the applicant that the
15 Secretary intends to revoke the applicant’s blue card
16 status, the Secretary may not approve an application
17 for adjustment of status under this section unless
18 the Secretary makes a final determination not to re-
19 voke the applicant’s status.

20 “(4) PAYMENT OF TAXES.—

21 “(A) IN GENERAL.—An applicant may not
22 file an application for adjustment of status
23 under this section unless the applicant has sat-
24 isfied any applicable Federal tax liability.

1 “(B) DEFINITION OF APPLICABLE FED-
2 ERAL TAX LIABILITY.—In this paragraph, the
3 term ‘applicable federal tax liability’ means all
4 Federal income taxes assessed in accordance
5 with section 6203 of the Internal Revenue Code
6 of 1986 since the date on which the applicant
7 was authorized to work in the United States in
8 blue card status.

9 “(C) COMPLIANCE.—The applicant may
10 demonstrate compliance with subparagraph (A)
11 by submitting such documentation as the Sec-
12 retary, in consultation with the Secretary of the
13 Treasury, may require by regulation.

14 “(c) SPOUSES AND CHILDREN.—Notwithstanding
15 any other provision of law, the Secretary shall grant per-
16 manent resident status to the spouse or child of an alien
17 whose status was adjusted under subsection (a) if—

18 “(1) the spouse or child (including any indi-
19 vidual who was a child on the date such alien was
20 granted blue card status) applies for such status;

21 “(2) the principal alien includes the spouse and
22 children in an application for adjustment of status
23 to that of a lawful permanent resident; and

24 “(3) the spouse or child is not ineligible for
25 such status under section 245B.

1 “(d) NUMERICAL LIMITATIONS DO NOT APPLY.—
2 The numerical limitations under sections 201 and 202
3 shall not apply to the adjustment of aliens to lawful per-
4 manent resident status under this section.

5 “(e) SUBMISSION OF APPLICATIONS.—

6 “(1) INTERVIEW.—The Secretary may interview
7 applicants for adjustment of status under this sec-
8 tion to determine whether they meet the eligibility
9 requirements set forth in this section.

10 “(2) FEES.—

11 “(A) IN GENERAL.—Applicants for adjust-
12 ment of status under this section shall pay a
13 processing fee to the Secretary in an amount
14 that will ensure the recovery of the full costs of
15 adjudicating such applications, including—

16 “(i) the cost of taking and processing
17 biometrics;

18 “(ii) expenses relating to prevention
19 and investigation of fraud; and

20 “(iii) costs relating to the administra-
21 tion of the fees collected.

22 “(B) AUTHORITY TO LIMIT FEES.—The
23 Secretary, by regulation—

24 “(i) may limit the maximum proc-
25 essing fee payable under this paragraph by

1 a family, including spouses and unmarried
2 children younger than 21 years of age; and

3 “(ii) may exempt individuals described
4 in section 245B(c)(10) and other defined
5 classes of individuals from the payment of
6 the fee under subparagraph (A).

7 “(3) DISPOSITION OF FEES.—All fees collected
8 under paragraph (2)(A)—

9 “(A) shall be deposited into the Immigra-
10 tion Examinations Fee Account pursuant to
11 section 286(m); and

12 “(B) shall remain available until expended
13 pursuant to section 286(n).

14 “(4) DOCUMENTATION OF WORK HISTORY.—

15 “(A) BURDEN OF PROOF.—An alien apply-
16 ing for blue card status under section 2211 of
17 the Border Security, Economic Opportunity,
18 and Immigration Modernization Act or for ad-
19 justment of status under subsection (a) shall
20 provide evidence that the alien has worked the
21 requisite number of hours or days required
22 under subsection (a)(1) of such section 2211 or
23 subsection (a)(3) of this section, as applicable.

24 “(B) TIMELY PRODUCTION OF RECORDS.—

25 If an employer or farm labor contractor employ-

1 ing such an alien has kept proper and adequate
2 records respecting such employment, the alien’s
3 burden of proof under subparagraph (A) may
4 be met by securing timely production of those
5 records under regulations to be promulgated by
6 the Secretary.

7 “(C) SUFFICIENT EVIDENCE.—An alien
8 may meet the burden of proof under subpara-
9 graph (A) to establish that the alien has per-
10 formed the days or hours of work referred to in
11 subparagraph (A) by producing sufficient evi-
12 dence to show the extent of that employment as
13 a matter of just and reasonable inference.

14 “(f) PENALTIES FOR FALSE STATEMENTS IN APPLI-
15 CATIONS.—

16 “(1) CRIMINAL PENALTY.—Any person who—

17 “(A) files an application for blue card sta-
18 tus under section 2211 of the Border Security,
19 Economic Opportunity, and Immigration Mod-
20 ernization Act or an adjustment of status under
21 this section and knowingly and willfully fal-
22 sifies, conceals, or covers up a material fact or
23 makes any false, fictitious, or fraudulent state-
24 ments or representations, or makes or uses any
25 false writing or document knowing the same to

1 contain any false, fictitious, or fraudulent state-
2 ment or entry; or

3 “(B) creates or supplies a false writing or
4 document for use in making such an applica-
5 tion,

6 shall be fined in accordance with title 18, United
7 States Code, imprisoned not more than 5 years, or
8 both.

9 “(2) INADMISSIBILITY.—An alien who is con-
10 victed of a crime under paragraph (1) shall be
11 deemed inadmissible to the United States on the
12 ground described in section 212(a)(6)(C)(i).

13 “(3) DEPOSIT.—Fines collected under para-
14 graph (1) shall be deposited into the Comprehensive
15 Immigration Reform Trust Fund established under
16 section 9(a)(1) of the Border Security, Economic
17 Opportunity, and Immigration Modernization Act.

18 “(g) ELIGIBILITY FOR LEGAL SERVICES.—Section
19 504(a)(11) of the Departments of Commerce, Justice, and
20 State, the Judiciary, and Related Agencies Appropriations
21 Act, 1996 (Public Law 104–134; 110 Stat. 1321–55) may
22 not be construed to prevent a recipient of funds under the
23 Legal Services Corporation Act (42 U.S.C. 2996 et seq.)
24 from providing legal assistance directly related to an appli-
25 cation for blue card status under section 2211 of the Bor-

1 der Security, Economic Opportunity, and Immigration
2 Modernization Act, to an individual who has been granted
3 blue card status, or for an application for an adjustment
4 of status under this section.

5 “(h) ADMINISTRATIVE AND JUDICIAL REVIEW.—
6 Aliens applying for blue card status under section 2211
7 of the Border Security, Economic Opportunity, and Immi-
8 gration Modernization Act or adjustment to permanent
9 resident status under this section shall be entitled to the
10 rights and subject to the conditions applicable to other
11 classes of aliens under sections 242(h) and 245E.

12 “(i) APPLICABILITY OF OTHER PROVISIONS.—The
13 provisions set forth in section 245E which are applicable
14 to aliens described in section 245B, 245C, and 245D shall
15 apply to aliens applying for blue card status under section
16 2211 of the Border Security, Economic Opportunity, and
17 Immigration Modernization Act or adjustment to perma-
18 nent resident status under this section.

19 “(j) LIMITATION ON BLUE CARD STATUS.—An alien
20 granted blue card status under section 2211 of the Border
21 Security, Economic Opportunity, and Immigration Mod-
22 ernization Act may only adjust status to an alien lawfully
23 admitted for permanent residence under this section, sec-
24 tion 245C of this Act, or section 2302 of the Border Secu-

1 rity, Economic Opportunity, and Immigration Moderniza-
2 tion Act.

3 “(k) DEFINITIONS.—In this section:

4 “(1) BLUE CARD STATUS.—The term ‘blue card
5 status’ means the status of an alien who has been
6 lawfully admitted into the United States for tem-
7 porary residence under section 2211 of the Border
8 Security, Economic Opportunity, and Immigration
9 Modernization Act.

10 “(2) AGRICULTURAL EMPLOYMENT.—The term
11 ‘agricultural employment’ has the meaning given
12 such term in section 3 of the Migrant and Seasonal
13 Agricultural Worker Protection Act (29 U.S.C.
14 1802), without regard to whether the specific service
15 or activity is temporary or seasonal.

16 “(3) EMPLOYER.—The term ‘employer’ means
17 any person or entity, including any farm labor con-
18 tractor and any agricultural association, that em-
19 ploys workers in agricultural employment.

20 “(4) WORK DAY.—The term ‘work day’ means
21 any day in which the individual is employed 5.75 or
22 more hours in agricultural employment.”.

23 (b) CONFORMING AMENDMENT.—Section 201(b)(1)
24 (8 U.S.C. 1151(b)(1), as amended by section 2103(c), is
25 further amended by adding at the end the following:

1 “(G) Aliens granted lawful permanent resi-
2 dent status under section 245F.”.

3 (c) CLERICAL AMENDMENT.—The table of contents,
4 as amended by section 2104(e), is further amended by in-
5 serting after the item relating to section 245E the fol-
6 lowing:

 “Sec. 245F. Adjustment to permanent resident status for agricultural work-
 ers.”.

7 **SEC. 2213. USE OF INFORMATION.**

8 Beginning not later than the first day of the applica-
9 tion period described in section 2211(b)(3), the Secretary,
10 in cooperation with qualified designated entities, shall
11 broadly disseminate information respecting the benefits
12 that aliens may receive under this subchapter and the re-
13 quirements that an alien is required to meet to receive
14 such benefits.

15 **SEC. 2214. REPORTS ON BLUE CARDS.**

16 Not later than September 30, 2013, and annually
17 thereafter for the next 8 years, the Secretary shall submit
18 a report to Congress that identifies, for the previous fiscal
19 year—

20 (1) the number of aliens who applied for blue
21 card status;

22 (2) the number of aliens who were granted blue
23 card status;

1 (3) the number of aliens who applied for an ad-
2 justment of status pursuant to section 245F(a) of
3 the Immigration and Nationality Act, as added by
4 section 2212; and

5 (4) the number of aliens who received an ad-
6 justment of status pursuant such section 245F(a).

7 **SEC. 2215. AUTHORIZATION OF APPROPRIATIONS.**

8 There are authorized to be appropriated to the Sec-
9 retary such sums as may be necessary to implement this
10 subchapter, including any sums needed for costs associ-
11 ated with the initiation of such implementation, for fiscal
12 years 2013 and 2014.

13 **Subchapter B—Correction of Social Security**
14 **Records**

15 **SEC. 2221. CORRECTION OF SOCIAL SECURITY RECORDS.**

16 (a) IN GENERAL.—Section 208(e)(1) of the Social
17 Security Act (42 U.S.C. 408(e)(1)) is amended—

18 (1) in subparagraph (B)(ii), by striking “or” at
19 the end;

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

22 (3) by inserting after subparagraph (C) the fol-
23 lowing:

1 “(D) who is granted blue card status
2 under the Agricultural Worker Program Act of
3 2013,”; and

4 (4) by striking “1990.” and inserting “1990, or
5 in the case of an alien described in subparagraph
6 (D), if such conduct is alleged to have occurred be-
7 fore the date on which the alien was granted blue
8 card status under section 2211(a) of the Agricul-
9 tural Worker Program Act of 2013.”.

10 (b) EFFECTIVE DATE.—The amendments made by
11 subsection (a) shall take effect on the first day of the sev-
12 enth month that begins after the date of the enactment
13 of this Act.

14 **CHAPTER 2—NONIMMIGRANT**
15 **AGRICULTURAL VISA PROGRAM**

16 **SEC. 2231. NONIMMIGRANT CLASSIFICATION FOR NON-**
17 **IMMIGRANT AGRICULTURAL WORKERS.**

18 Section 101(a)(15) (8 U.S.C. 1101(a)(15)) is amend-
19 ed by adding at the end the following:

20 “(W) an alien having a residence in a for-
21 eign country who is coming to the United
22 States for a temporary period—

23 “(iii)(I) to perform services or labor in
24 agricultural employment and who has a
25 written contract that specifies the wages,

1 benefits, and working conditions of such
2 full-time employment in an agricultural oc-
3 cupation with a designated agricultural
4 employer for a specified period of time;
5 and

6 “(II) who meets the requirements
7 under section 218A for a nonimmigrant
8 visa described in this clause; or

9 “(iv)(I) to perform services or labor in
10 agricultural employment and who has an
11 offer of full-time employment in an agricul-
12 tural occupation from a designated agricul-
13 tural employer for such employment and is
14 not described in clause (i); and

15 “(II) who meets the requirements
16 under section 218A for a nonimmigrant
17 visa described in this clause.”.

18 **SEC. 2232. ESTABLISHMENT OF NONIMMIGRANT AGRICUL-**
19 **TURAL WORKER PROGRAM.**

20 (a) IN GENERAL.—Chapter 2 of title II (8 U.S.C.
21 1181 et seq.) is amended by inserting after section 218
22 the following:

1 **“SEC. 218A. NONIMMIGRANT AGRICULTURAL WORKER PRO-**
2 **GRAM.**

3 “(a) DEFINITIONS.—In this section and in clauses
4 (iii) and (iv) of section 101(a)(15)(W):

5 “(1) AGRICULTURAL EMPLOYMENT.—The term
6 ‘agricultural employment’ has the meaning given
7 such term in section 3 of the Migrant and Seasonal
8 Agricultural Worker Protection Act (29 U.S.C.
9 1802), without regard to whether the specific service
10 or activity is temporary or seasonal.

11 “(2) AT-WILL AGRICULTURAL WORKER.—The
12 term ‘at-will agricultural worker’ means an alien
13 present in the United States pursuant to section
14 101(a)(15)(W)(iv).

15 “(3) BLUE CARD.—The term ‘blue card’ means
16 an employment authorization and travel document
17 issued to an alien granted blue card status under
18 section 2211(a) of the Agricultural Worker Program
19 Act of 2013.

20 “(4) CONTRACT AGRICULTURAL WORKER.—The
21 term ‘contract agricultural worker’ means an alien
22 present in the United States pursuant to section
23 101(a)(15)(W)(iii).

24 “(5) DESIGNATED AGRICULTURAL EM-
25 PLOYER.—The term ‘designated agricultural em-
26 ployer’ means an employer who is registered with

1 the Secretary of Agriculture pursuant to subsection
2 (e)(1).

3 “(6) ELECTRONIC JOB REGISTRY.—The term
4 ‘Electronic Job Registry’ means the Electronic Job
5 Registry of a State workforce agency (or similar suc-
6 cessor registry).

7 “(7) EMPLOYER.—Except as otherwise pro-
8 vided, the term ‘employer’ means any person or enti-
9 ty, including any farm labor contractor and any ag-
10 ricultural association, that employs workers in agri-
11 cultural employment.

12 “(8) NONIMMIGRANT AGRICULTURAL WORK-
13 ER.—The term ‘nonimmigrant agricultural worker’
14 mean a nonimmigrant described in clause (iii) or (iv)
15 of section 101(a)(15)(W).

16 “(9) PROGRAM.—The term ‘Program’ means
17 the Nonimmigrant Agricultural Worker Program es-
18 tablished under subsection (b).

19 “(10) SECRETARY.—Except as otherwise spe-
20 cifically provided, the term ‘Secretary’ means the
21 Secretary of Agriculture.

22 “(11) UNITED STATES WORKER.—The term
23 ‘United States worker’ means an individual who—

24 “(A) is a national of the United States; or

25 “(B) is an alien who—

1 “(i) is lawfully admitted for perma-
2 nent residence;

3 “(ii) is admitted as a refugee under
4 section 207;

5 “(iii) is granted asylum under section
6 208;

7 “(iv) holds a blue card; or

8 “(v) is an immigrant otherwise au-
9 thorized by this Act or by the Secretary of
10 Homeland Security to be employed in the
11 United States.

12 “(b) REQUIREMENTS.—

13 “(1) EMPLOYER.—An employer may not employ
14 an alien for agricultural employment under the Pro-
15 gram unless such employer is a designated agricul-
16 tural employer and complies with the terms of this
17 section.

18 “(2) WORKER.—An alien may not be employed
19 for agricultural employment under the Program un-
20 less such alien is a nonimmigrant agricultural work-
21 er and complies with the terms of this section.

22 “(c) NUMERICAL LIMITATION.—

23 “(1) FIRST 5 YEARS OF PROGRAM.—

24 “(A) IN GENERAL.—Subject to paragraph
25 (2), the worldwide level of visas for non-

1 immigrant agricultural workers for the fiscal
2 year during which the first visa is issued to a
3 nonimmigrant agricultural worker and for each
4 of the following 4 fiscal years shall be equal
5 to—

6 “(i) 112,333; and

7 “(ii) the numerical adjustment made
8 by the Secretary for such fiscal year in ac-
9 cordance with paragraph (2).

10 “(B) QUARTERLY ALLOCATION.—The an-
11 nual allocation of visas described in subpara-
12 graph (A) shall be evenly allocated between the
13 4 quarters of the fiscal year unless the Sec-
14 retary determines that an alternative allocation
15 would better accommodate the seasonal demand
16 for visas. Any unused visas in a quarter shall
17 be added to the allocation for the subsequent
18 quarter of the same fiscal year.

19 “(C) EFFECT OF 2ND OR SUBSEQUENT
20 DESIGNATED AGRICULTURAL EMPLOYER.—A
21 nonimmigrant agricultural worker who has a
22 valid visa issued under this section that counted
23 against the allocation described in subpara-
24 graph (A) shall not be recounted against the al-

1 location if the worker is petitioned for by a sub-
2 sequent designated agricultural employer.

3 “(2) ANNUAL ADJUSTMENTS FOR FIRST 5
4 YEARS OF PROGRAM.—

5 “(A) IN GENERAL.—The Secretary, in con-
6 sultation with the Secretary of Labor, and after
7 reviewing relevant evidence submitted by agri-
8 cultural producers and organizations rep-
9 resenting agricultural workers, may increase or
10 decrease, as appropriate, the worldwide level of
11 visas under paragraph (1) for each of the 5 fis-
12 cal years referred to in paragraph (1) after con-
13 sidering appropriate factors, including—

14 “(i) a demonstrated shortage of agri-
15 cultural workers;

16 “(ii) the level of unemployment and
17 underemployment of agricultural workers
18 during the preceding fiscal year;

19 “(iii) the number of applications for
20 blue card status;

21 “(iv) the number of blue card visa ap-
22 plications approved;

23 “(v) the number of nonimmigrant ag-
24 ricultural workers sought by employers
25 during the preceding fiscal year;

1 “(vi) the estimated number of United
2 States workers, including blue card work-
3 ers, who worked in agriculture during the
4 preceding fiscal year;

5 “(vii) the number of nonimmigrant
6 agricultural workers issued a visa in the
7 most recent fiscal year who remain in the
8 United States in compliance with the terms
9 of such visa;

10 “(viii) the number of United States
11 workers who accepted jobs offered by em-
12 ployers using the Electronic Job Registry
13 during the preceding fiscal year;

14 “(ix) any growth or contraction of the
15 United States agricultural industry that
16 has increased or decreased the demand for
17 agricultural workers; and

18 “(x) any changes in the real wages
19 paid to agricultural workers in the United
20 States as an indication of a shortage or
21 surplus of agricultural labor.

22 “(B) NOTIFICATION; IMPLEMENTATION.—
23 The Secretary shall notify the Secretary of
24 Homeland Security of any change to the world-
25 wide level of visas for nonimmigrant agricul-

1 tural workers. The Secretary of Homeland Se-
2 curity shall implement such changes.

3 “(C) EMERGENCY PROCEDURES.—The
4 Secretary shall establish, by regulation, proce-
5 dures for immediately adjusting an annual allo-
6 cation under paragraph (1) for labor shortages,
7 as determined by the Secretary. The Secretary
8 shall make a decision on a petition for an ad-
9 justment of status not later than 30 days after
10 receiving such petition.

11 “(3) SIXTH AND SUBSEQUENT YEARS OF PRO-
12 GRAM.—The Secretary, in consultation with the Sec-
13 retary of Labor, shall establish the worldwide level
14 of visas for nonimmigrant agricultural workers for
15 each fiscal year following the fiscal years referred to
16 in paragraph (1) after considering appropriate fac-
17 tors, including—

18 “(A) a demonstrated shortage of agricul-
19 tural workers;

20 “(B) the level of unemployment and under-
21 employment of agricultural workers during the
22 preceding fiscal year;

23 “(C) the number of applications for blue
24 card status;

1 “(D) the number of blue card visa applica-
2 tions approved;

3 “(E) the number of nonimmigrant agricul-
4 tural workers sought by employers during the
5 preceding fiscal year;

6 “(F) the estimated number of United
7 States workers, including blue card workers,
8 who worked in agriculture during the preceding
9 fiscal year;

10 “(G) the number of nonimmigrant agricul-
11 tural workers issued a visa in the most recent
12 fiscal year who remain in the United States in
13 compliance with the terms of such visa;

14 “(H) the number of United States workers
15 who accepted jobs offered by employers using
16 the Electronic Job Registry during the pre-
17 ceding fiscal year;

18 “(I) any growth or contraction of the
19 United States agricultural industry that has in-
20 creased or decreased the demand for agricul-
21 tural workers; and

22 “(J) any changes in the real wages paid to
23 agricultural workers in the United States as an
24 indication of a shortage or surplus of agricul-
25 tural labor.

1 “(4) EMERGENCY PROCEDURES.—The Sec-
2 retary shall establish, by regulation, procedures for
3 immediately adjusting an annual allocation under
4 paragraph (3) for labor shortages, as determined by
5 the Secretary. The Secretary shall make a decision
6 on a petition for an adjustment of status not later
7 than 30 days after receiving such petition

8 “(d) REQUIREMENTS FOR NONIMMIGRANT AGRICUL-
9 TURAL WORKERS.—

10 “(1) ELIGIBILITY FOR NONIMMIGRANT AGRI-
11 CULTURAL WORKER STATUS.—

12 “(A) IN GENERAL.—An alien is not eligible
13 to be admitted to the United States as a non-
14 immigrant agricultural worker if the alien—

15 “(i) violated a material term or condi-
16 tion of a previous admission as a non-
17 immigrant agricultural worker during the
18 most recent 3-year period (other than a
19 contract agricultural worker who volun-
20 tarily abandons his or her employment be-
21 fore the end of the contract period or
22 whose employment is terminated by the
23 employer for cause);

24 “(ii) has not obtained successful clear-
25 ance of any security and criminal back-

1 ground checks required by the Secretary of
2 Homeland Security or any other examina-
3 tion required under this Act; or

4 “(iii)(I) departed from the United
5 States while subject to an order of exclu-
6 sion, deportation, or removal, or pursuant
7 to an order of voluntary departure; and

8 “(II)(aa) is outside of the United
9 States; or

10 “(bb) has reentered the United States
11 illegally after December 31, 2012, without
12 receiving consent to the alien’s reapplica-
13 tion for admission under section 212(a)(9).

14 “(B) WAIVER.—The Secretary of Home-
15 land Security may waive the application of sub-
16 paragraph (A)(iii) on behalf of an alien if the
17 alien—

18 “(i) is the spouse or child of a United
19 States citizen or lawful permanent resi-
20 dent;

21 “(ii) is the parent of a child who is a
22 United States citizen or lawful permanent
23 resident;

1 “(iii) meets the requirements set forth
2 in clause (ii) or (iii) of section
3 245D(b)(1)(A); or

4 “(iv)(I) meets the requirements set
5 forth in section 245D(b)(1)(A)(ii);

6 “(II) is 16 years or older on the date
7 on which the alien applies for non-
8 immigrant agricultural status; and

9 “(III) was physically present in the
10 United States for an aggregate period of
11 not less than 3 years during the 6-year pe-
12 riod immediately preceding the date of the
13 enactment of this section.

14 “(2) TERM OF STAY FOR NONIMMIGRANT AGRI-
15 CULTURAL WORKERS.—

16 “(A) IN GENERAL.—

17 “(i) INITIAL ADMISSION.—A non-
18 immigrant agricultural worker may be ad-
19 mitted into the United States in such sta-
20 tus for an initial period of 3 years.

21 “(ii) RENEWAL.—A nonimmigrant ag-
22 ricultural worker may renew such worker’s
23 period of admission in the United States
24 for 1 additional 3-year period.

1 “(B) BREAK IN PRESENCE.—A non-
2 immigrant agricultural worker who has been
3 admitted to the United States for 2 consecutive
4 periods under subparagraph (A) is ineligible to
5 renew the alien’s nonimmigrant agricultural
6 worker status until such alien—

7 “(i) returns to a residence outside the
8 United States for a period of not less than
9 3 months; and

10 “(ii) seeks to reenter the United
11 States under the terms of the Program as
12 a nonimmigrant agricultural worker.

13 “(3) LOSS OF STATUS.—

14 “(A) IN GENERAL.—An alien admitted as
15 a nonimmigrant agricultural worker shall be in-
16 eligible for such status and shall be required to
17 depart the United States if such alien—

18 “(i) after the completion of his or her
19 contract with a designated agricultural em-
20 ployer, is not employed in agricultural em-
21 ployment by a designated agricultural em-
22 ployer; or

23 “(ii) is an at-will agricultural worker
24 and is not continuously employed by a des-
25 ignated agricultural employer in agricul-

1 tural employment as an at-will agricultural
2 worker.

3 “(B) EXCEPTION.—Subject to subpara-
4 graph (C), a nonimmigrant agricultural worker
5 has not violated subparagraph (A) if the non-
6 immigrant agricultural worker is not employed
7 in agricultural employment for a period not to
8 exceed 60 days.

9 “(C) WAIVER.—Notwithstanding subpara-
10 graph (B), the Secretary of Homeland Security
11 may waive the application of clause (i) or (ii) of
12 subparagraph (A) for a nonimmigrant agricul-
13 tural worker who was not employed in agricul-
14 tural employment for a period of more than 60
15 days if such period of unemployment was due
16 to—

17 “(i) the injury of such worker; or

18 “(ii) a natural disaster declared by
19 the Secretary.

20 “(D) TOLLING OF EMPLOYMENT REQUIRE-
21 MENT.—A nonimmigrant agricultural worker
22 may leave the United States for up to 60 days
23 in any fiscal year while in such status. During
24 the period in which the worker is outside of the

1 United States, the 60-day limit specified in sub-
2 paragraph (B) shall be tolled.

3 “(4) PORTABILITY OF STATUS.—

4 “(A) CONTRACT AGRICULTURAL WORK-
5 ERS.—

6 “(i) IN GENERAL.—Except as pro-
7 vided in clause (ii), an alien who entered
8 the United States as a contract agricul-
9 tural worker may—

10 “(I) seek employment as a non-
11 immigrant agricultural worker with a
12 designated agricultural employer other
13 than the designated agricultural em-
14 ployer with whom the employee had a
15 contract described in section
16 101(a)(15)(W)(iii)(I); and

17 “(II) accept employment with
18 such new employer after the date the
19 contract agricultural worker completes
20 such contract.

21 “(ii) VOLUNTARY ABANDONMENT;
22 TERMINATION FOR CAUSE.—A contract ag-
23 ricultural worker who voluntarily abandons
24 his or her employment before the end of

1 the contract period or whose employment
2 is terminated for cause by the employer—

3 “(I) may not accept subsequent
4 employment with another designated
5 agricultural employer without first de-
6 parting the United States and reen-
7 tering pursuant to a new offer of em-
8 ployment; and

9 “(II) is not entitled to the 75
10 percent payment guarantee described
11 in subsection (e)(4)(B).

12 “(iii) TERMINATION BY MUTUAL
13 AGREEMENT.—The termination of an em-
14 ployment contract by mutual agreement of
15 the designated agricultural employer and
16 the contract agricultural worker shall not
17 be considered voluntary abandonment for
18 purposes of clause (ii).

19 “(B) AT-WILL AGRICULTURAL WORK-
20 ERS.—An alien who entered the United States
21 as an at-will agricultural worker may seek em-
22 ployment as an at-will agricultural worker with
23 any other designated agricultural employer re-
24 ferred to in section 101(a)(15)(W)(iv)(I).

1 “(5) PROHIBITION ON GEOGRAPHIC LIMITA-
2 TION.—A nonimmigrant visa issued to a non-
3 immigrant agricultural worker—

4 “(A) shall not limit the geographical area
5 within which such worker may be employed;

6 “(B) shall not limit the type of agricultural
7 employment such worker may perform; and

8 “(C) shall restrict such worker to employ-
9 ment with designated agricultural employers.

10 “(6) TREATMENT OF SPOUSES AND CHIL-
11 DREN.—A spouse or child of a nonimmigrant agri-
12 cultural worker—

13 “(A) shall not be entitled to a visa or any
14 immigration status by virtue of the relationship
15 of such spouse or child to such worker; and

16 “(B) may be provided status as a non-
17 immigrant agricultural worker if the spouse or
18 child is independently qualified for such status.

19 “(e) EMPLOYER REQUIREMENTS.—

20 “(1) DESIGNATED AGRICULTURAL EMPLOYER
21 STATUS.—

22 “(A) REGISTRATION REQUIREMENT.—

23 Each employer seeking to employ nonimmigrant
24 agricultural workers shall register for des-
25 ignated agricultural employer status by submit-

1 ting to the Secretary, through the Farm Service
2 Agency in the geographic area of the employer
3 or electronically to the Secretary, a registration
4 that includes—

5 “(i) the employer’s employer identi-
6 fication number; and

7 “(ii) a registration fee, in an amount
8 determined by the Secretary, which shall
9 be used for the costs of administering the
10 program.

11 “(B) CRITERIA.—The Secretary shall
12 grant designated agricultural employer status to
13 an employer who submits a registration for
14 such status that includes—

15 “(i) documentation that the employer
16 is engaged in agriculture;

17 “(ii) the estimated number of non-
18 immigrant agricultural workers the em-
19 ployer will need each year;

20 “(iii) the anticipated periods during
21 which the employer will need such workers;
22 and

23 “(iv) documentation establishing need
24 for a specified agricultural occupation or
25 occupations.

1 “(C) DESIGNATION.—

2 “(i) REGISTRATION NUMBER.—The
3 Secretary shall assign each employer that
4 meets the criteria established pursuant to
5 subparagraph (B) with a designated agri-
6 cultural employer registration number.

7 “(ii) TERM OF DESIGNATION.—Each
8 employer granted designated agricultural
9 employer status under this paragraph shall
10 retain such status for a term of 3 years.
11 At the end of such 3-year term, the em-
12 ployer may renew the registration for an-
13 other 3-year term if the employer meets
14 the requirements set forth in subpara-
15 graphs (A) and (B).

16 “(D) ASSISTANCE.—In carrying out the
17 functions described in this subsection, the Sec-
18 retary may work through the Farm Service
19 Agency, or any other agency in the Department
20 of Agriculture—

21 “(i) to assist agricultural employers
22 with the registration process under this
23 paragraph by providing such employers
24 with—

1 “(I) technical assistance and ex-
2 pertise;

3 “(II) Internet access for submit-
4 ting such applications; and

5 “(III) a nonelectronic means for
6 submitting such registrations; and

7 “(ii) to provide resources about the
8 Program, including best practices and
9 compliance related assistance and re-
10 sources or training to assist in retention of
11 such workers to agricultural employers.

12 “(E) DEPOSIT OF REGISTRATION FEE.—
13 Fees collected pursuant to subparagraph
14 (A)(ii)—

15 “(i) shall be deposited into the Immi-
16 gration Examinations Fee Account pursu-
17 ant to section 286(m); and

18 “(ii) shall remain available until ex-
19 pended pursuant to section 286(n).

20 “(2) NONIMMIGRANT AGRICULTURAL WORKER
21 PETITION PROCESS.—

22 “(A) IN GENERAL.—Not later than 45
23 days before the date on which nonimmigrant
24 agricultural workers are needed, a designated
25 agricultural employer seeking to employ such

1 workers shall submit a petition to the Secretary
2 of Homeland Security that includes the employ-
3 er's designated agricultural employer registra-
4 tion number.

5 “(B) ATTESTATION.—An petition sub-
6 mitted under subparagraph (A) shall include an
7 attestation of the following:

8 “(i) The number of named or
9 unnamed nonimmigrant agricultural work-
10 ers the designated agricultural employer is
11 seeking to employ during the applicable pe-
12 riod of employment.

13 “(ii) The total number of contract ag-
14 ricultural workers and of at-will agricul-
15 tural workers the employer will require for
16 each occupational category.

17 “(iii) The anticipated period, includ-
18 ing expected beginning and ending dates,
19 during which such employees will be need-
20 ed.

21 “(iv) Evidence of contracts or written
22 disclosures of employment terms and con-
23 ditions in accordance with the Migrant and
24 Seasonal Agricultural Worker Protection
25 Act (29 U.S.C. 1801 et seq.), which have

1 been disclosed or provided to the non-
2 immigrant agricultural workers, or a sam-
3 ple of such contract or disclosure for
4 unnamed workers.

5 “(v) The information submitted to the
6 State workforce agency pursuant to para-
7 graph (3)(A)(i).

8 “(vi) The record of United States
9 workers described in paragraph (3)(A)(iii)
10 on the date of the request.

11 “(vii) Evidence of offers of employ-
12 ment made to United States workers as re-
13 quired under paragraph (3)(B).

14 “(viii) The employer will comply with
15 the additional program requirements for
16 designated agricultural employers de-
17 scribed in paragraph (4).

18 “(C) EMPLOYMENT AUTHORIZATION WHEN
19 CHANGING EMPLOYERS.—Nonimmigrant agri-
20 cultural workers in the United States who are
21 identified in a petition submitted pursuant to
22 subparagraph (A) and are in lawful status may
23 commence employment with their designated
24 agricultural employer after such employer has

1 submitted such petition to the Secretary of
2 Homeland Security.

3 “(D) REVIEW.—The Secretary of Home-
4 land Security shall review each petition sub-
5 mitted by designated agricultural employers
6 under this paragraph for completeness or obvi-
7 ous inaccuracies. Unless the Secretary of
8 Homeland Security determines that the petition
9 is incomplete or obviously inaccurate, the Sec-
10 retary shall accept the petition. The Secretary
11 shall establish a procedure for the processing of
12 petitions filed under this subsection. Not later
13 than 7 working days after the date of the filing,
14 the Secretary, by electronic or other means as-
15 suring expedited delivery, shall submit a copy of
16 notice of approval or denial of the petition to
17 the petitioner and, in the case of approved peti-
18 tions, to the appropriate immigration officer at
19 the port of entry or United States consulate, as
20 appropriate, if the petitioner has indicated that
21 the alien beneficiary or beneficiaries will apply
22 for a visa or admission to the United States.

23 “(3) EMPLOYMENT OF UNITED STATES WORK-
24 ERS.—

25 “(A) RECRUITMENT.—

1 “(i) FILING A JOB OPPORTUNITY
2 WITH LOCAL OFFICE OF STATE WORK-
3 FORCE AGENCY.—Not later than 60 days
4 before the date on which the employer de-
5 sires to employ a nonimmigrant agricul-
6 tural worker, the employer shall submit the
7 job opportunity for such worker to the
8 local office of the State workforce agency
9 where the job site is located and authorize
10 the posting of the job opportunity on the
11 appropriate Department of Labor Elec-
12 tronic Job Registry for a period of 45
13 days.

14 “(ii) CONSTRUCTION.—Nothing in
15 clause (i) may be construed to cause a
16 posting referred to in clause (i) to be treat-
17 ed as an interstate job order under section
18 653.500 of title 20, Code of Federal Regu-
19 lations (or similar successor regulation).

20 “(iii) RECORD OF UNITED STATES
21 WORKERS.—An employer shall keep a
22 record of all eligible, able, willing, and
23 qualified United States workers who apply
24 for agricultural employment with the em-
25 ployer for the agricultural employment for

1 which the nonimmigrant agricultural non-
2 immigrant workers are sought.

3 “(B) REQUIREMENT TO HIRE.—

4 “(i) UNITED STATES WORKERS.—An
5 employer may not seek a nonimmigrant ag-
6 ricultural worker for agricultural employ-
7 ment unless the employer offers such em-
8 ployment to any equally or better qualified
9 United States worker who will be available
10 at the time and place of need and who ap-
11 plies for such employment during the 45-
12 day recruitment period referred to in sub-
13 paragraph (A)(i).

14 “(ii) EXCEPTION.—Notwithstanding
15 clause (i), the employer may offer the job
16 to a nonimmigrant agricultural worker in-
17 stead of an alien in blue card status if—

18 “(I) such worker was previously
19 employed by the employer as an H-
20 2A worker;

21 “(II) such worker worked for the
22 employer for 3 years during the most
23 recent 4-year period; and

1 “(III) the employer pays such
2 worker the adverse effect wage rate
3 calculated under subsection (f)(5)(B).

4 “(4) ADDITIONAL PROGRAM REQUIREMENTS
5 FOR DESIGNATED AGRICULTURAL EMPLOYERS.—
6 Each designated agricultural employer shall comply
7 with the following requirements:

8 “(A) NO DISPLACEMENT OF UNITED
9 STATES WORKERS.—

10 “(i) IN GENERAL.—The employer
11 shall not displace a United States worker
12 employed by the employer, other than for
13 good cause, during the period of employ-
14 ment of the nonimmigrant agricultural
15 worker and for a period of 30 days pre-
16 ceding such period in the occupation and
17 at the location of employment for which
18 the employer seeks to employ non-
19 immigrant agricultural workers.

20 “(ii) LABOR DISPUTE.—The employer
21 shall not employ a nonimmigrant agricul-
22 tural worker for a specific job for which
23 the employer is requesting a nonimmigrant
24 agricultural worker because the former oc-

1 cupant of the job is on strike or being
2 locked out in the course of a labor dispute.

3 “(B) GUARANTEE OF EMPLOYMENT FOR
4 CONTRACT AGRICULTURAL WORKERS.—

5 “(i) OFFER TO CONTRACT WORKER.—

6 The employer shall guarantee to offer con-
7 tract agricultural workers employment for
8 the hourly equivalent of at least 75 percent
9 of the work days of the total period of em-
10 ployment, beginning with the first work
11 day after the arrival of the worker at the
12 place of employment and ending on the ex-
13 piration date specified in the job offer. In
14 this clause, the term ‘hourly equivalent’
15 means the number of hours in the work
16 days as stated in the job offer and shall ex-
17 clude the worker’s Sabbath and Federal
18 holidays. If the employer affords the con-
19 tract agricultural worker less employment
20 than the number of hours required under
21 this subparagraph, the employer shall pay
22 such worker the amount the worker would
23 have earned had the worker worked the
24 guaranteed number of hours.

1 “(ii) FAILURE TO WORK.—Any hours
2 which the worker fails to work, up to a
3 maximum of the number of hours specified
4 in the job offer for a work day, when the
5 worker has been offered an opportunity to
6 do so, and all hours of work actually per-
7 formed (including voluntary work in excess
8 of the number of hours specified in the job
9 offer in a work day, on the worker’s Sab-
10 bath, or on Federal holidays) may be
11 counted by the employer in calculating
12 whether the period of guaranteed employ-
13 ment has been met.

14 “(iii) CONTRACT IMPOSSIBILITY.—If,
15 before the expiration of the period of em-
16 ployment specified in the job offer, the
17 services of a contract agricultural worker
18 are no longer required for reasons beyond
19 the control of the employer due to any
20 form of natural disaster, including a flood,
21 hurricane, freeze, earthquake, fire,
22 drought, plant or animal disease or pest
23 infestation, or regulatory drought, before
24 the guarantee in clause (i) is fulfilled, the
25 employer—

1 “(I) may terminate the worker’s
2 employment;

3 “(II) shall fulfill the employment
4 guarantee described in clause (i) for
5 the work days that have elapsed from
6 the first work day after the arrival of
7 the worker to the termination of em-
8 ployment;

9 “(III) shall make efforts to
10 transfer the worker to other com-
11 parable employment acceptable to the
12 worker; and

13 “(IV) if such a transfer does not
14 take place, shall provide the return
15 transportation required under sub-
16 paragraph (J).

17 “(C) WORKERS’ COMPENSATION.—

18 “(i) REQUIREMENT TO PROVIDE.—If
19 a job referred to in paragraph (3) is not
20 covered by the State workers’ compensa-
21 tion law, the employer shall provide, at no
22 cost to the nonimmigrant agricultural
23 worker, insurance covering injury and dis-
24 ease arising out of, and in the course of,
25 such job.

1 “(ii) BENEFITS.—The insurance re-
2 quired to be provided under clause (i) shall
3 provide benefits at least equal to those pro-
4 vided under and pursuant to the State
5 workers’ compensation law for comparable
6 employment.

7 “(D) PROHIBITION FOR USE FOR NON-
8 AGRICULTURAL SERVICES.—The employer may
9 not employ a nonimmigrant agricultural worker
10 for employment other than agricultural employ-
11 ment.

12 “(E) WAGES.—The employer shall pay not
13 less than the wage required under subsection
14 (f).

15 “(F) DEDUCTION OF WAGES.—The em-
16 ployer shall make only deductions from a non-
17 immigrant agricultural worker’s wages that are
18 authorized by law and are reasonable and cus-
19 tomary in the occupation and area of employ-
20 ment of such worker.

21 “(G) REQUIREMENT TO PROVIDE HOUSING
22 OR A HOUSING ALLOWANCE.—

23 “(i) IN GENERAL.—Except as pro-
24 vided in clauses (iv) and (v), a designated
25 agricultural employer shall offer to provide

1 a nonimmigrant agricultural worker with
2 housing at no cost in accordance with
3 clause (ii) or (iii).

4 “(ii) HOUSING.—An employer may
5 provide housing to a nonimmigrant agricul-
6 tural worker that meets—

7 “(I) applicable Federal standards
8 for temporary labor camps; or

9 “(II) applicable local standards
10 (or, in the absence of applicable local
11 standards, State standards) for rental
12 or public accommodation housing or
13 other substantially similar class of
14 habitation.

15 “(iii) HOUSING PAYMENTS.—

16 “(I) PUBLIC HOUSING.—If the
17 employer arranges public housing for
18 nonimmigrant agricultural workers
19 through a State, county, or local gov-
20 ernment program and such public
21 housing units normally require pay-
22 ments from tenants, such payments
23 shall be made by the employer directly
24 to the landlord.

1 “(II) DEPOSITS.—Deposits for
2 bedding or other similar incidentals
3 related to housing shall not be col-
4 lected from workers by employers who
5 provide housing for such workers.

6 “(III) DAMAGES.—The employer
7 may require any worker who is re-
8 sponsible for damage to housing that
9 did not result from normal wear and
10 tear related to habitation to reimburse
11 the employer for the reasonable cost
12 of repairing such damage.

13 “(iv) HOUSING ALLOWANCE ALTER-
14 NATIVE.—

15 “(I) IN GENERAL.—The employer
16 may provide a reasonable housing al-
17 lowance instead of providing housing
18 under clause (i). Upon the request of
19 a worker seeking assistance in locat-
20 ing housing, the employer shall make
21 a good faith effort to assist the work-
22 er in identifying and locating housing
23 in the area of intended employment.
24 An employer who offers a housing al-
25 lowance to a worker or assists a work-

1 er in locating housing, which the
2 worker occupies, shall not be deemed
3 a housing provider under section 203
4 of the Migrant and Seasonal Agricultural
5 Worker Protection Act (29
6 U.S.C. 1823) solely by virtue of pro-
7 viding such housing allowance. No
8 housing allowance may be used for
9 housing that is owned or controlled by
10 the employer.

11 “(II) CERTIFICATION REQUIRE-
12 MENT.—Contract agricultural workers
13 may only be provided a housing allow-
14 ance if the Governor of the State in
15 which the place of employment is lo-
16 cated certifies to the Secretary that
17 there is adequate housing available in
18 the area of intended employment for
19 migrant farm workers and contract
20 agricultural workers who are seeking
21 temporary housing while employed in
22 agricultural work. Such certification
23 shall expire after 3 years unless re-
24 newed by the Governor of the State.

1 “(III) AMOUNT OF ALLOW-
2 ANCE.—

3 “(aa) NONMETROPOLITAN
4 COUNTIES.—If the place of em-
5 ployment of the workers provided
6 an allowance under this clause is
7 a nonmetropolitan county, the
8 amount of the housing allowance
9 under this clause shall be equal
10 to the average fair market rental
11 for existing housing in nonmetro-
12 politan counties in the State in
13 which the place of employment is
14 located, as established by the
15 Secretary of Housing and Urban
16 Development pursuant to section
17 8(e) of the United States Hous-
18 ing Act of 1937 (42 U.S.C.
19 1437f(c)), based on a 2-bedroom
20 dwelling unit and an assumption
21 of 2 persons per bedroom.

22 “(bb) METROPOLITAN
23 COUNTIES.—If the place of em-
24 ployment of the workers provided
25 an allowance under this clause is

1 a metropolitan county, the
2 amount of the housing allowance
3 under this clause shall be equal
4 to the average fair market rental
5 for existing housing in metropoli-
6 tan counties in the State in
7 which the place of employment is
8 located, as established by the
9 Secretary of Housing and Urban
10 Development pursuant to section
11 8(e) of the United States Hous-
12 ing Act of 1937 (42 U.S.C.
13 1437f(c)), based on a 2-bedroom
14 dwelling unit and an assumption
15 of 2 persons per bedroom.

16 “(v) EXCEPTION FOR COMMUTING
17 WORKERS.—Nothing in this subparagraph
18 may be construed to require an employer
19 to provide housing or a housing allowance
20 to workers who reside outside of the
21 United States if their place of residence is
22 within normal commuting distance and the
23 job site is within 50 miles of an inter-
24 national land border of the United States.

1 “(H) WORKSITE TRANSPORTATION FOR
2 CONTRACT WORKERS.—During the period a
3 designated agricultural employer employs a con-
4 tract agricultural worker, such employer shall,
5 at the employer’s option, provide or reimburse
6 the contract agricultural worker for the cost of
7 daily transportation from the contract worker’s
8 living quarters to the contract agricultural
9 worker’s place of employment.

10 “(I) REIMBURSEMENT OF TRANSPOR-
11 TATION TO THE PLACE OF EMPLOYMENT.—

12 “(i) IN GENERAL.—A nonimmigrant
13 agricultural worker shall be reimbursed by
14 the first employer for the cost of the work-
15 er’s transportation and subsistence from
16 the place from which the worker came
17 from to the place of first employment.

18 “(ii) LIMITATION.—The amount of re-
19 imbursement provided under clause (i) to a
20 worker shall not exceed the lesser of—

21 “(I) the actual cost to the worker
22 of the transportation and subsistence
23 involved; or

24 “(II) the most economical and
25 reasonable common carrier transpor-

1 tation charges and subsistence costs
2 for the distance involved.

3 “(J) REIMBURSEMENT OF TRANSPOR-
4 TATION FROM PLACE OF EMPLOYMENT.—

5 “(i) IN GENERAL.—A contract agri-
6 cultural worker who completes at least 27
7 months under his or her contract with the
8 same designated agricultural employer
9 shall be reimbursed by that employer for
10 the cost of the worker’s transportation and
11 subsistence from the place of employment
12 to the place from which the worker came
13 from abroad to work for the employer.

14 “(ii) LIMITATION.—The amount of re-
15 imbursement required under clause (i)
16 shall not exceed the lesser of—

17 “(I) the actual cost to the worker
18 of the transportation and subsistence
19 involved; or

20 “(II) the most economical and
21 reasonable common carrier transpor-
22 tation charges and subsistence costs
23 for the distance involved.

24 “(f) WAGES.—

25 “(1) WAGE RATE REQUIREMENT.—

1 “(A) IN GENERAL.—A nonimmigrant agri-
2 cultural worker employed by a designated agri-
3 cultural employer shall be paid not less than the
4 wage rate for such employment set forth in
5 paragraph (3).

6 “(B) WORKERS PAID ON A PIECE RATE OR
7 OTHER INCENTIVE BASIS.—If an employer pays
8 by the piece rate or other incentive method and
9 requires 1 or more minimum productivity
10 standards as a condition of job retention, such
11 standards shall be specified in the job offer and
12 be no more than those which have been nor-
13 mally required (at the time of the employee’s
14 first application for designated employer status)
15 by other employers for the activity in the geo-
16 graphic area of the job, unless the Secretary
17 approves a higher standard.

18 “(2) JOB CATEGORIES.—

19 “(A) IN GENERAL.—For purposes of para-
20 graph (1), each nonimmigrant agricultural
21 worker employed by such employer shall be as-
22 signed to 1 of the following standard occupa-
23 tional classifications, as defined by the Bureau
24 of Labor Statistics:

1 “(i) First-Line Supervisors of Farm-
2 ing, Fishing, and Forestry Workers (45-
3 1011).

4 “(ii) Animal Breeders (45-2021).

5 “(iii) Graders and Sorters, Agricul-
6 tural Products (45-2041).

7 “(iv) Agricultural equipment operator
8 (45-2091).

9 “(v) Farmworkers and Laborers,
10 Crop, Nursery, and Greenhouse (45-
11 2092).

12 “(vi) Farmworkers, Farm, Ranch and
13 Aquacultural Animals (45-2093).

14 “(B) DETERMINATION OF CLASSIFICA-
15 TION.—A nonimmigrant agricultural worker is
16 employed in a standard occupational classifica-
17 tion described in clause (i), (ii), (iii), (iv), (v),
18 or (vi) of subparagraph (A) if the worker per-
19 forms activities associated with that occupa-
20 tional classification, as specified on the employ-
21 er’s petition, for at least 75 percent of the time
22 in a semiannual employment period.

23 “(3) DETERMINATION OF WAGE RATE.—

24 “(A) CALENDAR YEARS 2014 THROUGH
25 2016.—The wage rate under this subparagraph

1 for calendar years 2014 through 2016 shall be
2 the higher of—

3 “(i) the applicable Federal, State, or
4 local minimum wage; or

5 “(ii)(I) for the category described in
6 paragraph (2)(A)(iii)—

7 “(aa) \$9.37 for calendar year
8 2014;

9 “(bb) \$9.60 for calendar year
10 2015; and

11 “(cc) \$9.84 for calendar year
12 2016;

13 “(II) for the category described in
14 paragraph (2)(A)(iv)—

15 “(aa) \$11.30 for calendar year
16 2014;

17 “(bb) \$11.58 for calendar year
18 2015; and

19 “(cc) \$11.87 for calendar year
20 2016;

21 “(III) for the category described in
22 paragraph (2)(A)(v)—

23 “(aa) \$9.17 for calendar year
24 2014;

1 “(bb) \$9.40 for calendar year
2 2015; and

3 “(cc) \$9.64 for calendar year
4 2016; and

5 “(IV) for the category described in
6 paragraph (2)(A)(vi)—

7 “(aa) \$10.82 for calendar year
8 2014;

9 “(bb) \$11.09 for calendar year
10 2015; and

11 “(cc) \$11.37 for calendar year
12 2016.

13 “(B) SUBSEQUENT YEARS.—The Secretary
14 shall increase the hourly wage rates set forth in
15 clauses (i) through (iv) of subparagraph (A),
16 for each calendar year after the calendar years
17 described in subparagraph (A) by an amount
18 equal to—

19 “(i) 1.5 percent, if the percentage in-
20 crease in the Employment Cost Index for
21 wages and salaries during the previous cal-
22 endar year, as calculated by the Bureau of
23 Labor Statistics, is less than 1.5 percent;

24 “(ii) the percentage increase in such
25 Employment Cost Index, if such percent-

1 age increase is between 1.5 percent and
2 2.5 percent, inclusive; or

3 “(iii) 2.5 percent, if such percentage
4 increase is greater than 2.5 percent.

5 “(C) AGRICULTURAL SUPERVISORS AND
6 ANIMAL BREEDERS.—Not later than September
7 1, 2015, and annually thereafter, the Secretary,
8 in consultation with the Secretary of Labor,
9 shall establish the required wage for the next
10 calendar year for each of the job categories set
11 out in clauses (i) and (ii) of paragraph (2)(A).

12 “(D) SURVEY BY BUREAU OF LABOR STA-
13 TISTICS.—Not later than April 15, 2015, the
14 Bureau of Labor Statistics shall consult with
15 the Secretary to expand the Occupational Em-
16 ployment Statistics Survey to survey agricul-
17 tural producers and contractors and produce
18 improved wage data by State and the job cat-
19 egories set out in clauses (i) through (vi) of
20 subparagraph (A).

21 “(4) CONSIDERATION.—In determining the
22 wage rate under paragraph (3)(C), the Secretary
23 may consider appropriate factors, including—

24 “(A) whether the employment of additional
25 alien workers at the required wage will ad-

1 versely affect the wages and working conditions
2 of workers in the United States similarly em-
3 ployed;

4 “(B) whether the employment in the
5 United States of an alien admitted under sec-
6 tion 101(a)(15)(H)(ii)(a) or unauthorized aliens
7 in the agricultural workforce has depressed
8 wages of United States workers engaged in ag-
9 ricultural employment below the levels that
10 would otherwise have prevailed if such aliens
11 had not been employed in the United States;

12 “(C) whether wages of agricultural workers
13 are sufficient to support such workers and their
14 families at a level above the poverty thresholds
15 determined by the Bureau of Census;

16 “(D) the wages paid workers in the United
17 States who are not employed in agricultural em-
18 ployment but who are employed in comparable
19 employment;

20 “(E) the continued exclusion of employers
21 of nonimmigrant alien workers in agriculture
22 from the payment of taxes under chapter 21 of
23 the Internal Revenue Code of 1986 (26 U.S.C.
24 3101 et seq.) and chapter 23 of such Code (26
25 U.S.C. 3301 et seq.);

1 “(F) the impact of farm labor costs in the
2 United States on the movement of agricultural
3 production to foreign countries;

4 “(G) a comparison of the expenses and
5 cost structure of foreign agricultural producers
6 to the expenses incurred by agricultural pro-
7 ducers based in the United States; and

8 “(H) the accuracy and reliability of the
9 Occupational Employment Statistics Survey.

10 “(5) ADVERSE EFFECT WAGE RATE.—

11 “(A) PROHIBITION OF MODIFICATION.—

12 The adverse effect wage rates in effect on April
13 15, 2013, for nonimmigrants admitted under
14 101(a)(15)(H)(ii)(a)—

15 “(i) shall remain in effect until the
16 date described in section 2233 of the Agri-
17 cultural Worker Program Act of 2013; and

18 “(ii) may not be modified except as
19 provided in subparagraph (B).

20 “(B) EXCEPTION.—Until the Secretary es-
21 tablishes the wage rates required under para-
22 graph (3)(C), the adverse effect wage rates in
23 effect on the date of the enactment of the Agri-
24 cultural Worker Program Act of 2013 shall
25 be—

1 “(i) deemed to be such wage rates;
2 and

3 “(ii) after September 1, 2015, ad-
4 justed annually in accordance with para-
5 graph (3)(B).

6 “(C) NONPAYMENT OF FICA AND FUTA
7 TAXES.—An employer employing nonimmigrant
8 agricultural workers shall not be required to
9 pay and withhold from such workers—

10 “(i) the tax required under section
11 3101 of the Internal Revenue Code of
12 1986; or

13 “(ii) the tax required under section
14 3301 of the Internal Revenue Code of
15 1986.

16 “(6) PREFERENTIAL TREATMENT OF ALIENS
17 PROHIBITED.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B), employers seeking to hire
20 United States workers shall offer the United
21 States workers not less than the same benefits,
22 wages, and working conditions that the em-
23 ployer is offering, intends to offer, or will pro-
24 vide to nonimmigrant agricultural workers. No
25 job offer may impose on United States workers

1 any restrictions or obligations that will not be
2 imposed on the employer's nonimmigrant agri-
3 cultural workers.

4 “(B) EXCEPTION.—Notwithstanding sub-
5 paragraph (A), a designated agricultural em-
6 ployer is not required to provide housing or a
7 housing allowance to United States workers.

8 “(g) WORKER PROTECTIONS AND DISPUTE RESOLU-
9 TION.—

10 “(1) EQUALITY OF TREATMENT.—Non-
11 immigrant agricultural workers shall not be denied
12 any right or remedy under any Federal, State, or
13 local labor or employment law applicable to United
14 States workers engaged in agricultural employment.

15 “(2) APPLICABILITY OF THE MIGRANT AND
16 SEASONAL AGRICULTURAL WORKER PROTECTION
17 ACT.—

18 “(A) MIGRANT AND SEASONAL AGRICUL-
19 TURAL WORKER PROTECTION ACT.—Non-
20 immigrant agricultural workers shall be consid-
21 ered migrant agricultural workers for purposes
22 of the Migrant and Seasonal Agricultural Work-
23 er Protection Act (29 U.S.C. 1801 et seq.).

24 “(B) ELIGIBILITY OF NONIMMIGRANT AG-
25 RICULTURAL WORKERS FOR CERTAIN LEGAL

1 ASSISTANCE.—A nonimmigrant agricultural
2 worker shall be considered to be lawfully admit-
3 ted for permanent residence for purposes of es-
4 tablishing eligibility for legal services under the
5 Legal Services Corporation Act (42 U.S.C.
6 2996 et seq.) on matters relating to wages,
7 housing, transportation, and other employment
8 rights.

9 “(C) MEDIATION.—

10 “(i) FREE MEDIATION SERVICES.—

11 The Federal Mediation and Conciliation
12 Service shall be available to assist in re-
13 solving disputes arising under this section
14 between nonimmigrant agricultural work-
15 ers and designated agricultural employers
16 without charge to the parties.

17 “(ii) COMPLAINT.—If a nonimmigrant
18 agricultural worker files a complaint under
19 section 504 of the Migrant and Seasonal
20 Agricultural Worker Protection Act (29
21 U.S.C. 1854), not later than 60 days after
22 the filing of proof of service of the com-
23 plaint, a party to the action may file a re-
24 quest with the Federal Mediation and Con-
25 ciliation Service to assist the parties in

1 reaching a satisfactory resolution of all
2 issues involving all parties to the dispute.

3 “(iii) NOTICE.—Upon filing a request
4 under clause (ii) and giving of notice to the
5 parties, the parties shall attempt mediation
6 within the period specified in clause (iv).

7 “(iv) 90-DAY LIMIT.—The Federal
8 Mediation and Conciliation Service may
9 conduct mediation or other nonbinding dis-
10 pute resolution activities for a period not
11 to exceed 90 days beginning on the date on
12 which the Federal Mediation and Concilia-
13 tion Service receives a request for assist-
14 ance under clause (ii) unless the parties
15 agree to an extension of such period.

16 “(v) AUTHORIZATION OF APPROPRIA-
17 TIONS.—

18 “(I) IN GENERAL.—Subject to
19 clause (II), there are authorized to be
20 appropriated to the Federal Mediation
21 and Conciliation Service \$500,000 for
22 each fiscal year to carry out this sub-
23 paragraph.

24 “(II) MEDIATION.—Notwith-
25 standing any other provision of law,

1 the Director of the Federal Mediation
2 and Conciliation Service is author-
3 ized—

4 “(aa) to conduct the medi-
5 ation or other dispute resolution
6 activities from any other account
7 containing amounts available to
8 the Director; and

9 “(bb) to reimburse such ac-
10 count with amounts appropriated
11 pursuant to subclause (I).

12 “(vi) PRIVATE MEDIATION.—If all
13 parties agree, a private mediator may be
14 employed as an alternative to the Federal
15 Mediation and Conciliation Service.

16 “(3) OTHER RIGHTS.—Nonimmigrant agricul-
17 tural workers shall be entitled to the rights granted
18 to other classes of aliens under sections 242(h) and
19 245E.

20 “(4) WAIVER OF RIGHTS.—Agreements by non-
21 immigrant agricultural workers to waive or modify
22 any rights or protections under this section shall be
23 considered void or contrary to public policy except as
24 provided in a collective bargaining agreement with a
25 bona fide labor organization.

1 “(h) ENFORCEMENT AUTHORITY.—

2 “(1) INVESTIGATION OF COMPLAINTS.—

3 “(A) AGGRIEVED PERSON OR THIRD-PARTY
4 COMPLAINTS.—

5 “(i) PROCESS.—The Secretary of
6 Labor shall establish a process for the re-
7 ceipt, investigation, and disposition of com-
8 plaints respecting a designated agricultural
9 employer’s failure to meet a condition spec-
10 ified in subsection (e), or an employer’s
11 misrepresentation of material facts in a pe-
12 tition under subsection (e)(2).

13 “(ii) FILING.—Any aggrieved person
14 or organization, including bargaining rep-
15 resentatives, may file a complaint referred
16 to in clause (i) not later than 1 year after
17 the date of the failure or misrepresenta-
18 tion, respectively.

19 “(iii) INVESTIGATION OR HEARING.—
20 The Secretary of Labor shall conduct an
21 investigation if there is reasonable cause to
22 believe that such failure or misrepresenta-
23 tion has occurred.

24 “(B) DETERMINATION ON COMPLAINT.—

25 Under such process, the Secretary of Labor

1 shall provide, not later than 30 days after the
2 date on which such a complaint is filed, for a
3 determination as to whether or not a reasonable
4 basis exists to make a finding described in sub-
5 paragraph (C), (D), (E), or (F). If the Sec-
6 retary of Labor determines that such a reason-
7 able basis exists, the Secretary of Labor shall
8 provide for notice of such determination to the
9 interested parties and an opportunity for a
10 hearing on the complaint, in accordance with
11 section 556 of title 5, United States Code, with-
12 in 60 days after the date of the determination.
13 If such a hearing is requested, the Secretary of
14 Labor shall make a finding concerning the mat-
15 ter not later than 60 days after the date of the
16 hearing. In the case of similar complaints re-
17 specting the same applicant, the Secretary of
18 Labor may consolidate the hearings under this
19 subparagraph on such complaints.

20 “(C) FAILURE TO MEET CONDITIONS.—If
21 the Secretary of Labor finds, after notice and
22 opportunity for a hearing, a failure to meet a
23 condition under subsection (e) or (f), or a mate-
24 rial misrepresentation of fact in a petition
25 under subsection (e)(2)—

1 “(i) the Secretary of Labor shall no-
2 tify the Secretary of such finding and may,
3 in addition, impose such other administra-
4 tive remedies (including civil money pen-
5 alties in an amount not to exceed \$1,000
6 per violation) as the Secretary of Labor
7 determines to be appropriate; and

8 “(ii) the Secretary may disqualify the
9 designated agricultural employer from the
10 employment of nonimmigrant agricultural
11 workers for a period of 1 year.

12 “(D) WILLFUL FAILURES AND WILLFUL
13 MISREPRESENTATIONS.—If the Secretary of
14 Labor finds, after notice and opportunity for
15 hearing, a willful failure to meet a condition
16 under subsection (e) or (f) or a willful misrepre-
17 sentation of a material fact in an registration
18 or petition under paragraph (1) or (2) of sub-
19 section (e)—

20 “(i) the Secretary of Labor shall no-
21 tify the Secretary of such finding and may,
22 in addition, impose such other administra-
23 tive remedies (including civil money pen-
24 alties in an amount not to exceed \$5,000

1 per violation) as the Secretary of Labor
2 determines to be appropriate;

3 “(ii) the Secretary of Labor may seek
4 appropriate legal or equitable relief; and

5 “(iii) the Secretary may disqualify the
6 designated agricultural employer from the
7 employment of nonimmigrant agricultural
8 workers for a period of 2 years.

9 “(E) DISPLACEMENT OF UNITED STATES
10 WORKERS.—If the Secretary of Labor finds,
11 after notice and opportunity for hearing, a will-
12 ful failure to meet a condition under subsection
13 (e) or (f) or a willful misrepresentation of a ma-
14 terial fact in an registration or petition under
15 paragraph (1) or (2) of subsection (e), in the
16 course of which failure or misrepresentation the
17 employer displaced a United States worker em-
18 ployed by the employer during the period of em-
19 ployment on the employer’s petition under sub-
20 section (e)(2) or during the period of 30 days
21 preceding such period of employment—

22 “(i) the Secretary of Labor shall no-
23 tify the Secretary of such finding and may,
24 in addition, impose such other administra-
25 tive remedies (including civil money pen-

1 alties in an amount not to exceed \$15,000
2 per violation) as the Secretary of Labor
3 determines to be appropriate; and

4 “(ii) the Secretary may disqualify the
5 employer from the employment of non-
6 immigrant agricultural workers for a pe-
7 riod of 3 years.

8 “(F) FAILURES TO PAY WAGES OR RE-
9 QUIRED BENEFITS.—If the Secretary of Labor
10 finds, after notice and opportunity for a hear-
11 ing, that the employer has failed to pay the
12 wages, or provide the housing allowance, trans-
13 portation, subsistence reimbursement, or guar-
14 antee of employment required under subsections
15 (e)(4) and (f), the Secretary of Labor shall as-
16 sess payment of back wages, or other required
17 benefits, due any United States worker or non-
18 immigrant agricultural worker employed by the
19 employer in the specific employment in ques-
20 tion. The back wages or other required benefits
21 required under subsections (e) and (f) shall be
22 equal to the difference between the amount that
23 should have been paid and the amount that ac-
24 tually was paid to such worker.

1 “(G) DISPOSITION OF PENALTIES.—Civil
2 penalties collected under this paragraph shall be
3 deposited into the Comprehensive Immigration
4 Reform Trust Fund established under section
5 9(a)(1) of the Border Security, Economic Op-
6 portunity, and Immigration Modernization Act.

7 “(2) LIMITATIONS ON CIVIL MONEY PEN-
8 ALTIES.—The Secretary of Labor shall not impose
9 total civil money penalties with respect to a petition
10 under subsection (e)(2) in excess of \$90,000.

11 “(3) ELECTION.—A nonimmigrant agricultural
12 worker who has filed an administrative complaint
13 with the Secretary of Labor may not maintain a civil
14 action unless a complaint based on the same viola-
15 tion filed with the Secretary of Labor under para-
16 graph (1) is withdrawn before the filing of such ac-
17 tion, in which case the rights and remedies available
18 under this subsection shall be exclusive.

19 “(4) PRECLUSIVE EFFECT.—Any settlement by
20 a nonimmigrant agricultural worker, a designated
21 agricultural employer, or any person reached
22 through the mediation process required under sub-
23 section (g)(2)(C) shall preclude any right of action
24 arising out of the same facts between the parties in
25 any Federal or State court or administrative pro-

1 ceeding, unless specifically provided otherwise in the
2 settlement agreement.

3 “(5) SETTLEMENTS.—Any settlement by the
4 Secretary of Labor with a designated agricultural
5 worker on behalf of a nonimmigrant agricultural
6 worker of a complaint filed with the Secretary of
7 Labor under this section or any finding by the Sec-
8 retary of Labor under this subsection shall preclude
9 any right of action arising out of the same facts be-
10 tween the parties under any Federal or State court
11 or administrative proceeding, unless specifically pro-
12 vided otherwise in the settlement agreement.

13 “(6) STATUTORY CONSTRUCTION.—Nothing in
14 this subsection may 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.

20 “(7) DISCRIMINATION PROHIBITED.—It is a
21 violation of this subsection for any person who has
22 filed a petition under subsection (e) or (f) to intimi-
23 date, threaten, restrain, coerce, blacklist, discharge,
24 or in any other manner discriminate against an em-

1 ployee, including a former employee or an applicant
2 for employment, because the employee—

3 “(A) has disclosed information to the em-
4 ployer, or to any other person, that the em-
5 ployee reasonably believes evidences a violation
6 of subsection (e) or (f), or any rule or regula-
7 tion relating to subsection (e) or (f); or

8 “(B) cooperates or seeks to cooperate in an
9 investigation or other proceeding concerning the
10 employer’s compliance with the requirements
11 under subsection (e) or (f) or any rule or regu-
12 lation pertaining to subsection (e) or (f).

13 “(8) ROLE OF ASSOCIATIONS.—

14 “(A) VIOLATION BY A MEMBER OF AN AS-
15 SOCIATION.—

16 “(i) IN GENERAL.—If an association
17 acting as the agent of an employer files an
18 application on behalf of such employer, the
19 employer is fully responsible for such appli-
20 cation, and for complying with the terms
21 and conditions of subsection (e). If such an
22 employer is determined to have violated
23 any requirement described in this sub-
24 section, the penalty for such violation shall

1 apply only to that employer except as pro-
2 vided in clause (ii).

3 “(ii) COLLECTIVE RESPONSIBILITY.—

4 If the Secretary of Labor determines that
5 the association or other members of the as-
6 sociation participated in, had knowledge of,
7 or reason to know of a violation described
8 in clause (i), the penalty shall also be in-
9 voked against the association and complicit
10 association members.

11 “(B) VIOLATIONS BY AN ASSOCIATION

12 ACTING AS AN EMPLOYER.—

13 “(i) IN GENERAL.—If an association

14 filing an application as a sole or joint em-
15 ployer is determined to have violated any
16 requirement described in this section, the
17 penalty for such violation shall apply only
18 to the association except as provided in
19 clause (ii).

20 “(ii) MEMBER RESPONSIBILITY.—If

21 the Secretary of Labor determines that 1
22 or more association members participated
23 in, had knowledge of, or reason to know of
24 the violation described in clause (i), the

1 penalty shall be invoked against all
2 complicit association members.

3 “(i) SPECIAL NONIMMIGRANT VISA PROCESSING AND
4 WAGE DETERMINATION PROCEDURES FOR CERTAIN AG-
5 RICULTURAL OCCUPATIONS.—

6 “(1) FINDING.—Certain industries possess
7 unique occupational characteristics that necessitate
8 the Secretary of Agriculture to adopt special proce-
9 dures relating to housing, pay, and visa program ap-
10 plication requirements for those industries.

11 “(2) SPECIAL PROCEDURES INDUSTRY DE-
12 FINED.—In this subsection, the term ‘Special Proce-
13 dures Industry’ means—

14 “(A) shepherding and goat herding;

15 “(B) itinerant commercial beekeeping and
16 pollination;

17 “(C) open range production of livestock;

18 “(D) itinerant animal shearing; and

19 “(E) custom combining industries.

20 “(3) WORK LOCATIONS.—The Secretary shall
21 allow designated agricultural employers in a Special
22 Procedures Industry that do not operate in a single
23 fixed-site location to provide, as part of its registra-
24 tion or petition under the Program, a list of antici-
25 pated work locations, which—

1 “(A) may include an anticipated itinerary;
2 and

3 “(B) may be subsequently amended by the
4 employer, after notice to the Secretary.

5 “(4) WAGE RATES.—The Secretary may estab-
6 lish monthly, weekly, or biweekly wage rates for oc-
7 cupations in a Special Procedures Industry for a
8 State or other geographic area. For an employer in
9 those Special Procedures Industries that typically
10 pay a monthly wage, the Secretary shall require that
11 workers will be paid not less frequently than month-
12 ly and at a rate no less than the legally required
13 monthly cash wage for such employer as of the date
14 of the enactment of the Border Security, Economic
15 Opportunity, and Immigration Modernization Act
16 and in an amount as re-determined annually by the
17 Secretary of Agriculture through rulemaking.

18 “(5) HOUSING.—The Secretary shall allow for
19 the provision of housing or a housing allowance by
20 employers in Special Procedures Industries and
21 allow housing suitable for workers employed in re-
22 mote locations.

23 “(6) ALLERGY LIMITATION.—An employer en-
24 gaged in the commercial beekeeping or pollination
25 services industry may require that an applicant be

1 free from bee pollen, venom, or other bee-related al-
2 lergies.

3 “(7) APPLICATION.—An individual employer in
4 a Special Procedures Industry may file a program
5 petition on its own behalf or in conjunction with an
6 association of employers. The employer’s petition
7 may be part of several related petitions submitted si-
8 multaneously that constitute a master petition.

9 “(8) RULEMAKING.—The Secretary or, as ap-
10 propriate, the Secretary of Homeland Security or
11 the Secretary of Labor, after consultation with em-
12 ployers and employee representatives, shall publish
13 for notice and comment proposed regulations relat-
14 ing to housing, pay, and application procedures for
15 Special Procedures Industries.

16 “(j) MISCELLANEOUS PROVISIONS.—

17 “(1) DISQUALIFICATION OF NONIMMIGRANT AG-
18 RICULTURAL WORKERS FROM FINANCIAL ASSIST-
19 ANCE.—An alien admitted as a nonimmigrant agri-
20 cultural worker is not eligible for any program of fi-
21 nancial assistance under Federal law (whether
22 through grant, loan, guarantee, or otherwise) on the
23 basis of financial need, as such programs are identi-
24 fied by the Secretary in consultation with other
25 agencies of the United States.

1 “(2) MONITORING REQUIREMENT.—

2 “(A) IN GENERAL.—The Secretary shall
3 monitor the movement of nonimmigrant agricul-
4 tural workers through—

5 “(i) the Employment Verification Sys-
6 tem described in section 274A(b); and

7 “(ii) the electronic monitoring system
8 established pursuant to subparagraph (B).

9 “(B) ELECTRONIC MONITORING SYSTEM.—
10 Not later than 2 years after the effective date
11 of this section, the Secretary of Homeland Se-
12 curity, through the Director of U.S. Citizenship
13 and Immigration Services, shall establish an
14 electronic monitoring system, which shall—

15 “(i) be modeled on the Student and
16 Exchange Visitor Information System
17 (SEVIS) and the SEVIS II tracking sys-
18 tem administered by U.S. Immigration and
19 Customs Enforcement;

20 “(ii) monitor the presence and em-
21 ployment of nonimmigrant agricultural
22 workers; and

23 “(iii) assist in ensuring the compli-
24 ance of designated agricultural employers

1 and nonimmigrant agricultural workers
2 with the requirements of the Program.”.

3 (b) RULEMAKING.—The Secretary of Agriculture
4 shall issue regulations to carry out section 218A of the
5 Immigration and Nationality Act, as added by subsection
6 (a), not later than 1 year after the date of the enactment
7 of this Act.

8 (c) CLERICAL AMENDMENT.—The table of contents
9 is amended by inserting after the item relating to section
10 218 the following:

“Sec. 218A. Nonimmigrant agricultural worker program.”.

11 (d) EFFECTIVE DATE.—The amendments made by
12 this section shall take effect on October 1, 2014.

13 **SEC. 2233. TRANSITION OF H-2A WORKER PROGRAM.**

14 (a) SUNSET OF PROGRAM.—

15 (1) IN GENERAL.—Except as provided in para-
16 graph (2), an employer may not petition to employ
17 an alien pursuant to section 101(a)(15)(H)(ii)(a) of
18 the Immigration and Nationality Act (8 U.S.C.
19 1101(a)(15)(H)(ii)(a)) after the date that is 1 year
20 after the date on which the regulations issued pursu-
21 ant to section 2241(b) become effective.

22 (2) EXCEPTION.—An employer may employ an
23 alien described in paragraph (1) for the shorter of—

24 (A) 10 months; or

25 (B) the time specified in the position.

1 (b) CONFORMING AMENDMENTS.—

2 (1) REPEAL OF H-2A NONIMMIGRANT CAT-
3 EGORY.—Section 101(a)(15)(H)(ii) (8 U.S.C.
4 1101(a)(15)(H)(ii)) is amended by striking sub-
5 clause (a).

6 (2) REPEAL OF ADMISSION REQUIREMENTS FOR
7 H-2A WORKER.—Section 218 (8 U.S.C. 1188) is re-
8 pealed.

9 (3) CONFORMING AMENDMENTS.—

10 (A) AMENDMENT OF PETITION REQUIRE-
11 MENTS.—Section 214(c)(1) (8 U.S.C.
12 1184(c)(1)) is amended by striking “For pur-
13 poses of this subsection” and all that follows.

14 (B) CLERICAL AMENDMENT.—The table of
15 contents is amended by striking the item relat-
16 ing to section 218.

17 (4) EFFECTIVE DATE.—The amendments made
18 by this subsection shall take effect on the date that
19 is 1 year after the effective date of the regulations
20 issued pursuant to section 2241(b).

21 **SEC. 2234. REPORTS TO CONGRESS ON NONIMMIGRANT AG-**
22 **RICULTURAL WORKERS.**

23 (a) ANNUAL REPORT BY SECRETARY OF AGRI-
24 CULTURE.—Not later than September 30 of each year, the
25 Secretary of Agriculture shall submit a report to Congress

1 that identifies, for the previous year, the number,
2 disaggregated by State and by occupation, of—

3 (1) job opportunities approved for employment
4 of aliens admitted pursuant to clause (iii) or clause
5 (iv) of section 101(a)(15)(W) of the Immigration
6 and Nationality Act, as added by section 2231; and

7 (2) aliens actually admitted pursuant to each
8 such clause.

9 (b) ANNUAL REPORT BY SECRETARY OF HOMELAND
10 SECURITY.—Not later than September 30 of each year,
11 the Secretary shall submit a report to Congress that iden-
12 tifies, for the previous year, the number of aliens described
13 in subsection (a)(2) who—

14 (1) violated the terms of the nonimmigrant ag-
15 ricultural worker program established under section
16 218A(b) of the Immigration and Nationality Act, as
17 added by section 2232; and

18 (2) have not departed from the United States.

19 **CHAPTER 3—OTHER PROVISIONS**

20 **SEC. 2241. RULEMAKING.**

21 (a) CONSULTATION REQUIREMENT.—In the course of
22 promulgating any regulation necessary to implement this
23 subtitle, or the amendments made by this subtitle, the Sec-
24 retary, the Secretary of Agriculture, the Secretary of

1 Labor, and the Secretary of State shall regularly consult
2 with each other.

3 (b) DEADLINE FOR ISSUANCE OF REGULATIONS.—
4 Except as provided in section 2232(b), all regulations to
5 implement this subtitle and the amendments made by this
6 subtitle shall be issued not later than 6 months after the
7 date of the enactment of this Act.

8 **SEC. 2242. REPORTS TO CONGRESS.**

9 Not later than 180 days after the date of the enact-
10 ment of this Act, the Secretary and the Secretary of Agri-
11 culture shall jointly submit a report to Congress that de-
12 scribes the measures being taken and the progress made
13 in implementing this subtitle and the amendments made
14 by this subtitle.

15 **SEC. 2243. BENEFITS INTEGRITY PROGRAMS.**

16 (a) IN GENERAL.—Without regard to whether per-
17 sonal interviews are conducted in the adjudication of bene-
18 fits provided for by section 210A, 218A, 245B, 245C,
19 245D, 245E, or 245F of the Immigration and Nationality
20 Act, or in seeking a benefit under section 101(a)(15)(U)
21 of the Immigration and Nationality Act, section 1242 of
22 the Refugee Crisis in Iraq Act of 2007 (8 U.S.C. 1157
23 note), section 602(b) of the Afghan Allies Protection Act
24 of 2009 (8 U.S.C. 1101 note), or section 2211 of this Act,
25 the Secretary shall uphold and maintain the integrity of

1 those benefits by carrying out for each of them, within
2 the Fraud Detection and National Security Directorate of
3 U.S. Citizenship and Immigration Services, programs as
4 follows:

5 (1) A benefit fraud assessment program to
6 quantify fraud rates, detect ongoing fraud trends,
7 and develop appropriate countermeasures, including
8 through a random sample of both pending and com-
9 pleted cases.

10 (2) A compliance review program, including site
11 visits, to identify frauds and deter fraudulent and il-
12 legal activities.

13 (b) REPORTS.—

14 (1) IN GENERAL.—Not later than 90 days after
15 the date of the enactment of this Act, U.S. Citizen-
16 ship and Immigration Services shall annually submit
17 to Congress a report on the programs carried out
18 pursuant to subsection (a).

19 (2) ELEMENTS IN FIRST REPORT.—The initial
20 report submitted under paragraph (1) shall include
21 the methodologies to be used by the Fraud Detection
22 and National Security Directorate for each of the
23 programs specified in paragraphs (1) and (2) of sub-
24 section (a).

1 (3) ELEMENTS IN SUBSEQUENT REPORTS.—

2 Each subsequent report under paragraph (1) shall
3 include, for the calendar year covered by such re-
4 port, a descriptions of examples of fraud detected,
5 fraud rates for programs and types of applicants,
6 and a description of the disposition of the cases in
7 which fraud was detected or suspected.

8 (c) USE OF FINDINGS OF FRAUD.—Any instance of
9 fraud or abuse detected pursuant to a program carried
10 out pursuant to subsection (a) may be used to deny or
11 revoke benefits, and may also be referred to U.S. Immi-
12 gration and Customs Enforcement for investigation of
13 criminal violations of section 266 of the Immigration and
14 Nationality Act (8 U.S.C. 1306).

15 (d) FUNDING.—There are authorized to be appro-
16 priated, from the Comprehensive Immigration Reform
17 Trust Fund established under section 9(a)(1), such sums
18 as may be necessary to carry out this section.

19 **SEC. 2244. EFFECTIVE DATE.**

20 This subtitle and the amendments made by this sub-
21 title, except for sections 2231, 2232, and 2233, shall take
22 effect on the date on which the regulations required under
23 section 2241 are issued, regardless of whether such regu-
24 lations are issued on an interim basis or on any other
25 basis.

1 **Subtitle C—Future Immigration**

2 **SEC. 2301. MERIT-BASED POINTS TRACK ONE.**

3 (a) IN GENERAL.—

4 (1) WORLDWIDE LEVEL OF MERIT-BASED IMMI-
5 GRANTS.—Section 201(e) (8 U.S.C. 1151(e)) is
6 amended to read as follows:

7 “(e) WORLDWIDE LEVEL OF MERIT-BASED IMMI-
8 GRANTS.—

9 “(1) IN GENERAL.—

10 “(A) NUMERICAL LIMITATION.—Subject to
11 paragraphs (2), (3), and (4), the worldwide
12 level of merit-based immigrants is equal to
13 120,000 for each fiscal year.

14 “(B) STATUS.—An alien admitted on the
15 basis of a merit-based immigrant visa under
16 this section shall have the status of an alien
17 lawfully admitted for permanent residence.

18 “(2) ANNUAL INCREASE.—

19 “(A) IN GENERAL.—Subject to subpara-
20 graph (B) and paragraph (3), if in any fiscal
21 year the worldwide level of visas available for
22 merit-based immigrants under this section—

23 “(i) is less than 75 percent of the
24 number of applicants for such fiscal year,

1 the worldwide level shall increase by 5 per-
2 cent for the next fiscal year; and

3 “(ii) is equal to or more than 75 per-
4 cent of such number, the worldwide level
5 for the next fiscal year shall be the same
6 as the worldwide level for such fiscal year,
7 minus any amount added to the worldwide
8 level for such fiscal year under paragraph
9 (4).

10 “(B) LIMITATION ON INCREASE.—The
11 worldwide level of visas available for merit-
12 based immigrants shall not exceed 250,000.

13 “(3) EMPLOYMENT CONSIDERATION.—The
14 worldwide level of visas available for merit-based im-
15 migrants may not be increased for a fiscal year
16 under paragraph (2) if the annual average unem-
17 ployment rate for the civilian labor force 18 years or
18 over in the United States, as determined by the Bu-
19 reau of Labor Statistics, for such previous fiscal
20 year is more than 8½ percent.

21 “(4) RECAPTURE OF UNUSED VISAS.—The
22 worldwide level of merit-based immigrants described
23 in paragraph (1) for a fiscal year shall be increased
24 by the difference (if any) between the worldwide
25 level established under paragraph (1) for the pre-

1 vious fiscal year and the number of visas actually
2 issued under this subsection during that fiscal year.
3 Such visas shall be allocated for the following year
4 pursuant to section 203(c)(3).”.

5 (2) MERIT-BASED IMMIGRANTS.—Section 203
6 (8 U.S.C. 1153) is amended by inserting after sub-
7 section (b) the following:

8 “(c) MERIT-BASED IMMIGRANTS.—

9 “(1) FISCAL YEARS 2015 THROUGH 2017.—Dur-
10 ing each of the fiscal years 2015 through 2017, the
11 worldwide level of merit-based immigrant visas made
12 available under section 201(e)(1) shall be available
13 for aliens described in section 203(b)(3) and in addi-
14 tion to any visas available for such aliens under such
15 section.

16 “(2) SUBSEQUENT FISCAL YEARS.—During fis-
17 cal year 2018 and each subsequent fiscal year, aliens
18 subject to the worldwide level specified in section
19 201(e) for merit-based immigrants shall be allocated
20 as follows:

21 “(A) 50 percent shall be available to appli-
22 cants with the highest number of points allo-
23 cated under tier 1 in paragraph (4).

1 “(B) 50 percent shall be available to appli-
2 cants with the highest number of points allo-
3 cated under tier 2 in paragraph (5).

4 “(3) UNUSED VISAS.—If the total number of
5 visas allocated to tier 1 or tier 2 for a fiscal year
6 are not granted during that fiscal year, such number
7 may be added to the number of visas available under
8 section 201(e)(1) for the following fiscal year and al-
9 located as follows:

10 “(A) If the unused visas were allocated for
11 tier 1 in a fiscal year, $\frac{2}{3}$ of such visas shall be
12 available for aliens allocated visas under tier 1
13 in the following fiscal year and $\frac{1}{3}$ of such visas
14 shall be available for aliens allocated visas
15 under either tier 1 or tier 2 in the following fis-
16 cal year.

17 “(B) If the unused visas were allocated for
18 tier 2 in a fiscal year, $\frac{2}{3}$ of such visas shall be
19 available for aliens allocated visas under tier 2
20 in the following fiscal year and $\frac{1}{3}$ of such visas
21 shall be available for aliens allocated visas
22 under either tier 1 or tier 2 in the following fis-
23 cal year.

1 “(4) TIER 1.—The Secretary shall allocate
2 points to each alien seeking to be a tier 1 merit-
3 based immigrant as follows:

4 “(A) EDUCATION.—

5 “(i) IN GENERAL.—An alien may re-
6 ceive points under only 1 of the following
7 categories:

8 “(I) An alien who has received a
9 doctorate degree from an institution
10 of higher education in the United
11 States or the foreign equivalent shall
12 be allocated 15 points.

13 “(II) An alien who has received a
14 master’s degree from an institution of
15 higher education in the United States
16 or the foreign equivalent shall be allo-
17 cated 10 points.

18 “(ii) An alien who has received a
19 bachelor’s degree from an institution of
20 higher education (as defined in section
21 101(a) of the Higher Education Act of
22 1965 (20 U.S.C. 1001(a)) shall be allo-
23 cated 5 points.

1 “(B) EMPLOYMENT EXPERIENCE.—An
2 alien shall be allocated not more than 20 points
3 as follows:

4 “(i) 3 points for each year the alien
5 has been lawfully employed in a zone 5 oc-
6 cupation in the United States.

7 “(ii) 2 points for each year the alien
8 has been lawfully employed in a zone 4 oc-
9 cupation in the United States.

10 “(C) EMPLOYMENT RELATED TO EDU-
11 CATION.—An alien who is in the United States
12 and is employed full-time or has an offer of full-
13 time employment in a field related to the alien’s
14 education—

15 “(i) in a zone 5 occupation shall be al-
16 located 10 points; or

17 “(ii) in a zone 4 occupation shall be
18 allocated 8 points.

19 “(D) ENTREPRENEURSHIP.—An alien who
20 is an entrepreneur in business that employs at
21 least 2 employees in a zone 4 occupation or a
22 zone 5 occupation shall be allocated 10 points.

23 “(E) HIGH DEMAND OCCUPATION.—An
24 alien who is employed full-time in the United
25 States or has an offer of full-time employment

1 in a high demand tier 1 occupation shall be al-
2 located 10 points.

3 “(F) CIVIC INVOLVEMENT.—An alien who
4 has attested that he or she has engaged in a
5 significant amount of community service, as de-
6 termined by the Secretary, shall be allocated 2
7 points.

8 “(G) ENGLISH LANGUAGE.—An alien who
9 received a score of 80 or more on the Test of
10 English as a Foreign Language, or an equiva-
11 lent score on a similar test, as determined by
12 the Secretary, shall be allocated 10 points.

13 “(H) SIBLINGS AND MARRIED SONS AND
14 DAUGHTERS OF CITIZENS.—An alien who is the
15 sibling of a citizen of the United States or who
16 is over 31 years of age and is the married son
17 or married daughter of a citizen of the United
18 States shall be allocated 10 points.

19 “(I) AGE.—An alien who is—

20 “(i) between 18 and 24 years of age
21 shall be allocated 8 points;

22 “(ii) between 25 and 32 years of age
23 shall be allocated 6 points; or

24 “(iii) between 33 and 37 years of age
25 shall be allocated 4 points.

1 “(J) COUNTRY OF ORIGIN.—An alien who
2 is a national of a country of which fewer than
3 50,000 nationals were lawfully admitted to per-
4 manent residence in the United States in the
5 previous 5 years shall be allocated 5 points.

6 “(5) TIER 2.—The Secretary shall allocate
7 points to each alien seeking to be a tier 2 merit-
8 based immigrant as follows:

9 “(A) EMPLOYMENT EXPERIENCE.—An
10 alien shall be allocated 2 points for each year
11 the alien has been lawfully employed in the
12 United States, for a total of not more than 20
13 points.

14 “(B) SPECIAL EMPLOYMENT CRITERIA.—
15 An alien who is employed full-time in the
16 United States, or has an offer of full-time em-
17 ployment—

18 “(i) in a high demand tier 2 occupa-
19 tion shall be allocated 10 points; or

20 “(ii) in a zone 1, zone 2, or zone 3 oc-
21 cupation shall be allocated 10 points.

22 “(C) CAREGIVER.—An alien who is or has
23 been a primary caregiver shall be allocated 10
24 points.

1 “(D) EXCEPTIONAL EMPLOYMENT
2 RECORD.—An alien who has a record of excep-
3 tional employment, as determined by the Sec-
4 retary, shall be allocated 10 points. In deter-
5 mining a record of exceptional employment, the
6 Secretary shall consider factors including pro-
7 motions, longevity, changes in occupations from
8 a lower job zone to a higher job zone, partici-
9 pated in safety training, and increases in pay.

10 “(E) CIVIC INVOLVEMENT.—An alien who
11 has demonstrated significant civic involvement
12 shall be allocated 2 points.

13 “(F) ENGLISH LANGUAGE.—

14 “(i) ENGLISH PROFICIENCY.—An
15 alien who has demonstrated English pro-
16 ficiency, as determined by a standardized
17 test designated by the Secretary of Edu-
18 cation, shall be allocated 10 points.

19 “(ii) ENGLISH KNOWLEDGE.—An
20 alien who has demonstrated English knowl-
21 edge, as determined by a standardized test
22 designated by the Secretary of Education,
23 shall be allocated 5 points.

24 “(G) SIBLINGS AND MARRIED SONS AND
25 DAUGHTERS OF CITIZENS.—An alien who is the

1 sibling of a citizen of the United States or is
2 over the age of 31 and is the married son or
3 married daughter of a citizen of the United
4 States shall be allocated 10 points.

5 “(H) AGE.—An alien who is—

6 “(i) between 18 and 24 years of age
7 shall be allocated 8 points;

8 “(ii) between 25 and 32 years of age
9 shall be allocated 6 points; or

10 “(iii) between 33 and 37 years of age
11 shall be allocated 4 points.

12 “(I) COUNTRY OF ORIGIN.—An alien who
13 is a national of a country of which fewer than
14 50,000 nationals were lawfully admitted to per-
15 manent residence in the United States in the
16 previous 5 years shall be allocated 5 points.

17 “(6) APPLICATION PROCEDURES.—

18 “(A) SUBMISSION.—During the 30-day pe-
19 riod beginning on the first October 1 occurring
20 at least 3 years after the date of the enactment
21 of the Border Security, Economic Opportunity,
22 and Immigration Modernization Act, and dur-
23 ing each 30-day period beginning on October 1
24 in subsequent years, eligible aliens may submit,
25 to U.S. Citizenship and Immigration Services,

1 an application for a merit-based immigrant visa
2 that contains such information as the Secretary
3 may reasonably require.

4 “(B) ADJUDICATION.—Before the last day
5 of each fiscal year in which applications are
6 filed pursuant to subparagraph (A), the Direc-
7 tor, U.S. Citizenship and Immigration Services,
8 shall—

9 “(i) review the applications to deter-
10 mine which aliens will be granted a merit
11 based immigrant visa in the following fiscal
12 year in accordance with this subsection;
13 and

14 “(ii) in coordination with the Sec-
15 retary of State, provide such visas to all
16 successful applicants.

17 “(C) FEE.—An alien who is allocated a
18 visa under this subsection shall pay a fee of
19 \$1,500 in addition to any fee assessed to cover
20 the costs to process an application under this
21 subsection. Fees collected under this paragraph
22 shall be deposited by the Secretary into the
23 Comprehensive Immigration Reform Trust
24 Fund established under section 9(a)(1) of the

1 Border Security, Economic Opportunity, and
2 Immigration Modernization Act.

3 “(7) ELIGIBILITY OF ALIENS IN REGISTERED
4 PROVISIONAL IMMIGRANT STATUS.—An alien who
5 was granted registered provisional immigrant status
6 under section 245B is not eligible to receive a merit-
7 based immigrant visa under section 201(e).

8 “(8) INELIGIBILITY OF ALIENS WITH PENDING
9 OR APPROVED PETITIONS.—An alien who has a peti-
10 tion pending or approved in another immigrant cat-
11 egory under this section or section 201 may not
12 apply for a merit-based immigrant visa.

13 “(9) DEFINITIONS.—In this subsection:

14 “(A) HIGH DEMAND TIER 1 OCCUPA-
15 TION.—The term ‘high demand tier 1 occupa-
16 tion’ means 1 of the 5 occupations for which
17 the highest number of nonimmigrants described
18 in section 101(a)(15)(H)(i) were sought to be
19 admitted by employers during the previous fis-
20 cal year.

21 “(B) HIGH DEMAND TIER 2 OCCUPA-
22 TION.—The term ‘high demand tier 2 occupa-
23 tion’ means 1 of the 5 occupations for which
24 the highest number of positions were sought to

1 become registered positions by employers under
2 section 220(e) during the previous fiscal year.

3 “(C) SECRETARY.—The term ‘Secretary’
4 means the Secretary of Homeland Security.

5 “(D) ZONE 1 OCCUPATION.—The term
6 ‘zone 1 occupation’ means an occupation that
7 requires little or no preparation and is classified
8 as a zone 1 occupation on—

9 “(i) the Occupational Information
10 Network Database (O*NET) on the date
11 of the enactment of the Border Security,
12 Economic Opportunity, and Immigration
13 Modernization Act; or

14 “(ii) such Database or a similar suc-
15 cessor database, as designated by the Sec-
16 retary of Labor, after such date of enact-
17 ment.

18 “(E) ZONE 2 OCCUPATION.—The term
19 ‘zone 2 occupation’ means an occupation that
20 requires some preparation and is classified as a
21 zone 2 occupation on—

22 “(i) the Occupational Information
23 Network Database (O*NET) on the date
24 of the enactment of the Border Security,

1 Economic Opportunity, and Immigration
2 Modernization Act; or

3 “(ii) such Database or a similar suc-
4 cessor database, as designated by the Sec-
5 retary of Labor, after such date of enact-
6 ment.

7 “(F) ZONE 3 OCCUPATION.—The term
8 ‘zone 3 occupation’ means an occupation that
9 requires medium preparation and is classified
10 as a zone 3 occupation on—

11 “(i) the Occupational Information
12 Network Database (O*NET) on the date
13 of the enactment of the Border Security,
14 Economic Opportunity, and Immigration
15 Modernization Act; or

16 “(ii) such Database or a similar suc-
17 cessor database, as designated by the Sec-
18 retary of Labor, after such date of enact-
19 ment.

20 “(G) ZONE 4 OCCUPATION.—The term
21 ‘zone 4 occupation’ means an occupation that
22 requires considerable preparation and is classi-
23 fied as a zone 4 occupation on—

24 “(i) the Occupational Information
25 Network Database (O*NET) on the date

1 of the enactment of the Border Security,
2 Economic Opportunity, and Immigration
3 Modernization Act; or

4 “(ii) such Database or a similar suc-
5 cessor database, as designated by the Sec-
6 retary of Labor, after such date of enact-
7 ment.

8 “(H) ZONE 5 OCCUPATION.—The term
9 ‘zone 5 occupation’ means an occupation that
10 requires extensive preparation and is classified
11 as a zone 5 occupation on—

12 “(i) the Occupational Information
13 Network Database (O*NET) on the date
14 of the enactment of the Border Security,
15 Economic Opportunity, and Immigration
16 Modernization Act; or

17 “(ii) such Database or a similar suc-
18 cessor database, as designated by the Sec-
19 retary of Labor, after such date of enact-
20 ment.”.

21 (3) GAO STUDY AND REPORT.—

22 (A) STUDY.—The Comptroller General of
23 the United States shall conduct a study of the
24 merit-based immigration system established
25 under section 203(c) of the Immigration and

1 Nationality Act, as amended by paragraph (2),
2 to determine, during the first 7 years of such
3 system—

4 (i) how the points described in para-
5 graphs (4)(H), (4)(J), (5)(G), and (5)(I)
6 of section 203(c) of such Act were utilized;

7 (ii) how many of the points allocated
8 to people lawfully admitted for permanent
9 residence were allocated under such para-
10 graphs;

11 (iii) how many people who were allo-
12 cated points under such paragraphs were
13 not lawfully admitted to permanent resi-
14 dence;

15 (iv) the countries of origin of the peo-
16 ple who applied for a merit-based visa
17 under section 203(c) of such Act;

18 (v) the number of such visas issued
19 under tier 1 and tier 2 to males and fe-
20 males, respectively;

21 (vi) the age of individuals who were
22 issued such visas; and

23 (vii) the educational attainment and
24 occupation of people who were issued such
25 visas.

1 (B) REPORT.—Not later than 7 years after
2 the date of the enactment of this Act, the
3 Comptroller General shall submit a report to
4 Congress that describes the results of the study
5 conducted pursuant to subparagraph (A).

6 (b) MODIFICATION OF POINTS.—The Secretary may
7 submit to Congress a proposal to modify the number of
8 points allocated under subsection (c) of section 203 of the
9 Immigration and Nationality Act (8 U.S.C. 1153), as
10 amended by subsection (a).

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall take effect on October 1, 2014.

13 **SEC. 2302. MERIT-BASED TRACK TWO.**

14 (a) IN GENERAL.—In addition to any immigrant visa
15 made available under the Immigration and Nationality Act
16 (8 U.S.C. 1101 et seq.), as amended by this Act, the Sec-
17 retary of State shall allocate merit-based immigrant visas
18 as described in this section.

19 (b) STATUS.—An alien admitted on the basis of a
20 merit-based immigrant visa under this section shall have
21 the status of an alien lawfully admitted for permanent res-
22 idence (as that term is defined in section 101(a)(20) of
23 the Immigration and Nationality Act (8 U.S.C.
24 1101(a)(20)).

1 (c) ELIGIBILITY.—Beginning on October 1, 2014, the
2 following aliens shall be eligible for merit-based immigrant
3 visas under this section:

4 (1) EMPLOYMENT-BASED IMMIGRANTS.—An
5 alien who is the beneficiary of a petition filed before
6 the date of the enactment of this Act to accord sta-
7 tus under section 203(b) of the Immigration and
8 Nationality Act, if the visa has not been issued with-
9 in 5 years after the date on which such petition was
10 filed.

11 (2) FAMILY-SPONSORED IMMIGRANTS.—Subject
12 to subsection (d), an alien who is the beneficiary of
13 a petition filed to accord status under section 203(a)
14 of the Immigration and Nationality Act—

15 (A) prior to the date of the enactment of
16 this Act, if the visa was not issued within 5
17 years after the date on which such petition was
18 filed; or

19 (B) after such date of enactment, to ac-
20 cord status under paragraph (3) or (4) of sec-
21 tion 203(a) of the Immigration and Nationality
22 Act (8 U.S.C. 1153(a)), as in effect the minute
23 before the effective date specified in section
24 2307(a)(3) of this Act, and the visa was not

1 issued within 5 years after the date on which
2 petition was filed.

3 (3) LONG-TERM ALIEN WORKERS AND OTHER
4 MERIT-BASED IMMIGRANTS.—An alien who—

5 (A) is not admitted pursuant to subpara-
6 graph (W) of section 101(a)(15) of the Immi-
7 gration and Nationality Act (8 U.S.C.
8 1101(a)(15)); and

9 (B) has been lawfully present in the
10 United States in a status that allows for em-
11 ployment authorization for a continuous period,
12 not counting brief, casual, and innocent ab-
13 sences, of not less than 10 years.

14 (d) ALLOCATION OF EMPLOYMENT-SPONSORED
15 MERIT-BASED IMMIGRANT VISAS.—In each of the fiscal
16 years 2015 through and including 2021, the Secretary of
17 State shall allocate to aliens described in subsection (c)(1)
18 a number of merit-based immigrant visas equal to $\frac{1}{7}$ of
19 the number of aliens described in subsection (c)(1) whose
20 visas had not been issued as of the date of the enactment
21 of this Act.

22 (e) ALLOCATION OF FAMILY-SPONSORED MERIT-
23 BASED IMMIGRANT VISAS.—The visas authorized by sub-
24 section (c)(2) shall be allocated as follows:

1 (1) SPOUSES AND CHILDREN OF PERMANENT
2 RESIDENTS.—Petitions to accord status under sec-
3 tion 203(a)(2)(A) of the Immigration and Nation-
4 ality Act (8 U.S.C. 1153(a)(2)(A)), as in effect the
5 minute before the effective date specified in section
6 2307(a)(3) of this Act, are automatically converted
7 to petitions to accord status to the same bene-
8 ficiaries as immediate relatives under section
9 201(b)(2)(A) of the Immigration and Nationality
10 Act (8 U.S.C. 1151(b)(2)(A)).

11 (2) OTHER FAMILY MEMBERS.—In each of the
12 fiscal years 2015 through and including 2021, the
13 Secretary of State shall allocate to the aliens de-
14 scribed in subsection (c)(2)(A), other than those
15 aliens described in paragraph (1), a number of tran-
16 sitional merit-based immigrant visas equal to $\frac{1}{7}$ of
17 the difference between—

18 (A) the number of aliens described in sub-
19 section (c)(2)(A) whose visas had not been
20 issued as of the date of the enactment of this
21 Act; and

22 (B) the number of aliens described in
23 paragraph (1).

24 (3) ORDER OF ISSUANCE FOR PREVIOUSLY
25 FILED APPLICATIONS.—Subject to paragraphs (1)

1 and (2), the visas authorized by subsection (c)(2)(A)
2 shall be issued without regard to a per country limi-
3 tation in the order described in section 203(a) of the
4 Immigration and Nationality Act (8 U.S.C.
5 1153(a)), as amended by section 2305(b), in the
6 order in which the petitions to accord status under
7 such section 203(a) were filed prior to the date of
8 the enactment of this Act.

9 (4) SUBSEQUENTLY FILED APPLICATIONS.—In
10 fiscal year 2022, the Secretary of State shall allocate
11 to the aliens described in subsection (c)(2)(B), the
12 number of merit-based immigrant visas equal to $\frac{1}{2}$
13 of the number of aliens described in subsection
14 (c)(2)(B) whose visas had not been issued by Octo-
15 ber 1, 2021. In fiscal year 2023, the Secretary of
16 State shall allocate to the aliens described in sub-
17 section (c)(2)(B), the number of merit-based immi-
18 grant visas equal to the number of aliens described
19 in subsection (c)(2)(B) whose visas had not been
20 issued by October 1, 2022.

21 (5) ORDER OF ISSUANCE FOR SUBSEQUENTLY
22 FILED APPLICATIONS.—Subject to paragraph (4),
23 the visas authorized by subsection (c)(2)(B) shall be
24 issued in the order in which the petitions to accord
25 status under section 203(a) of the Immigration and

1 Nationality Act were filed, as in effect the minute
2 before the effective date specified in section
3 2307(a)(3) of this Act.

4 (f) **APPLICABILITY OF CERTAIN GROUNDS OF INAD-**
5 **MISSIBILITY.**—In determining an alien’s inadmissibility
6 under this section, section 212(a)(9)(B) of the Immigra-
7 tion and Nationality Act (8 U.S.C. 1193(a)(9)(B)) shall
8 not apply.

9 (g) **ELIGIBILITY IN YEARS AFTER 2028.**—Beginning
10 in fiscal year 2029, aliens eligible for adjustment of status
11 under subsection (c)(3) must be lawfully present in an em-
12 ployment authorized status for 20 years prior to filing an
13 application for adjustment of status.

14 **SEC. 2303. REPEAL OF THE DIVERSITY VISA PROGRAM.**

15 (a) **IN GENERAL.**—Title II (8 U.S.C. 1151 et seq.)
16 is amended—

17 (1) in section 201(a) (8 U.S.C. 1151(a))—

18 (A) in paragraph (1), by adding “and” at
19 the end;

20 (B) in paragraph (2), by striking “; and”
21 at the end and inserting a period; and

22 (C) by striking paragraph (3);

23 (2) in section 203 (8 U.S.C. 1153)—

24 (A) by striking subsection (c);

25 (B) in subsection (e)—

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

2 (ii) by redesignating paragraph (3) as
3 paragraph (2);

4 (C) in subsection (f), by striking “(a), (b),
5 or (c) of this section” and inserting “(a) or
6 (b)”; and

7 (D) in subsection (g), by striking “(a), (b),
8 and (c)” and inserting “(a) and (b)”; and
9 (3) in section 204 (8 U.S.C. 1154)—

10 (A) in subsection (a), as amended by sec-
11 tion 2305(d)(6)(A)(i), by striking paragraph
12 (8); and

13 (B) in subsection (e), by striking “(a), (b),
14 or (c)” and inserting “(a) or (b)”.

15 (b) EFFECTIVE DATE AND APPLICATION.—

16 (1) EFFECTIVE DATE.—The amendments made
17 by this section shall take effect on October 1, 2014.

18 (2) APPLICATION.—An alien who receives a no-
19 tification from the Secretary that the alien was se-
20 lected to receive a diversity immigrant visa under
21 section 203(c) of the Immigration and Nationality
22 Act (8 U.S.C. 1153(c)) for fiscal year 2013 or fiscal
23 year 2014 shall remain eligible to receive such visa
24 under the rules of such section, as in effect on Sep-
25 tember 30, 2014. No alien may be allocated such a

1 diversity immigrant visa for a fiscal year after fiscal
2 year 2015.

3 **SEC. 2304. WORLDWIDE LEVELS AND RECAPTURE OF UN-**
4 **USED IMMIGRANT VISAS.**

5 (a) EMPLOYMENT-BASED IMMIGRANTS.—Section
6 201(d) (8 U.S.C. 1151(d)) is amended to read as follows:

7 “(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED
8 IMMIGRANTS.—

9 “(1) IN GENERAL.—

10 “(A) WORLDWIDE LEVEL.—For a fiscal
11 year after fiscal year 2015, the worldwide level
12 of employment-based immigrants under this
13 subsection is equal to the sum of—

14 “(i) 140,000; and

15 “(ii) the number computed under
16 paragraph (2).

17 “(B) FISCAL YEAR 2015.—For fiscal year
18 2015, the worldwide level of employment-based
19 immigrants under this subsection is equal to
20 the sum of—

21 “(i) 140,000;

22 “(ii) the number computed under
23 paragraph (2); and

24 “(iii) the number computed under
25 paragraph (3).

1 “(2) PREVIOUS FISCAL YEAR.—The number
2 computed under this paragraph for a fiscal year is
3 the difference, if any, between the maximum number
4 of visas which may be issued under section 203(a)
5 (relating to family-sponsored immigrants) during the
6 previous fiscal year and the number of visas issued
7 under that section during that year.

8 “(3) UNUSED VISAS.—The number computed
9 under this paragraph is the difference, if any, be-
10 tween—

11 “(A) the sum of the worldwide levels estab-
12 lished under paragraph (1), as in effect on the
13 day before the date of the enactment of the
14 Border Security, Economic Opportunity, and
15 Immigration Modernization Act, for fiscal years
16 1992 through and including 2013; and

17 “(B) the number of visas actually issued
18 under section 203(b) during such fiscal years.”.

19 (b) FAMILY-SPONSORED IMMIGRANTS.—Section
20 201(c) (8 U.S.C. 1151(c)) is amended to read as follows:

21 “(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED
22 IMMIGRANTS.—

23 “(1) IN GENERAL.—

24 “(A) WORLDWIDE LEVEL.—Subject to
25 subparagraph (C), for each fiscal year after fis-

1 cal year 2015, the worldwide level of family-
2 sponsored immigrants under this subsection for
3 a fiscal year is equal to the sum of—

4 “(i) 480,000 minus the number com-
5 puted under paragraph (2); and

6 “(ii) the number computed under
7 paragraph (3).

8 “(B) FISCAL YEAR 2015.—Subject to sub-
9 paragraph (C), for fiscal year 2015, the world-
10 wide level of family-sponsored immigrants
11 under this subsection is equal to the sum of—

12 “(i) 480,000 minus the number com-
13 puted under paragraph (2);

14 “(ii) the number computed under
15 paragraph (3); and

16 “(iii) the number computed under
17 paragraph (4).

18 “(C) LIMITATION.—The number computed
19 under subparagraph (A)(i) or (B)(i) may not be
20 less than 226,000, except that beginning on the
21 date that is 18 months after the date of the en-
22 actment of the Border Security, Economic Op-
23 portunity, and Immigration Modernization Act,
24 the number computed under subparagraph
25 (A)(i) or (B)(i) may not be less than 161,000.

1 “(2) IMMEDIATE RELATIVES.—The number
2 computed under this paragraph for a fiscal year is
3 the number of aliens described in subparagraph (A)
4 or (B) of subsection (b)(2) who were issued immi-
5 grant visas, or who otherwise acquired the status of
6 an alien lawfully admitted to the United States for
7 permanent residence, in the previous fiscal year.

8 “(3) PREVIOUS FISCAL YEAR.—The number
9 computed under this paragraph for a fiscal year is
10 the difference, if any, between the maximum number
11 of visas which may be issued under section 203(b)
12 (relating to employment-based immigrants) during
13 the previous fiscal year and the number of visas
14 issued under that section during that year.

15 “(4) UNUSED VISAS.—The number computed
16 under this paragraph is the difference, if any, be-
17 tween—

18 “(A) the sum of the worldwide levels estab-
19 lished under paragraph (1) for fiscal years
20 1992 through and including 2013; and

21 “(B) the number of visas actually issued
22 under section 203(a) during such fiscal years.”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall take effect on the first day of the first

1 fiscal year beginning after the date of the enactment of
2 this Act.

3 **SEC. 2305. RECLASSIFICATION OF SPOUSES AND MINOR**
4 **CHILDREN OF LAWFUL PERMANENT RESI-**
5 **DENTS AS IMMEDIATE RELATIVES.**

6 (a) IMMEDIATE RELATIVES.—Section 201(b)(2) (8
7 U.S.C. 1151(b)(2)) is amended to read as follows:

8 “(2)(A) Aliens who are immediate relatives.

9 “(B) In this paragraph, the term ‘immediate
10 relative’ means—

11 “(i) a child, spouse, or parent of a citizen
12 of the United States, except that in the case of
13 such a parent such citizen shall be at least 21
14 years of age;

15 “(ii) a child or spouse of an alien lawfully
16 admitted for permanent residence;

17 “(iii) a child or spouse of an alien de-
18 scribed in clause (i), who is accompanying or
19 following to join the alien;

20 “(iv) a child or spouse of an alien de-
21 scribed in clause (ii), who is accompanying or
22 following to join the alien;

23 “(v) an alien admitted under section
24 211(a) on the basis of a prior issuance of a visa

1 to the alien's accompanying parent who is an
2 immediate relative; and

3 “(vi) an alien born to an alien lawfully ad-
4 mitted for permanent residence during a tem-
5 porary visit abroad.

6 “(C) If an alien who was the spouse or child of
7 a citizen of the United States or of an alien lawfully
8 admitted for permanent residence and was not le-
9 gally separated from the citizen or lawful permanent
10 resident at the time of the citizen's or lawful perma-
11 nent resident's death files a petition under section
12 204(a)(1)(B), the alien spouse (and each child of the
13 alien) shall remain, for purposes of this paragraph,
14 an immediate relative during the period beginning
15 on the date of the citizen's or permanent resident's
16 death and ending on the date on which the alien
17 spouse remarries.

18 “(D) An alien who has filed a petition under
19 clause (iii) or (iv) of section 204(a)(1)(A) shall re-
20 main, for purposes of this paragraph, an immediate
21 relative if the United States citizen or lawful perma-
22 nent resident spouse or parent loses United States
23 citizenship on account of the abuse.”.

24 (b) ALLOCATION OF IMMIGRANT VISAS.—Section
25 203(a) (8 U.S.C. 1153(a)) is amended—

1 (1) in paragraph (1), by striking “23,400,” and
2 inserting “20 percent of the worldwide level of fam-
3 ily-sponsored immigrants under section 201(c)”;

4 (2) by striking paragraph (2) and inserting the
5 following:

6 “(2) UNMARRIED SONS AND UNMARRIED
7 DAUGHTERS OF PERMANENT RESIDENT ALIENS.—
8 Qualified immigrants who are the unmarried sons or
9 unmarried daughters (but are not the children) of
10 an alien lawfully admitted for permanent residence
11 shall be allocated visas in a number not to exceed 20
12 percent of the worldwide level of family-sponsored
13 immigrants under section 201(c), plus any visas not
14 required for the class specified in paragraph (1).”;

15 (3) in paragraph (3)—

16 (A) by striking “23,400,” and inserting
17 “20 percent of the worldwide level of family-
18 sponsored immigrants under section 201(c)”;
19 and

20 (B) by striking “classes specified in para-
21 graphs (1) and (2).” and inserting “class speci-
22 fied in paragraph (2).”; and

23 (4) in paragraph (4)—

24 (A) by striking “65,000,” and inserting
25 “40 percent of the worldwide level of family-

1 sponsored immigrants under section 201(e)”;
2 and

3 (B) by striking “classes specified in para-
4 graphs (1) through (3).” and inserting “class
5 specified in paragraph (3).”.

6 (c) TERMINATION OF REGISTRATION.—Section
7 203(g) (8 U.S.C. 1153(g)) is amended to read as follows:

8 “(g) LISTS.—

9 “(1) IN GENERAL.—For purposes of carrying
10 out the orderly administration of this title, the Sec-
11 retary of State may make reasonable estimates of
12 the anticipated numbers of immigrant visas to be
13 issued during any quarter of any fiscal year within
14 each of the categories under subsections (a), (b),
15 and (c) and may rely upon such estimates in author-
16 izing the issuance of visas.

17 “(2) TERMINATION OF REGISTRATION.—

18 “(A) INFORMATION DISSEMINATION.—Not
19 later than 180 days after the date of the enact-
20 ment of the Border Security, Economic Oppor-
21 tunity, and Immigration Modernization Act, the
22 Secretary of Homeland Security and the Sec-
23 retary of State shall adopt a plan to broadly
24 disseminate information to the public regarding
25 termination of registration procedures described

1 in subparagraphs (B) and (C), including proce-
2 dures for notifying the Department of Home-
3 land Security and the Department of State of
4 any change of address on the part of a peti-
5 tioner or a beneficiary of an immigrant visa pe-
6 tition.

7 “(B) TERMINATION FOR FAILURE TO AD-
8 JUST.—The Secretary of Homeland Security
9 shall terminate the registration of any alien who
10 has evidenced an intention to acquire lawful
11 permanent residence under section 245 and who
12 fails to apply to adjust status within 1 year fol-
13 lowing notification to the alien of the avail-
14 ability of an immigrant visa.

15 “(C) TERMINATION FOR FAILURE TO
16 APPLY.—The Secretary of State shall terminate
17 the registration of any alien not described in
18 subparagraph (B) who fails to apply for an im-
19 migrant visa within 1 year following notification
20 to the alien of the availability of such visa.

21 “(3) REINSTATEMENT.—The registration of
22 any alien that was terminated under paragraph (2)
23 shall be reinstated if, within 2 years following the
24 date of notification of the availability of such visa,

1 the alien demonstrates that such failure to apply
2 was due to good cause.”.

3 (d) TECHNICAL AND CONFORMING AMENDMENTS.—

4 (1) DEFINITIONS.—Section 101(a)(15)(K)(ii)
5 (8 U.S.C. 1101(a)(15)(K)(ii)) is amended by strik-
6 ing “section 201(b)(2)(A)(i)” and inserting “section
7 201(b)(2) (other than clause (v) or (vi) of subpara-
8 graph (B))”.

9 (2) PER COUNTRY LEVEL.—Section
10 202(a)(1)(A) (8 U.S.C. 1152(a)(1)(A)) is amended
11 by striking “section 201(b)(2)(A)(i)” and inserting
12 “section 201(b)(2) (other than clause (v) or (vi) of
13 subparagraph (B))”.

14 (3) RULES FOR DETERMINING WHETHER CER-
15 TAIN ALIENS ARE IMMEDIATE RELATIVES.—Section
16 201(f) (8 U.S.C. 1151(f)) is amended—

17 (A) in paragraph (1), by striking “para-
18 graphs (2) and (3),” and inserting “paragraph
19 (2),”;

20 (B) by striking paragraph (2);

21 (C) by redesignating paragraphs (3) and
22 (4) as paragraphs (2) and (3), respectively; and

23 (D) in paragraph (3), as redesignated by
24 subparagraph (C), by striking “through (3)”
25 and inserting “and (2)”.

1 (4) NUMERICAL LIMITATION TO ANY SINGLE
2 FOREIGN STATE.—Section 202(a)(4) (8 U.S.C.
3 1152(a)(4)) is amended—

4 (A) by striking subparagraphs (A) and
5 (B);

6 (B) by redesignating subparagraphs (C)
7 and (D) as subparagraphs (A) and (B), respec-
8 tively; and

9 (C) in subparagraph (A), as redesignated
10 by clause (ii), by striking “section
11 203(a)(2)(B)” and inserting “section
12 203(a)(2)”.

13 (5) ALLOCATION OF IMMIGRANT VISAS.—Sec-
14 tion 203(h) (8 U.S.C. 1153(h)) is amended—

15 (A) in paragraph (1)—

16 (i) in the matter preceding subpara-
17 graph (A), by striking “subsections
18 (a)(2)(A) and (d)” and inserting “sub-
19 section (d)”;

20 (ii) in subparagraph (A), by striking
21 “becomes available for such alien (or, in
22 the case of subsection (d), the date on
23 which an immigrant visa number became
24 available for the alien’s parent),” and in-

1 serting “became available for the alien’s
2 parent,”; and

3 (iii) in subparagraph (B), by striking
4 “applicable”;

5 (B) by amending paragraph (2) to read as
6 follows:

7 “(2) PETITIONS DESCRIBED.—The petition de-
8 scribed in this paragraph is a petition filed under
9 section 204 for classification of the alien’s parent
10 under subsection (a), (b), or (c).”; and

11 (C) by amending paragraph (3) to read as
12 follows:

13 “(3) RETENTION OF PRIORITY DATE.—

14 “(A) PETITIONS FILED FOR CHILDREN.—

15 For a petition originally filed to classify a child
16 under subsection (d), if the age of the alien is
17 determined under paragraph (1) to be 21 years
18 of age or older on the date that a visa number
19 becomes available to the alien’s parent who was
20 the principal beneficiary of the petition, then,
21 upon the parent’s admission to lawful perma-
22 nent residence in the United States, the petition
23 shall automatically be converted to a petition
24 filed by the parent for classification of the alien
25 under subsection (a)(2) and the petition shall

1 retain the priority date established by the origi-
2 nal petition.

3 “(B) FAMILY AND EMPLOYMENT-BASED
4 PETITIONS.—The priority date for any family-
5 or employment-based petition shall be the date
6 of filing of the petition with the Secretary of
7 Homeland Security (or the Secretary of State,
8 if applicable), unless the filing of the petition
9 was preceded by the filing of a labor certifi-
10 cation with the Secretary of Labor, in which
11 case that date shall constitute the priority date.
12 The beneficiary of any petition shall retain his
13 or her earliest priority date based on any peti-
14 tion filed on his or her behalf that was approv-
15 able when filed, regardless of the category of
16 subsequent petitions.”.

17 (6) PROCEDURE FOR GRANTING IMMIGRANT
18 STATUS.—

19 (A) PETITIONING PROCEDURE.—Section
20 204 (8 U.S.C. 1154) is amended—

21 (i) by striking subsection (a) and in-
22 serting the following:

23 “(a) PETITIONING PROCEDURE.—

24 “(1) IN GENERAL.—(A) Except as provided in
25 subparagraph (H), any citizen of the United States

1 or alien lawfully admitted for permanent residence
2 claiming that an alien is entitled to classification by
3 reason of a relationship described in subparagraph
4 (A) or (B) of section 203(a)(1) or to an immediate
5 relative status under section 201(b)(2)(A) may file a
6 petition with the Secretary of Homeland Security for
7 such classification.

8 “(B) An alien spouse or alien child described in
9 section 201(b)(2)(C) may file a petition with the
10 Secretary under this paragraph for classification of
11 the alien (and the alien’s children) under such sec-
12 tion.

13 “(C)(i) An alien who is described in clause (ii)
14 may file a petition with the Secretary under this
15 subparagraph for classification of the alien (and any
16 child of the alien) if the alien demonstrates to the
17 Secretary that—

18 “(I) the marriage or the intent to marry
19 the citizen of the United States or lawful per-
20 manent resident was entered into in good faith
21 by the alien; and

22 “(II) during the marriage or relationship
23 intended by the alien to be legally a marriage,
24 the alien or a child of the alien has been bat-
25 tered or has been the subject of extreme cruelty

1 perpetrated by the alien’s spouse or intended
2 spouse.

3 “(ii) For purposes of clause (i), an alien de-
4 scribed in this clause is an alien—

5 “(I)(aa) who is the spouse of a citizen of
6 the United States or lawful permanent resident;

7 “(bb) who believed that he or she had mar-
8 ried a citizen of the United States or lawful
9 permanent resident and with whom a marriage
10 ceremony was actually performed and who oth-
11 erwise meets any applicable requirements under
12 this Act to establish the existence of and bona
13 fides of a marriage, but whose marriage is not
14 legitimate solely because of the bigamy of such
15 citizen of the United States or lawful perma-
16 nent resident; or

17 “(cc) who was a bona fide spouse of a cit-
18 izen of the United States or a lawful permanent
19 resident within the past 2 years and—

20 “(AA) whose spouse died within the
21 past 2 years;

22 “(BB) whose spouse renounced citi-
23 zenship status or renounced or lost status
24 as a lawful permanent resident within the

1 past 2 years related to an incident of do-
2 mestic violence; or

3 “(CC) who demonstrates a connection
4 between the legal termination of the mar-
5 riage within the past 2 years and battering
6 or extreme cruelty by a spouse who is a
7 citizen of the United States or a lawful
8 permanent resident spouse;

9 “(II) who is a person of good moral char-
10 acter;

11 “(III) who is eligible to be classified as an
12 immediate relative under section 201(b)(2)(A)
13 or who would have been so classified but for the
14 bigamy of the citizen of the United States that
15 the alien intended to marry; and

16 “(IV) who has resided with the alien’s
17 spouse or intended spouse.

18 “(D) An alien who is the child of a citizen or
19 lawful permanent resident of the United States, or
20 who was a child of a United States citizen or lawful
21 permanent resident parent who within the past 2
22 years lost or renounced citizenship status related to
23 an incident of domestic violence, and who is a person
24 of good moral character, who is eligible to be classi-
25 fied as an immediate relative under section

1 201(b)(2)(A), and who resides, or has resided in the
2 past, with the citizen or lawful permanent resident
3 parent may file a petition with the Secretary of
4 Homeland Security under this paragraph for classi-
5 fication of the alien (and any child of the alien)
6 under such section if the alien demonstrates to the
7 Secretary that the alien has been battered by or has
8 been the subject of extreme cruelty perpetrated by
9 the alien’s citizen or lawful permanent resident par-
10 ent. For purposes of this subparagraph, residence
11 includes any period of visitation.

12 “(E) An alien who—

13 “(i) is the spouse, intended spouse, or child
14 living abroad of a citizen or lawful permanent
15 resident who—

16 “(I) is an employee of the United
17 States Government;

18 “(II) is a member of the uniformed
19 services (as defined in section 101(a) of
20 title 10, United States Code); or

21 “(III) has subjected the alien or the
22 alien’s child to battery or extreme cruelty
23 in the United States; and

24 “(ii) is eligible to file a petition under sub-
25 paragraph (C) or (D),

1 shall file such petition with the Secretary of Home-
2 land Security under the procedures that apply to
3 self-petitioners under subparagraph (C) or (D), as
4 applicable.

5 “(F) For the purposes of any petition filed
6 under subparagraph (C) or (D), the
7 denaturalization, loss or renunciation of citizenship
8 or lawful permanent resident status, death of the
9 abuser, divorce, or changes to the abuser’s citizen-
10 ship or lawful permanent resident status after filing
11 of the petition shall not adversely affect the approval
12 of the petition, and for approved petitions shall not
13 preclude the classification of the eligible self-peti-
14 tioning spouse or child as an immediate relative or
15 affect the alien’s ability to adjust status under sub-
16 sections (a) and (c) of section 245 or obtain status
17 as a lawful permanent resident based on the ap-
18 proved self-petition under such clauses.

19 “(G) An alien may file a petition with the Sec-
20 retary of Homeland Security under this paragraph
21 for classification of the alien under section
22 201(b)(2)(A) if the alien—

23 “(i) is the parent of a citizen of the United
24 States or was a parent of a citizen of the
25 United States who, within the past 2 years, lost

1 or renounced citizenship status related to an in-
2 cident of domestic violence or died;

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

4 “(iii) is eligible to be classified as an im-
5 mediate relative under section 201(b)(2)(A);

6 “(iv) resides, or has resided, with the cit-
7 izen daughter or son; and

8 “(v) demonstrates that the alien has been
9 battered or subject to extreme cruelty by the
10 citizen daughter or son.

11 “(H)(i) Subparagraph (A) shall not apply to a
12 citizen of the United States who has been convicted
13 of a specified offense against a minor, unless the
14 Secretary of Homeland Security, in the Secretary’s
15 sole and unreviewable discretion, determines that the
16 citizen poses no risk to the alien with respect to
17 whom a petition described in subparagraph (A) is
18 filed.

19 “(ii) For purposes of clause (i), the term ‘speci-
20 fied offense against a minor’ has the meaning given
21 such term in section 111 of the Adam Walsh Child
22 Protection and Safety Act of 2006 (42 U.S.C.
23 16911).

24 “(2) DETERMINATION OF GOOD MORAL CHAR-
25 ACTER.—Notwithstanding section 101(f), an act or

1 conviction that is waivable with respect to the peti-
2 tioner for purposes of a determination of the peti-
3 tioner's admissibility under section 212(a) or deport-
4 ability under section 237(a) shall not bar the Sec-
5 retary of Homeland Security from finding the peti-
6 tioner to be of good moral character under subpara-
7 graph (C) or (D) of paragraph (1), if the Secretary
8 finds that the act or conviction was connected to the
9 alien's having been battered or subjected to extreme
10 cruelty.

11 “(3) PREFERENCE STATUS.—(A)(i) Any child
12 who attains 21 years of age who has filed a petition
13 under paragraph (1)(D) that was filed or approved
14 before the date on which the child attained 21 years
15 of age shall be considered (if the child has not been
16 admitted or approved for lawful permanent residence
17 by the date the child attained 21 years of age) a pe-
18 titioner for preference status under paragraph (1),
19 (2), or (3) of section 203(a), whichever paragraph is
20 applicable, with the same priority date assigned to
21 the self-petition filed under paragraph (1)(D). No
22 new petition shall be required to be filed.

23 “(ii) Any individual described in clause (i) is el-
24 igible for deferred action and work authorization.

1 “(iii) Any derivative child who attains 21 years
2 of age who is included in a petition described in sub-
3 paragraph (B) that was filed or approved before the
4 date on which the child attained 21 years of age
5 shall be considered (if the child has not been admit-
6 ted or approved for lawful permanent residence by
7 the date the child attained 21 years of age) a VAWA
8 self-petitioner with the same priority date as that as-
9 signed to the petitioner in any petition described in
10 subparagraph (B). No new petition shall be required
11 to be filed.

12 “(iv) Any individual described in clause (iii) and
13 any derivative child of a petitioner described in sub-
14 paragraph (B) is eligible for deferred action and
15 work authorization.

16 “(B) The petition referred to in subparagraph
17 (A)(iii) is a petition filed by an alien under subpara-
18 graph (C) or (D) of paragraph (1) in which the child
19 is included as a derivative beneficiary.

20 “(C) Nothing in the amendments made by the
21 Child Status Protection Act (Public Law 107–208;
22 116 Stat. 927) shall be construed to limit or deny
23 any right or benefit provided under this paragraph.

24 “(D) Any alien who benefits from this para-
25 graph may adjust status in accordance with sub-

1 sections (a) and (c) of section 245 as an alien hav-
2 ing an approved petition for classification under sub-
3 paragraph (C) or (D) of paragraph (1).

4 “(E) For purposes of this paragraph, an indi-
5 vidual who is not less than 21 years of age, who
6 qualified to file a petition under paragraph (1)(D)
7 as of the minute before the date on which the indi-
8 vidual attained 21 years of age, and who did not file
9 such a petition before such day, shall be treated as
10 having filed a petition under such paragraph as of
11 such day if a petition is filed for the status described
12 in such paragraph before the individual attains 25
13 years of age and the individual shows that the abuse
14 was at least 1 central reason for the filing delay.
15 Subparagraphs (A) through (D) shall apply to an in-
16 dividual described in this subparagraph in the same
17 manner as an individual filing a petition under para-
18 graph (1)(D).

19 “(4) CLASSIFICATION AS ALIEN WITH EX-
20 TRAORDINARY ABILITY.—Any alien desiring to be
21 classified under subparagraph (I), (J), (K), (L), or
22 (M) of section 201(b)(1) or section 203(b)(1)(A), or
23 any person on behalf of such an alien, may file a pe-
24 tition with the Secretary of Homeland Security for
25 such classification.

1 “(5) CLASSIFICATION AS EMPLOYMENT-BASED
2 IMMIGRANT.—Any employer desiring and intending
3 to employ within the United States an alien entitled
4 to classification under paragraph (1)(B), (1)(C), (2),
5 or (3) of section 203(b) may file a petition with the
6 Secretary of Homeland Security for such classifica-
7 tion.

8 “(6) CLASSIFICATION AS SPECIAL IMMI-
9 GRANT.—(A) Any alien (other than a special immi-
10 grant under section 101(a)(27)(D)) desiring to be
11 classified under section 203(b)(4), or any person on
12 behalf of such an alien, may file a petition with the
13 Secretary of Homeland Security for such classifica-
14 tion.

15 “(B) Aliens claiming status as a special immi-
16 grant under section 101(a)(27)(D) may file a peti-
17 tion only with the Secretary of State and only after
18 notification by the Secretary that such status has
19 been recommended and approved pursuant to such
20 section.

21 “(7) CLASSIFICATION AS IMMIGRANT INVES-
22 TOR.—Any alien desiring to be classified under para-
23 graph (5) or (6) of section 203(b) may file a petition
24 with the Secretary of Homeland Security for such
25 classification.

1 “(8) DIVERSITY VISA.—(A) Any alien desiring
2 to be provided an immigrant visa under section
3 203(c) may file a petition at the place and time de-
4 termined by the Secretary of State by regulation.
5 Only 1 such petition may be filed by an alien with
6 respect to any petitioning period established. If more
7 than 1 petition is submitted all such petitions sub-
8 mitted for such period by the alien shall be voided.

9 “(B)(i) The Secretary of State shall designate
10 a period for the filing of petitions with respect to
11 visas which may be issued under section 203(c) for
12 the fiscal year beginning after the end of the period.

13 “(ii) Aliens who qualify, through random selec-
14 tion, for a visa under section 203(c) shall remain eli-
15 gible to receive such visa only through the end of the
16 specific fiscal year for which they were selected.

17 “(iii) The Secretary of State shall prescribe
18 such regulations as may be necessary to carry out
19 this subparagraph.

20 “(C) A petition under this paragraph shall be
21 in such form as the Secretary of State may by regu-
22 lation prescribe and shall contain such information
23 and be supported by such documentary evidence as
24 the Secretary of State may require.

1 “(D) Each petition to compete for consideration
2 for a visa under section 203(c) shall be accompanied
3 by a fee equal to \$30. All amounts collected under
4 this subparagraph shall be deposited into the Treas-
5 ury as miscellaneous receipts.

6 “(9) CONSIDERATION OF CREDIBLE EVI-
7 DENCE.—In acting on petitions filed under subpara-
8 graph (C) or (D) of paragraph (1), or in making de-
9 terminations under paragraphs (2) and (3), the Sec-
10 retary of Homeland Security shall consider any cred-
11 ible evidence relevant to the petition. The determina-
12 tion of what evidence is credible and the weight to
13 be given that evidence shall be within the sole discre-
14 tion of the Secretary.

15 “(10) WORK AUTHORIZATION.—(A) Upon the
16 approval of a petition as a VAWA self-petitioner, the
17 alien—

18 “(i) is eligible for work authorization; and

19 “(ii) may be provided an ‘employment au-
20 thorized’ endorsement or appropriate work per-
21 mit incidental to such approval.

22 “(B) Notwithstanding any provision of this Act
23 restricting eligibility for employment in the United
24 States, the Secretary of Homeland Security shall
25 grant employment authorization to an alien who has

1 filed an application for status as a VAWA self-peti-
2 tioner on the date that is the earlier of—

3 “(i) the date on which the alien’s applica-
4 tion for such status is approved; or

5 “(ii) a date determined by the Secretary
6 that is not later than 180 days after the date
7 on which the alien filed the application.

8 “(11) LIMITATION.—Notwithstanding para-
9 graphs (1) through (10), an individual who was a
10 VAWA petitioner or who had the status of a non-
11 immigrant under subparagraph (T) or (U) of section
12 101(a)(15) may not file a petition for classification
13 under this section or section 214 to classify any per-
14 son who committed the battery or extreme cruelty or
15 trafficking against the individual (or the individual’s
16 child), which established the individual’s (or individ-
17 ual’s child’s) eligibility as a VAWA petitioner or for
18 such nonimmigrant status.”;

19 (ii) in subsection (c)(1), by striking
20 “or preference status”; and

21 (iii) in subsection (h), by striking “or
22 a petition filed under subsection
23 (a)(1)(B)(ii)”.

24 (B) CONFORMING AMENDMENTS.—The
25 Act (8 U.S.C. 1101 et seq.) is amended—

1 (i) in section 101(a)—

2 (I) in paragraph (15)(K), by
3 striking “204(a)(1)(A)(viii)(I)” each
4 place such term appears and inserting
5 “204(a)(1)(H)(i)”;

6 (II) in paragraph (50), by strik-
7 ing “204(a)(1)(A)(iii)(II)(aa)(BB),
8 204(a)(1)(B)(ii)(II)(aa)(BB),” and in-
9 serting “204(a)(1)(C)(ii)(I)(bb) or”;
10 and

11 (III) in paragraph (51)—

12 (aa) in subparagraph (A),
13 by striking “204(a)(1)(A)” and
14 inserting “204(a)(1)”;

15 (bb) by striking subpara-
16 graph (B); and

17 (cc) by redesignating sub-
18 paragraphs (C), (D), (E), (F),
19 and (G) as subparagraphs (B),
20 (C), (D), (E), and (F), respec-
21 tively;

22 (ii) in section 212(a)(4)(C)(i)—

23 (I) in subclause (I), by striking
24 “clause (ii), (iii), or (iv) of section
25 204(a)(1)(A), or” and inserting “sub-

1 paragraph (B), (C), or (D) of section
2 204(a)(1);”;

3 (II) by striking subclause (II);

4 and

5 (III) by redesignating subclause
6 (III) as subclause (II);

7 (iii) in section 216(c)(4)(D), by strik-
8 ing “204(a)(1)(A)(iii)(II)(aa)(BB)” and
9 inserting “204(a)(1)(C)(ii)(I)(bb)”;

10 (iv) in section 240(e)(7)(C)(iv)(I), by
11 striking “clause (iii) or (iv) of section
12 204(a)(1)(A), clause (ii) or (iii) of section
13 204(a)(1)(B),” and inserting “subpara-
14 graph (C) or (D) of section 204(a)(1),”.

15 (7) EXCLUDABLE ALIENS.—Section
16 212(d)(12)(B) (8 U.S.C. 1182(d)(12)(B)) is amend-
17 ed by striking “section 201(b)(2)(A)” and inserting
18 “section 201(b)(2) (other than subparagraph
19 (B)(vi))”.

20 (8) ADMISSION OF NONIMMIGRANTS.—Section
21 214(r)(3)(A) (8 U.S.C. 1184(r)(3)(A)) is amended
22 by striking “section 201(b)(2)(A)(i).” and inserting
23 “section 201(b)(2) (other than clause (v) or (vi) of
24 subparagraph (B)).”.

1 (9) REFUGEE CRISIS IN IRAQ ACT OF 2007.—
2 Section 1243(a)(4) of the Refugee Crisis in Iraq Act
3 of 2007 (8 U.S.C. 1157 note) is amended by strik-
4 ing “section 201(b)(2)(A)(i)” and inserting “section
5 201(b)(2) (other than clause (v) or (vi) of subpara-
6 graph (B))”.

7 (10) PROCESSING OF VISA APPLICATIONS.—
8 Section 233 of the Department of State Authoriza-
9 tion Act, Fiscal Year 2003 (8 U.S.C. 1201 note) is
10 amended by striking “section 201(b)(2)(A)(i)” and
11 inserting “section 201(b)(2) (other than clause (v)
12 or (vi) of subparagraph (B))”.

13 (11) ADJUSTMENT OF STATUS.—Section 245(a)
14 (8 U.S.C. 1255(a)) is amended to read as follows:

15 “(a)(1) The status of an alien who was inspected and
16 admitted or paroled into the United States or the status
17 of any other alien having an approved petition for classi-
18 fication as a VAWA self-petitioner may be adjusted by the
19 Attorney General or the Secretary of Homeland Security,
20 in the Attorney General’s or the Secretary’s discretion and
21 under such regulations as the Attorney General or Sec-
22 retary may prescribe, to that of an alien lawfully admitted
23 for permanent residence (regardless of whether the alien
24 has already been admitted for permanent residence) if—

1 “(A) the alien makes an application for such
2 adjustment;

3 “(B) the alien is eligible to receive an immi-
4 grant visa and is admissible to the United States for
5 permanent residence; and

6 “(C) subject to paragraph (2), an immigrant
7 visa is immediately available to the alien at the time
8 the alien’s application is filed.

9 “(2)(A) An application that is based on a petition ap-
10 proved or approvable under subparagraph (A) or (B) of
11 section 204(a)(1) may be filed without regard to the limi-
12 tation set forth in paragraph (1)(C).

13 “(B) An application for adjustment filed for an alien
14 under this paragraph may not be approved until such time
15 as an immigrant visa becomes available for the alien.”.

16 (e) EFFECTIVE DATE.—The amendments made by
17 this section shall take effect on the date of the enactment
18 of this Act.

19 **SEC. 2306. NUMERICAL LIMITATIONS ON INDIVIDUAL FOR-**
20 **EIGN STATES.**

21 (a) NUMERICAL LIMITATION TO ANY SINGLE FOR-
22 EIGN STATE.—Section 202(a)(2) (8 U.S.C. 1152(a)(2)) is
23 amended—

24 (1) in the paragraph heading, by striking “AND
25 EMPLOYMENT-BASED”;

1 (2) by striking “(3), (4), and (5),” and insert-
2 ing “(3) and (4),”;

3 (3) by striking “subsections (a) and (b) of sec-
4 tion 203” and inserting “section 203(a);”

5 (4) by striking “7” and inserting “15”; and

6 (5) by striking “such subsections” and inserting
7 “such section”.

8 (b) CONFORMING AMENDMENTS.—Section 202 (8
9 U.S.C. 1152) is amended—

10 (1) in subsection (a)—

11 (A) in paragraph (3), by striking “both
12 subsections (a) and (b) of section 203” and in-
13 serting “section 203(a);” and

14 (B) by striking paragraph (5); and

15 (2) by amending subsection (e) to read as fol-
16 lows:

17 “(e) SPECIAL RULES FOR COUNTRIES AT CEILING.—

18 If it is determined that the total number of immigrant
19 visas made available under section 203(a) to natives of
20 any single foreign state or dependent area will exceed the
21 numerical limitation specified in subsection (a)(2) in any
22 fiscal year, in determining the allotment of immigrant visa
23 numbers to natives under section 203(a), visa numbers
24 with respect to natives of that state or area shall be allo-
25 cated (to the extent practicable and otherwise consistent

1 with this section and section 203) in a manner so that,
2 except as provided in subsection (a)(4), the proportion of
3 the visa numbers made available under each of paragraphs
4 (1) through (4) of section 203(a) is equal to the ratio of
5 the total number of visas made available under the respec-
6 tive paragraph to the total number of visas made available
7 under section 203(a).”.

8 (c) COUNTRY-SPECIFIC OFFSET.—Section 2 of the
9 Chinese Student Protection Act of 1992 (8 U.S.C. 1255
10 note) is amended—

11 (1) in subsection (a), by striking “subsection
12 (e))” and inserting “subsection (d))”; and

13 (2) by striking subsection (d) and redesignating
14 subsection (e) as subsection (d).

15 (d) EFFECTIVE DATE.—The amendments made by
16 this section shall take effect 1 year after the date of the
17 enactment of this Act.

18 **SEC. 2307. ALLOCATION OF IMMIGRANT VISAS.**

19 (a) PREFERENCE ALLOCATION FOR FAMILY-SPON-
20 SORED IMMIGRANTS.—

21 (1) IN GENERAL.—Section 203(a) (8 U.S.C.
22 1153(a)), as amended by section 2305(b), is further
23 amended to read as follows:

24 “(a) PREFERENCE ALLOCATION FOR FAMILY-SPON-
25 SORED IMMIGRANTS.—Aliens subject to the worldwide

1 level specified in section 201(c) for family-sponsored immi-
2 grants shall be allotted visas as follows:

3 “(1) SONS AND DAUGHTERS OF CITIZENS.—

4 Qualified immigrants who are—

5 “(A) the unmarried sons or unmarried
6 daughters but not the children of citizens of the
7 United States shall be allocated visas in a num-
8 ber not to exceed 35 percent of the worldwide
9 level authorized in section 201(c), plus the sum
10 of—

11 “(i) the number of visas not required
12 for the class specified in paragraph (2) for
13 the current fiscal year; and

14 “(ii) the number of visas not required
15 for the class specified in subparagraph (B);

16 or

17 “(B) the married sons or married daugh-
18 ters of citizens of the United States who are 31
19 years of age or younger at the time of filing a
20 petition under section 204 shall be allocated
21 visas in a number not to exceed 25 percent of
22 the worldwide level authorized in section 201(c),
23 plus the number of any visas not required for
24 the class specified in subparagraph (A) current
25 fiscal year.

1 “(2) SONS AND DAUGHTERS OF PERMANENT
2 RESIDENTS.—Qualified immigrants who are the un-
3 married sons or unmarried daughters of aliens ad-
4 mitted for permanent residence shall be allocated
5 visas in a number not to exceed 40 percent of the
6 worldwide level authorized in section 201(c), plus
7 any visas not required for the class specified in para-
8 graph (1)(A).”.

9 (2) CONFORMING AMENDMENTS.—

10 (A) PROCEDURE FOR GRANTING IMMI-
11 GRANT STATUS.—Section 204(f)(1) (8 U.S.C.
12 1154(f)(1)) is amended by striking “section
13 201(b), 203(a)(1), or 203(a)(3),” and inserting
14 “section 201(b) or subparagraph (A) or (B) of
15 section 203(a)(1)”.

16 (B) AUTOMATIC CONVERSION.—For the
17 purposes of any petition pending or approved
18 based on a relationship described—

19 (i) in subparagraph (A) of section
20 203(a)(1) of the Immigration and Nation-
21 ality Act (8 U.S.C. 1153(a)(1)), as amend-
22 ed by paragraph (1), and notwithstanding
23 the age of the alien, such a petition shall
24 be deemed reclassified as a petition based
25 on a relationship described in subpara-

1 graph (B) of such section 203(a)(1) upon
2 the marriage of such alien; or

3 (ii) in subparagraph (B) of such sec-
4 tion 203(a)(1), such a petition shall be
5 deemed reclassified as a petition based on
6 a relationship described in subparagraph
7 (A) of such section 203(a)(1) upon the
8 legal termination of marriage or death of
9 such alien's spouse.

10 (3) EFFECTIVE DATE.—The amendments made
11 by this subsection shall take effect on the first day
12 of the first fiscal year that begins at least 18 months
13 following the date of the enactment of this Act.

14 (b) PREFERENCE ALLOCATION FOR EMPLOYMENT-
15 BASED IMMIGRANTS.—

16 (1) IN GENERAL.—Section 201(b)(1) (8 U.S.C.
17 1151(b)(1)), as amended by sections 2103(e) and
18 2212(d), is further amended by adding at the end
19 the following:

20 “(H) Derivative beneficiaries as described
21 in section 203(d) of employment-based immi-
22 grants under section 203(b).

23 “(I) Aliens with extraordinary ability in
24 the sciences, arts, education, business, or ath-
25 letics which has been demonstrated by sus-

1 tained national or international acclaim, if, with
2 respect to any such alien—

3 “(i) the achievements of such alien
4 have been recognized in the field through
5 extensive documentation;

6 “(ii) such alien seeks to enter the
7 United States to continue work in the area
8 of extraordinary ability; and

9 “(iii) the entry of such alien into the
10 United States will substantially benefit
11 prospectively the United States.

12 “(J) Aliens who are outstanding professors
13 and researchers if, with respect to any such
14 alien—

15 “(i) the alien is recognized inter-
16 nationally as outstanding in a specific aca-
17 demic area;

18 “(ii) the alien has at least 3 years of
19 experience in teaching or research in the
20 academic area; and

21 “(iii) the alien seeks to enter the
22 United States—

23 “(I) to be employed in a tenured
24 position (or tenure-track position)
25 within a not for profit university or

1 institution of higher education to
2 teach in the academic area;

3 “(II) for employment in a com-
4 parable position with a not for profit
5 university or institution of higher edu-
6 cation, or a governmental research or-
7 ganization, to conduct research in the
8 area; or

9 “(III) for employment in a com-
10 parable position to conduct research
11 in the area with a department, divi-
12 sion, or institute of a private em-
13 ployer, if the department, division, or
14 institute employs at least 3 persons
15 full-time in research activities and has
16 achieved documented accomplishments
17 in an academic field.

18 “(K) Aliens who are multinational execu-
19 tives and managers if, with respect to any such
20 alien—

21 “(i) in the 3 years preceding the time
22 of the alien’s application for classification
23 and admission into the United States
24 under this subparagraph, the alien has
25 been employed for at least 1 year by a firm

1 or corporation or other legal entity or an
2 affiliate or subsidiary thereof; and

3 “(ii) the alien seeks to enter the
4 United States in order to continue to
5 render services to the same employer or to
6 a subsidiary or affiliate thereof in a capac-
7 ity that is managerial or executive.

8 “(L) Aliens who have earned a doctorate
9 degree from an institution of higher education
10 in the United States or the foreign equivalent.

11 “(M) Alien physicians who have completed
12 the foreign residency requirements under sec-
13 tion 212(e) or obtained a waiver of these re-
14 quirements or an exemption requested by an in-
15 terested State agency or by an interested Fed-
16 eral agency under section 214(l), including
17 those alien physicians who completed such serv-
18 ice before the date of the enactment of the Bor-
19 der Security, Economic Opportunity, and Immi-
20 gration Modernization Act.

21 “(N) ADVANCED DEGREES IN A STEM
22 FIELD.—

23 “(i) IN GENERAL.—An immigrant
24 who—

1 “(I) has earned a master’s or
2 higher degree in a field of science,
3 technology, engineering, or mathe-
4 matics included in the Department of
5 Education’s Classification of Instruc-
6 tional Programs taxonomy within the
7 summary groups of computer and in-
8 formation sciences and support serv-
9 ices, engineering, mathematics and
10 statistics, biological and biomedical
11 sciences, and physical sciences, from a
12 United States institution of higher
13 education;

14 “(II) has an offer of employment
15 from a United States employer in a
16 field related to such degree; and

17 “(III) earned the qualifying grad-
18 uate degree during the 5-year period
19 immediately before the initial filing
20 date of the petition under which the
21 nonimmigrant is a beneficiary.

22 “(ii) DEFINITION.—In this subpara-
23 graph, the term ‘United States institution
24 of higher education’ means an institution
25 that—

1 “(I) is described in section
2 101(a) of the Higher Education Act
3 of 1965 (20 U.S.C. 1001(a)) or is a
4 proprietary institution of higher edu-
5 cation (as defined in section 102(b) of
6 such Act (20 U.S.C. 1002(b)));

7 “(II) was classified by the Car-
8 negie Foundation for the Advance-
9 ment of Teaching on January 1,
10 2012, as a doctorate-granting univer-
11 sity with a very high or high level of
12 research activity or classified by the
13 National Science Foundation after the
14 date of enactment of this subpara-
15 graph, pursuant to an application by
16 the institution, as having equivalent
17 research activity to those institutions
18 that had been classified by the Car-
19 negie Foundation as being doctorate-
20 granting universities with a very high
21 or high level of research activity; and

22 “(III) is accredited by an accred-
23 iting body that is itself accredited ei-
24 ther by the Department of Education

1 or by the Council for Higher Edu-
2 cation Accreditation.”.

3 (2) EXCEPTION FROM LABOR CERTIFICATION
4 REQUIREMENT FOR STEM IMMIGRANTS.—Section
5 212(a)(5)(D) (8 U.S.C. 1182(a)(5)(D)) is amended
6 to read as follows:

7 “(D) APPLICATION OF GROUNDS.—

8 “(i) IN GENERAL.—Except as pro-
9 vided in clause (ii), the grounds for inad-
10 missibility of aliens under subparagraphs
11 (A) and (B) shall apply to immigrants
12 seeking admission or adjustment of status
13 under paragraph (2) or (3) of section
14 203(b).

15 “(ii) SPECIAL RULE FOR STEM IMMI-
16 GRANTS.—The grounds for inadmissibility
17 of aliens under subparagraph (A) shall not
18 apply to an immigrant seeking admission
19 or adjustment of status under section
20 203(b)(2)(B) or 201(b)(1)(N).”.

21 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

22 (1) TREATMENT OF DERIVATIVE FAMILY MEM-
23 BERS.—Section 203(d) (8 U.S.C. 1153(d)) is
24 amended to read as follows:

1 “(d) TREATMENT OF FAMILY MEMBERS.—If accom-
2 panying or following to join a spouse or parent issued a
3 visa under subsection (a), (b), or (c), subparagraph (I),
4 (J), (K), (L), or (M) of section 201(b)(1), or section
5 201(b)(2), a spouse or child (as defined in subparagraph
6 (A), (B), (C), (D), or (E) of section 101(b)(1)) shall be
7 entitled to the same immigrant status and the same order
8 of consideration provided in the respective provision.”.

9 (2) ALIENS WHO ARE PRIORITY WORKERS OR
10 MEMBERS OF THE PROFESSIONS HOLDING AD-
11 VANCED DEGREES.—Section 203(b) (8 U.S.C.
12 1153(b)) is amended—

13 (A) in the matter preceding paragraph (1),
14 by striking “Aliens” and inserting “Other than
15 aliens described in paragraph (1) or (2)(B),
16 aliens”;

17 (B) in paragraph (1), by striking the mat-
18 ter preceding subparagraph (A) and inserting
19 “Aliens described in any of the following sub-
20 paragraphs may be admitted to the United
21 States without respect to the worldwide level
22 specified in section 201(d)”;

23 (C) by amending paragraph (2) to read as
24 follows:

1 “(2) ALIENS WHO ARE MEMBERS OF PROFES-
2 SIONS HOLDING ADVANCED DEGREES OR PROSPEC-
3 TIVE EMPLOYEES OF NATIONAL SECURITY FACILI-
4 TIES.—

5 “(A) IN GENERAL.—Visas shall be made
6 available, in a number not to exceed 40 percent
7 of the worldwide level authorized in section
8 201(d), plus any visas not required for the
9 classes specified in paragraph (5) to qualified
10 immigrants who are either of the following:

11 “(i) Members of the professions hold-
12 ing advanced degrees or their equivalent
13 whose services in the sciences, arts, profes-
14 sions, or business are sought by an em-
15 ployer in the United States, including alien
16 physicians holding foreign medical degrees
17 that have been deemed sufficient for ac-
18 ceptance by an accredited United States
19 medical residency or fellowship program.

20 “(ii) Prospective employees, in a re-
21 search capacity, of Federal national secu-
22 rity, science, and technology laboratories,
23 centers, and agencies, if such immigrants
24 have been lawfully present in the United
25 States for two years prior to employment

1 (unless the Secretary of Homeland Secu-
2 rity determines, including upon request of
3 the prospective laboratory, center, or agen-
4 cy, that exceptional circumstances exist
5 justifying waiver of the presence require-
6 ment).

7 “(B) WAIVER OF JOB OFFER.—

8 “(i) NATIONAL INTEREST WAIVER.—
9 Subject to clause (ii), the Secretary of
10 Homeland Security may, if the Secretary
11 deems it to be in the national interest,
12 waive the requirements of subparagraph
13 (A) that an alien’s services in the sciences,
14 arts, professions, or business be sought by
15 an employer in the United States.

16 “(ii) PHYSICIANS WORKING IN SHORT-
17 AGE AREAS OR VETERANS FACILITIES.—

18 “(I) IN GENERAL.—The Sec-
19 retary shall grant a national interest
20 waiver pursuant to clause (i) on be-
21 half of any alien physician with re-
22 spect to whom a petition for pref-
23 erence classification has been filed
24 under subparagraph (A) if—

1 “(aa) the alien physician
2 agrees to work on a full- time
3 basis practicing primary care,
4 specialty medicine, or a combina-
5 tion thereof, in an area or areas
6 designated by the Secretary of
7 Health and Human Services as
8 having a shortage of health care
9 professionals or at a health care
10 facility under the jurisdiction of
11 the Secretary of Veterans Affairs;
12 or

13 “(bb) the alien physician is
14 pursuing such waiver based upon
15 service at a facility or facilities
16 that serve patients who reside in
17 a geographic area or areas des-
18 ignated by the Secretary of
19 Health and Human Services as
20 having a shortage of health care
21 professionals (without regard to
22 whether such facility or facilities
23 are located within such an area)
24 and a Federal agency or a local,
25 county, regional, or State depart-

1 ment of public health determines
2 that the alien physician’s work at
3 such facility was or will be in the
4 public interest.

5 “(II) PROHIBITION.—

6 “(aa) No permanent resi-
7 dent visa may be issued to an
8 alien physician described in sub-
9 clause (I) by the Secretary of
10 State under section 204(b), and
11 the Secretary of Homeland Secu-
12 rity may not adjust the status of
13 such an alien physician from that
14 of a nonimmigrant alien to that
15 of a permanent resident alien
16 under section 245, until such
17 time as the alien has worked full
18 time as a physician for an aggre-
19 gate of 5 years (not including the
20 time served in the status of an
21 alien described in section
22 101(a)(15)(J)), in an area or
23 areas designated by the Secretary
24 of Health and Human Services
25 as having a shortage of health

1 care professionals or at a health
2 care facility under the jurisdic-
3 tion of the Secretary of Veterans
4 Affairs, or at a facility or facili-
5 ties meeting the requirements of
6 subelause (I)(bb).

7 “(bb) The 5-year service re-
8 quirement of item (aa) shall be
9 counted from the date the alien
10 physician begins work in the
11 shortage area in any legal status
12 and not the date an immigrant
13 visa petition is filed or approved.
14 Such service shall be aggregated
15 without regard to when such
16 service began and without regard
17 to whether such service began
18 during or in conjunction with a
19 course of graduate medical edu-
20 cation.

21 “(cc) An alien physician
22 shall not be required to submit
23 an employment contract with a
24 term exceeding the balance of the
25 5-year commitment yet to be

1 served, nor an employment con-
2 tract dated within a minimum
3 time period prior to filing of a
4 visa petition pursuant to this
5 subsection.

6 “(dd) An alien physician
7 shall not be required to file addi-
8 tional immigrant visa petitions
9 upon a change of work location
10 from the location approved in the
11 original national interest immi-
12 grant petition.

13 “(III) STATUTORY CONSTRUC-
14 TION.—Nothing in this subparagraph
15 may be construed to prevent the filing
16 of a petition with the Secretary of
17 Homeland Security for classification
18 under section 204(a), by an alien phy-
19 sician described in subclause (I) prior
20 to the date by which such alien physi-
21 cian has completed the service de-
22 scribed in subclause (II) or in section
23 214(l).

24 “(C) GUIDANCE AND RULES.—The Sec-
25 retary may prescribe such policy guidance and

1 rules as the Secretary considers appropriate for
2 purposes of subparagraph (A) to ensure na-
3 tional security and promote the interests and
4 competitiveness of the United States. Such
5 rules shall include a definition of the term ‘Fed-
6 eral national security, science, and technology
7 laboratories, centers, and agencies’ for purposes
8 of clause (ii) of subparagraph (A), which shall
9 include the following:

10 “(i) The national security, science,
11 and technology laboratories, centers, and
12 agencies of the Department of Defense, the
13 Department of Energy, the Department of
14 Homeland Security, the elements of the in-
15 telligence community (as that term is de-
16 fined in section 4(3) of the National Secu-
17 rity Act of 1947), and any other depart-
18 ment or agency of the Federal Government
19 that conducts or funds research and devel-
20 opment in the essential national interest.

21 “(ii) Federally funded research and
22 development centers (FFRDCs) that are
23 primarily supported by a department or
24 agency of the Federal Government speci-
25 fied in clause (i).”

1 (3) SKILLED WORKERS, PROFESSIONALS, AND
2 OTHER WORKERS.—

3 (A) IN GENERAL.—Section 203(b)(3)(A)
4 (8 U.S.C. 1153(b)(3)(A)) is amended by strik-
5 ing “in a number not to exceed 28.6 percent of
6 such worldwide level, plus any visas not re-
7 quired for the classes specified in paragraphs
8 (1) and (2),” and inserting “in a number not
9 to exceed 40 percent of the worldwide level au-
10 thorized in section 201(d), plus any visas not
11 required for the class specified in paragraph
12 (2),”.

13 (B) MEDICAL LICENSE REQUIREMENTS.—
14 Section 214(i)(2)(A) (8 U.S.C. 1184(i)(2)(A))
15 is amended by adding at the end “including in
16 the case of a medical doctor, the licensure re-
17 quired to practice medicine in the United
18 States,”.

19 (C) REPEAL OF LIMITATION ON OTHER
20 WORKERS.—Section 203(b)(3) (8 U.S.C.
21 1153(b)(3)) is amended—

22 (i) by striking subparagraph (B); and

23 (ii) redesignated subparagraph (C) as
24 subparagraph (B).

1 (4) CERTAIN SPECIAL IMMIGRANTS.—Section
2 203(b)(4) (8 U.S.C. 1153(b)(4)) is amended by
3 striking “in a number not to exceed 7.1 percent of
4 such worldwide level,” and inserting “in a number
5 not to exceed 10 percent of the worldwide level au-
6 thorized in section 201(d), plus any visas not re-
7 quired for the class specified in paragraph (3),”.

8 (5) EMPLOYMENT CREATION.—Section
9 203(b)(5)(A) (8 U.S.C. 1153(b)(5)(A)) is amended
10 by striking “in a number not to exceed 7.1 percent
11 of such worldwide level,” and inserting “in a number
12 not to exceed 10 percent of the worldwide level au-
13 thorized in section 201(d), plus any visas not re-
14 quired for the class specified in paragraph (4),”.

15 (d) NATURALIZATION OF EMPLOYEES OF CERTAIN
16 NATIONAL SECURITY FACILITIES WITHOUT REGARD TO
17 RESIDENCY REQUIREMENTS.—Section 316 (8 U.S.C.
18 1427) is amended by adding at the end the following:

19 “(g)(1) Any person who, while an alien or a noncit-
20 izen national of the United States, has been employed in
21 a research capacity at a Federal national security, science,
22 and technology laboratory, center, or agency (as defined
23 pursuant to section 203(b)(2)(C)) for a period or periods
24 aggregating one year or more may, in the discretion of

1 the Secretary, be naturalized without regard to the resi-
2 dence requirements of this section if the person—

3 “(A) has complied with all requirements as de-
4 termined by the Secretary of Homeland Security, the
5 Secretary of Defense, the Secretary of Energy, or
6 the head of a petitioning department or agency of
7 the Federal Government, including contractual re-
8 quirements to maintain employment in a research
9 capacity with a Federal national security, science,
10 and technology laboratory, center, or agency for a
11 period not to exceed five years; and

12 “(B) has favorably completed and adjudicated a
13 background investigation at the appropriate level,
14 from the employing department or agency of the
15 Federal Government within the last five years.

16 “(2) The number of aliens or noncitizen nationals
17 naturalized in any fiscal year under this subsection shall
18 not exceed a number as defined by the Secretary of Home-
19 land Security, in consultation with the head of the peti-
20 tioning department or agency of the Federal Govern-
21 ment.”.

1 **SEC. 2308. INCLUSION OF COMMUNITIES ADVERSELY AF-**
2 **FECTED BY A RECOMMENDATION OF THE DE-**
3 **FENSE BASE CLOSURE AND REALIGNMENT**
4 **COMMISSION AS TARGETED EMPLOYMENT**
5 **AREAS.**

6 (a) IN GENERAL.—Section 203(b)(5)(B)(ii) (8
7 U.S.C. 1153(b)(5)(B)(ii)) is amended by inserting “, any
8 community adversely affected by a recommendation by the
9 Defense Base Closure and Realignment Commission,”
10 after “rural area”.

11 (b) REGULATIONS.—The Secretary, in consultation
12 with the Secretary of Defense, shall implement the amend-
13 ment made by subsection (a) through appropriate regula-
14 tions.

15 **SEC. 2309. V NONIMMIGRANT VISAS.**

16 (a) NONIMMIGRANT ELIGIBILITY.—Subparagraph
17 (V) of section 101(a)(15) (8 U.S.C. 1101(a)(15)) is
18 amended to read as follows:

19 “(V)(i) subject to section 214(q)(1) and
20 section 212(a)(4), an alien who is the bene-
21 ficiary of an approved petition under section
22 203(a) as—

23 “(I) the unmarried son or unmarried
24 daughter of a citizen of the United States;

1 “(II) the unmarried son or unmarried
2 daughter of an alien lawfully admitted for
3 permanent residence; or

4 “(III) the married son or married
5 daughter of a citizen of the United States
6 and who is 31 years of age or younger; or

7 “(ii) subject to section 214(q)(2), an alien
8 who is—

9 “(I) the sibling of a citizen of the
10 United States; or

11 “(II) the married son or married
12 daughter of a citizen of the United States
13 and who is older than 31 years of age;”.

14 (b) EMPLOYMENT AND PERIOD OF ADMISSION OF
15 NONIMMIGRANTS DESCRIBED IN SECTION
16 101(A)(15)(V).—Section 214(q) (8 U.S.C. 1184(q)) is
17 amended to read as follows:

18 “(q) NONIMMIGRANTS DESCRIBED IN SECTION
19 101(A)(15)(V).—

20 “(1) CERTAIN SONS AND DAUGHTERS.—

21 “(A) EMPLOYMENT AUTHORIZATION.—The
22 Secretary shall—

23 “(i) authorize a nonimmigrant admit-
24 ted pursuant to section 101(a)(15)(V)(i) to
25 engage in employment in the United States

1 during the period of such nonimmigrant's
2 authorized admission; and

3 “(ii) provide such a nonimmigrant
4 with an ‘employment authorized’ endorse-
5 ment or other appropriate document signi-
6 fying authorization of employment.

7 “(B) TERMINATION OF ADMISSION.—The
8 period of authorized admission for such a non-
9 immigrant shall terminate 30 days after the
10 date on which—

11 “(i) such nonimmigrant's application
12 for an immigrant visa pursuant to the ap-
13 proval of a petition under subsection (a) or
14 (c) of section 203 is denied; or

15 “(ii) such nonimmigrant's application
16 for adjustment of status under section 245
17 pursuant to the approval of such a petition
18 is denied.

19 “(2) SIBLINGS AND SONS AND DAUGHTERS OF
20 CITIZENS.—

21 “(A) EMPLOYMENT AUTHORIZATION.—The
22 Secretary may not authorize a nonimmigrant
23 admitted pursuant to section 101(a)(15)(V)(ii)
24 to engage in employment in the United States.

1 “(B) PERIOD OF ADMISSION.—The period
2 of authorized admission as such a non-
3 immigrant may not exceed 60 days per fiscal
4 year.

5 “(C) TREATMENT OF PERIOD OF ADMIS-
6 SION.—An alien admitted under section
7 101(a)(15)(V) may not receive an allocation of
8 points pursuant to section 203(c) for residence
9 in the United States while admitted as such a
10 nonimmigrant.”.

11 (c) PUBLIC BENEFITS.—A noncitizen who is lawfully
12 present in the United States pursuant to section
13 101(a)(15)(V) of the Immigration and Nationality Act (8
14 U.S.C. 1101(a)(15)(V)) is not eligible for any means-test-
15 ed public benefits (as such term is defined and imple-
16 mented in section 403 of the Personal Responsibility and
17 Work Opportunity Reconciliation Act of 1996 (8 U.S.C.
18 1613)). A noncitizen admitted under this section—

19 (1) is not entitled to the premium assistance
20 tax credit authorized under section 36B of the Inter-
21 nal Revenue Code of 1986 for his or her coverage;

22 (2) shall be subject to the rules applicable to in-
23 dividuals not lawfully present that are set forth in
24 subsection (e) of such section;

1 the date on which the fiancé, fiancée, or immigrant
2 visa petition is filed with the Secretary of Homeland
3 Security to classify the alien’s parent as the fiancée
4 or fiancé of a United States citizen or of an alien
5 lawfully admitted for permanent residence (in the
6 case of an alien parent described in clause (i)) or as
7 the spouse of a citizen of the United States or of an
8 alien lawfully admitted to permanent residence
9 under section 201(b)(2)(A) (in the case of an alien
10 parent described in clause (ii));”.

11 (b) ADJUSTMENT OF STATUS AUTHORIZED.—Section
12 214(d) (8 U.S.C. 1184(d)) is amended—

13 (1) by redesignating paragraphs (2) and (3) as
14 paragraphs (3) and (4), respectively; and

15 (2) in paragraph (1), by striking “In the event”
16 and all that follows through the end; and

17 (3) by inserting after paragraph (1) the fol-
18 lowing:

19 “(2)(A) If an alien does not marry the petitioner
20 under paragraph (1) within 3 months after the alien and
21 the alien’s children are admitted into the United States,
22 the visa previously issued under the provisions of section
23 1101(a)(15)(K)(i) shall automatically expire and such
24 alien and children shall be required to depart from the
25 United States. If such aliens fail to depart from the

1 United States, they shall be placed in proceedings in ac-
2 cordance with sections 240 and 241.

3 “(B) Subject to subparagraphs (C) and (D), if an
4 alien marries the petitioner described in section
5 101(a)(15)(K)(i) within 90 days after the alien is admit-
6 ted into the United States, the Secretary or the Attorney
7 General, subject to the provisions of section 245(d), may
8 adjust the status of the alien, and any children accom-
9 panying or following to join the alien, to that of an alien
10 lawfully admitted for permanent residence on a conditional
11 basis under section 216 if the alien and any such children
12 apply for such adjustment and are not determined to be
13 inadmissible to the United States. If the alien does not
14 apply for such adjustment within 6 months after the mar-
15 riage, the visa issued under the provisions of section
16 1101(a)(15)(K) shall automatically expire.

17 “(C) Paragraphs (5) and (7)(A) of section 212(a)
18 shall not apply to an alien who is eligible to apply for ad-
19 justment of the alien’s status to an alien lawfully admitted
20 for permanent residence under this section.

21 “(D) An alien eligible for a waiver of inadmissibility
22 as otherwise authorized under this Act or the Border Se-
23 curity, Economic Opportunity, and Immigration Mod-
24 ernization Act shall be permitted to apply for adjustment

1 of the alien’s status to that of an alien lawfully admitted
2 for permanent residence under this section.”.

3 (c) AGE DETERMINATION.—Section 245(d) (8 U.S.C.
4 1255(d)) is amended—

5 (1) by striking “The Attorney General” and in-
6 serting “(1) The Secretary of Homeland Security”;

7 (2) in paragraph (1), as redesignated, by strik-
8 ing “Attorney General” and inserting “Secretary”;
9 and

10 (3) by adding at the end the following:

11 “(2) A determination of the age of an alien admitted
12 to the United States under section 101(a)(15)(K)(iii) shall
13 be made, for purposes of adjustment to the status of an
14 alien lawfully admitted for permanent residence on a con-
15 ditional basis under section 216, using the age of the alien
16 on the date on which the fiancé, fiancée, or immigrant visa
17 petition was filed with the Secretary of Homeland Security
18 to classify the alien’s parent as the fiancée or fiancé of
19 a United States citizen or of an alien lawfully admitted
20 to permanent residence (in the case of an alien parent ad-
21 mitted to the United States under section
22 101(a)(15)(K)(i)) or as the spouse of a United States cit-
23 izen or of an alien lawfully admitted to permanent resi-
24 dence under section 201(b)(2)(A) (in the case of an alien

1 parent admitted to the United States under section
2 101(a)(15)(K)(ii).”.

3 (d) APPLICABILITY.—The amendments made by this
4 section shall apply to all petitions or applications described
5 in such amendments that are pending as of the date of
6 the enactment of the Border Security, Economic Oppor-
7 tunity, and Immigration Modernization Act.

8 (e) TECHNICAL AND CONFORMING AMENDMENTS.—

9 (1) DEFINITIONS.—Section 101(a)(15)(K) (8
10 U.S.C. 1101(a)(15)(K)), as amended by subsection
11 (a), is further amended—

12 (A) in clause (ii), by striking “section
13 201(b)(2)(A)(i)” and inserting “section
14 201(b)(2)”; and

15 (B) in clause (iii), by striking “section
16 201(b)(2)(A)(i)” and inserting “section
17 201(b)(2)”.

18 (2) AGE DETERMINATION.—Paragraph (2) of
19 section 245(d) (8 U.S.C. 1255(d)), as added by sub-
20 section (c), is amended by striking section
21 “201(b)(2)(A)(i)” and inserting “201(b)(2)”.

22 (3) EFFECTIVE DATE.—The amendments made
23 by this subsection shall take effect on the first day
24 of the first fiscal year beginning no earlier than 1
25 year after the date of the enactment of this Act.

1 **SEC. 2311. EQUAL TREATMENT FOR ALL STEPCHILDREN.**

2 Section 101(b)(1)(B) (8 U.S.C. 1101(b)(1)(B)) is
3 amended by striking “eighteen years” and inserting “21
4 years”.

5 **SEC. 2312. MODIFICATION OF ADOPTION AGE REQUIRE-**
6 **MENTS.**

7 Section 101(b)(1) (8 U.S.C. 1101(b)(1)) is amend-
8 ed—

9 (1) in subparagraph (E)—

10 (A) by striking “(E)(i)” and inserting
11 “(E)”;

12 (B) by striking “under the age of sixteen
13 years” and inserting “younger than 18 years of
14 age, or a child adopted when 18 years of age
15 or older if the adopting parent or parents initi-
16 ated the legal adoption process before the child
17 reached 18 years of age”;

18 (C) by striking “; or” and inserting a
19 semicolon; and

20 (D) by striking clause (ii);

21 (2) in subparagraph (F)—

22 (A) by striking “(F)(i)” and inserting
23 “(F)”;

24 (B) by striking “sixteen” and inserting
25 “18”;

1 (C) by striking “Attorney General” and in-
2 serting “Secretary of Homeland Security”; and
3 (D) by striking clause (ii); and
4 (3) in subparagraph (G), by striking “16” and
5 inserting “18”.

6 **SEC. 2313. RELIEF FOR ORPHANS, WIDOWS, AND WID-**
7 **OWERS.**

8 (a) IN GENERAL.—

9 (1) SPECIAL RULE FOR ORPHANS AND
10 SPOUSES.—In applying clauses (iii) and (iv) of sec-
11 tion 201(b)(2)(B) of the Immigration and Nation-
12 ality Act, as added by section 2305(a) of this Act,
13 to an alien whose citizen or lawful permanent resi-
14 dent relative died before the date of the enactment
15 of this Act, the alien relative may file the classifica-
16 tion petition under section 204(a)(1)(A)(ii) of the
17 Immigration and Nationality Act not later than 2
18 years after the date of the enactment of this Act.

19 (2) ELIGIBILITY FOR PAROLE.—If an alien was
20 excluded, deported, removed, or departed voluntarily
21 before the date of the enactment of this Act based
22 solely upon the alien’s lack of classification as an
23 immediate relative (as defined in section
24 201(b)(2)(B)(iv) of the Immigration and Nationality

1 Act, as amended by section 2305(a) of this Act) due
2 to the death of such citizen or resident—

3 (A) such alien shall be eligible for parole
4 into the United States pursuant to the Sec-
5 retary's discretionary authority under section
6 212(d)(5) of such Act (8 U.S.C. 1182(d)(5));
7 and

8 (B) such alien's application for adjustment
9 of status shall be considered by the Secretary
10 notwithstanding section 212(a)(9) of such Act
11 (8 U.S.C. 1182(a)(9)).

12 (3) ELIGIBILITY FOR PAROLE.—If an alien de-
13 scribed in section 204(l) of the Immigration and Na-
14 tionality Act (8 U.S.C. 1154(l)) was excluded, de-
15 ported, removed, or departed voluntarily before the
16 date of the enactment of this Act—

17 (A) such alien shall be eligible for parole
18 into the United States pursuant to the Sec-
19 retary's discretionary authority under section
20 212(d)(5) of such Act (8 U.S.C. 1182(d)(5));
21 and

22 (B) such alien's application for adjustment
23 of status shall be considered by the Secretary
24 notwithstanding section 212(a)(9) of such Act
25 (8 U.S.C. 1182(a)(9)).

1 (b) PROCESSING OF IMMIGRANT VISAS AND DERIVA-
2 TIVE PETITIONS.—

3 (1) IN GENERAL.—Section 204(b) (8 U.S.C.
4 1154(b)) is amended—

5 (A) by striking “After an investigation”
6 and inserting “(1) After an investigation”; and

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

8 “(2)(A) Any alien described in subparagraph (B)
9 whose qualifying relative died before the completion of im-
10 migrant visa processing may have an immigrant visa ap-
11 plication adjudicated as if such death had not occurred.
12 An immigrant visa issued before the death of the quali-
13 fying relative shall remain valid after such death.

14 “(B) An alien described in this subparagraph is an
15 alien who—

16 “(i) is an immediate relative (as described in
17 section 201(b)(2)(B));

18 “(ii) is a family-sponsored immigrant (as de-
19 scribed in subsection (a) or (d) of section 203);

20 “(iii) is a derivative beneficiary of an employ-
21 ment-based immigrant under section 203(b) (as de-
22 scribed in section 203(d)); or

23 “(iv) is the spouse or child of a refugee (as de-
24 scribed in section 207(c)(2)) or an asylee (as de-
25 scribed in section 208(b)(3)).”.

1 (2) TRANSITION PERIOD.—

2 (A) IN GENERAL.—Notwithstanding a de-
3 nial or revocation of an application for an immi-
4 grant visa for an alien due to the death of the
5 qualifying relative before the date of the enact-
6 ment of this Act, such application may be re-
7 newed by the alien through a motion to reopen,
8 without fee.

9 (B) INAPPLICABILITY OF BARS TO
10 ENTRY.—Notwithstanding section 212(a)(9) of
11 the Immigration and Nationality Act (8 U.S.C.
12 1182(a)(9)), an alien’s application for an immi-
13 grant visa shall be considered if the alien was
14 excluded, deported, removed, or departed volun-
15 tarily before the date of the enactment of this
16 Act.

17 (c) NATURALIZATION.—Section 319(a) (8 U.S.C.
18 1430(a)) is amended by striking “States,” and inserting
19 “States (or if the spouse is deceased, the spouse was a
20 citizen of the United States),”.

21 (d) WAIVERS OF INADMISSIBILITY.—Section 212 (8
22 U.S.C. 1182) is amended by adding at the end the fol-
23 lowing:

24 “(v) CONTINUED WAIVER ELIGIBILITY FOR WIDOWS,
25 WIDOWERS, AND ORPHANS.—In the case of an alien who

1 would have been statutorily eligible for any waiver of inad-
2 missibility under this Act but for the death of a qualifying
3 relative, the eligibility of such alien shall be preserved as
4 if the death had not occurred and the death of the quali-
5 fying relative shall be the functional equivalent of hardship
6 for purposes of any waiver of inadmissibility which re-
7 quires a showing of hardship.”.

8 (e) SURVIVING RELATIVE CONSIDERATION FOR CER-
9 TAIN PETITIONS AND APPLICATIONS.—Section 204(l)(1)
10 (8 U.S.C. 1154(l)(1)) is amended—

11 (1) by striking “who resided in the United
12 States at the time of the death of the qualifying rel-
13 ative and who continues to reside in the United
14 States”; and

15 (2) by striking “related applications,” and in-
16 serting “related applications (including affidavits of
17 support),”.

18 (f) FAMILY-SPONSORED IMMIGRANTS.—Section
19 212(a)(4)(C)(i) (8 U.S.C. 1182(a)(4)(C)(i)), as amended
20 by section 2305(d)(6)(B)(iii), is further amended by add-
21 ing at the end the following:

22 “(III) the status as a surviving
23 relative under 204(l); or”.

1 **SEC. 2314. DISCRETIONARY AUTHORITY WITH RESPECT TO**
2 **REMOVAL, DEPORTATION, OR INADMIS-**
3 **SIBILITY OF CITIZEN AND RESIDENT IMME-**
4 **DIATE FAMILY MEMBERS.**

5 (a) APPLICATIONS FOR RELIEF FROM REMOVAL.—
6 Section 240(c)(4) (8 U.S.C. 1229a(c)(4)) is amended by
7 adding at the end the following:

8 “(D) JUDICIAL DISCRETION.—In the case
9 of an alien subject to removal, deportation, or
10 inadmissibility, the immigration judge may ex-
11 ercise discretion to decline to order the alien re-
12 movable, deportable, or inadmissible from the
13 United States and terminate proceedings if the
14 judge determines that such removal, deporta-
15 tion, or inadmissibility is against the public in-
16 terest or would result in hardship to the alien’s
17 United States citizen or lawful permanent resi-
18 dent parent, spouse, or child, or the judge de-
19 termines the alien is prima facie eligible for
20 naturalization except that this subparagraph
21 shall not apply to an alien whom the judge de-
22 termines—

23 “(i) is inadmissible or deportable
24 under—

1 “(I) subparagraph (B), (C),
2 (D)(ii), (E), (H), (I), or (J) of section
3 212(a)(2);

4 “(II) section 212(a)(3);

5 “(III) subparagraph (A), (C), or
6 (D) of section 212(a)(10); or

7 “(IV) paragraph (2)(A)(ii),
8 (2)(A)(v), (2)(F), (4), or (6) of sec-
9 tion 237(a); or

10 “(ii) has—

11 “(I) engaged in conduct de-
12 scribed in paragraph (8) or (9) of sec-
13 tion 103 of the Trafficking Victims
14 Protection Act of 2000 (22 U.S.C.
15 7102); or

16 “(II) a felony conviction de-
17 scribed in section 101(a)(43) that
18 would have been classified as an ag-
19 gravated felony at the time of convic-
20 tion.”.

21 (b) SECRETARY’S DISCRETION.—Section 212 (8
22 U.S.C. 1182), as amended by section 2313(d), is further
23 amended by adding at the end the following:

24 “(w) SECRETARY’S DISCRETION.—In the case of an
25 alien who is inadmissible under this section or deportable

1 under section 237, the Secretary of Homeland Security
2 may exercise discretion to waive a ground of inadmis-
3 sibility or deportability if the Secretary determines that
4 such removal or refusal of admission is against the public
5 interest or would result in hardship to the alien’s United
6 States citizen or permanent resident parent, spouse, or
7 child. This subsection shall not apply to an alien whom
8 the Secretary determines—

9 “(1) is inadmissible or deportable under—

10 “(A) subparagraph (B), (C), (D)(ii), (E),
11 (H), (I), or (J) of subsection (a)(2);

12 “(B) subsection (a)(3);

13 “(C) subparagraph (A), (C), or (D) of sub-
14 section (a)(10);

15 “(D) paragraphs (2)(A)(ii), (2)(A)(v),
16 (2)(F), or (6) of section 237(a); or

17 “(E) section 240(c)(4)(D)(ii)(II); or

18 “(2) has—

19 “(A) engaged in conduct described in para-
20 graph (8) or (9) of section 103 of the Traf-
21 ficking Victims Protection Act of 2000 (22
22 U.S.C. 7102); or

23 “(B) a felony conviction described in sec-
24 tion 101(a)(43) that would have been classified

1 as an aggravated felony at the time of convic-
2 tion.”.

3 (c) REINSTATEMENT OF REMOVAL ORDERS.—Sec-
4 tion 241(a)(5) (8 U.S.C. 1231(a)(5)) is amended by strik-
5 ing the period at the end and inserting “, unless the alien
6 reentered prior to attaining the age of 18 years, or rein-
7 statement of the prior order of removal would not be in
8 the public interest or would result in hardship to the
9 alien’s United States citizen or permanent resident parent,
10 spouse, or child.”.

11 **SEC. 2315. WAIVERS OF INADMISSIBILITY.**

12 (a) ALIENS WHO ENTERED AS CHILDREN.—Section
13 212(a)(9)(B)(iii) (8 U.S.C. 1182(a)(9)(B)(iii)) is amended
14 by adding at the end the following:

15 “(VI) ALIENS WHO ENTERED AS
16 CHILDREN.—Clause (i) shall not apply
17 to an alien who is the beneficiary of
18 an approved petition under
19 101(a)(15)(H) and who has earned a
20 baccalaureate or higher degree from a
21 United States institution of higher
22 education (as defined in section
23 101(a) of the Higher Education Act
24 of 1965 (20 U.S.C. 1001(a)), and had
25 not yet reached the age of 16 years at

1 the time of initial entry to the United
2 States.”.

3 (b) ALIENS UNLAWFULLY PRESENT.—Section
4 212(a)(9)(B)(v) (8 U.S.C. 1181(a)(9)(B)(v) is amended—

5 (1) by striking “spouse or son or daughter” and
6 inserting “spouse, son, daughter, or parent”;

7 (2) by striking “extreme”; and

8 (3) by inserting “, child,” after “lawfully resi-
9 dent spouse”.

10 (c) PREVIOUS IMMIGRATION VIOLATIONS.—Section

11 212(a)(9)(C)(i) (8 U.S.C. 1182(a)(9)(C)(i) is amended

12 by adding “, other than an alien described in clause (iii)

13 or (iv) of subparagraph (B),” after “Any alien”.

14 (d) FALSE CLAIMS.—

15 (1) INADMISSIBILITY.—

16 (A) IN GENERAL.—Section 212(a)(6)(C)

17 (8 U.S.C. 1182(a)(6)(C)) is amended to read as

18 follows:

19 “(C) MISREPRESENTATION.—

20 “(i) IN GENERAL.—Any alien who, by

21 fraud or willfully misrepresenting a mate-

22 rial fact, seeks to procure (or within the

23 last 3 years has sought to procure or has

24 procured) a visa, other documentation, or

25 admission into the United States or other

1 benefit provided under this Act is inadmis-
2 sible.

3 “(ii) FALSELY CLAIMING CITIZEN-
4 SHIP.—

5 “(I) INADMISSIBILITY.—Subject
6 to subclause (II), any alien who know-
7 ingly misrepresents himself or herself
8 to be a citizen of the United States
9 for any purpose or benefit under this
10 chapter (including section 274A) or
11 any other Federal or State law is in-
12 admissible.

13 “(II) SPECIAL RULE FOR CHIL-
14 DREN.—An alien shall not be inadmis-
15 sible under this clause if the misrepre-
16 sentation described in subclause (I)
17 was made by the alien when the
18 alien—

19 “(aa) was under 18 years of
20 age; or

21 “(bb) otherwise lacked the
22 mental competence to knowingly
23 misrepresent a claim of United
24 States citizenship.

1 “(iii) WAIVER.—The Attorney General
2 or the Secretary of Homeland Security
3 may, in the discretion of the Attorney Gen-
4 eral or the Secretary, waive the application
5 of clause (i) or (ii)(I) for an alien, regard-
6 less whether the alien is within or outside
7 the United States, if the Attorney General
8 or the Secretary finds that a determination
9 of inadmissibility to the United States for
10 such alien would—

11 “(I) result in extreme hardship to
12 the alien or to the alien’s parent,
13 spouse, son, or daughter who is a cit-
14 izen of the United States or an alien
15 lawfully admitted for permanent resi-
16 dence; or

17 “(II) in the case of a VAWA self-
18 petitioner, result in significant hard-
19 ship to the alien or a parent or child
20 of the alien who is a citizen of the
21 United States, an alien lawfully ad-
22 mitted for permanent residence, or a
23 qualified alien (as defined in section
24 431 of the Personal Responsibility

1 and Work Opportunity Reconciliation
2 Act of 1996 (8 U.S.C. 1641(b))).

3 “(iv) LIMITATION ON REVIEW.—No
4 court shall have jurisdiction to review a de-
5 cision or action of the Attorney General or
6 the Secretary regarding a waiver under
7 clause (iii).”.

8 (B) CONFORMING AMENDMENT.—Section
9 212 (8 U.S.C. 1182) is amended by striking
10 subsection (i).

11 (2) DEPORTABILITY.—Section 237(a)(3)(D) (8
12 U.S.C. 1227(a)(3)(D)) is amended to read as fol-
13 lows:

14 “(D) FALSELY CLAIMING CITIZENSHIP.—
15 Any alien described in section 212(a)(6)(C)(ii)
16 is deportable.”.

17 **SEC. 2316. CONTINUOUS PRESENCE.**

18 Section 240A(d)(1) (8 U.S.C. 1229b(d)(1)) is amend-
19 ed to read as follows:

20 “(1) TERMINATION OF CONTINUOUS PERIOD.—
21 For purposes of this section, any period of contin-
22 uous residence or continuous physical presence in
23 the United States shall be deemed to end, except in
24 the case of an alien who applies for cancellation of
25 removal under subsection (b)(2), on the date that a

1 notice to appear is filed with the Executive Office
2 for Immigration Review pursuant to section 240.”.

3 **SEC. 2317. GLOBAL HEALTH CARE COOPERATION.**

4 (a) TEMPORARY ABSENCE OF ALIENS PROVIDING
5 HEALTH CARE IN DEVELOPING COUNTRIES.—

6 (1) IN GENERAL.—Title III (8 U.S.C. 1401 et
7 seq.) is amended by inserting after section 317 the
8 following:

9 **“SEC. 317A. TEMPORARY ABSENCE OF ALIENS PROVIDING**
10 **HEALTH CARE IN DEVELOPING COUNTRIES.**

11 “(a) IN GENERAL.—Notwithstanding any other pro-
12 vision of this Act, the Secretary of Homeland Security
13 shall allow an eligible alien and the spouse or child of such
14 alien to reside in a candidate country during the period
15 that the eligible alien is working as a physician or other
16 health care worker in a candidate country. During such
17 period the eligible alien and such spouse or child shall be
18 considered—

19 “(1) to be physically present and residing in the
20 United States for purposes of naturalization under
21 section 316(a); and

22 “(2) to meet the continuous residency require-
23 ments under section 316(b).

24 “(b) DEFINITIONS.—In this section:

1 “(1) CANDIDATE COUNTRY.—The term ‘can-
2 didate country’ means a country that the Secretary
3 of State determines to be—

4 “(A) eligible for assistance from the Inter-
5 national Development Association, in which the
6 per capita income of the country is equal to or
7 less than the historical ceiling of the Inter-
8 national Development Association for the appli-
9 cable fiscal year, as defined by the International
10 Bank for Reconstruction and Development;

11 “(B) classified as a lower middle income
12 country in the then most recent edition of the
13 World Development Report for Reconstruction
14 and Development published by the International
15 Bank for Reconstruction and Development and
16 having an income greater than the historical
17 ceiling for International Development Associa-
18 tion eligibility for the applicable fiscal year; or

19 “(C) qualified to be a candidate country
20 due to special circumstances, including natural
21 disasters or public health emergencies.

22 “(2) ELIGIBLE ALIEN.—The term ‘eligible
23 alien’ means an alien who—

24 “(A) has been lawfully admitted to the
25 United States for permanent residence; and

1 “(B) is a physician or other healthcare
2 worker.

3 “(c) CONSULTATION.—The Secretary of Homeland
4 Security shall consult with the Secretary of State in car-
5 rying out this section.

6 “(d) PUBLICATION.—The Secretary of State shall
7 publish—

8 “(1) not later than 180 days after the date of
9 the enactment of the Border Security, Economic Op-
10 portunity, and Immigration Modernization Act, a list
11 of candidate countries;

12 “(2) an updated version of the list required by
13 paragraph (1) not less often than once each year;
14 and

15 “(3) an amendment to the list required by
16 paragraph (1) at the time any country qualifies as
17 a candidate country due to special circumstances
18 under subsection (b)(1)(C).”.

19 (2) RULEMAKING.—

20 (A) REQUIREMENT.—Not later than 180
21 days after the date of the enactment of this
22 Act, the Secretary shall promulgate regulations
23 to carry out the amendments made by this sub-
24 section.

1 (B) CONTENT.—The regulations promul-
2 gated pursuant to subparagraph (A) shall—

3 (i) permit an eligible alien (as defined
4 in section 317A of the Immigration and
5 Nationality Act, as added by subsection
6 (a)) and the spouse or child of the eligible
7 alien to reside in a foreign country to work
8 as a physician or other healthcare worker
9 as described in subsection (a) of such sec-
10 tion 317A for not less than a 12-month pe-
11 riod and not more than a 24-month period,
12 and shall permit the Secretary to extend
13 such period for an additional period not to
14 exceed 12 months, if the Secretary deter-
15 mines that such country has a continuing
16 need for such a physician or other
17 healthcare worker;

18 (ii) provide for the issuance of docu-
19 ments by the Secretary to such eligible
20 alien, and such spouse or child, if appro-
21 priate, to demonstrate that such eligible
22 alien, and such spouse or child, if appro-
23 priate, is authorized to reside in such
24 country under such section 317A; and

1 (iii) provide for an expedited process
2 through which the Secretary shall review
3 applications for such an eligible alien to re-
4 side in a foreign country pursuant to sub-
5 section (a) of such section 317A if the Sec-
6 retary of State determines a country is a
7 candidate country pursuant to subsection
8 (b)(1)(C) of such section 317A.

9 (3) TECHNICAL AND CONFORMING AMEND-
10 MENTS.—

11 (A) DEFINITION.—Section
12 101(a)(13)(C)(ii) (8 U.S.C. 1101(a)(13)(C)(ii))
13 is amended by adding “except in the case of an
14 eligible alien, or the spouse or child of such
15 alien, who is authorized to be absent from the
16 United States under section 317A,” at the end.

17 (B) DOCUMENTARY REQUIREMENTS.—Sec-
18 tion 211(b) (8 U.S.C. 1181(b)) is amended by
19 inserting “, including an eligible alien author-
20 ized to reside in a foreign country under section
21 317A and the spouse or child of such eligible
22 alien, if appropriate,” after “101(a)(27)(A),”.

23 (C) INELIGIBLE ALIENS.—Section
24 212(a)(7)(A)(i)(I) (8 U.S.C.
25 1182(a)(7)(A)(i)(I)) is amended by inserting

1 “other than an eligible alien authorized to re-
2 side in a foreign country under section 317A
3 and the spouse or child of such eligible alien, if
4 appropriate,” after “Act,”.

5 (4) CLERICAL AMENDMENT.—The table of con-
6 tents of such Act is amended by inserting after the
7 item relating to section 317 the following:

“Sec. 317A. Temporary absence of aliens providing health care in developing
countries.”.

8 (b) ATTESTATION BY HEALTH CARE WORKERS.—

9 (1) ATTESTATION REQUIREMENT.—Section
10 212(a)(5) (8 U.S.C. 1182(a)(5)) is amended by add-
11 ing at the end the following:

12 “(E) HEALTH CARE WORKERS WITH
13 OTHER OBLIGATIONS.—

14 “(i) IN GENERAL.—An alien who
15 seeks to enter the United States for the
16 purpose of performing labor as a physician
17 or other health care worker is inadmissible
18 unless the alien submits to the Secretary of
19 Homeland Security or the Secretary of
20 State, as appropriate, an attestation that
21 the alien is not seeking to enter the United
22 States for such purpose during any period
23 in which the alien has an outstanding obli-
24 gation to the government of the alien’s

1 country of origin or the alien's country of
2 residence.

3 “(ii) OBLIGATION DEFINED.—In this
4 subparagraph, the term ‘obligation’ means
5 an obligation incurred as part of a valid,
6 voluntary individual agreement in which
7 the alien received financial assistance to
8 defray the costs of education or training to
9 qualify as a physician or other health care
10 worker in consideration for a commitment
11 to work as a physician or other health care
12 worker in the alien's country of origin or
13 the alien's country of residence.

14 “(iii) WAIVER.—The Secretary of
15 Homeland Security may waive a finding of
16 inadmissibility under clause (i) if the Sec-
17 retary determines that—

18 “(I) the obligation was incurred
19 by coercion or other improper means;

20 “(II) the alien and the govern-
21 ment of the country to which the alien
22 has an outstanding obligation have
23 reached a valid, voluntary agreement,
24 pursuant to which the alien's obliga-
25 tion has been deemed satisfied, or the

1 alien has shown to the satisfaction of
2 the Secretary that the alien has been
3 unable to reach such an agreement
4 because of coercion or other improper
5 means; or

6 “(III) the obligation should not
7 be enforced due to other extraordinary
8 circumstances, including undue hard-
9 ship that would be suffered by the
10 alien in the absence of a waiver.”.

11 (2) EFFECTIVE DATE.—The amendment made
12 by paragraph (1) shall take effect on the date that
13 is 180 days after the date of the enactment of this
14 Act.

15 (3) APPLICATION.—Not later than the effective
16 date described in paragraph (2), the Secretary shall
17 begin to carry out subparagraph (E) of section
18 212(a)(5) of the Immigration and Nationality Act,
19 as added by paragraph (1), including the require-
20 ment for the attestation and the granting of a waiv-
21 er described in clause (iii) of such subparagraph (E),
22 regardless of whether regulations to implement such
23 subparagraph have been promulgated.

1 **SEC. 2318. EXTENSION AND IMPROVEMENT OF THE IRAQI**
2 **SPECIAL IMMIGRANT VISA PROGRAM.**

3 The Refugee Crisis in Iraq Act of 2007 (8 U.S.C.
4 1157 note) is amended—

5 (1) in section 1242, by amending subsection (c)
6 to read as follows:

7 “(c) IMPROVED APPLICATION PROCESS.—Not later
8 than 120 days after the date of the enactment of the Bor-
9 der Security, Economic Opportunity, and Immigration
10 Modernization Act, the Secretary of State and the Sec-
11 retary of Homeland Security, in consultation with the Sec-
12 retary of Defense, shall improve the efficiency by which
13 applications for special immigrant visas under section
14 1244(a) are processed so that all steps incidental to the
15 issuance of such visas, including required screenings and
16 background checks, are completed not later than 9 months
17 after the date on which an eligible alien applies for such
18 visa.”;

19 (2) in section 1244—

20 (A) in subsection (b)—

21 (i) in paragraph (1)—

22 (I) by amending subparagraph

23 (B) to read as follows:

24 “(B) was or is employed in Iraq on or
25 after March 20, 2003, for not less than 1 year,
26 by, or on behalf of—

1 “(i) the United States Government;

2 “(ii) a media or nongovernmental or-
3 ganization headquartered in the United
4 States; or

5 “(iii) an organization or entity closely
6 associated with the United States mission
7 in Iraq that has received United States
8 Government funding through an official
9 and documented contract, award, grant, or
10 cooperative agreement;”;

11 (II) in subparagraph (C), by
12 striking “the United States Govern-
13 ment” and inserting “an entity or or-
14 ganization described in subparagraph
15 (B)”; and

16 (III) in subparagraph (D), by
17 striking by striking “the United
18 States Government.” and inserting
19 “such entity or organization.”; and

20 (ii) in paragraph (4)—

21 (I) by striking “A recommenda-
22 tion” and inserting the following:

23 “(A) IN GENERAL.—Except as provided
24 under subparagraph (B), a recommendation”;

1 (II) by striking “the United
2 States Government prior” and insert-
3 ing “an entity or organization de-
4 scribed in paragraph (1)(B) prior”;
5 and

6 (III) by adding at the end the
7 following:

8 “(B) REVIEW PROCESS FOR DENIAL BY
9 CHIEF OF MISSION.—

10 “(i) IN GENERAL.—An applicant who
11 has been denied Chief of Mission approval
12 required by subparagraph (A) shall—

13 “(I) receive a written decision;
14 and

15 “(II) be provided 120 days from
16 the date of the decision to request re-
17 opening of the decision to provide ad-
18 ditional information, clarify existing
19 information, or explain any unfavor-
20 able information.

21 “(ii) SENIOR COORDINATOR.—The
22 Secretary of State shall designate, in the
23 Embassy of the United States in Baghdad,
24 Iraq, a senior coordinator responsible for
25 overseeing the efficiency and integrity of

1 the processing of special immigrant visas
2 under this section, who shall be given—

3 “(I) sufficiently high security
4 clearance to review Chief of Mission
5 denials in cases that appear to have
6 relied upon insufficient or incorrect
7 information; and

8 “(II) responsibility for ensuring
9 that an applicant described in clause
10 (i) receives the information described
11 in clause (i)(I).”; and

12 (B) in subsection (c)(3), by adding at the
13 end the following:

14 “(C) SUBSEQUENT FISCAL YEARS.—Not-
15 withstanding subparagraphs (A) and (B), and
16 consistent with subsection (b), any unused bal-
17 ance of the total number of principal aliens who
18 may be provided special immigrant status under
19 this section in fiscal years 2008 through 2012
20 may be carried forward and provided through
21 the end of fiscal year 2018.”; and

22 (3) in section 1248, by adding at the end the
23 following:

24 “(f) REPORT ON IMPROVEMENTS.—

1 “(1) IN GENERAL.—Not later than 120 days
2 after the date of the enactment of the Border Secu-
3 rity, Economic Opportunity, and Immigration Mod-
4 ernization Act, the Secretary of State and the Sec-
5 retary of Homeland Security, in consultation with
6 the Secretary of Defense, shall submit a report, with
7 a classified annex, if necessary, to—

8 “(A) the Committee on the Judiciary of
9 the Senate;

10 “(B) the Committee on Foreign Relations
11 of the Senate;

12 “(C) the Committee on the Judiciary of
13 the House of Representatives; and

14 “(D) the Committee on Foreign Affairs of
15 the House of Representatives.

16 “(2) CONTENTS.—The report submitted under
17 paragraph (1) shall describe the implementation of
18 improvements to the processing of applications for
19 special immigrant visas under section 1244(a), in-
20 cluding information relating to—

21 “(A) enhancing existing systems for con-
22 ducting background and security checks of per-
23 sons applying for special immigrant status,
24 which shall—

25 “(i) support immigration security; and

1 “(ii) provide for the orderly processing
2 of such applications without delay;

3 “(B) the financial, security, and personnel
4 considerations and resources necessary to carry
5 out this subtitle;

6 “(C) the number of aliens who have ap-
7 plied for special immigrant visas under section
8 1244 during each month of the preceding fiscal
9 year;

10 “(D) the reasons for the failure to expedi-
11 tiously process any applications that have been
12 pending for longer than 9 months;

13 “(E) the total number of applications that
14 are pending due to the failure—

15 “(i) to receive approval from the Chief
16 of Mission;

17 “(ii) for U.S. Citizenship and Immi-
18 gration Services to complete the adjudica-
19 tion of the Form I-360;

20 “(iii) to conduct a visa interview; or

21 “(iv) to issue the visa to an eligible
22 alien;

23 “(F) the average wait times for an appli-
24 cant at each of the stages described in subpara-
25 graph (E);

1 (A) in subparagraph (A)—

2 (i) by amending clause (ii) to read as
3 follows:

4 “(ii) was or is employed in Afghani-
5 stan on or after October 7, 2001, for not
6 less than 1 year, by, or on behalf of—

7 “(I) the United States Govern-
8 ment;

9 “(II) a media or nongovern-
10 mental organization headquartered in
11 the United States; or

12 “(III) an organization or entity
13 closely associated with the United
14 States mission in Afghanistan that
15 has received United States Govern-
16 ment funding through an official and
17 documented contract, award, grant, or
18 cooperative agreement;”;

19 (ii) in clause (iii), by striking “the
20 United States Government” and inserting
21 “an entity or organization described in
22 clause (ii)”;

23 (iii) in clause (iv), by striking by
24 striking “the United States Government.”

1 and inserting “such entity or organiza-
2 tion.”;

3 (B) by amending subparagraph (B) to read
4 as follows:

5 “(B) FAMILY MEMBERS.—An alien is de-
6 scribed in this subparagraph if the alien is—

7 “(i) the spouse or minor child of a
8 principal alien described in subparagraph
9 (A) who is accompanying or following to
10 join the principal alien in the United
11 States; or

12 “(ii)(I) the spouse, child, parent, or
13 sibling of a principal alien described in
14 subparagraph (A), whether or not accom-
15 panying or following to join; and

16 “(II) has experienced or is experi-
17 encing an ongoing serious threat as a con-
18 sequence of the qualifying employment of a
19 principal alien described in subparagraph
20 (A).”; and

21 (C) in subparagraph (D)—

22 (i) by striking “A recommendation”
23 and inserting the following:

1 “(i) IN GENERAL.—Except as pro-
2 vided under clause (ii), a recommenda-
3 tion”;

4 (ii) by striking “the United States
5 Government prior” and inserting “an enti-
6 ty or organization described in paragraph
7 (2)(A)(ii) prior”; and

8 (iii) by adding at the end the fol-
9 lowing:

10 “(ii) REVIEW PROCESS FOR DENIAL
11 BY CHIEF OF MISSION.—

12 “(I) IN GENERAL.—An applicant
13 who has been denied Chief of Mission
14 approval shall—

15 “(aa) receive a written deci-
16 sion; and

17 “(bb) be provided 120 days
18 from the date of receipt of such
19 opinion to request reconsider-
20 ation of the decision to provide
21 additional information, clarify ex-
22 isting information, or explain any
23 unfavorable information.

24 “(II) SENIOR COORDINATOR.—
25 The Secretary of State shall des-

1 ignite, in the Embassy of the United
2 States in Kabul, Afghanistan, a senior
3 coordinator responsible for overseeing
4 the efficiency and integrity of the
5 processing of special immigrant visas
6 under this section, who shall be
7 given—

8 “(aa) sufficiently high secu-
9 rity clearance to review Chief of
10 Mission denials in cases that ap-
11 pear to have relied upon insuffi-
12 cient or incorrect information;
13 and

14 “(bb) responsibility for en-
15 suring that an applicant de-
16 scribed in subclause (I) receives
17 the information described in sub-
18 clause (I)(aa).”;

19 (2) in paragraph (3)(C), by amending clause
20 (iii) to read as follows:

21 “(iii) FISCAL YEARS 2014 THROUGH
22 2018.—For each of the fiscal years 2014
23 through 2018, the total number of prin-
24 cipal aliens who may be provided special

1 immigrant status under this section may
2 not exceed the sum of—

3 “(I) 5,000;

4 “(II) the difference between the
5 number of special immigrant visas al-
6 located under this section for fiscal
7 years 2009 through 2013 and the
8 number of such allocated visas that
9 were issued; and

10 “(III) any unused balance of the
11 total number of principal aliens who
12 may be provided special immigrant
13 status in fiscal years 2014 through
14 2018 that have been carried for-
15 ward.”;

16 (3) in paragraph (4)—

17 (A) in the heading, by striking “PROHIBI-
18 TION ON FEES.—” and inserting “APPLICATION
19 PROCESS.—”;

20 (B) by striking “The Secretary” and in-
21 serting the following:

22 “(A) IN GENERAL.—Not later than 120
23 days after the date of enactment of the Border
24 Security, Economic Opportunity, and Immigra-
25 tion Modernization Act, the Secretary of State

1 and the Secretary of Homeland Security, in
2 consultation with the Secretary of Defense,
3 shall improve the efficiency by which applica-
4 tions for special immigrant visas under para-
5 graph (1) are processed so that all steps inci-
6 dental to the issuance of such visas, including
7 required screenings and background checks, are
8 completed not later than 6 months after the
9 date on which an eligible alien applies for such
10 visa.

11 “(B) PROHIBITION ON FEES.—The Sec-
12 retary”); and

13 (4) by adding at the end the following:

14 “(12) REPORT ON IMPROVEMENTS.—Not later
15 than 120 days after the date of the enactment of the
16 Border Security, Economic Opportunity, and Immig-
17 ration Modernization Act, the Secretary of State
18 and the Secretary of Homeland Security, in con-
19 sultation with the Secretary of Defense, shall submit
20 to the appropriate committees of Congress a report,
21 with a classified annex, if necessary, that describes
22 the implementation of improvements to the proc-
23 essing of applications for special immigrant visas
24 under this subsection, including information relating
25 to—

1 “(A) enhancing existing systems for con-
2 ducting background and security checks of per-
3 sons applying for special immigrant status,
4 which shall—

5 “(i) support immigration security; and

6 “(ii) provide for the orderly processing
7 of such applications without delay;

8 “(B) the financial, security, and personnel
9 considerations and resources necessary to carry
10 out this section;

11 “(C) the number of aliens who have ap-
12 plied for special immigrant visas under this
13 subsection during each month of the preceding
14 fiscal year;

15 “(D) the reasons for the failure to expedi-
16 tiously process any applications that have been
17 pending for longer than 9 months;

18 “(E) the total number of applications that
19 are pending due to the failure—

20 “(i) to receive approval from the Chief
21 of Mission;

22 “(ii) for U.S. Citizenship and Immi-
23 gration Services to complete the adjudica-
24 tion of the Form I-360;

25 “(iii) to conduct a visa interview; or

1 “(iv) to issue the visa to an eligible
2 alien;

3 “(F) the average wait times for an appli-
4 cant at each of the stages described in subpara-
5 graph (E);

6 “(G) the number of denials or rejections at
7 each of the stages described in subparagraph
8 (E); and

9 “(H) a breakdown of reasons for denials
10 by the Chief of Mission based on the categories
11 already made available to denied special immi-
12 grant visa applicants in the denial letter sent to
13 them by the Chief of Mission.

14 “(13) PUBLIC QUARTERLY REPORTS.—Not
15 later than 120 days after the date of the enactment
16 of the Border Security, Economic Opportunity, and
17 Immigration Modernization Act, and every 3 months
18 thereafter, the Secretary of State and the Secretary
19 of Homeland Security, in consultation with the Sec-
20 retary of Defense, shall publish a report on the
21 website of the Department of State that describes
22 the efficiency improvements made in the process by
23 which applications for special immigrant visas under
24 this subsection are processed, including information

1 described in subparagraph (C) through (H) of para-
2 graph (12).”.

3 **SEC. 2320. SPECIAL IMMIGRANT NONMINISTER RELIGIOUS**
4 **WORKER PROGRAM.**

5 Section 101(a)(27)(C)(ii) (8 U.S.C. 1101
6 (a)(27)(C)(ii)) is amended in subclauses (II) and (III) by
7 striking “before September 30, 2015,” both places such
8 term appears.

9 **SEC. 2321. SPECIAL IMMIGRANT STATUS FOR CERTAIN SUR-**
10 **VIVING SPOUSES AND CHILDREN.**

11 (a) IN GENERAL.—Section 101(a)(27) (8 U.S.C.
12 1101(a)(27)) is amended in subparagraph (D)—

13 (1) by inserting “(i)” before “an immigrant
14 who is an employee”;

15 (2) by inserting “or” after “grant such sta-
16 tus;”; and

17 (3) by inserting after clause (i), as designated
18 by paragraph (1), the following:

19 “(ii) an immigrant who is the surviving
20 spouse or child of an employee of the United
21 States Government abroad killed in the line of
22 duty, provided that the employee had performed
23 faithful service for a total of 15 years, or more,
24 and that the principal officer of a Foreign Serv-
25 ice establishment (or, in the case of the Amer-

1 ican Institute of Taiwan, the Director thereof)
2 in his or her discretion, recommends the grant-
3 ing of special immigrant status to the spouse or
4 child and the Secretary of State approves such
5 recommendation and finds that it is in the na-
6 tional interest to grant such status;”.

7 (b) **EFFECTIVE DATE.**—The amendments made by
8 subsection (a) take effect beginning on January 31, 2013,
9 and shall have retroactive effect.

10 **SEC. 2322. REUNIFICATION OF CERTAIN FAMILIES OF FILI-**
11 **PINO VETERANS OF WORLD WAR II.**

12 (a) **SHORT TITLE.**—This section may be cited as the
13 “Filipino Veterans Family Reunification Act”.

14 (b) **EXEMPTION FROM IMMIGRANT VISA LIMIT.**—
15 Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended by
16 sections 2103(c), 2212(d), and 2307(b), is further amend-
17 ed by adding at the end the following:

18 “(O) Aliens who—

19 “(i) are the sons or daughters of a citizen
20 of the United States; and

21 “(ii) have a parent (regardless of whether
22 the parent is living or dead) who was natural-
23 ized pursuant to—

1 “(I) section 405 of the Immigration
2 Act of 1990 (Public Law 101–649; 8
3 U.S.C. 1440 note); or

4 “(II) title III of the Act of October
5 14, 1940 (54 Stat. 1137, chapter 876), as
6 added by section 1001 of the Second War
7 Powers Act, 1942 (56 Stat. 182, chapter
8 199).”.

9 **Subtitle D—Conrad State 30 and**
10 **Physician Access**

11 **SEC. 2401. CONRAD STATE 30 PROGRAM.**

12 Section 220(c) of the Immigration and Nationality
13 Technical Corrections Act of 1994 (Public Law 103–416;
14 8 U.S.C. 1182 note) is amended by striking “and before
15 September 30, 2015”.

16 **SEC. 2402. RETAINING PHYSICIANS WHO HAVE PRACTICED**
17 **IN MEDICALLY UNDERSERVED COMMU-**
18 **NITIES.**

19 Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended
20 by sections 2103(c), 2212(d)(2), 2307(b), and 2323(b) is
21 further amended by adding at the end the following:

22 “(P)(i) Alien physicians who have completed
23 service requirements of a waiver requested under
24 section 203(b)(2)(B)(ii), including alien physicians
25 who completed such service before the date of the

1 enactment of the Border Security, Economic Oppor-
2 tunity, and Immigration Modernization Act and any
3 spouses or children of such alien physicians.

4 “(ii) Nothing in this subparagraph may be con-
5 strued—

6 “(I) to prevent the filing of a petition with
7 the Secretary of Homeland Security for classi-
8 fication under section 204(a) or the filing of an
9 application for adjustment of status under sec-
10 tion 245 by an alien physician described in this
11 subparagraph prior to the date by which such
12 alien physician has completed the service de-
13 scribed in section 214(l) or worked full-time as
14 a physician for an aggregate of 5 years at the
15 location identified in the section 214(l) waiver
16 or in an area or areas designated by the Sec-
17 retary of Health and Human Services as having
18 a shortage of health care professionals; or

19 “(II) to permit the Secretary of Homeland
20 Security to grant such a petition or application
21 until the alien has satisfied all the requirements
22 of the waiver received under section 214(l).”.

1 **SEC. 2403. EMPLOYMENT PROTECTIONS FOR PHYSICIANS.**

2 (a) IN GENERAL.—Section 214(l)(1)(C) (8 U.S.C.
3 1184(l)(1)(C)) is amended by striking clauses (i) and (ii)
4 and inserting the following:

5 “(i) the alien demonstrates a bona fide
6 offer of full-time employment, at a health care
7 organization, which employment has been deter-
8 mined by the Secretary of Homeland Security
9 to be in the public interest; and

10 “(ii) the alien agrees to begin employment
11 with the health facility or health care organiza-
12 tion in a geographic area or areas which are
13 designated by the Secretary of Health and
14 Human Services as having a shortage of health
15 care professionals by the later of the date that
16 is 90 days after receiving such waiver, 90 days
17 after completing graduate medical education or
18 training under a program approved pursuant to
19 section 212(j)(1), or 90 days after receiving
20 nonimmigrant status or employment authoriza-
21 tion, provided that the alien or the alien’s em-
22 ployer petitions for such nonimmigrant status
23 or employment authorization within 90 days of
24 completing graduate medical education or train-
25 ing and agrees to continue to work for a total
26 of not less than 3 years in any status author-

1 ized for such employment under this subsection,
2 unless—

3 “(I) the Secretary determines that ex-
4 tenuating circumstances exist that justify a
5 lesser period of employment at such facility
6 or organization, in which case the alien
7 shall demonstrate another bona fide offer
8 of employment at a health facility or
9 health care organization, for the remainder
10 of such 3-year period;

11 “(II) the interested agency that re-
12 quested the waiver attests that extenuating
13 circumstances exist that justify a lesser pe-
14 riod of employment at such facility or or-
15 ganization in which case the alien shall
16 demonstrate another bona fide offer of em-
17 ployment at a health facility or health care
18 organization so designated by the Sec-
19 retary of Health and Human Services, for
20 the remainder of such 3-year period; or

21 “(III) if the alien elects not to pursue
22 a determination of extenuating cir-
23 cumstances pursuant to subclause (I) or
24 (II), the alien terminates the alien’s em-
25 ployment relationship with such facility or

1 organization, in which case the alien shall
2 be employed for the remainder of such 3-
3 year period, and 1 additional year for each
4 termination, at another health facility or
5 health care organization in a geographic
6 area or areas which are designated by the
7 Secretary of Health and Human Services
8 as having a shortage of health care profes-
9 sionals; and”.

10 (b) PHYSICIAN EMPLOYMENT IN UNDERSERVED
11 AREAS.—Section 214(l)(1) (8 U.S.C. 1184(l)(1)), as
12 amended by subsection (a), is further amended by adding
13 at the end the following:

14 “(E) If a physician pursuing graduate medical
15 education or training pursuant to section
16 101(a)(15)(J) applies for a Conrad J–1 waiver with
17 an interested State department of health and the ap-
18 plication is denied because the State has requested
19 the maximum number of waivers permitted for that
20 fiscal year, the physician’s nonimmigrant status
21 shall be automatically extended for 6 months if the
22 physician agrees to seek a waiver under this sub-
23 section (except for subparagraph (D)(ii)) to work for
24 an employer in a State that has not yet requested
25 the maximum number of waivers. The physician

1 shall be authorized to work only for such employer
2 from the date on which a new waiver application is
3 filed with the State until the date on which the Sec-
4 retary of Homeland Security denies such waiver or
5 issues work authorization for such employment pur-
6 suant to the approval of such waiver.”.

7 (c) GRADUATE MEDICAL EDUCATION OR TRAIN-
8 ING.—Section 214(h)(1), as amended by section 4401(b)
9 of this Act, is further amended by inserting “(J) (if enter-
10 ing the United States for graduate medical education or
11 training),” after “(H)(i)(c),”.

12 (d) CONTRACT REQUIREMENTS.—Section 214(l) (8
13 U.S.C. 1184(l)) is amended by adding at the end the fol-
14 lowing:

15 “(4) An alien granted a waiver under paragraph
16 (1)(C) shall enter into an employment agreement with the
17 contracting health facility or health care organization
18 that—

19 “(A) specifies the maximum number of on-call
20 hours per week (which may be a monthly average)
21 that the alien will be expected to be available and
22 the compensation the alien will receive for on-call
23 time;

24 “(B) specifies whether the contracting facility
25 or organization will pay for the alien’s malpractice

1 insurance premiums, including whether the employer
2 will provide malpractice insurance and, if so, the
3 amount of such insurance that will be provided;

4 “(C) describes all of the work locations that the
5 alien will work and a statement that the contracting
6 facility or organization will not add additional work
7 locations without the approval of the Federal agency
8 or State agency that requested the waiver; and

9 “(D) does not include a non-compete provision.

10 “(5) An alien granted a waiver under paragraph
11 (1)(C) whose employment relationship with a health facil-
12 ity or health care organization terminates during the 3-
13 year service period required by such paragraph—

14 “(A) shall have a period of 120 days beginning
15 on the date of such termination of employment to
16 submit to the Secretary of Homeland Security appli-
17 cations or petitions to commence employment with
18 another contracting health facility or health care or-
19 ganization in a geographic area or areas which are
20 designated by the Secretary of Health and Human
21 Services as having a shortage of health care profes-
22 sionals;

23 “(B) shall be considered to be maintaining law-
24 ful status in an authorized stay during the 120-day
25 period referred to in subsection (A); and

1 “(C) shall not be considered to be fulfilling the
2 3-year term of service during the 120-day period re-
3 ferred to in subparagraph (A).”.

4 **SEC. 2404. ALLOTMENT OF CONRAD 30 WAIVERS.**

5 (a) IN GENERAL.—Section 214(l) (8 U.S.C. 1184(l)),
6 as amended by section 2403, is further amended by adding
7 at the end the following:

8 “(6)(A)(i) All States shall be allotted a total of 35
9 waivers under paragraph (1)(B) for a fiscal year if 90 per-
10 cent of the waivers available to the States receiving at
11 least 5 waivers were used in the previous fiscal year.

12 “(ii) When an allocation has occurred under clause
13 (i), all States shall be allotted an additional 5 waivers
14 under paragraph (1)(B) for each subsequent fiscal year
15 if 90 percent of the waivers available to the States receiv-
16 ing at least 5 waivers were used in the previous fiscal year.
17 If the States are allotted 45 or more waivers for a fiscal
18 year, the States will only receive an additional increase
19 of 5 waivers the following fiscal year if 95 percent of the
20 waivers available to the States receiving at least 1 waiver
21 were used in the previous fiscal year.

22 “(B) Any increase in allotments under subparagraph
23 (A) shall be maintained indefinitely, unless in a fiscal year,
24 the total number of such waivers granted is 5 percent
25 lower than in the last year in which there was an increase

1 in the number of waivers allotted pursuant to this para-
2 graph, in which case—

3 “(i) the number of waivers allotted shall be de-
4 creased by 5 for all States beginning in the next fis-
5 cal year; and

6 “(ii) each additional 5 percent decrease in such
7 waivers granted from the last year in which there
8 was an increase in the allotment, shall result in an
9 additional decrease of 5 waivers allotted for all
10 States, provided that the number of waivers allotted
11 for all States shall not drop below 30.”.

12 (b) ACADEMIC MEDICAL CENTERS.—Section
13 214(l)(1)(D) (8 U.S.C. 1184(l)(1)(D)) is amended—

14 (1) in clause (ii), by striking “and” at the end;

15 (2) in clause (iii), by striking the period at the
16 end and inserting “; and”; and

17 (3) by adding at the end the following:

18 “(iv) in the case of a request by an inter-
19 ested State agency—

20 “(I) the head of such agency deter-
21 mines that the alien is to practice medicine
22 in, or be on the faculty of a residency pro-
23 gram at, an academic medical center (as
24 that term is defined in section
25 411.355(e)(2) of title 42, Code of Federal

1 Regulations, or similar successor regula-
2 tion), without regard to whether such facil-
3 ity is located within an area designated by
4 the Secretary of Health and Human Serv-
5 ices as having a shortage of health care
6 professionals; and

7 “(II) the head of such agency deter-
8 mines that—

9 “(aa) the alien physician’s work
10 is in the public interest; and

11 “(bb) the grant of such waiver
12 would not cause the number of the
13 waivers granted on behalf of aliens for
14 such State for a fiscal year (within
15 the limitation in subparagraph (B)
16 and subject to paragraph (6)) in ac-
17 cordance with the conditions of this
18 clause to exceed 3.”.

19 **SEC. 2405. AMENDMENTS TO THE PROCEDURES, DEFINI-**
20 **TIONS, AND OTHER PROVISIONS RELATED TO**
21 **PHYSICIAN IMMIGRATION.**

22 (a) ALLOWABLE VISA STATUS FOR PHYSICIANS FUL-
23 FILLING WAIVER REQUIREMENTS IN MEDICALLY UNDER-
24 SERVED AREAS.—Section 214(l)(2)(A) (8 U.S.C.
25 1184(l)(2)(A)) is amended by striking “an alien described

1 in section 101(a)(15)(H)(i)(b).” and inserting “any status
2 authorized for employment under this Act.”.

3 (b) SHORT TERM WORK AUTHORIZATION FOR PHY-
4 SICIANS COMPLETING THEIR RESIDENCIES.—A physician
5 completing graduate medical education or training as de-
6 scribed in section 212(j) of the Immigration and Nation-
7 ality Act (8 U.S.C. 1182(j)) as a nonimmigrant described
8 in section 101(a)(15)(H)(i) of such Act (8 U.S.C.
9 1101(a)(15)(H)(i)) shall have such nonimmigrant status
10 automatically extended until October 1 of the fiscal year
11 for which a petition for a continuation of such non-
12 immigrant status has been submitted in a timely manner
13 and where the employment start date for the beneficiary
14 of such petition is October 1 of that fiscal year. Such phy-
15 sician shall be authorized to be employed incident to status
16 during the period between the filing of such petition and
17 October 1 of such fiscal year. However, the physician’s
18 status and employment authorization shall terminate 30
19 days from the date such petition is rejected, denied, or
20 revoked. A physician’s status and employment authoriza-
21 tion will automatically extend to October 1 of the next fis-
22 cal year if all visas as described in such section
23 101(a)(15)(H)(i) authorized to be issued for the fiscal
24 year have been issued.

1 (c) APPLICABILITY OF SECTION 212(e) TO SPOUSES
2 AND CHILDREN OF J-1 EXCHANGE VISITORS.—A spouse
3 or child of an exchange visitor described in section
4 101(a)(15)(J) of the Immigration and Nationality Act (8
5 U.S.C. 1101(a)(15)(J)) shall not be subject to the require-
6 ments of section 212(e) of the Immigration and Nation-
7 ality Act (8 U.S.C. 1182(e)).

8 **Subtitle E—Integration**

9 **SEC. 2501. DEFINITIONS.**

10 In this subtitle:

11 (1) CHIEF.—The term “Chief” means the Chief
12 of the Office.

13 (2) FOUNDATION.—The term “Foundation”
14 means the United States Citizenship Foundation es-
15 tablished pursuant to section 2531.

16 (3) IEACA GRANTS.—The term “IEACA
17 grants” means Initial Entry, Adjustment, and Citi-
18 zenship Assistance grants authorized under section
19 2537.

20 (4) IMMIGRANT INTEGRATION.—The term “im-
21 migrant integration” means the process by which
22 immigrants—

23 (A) join the mainstream of civic life by en-
24 gaging and sharing ownership in their local

1 community, the United States, and the prin-
2 ciples of the Constitution;

3 (B) attain financial self-sufficiency and up-
4 ward economic mobility for themselves and their
5 family members; and

6 (C) acquire English language skills and re-
7 lated cultural knowledge necessary to effectively
8 participate in their community.

9 (5) LINGUISTIC INTEGRATION.—The term “lin-
10 guistic integration” means the acquisition, by limited
11 English proficient individuals, of English language
12 skills and related cultural knowledge necessary to
13 meaningfully and effectively fulfill their roles as
14 community members, family members, and workers.

15 (6) OFFICE.—The term “Office” means the Of-
16 fice of Citizenship and New Americans established in
17 U.S. Citizenship and Immigration Services under
18 section 2511.

19 (7) RECEIVING COMMUNITIES.—The term “re-
20 ceiving communities” means the long-term residents
21 of the communities in which immigrants settle.

22 (8) TASK FORCE.—The term “Task Force”
23 means the Task Force on New Americans estab-
24 lished pursuant to section 2521.

1 (9) USCF COUNCIL.—The term “USCF Coun-
2 cil” means the Council of Directors of the Founda-
3 tion.

4 **CHAPTER 1—CITIZENSHIP AND NEW**
5 **AMERICANS**

6 **Subchapter A—Office of Citizenship and New**
7 **Americans**

8 **SEC. 2511. OFFICE OF CITIZENSHIP AND NEW AMERICANS.**

9 (a) RENAMING OFFICE OF CITIZENSHIP.—

10 (1) IN GENERAL.—Beginning on the date of the
11 enactment of this Act, the Office of Citizenship in
12 U.S. Citizenship and Immigration Services shall be
13 referred to as the “Office of Citizenship and New
14 Americans”.

15 (2) REFERENCES.—Any reference in a law, reg-
16 ulation, document, paper, or other record of the
17 United States to the Office of Citizenship in U.S.
18 Citizenship and Immigration Services shall be
19 deemed to be a reference to the Office of Citizenship
20 and New Americans.

21 (3) TECHNICAL AND CONFORMING AMEND-
22 MENTS.—Section 451 of the Homeland Security Act
23 of 2002 (6 U.S.C. 271) is amended—

24 (A) in the section heading, by striking
25 “**BUREAU OF**” and inserting “**U.S.**”;

1 (B) in subsection (a)(1), by striking “the
2 ‘Bureau of’ and inserting “‘U.S.’”;

3 (C) by striking “the Bureau of” each place
4 such terms appears and inserting “U.S.”; and

5 (D) in subsection (f)—

6 (i) by amending the subsection head-
7 ing to read as follows: “OFFICE OF CITI-
8 ZENSHIP AND NEW AMERICANS”; and

9 (ii) by striking paragraph (1) and in-
10 sserting the following:

11 “(1) CHIEF.—The Office of Citizenship and
12 New Americans shall be within U.S. Citizenship and
13 Immigration Services and shall be headed by the
14 Chief of the Office of Citizenship and New Ameri-
15 cans.”.

16 (b) FUNCTIONS.—Section 451(f) of such Act (6
17 U.S.C. 271(f)), as amended by subsection (a)(3)(D), is
18 further amended by striking paragraph (2) and inserting
19 the following:

20 “(2) FUNCTIONS.—The Chief of the Office of
21 Citizenship and New Americans shall—

22 “(A) promote institutions and provide
23 training on citizenship responsibilities for aliens
24 interested in becoming naturalized citizens of

1 the United States, including the development of
2 educational materials for such aliens;

3 “(B) provide general leadership, consulta-
4 tion, and coordination of the immigrant integra-
5 tion programs across the Federal Government
6 and with State and local entities;

7 “(C) in coordination with the Task Force
8 on New Americans established under section
9 2521 of the Border Security, Economic Oppor-
10 tunity, and Immigration Modernization Act—

11 “(i) advise the Director of U.S. Citi-
12 zenship and Immigration Services, the Sec-
13 retary of Homeland Security, and the Do-
14 mestic Policy Council, on—

15 “(I) the challenges and opportu-
16 nities relating to the linguistic, eco-
17 nomic, and civic integration of immi-
18 grants and their young children and
19 progress in meeting integration goals
20 and indicators; and

21 “(II) immigrant integration con-
22 siderations relating to Federal budg-
23 ets;

24 “(ii) establish national goals for intro-
25 ducing new immigrants into the United

1 States and measure the degree to which
2 such goals are met;

3 “(iii) evaluate the scale, quality, and
4 effectiveness of Federal Government efforts
5 in immigrant integration and provide ad-
6 vice on appropriate actions; and

7 “(iv) identify the integration implica-
8 tions of new or proposed immigration poli-
9 cies and provide recommendations for ad-
10 dressing such implications;

11 “(D) serve as a liaison and intermediary
12 with State and local governments and other en-
13 tities to assist in establishing local goals, task
14 forces, and councils to assist in—

15 “(i) introducing immigrants into the
16 United States; and

17 “(ii) promoting citizenship education
18 and awareness among aliens interested in
19 becoming naturalized citizens of the United
20 States;

21 “(E) coordinate with other Federal agen-
22 cies to provide information to State and local
23 governments on the demand for existing Fed-
24 eral and State English education programs and

1 best practices for immigrants who recently ar-
2 rived in the United States;

3 “(F) assist States in coordinating the ac-
4 tivities of the grant programs authorized under
5 sections 2537 and 2538 of the Border Security,
6 Economic Opportunity, and Immigration Mod-
7 ernization Act;

8 “(G) submit a biennial report to the appro-
9 priate congressional committees that describes
10 the activities of the Office of Citizenship and
11 New Americans; and

12 “(H) carry out such other functions and
13 activities as Secretary may assign.”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 subsections (a) and (b) shall take effect on the date that
16 is 1 year after the date of the enactment of this Act.

17 **Subchapter B—Task Force on New**
18 **Americans**

19 **SEC. 2521. ESTABLISHMENT.**

20 (a) IN GENERAL.—The Secretary shall establish a
21 Task Force on New Americans.

22 (b) FULLY FUNCTIONAL.—The Task Force shall be
23 fully functional not later than 18 months after the date
24 of the enactment of this Act.

1 **SEC. 2522. PURPOSE.**

2 The purposes of the Task Force are—

3 (1) to establish a coordinated Federal program
4 and policy response to immigrant integration issues;
5 and

6 (2) to advise and assist the Federal Govern-
7 ment in identifying and fostering policies to carry
8 out the policies and goals established under this
9 chapter.

10 **SEC. 2523. MEMBERSHIP.**

11 (a) IN GENERAL.—The Task Force shall be com-
12 prised of—

13 (1) the Secretary, who shall serve as Chair of
14 the Task Force;

15 (2) the Secretary of the Treasury;

16 (3) the Attorney General;

17 (4) the Secretary of Commerce;

18 (5) the Secretary of Labor;

19 (6) the Secretary of Health and Human Serv-
20 ices;

21 (7) the Secretary of Housing and Urban Devel-
22 opment;

23 (8) the Secretary of Transportation;

24 (9) the Secretary of Education;

25 (10) the Director of the Office of Management
26 and Budget;

1 (11) the Administrator of the Small Business
2 Administration;

3 (12) the Director of the Domestic Policy Coun-
4 cil;

5 (13) the Director of the National Economic
6 Council; and

7 (14) the National Security Advisor.

8 (b) DELEGATION.—A member of the Task Force may
9 delegate a senior official, at the Assistant Secretary, Dep-
10 uty Administrator, Deputy Director, or Assistant Attorney
11 General level, to perform the functions of a Task Force
12 member described in section 2524.

13 **SEC. 2524. FUNCTIONS.**

14 (a) MEETINGS; FUNCTIONS.—The Task Force
15 shall—

16 (1) meet at the call of the Chair; and

17 (2) perform such functions as the Secretary
18 may prescribe.

19 (b) COORDINATED RESPONSE.—The Task Force
20 shall work with executive branch agencies—

21 (1) to provide a coordinated Federal response
22 to issues that impact the lives of new immigrants
23 and receiving communities, including—

24 (A) access to youth and adult education
25 programming;

- 1 (B) workforce training;
- 2 (C) health care policy;
- 3 (D) access to naturalization; and
- 4 (E) community development challenges;

5 and

- 6 (2) to ensure that Federal programs and poli-
- 7 cies adequately address such impacts.

8 (c) LIAISONS.—Members of the Task Force shall
9 serve as liaisons to their respective agencies to ensure the
10 quality and timeliness of their agency’s participation in ac-
11 tivities of the Task Force, including—

- 12 (1) creating integration goals and indicators;
- 13 (2) implementing the biannual consultation
14 process with the agency’s State and local counter-
15 parts; and
- 16 (3) reporting on agency data collection, policy,
17 and program efforts relating to achieving the goals
18 and indicators referred to in paragraph (1).

19 (d) RECOMMENDATIONS.—Not later than 18 months
20 after the end of the period specified in section 2521(b),
21 the Task Force shall—

- 22 (1) provide recommendations to the Domestic
23 Policy Council and the Secretary on the effects of
24 pending legislation and executive branch policy pro-
25 posals;

1 (2) suggest changes to Federal programs or
2 policies to address issues of special importance to
3 new immigrants and receiving communities;

4 (3) review and recommend changes to policies
5 that have a distinct impact on new immigrants and
6 receiving communities; and

7 (4) assist in the development of legislative and
8 policy proposals of special importance to new immi-
9 grants and receiving communities.

10 **CHAPTER 2—PUBLIC-PRIVATE**
11 **PARTNERSHIP**

12 **SEC. 2531. ESTABLISHMENT OF UNITED STATES CITIZEN-**
13 **SHIP FOUNDATION.**

14 The Secretary, acting through the Director of U.S.
15 Citizenship and Immigration Services, is authorized to es-
16 tablish a nonprofit corporation or a not-for-profit, public
17 benefit, or similar entity, which shall be known as the
18 “United States Citizenship Foundation”.

19 **SEC. 2532. FUNDING.**

20 (a) GIFTS TO FOUNDATION.—In order to carry out
21 the purposes set forth in section 2533, the Foundation
22 may—

23 (1) solicit, accept, and make gifts of money and
24 other property in accordance with section 501(c)(3)
25 of the Internal Revenue Code of 1986;

1 (2) engage in coordinated work with the De-
2 partment, including the Office and U.S. Citizenship
3 and Immigration Services; and

4 (3) accept, hold, administer, invest, and spend
5 any gift, devise, or bequest of real or personal prop-
6 erty made to the Foundation.

7 (b) GIFTS TO OFFICE OF CITIZENSHIP AND NEW
8 AMERICANS.—The Office may accept gifts from the Foun-
9 dation to support the functions of the Office.

10 **SEC. 2533. PURPOSES.**

11 The purposes of the Foundation are—

12 (1) to expand citizenship preparation programs
13 for lawful permanent residents;

14 (2) to provide direct assistance for aliens seek-
15 ing provisional immigrant status, legal permanent
16 resident status, or naturalization as a United States
17 citizen; and

18 (3) to coordinate immigrant integration with
19 State and local entities.

20 **SEC. 2534. AUTHORIZED ACTIVITIES.**

21 The Foundation shall carry out its purpose by—

22 (1) making United States citizenship instruc-
23 tion and naturalization application services acces-
24 sible to low-income and other underserved lawful
25 permanent resident populations;

- 1 (2) developing, identifying, and sharing best
2 practices in United States citizenship preparation;
- 3 (3) supporting innovative and creative solutions
4 to barriers faced by those seeking naturalization;
- 5 (4) increasing the use of, and access to, tech-
6 nology in United States citizenship preparation pro-
7 grams;
- 8 (5) engaging receiving communities in the
9 United States citizenship and civic integration proc-
10 ess;
- 11 (6) administering the New Citizens Award Pro-
12 gram to recognize, in each calendar year, not more
13 than 10 United States citizens who—
 - 14 (A) have made outstanding contributions
15 to the United States; and
 - 16 (B) have been naturalized during the 10-
17 year period ending on the date of such recogni-
18 tion;
- 19 (7) fostering public education and awareness;
- 20 (8) coordinating its immigrant integration ef-
21 forts with the Office;
- 22 (9) awarding grants to eligible public or private
23 nonprofit organizations under section 2537; and
- 24 (10) awarding grants to State and local govern-
25 ments under section 2538.

1 **SEC. 2535. COUNCIL OF DIRECTORS.**

2 (a) MEMBERS.—To the extent consistent with section
3 501(c)(3) of the Internal Revenue Code of 1986, the
4 Foundation shall have a Council of Directors, which shall
5 be comprised of—

6 (1) the Director of U.S. Citizenship and Immi-
7 gration Services;

8 (2) the Chief of the Office of Citizenship and
9 New Americans; and

10 (3) 10 directors, appointed by the ex-officio di-
11 rectors designated in paragraphs (1) and (2), from
12 national community-based organizations that pro-
13 mote and assist permanent residents with natu-
14 ralization.

15 (b) APPOINTMENT OF EXECUTIVE DIRECTOR.—The
16 USCF Council shall appoint an Executive Director, who
17 shall oversee the day-to-day operations of the Foundation.

18 **SEC. 2536. POWERS.**

19 The Executive Director is authorized to carry out the
20 purposes set forth in section 2533 on behalf of the Foun-
21 dation by—

22 (1) accepting, holding, administering, investing,
23 and spending any gift, devise, or bequest of real or
24 personal property made to the Foundation;

25 (2) entering into contracts and other financial
26 assistance agreements with individuals, public or pri-

1 vate organizations, professional societies, and gov-
2 ernment agencies to carry out the functions of the
3 Foundation;

4 (3) entering into such other contracts, leases,
5 cooperative agreements, and other transactions as
6 the Executive Director considers appropriate to
7 carry out the activities of the Foundation; and

8 (4) charging such fees for professional services
9 furnished by the Foundation as the Executive Direc-
10 tor determines reasonable and appropriate.

11 **SEC. 2537. INITIAL ENTRY, ADJUSTMENT, AND CITIZENSHIP**
12 **ASSISTANCE GRANT PROGRAM.**

13 (a) AUTHORIZATION.—The Secretary, acting through
14 the Director of U.S. Citizenship and Immigration Serv-
15 ices, may award Initial Entry, Adjustment, and Citizen-
16 ship Assistance grants to eligible public or private, non-
17 profit organizations.

18 (b) USE OF GRANT FUNDS.—IEACA grants shall be
19 used for the design and implementation of programs that
20 provide direct assistance, within the scope of the author-
21 ized practice of immigration law—

22 (1) to aliens who are preparing an initial appli-
23 cation for registered provisional immigrant status
24 under section 245B of the Immigration and Nation-
25 ality Act and to aliens who are preparing an initial

1 application for blue card status under section 2211,
2 including assisting applicants in—

3 (A) screening to assess prospective appli-
4 cants' potential eligibility or lack of eligibility;

5 (B) completing applications;

6 (C) gathering proof of identification, em-
7 ployment, residence, and tax payment;

8 (D) gathering proof of relationships of eli-
9 gible family members;

10 (E) applying for any waivers for which ap-
11 plicants and qualifying family members may be
12 eligible; and

13 (F) any other assistance that the Secretary
14 or grantee considers useful to aliens who are in-
15 terested in applying for registered provisional
16 immigrant status;

17 (2) to aliens seeking to adjust their status
18 under section 245, 245B, 245C, or 245F of the Im-
19 migration and Nationality Act;

20 (3) to legal permanent residents seeking to be-
21 come naturalized United States citizens; and

22 (4) to applicants on—

23 (A) the rights and responsibilities of
24 United States citizenship;

1 (B) civics-based English as a second lan-
2 guage;

3 (C) civics, with a special emphasis on com-
4 mon values and traditions of Americans, includ-
5 ing an understanding of the history of the
6 United States and the principles of the Con-
7 stitution; and

8 (D) applying for United States citizenship.

9 **SEC. 2538. PILOT PROGRAM TO PROMOTE IMMIGRANT IN-**
10 **TEGRATION AT STATE AND LOCAL LEVELS.**

11 (a) GRANTS AUTHORIZED.—The Chief shall establish
12 a pilot program through which the Chief may award
13 grants, on a competitive basis, to States and local govern-
14 ments or other qualifying entities, in collaboration with
15 State and local governments—

16 (1) to establish New Immigrant Councils to
17 carry out programs to integrate new immigrants; or

18 (2) to carry out programs to integrate new im-
19 migrants.

20 (b) APPLICATION.—A State or local government de-
21 siring a grant under this section shall submit an applica-
22 tion to the Chief at such time, in such manner, and con-
23 taining such information as the Chief may reasonably re-
24 quire, including—

1 (1) a proposal to meet an objective or combina-
2 tion of objectives set forth in subsection (d)(3);

3 (2) the number of new immigrants in the appli-
4 cant's jurisdiction; and

5 (3) a description of the challenges in intro-
6 ducing and integrating new immigrants into the
7 State or local community.

8 (c) **PRIORITY.**—In awarding grants under this sec-
9 tion, the Chief shall give priority to States and local gov-
10 ernments or other qualifying entities that—

11 (1) use matching funds from non-Federal
12 sources, which may include in-kind contributions;

13 (2) demonstrate collaboration with public and
14 private entities to achieve the goals of the com-
15 prehensive plan developed pursuant to subsection
16 (d)(3);

17 (3) are 1 of the 10 States with the highest rate
18 of foreign-born residents; or

19 (4) have experienced a large increase in the
20 population of immigrants during the most recent 10-
21 year period relative to past migration patterns,
22 based on data compiled by the Office of Immigration
23 Statistics or the United States Census Bureau.

24 (d) **AUTHORIZED ACTIVITIES.**—A grant awarded
25 under this subsection may be used—

1 (1) to form a New Immigrant Council, which
2 shall—

3 (A) consist of between 15 and 19 individ-
4 uals, inclusive, from the State, local govern-
5 ment, or qualifying organization;

6 (B) include, to the extent practicable, rep-
7 resentatives from—

8 (i) business;

9 (ii) faith-based organizations;

10 (iii) civic organizations;

11 (iv) philanthropic organizations;

12 (v) nonprofit organizations, including
13 those with legal and advocacy experience
14 working with immigrant communities;

15 (vi) key education stakeholders, such
16 as State educational agencies, local edu-
17 cational agencies, community colleges, and
18 teachers;

19 (vii) State adult education offices;

20 (viii) State or local public libraries;

21 and

22 (ix) State or local governments; and

23 (C) meet not less frequently than once
24 each quarter;

1 (2) to provide subgrants to local communities,
2 city governments, municipalities, nonprofit organiza-
3 tions (including veterans' and patriotic organiza-
4 tions), or other qualifying entities;

5 (3) to develop, implement, expand, or enhance
6 a comprehensive plan to introduce and integrate new
7 immigrants into the State by—

8 (A) improving English language skills;

9 (B) engaging caretakers with limited
10 English proficiency in their child's education
11 through interactive parent and child literacy ac-
12 tivities;

13 (C) improving and expanding access to
14 workforce training programs;

15 (D) teaching United States history, civics
16 education, citizenship rights, and responsibil-
17 ities;

18 (E) promoting an understanding of the
19 form of government and history of the United
20 States and the principles of the Constitution;

21 (F) improving financial literacy; and

22 (G) focusing on other key areas of impor-
23 tance to integration in our society; and

24 (4) to engage receiving communities in the citi-
25 zenship and civic integration process by—

1 (A) increasing local service capacity;

2 (B) building meaningful connections be-
3 tween newer immigrants and long-time resi-
4 dents;

5 (C) communicating the contributions of re-
6 ceiving communities and new immigrants; and

7 (D) engaging leaders from all sectors of
8 the community.

9 (e) REPORTING AND EVALUATION.—

10 (1) ANNUAL REPORT.—Each grant recipient
11 shall submit an annual report to the Office that de-
12 scribes—

13 (A) the activities undertaken by the grant
14 recipient, including how such activities meet the
15 goals of the Office, the Foundation, and the
16 comprehensive plan described in subsection
17 (d)(3);

18 (B) the geographic areas being served;

19 (C) the number of immigrants in such
20 areas; and

21 (D) the primary languages spoken in such
22 areas.

23 (2) ANNUAL EVALUATION.—The Chief shall
24 conduct an annual evaluation of the grant program
25 established under this section—

1 (A) to assess and improve the effectiveness
2 of such grant program;

3 (B) to assess the future needs of immi-
4 grants and of State and local governments re-
5 lated to immigrants; and

6 (C) to ensure that grantees recipients and
7 subgrantees are acting within the scope and
8 purpose of this subchapter.

9 **SEC. 2539. NATURALIZATION CEREMONIES.**

10 (a) IN GENERAL.—The Chief, in consultation with
11 the Director of the National Park Service, the Archivist
12 of the United States, and other appropriate Federal offi-
13 cials, shall develop and implement a strategy to enhance
14 the public awareness of naturalization ceremonies.

15 (b) VENUES.—In developing the strategy under sub-
16 section (a), the Secretary shall consider the use of out-
17 standing and historic locations as venues for select natu-
18 ralization ceremonies.

19 (c) REPORTING REQUIREMENT.—The Secretary shall
20 annually submit a report to Congress that contains—

21 (1) the content of the strategy developed under
22 subsection (a); and

23 (2) the progress made towards the implementa-
24 tion of such strategy.

1 **CHAPTER 3—FUNDING**

2 **SEC. 2541. AUTHORIZATION OF APPROPRIATIONS.**

3 (a) OFFICE OF CITIZENSHIP AND NEW AMERI-
4 CANS.—In addition to any amounts otherwise made avail-
5 able to the Office, there are authorized to be appropriated
6 to carry out the functions described in section 451(f)(2)
7 of the Homeland Security Act of 2002 (6 U.S.C.
8 271(f)(2)), as amended by section 2511(b)—

9 (1) \$10,000,000 for the 5-year period ending
10 on September 30, 2018; and

11 (2) such sums as may be necessary for fiscal
12 year 2019 and subsequent fiscal years.

13 (b) GRANT PROGRAMS.—There are authorized to be
14 appropriated to implement the grant programs authorized
15 under sections 2537 and 2538, and to implement the
16 strategy under section 2539—

17 (1) \$100,000,000 for the 5-year period ending
18 on September 30, 2018; and

19 (2) such sums as may be necessary for fiscal
20 year 2019 and subsequent fiscal years.

1 **CHAPTER 4—REDUCE BARRIERS TO**
2 **NATURALIZATION**

3 **SEC. 2551. WAIVER OF ENGLISH REQUIREMENT FOR SEN-**
4 **IOR NEW AMERICANS.**

5 Section 312 (8 U.S.C. 1423) is amended by striking
6 subsection (b) and inserting the following:

7 “(b) The requirements under subsection (a) shall not
8 apply to any person who—

9 “(1) is unable to comply with such require-
10 ments because of physical or mental disability, in-
11 cluding developmental or intellectual disability; or

12 “(2) on the date on which the person’s applica-
13 tion for naturalization is filed under section 334—

14 “(A) is older than 65 years of age; and

15 “(B) has been living in the United States
16 for periods totaling at least 5 years after being
17 lawfully admitted for permanent residence.

18 “(c) The requirement under subsection (a)(1) shall
19 not apply to any person who, on the date on which the
20 person’s application for naturalization is filed under sec-
21 tion 334—

22 “(1) is older than 50 years of age and has been
23 living in the United States for periods totaling at
24 least 20 years after being lawfully admitted for per-
25 manent residence;

1 “(2) is older than 55 years of age and has been
2 living in the United States for periods totaling at
3 least 15 years after being lawfully admitted for per-
4 manent residence; or

5 “(3) is older than 60 years of age and has been
6 living in the United States for periods totaling at
7 least 10 years after being lawfully admitted for per-
8 manent residence.

9 “(d) The Secretary of Homeland Security may waive,
10 on a case-by-case basis, the requirement under subsection
11 (a)(2) on behalf of any person who, on the date on which
12 the person’s application for naturalization is filed under
13 section 334—

14 “(1) is older than 60 years of age; and

15 “(2) has been living in the United States for
16 periods totaling at least 10 years after being lawfully
17 admitted for permanent residence.”.

18 **SEC. 2552. FILING OF APPLICATIONS NOT REQUIRING REG-**

19 **ULAR INTERNET ACCESS.**

20 (a) **ELECTRONIC FILING NOT REQUIRED.—**

21 (1) **IN GENERAL.—**The Secretary may not re-
22 quire that an applicant or petitioner for permanent
23 residence or citizenship of the United States use an
24 electronic method to file any application, or access to
25 a customer account.

1 (2) SUNSET DATE.—This subsection shall cease
2 to be effective on October 1, 2020.

3 (b) NOTIFICATION REQUIREMENT.—Beginning on
4 October 1, 2020, the Secretary may not require that an
5 applicant or petitioner for permanent residence or citizen-
6 ship of the United States use an electronic method to file
7 any application or access to a customer account unless the
8 Secretary notifies the Committee on the Judiciary of the
9 Senate and the Committee on the Judiciary of the House
10 of Representatives of such requirement not later than 30
11 days before the effective date of such requirement.

12 **SEC. 2553. PERMISSIBLE USE OF ASSISTED HOUSING BY**
13 **BATTERED IMMIGRANTS.**

14 Section 214 of the Housing and Community Develop-
15 ment Act of 1980 (42 U.S.C. 1436a) is amended—

16 (1) in subsection (a)—

17 (A) in paragraph (6), by striking “; or”
18 and inserting a semicolon;

19 (B) by redesignating paragraph (7) as
20 paragraph (8); and

21 (C) by inserting after paragraph (6) the
22 following new paragraph:

23 “(7) a qualified alien described in section
24 431(c) of the Personal Responsibility and Work Op-

1 portunity Reconciliation Act of 1996 (8 U.S.C.
2 1641(c)); or”; and

3 (2) in subsection (c)—

4 (A) in paragraph (1)(A), by striking
5 “paragraphs (1) through (6)” and inserting
6 “paragraphs (1) through (7)”; and

7 (B) in paragraph (2)(A), by inserting
8 “(other than a qualified alien described in sec-
9 tion 431(c) of the Personal Responsibility and
10 Work Opportunity Reconciliation Act of 1996
11 (8 U.S.C. 1641(c))” after “any alien”.

12 **SEC. 2554. UNITED STATES CITIZENSHIP FOR INTER-**
13 **NATIONALLY ADOPTED INDIVIDUALS.**

14 (a) **AUTOMATIC CITIZENSHIP.**—Section 104 of the
15 Child Citizenship Act of 2000 (Public Law 106–395; 8
16 U.S.C. 1431 note) is amended to read as follows:

17 **“SEC. 104. APPLICABILITY.**

18 “The amendments made by this title shall apply to
19 any individual who satisfies the requirements under sec-
20 tion 320 or 322 of the Immigration and Nationality Act,
21 regardless of the date on which such requirements were
22 satisfied.”.

23 (b) **MODIFICATION OF PREADoption VISITATION**
24 **REQUIREMENT.**—Section 101(b)(1)(F)(i) (8 U.S.C.
25 1101(b)(1)(F)(i)), as amended by section 2312, is further

1 amended by striking “at least twenty-five years of age,
2 who personally saw and observed the child prior to or dur-
3 ing the adoption proceedings;” and inserting “who is at
4 least 25 years of age, at least 1 of whom personally saw
5 and observed the child before or during the adoption pro-
6 ceedings;”.

7 (c) AUTOMATIC CITIZENSHIP FOR CHILDREN OF
8 UNITED STATES CITIZENS WHO ARE PHYSICALLY
9 PRESENT IN THE UNITED STATES.—

10 (1) IN GENERAL.—Section 320(a)(3) (8 U.S.C.
11 1431(a)(3)) is amended to read as follows:

12 “(3) The child is physically present in the
13 United States in the legal custody of the citizen par-
14 ent pursuant to a lawful admission.”.

15 (2) APPLICABILITY TO INDIVIDUAL’S WHO NO
16 LONGER HAVE LEGAL STATUS.—Notwithstanding
17 the lack of legal status or physical presence in the
18 United States, a person shall be deemed to meet the
19 requirements under section 320 of the Immigration
20 and Nationality Act, as amended by paragraph (1),
21 if the person—

22 (A) was born outside of the United States;

23 (B) was adopted by a United States citizen
24 before the person reached 18 years of age;

1 (C) was legally admitted to the United
2 States; and

3 (D) would have qualified for automatic
4 United States citizenship if the amendments
5 made by paragraph (1) had been in effect at
6 the time of such admission.

7 (d) RETROACTIVE APPLICATION.—Section 320(b) (8
8 U.S.C. 1431(b)) is amended by inserting “, regardless of
9 the date on which the adoption was finalized” before the
10 period at the end.

11 (e) APPLICABILITY.—The amendments made by this
12 section shall apply to any individual adopted by a citizen
13 of the United States regardless of whether the adoption
14 occurred prior to, on, or after the date of the enactment
15 of the Child Citizenship Act of 2000.

16 **TITLE III—INTERIOR**
17 **ENFORCEMENT**

18 **Subtitle A—Employment**
19 **Verification System**

20 **SEC. 3101. UNLAWFUL EMPLOYMENT OF UNAUTHORIZED**
21 **ALIENS.**

22 (a) IN GENERAL.—Section 274A (8 U.S.C. 1324a)
23 is amended to read as follows:

1 **“SEC. 274A. UNLAWFUL EMPLOYMENT OF ALIENS.**

2 “(a) MAKING EMPLOYMENT OF UNAUTHORIZED
3 ALIENS UNLAWFUL.—

4 “(1) IN GENERAL.—It is unlawful for an em-
5 ployer—

6 “(A) to hire, recruit, or refer for a fee an
7 alien for employment in the United States
8 knowing that the alien is an unauthorized alien
9 with respect to such employment; or

10 “(B) to hire, recruit, or refer for a fee for
11 employment in the United States an individual
12 without complying with the requirements under
13 subsections (c) and (d).

14 “(2) CONTINUING EMPLOYMENT.—

15 “(A) PROHIBITION ON CONTINUED EM-
16 PLOYMENT OF UNAUTHORIZED ALIENS.—It is
17 unlawful for an employer, after hiring an alien
18 for employment, to continue to employ the alien
19 in the United States knowing that the alien is
20 (or has become) an unauthorized alien with re-
21 spect to such employment.

22 “(B) PROHIBITION ON CONSIDERATION OF
23 PREVIOUS UNAUTHORIZED STATUS.—Nothing
24 in this section may be construed to prohibit the
25 employment of an individual who is authorized

1 for employment in the United States if such in-
2 dividual was previously an unauthorized alien.

3 “(3) USE OF LABOR THROUGH CONTRACT.—

4 For purposes of this section, any employer that uses
5 a contract, subcontract, or exchange to obtain the
6 labor of an alien in the United States while knowing
7 that the alien is an unauthorized alien with respect
8 to performing such labor shall be considered to have
9 hired the alien for employment in the United States
10 in violation of paragraph (1)(A).

11 “(4) USE OF STATE EMPLOYMENT AGENCY

12 DOCUMENTATION.—For purposes of paragraphs
13 (1)(B), (5), and (6), an employer shall be deemed to
14 have complied with the requirements under sub-
15 section (c) with respect to the hiring of an individual
16 who was referred for such employment by a State
17 employment agency (as defined by the Secretary) if
18 the employer has and retains (for the period and in
19 the manner described in subsection (c)(3)) appro-
20 priate documentation of such referral by such agen-
21 cy, certifying that such agency has complied with the
22 procedures described in subsection (c) with respect
23 to the individual’s referral. An employer that relies
24 on a State agency’s certification of compliance with
25 subsection (c) under this paragraph may utilize and

1 retain the State agency’s certification of compliance
2 with the procedures described in subsection (d), if
3 any, in the manner provided under this paragraph.

4 “(5) GOOD FAITH DEFENSE.—

5 “(A) DEFENSE.—An employer, person, or
6 entity that hires, employs, recruits, or refers in-
7 dividuals for employment in the United States,
8 or is otherwise obligated to comply with the re-
9 quirements under this section and establishes
10 good faith compliance with the requirements
11 under paragraphs (1) through (4) of subsection
12 (c) and subsection (d)—

13 “(i) has established an affirmative de-
14 fense that the employer, person, or entity
15 has not violated paragraph (1)(A) with re-
16 spect to hiring and employing; and

17 “(ii) has established compliance with
18 its obligations under subparagraph (A) and
19 (B) of paragraph (1) and subsection (c)
20 unless the Secretary demonstrates that the
21 employer had knowledge that an individ-
22 uals hired, employed, recruited, or referred
23 by the employer, person, or entity is an un-
24 authorized alien.

1 “(B) EXCEPTION FOR CERTAIN EMPLOY-
2 ERS.—An employer who is not required to par-
3 ticipate in the System or who is participating in
4 the System on a voluntary basis pursuant to
5 subsection (d)(2)(J) has established an affirma-
6 tive defense under subparagraph (A) and need
7 not demonstrate compliance with the require-
8 ments under subsection (d).

9 “(6) GOOD FAITH COMPLIANCE.—

10 “(A) IN GENERAL.—Except as otherwise
11 provided in this subsection, an employer, per-
12 son, or entity is considered to have complied
13 with a requirement under this subsection not-
14 withstanding a technical or procedural failure
15 to meet such requirement if there was a good
16 faith attempt to comply with the requirement.

17 “(B) EXCEPTION IF FAILURE TO CORRECT
18 AFTER NOTICE.—Subparagraph (A) shall not
19 apply if—

20 “(i) the failure is not de minimis;

21 “(ii) the Secretary of Homeland Secu-
22 rity has explained to the employer, person,
23 or entity the basis for the failure and why
24 it is not de minimis;

1 “(iii) the employer, person, or entity
2 has been provided a period of not less than
3 30 days (beginning after the date of the
4 explanation) to correct the failure; and

5 “(iv) the employer, person, or entity
6 has not corrected the failure voluntarily
7 within such period.

8 “(C) EXCEPTION FOR PATTERN OR PRAC-
9 TICE VIOLATORS.—Subparagraph (A) shall not
10 apply to an employer, person, or entity that has
11 engaged or is engaging in a pattern or practice
12 of violations of paragraph (1)(A) or (2).

13 “(7) PRESUMPTION.—After the date on which
14 an employer is required to participate in the System
15 under subsection (d), the employer is presumed to
16 have acted with knowledge for purposes of para-
17 graph (1)(A) if the employer hires, employs, re-
18 cruits, or refers an employee for a fee and fails to
19 make an inquiry to verify the employment authoriza-
20 tion status of the employee through the System.

21 “(8) CONTINUED APPLICATION OF WORKFORCE
22 AND LABOR PROTECTION REMEDIES DESPITE UNAU-
23 THORIZED EMPLOYMENT.—

24 “(A) IN GENERAL.—Subject only to sub-
25 paragraph (B), all rights and remedies provided

1 under any Federal, State, or local law relating
2 to workplace rights, including but not limited to
3 back pay, are available to an employee de-
4 spite—

5 “(i) the employee’s status as an unau-
6 thORIZED alien during or after the period of
7 employment; or

8 “(ii) the employer’s or employee’s fail-
9 ure to comply with the requirements of
10 this section.

11 “(B) REINSTATEMENT.—Reinstatement
12 shall be available to individuals who—

13 “(i) are authorized to work in the
14 United States at the time such relief is or-
15 dered or effectuated; or

16 “(ii) lost employment-authorized sta-
17 tus due to the unlawful acts of the em-
18 ployer under this section.

19 “(b) DEFINITIONS.—In this section:

20 “(1) COMMISSIONER.—The term ‘Commis-
21 sioner’ means the Commissioner of Social Security.

22 “(2) DEPARTMENT.—Except as otherwise pro-
23 vided, the term ‘Department’ means the Department
24 of Homeland Security.

1 “(3) EMPLOYER.—The term ‘employer’ means
2 any person or entity, including an agency or depart-
3 ment of a Federal, State, or local government, an
4 agent, or a System service provider acting on behalf
5 of an employer, that hires, employs, recruits, or re-
6 fers for a fee an individual for employment in the
7 United States that is not casual, sporadic, irregular,
8 or intermittent (as defined by the Secretary).

9 “(4) EMPLOYMENT AUTHORIZED STATUS.—The
10 term ‘employment authorized status’ means, with re-
11 spect to an individual, that the individual is author-
12 ized to be employed in the United States under the
13 immigration laws of the United States.

14 “(5) SECRETARY.—Except as otherwise specifi-
15 cally provided, the term ‘Secretary’ means the Sec-
16 retary of Homeland Security.

17 “(6) SYSTEM.—The term ‘System’ means the
18 Employment Verification System established under
19 subsection (d).

20 “(7) UNAUTHORIZED ALIEN.—The term ‘unau-
21 thorized alien’ means an alien who, with respect to
22 employment in the United States at a particular
23 time—

24 “(A) is not lawfully admitted for perma-
25 nent residence; or

1 “(B) is not authorized to be employed
2 under this Act or by the Secretary.

3 “(8) WORKPLACE RIGHTS.—The term ‘work-
4 place rights’ means rights guaranteed under Fed-
5 eral, State, or local labor or employment laws, in-
6 cluding laws concerning wages and hours, benefits
7 and employment standards, labor relations, work-
8 place health and safety, work-related injuries, non-
9 discrimination, and retaliation for exercising rights
10 under such laws.

11 “(c) DOCUMENT VERIFICATION REQUIREMENTS.—
12 Any employer hiring an individual for employment in the
13 United States shall comply with the following require-
14 ments and the requirements under subsection (d) to verify
15 that the individual has employment authorized status.

16 “(1) ATTESTATION AFTER EXAMINATION OF
17 DOCUMENTATION.—

18 “(A) IN GENERAL.—

19 “(i) EXAMINATION BY EMPLOYER.—
20 An employer shall attest, under penalty of
21 perjury on a form prescribed by the Sec-
22 retary, that the employer has verified the
23 identity and employment authorization sta-
24 tus of the individual—

25 “(I) by examining—

1 “(aa) a document specified
2 in subparagraph (C); or

3 “(bb) a document specified
4 in subparagraph (D) and a docu-
5 ment specified in subparagraph
6 (E); and

7 “(II) by utilizing an identity au-
8 thentication mechanism described in
9 clause (iii) or (iv) of subparagraph
10 (F).

11 “(ii) PUBLICATION OF DOCUMENTS.—
12 The Secretary shall publish a picture of
13 each document specified in subparagraphs
14 (C) and (E) on the U.S. Citizenship and
15 Immigration Services website.

16 “(B) REQUIREMENTS.—

17 “(i) FORM.—The form referred to in
18 subparagraph (A)(i)—

19 “(I) shall be prescribed by the
20 Secretary not later than 6 months
21 after the date of the enactment of the
22 Border Security, Economic Oppor-
23 tunity, and Immigration Moderniza-
24 tion Act;

25 “(II) shall be available as—

1 “(aa) a paper form;

2 “(bb) a form that may be
3 completed by an employer via
4 telephone or video conference;

5 “(cc) an electronic form; or

6 “(dd) a form that is inte-
7 grated electronically with the re-
8 quirements under subsection (d).

9 “(ii) ATTESTATION.—Each such form
10 shall require the employer to sign an attes-
11 tation with a handwritten, electronic, or
12 digital pin code signature, according to
13 standards prescribed by the Secretary.

14 “(iii) COMPLIANCE.—An employer has
15 complied with the requirements under this
16 paragraph with respect to examination of
17 the documents included in subclauses (I)
18 and (II) of subparagraph (A)(i) if—

19 “(I) the employer has, in good
20 faith, followed applicable regulations
21 and any written procedures or instruc-
22 tions provided by the Secretary; and

23 “(II) a reasonable person would
24 conclude that the documentation is

1 genuine and relates to the individual
2 presenting such documentation.

3 “(C) DOCUMENTS ESTABLISHING IDEN-
4 TITY AND EMPLOYMENT AUTHORIZED STA-
5 TUS.—A document is specified in this subpara-
6 graph if the document is unexpired (unless the
7 validity of the document is extended by law)
8 and is 1 of the following:

9 “(i) A United States passport or pass-
10 port card issued to an individual pursuant
11 to the Secretary of State’s authority under
12 the Act entitled ‘An Act to regulate the
13 issue and validity of passports, and for
14 other purposes’, approved July 3, 1926 (22
15 U.S.C. 211a).

16 “(ii) A document issued to an alien
17 evidencing that the alien is lawfully admit-
18 ted for permanent residence or another
19 document issued to an individual evidenc-
20 ing the individual’s employment authorized
21 status, as designated by the Secretary, if
22 the document—

23 “(I) contains a photograph of the
24 individual, or such other personal
25 identifying information relating to the

1 individual as the Secretary deter-
2 mines, by regulation, to be sufficient
3 for the purposes of this subparagraph;

4 “(II) is evidence of employment
5 authorized status; and

6 “(III) contains security features
7 to make the document resistant to
8 tampering, counterfeiting, and fraudu-
9 lent use.

10 “(iii) An enhanced driver’s license or
11 identification card issued to a national of
12 the United States by a State, an outlying
13 possession of the United States, or a feder-
14 ally recognized Indian tribe that—

15 “(I) meets the requirements
16 under section 202 of the REAL ID
17 Act of 2005 (division B of Public Law
18 109–13; 49 U.S.C. 30301 note); and

19 “(II) the Secretary has certified
20 by notice published in the Federal
21 Register and through appropriate no-
22 tice directly to employers registered in
23 the System 3 months prior to publica-
24 tion that such enhanced license or
25 card is suitable for use under this

1 subparagraph based upon the accu-
2 racy and security of the issuance proc-
3 ess, security features on the docu-
4 ment, and such other factors as the
5 Secretary may prescribe.

6 “(iv) A passport issued by the appro-
7 priate authority of a foreign country ac-
8 companied by a Form I-94 or Form I-
9 94A (or similar successor record), or other
10 documentation as designated by the Sec-
11 retary that specifies the individual’s status
12 in the United States and the duration of
13 such status if the proposed employment is
14 not in conflict with any restriction or limi-
15 tation specified on such form or docu-
16 mentation.

17 “(v) A passport issued by the Fed-
18 erated States of Micronesia or the Repub-
19 lic of the Marshall Islands with evidence of
20 nonimmigrant admission to the United
21 States under the Compact of Free Associa-
22 tion between the United States and the
23 Federated States of Micronesia or the Re-
24 public of the Marshall Islands.

1 “(D) DOCUMENTS ESTABLISHING IDEN-
2 TITY OF INDIVIDUAL.—A document is specified
3 in this subparagraph if the document is unex-
4 pired (unless the validity of the document is ex-
5 tended by law) and is 1 of the following:

6 “(i) A driver’s license or identity card
7 that is not described in subparagraph
8 (C)(iii) and is issued to an individual by a
9 State or an outlying possession of the
10 United States, a federally recognized In-
11 dian tribe, or an agency (including mili-
12 tary) of the Federal Government if the
13 driver’s license or identity card includes, at
14 a minimum—

15 “(I) the individual’s photograph,
16 name, date of birth, gender, and driv-
17 er’s license or identification card num-
18 ber; and

19 “(II) security features to make
20 the license or card resistant to tam-
21 pering, counterfeiting, and fraudulent
22 use.

23 “(ii) A voter registration card.

24 “(iii) A document that complies with
25 the requirements under section 7209(b)(1)

1 of the Intelligence Reform and Terrorism
2 Prevention Act of 2004 (Public Law 108–
3 458; 8 U.S.C. 1185 note).

4 “(iv) For individuals under 18 years
5 of age who are unable to present a docu-
6 ment listed in clause (i) or (ii), documenta-
7 tion of personal identity of such other type
8 as the Secretary determines will provide a
9 reliable means of identification, which may
10 include an attestation as to the individual’s
11 identity by a parent or legal guardian
12 under penalty of perjury.

13 “(E) DOCUMENTS EVIDENCING EMPLOY-
14 MENT AUTHORIZATION.—A document is speci-
15 fied in this subparagraph if the document is un-
16 expired (unless the validity of the document is
17 extended by law) and is 1 of the following:

18 “(i) A social security account number
19 card issued by the Commissioner, other
20 than a card which specifies on its face that
21 the card is not valid to evidence employ-
22 ment authorized status or has other simi-
23 lar words of limitation.

24 “(ii) Any other documentation evi-
25 dencing employment authorized status that

1 the Secretary determines and publishes in
2 the Federal Register and through appro-
3 priate notice directly to employers reg-
4 istered within the System to be acceptable
5 for purposes of this subparagraph if such
6 documentation, including any electronic se-
7 curity measures linked to such documenta-
8 tion, contains security features to make
9 such documentation resistant to tam-
10 pering, counterfeiting, and fraudulent use.

11 “(F) IDENTITY AUTHENTICATION MECHA-
12 NISM.—

13 “(i) DEFINITIONS.—In this subpara-
14 graph:

15 “(I) COVERED IDENTITY DOCU-
16 MENT.—The term ‘covered identity
17 document’ means a valid—

18 “(aa) United States pass-
19 port, passport card, or a docu-
20 ment evidencing lawful perma-
21 nent residence status or employ-
22 ment authorized status issued to
23 an alien;

24 “(bb) enhanced driver’s li-
25 cense or identity card issued by a

1 participating State or an outlying
2 possession of the United States;
3 or

4 “(cc) photograph and appro-
5 priate identifying information
6 provided by the Secretary of
7 State pursuant to the granting of
8 a visa.

9 “(II) PARTICIPATING STATE.—

10 The term ‘participating State’ means
11 a State that has an agreement with
12 the Secretary to provide the Sec-
13 retary, for purposes of identity
14 verification in the System, with photo-
15 graphs and appropriate identifying in-
16 formation maintained by the State.

17 “(ii) REQUIREMENT FOR IDENTITY
18 AUTHENTICATION.—In addition to
19 verifying the documents specified in sub-
20 paragraph (C), (D), or (E) and utilizing
21 the System under subsection (d), each em-
22 ployer shall use an identity authentication
23 mechanism described in clause (iii) or pro-
24 vided in clause (iv) after it becomes avail-

1 able to verify the identity of each indi-
2 vidual the employer seeks to hire.

3 “(iii) PHOTO TOOL.—

4 “(I) USE REQUIREMENT.—An
5 employer hiring an individual who has
6 a covered identity document shall
7 verify the identity of such individual
8 using the photo tool described in sub-
9 clause (II).

10 “(II) DEVELOPMENT REQUIRE-
11 MENT.—The Secretary shall develop
12 and maintain a photo tool that en-
13 ables employers to match the photo on
14 a covered identity document provided
15 to the employer to a photo maintained
16 by a U.S. Citizenship and Immigra-
17 tion Services database.

18 “(iv) ADDITIONAL SECURITY MEAS-
19 URES.—

20 “(I) USE REQUIREMENT.—An
21 employer seeking to hire an individual
22 whose identity may not be verified
23 using the photo tool described in
24 clause (iii) shall verify the identity of
25 such individual using the additional

1 security measures described in sub-
2 clause (II).

3 “(II) DEVELOPMENT REQUIRE-
4 MENT.—The Secretary shall develop,
5 after publication in the Federal Reg-
6 ister and an opportunity for public
7 comment, specific and effective addi-
8 tional security measures to adequately
9 verify the identity of an individual
10 whose identity may not be verified
11 using the photo tool described in
12 clause (iii). Such additional security
13 measures—

14 “(aa) shall be kept up-to-
15 date with technological advances;
16 and

17 “(bb) shall provide a means
18 of identity authentication in a
19 manner that provides a high level
20 of certainty as to the identity of
21 such individual, using immigra-
22 tion and identifying information
23 that may include review of iden-
24 tity documents or background
25 screening verification techniques

1 using publicly available informa-
2 tion.

3 “(G) AUTHORITY TO PROHIBIT USE OF
4 CERTAIN DOCUMENTS.—If the Secretary deter-
5 mines, after publication in the Federal Register
6 and an opportunity for public comment, that
7 any document or class of documents specified in
8 subparagraph (B), (C), or (D) does not reliably
9 establish identity or that employment author-
10 ized status is being used fraudulently to an un-
11 acceptable degree, the Secretary—

12 “(i) may prohibit or restrict the use of
13 such document or class of documents for
14 purposes of this subsection; and

15 “(ii) shall directly notify all employers
16 registered within the System of the prohi-
17 bition through appropriate means.

18 “(H) AUTHORITY TO ALLOW USE OF CER-
19 TAIN DOCUMENTS.—If the Secretary has deter-
20 mined that another document or class of docu-
21 ments, such as a document issued by a federally
22 recognized Indian tribe, may be used to reliably
23 establish identity or employment authorized sta-
24 tus, the Secretary—

1 “(i) may allow the use of that docu-
2 ment or class of documents for purposes of
3 this subsection after publication in the
4 Federal Register and an opportunity for
5 public comment;

6 “(ii) shall publish a description of any
7 such document or class of documents on
8 the U.S. Citizenship and Immigration
9 Services website; and

10 “(iii) shall directly notify all employ-
11 ers registered within the System of the ad-
12 dition through appropriate means.

13 “(2) INDIVIDUAL ATTESTATION OF EMPLOY-
14 MENT AUTHORIZATION.—An individual, upon com-
15 mencing employment with an employer, shall—

16 “(A) attest, under penalty of perjury, on
17 the form prescribed by the Secretary, that the
18 individual is—

19 “(i) a citizen of the United States;

20 “(ii) an alien lawfully admitted for
21 permanent residence;

22 “(iii) an alien who has employment
23 authorized status; or

24 “(iv) otherwise authorized by the Sec-
25 retary to be hired for such employment;

1 “(B) provide such attestation by a hand-
2 written, electronic, or digital pin code signature;
3 and

4 “(C) provide the individual’s social security
5 account number to the Secretary, unless the in-
6 dividual has not yet been issued such a number,
7 on such form as the Secretary may require.

8 “(3) RETENTION OF VERIFICATION RECORD.—

9 “(A) IN GENERAL.—After completing a
10 form for an individual in accordance with para-
11 graphs (1) and (2), the employer shall retain a
12 version of such completed form and make such
13 form available for inspection by the Secretary
14 or the Office of Special Counsel for Immigra-
15 tion-Related Unfair Employment Practices of
16 the Department of Justice during the period be-
17 ginning on the hiring date of the individual and
18 ending on the later of—

19 “(i) the date that is 3 years after such
20 hiring date; or

21 “(ii) the date that is 1 year after the
22 date on which the individual’s employment
23 with the employer is terminated.

24 “(B) REQUIREMENT FOR ELECTRONIC RE-
25 TENTION.—The Secretary—

1 “(i) shall permit an employer to retain
2 the form described in subparagraph (A) in
3 electronic form; and

4 “(ii) shall permit an employer to re-
5 tain such form in paper, microfiche, micro-
6 film, portable document format, or other
7 media.

8 “(4) COPYING OF DOCUMENTATION AND REC-
9 ORDKEEPING.—The Secretary may promulgate regu-
10 lations regarding—

11 “(A) copying documents and related infor-
12 mation pertaining to employment verification
13 presented by an individual under this sub-
14 section; and

15 “(B) retaining such information during a
16 period not to exceed the required retention pe-
17 riod set forth in paragraph (3).

18 “(5) PENALTIES.—An employer that fails to
19 comply with any requirement under this subsection
20 may be penalized under subsection (e)(4)(B).

21 “(6) PROTECTION OF CIVIL RIGHTS.—

22 “(A) IN GENERAL.—Nothing in this sec-
23 tion may be construed to diminish any rights
24 otherwise protected by Federal law.

1 “(B) PROHIBITION ON DISCRIMINATION.—

2 An employer shall use the procedures for docu-
3 ment verification set forth in this paragraph for
4 all employees without regard to race, color, reli-
5 gion, sex, national origin, or, unless specifically
6 permitted in this section, to citizenship status.

7 “(7) RECEIPTS.—The Secretary may authorize
8 the use of receipts for replacement documents, and
9 temporary evidence of employment authorization by
10 an individual to meet a documentation requirement
11 under this subsection on a temporary basis not to
12 exceed 1 year, after which time the individual shall
13 provide documentation sufficient to satisfy the docu-
14 mentation requirements under this subsection.

15 “(8) NO AUTHORIZATION OF NATIONAL IDENTI-
16 FICATION CARDS.—Nothing in this section may be
17 construed to directly or indirectly authorize the
18 issuance, use, or establishment of a national identi-
19 fication card.

20 “(d) EMPLOYMENT VERIFICATION SYSTEM.—

21 “(1) IN GENERAL.—

22 “(A) ESTABLISHMENT.—The Secretary, in
23 consultation with the Commissioner, shall es-
24 tablish the Employment Verification System.

1 “(B) MONITORING.—The Secretary shall
2 create the necessary processes to monitor—

3 “(i) the functioning of the System, in-
4 cluding the volume of the workflow, the
5 speed of processing of queries, the speed
6 and accuracy of responses;

7 “(ii) the misuse of the System, includ-
8 ing the prevention of fraud or identity
9 theft;

10 “(iii) whether the use of the System
11 results in wrongful adverse actions or dis-
12 crimination based upon a prohibited factor
13 against citizens or nationals of the United
14 States or individuals who have employment
15 authorized status; and

16 “(iv) the security, integrity, and pri-
17 vacy of the System.

18 “(C) PROCEDURES.—The Secretary—

19 “(i) shall create processes to provide
20 an individual with direct access to the indi-
21 vidual’s case history in the System, includ-
22 ing—

23 “(I) the identities of all persons
24 or entities that have queried the indi-
25 vidual through the System;

1 “(II) the date of each such
2 query; and

3 “(III) the System response for
4 each such query; and

5 “(ii) in consultation with the Commis-
6 sioner, shall develop—

7 “(I) protocols to notify an indi-
8 vidual, in a timely manner through
9 the use of electronic correspondence
10 or mail, that a query for the indi-
11 vidual has been processed through the
12 System; or

13 “(II) a process for the individual
14 to submit additional queries to the
15 System or notify the Secretary of po-
16 tential identity fraud.

17 “(2) PARTICIPATION REQUIREMENTS.—

18 “(A) FEDERAL GOVERNMENT.—Except as
19 provided in subparagraph (B), all agencies and
20 departments in the executive, legislative, or ju-
21 dicial branches of the Federal Government shall
22 participate in the System beginning on the ear-
23 lier of—

24 “(i) the date of the enactment of the
25 Border Security, Economic Opportunity,

1 and Immigration Modernization Act, to the
2 extent required under section 402(e)(1) of
3 the Illegal Immigration Reform and Immigrant
4 Responsibility Act of 1996 (division
5 C of Public Law 104–208; 8 U.S.C.
6 1324a) and as already implemented by
7 each agency or department; or

8 “(ii) the date that is 90 days after the
9 date of the enactment of the Border Security,
10 Economic Opportunity, and Immigration
11 Modernization Act.

12 “(B) FEDERAL CONTRACTORS.—Federal
13 contractors shall participate in the System as
14 provided in the final rule relating to employ-
15 ment eligibility verification published in the
16 Federal Register on November 14, 2008 (73
17 Fed. Reg. 67,651), or any similar subsequent
18 regulation, for which purpose references to E-
19 Verify in the final rule shall be construed to
20 apply to the System.

21 “(C) CRITICAL INFRASTRUCTURE.—

22 “(i) IN GENERAL.—Beginning on the
23 date that is 1 year after the date on which
24 regulations are published implementing
25 this subsection, the Secretary may author-

1 ize or direct any employer, person, or enti-
2 ty responsible for granting access to, pro-
3 tecting, securing, operating, administering,
4 or regulating part of the critical infrastruc-
5 ture (as defined in section 1016(e) of the
6 Critical Infrastructure Protection Act of
7 2001 (42 U.S.C. 5195c(e))) to participate
8 in the System to the extent the Secretary
9 determines that such participation will as-
10 sist in the protection of the critical infra-
11 structure.

12 “(ii) NOTIFICATION TO EMPLOY-
13 ERS.—The Secretary shall notify an em-
14 ployer required to participate in the Sys-
15 tem under this subparagraph not later
16 than 90 days before the date on which the
17 employer is required to participate.

18 “(D) EMPLOYERS WITH MORE THAN 5,000
19 EMPLOYEES.—Not later than 2 years after reg-
20 ulations are published implementing this sub-
21 section, all employers with more than 5,000 em-
22 ployees shall participate in the System with re-
23 spect to all newly hired employees and employ-
24 ees with expiring temporary employment au-
25 thorization documents.

1 “(E) EMPLOYERS WITH MORE THAN 500
2 EMPLOYEES.—Not later than 3 years after reg-
3 ulations are published implementing this sub-
4 section, all employers with more than 500 em-
5 ployees shall participate in the System with re-
6 spect to all newly hired employees and employ-
7 ees with expiring temporary employment au-
8 thorization documents.

9 “(F) AGRICULTURAL EMPLOYMENT.—Not
10 later than 4 years after regulations are pub-
11 lished implementing this subsection, employers
12 of employees performing agricultural employ-
13 ment (as defined in section 218A of this Act
14 and section 2202 of the Border Security, Eco-
15 nomic Opportunity, and Immigration Mod-
16 ernization Act) shall participate in the System
17 with respect to all newly hired employees and
18 employees with expiring temporary employment
19 authorization documents. An agricultural em-
20 ployee shall not be counted for purposes of sub-
21 paragraph (D) or (E).

22 “(G) ALL EMPLOYERS.—Except as pro-
23 vided in subparagraph (H), not later than 4
24 years after regulations are published imple-
25 menting this subsection, all employers shall par-

1 ticipate in the System with respect to all newly
2 hired employees and employees with expiring
3 temporary employment authorization docu-
4 ments.

5 “(H) TRIBAL GOVERNMENT EMPLOY-
6 ERS.—

7 “(i) RULEMAKING.—In developing
8 regulations to implement this subsection,
9 the Secretary shall—

10 “(I) consider the effects of this
11 section on federally recognized Indian
12 tribes and tribal members; and

13 “(II) consult with the govern-
14 ments of federally recognized Indian
15 tribes.

16 “(ii) REQUIRED PARTICIPATION.—Not
17 later than 5 years after regulations are
18 published implementing this subsection, all
19 employers owned by, or entities of, the gov-
20 ernment of a federally recognized Indian
21 tribe shall participate in the System with
22 respect to all newly hired employees and
23 employees with expiring temporary employ-
24 ment authorization documents.

25 “(I) IMMIGRATION LAW VIOLATORS.—

1 “(i) ORDERS FINDING VIOLATIONS.—

2 An order finding any employer to have vio-
3 lated this section or section 274C may, in
4 the Secretary’s discretion, require the em-
5 ployer to participate in the System with re-
6 spect to newly hired employees and em-
7 ployees with expiring temporary employ-
8 ment authorization documents, if such em-
9 ployer is not otherwise required to partici-
10 pate in the System under this section. The
11 Secretary shall monitor such employer’s
12 compliance with System procedures.

13 “(ii) PATTERN OR PRACTICE OF VIO-
14 LATIONS.—The Secretary may require an
15 employer that is required to participate in
16 the System with respect to newly hired em-
17 ployees to participate in the System with
18 respect to the employer’s current employ-
19 ees if the employer is determined by the
20 Secretary or other appropriate authority to
21 have engaged in a pattern or practice of
22 violations of the immigration laws of the
23 United States.

24 “(J) VOLUNTARY PARTICIPATION.—The
25 Secretary may permit any employer that is not

1 required to participate in the System under this
2 section to do so on a voluntary basis.

3 “(3) CONSEQUENCE OF FAILURE TO PARTICI-
4 PATE.—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraph (B), the failure, other than a de
7 minimis or inadvertent failure, of an employer
8 that is required to participate in the System to
9 comply with the requirements of the System
10 with respect to an individual—

11 “(i) shall be treated as a violation of
12 subsection (a)(1)(B) with respect to that
13 individual; and

14 “(ii) creates a rebuttable presumption
15 that the employer has violated paragraph
16 (1)(A) or (2) of subsection (a).

17 “(B) EXCEPTION.—

18 “(i) IN GENERAL.—Subparagraph (A)
19 shall not apply in a criminal prosecution.

20 “(ii) USE AS EVIDENCE.—Nothing in
21 this paragraph may be construed to limit
22 the use in the prosecution of a Federal
23 crime, in a manner otherwise consistent
24 with Federal criminal law and procedure,
25 of evidence relating to the employer’s fail-

1 ure to comply with requirements of the
2 System.

3 “(4) PROCEDURES FOR PARTICIPANTS IN THE
4 SYSTEM.—

5 “(A) IN GENERAL.—An employer partici-
6 pating in the System shall register such partici-
7 pation with the Secretary and, when hiring any
8 individual for employment in the United States,
9 shall comply with the following:

10 “(i) REGISTRATION OF EMPLOYERS.—

11 The Secretary, through notice in the Fed-
12 eral Register, shall prescribe procedures
13 that employers shall be required to follow
14 to register with the System.

15 “(ii) UPDATING INFORMATION.—The
16 employer is responsible for providing notice
17 of any change to the information required
18 under subclauses (I), (II), and (III) of
19 clause (v) before conducting any further
20 inquiries within the System, or on such
21 other schedule as the Secretary may pre-
22 scribe.

23 “(iii) TRAINING.—The Secretary shall
24 require employers to undergo such training
25 as the Secretary determines to be nec-

1 essary to ensure proper use, protection of
2 civil rights and civil liberties, privacy, in-
3 tegrity, and security of the System. To the
4 extent practicable, such training shall be
5 made available electronically on the U.S.
6 Citizenship and Immigration Services
7 website.

8 “(iv) NOTIFICATION TO EMPLOY-
9 EES.—The employer shall inform individ-
10 uals hired for employment that the Sys-
11 tem—

12 “(I) will be used by the employer;

13 “(II) may be used for immigra-
14 tion enforcement purposes; and

15 “(III) may not be used to dis-
16 criminate or to take adverse action
17 against a national of the United
18 States or an alien who has employ-
19 ment authorized status.

20 “(v) PROVISION OF ADDITIONAL IN-
21 FORMATION.—The employer shall obtain
22 from the individual (and the individual
23 shall provide) and shall record in such
24 manner as the Secretary may specify—

1 “(I) the individual’s social secu-
2 rity account number;

3 “(II) if the individual does not
4 attest to United States citizenship or
5 status as a national of the United
6 States under subsection (c)(2), such
7 identification or authorization number
8 established by the Department as the
9 Secretary shall specify; and

10 “(III) such other information as
11 the Secretary may require to deter-
12 mine the identity and employment au-
13 thorization of an individual.

14 “(vi) PRESENTATION OF DOCUMENTA-
15 TION.—The employer, and the individual
16 whose identity and employment authorized
17 status are being confirmed, shall fulfill the
18 requirements under subsection (c).

19 “(B) SEEKING CONFIRMATION.—

20 “(i) IN GENERAL.—An employer shall
21 use the System to confirm the identity and
22 employment authorized status of any indi-
23 vidual during—

24 “(I) the period beginning on the
25 date on which the individual accepts

1 an offer of employment and ending 3
2 business days after the date on which
3 employment begins; or

4 “(II) such other reasonable pe-
5 riod as the Secretary may prescribe.

6 “(ii) LIMITATION.—An employer may
7 not make the starting date of an individ-
8 ual’s employment or training or any other
9 term and condition of employment depend-
10 ent on the receipt of a confirmation of
11 identity and employment authorized status
12 by the System.

13 “(iii) REVERIFICATION.—If an indi-
14 vidual has a limited period of employment
15 authorized status, the individual’s em-
16 ployer shall reverify such status through
17 the System not later than 3 business days
18 after the last day of such period.

19 “(iv) OTHER EMPLOYMENT.—For em-
20 ployers directed by the Secretary to par-
21 ticipate in the System under paragraph
22 (2)(C)(i) to protect critical infrastructure
23 or otherwise specified circumstances in this
24 section to verify their entire workforce, the
25 System may be used for initial verification

1 of an individual who was hired before the
2 employer became subject to the System,
3 and the employer shall initiate all required
4 procedures on or before such date as the
5 Secretary shall specify.

6 “(v) NOTIFICATION.—

7 “(I) IN GENERAL.—The Sec-
8 retary shall provide, and the employer
9 shall utilize, as part of the System, a
10 method of notifying employers of a
11 confirmation or nonconfirmation of an
12 individual’s identity and employment
13 authorized status, or a notice that
14 further action is required to verify
15 such identity or employment eligibility
16 (referred to in this subsection as a
17 ‘further action notice’).

18 “(II) PROCEDURES.—The Sec-
19 retary shall—

20 “(aa) directly notify the in-
21 dividual and the employer, by
22 means of electronic correspond-
23 ence, mail, text message, tele-
24 phone, or other direct commu-

1 notification, of a nonconfirmation or
2 further action notice;

3 “(bb) provide information
4 about filing an administrative ap-
5 peal under paragraph (6) and a
6 filing for review before an admin-
7 istrative law judge under para-
8 graph (7); and

9 “(cc) establish procedures to
10 directly notify the individual and
11 the employer of a confirmation.

12 “(III) IMPLEMENTATION.—The
13 Secretary may provide for a phased-in
14 implementation of the notification re-
15 quirements under this clause, as ap-
16 propriate. The notification system
17 shall cover all inquiries not later than
18 1 year from the date of the enactment
19 of the Border Security, Economic Op-
20 portunity, and Immigration Mod-
21 ernization Act.

22 “(C) CONFIRMATION OR NONCONFIRMA-
23 TION.—

24 “(i) INITIAL RESPONSE.—

1 “(I) IN GENERAL.—Except as
2 provided in subclause (II), the System
3 shall provide—

4 “(aa) a confirmation of an
5 individual’s identity and employ-
6 ment authorized status or a fur-
7 ther action notice at the time of
8 the inquiry; and

9 “(bb) an appropriate code
10 indicating such confirmation or
11 such further action notice.

12 “(II) ALTERNATIVE DEAD-
13 LINE.—If the System is unable to
14 provide immediate confirmation or
15 further action notice for technological
16 reasons or due to unforeseen cir-
17 cumstances, the System shall provide
18 a confirmation or further action notice
19 not later than 3 business days after
20 the initial inquiry.

21 “(ii) CONFIRMATION UPON INITIAL
22 INQUIRY.—If the employer receives an ap-
23 propriate confirmation of an individual’s
24 identity and employment authorized status
25 under the System, the employer shall

1 record the confirmation in such manner as
2 the Secretary may specify.

3 “(iii) FURTHER ACTION NOTICE AND
4 LATER CONFIRMATION OR NONCONFIRMA-
5 TION.—

6 “(I) NOTIFICATION AND AC-
7 KNOWLEDGMENT THAT FURTHER AC-
8 TION IS REQUIRED.—Not later than 3
9 business days after an employer re-
10 ceives a further action notice of an in-
11 dividual’s identity or employment eli-
12 gibility under the System, or during
13 such other reasonable time as the Sec-
14 retary may prescribe, the employer
15 shall notify the individual for whom
16 the confirmation is sought of the fur-
17 ther action notice and any procedures
18 specified by the Secretary for address-
19 ing such notice. The further action
20 notice shall be given to the individual
21 in writing and the employer shall ac-
22 knowledge in the System under pen-
23 alty of perjury that it provided the
24 employee with the further action no-
25 tice. The individual shall affirmatively

1 acknowledge in writing, or in such
2 other manner as the Secretary may
3 specify, the receipt of the further ac-
4 tion notice from the employer. If the
5 individual refuses to acknowledge the
6 receipt of the further action notice, or
7 acknowledges in writing that the indi-
8 vidual will not contest the further ac-
9 tion notice under subclause (II), the
10 employer shall notify the Secretary in
11 such manner as the Secretary may
12 specify.

13 “(II) CONTEST.—Not later than
14 10 business days after receiving noti-
15 fication of a further action notice
16 under subclause (I), the individual
17 shall contact the appropriate Federal
18 agency and, if the Secretary so re-
19 quires, appear in person for purposes
20 of verifying the individual’s identity
21 and employment eligibility. The Sec-
22 retary, in consultation with the Com-
23 missioner and other appropriate Fed-
24 eral agencies, shall specify an avail-
25 able secondary verification procedure

1 to confirm the validity of information
2 provided and to provide a confirma-
3 tion or nonconfirmation. Any proce-
4 dures for reexamination shall not limit
5 in any way an employee's right to ap-
6 peal a nonconfirmation.

7 “(III) NO CONTEST.—If the indi-
8 vidual refuses to acknowledge receipt
9 of the further action notice, acknowl-
10 edges that the individual will not con-
11 test the further action notice as pro-
12 vided in subclause (I), or does not
13 contact the appropriate Federal agen-
14 cy within the period specified in sub-
15 clause (II), following expiration of the
16 period specified in subclause (II), a
17 nonconfirmation shall be issued. The
18 employer shall record the noncon-
19 firmation in such manner as the Sec-
20 retary may specify and terminate the
21 individual's employment. An individ-
22 ual's failure to contest a further ac-
23 tion notice shall not be considered an
24 admission of guilt with respect to any

1 violation of this section or any provi-
2 sion of law.

3 “(IV) CONFIRMATION OR NON-
4 CONFIRMATION.—Unless the period is
5 extended in accordance with this sub-
6 clause, the System shall provide a
7 confirmation or nonconfirmation not
8 later than 10 business days after the
9 date on which the individual contests
10 the further action notice under sub-
11 clause (II). If the Secretary deter-
12 mines that good cause exists, after
13 taking into account adverse impacts
14 to the employer, and including time to
15 permit the individual to obtain and
16 provide needed evidence of identity or
17 employment eligibility, the Secretary
18 shall extend the period for providing
19 confirmation or nonconfirmation for
20 stated periods beyond 10 business
21 days. When confirmation or noncon-
22 firmation is provided, the confirma-
23 tion system shall provide an appro-
24 priate code indicating such confirma-
25 tion or nonconfirmation.

1 “(V) REEXAMINATION.—Nothing
2 in this section shall prevent the Sec-
3 retary from establishing procedures to
4 reexamine a case where a confirma-
5 tion or nonconfirmation has been pro-
6 vided if subsequently received infor-
7 mation indicates that the confirmation
8 or nonconfirmation may not have been
9 correct. Any procedures for reexam-
10 ination shall not limit in any way an
11 employee’s right to appeal a noncon-
12 firmation.

13 “(VI) EMPLOYEE PROTEC-
14 TIONS.—An employer may not termi-
15 nate employment or take any other
16 adverse action against an individual
17 solely because of a failure of the indi-
18 vidual to have identity and employ-
19 ment eligibility confirmed under this
20 subsection until—

21 “(aa) a nonconfirmation has
22 been issued;

23 “(bb) if the further action
24 notice was contested, the period
25 to timely file an administrative

1 appeal has expired without an
2 appeal or the contestation to the
3 further action notice is with-
4 drawn; or

5 “(cc) if an appeal before an
6 administrative law judge under
7 paragraph (7) has been filed, the
8 nonconfirmation has been upheld
9 or the appeal has been withdrawn
10 or dismissed.

11 “(iv) NOTICE OF NONCONFIRMA-
12 TION.—Not later than 3 business days
13 after an employer receives a nonconfirma-
14 tion, or during such other reasonable time
15 as the Secretary may provide, the employer
16 shall notify the individual who is the sub-
17 ject of the nonconfirmation, and provide
18 information about filing an administrative
19 appeal pursuant to paragraph (6) and a
20 request for a hearing before an administra-
21 tive law judge pursuant to paragraph (7).
22 The nonconfirmation notice shall be given
23 to the individual in writing and the em-
24 ployer shall acknowledge in the System
25 under penalty of perjury that it provided

1 the notice (or adequately attempted to pro-
2 vide notice, but was unable to do so despite
3 reasonable efforts). The individual shall af-
4 firmatively acknowledge in writing, or in
5 such other manner as the Secretary may
6 prescribe, the receipt of the nonconfirma-
7 tion notice from the employer. If the indi-
8 vidual refuses or fails to acknowledge the
9 receipt of the nonconfirmation notice, the
10 employer shall notify the Secretary in such
11 manner as the Secretary may prescribe.

12 “(D) CONSEQUENCES OF NONCONFIRMA-
13 TION.—

14 “(i) TERMINATION OF CONTINUED
15 EMPLOYMENT.—Except as provided in
16 clause (iii), an employer that has received
17 a nonconfirmation regarding an individual
18 and has made reasonable efforts to notify
19 the individual in accordance with subpara-
20 graph (C)(iv) shall terminate the employ-
21 ment of the individual upon the expiration
22 of the time period specified in paragraph
23 (7).

24 “(ii) CONTINUED EMPLOYMENT
25 AFTER NONCONFIRMATION.—If the em-

1 ployer continues to employ an individual
2 after receiving nonconfirmation and ex-
3 haustion of all appeals or expiration of all
4 rights to appeal if not appealed, in viola-
5 tion of clause (i), a rebuttable presumption
6 is created that the employer has violated
7 paragraphs (1)(A) and (2) of subsection
8 (a). Such presumption shall not apply in
9 any prosecution under subsection (k)(1).

10 “(iii) EFFECT OF ADMINISTRATIVE
11 APPEAL OR REVIEW BY ADMINISTRATIVE
12 LAW JUDGE.—If an individual files an ad-
13 ministrative appeal of the nonconfirmation
14 within the time period specified in para-
15 graph (6)(A), or files for review with an
16 administrative law judge specified in para-
17 graph (7)(A), the employer shall not termi-
18 nate the individual’s employment under
19 this subparagraph prior to the resolution
20 of the administrative appeal unless the
21 Secretary or Commissioner terminates the
22 stay under paragraph (6)(B) or (7)(B).

23 “(iv) WEEKLY REPORT.—The Direc-
24 tor of U.S. Citizenship and Immigration
25 Services shall submit a weekly report to

1 the Assistant Secretary for Immigration
2 and Customs Enforcement that includes,
3 for each individual who receives final non-
4 confirmation through the System—

5 “(I) the name of such individual;

6 “(II) his or her social security
7 number or alien file number;

8 “(III) the name and contact in-
9 formation for his or her current em-
10 ployer; and

11 “(IV) any other critical informa-
12 tion that the Assistant Secretary de-
13 termines to be appropriate.

14 “(E) OBLIGATION TO RESPOND TO QUE-
15 RIES AND ADDITIONAL INFORMATION.—

16 “(i) IN GENERAL.—Employers shall
17 comply with requests for information from
18 the Secretary and the Special Counsel for
19 Immigration-Related Unfair Employment
20 Practices of the Department of Justice, in-
21 cluding queries concerning current and
22 former employees, within the time frame
23 during which records are required to be
24 maintained under this section regarding
25 such former employees, if such information

1 relates to the functioning of the System,
2 the accuracy of the responses provided by
3 the System, or any suspected misuse, dis-
4 crimination, fraud, or identity theft in the
5 use of the System. Failure to comply with
6 a request under this clause constitutes a
7 violation of subsection (a)(1)(B).

8 “(ii) ACTION BY INDIVIDUALS.—

9 “(I) IN GENERAL.—Individuals
10 being verified through the System
11 may be required to take further action
12 to address questions identified by the
13 Secretary or the Commissioner re-
14 garding the documents relied upon for
15 purposes of subsection (c).

16 “(II) NOTIFICATION.—Not later
17 than 3 business days after the receipt
18 of such questions regarding an indi-
19 vidual, or during such other reason-
20 able time as the Secretary may pre-
21 scribe, the employer shall—

22 “(aa) notify the individual of
23 any such requirement for further
24 actions; and

1 “(bb) record the date and
2 manner of such notification.

3 “(III) ACKNOWLEDGMENT.—The
4 individual shall acknowledge the noti-
5 fication received from the employer
6 under subclause (II) in writing, or in
7 such other manner as the Secretary
8 may prescribe.

9 “(iii) RULEMAKING.—

10 “(I) IN GENERAL.—The Sec-
11 retary, in consultation with the Com-
12 missioner and the Attorney General,
13 is authorized to issue regulations im-
14 plementing, clarifying, and
15 supplementing the requirements under
16 this subparagraph—

17 “(aa) to facilitate the func-
18 tioning, accuracy, and fairness of
19 the System;

20 “(bb) to prevent misuse, dis-
21 crimination, fraud, or identity
22 theft in the use of the System; or

23 “(cc) to protect and main-
24 tain the confidentiality of infor-
25 mation that could be used to lo-

1 cate or otherwise place at risk of
2 harm victims of domestic vio-
3 lence, dating violence, sexual as-
4 sault, stalking, and human traf-
5 ficking, and of the applicant or
6 beneficiary of any petition de-
7 scribed in section 384(a)(2) of
8 the Illegal Immigration Reform
9 and Immigrant Responsibility
10 Act of 1996 (8 U.S.C.
11 1367(a)(2)).

12 “(II) NOTICE.—The regulations
13 issued under subclause (I) shall be—

14 “(aa) published in the Fed-
15 eral Register; and

16 “(bb) provided directly to all
17 employers registered in the Sys-
18 tem.

19 “(F) DESIGNATED AGENTS.—The Sec-
20 retary shall establish a process—

21 “(i) for certifying, on an annual basis
22 or at such times as the Secretary may pre-
23 scribe, designated agents and other System
24 service providers seeking access to the Sys-
25 tem to perform verification queries on be-

1 half of employers, based upon training,
2 usage, privacy, and security standards pre-
3 scribed by the Secretary;

4 “(ii) for ensuring that designated
5 agents and other System service providers
6 are subject to monitoring to the same ex-
7 tent as direct access users; and

8 “(iii) for establishing standards for
9 certification of electronic I-9 programs.

10 “(G) REQUIREMENT TO PROVIDE INFOR-
11 MATION.—

12 “(i) IN GENERAL.—No later than 3
13 months after the date of the enactment of
14 the Border Security, Economic Oppor-
15 tunity, and Immigration Modernization
16 Act, the Secretary, in consultation with the
17 Secretary of Labor, the Secretary of Agri-
18 culture, the Commissioner, the Attorney
19 General, the Equal Employment Oppor-
20 tunity Commission, and the Administrator
21 of the Small Business Administration,
22 shall commence a campaign to disseminate
23 information respecting the procedures,
24 rights, and remedies prescribed under this
25 section.

1 “(ii) CAMPAIGN REQUIREMENTS.—

2 The campaign authorized under clause

3 (i)—

4 “**(I)** shall be aimed at increasing

5 the knowledge of employers, employ-

6 ees, and the general public concerning

7 employer and employee rights, respon-

8 sibilities, and remedies under this sec-

9 tion; and

10 “**(II)** shall be coordinated with

11 the public education campaign con-

12 ducted by U.S. Citizenship and Immi-

13 gration Services.

14 “(iii) **ASSESSMENT.**—The Secretary

15 shall assess the success of the campaign in

16 achieving the goals of the campaign.

17 “(iv) **AUTHORITY TO CONTRACT.**—In

18 order to carry out and assess the campaign

19 under this subparagraph, the Secretary

20 may, to the extent deemed appropriate and

21 subject to the availability of appropria-

22 tions, contract with public and private or-

23 ganizations for outreach and assessment

24 activities under the campaign.

1 “(v) AUTHORIZATION OF APPROPRIA-
2 TIONS.—There are authorized to be appro-
3 priated to carry out this paragraph
4 \$40,000,000 for each of the fiscal years
5 2014 through 2016.

6 “(H) AUTHORITY TO MODIFY INFORMA-
7 TION REQUIREMENTS.—Based on a regular re-
8 view of the System and the document
9 verification procedures to identify misuse or
10 fraudulent use and to assess the security of the
11 documents and processes used to establish iden-
12 tity or employment authorized status, the Sec-
13 retary, in consultation with the Commissioner,
14 after publication of notice in the Federal Reg-
15 ister and an opportunity for public comment,
16 may modify, if the Secretary determines that
17 the modification is necessary to ensure that the
18 System accurately and reliably determines the
19 identity and employment authorized status of
20 employees and maintain existing protections
21 against misuse, discrimination, fraud, and iden-
22 tity theft—

23 “(i) the information that shall be pre-
24 sented to the employer by an individual;

1 “(ii) the information that shall be pro-
2 vided to the System by the employer; and

3 “(iii) the procedures that shall be fol-
4 lowed by employers with respect to the
5 process of verifying an individual through
6 the System.

7 “(I) SELF-VERIFICATION.—Subject to ap-
8 propriate safeguards to prevent misuse of the
9 system, the Secretary, in consultation with the
10 Commissioner, shall establish a secure self-
11 verification procedure to permit an individual
12 who seeks to verify the individual’s own employ-
13 ment eligibility to contact the appropriate agen-
14 cy and, in a timely manner, correct or update
15 the information contained in the System.

16 “(5) PROTECTION FROM LIABILITY FOR AC-
17 TIONS TAKEN ON THE BASIS OF INFORMATION PRO-
18 VIDED BY THE SYSTEM.—An employer shall not be
19 liable to a job applicant, an employee, the Federal
20 Government, or a State or local government, under
21 Federal, State, or local criminal or civil law for any
22 employment-related action taken with respect to a
23 job applicant or employee in good faith reliance on
24 information provided by the System.

25 “(6) ADMINISTRATIVE APPEAL.—

1 “(A) IN GENERAL.—An individual who is
2 notified of a nonconfirmation may, not later
3 than 10 business days after the date that such
4 notice is received, file an administrative appeal
5 of such nonconfirmation with the Commissioner
6 if the notice is based on records maintained by
7 the Commissioner, or in any other case, with
8 the Secretary. An individual who did not timely
9 contest a further action notice timely received
10 by that individual for which the individual ac-
11 knowledged receipt may not be granted a review
12 under this paragraph.

13 “(B) ADMINISTRATIVE STAY OF NONCON-
14 FIRMATION.—The nonconfirmation shall be
15 automatically stayed upon the timely filing of
16 an administrative appeal, unless the noncon-
17 firmation resulted after the individual acknowl-
18 edged receipt of the further action notice but
19 failed to contact the appropriate agency within
20 the time provided. The stay shall remain in ef-
21 fect until the resolution of the appeal, unless
22 the Secretary or the Commissioner terminates
23 the stay based on a determination that the ad-
24 ministrative appeal is frivolous or filed for pur-
25 poses of delay.

1 “(C) REVIEW FOR ERROR.—The Secretary
2 and the Commissioner shall develop procedures
3 for resolving administrative appeals regarding
4 nonconfirmations based upon the information
5 that the individual has provided, including any
6 additional evidence or argument that was not
7 previously considered. Any such additional evi-
8 dence or argument shall be filed within 10 busi-
9 ness days of the date the appeal was originally
10 filed. Appeals shall be resolved within 20 busi-
11 ness days after the individual has submitted all
12 evidence and arguments the individual wishes to
13 submit, or has stated in writing that there is no
14 additional evidence that the individual wishes to
15 submit. The Secretary and the Commissioner
16 may, on a case by case basis for good cause, ex-
17 tend the filing and submission period in order
18 to ensure accurate resolution of an appeal be-
19 fore the Secretary or the Commissioner.

20 “(D) PREPONDERANCE OF EVIDENCE.—
21 Administrative appeal under this paragraph
22 shall be limited to whether a nonconfirmation
23 notice is supported by a preponderance of the
24 evidence.

1 “(E) DAMAGES, FEES, AND COSTS.—No
2 money damages, fees or costs may be awarded
3 in the administrative appeal process under this
4 paragraph.

5 “(7) REVIEW BY ADMINISTRATIVE LAW
6 JUDGE.—

7 “(A) IN GENERAL.—Not later than 30
8 days after the date an individual receives a final
9 determination on an administrative appeal
10 under paragraph (6), the individual may obtain
11 review of such determination by filing a com-
12 plaint with a Department of Justice administra-
13 tive law judge in accordance with this para-
14 graph.

15 “(B) STAY OF NONCONFIRMATION.—The
16 nonconfirmation related to such final deter-
17 mination shall be automatically stayed upon the
18 timely filing of a complaint under this para-
19 graph, and the stay shall remain in effect until
20 the resolution of the complaint, unless the ad-
21 ministrative law judge determines that the ac-
22 tion is frivolous or filed for purposes of delay.

23 “(C) SERVICE.—The respondent to com-
24 plaint filed under this paragraph is either the
25 Secretary or the Commissioner, but not both,

1 depending upon who issued the administrative
2 order under paragraph (6). In addition to serv-
3 ing the respondent, the plaintiff shall serve the
4 Attorney General.

5 “(D) AUTHORITY OF ADMINISTRATIVE
6 LAW JUDGE.—

7 “(i) RULES OF PRACTICE.—The Sec-
8 retary shall promulgate regulations regard-
9 ing the rules of practice in appeals brought
10 pursuant to this subsection.

11 “(ii) AUTHORITY OF ADMINISTRATIVE
12 LAW JUDGE.—The administrative law
13 judge shall have power to—

14 “(I) terminate a stay of a non-
15 confirmation under subparagraph (B)
16 if the administrative law judge deter-
17 mines that the action is frivolous or
18 filed for purposes of delay;

19 “(II) adduce evidence at a hear-
20 ing;

21 “(III) compel by subpoena the
22 attendance of witnesses and the pro-
23 duction of evidence at any designated
24 place or hearing;

1 “(IV) resolve claims of identity
2 theft; and

3 “(V) enter, upon the pleadings
4 and any evidence adduced at a hear-
5 ing, a decision affirming or reversing
6 the result of the agency, with or with-
7 out remanding the cause for a rehear-
8 ing.

9 “(iii) SUBPOENA.—In case of contu-
10 macy or refusal to obey a subpoena law-
11 fully issued under this section and upon
12 application of the administrative law judge,
13 an appropriate district court of the United
14 States may issue an order requiring com-
15 pliance with such subpoena and any failure
16 to obey such order may be punished by
17 such court as a contempt of such court.

18 “(iv) TRAINING.—An administrative
19 law judge hearing cases shall have special
20 training respecting employment authorized
21 status verification.

22 “(E) ORDER BY ADMINISTRATIVE LAW
23 JUDGE.—

24 “(i) IN GENERAL.—The administra-
25 tive law judge shall issue and cause to be

1 served to the parties in the proceeding an
2 order which may be appealed as provided
3 in subparagraph (G).

4 “(ii) CONTENTS OF ORDER.—Such an
5 order shall uphold or reverse the final de-
6 termination on the request for reconsider-
7 ation and order lost wages and other ap-
8 propriate remedies as provided in subpara-
9 graph (F).

10 “(F) COMPENSATION FOR ERROR.—

11 “(i) IN GENERAL.—In cases in which
12 the administrative law judge reverses the
13 final determination of the Secretary or the
14 Commissioner made under paragraph (6),
15 and the administrative law judge finds
16 that—

17 “(I) the nonconfirmation was due
18 to gross negligence or intentional mis-
19 conduct of the employer, the adminis-
20 trative law judge may order the em-
21 ployer to pay the individual lost
22 wages, and reasonable costs and attor-
23 neys’ fees incurred during administra-
24 tive and judicial review; or

1 “(II) such final determination
2 was erroneous by reason of the neg-
3 ligence of the Secretary or the Com-
4 missioner, the administrative law
5 judge may order the Secretary or the
6 Commissioner to pay the individual
7 lost wages, and reasonable costs and
8 attorneys’ fees incurred during the ad-
9 ministrative appeal and the adminis-
10 trative law judge review.

11 “(ii) CALCULATION OF LOST
12 WAGES.—Lost wages shall be calculated
13 based on the wage rate and work schedule
14 that prevailed prior to termination. The in-
15 dividual shall be compensated for wages
16 lost beginning on the first scheduled work
17 day after employment was terminated and
18 ending 120 days after completion of the
19 administrative law judge’s review described
20 in this paragraph or the day after the indi-
21 vidual is reinstated or obtains employment
22 elsewhere, whichever occurs first. If the in-
23 dividual obtains employment elsewhere at a
24 lower wage rate, the individual shall be
25 compensated for the difference in wages

1 for the period ending 120 days after com-
2 pletion of the administrative law judge re-
3 view process. No lost wages shall be award-
4 ed for any period of time during which the
5 individual was not in employment author-
6 ized status.

7 “(iii) PAYMENT OF COMPENSATION.—
8 Notwithstanding any other law, payment of
9 compensation for lost wages, costs, and at-
10 torneys’ fees under this paragraph, or com-
11 promise settlements of the same, shall be
12 made as provided by section 1304 of title
13 31, United States Code. Appropriations
14 made available to the Secretary or the
15 Commissioner, accounts provided for under
16 section 286, and funds from the Federal
17 Old-Age and Survivors Insurance Trust
18 Fund or the Federal Disability Insurance
19 Trust Fund shall not be available to pay
20 such compensation.

21 “(G) APPEAL.—No later than 45 days
22 after the entry of such final order, any person
23 adversely affected by such final order may seek
24 review of such order in the United States Court
25 of Appeals for the circuit in which the violation

1 is alleged to have occurred or in which the em-
2 ployer resides or transacts business.

3 “(8) MANAGEMENT OF THE SYSTEM.—

4 “(A) IN GENERAL.—The Secretary is au-
5 thorized to establish, manage, and modify the
6 System, which shall—

7 “(i) respond to inquiries made by par-
8 ticipating employers at any time through
9 the Internet, or such other means as the
10 Secretary may designate, concerning an in-
11 dividual’s identity and whether the indi-
12 vidual is in employment authorized status;

13 “(ii) maintain records of the inquiries
14 that were made, of confirmations provided
15 (or not provided), and of the codes pro-
16 vided to employers as evidence of their
17 compliance with their obligations under the
18 System; and

19 “(iii) provide information to, and re-
20 quire action by, employers and individuals
21 using the System.

22 “(B) DESIGN AND OPERATION OF SYS-
23 TEM.—The System shall be designed and oper-
24 ated—

1 “(i) to maximize its reliability and
2 ease of use by employers consistent with
3 protecting the privacy and security of the
4 underlying information, and ensuring full
5 notice of such use to employees;

6 “(ii) to maximize its ease of use by
7 employees, including direct notification of
8 its use, of results, and ability to challenge
9 results;

10 “(iii) to respond accurately to all in-
11 quires made by employers on whether in-
12 dividuals are authorized to be employed
13 and to register any times when the system
14 is unable to receive inquiries;

15 “(iv) to maintain appropriate adminis-
16 trative, technical, and physical safeguards
17 to prevent unauthorized disclosure of per-
18 sonal information, misuse by employers
19 and employees, and discrimination;

20 “(v) to require regularly scheduled re-
21 fresher training of all users of the System
22 to ensure compliance with all procedures;

23 “(vi) to allow for auditing of the use
24 of the System to detect misuse, discrimina-
25 tion, fraud, and identity theft, to protect

1 privacy and assess System accuracy, and
2 to preserve the integrity and security of
3 the information in all of the System, in-
4 cluding—

5 “(I) to develop and use tools and
6 processes to detect or prevent fraud
7 and identity theft, such as multiple
8 uses of the same identifying informa-
9 tion or documents to fraudulently gain
10 employment;

11 “(II) to develop and use tools
12 and processes to detect and prevent
13 misuse of the system by employers
14 and employees;

15 “(III) to develop tools and proc-
16 esses to detect anomalies in the use of
17 the system that may indicate potential
18 fraud or misuse of the system;

19 “(IV) to audit documents and in-
20 formation submitted by employees to
21 employers, including authority to con-
22 duct interviews with employers and
23 employees, and obtain information
24 concerning employment from the em-
25 ployer;

1 “(vii) to confirm identity and employ-
2 ment authorization through verification
3 and comparison of records as determined
4 necessary by the Secretary;

5 “(viii) to confirm electronically the
6 issuance of the employment authorization
7 or identity document and—

8 “(I) if such photograph is avail-
9 able, to display the digital photograph
10 that the issuer placed on the docu-
11 ment so that the employer can com-
12 pare the photograph displayed to the
13 photograph on the document pre-
14 sented by the employee; or

15 “(II) if a photograph is not avail-
16 able from the issuer, to confirm the
17 authenticity of the document using
18 such alternative procedures as the
19 Secretary may specify; and

20 “(ix) to provide appropriate notifica-
21 tion directly to employers registered with
22 the System of all changes made by the
23 Secretary or the Commissioner related to
24 allowed and prohibited documents, and use
25 of the System.

1 “(C) SAFEGUARDS TO THE SYSTEM.—

2 “(i) REQUIREMENT TO DEVELOP.—

3 The Secretary, in consultation with the
4 Commissioner and other appropriate Fed-
5 eral and State agencies, shall develop poli-
6 cies and procedures to ensure protection of
7 the privacy and security of personally iden-
8 tifiable information and identifiers con-
9 tained in the records accessed or main-
10 tained by the System. The Secretary, in
11 consultation with the Commissioner and
12 other appropriate Federal and State agen-
13 cies, shall develop and deploy appropriate
14 privacy and security training for the Fed-
15 eral and State employees accessing the
16 records under the System.

17 “(ii) PRIVACY AUDITS.—The Sec-
18 retary, acting through the Chief Privacy
19 Officer of the Department, shall conduct
20 regular privacy audits of the policies and
21 procedures established under clause (i), in-
22 cluding any collection, use, dissemination,
23 and maintenance of personally identifiable
24 information and any associated informa-
25 tion technology systems, as well as scope of

1 requests for this information. The Chief
2 Privacy Officer shall review the results of
3 the audits and recommend to the Secretary
4 any changes necessary to improve the pri-
5 vacy protections of the program.

6 “(iii) ACCURACY AUDITS.—

7 “(I) IN GENERAL.—Not later
8 than November 30 of each year, the
9 Inspector General of the Department
10 of Homeland Security shall submit a
11 report to the Secretary, with a copy to
12 the President of the Senate and the
13 Speaker of the House of Representa-
14 tives, that sets forth the error rate of
15 the System for the previous fiscal year
16 and the assessments required to be
17 submitted by the Secretary under sub-
18 paragraphs (A) and (B) of paragraph
19 (10). The report shall describe in de-
20 tail the methodology employed for
21 purposes of the report, and shall make
22 recommendations for how error rates
23 may be reduced.

24 “(II) ERROR RATE DEFINED.—In
25 this clause, the term ‘error rate’

1 means the percentage determined by
2 dividing—

3 “(aa) the number of employ-
4 ment authorized individuals who
5 received further action notices,
6 contested such notices, and were
7 subsequently found to be employ-
8 ment authorized; by

9 “(bb) the number of System
10 inquiries submitted for employ-
11 ment authorized individuals.

12 “(III) REDUCTION OF PENALTIES
13 FOR RECORDKEEPING OR
14 VERIFICATION PRACTICES FOLLOWING
15 PERSISTENT SYSTEM INACCURA-
16 CIES.—Notwithstanding subsection
17 (e)(4)(C)(i), in any calendar year fol-
18 lowing a report by the Inspector Gen-
19 eral under subclause (I) that the Sys-
20 tem had an error rate higher than 0.3
21 percent for the previous fiscal year,
22 the civil penalty assessable by the Sec-
23 retary or an administrative law judge
24 under that subsection for each first-
25 time violation by an employer who has

1 not previously been penalized under
2 this section may not exceed \$1,000.

3 “(iv) RECORDS SECURITY PRO-
4 GRAM.—Any person, including a private
5 third party vendor, who retains document
6 verification or System data pursuant to
7 this section shall implement an effective
8 records security program that—

9 “(I) ensures that only authorized
10 personnel have access to document
11 verification or System data; and

12 “(II) ensures that whenever such
13 data is created, completed, updated,
14 modified, altered, or corrected in elec-
15 tronic format, a secure and perma-
16 nent record is created that establishes
17 the date of access, the identity of the
18 individual who accessed the electronic
19 record, and the particular action
20 taken.

21 “(v) RECORDS SECURITY PROGRAM.—
22 In addition to the security measures de-
23 scribed in clause (iv), a private third party
24 vendor who retains document verification
25 or System data pursuant to this section

1 shall implement an effective records secu-
2 rity program that—

3 “(I) provides for backup and re-
4 covery of any records maintained in
5 electronic format to protect against
6 information loss, such as power inter-
7 ruptions; and

8 “(II) ensures that employees are
9 trained to minimize the risk of unau-
10 thorized or accidental alteration or
11 erasure of such data in electronic for-
12 mat.

13 “(vi) AUTHORIZED PERSONNEL DE-
14 FINED.—In this subparagraph, the term
15 ‘authorized personnel’ means anyone reg-
16 istered as a System user, or anyone with
17 partial or full responsibility for completion
18 of employment authorization verification or
19 retention of data in connection with em-
20 ployment authorization verification on be-
21 half of an employer.

22 “(D) AVAILABLE FACILITIES AND ALTER-
23 NATIVE ACCOMMODATIONS.—The Secretary
24 shall make appropriate arrangements and de-
25 velop standards to allow employers or employ-

1 ees, including remote hires, who are otherwise
2 unable to access the System to use electronic
3 and telephonic formats (including video confer-
4 encing, scanning technology, and other available
5 technologies), Federal Government facilities,
6 public facilities, or other available locations in
7 order to utilize the System.

8 “(E) RESPONSIBILITIES OF THE SEC-
9 RETARY.—

10 “(i) IN GENERAL.—As part of the
11 System, the Secretary shall maintain a re-
12 liable, secure method, which, operating
13 through the System and within the time
14 periods specified, compares the name, alien
15 identification or authorization number, or
16 other information as determined relevant
17 by the Secretary, provided in an inquiry
18 against such information maintained or
19 accessed by the Secretary in order to con-
20 firm (or not confirm) the validity of the in-
21 formation provided, the correspondence of
22 the name and number, whether the alien
23 has employment authorized status (or, to
24 the extent that the Secretary determines to
25 be feasible and appropriate, whether the

1 records available to the Secretary verify
2 the identity or status of a national of the
3 United States), and such other information
4 as the Secretary may prescribe.

5 “(ii) PHOTOGRAPH DISPLAY.—As part
6 of the System, the Secretary shall establish
7 a reliable, secure method, which, operating
8 through the System, displays the digital
9 photograph described in subparagraph
10 (B)(viii)(I).

11 “(iii) TIMING OF NOTICES.—The Sec-
12 retary shall have authority to prescribe
13 when a confirmation, nonconfirmation, or
14 further action notice shall be issued.

15 “(iv) USE OF INFORMATION.—The
16 Secretary shall perform regular audits
17 under the System, as described in subpara-
18 graph (B)(vi) and shall utilize the informa-
19 tion obtained from such audits, as well as
20 any information obtained from the Com-
21 missioner pursuant to part E of title XI of
22 the Social Security Act (42 U.S.C. 1301 et
23 seq.), for the purposes of this section and
24 to administer and enforce the immigration
25 laws.

1 “(v) IDENTITY FRAUD PROTECTION.—
2 To prevent identity fraud, not later than
3 18 months after the date of the enactment
4 of the Border Security, Economic Oppor-
5 tunity, and Immigration Modernization
6 Act, the Secretary shall—

7 “(I) in consultation with the
8 Commissioner, establish a program to
9 provide a reliable, secure method for
10 an individual to temporarily suspend
11 or limit the use of the individual’s so-
12 cial security account number or other
13 identifying information for verification
14 by the System; and

15 “(II) for each individual being
16 verified through the System—

17 “(aa) notify the individual
18 that the individual has the option
19 to limit the use of the individ-
20 ual’s social security account num-
21 ber or other identifying informa-
22 tion for verification by the Sys-
23 tem; and

1 “(bb) provide instructions to
2 the individuals for exercising the
3 option referred to in item (aa).

4 “(vi) ALLOWING PARENTS TO PRE-
5 VENT THEFT OF THEIR CHILD’S IDEN-
6 TITY.—The Secretary, in consultation with
7 the Commissioner, shall establish a pro-
8 gram that provides a reliable, secure meth-
9 od by which parents or legal guardians
10 may suspend or limit the use of the social
11 security account number or other identi-
12 fying information of a minor under their
13 care for the purposes of the System. The
14 Secretary may implement the program on
15 a limited pilot program basis before mak-
16 ing it fully available to all individuals.

17 “(vii) PROTECTION FROM MULTIPLE
18 USE.—The Secretary and the Commis-
19 sioner shall establish a procedure for iden-
20 tifying and handling a situation in which a
21 social security account number has been
22 identified to be subject to unusual multiple
23 use in the System or is otherwise suspected
24 or determined to have been compromised
25 by identity fraud.

1 “(viii) MONITORING AND COMPLIANCE
2 UNIT.—The Secretary shall establish or
3 designate a monitoring and compliance
4 unit to detect and reduce identity fraud
5 and other misuse of the System.

6 “(ix) CIVIL RIGHTS AND CIVIL LIB-
7 ERTIES ASSESSMENTS.—

8 “(I) REQUIREMENT TO CON-
9 DUCT.—The Secretary shall conduct
10 regular civil rights and civil liberties
11 assessments of the System, including
12 participation by employers, other pri-
13 vate entities, and Federal, State, and
14 local government entities.

15 “(II) REQUIREMENT TO RE-
16 SPOND.—Employers, other private en-
17 tities, and Federal, State, and local
18 entities shall timely respond to any re-
19 quest in connection with such an as-
20 sessment.

21 “(III) ASSESSMENT AND REC-
22 COMMENDATIONS.—The Officer for
23 Civil Rights and Civil Liberties of the
24 Department shall review the results of
25 each such assessment and recommend

1 to the Secretary any changes nec-
2 essary to improve the civil rights and
3 civil liberties protections of the Sys-
4 tem.

5 “(F) GRANTS TO STATES.—

6 “(i) IN GENERAL.—The Secretary
7 shall create and administer a grant pro-
8 gram to help provide funding for States
9 that grant—

10 “(I) the Secretary access to driv-
11 er’s license information as needed to
12 confirm that a driver’s license pre-
13 sented under subsection (c)(1)(D)(i)
14 confirms the identity of the subject of
15 the System check, and that a driver’s
16 license matches the State’s records;
17 and

18 “(II) such assistance as the Sec-
19 retary may request in order to resolve
20 further action notices or nonconfirma-
21 tions relating to such information.

22 “(ii) CONSTRUCTION WITH THE DRIV-
23 ER’S PRIVACY PROTECTION ACT OF 1994.—
24 The provision of a photograph to the Sec-
25 retary as described in clause (i) may not be

1 construed as a violation of section 2721 of
2 title 18, United States Code, and is a per-
3 missible use under subsection (b)(1) of
4 that section.

5 “(iii) AUTHORIZATION OF APPROPRIA-
6 TIONS.—There is authorized to be appro-
7 priated to the Secretary \$250,000,000 to
8 carry out this subparagraph.

9 “(G) RESPONSIBILITIES OF THE SEC-
10 RETARY OF STATE.—As part of the System, the
11 Secretary of State shall provide to the Sec-
12 retary access to passport and visa information
13 as needed to confirm that a passport, passport
14 card, or visa presented under subsection
15 (c)(1)(C) confirms the identity of the subject of
16 the System check, and that a passport, passport
17 card, or visa photograph matches the Secretary
18 of State’s records, and shall provide such assist-
19 ance as the Secretary may request in order to
20 resolve further action notices or nonconfirma-
21 tions relating to such information.

22 “(H) UPDATING INFORMATION.—The
23 Commissioner, the Secretary, and the Secretary
24 of State shall update their information in a
25 manner that promotes maximum accuracy and

1 shall provide a process for the prompt correc-
2 tion of erroneous information.

3 “(9) LIMITATION ON USE OF THE SYSTEM.—

4 Notwithstanding any other provision of law, nothing
5 in this subsection may be construed to permit or
6 allow any department, bureau, or other agency of
7 the United States Government or any other entity to
8 utilize any information, database, or other records
9 assembled under this subsection for any purpose
10 other than for employment verification or to ensure
11 secure, appropriate and nondiscriminatory use of the
12 System.

13 “(10) ANNUAL REPORT AND CERTIFICATION.—

14 Not later than 18 months after the promulgation of
15 regulations to implement this subsection, and annu-
16 ally thereafter, the Secretary shall submit to Con-
17 gress a report that includes the following:

18 “(A) An assessment, as submitted to the
19 Secretary by the Inspector General of the De-
20 partment of Homeland Security pursuant to
21 paragraph (8)(C)(iii)(I), of the accuracy rates
22 of further action notices and other System no-
23 tices provided by employers to individuals who
24 are authorized to be employed in the United
25 States.

1 “(B) An assessment, as submitted to the
2 Secretary by the Inspector General of the De-
3 partment of Homeland Security pursuant to
4 paragraph (8)(C)(iii)(I), of the accuracy rates
5 of further action notices and other System no-
6 tices provided directly (by the System) in a
7 timely fashion to individuals who are not au-
8 thorized to be employed in the United States.

9 “(C) An assessment of any challenges
10 faced by small employers in utilizing the Sys-
11 tem.

12 “(D) An assessment of the rate of em-
13 ployer noncompliance (in addition to failure to
14 provide required notices in a timely fashion) in
15 each of the following categories:

16 “(i) Taking adverse action based on a
17 further action notice.

18 “(ii) Use of the System for non-
19 employees or other individuals before they
20 are offered employment.

21 “(iii) Use of the System to reverify
22 employment authorized status of current
23 employees except if authorized to do so.

1 “(iv) Use of the System selectively,
2 except in cases in which such use is au-
3 thorized.

4 “(v) Use of the System to deny em-
5 ployment or post-employment benefits or
6 otherwise interfere with labor rights.

7 “(vi) Requiring employees or appli-
8 cants to use any self-verification feature or
9 to provide self-verification results.

10 “(vii) Discouraging individuals who
11 receive a further action notice from chal-
12 lenging the further action notice or appeal-
13 ing a determination made by the System.

14 “(E) An assessment of the rate of em-
15 ployee noncompliance in each of the following
16 categories:

17 “(i) Obtaining employment when un-
18 authorized with an employer complying
19 with the System in good faith.

20 “(ii) Failure to provide required docu-
21 ments in a timely manner.

22 “(iii) Attempting to use fraudulent
23 documents or documents not related to the
24 individual.

1 “(iv) Misuse of the administrative ap-
2 peal and judicial review process.

3 “(F) An assessment of the amount of time
4 taken for—

5 “(i) the System to provide the con-
6 firmation or further action notice;

7 “(ii) individuals to contest further ac-
8 tion notices;

9 “(iii) the System to provide a con-
10 firmation or nonconfirmation of a con-
11 tested further action notice;

12 “(iv) individuals to file an administra-
13 tive appeal of a nonconfirmation; and

14 “(v) resolving administrative appeals
15 regarding nonconfirmations.

16 “(11) ANNUAL GAO STUDY AND REPORT.—

17 “(A) REQUIREMENT.—The Comptroller
18 General shall, for each year, undertake a study
19 to evaluate the accuracy, efficiency, integrity,
20 and impact of the System.

21 “(B) REPORT.—Not later than 18 months
22 after the promulgation of regulations to imple-
23 ment this subsection, and yearly thereafter, the
24 Comptroller General shall submit to Congress a
25 report containing the findings of the study car-

1 ried out under this paragraph. Each such re-
2 port shall include, at a minimum, the following:

3 “(i) An assessment of System per-
4 formance with respect to the rate at which
5 individuals who are eligible for employment
6 in the United States are correctly approved
7 within the required periods, including a
8 separate assessment of such rate for natu-
9 ralized United States citizens, nationals of
10 the United States, and aliens.

11 “(ii) An assessment of the privacy and
12 confidentiality of the System and of the
13 overall security of the System with respect
14 to cybertheft and theft or misuse of private
15 data.

16 “(iii) An assessment of whether the
17 System is being implemented in a manner
18 that is not discriminatory or used for retal-
19 iation against employees.

20 “(iv) An assessment of the most com-
21 mon causes for the erroneous issuance of
22 nonconfirmations by the System and rec-
23 ommendations to correct such causes.

1 “(v) The recommendations of the
2 Comptroller General regarding System im-
3 provements.

4 “(vi) An assessment of the frequency
5 and magnitude of changes made to the
6 System and the impact on the ability for
7 employers to comply in good faith.

8 “(vii) An assessment of the direct and
9 indirect costs incurred by employers in
10 complying with the System, including costs
11 associated with retaining potential employ-
12 ees through the administrative appeals
13 process and receiving a nonconfirmation.

14 “(viii) An assessment of any backlogs
15 or delays in the System providing the con-
16 firmation or further action notice and im-
17 pacts to hiring by employers.

18 “(e) COMPLIANCE.—

19 “(1) COMPLAINTS AND INVESTIGATIONS.—The
20 Secretary shall establish procedures—

21 “(A) for individuals and entities to file
22 complaints respecting potential violations of
23 subsections (a) or (f)(1);

1 “(B) for the investigation of those com-
2 plaints which the Secretary deems appropriate
3 to investigate; and

4 “(C) for providing notification to the Spe-
5 cial Counsel for Immigration-Related Unfair
6 Employment Practices of the Department of
7 Justice of potential violations of section 274B.

8 “(2) AUTHORITY IN INVESTIGATIONS.—In con-
9 ducting investigations and proceedings under this
10 subsection—

11 “(A) immigration officers shall have rea-
12 sonable access to examine evidence of the em-
13 ployer being investigated;

14 “(B) immigration officers designated by
15 the Secretary, and administrative law judges
16 and other persons authorized to conduct pro-
17 ceedings under this section, may compel by sub-
18 poena the attendance of relevant witnesses and
19 the production of relevant evidence at any des-
20 ignated place in an investigation or case under
21 this subsection. In case of refusal to fully com-
22 ply with a subpoena lawfully issued under this
23 paragraph, the Secretary may request that the
24 Attorney General apply in an appropriate dis-
25 trict court of the United States for an order re-

1 quiring compliance with the subpoena, and any
2 failure to obey such order may be punished by
3 the court as contempt. Failure to cooperate
4 with the subpoena shall be subject to further
5 penalties, including further fines and the void-
6 ing of any mitigation of penalties or termi-
7 nation of proceedings under paragraph (4)(E);
8 and

9 “(C) the Secretary, in cooperation with the
10 Commissioner and Attorney General, and in
11 consultation with other relevant agencies, shall
12 establish a Joint Employment Fraud Task
13 Force consisting of, at a minimum—

14 “(i) the System’s compliance per-
15 sonnel;

16 “(ii) immigration law enforcement of-
17 ficers;

18 “(iii) personnel of the Office of Spe-
19 cial Counsel for Immigration-Related Un-
20 fair Employment Practices of the Depart-
21 ment of Justice;

22 “(iv) personnel of the Office for Civil
23 Rights and Civil Liberties of the Depart-
24 ment; and

1 “(v) personnel of Office of Inspector
2 General of the Social Security Administra-
3 tion.

4 “(3) COMPLIANCE PROCEDURES.—

5 “(A) PRE-PENALTY NOTICE.—If the Sec-
6 retary has reasonable cause to believe that
7 there has been a civil violation of this section in
8 the previous 3 years, the Secretary shall issue
9 to the employer concerned a written notice of
10 the Department’s intention to issue a claim for
11 a monetary or other penalty. Such pre-penalty
12 notice shall—

13 “(i) describe the violation;

14 “(ii) specify the laws and regulations
15 allegedly violated;

16 “(iii) disclose the material facts which
17 establish the alleged violation;

18 “(iv) describe the penalty sought to be
19 imposed; and

20 “(v) inform such employer that such
21 employer shall have a reasonable oppor-
22 tunity to make representations as to why a
23 monetary or other penalty should not be
24 imposed.

1 “(B) EMPLOYER’S RESPONSE.—Whenever
2 any employer receives written pre-penalty notice
3 of a fine or other penalty in accordance with
4 subparagraph (A), the employer may, within 60
5 days from receipt of such notice, file with the
6 Secretary its written response to the notice.
7 The response may include any relevant evidence
8 or proffer of evidence that the employer wishes
9 to present with respect to whether the employer
10 violated this section and whether, if so, the pen-
11 alty should be mitigated, and shall be filed and
12 considered in accordance with procedures to be
13 established by the Secretary.

14 “(C) RIGHT TO A HEARING.—Before
15 issuance of an order imposing a penalty on any
16 employer, person, or entity, the employer, per-
17 son, or entity shall be entitled to a hearing be-
18 fore an administrative law judge, if requested
19 within 60 days of the notice of penalty. The
20 hearing shall be held at the nearest location
21 practicable to the place where the employer,
22 person, or entity resides or of the place where
23 the alleged violation occurred.

24 “(D) ISSUANCE OF ORDERS.—If no hear-
25 ing is so requested, the Secretary’s imposition

1 of the order shall constitute a final and
2 unappealable order. If a hearing is requested
3 and the administrative law judge determines,
4 upon clear and convincing evidence received,
5 that there was a violation, the administrative
6 law judge shall issue the final determination
7 with a written penalty claim. The penalty claim
8 shall specify all charges in the information pro-
9 vided under clauses (i) through (iii) of subpara-
10 graph (A) and any mitigation of the penalty
11 that the administrative law judge deems appro-
12 priate under paragraph (4)(E).

13 “(4) CIVIL PENALTIES.—

14 “(A) HIRING OR CONTINUING TO EMPLOY
15 UNAUTHORIZED ALIENS.—Any employer that
16 violates any provision of subsection (a)(1)(A) or
17 (a)(2) shall—

18 “(i) pay a civil penalty of not less
19 than \$3,500 and not more than \$7,500 for
20 each unauthorized alien with respect to
21 which each violation of either subsection
22 (a)(1)(A) or (a)(2) occurred;

23 “(ii) if the employer has previously
24 been fined as a result of a previous en-
25 forcement action or previous violation

1 under this paragraph, pay a civil penalty of
2 not less than \$5,000 and not more than
3 \$15,000 for each unauthorized alien with
4 respect to which a violation of either sub-
5 section (a)(1)(A) or (a)(2) occurred; and

6 “(iii) if the employer has previously
7 been fined more than once under this para-
8 graph, pay a civil penalty of not less than
9 \$10,000 and not more than \$25,000 for
10 each unauthorized alien with respect to
11 which a violation of either subsection
12 (a)(1)(A) or (a)(2) occurred.

13 “(B) ENHANCED PENALTIES.—After the
14 Secretary certifies to Congress that the System
15 has been established, implemented, and made
16 mandatory for use by all employers in the
17 United States, the Secretary may establish an
18 enhanced civil penalty for an employer who—

19 “(i) fails to query the System to verify
20 the identify and work authorized status of
21 an individual; and

22 “(ii) violates a Federal, State, or local
23 law related to—

24 “(I) the payment of wages;

1 “(II) hours worked by employees;

2 or

3 “(III) workplace health and safe-

4 ty.

5 “(C) RECORDKEEPING OR VERIFICATION
6 PRACTICES.—Any employer that violates or fails
7 to comply with any requirement under sub-
8 section (a)(1)(B), other than a minor or inad-
9 vertent failure, as determined by the Secretary,
10 shall pay a civil penalty of—

11 “(i) not less than \$500 and not more
12 than \$2,000 for each violation;

13 “(ii) if an employer has previously
14 been fined under this paragraph, not less
15 than \$1,000 and not more than \$4,000 for
16 each violation; and

17 “(iii) if an employer has previously
18 been fined more than once under this para-
19 graph, not less than \$2,000 and not more
20 than \$8,000 for each violation.

21 “(D) OTHER PENALTIES.—The Secretary
22 may impose additional penalties for violations,
23 including cease and desist orders, specially de-
24 signed compliance plans to prevent further vio-
25 lations, suspended fines to take effect in the

1 event of a further violation, and in appropriate
2 cases, the remedy provided by paragraph (f)(2).

3 “(E) MITIGATION.—The Secretary or, if
4 an employer requests a hearing, the administra-
5 tive law judge, is authorized, upon such terms
6 and conditions as the Secretary or administra-
7 tive law judge deems reasonable and just and in
8 accordance with such procedures as the Sec-
9 retary may establish or any procedures estab-
10 lished governing the administrative law judge’s
11 assessment of penalties, to reduce or mitigate
12 penalties imposed upon employers, based upon
13 factors including, the employer’s hiring volume,
14 compliance history, good-faith implementation
15 of a compliance program, the size and level of
16 sophistication of the employer, and voluntary
17 disclosure of violations of this subsection to the
18 Secretary. The Secretary or administrative law
19 judge shall not mitigate a penalty below the
20 minimum penalty provided by this section, ex-
21 cept that the Secretary may, in the case of an
22 employer subject to penalty for recordkeeping
23 or verification violations only who has not pre-
24 viously been penalized under this section, in the
25 Secretary’s or administrative law judge’s discre-

1 tion, mitigate the penalty below the statutory
2 minimum or remit it entirely. In any case where
3 a civil money penalty has been imposed on an
4 employer under section 274B for an action or
5 omission that is also a violation of this section,
6 the Secretary or administrative law judge shall
7 mitigate any civil money penalty under this sec-
8 tion by the amount of the penalty imposed
9 under section 274B.

10 “(F) EFFECTIVE DATE.—The civil money
11 penalty amounts and the enhanced penalties
12 provided by subparagraphs (A), (B), and (C) of
13 this paragraph and by subsection (f)(2) shall
14 apply to violations of this section committed on
15 or after the date that is 1 year after the date
16 of the enactment of the Border Security, Eco-
17 nomic Opportunity, and Immigration Mod-
18 ernization Act. For violations committed prior
19 to such date of enactment, the civil money pen-
20 alty amounts provided by regulations imple-
21 menting this section as in effect the minute be-
22 fore such date of enactment with respect to
23 knowing hiring or continuing employment,
24 verification, or indemnity bond violations, as
25 appropriate, shall apply.

1 “(5) ORDER OF INTERNAL REVIEW AND CER-
2 TIFICATION OF COMPLIANCE.—

3 “(A) EMPLOYER COMPLIANCE.—If the
4 Secretary has reasonable cause to believe that
5 an employer has failed to comply with this sec-
6 tion, the Secretary is authorized, at any time,
7 to require that the employer certify that it is in
8 compliance with this section, or has instituted a
9 program to come into compliance.

10 “(B) EMPLOYER CERTIFICATION.—

11 “(i) REQUIREMENT.—Except as pro-
12 vided in subparagraph (C), not later than
13 60 days after receiving a notice from the
14 Secretary requiring a certification under
15 subparagraph (A), an official with respon-
16 sibility for, and authority to bind the com-
17 pany on, all hiring and immigration com-
18 pliance notices shall certify under penalty
19 of perjury that the employer is in conform-
20 ance with the requirements of paragraphs
21 (1) through (4) of subsection (c), per-
22 taining to document verification require-
23 ments, and with subsection (d), pertaining
24 to the System (once the System is imple-
25 mented with respect to that employer ac-

1 cording to the requirements under sub-
2 section (d)(2)), and with any additional re-
3 quirements that the Secretary may promul-
4 gate by regulation pursuant to subsection
5 (c) or (d) or that the employer has insti-
6 tuted a program to come into compliance
7 with these requirements.

8 “(ii) APPLICATION.—Clause (i) shall
9 not apply until the date that the Secretary
10 certifies to Congress that the System has
11 been established, implemented, and made
12 mandatory for use by all employers in the
13 United States.

14 “(C) EXTENSION OF DEADLINE.—At the
15 request of the employer, the Secretary may ex-
16 tend the 60-day deadline for good cause.

17 “(D) STANDARDS OR METHODS.—The Sec-
18 retary is authorized to publish in the Federal
19 Register standards or methods for such certifi-
20 cation, require specific recordkeeping practices
21 with respect to such certifications, and audit
22 the records thereof at any time. This authority
23 shall not be construed to diminish or qualify
24 any other penalty provided by this section.

1 “(6) REQUIREMENTS FOR REVIEW OF A FINAL
2 DETERMINATION.—With respect to judicial review of
3 a final determination or penalty order issued under
4 paragraph (3)(D), the following requirements apply:

5 “(A) DEADLINE.—The petition for review
6 must be filed no later than 30 days after the
7 date of the final determination or penalty order
8 issued under paragraph (3)(D).

9 “(B) VENUE AND FORMS.—The petition
10 for review shall be filed with the court of ap-
11 peals for the judicial circuit where the employ-
12 er’s principal place of business was located
13 when the final determination or penalty order
14 was made. The record and briefs do not have
15 to be printed. The court shall review the pro-
16 ceeding on a typewritten or electronically filed
17 record and briefs.

18 “(C) SERVICE.—The respondent is the
19 Secretary. In addition to serving the respond-
20 ent, the petitioner shall serve the Attorney Gen-
21 eral.

22 “(D) PETITIONER’S BRIEF.—The peti-
23 tioner shall serve and file a brief in connection
24 with a petition for judicial review not later than
25 40 days after the date on which the administra-

1 tive record is available, and may serve and file
2 a reply brief not later than 14 days after serv-
3 ice of the brief of the respondent, and the court
4 may not extend these deadlines, except for good
5 cause shown. If a petitioner fails to file a brief
6 within the time provided in this paragraph, the
7 court shall dismiss the appeal unless a manifest
8 injustice would result.

9 “(E) SCOPE AND STANDARD FOR RE-
10 VIEW.—The court of appeals shall conduct a de
11 novo review of the administrative record on
12 which the final determination was based and
13 any additional evidence that the Court finds
14 was previously unavailable at the time of the
15 administrative hearing.

16 “(F) EXHAUSTION OF ADMINISTRATIVE
17 REMEDIES.—A court may review a final deter-
18 mination under paragraph (3)(C) only if—

19 “(i) the petitioner has exhausted all
20 administrative remedies available to the pe-
21 titioner as of right, including any adminis-
22 trative remedies established by regulation,
23 and

24 “(ii) another court has not decided
25 the validity of the order, unless the review-

1 ing court finds that the petition presents
2 grounds that could not have been pre-
3 sented in the prior judicial proceeding or
4 that the remedy provided by the prior pro-
5 ceeding was inadequate or ineffective to
6 test the validity of the order.

7 “(G) ENFORCEMENT OF ORDERS.—If the
8 final determination issued against the employer
9 under this subsection is not subjected to review
10 as provided in this paragraph, the Attorney
11 General, upon request by the Secretary, may
12 bring a civil action to enforce compliance with
13 the final determination in any appropriate dis-
14 trict court of the United States. The court, on
15 a proper showing, shall issue a temporary re-
16 straining order or a preliminary or permanent
17 injunction requiring that the employer comply
18 with the final determination issued against that
19 employer under this subsection. In any such
20 civil action, the validity and appropriateness of
21 the final determination shall not be subject to
22 review.

23 “(7) CREATION OF LIEN.—If any employer lia-
24 ble for a fee or penalty under this section neglects
25 or refuses to pay such liability after demand and

1 fails to file a petition for review (if applicable) as
2 provided in paragraph (6), the amount of the fee or
3 penalty shall be a lien in favor of the United States
4 on all property and rights to property, whether real
5 or personal, belonging to such employer. If a petition
6 for review is filed as provided in paragraph (6), the
7 lien shall arise upon the entry of a final judgment
8 by the court. The lien continues for 20 years or until
9 the liability is satisfied, remitted, set aside, or termi-
10 nated.

11 “(8) FILING NOTICE OF LIEN.—

12 “(A) PLACE FOR FILING.—The notice of a
13 lien referred to in paragraph (7) shall be filed
14 as described in 1 of the following:

15 “(i) UNDER STATE LAWS.—

16 “(I) REAL PROPERTY.—In the
17 case of real property, in 1 office with-
18 in the State (or the county, or other
19 governmental subdivision), as des-
20 ignated by the laws of such State, in
21 which the property subject to the lien
22 is situated.

23 “(II) PERSONAL PROPERTY.—In
24 the case of personal property, whether
25 tangible or intangible, in 1 office with-

1 in the State (or the county, or other
2 governmental subdivision), as des-
3 ignated by the laws of such State, in
4 which the property subject to the lien
5 is situated, except that State law
6 merely conforming to or reenacting
7 Federal law establishing a national fil-
8 ing system does not constitute a sec-
9 ond office for filing as designated by
10 the laws of such State.

11 “(ii) WITH CLERK OF DISTRICT
12 COURT.—In the office of the clerk of the
13 United States district court for the judicial
14 district in which the property subject to
15 the lien is situated, whenever the State has
16 not by law designated 1 office which meets
17 the requirements of clause (i).

18 “(iii) WITH RECORDER OF DEEDS OF
19 THE DISTRICT OF COLUMBIA.—In the of-
20 fice of the Recorder of Deeds of the Dis-
21 trict of Columbia, if the property subject to
22 the lien is situated in the District of Co-
23 lumbia.

24 “(B) SITUS OF PROPERTY SUBJECT TO
25 LIEN.—For purposes of subparagraph (A),

1 property shall be deemed to be situated as fol-
2 lows:

3 “(i) REAL PROPERTY.—In the case of
4 real property, at its physical location.

5 “(ii) PERSONAL PROPERTY.—In the
6 case of personal property, whether tangible
7 or intangible, at the residence of the tax-
8 payer at the time the notice of lien is filed.

9 “(C) DETERMINATION OF RESIDENCE.—
10 For purposes of subparagraph (B)(ii), the resi-
11 dence of a corporation or partnership shall be
12 deemed to be the place at which the principal
13 executive office of the business is located, and
14 the residence of a taxpayer whose residence is
15 outside the United States shall be deemed to be
16 in the District of Columbia.

17 “(D) EFFECT OF FILING NOTICE OF
18 LIEN.—

19 “(i) IN GENERAL.—Upon filing of a
20 notice of lien in the manner described in
21 this paragraph, the lien shall be valid
22 against any purchaser, holder of a security
23 interest, mechanic’s lien, or judgment lien
24 creditor, except with respect to properties
25 or transactions specified in subsection (b),

1 (c), or (d) of section 6323 of the Internal
2 Revenue Code of 1986 for which a notice
3 of tax lien properly filed on the same date
4 would not be valid.

5 “(ii) NOTICE OF LIEN.—The notice of
6 lien shall be considered a notice of lien for
7 taxes payable to the United States for the
8 purpose of any State or local law providing
9 for the filing of a notice of a tax lien. A
10 notice of lien that is registered, recorded,
11 docketed, or indexed in accordance with
12 the rules and requirements relating to
13 judgments of the courts of the State where
14 the notice of lien is registered, recorded,
15 docketed, or indexed shall be considered
16 for all purposes as the filing prescribed by
17 this section.

18 “(iii) OTHER PROVISIONS.—The pro-
19 visions of section 3201(e) of title 28,
20 United States Code, shall apply to liens
21 filed as prescribed by this paragraph.

22 “(E) ENFORCEMENT OF A LIEN.—A lien
23 obtained through this paragraph shall be con-
24 sidered a debt as defined by section 3002 of

1 title 28, United States Code and enforceable
2 pursuant to chapter 176 of such title.

3 “(9) ATTORNEY GENERAL ADJUDICATION.—

4 The Attorney General shall have jurisdiction to adju-
5 dicate administrative proceedings under this sub-
6 section. Such proceedings shall be conducted in ac-
7 cordance with requirements of section 554 of title 5,
8 United States Code.

9 “(f) CRIMINAL AND CIVIL PENALTIES AND INJUNC-
10 TIONS.—

11 “(1) PROHIBITION OF INDEMNITY BONDS.—It
12 is unlawful for an employer, in the hiring of any in-
13 dividual, to require the individual to post a bond or
14 security, to pay or agree to pay an amount, or other-
15 wise to provide a financial guarantee or indemnity,
16 against any potential liability arising under this sec-
17 tion relating to such hiring of the individual.

18 “(2) CIVIL PENALTY.—Any employer who is de-
19 termined, after notice and opportunity for mitigation
20 of the monetary penalty under subsection (e), to
21 have violated paragraph (1) shall be subject to a
22 civil penalty of \$10,000 for each violation and to an
23 administrative order requiring the return of any
24 amounts received in violation of such paragraph to

1 the employee or, if the employee cannot be located,
2 to the general fund of the Treasury.

3 “(g) GOVERNMENT CONTRACTS.—

4 “(1) CONTRACTORS AND RECIPIENTS.—When-
5 ever an employer who is a Federal contractor (mean-
6 ing an employer who holds a Federal contract,
7 grant, or cooperative agreement, or reasonably may
8 be expected to submit an offer for or be awarded a
9 government contract) is determined by the Secretary
10 to have violated this section on more than 3 occa-
11 sions or is convicted of a crime under this section,
12 the employer shall be considered for debarment from
13 the receipt of Federal contracts, grants, or coopera-
14 tive agreements in accordance with the procedures
15 and standards and for the periods prescribed by the
16 Federal Acquisition Regulation. However, any ad-
17 ministrative determination of liability for civil pen-
18 alty by the Secretary or the Attorney General shall
19 not be reviewable in any debarment proceeding.

20 “(2) INADVERTENT VIOLATIONS.—Inadvertent
21 violations of recordkeeping or verification require-
22 ments, in the absence of any other violations of this
23 section, shall not be a basis for determining that an
24 employer is a repeat violator for purposes of this
25 subsection.

1 “(3) OTHER REMEDIES AVAILABLE.—Nothing
2 in this subsection shall be construed to modify or
3 limit any remedy available to any agency or official
4 of the Federal Government for violation of any con-
5 tractual requirement to participate in the System, as
6 provided in the final rule relating to employment eli-
7 gibility verification published in the Federal Register
8 on November 14, 2008 (73 Fed. Reg. 67,651), or
9 any similar subsequent regulation.

10 “(h) PREEMPTION.—The provisions of this section
11 preempt any State or local law, ordinance, policy, or rule,
12 including any criminal or civil fine or penalty structure,
13 relating to the hiring, continued employment, or status
14 verification for employment eligibility purposes, of unau-
15 thorized aliens. A State, locality, municipality, or political
16 subdivision may exercise its authority over business licens-
17 ing and similar laws as a penalty for failure to use the
18 System.

19 “(i) DEPOSIT OF AMOUNTS RECEIVED.—Except as
20 otherwise specified, civil penalties collected under this sec-
21 tion shall be deposited by the Secretary into the Com-
22 prehensive Immigration Reform Trust Fund established
23 under section 9(a)(1) of the Border Security, Economic
24 Opportunity, and Immigration Modernization Act.

25 “(j) CHALLENGES TO VALIDITY OF THE SYSTEM.—

1 “(1) IN GENERAL.—Any right, benefit, or claim
2 not otherwise waived or limited pursuant to this sec-
3 tion is available in an action instituted in the United
4 States District Court for the District of Columbia,
5 but shall be limited to determinations of—

6 “(A) whether this section, or any regula-
7 tion issued to implement this section, violates
8 the Constitution of the United States; or

9 “(B) whether such a regulation issued by
10 or under the authority of the Secretary to im-
11 plement this section, is contrary to applicable
12 provisions of this section or was issued in viola-
13 tion of chapter 5 of title 5, United States Code.

14 “(2) DEADLINES FOR BRINGING ACTIONS.—
15 Any action instituted under this subsection must be
16 filed no later than 180 days after the date the chal-
17 lenged section or regulation described in subpara-
18 graph (A) or (B) of paragraph (1) becomes effective.
19 No court shall have jurisdiction to review any chal-
20 lenge described in subparagraph (B) after the time
21 period specified in this subsection expires.

22 “(k) CRIMINAL PENALTIES AND INJUNCTIONS FOR
23 PATTERN OR PRACTICE VIOLATIONS.—

24 “(1) PATTERN AND PRACTICE.—Any employer
25 who engages in a pattern or practice of knowing vio-

1 lations of subsection (a)(1)(A) or (a)(2) shall be
2 fined under title 18, United States Code, no more
3 than \$10,000 for each unauthorized alien with re-
4 spect to whom such violation occurs, imprisoned for
5 not more than 2 years for the entire pattern or prac-
6 tice, or both.

7 “(2) TERM OF IMPRISONMENT.—The maximum
8 term of imprisonment of a person convicted of any
9 criminal offense under the United States Code shall
10 be increased by 5 years if the offense is committed
11 as part of a pattern or practice of violations of sub-
12 section (a)(1)(A) or (a)(2).

13 “(3) ENJOINING OF PATTERN OR PRACTICE
14 VIOLATIONS.—Whenever the Secretary or the Attor-
15 ney General has reasonable cause to believe that an
16 employer is engaged in a pattern or practice of em-
17 ployment in violation of subsection (a)(1)(A) or
18 (a)(2), the Attorney General may bring a civil action
19 in the appropriate district court of the United States
20 requesting such relief, including a permanent or
21 temporary injunction, restraining order, or other
22 order against the employer, as the Secretary or At-
23 torney General deems necessary.

24 “(1) CRIMINAL PENALTIES FOR UNLAWFUL AND
25 ABUSIVE EMPLOYMENT.—

1 “(1) IN GENERAL.—Any person who, during
2 any 12-month period, knowingly employs or hires,
3 employs, recruits, or refers for a fee for employment
4 10 or more individuals within the United States who
5 are under the control and supervision of such per-
6 son—

7 “(A) knowing that the individuals are un-
8 authorized aliens; and

9 “(B) under conditions that violate section
10 5(a) of the Occupational Safety and Health Act
11 of 1970 (29 U.S.C. 654(a) (relating to occupa-
12 tional safety and health), section 6 or 7 of the
13 Fair Labor Standards Act of 1938 (29 U.S.C.
14 206 and 207) (relating to minimum wages and
15 maximum hours of employment), section 3142
16 of title 40, United States Code, (relating to re-
17 quired wages on construction contracts), or sec-
18 tions 6703 or 6704 of title 41, United States
19 Code, (relating to required wages on service
20 contracts),

21 shall be fined under title 18, United States Code, or
22 imprisoned for not more than 10 years, or both.

23 “(2) ATTEMPT AND CONSPIRACY.—Any person
24 who attempts or conspires to commit any offense

1 under this section shall be punished in the same
2 manner as a person who completes the offense.”.

3 (b) REPORT ON USE OF THE SYSTEM IN THE AGRI-
4 CULTURAL INDUSTRY.—Not later than 18 months after
5 the date of the enactment of this Act, the Secretary, in
6 consultation with the Secretary of Agriculture, shall sub-
7 mit a report to Congress that assesses implementation of
8 the Employment Verification System established under
9 section 274A(d) of the Immigration and Nationality Act,
10 as amended by subsection (a), in the agricultural industry,
11 including the use of such System technology in agriculture
12 industry hiring processes, user, contractor, and third-
13 party employer agent employment practices, timing and
14 logistics regarding employment verification and
15 reverification processes to meet agriculture industry prac-
16 tices, and identification of potential challenges and modi-
17 fications to meet the unique needs of the agriculture in-
18 dustry. Such report shall review—

19 (1) the modality of access, training and out-
20 reach, customer support, processes for further action
21 notices and secondary verifications for short-term
22 workers, monitoring, and compliance procedures for
23 such System;

24 (2) the interaction of such System with the
25 process to admit nonimmigrant workers pursuant to

1 section 218 or 218A of the Immigration and Nation-
2 ality Act (8 U.S.C. 1188 et seq.) and with enforce-
3 ment of the immigration laws; and

4 (3) the collaborative use of processes of other
5 Federal and State agencies that intersect with the
6 agriculture industry.

7 (c) REPORT ON IMPACT OF THE SYSTEM ON EM-
8 PLOYERS.—Not later than 18 months after the date of
9 the enactment of this Act, the Secretary shall submit to
10 Congress a report that assesses—

11 (1) the implementation of the Employment
12 Verification System established under section
13 274A(d) of the Immigration and Nationality Act, as
14 amended by subsection (a), by employers;

15 (2) any adverse impact on the revenues, busi-
16 ness processes, or profitability of employers required
17 to use such System; and

18 (3) the economic impact of such System on
19 small businesses.

20 (d) GOVERNMENT ACCOUNTABILITY OFFICE STUDY
21 OF THE EFFECTS OF DOCUMENT REQUIREMENTS ON EM-
22 PLOYMENT AUTHORIZED PERSONS AND EMPLOYERS.—

23 (1) STUDY.—The Comptroller General of the
24 United States shall carry out a study of—

1 (A) the effects of the documentary require-
2 ments of section 274A of the Immigration and
3 Nationality Act, as amended by subsection (a),
4 on employers, naturalized United States citi-
5 zens, nationals of the United States, and indi-
6 viduals with employment authorized status; and

7 (B) the challenges such employers, citizens,
8 nationals, or individuals may face in obtaining
9 the documentation required under that section.

10 (2) REPORT.—Not later than 4 years after the
11 date of the enactment of this Act, the Comptroller
12 General shall submit to Congress a report containing
13 the findings of the study carried out under para-
14 graph (1). Such report shall include, at a minimum,
15 the following:

16 (A) An assessment of available information
17 regarding the number of working age nationals
18 of the United States and individuals who have
19 employment authorized status who lack docu-
20 ments required for employment by such section
21 274A.

22 (B) A description of the additional steps
23 required for individuals who have employment
24 authorized status and do not possess the docu-

1 ments required by such section 274A to obtain
2 such documents.

3 (C) A general assessment of the average fi-
4 nancial costs for individuals who have employ-
5 ment authorized status who do not possess the
6 documents required by such section 274A to ob-
7 tain such documents.

8 (D) A general assessment of the average
9 financial costs and challenges for employers
10 who have been required to participate in the
11 Employment Verification System established by
12 subsection (d) of such section 274A.

13 (E) A description of the barriers to indi-
14 viduals who have employment authorized status
15 in obtaining the documents required by such
16 section 274A, including barriers imposed by the
17 executive branch of the Government.

18 (F) Any particular challenges facing indi-
19 viduals who have employment authorized status
20 who are members of a federally recognized In-
21 dian tribe in complying with the provisions of
22 such section 274A.

23 (e) REPEAL OF PILOT PROGRAMS AND E-VERIFY
24 AND TRANSITION PROCEDURES.—

1 (1) REPEAL.—Sections 401, 402, 403, 404,
2 and 405 of the Illegal Immigration Reform and Im-
3 migrant Responsibility Act of 1996 (division C of
4 Public Law 104–208; 8 U.S.C. 1324a note) are re-
5 pealed.

6 (2) TRANSITION PROCEDURES.—

7 (A) CONTINUATION OF E-VERIFY PRO-
8 GRAM.—Notwithstanding the repeals made by
9 paragraph (1), the Secretary shall continue to
10 operate the E-Verify Program as described in
11 section 403 of the Illegal Immigration Reform
12 and Immigrant Responsibility Act of 1996 (di-
13 vision C of Public Law 104–208; 8 U.S.C.
14 1324a note), as in effect the minute before the
15 date of the enactment of this Act, until the
16 transition to the System described in section
17 274A(d) of the Immigration and Nationality
18 Act, as amended by subsection (a), is deter-
19 mined by the Secretary to be complete.

20 (B) TRANSITION TO THE SYSTEM.—Any
21 employer who was participating in the E-Verify
22 Program described in section 403 of the Illegal
23 Immigration Reform and Immigrant Responsi-
24 bility Act of 1996 (division C of Public Law
25 104–208; 8 U.S.C. 1324a note), as in effect the

1 minute before the date of the enactment of this
2 Act, shall participate in the System described in
3 section 274A(d) of the Immigration and Na-
4 tionality Act, as amended by subsection (a), to
5 the same extent and in the same manner that
6 the employer participated in such E-Verify Pro-
7 gram.

8 (3) CONSTRUCTION.—The repeal made by para-
9 graph (1) may not be construed to limit the author-
10 ity of the Secretary to allow or continue to allow the
11 participation in such System of employers who have
12 participated in such E-Verify Program, as in effect
13 on the minute before the date of the enactment of
14 this Act.

15 (f) CONFORMING AMENDMENT.—Section 274(a) (8
16 U.S.C. 1324(a)) is amended—

17 (1) by striking paragraph (3); and

18 (2) by redesignating paragraph (4) as para-
19 graph (3).

20 **SEC. 3102. INCREASING SECURITY AND INTEGRITY OF SO-**
21 **CIAL SECURITY CARDS.**

22 (a) FRAUD-RESISTANT, TAMPER-RESISTANT, WEAR-
23 RESISTANT, AND IDENTITY THEFT-RESISTANT SOCIAL
24 SECURITY CARDS.—

25 (1) ISSUANCE.—

1 (A) PRELIMINARY WORK.—Not later than
2 180 days after the date of the enactment of this
3 Act, the Commissioner of Social Security shall
4 begin work to administer and issue fraud-resist-
5 ant, tamper-resistant, wear-resistant, and iden-
6 tity theft-resistant social security cards.

7 (B) COMPLETION.—Not later than 5 years
8 after the date of the enactment of this Act, the
9 Commissioner of Social Security shall issue only
10 social security cards determined to be fraud-re-
11 sistant, tamper-resistant, wear-resistant, and
12 identity theft-resistant.

13 (2) AMENDMENT.—

14 (A) IN GENERAL.—Section 205(c)(2)(G) of
15 the Social Security Act (42 U.S.C.
16 405(c)(2)(G)) is amended by striking the sec-
17 ond sentence and inserting the following: “The
18 social security card shall be fraud-resistant,
19 tamper-resistant, wear-resistant, and identity
20 theft-resistant.”.

21 (B) EFFECTIVE DATE.—The amendment
22 made by subparagraph (A) shall take effect on
23 the date that is 5 years after the date of the
24 enactment of this Act.

1 (3) AUTHORIZATION OF APPROPRIATION.—

2 There are authorized to be appropriated, from the
3 Comprehensive Immigration Reform Trust Fund es-
4 tablished under section 9(a)(1), such sums as may
5 be necessary to carry out this section and the
6 amendments made by this section.

7 (4) EMERGENCY DESIGNATION FOR CONGRES-
8 SIONAL ENFORCEMENT.—In the Senate, amounts
9 made available under this subsection are designated
10 as an emergency requirement pursuant to section
11 403(a) of S. Con. Res. 13 (111th Congress), the
12 concurrent resolution on the budget for fiscal year
13 2010.

14 (5) EMERGENCY DESIGNATION FOR STATUTORY
15 PAYGO.—Amounts made available under this sub-
16 section are designated as an emergency requirement
17 under section 4(g) of the Statutory Pay-As-You-Go
18 Act of 2010 (Public Law 111–139; 2 U.S.C.
19 933(g)).

20 (b) MULTIPLE CARDS.—Section 205(e)(2)(G) of the
21 Social Security Act (42 U.S.C. 405(e)(2)(G)), as amended
22 by subsection (a)(2), is amended—

23 (1) by inserting “(i)” after “(G)”; and

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

1 “(ii) The Commissioner of Social Security shall re-
2 strict the issuance of multiple replacement social security
3 cards to any individual to 3 per year and 10 for the life
4 of the individual, except that the Commissioner may allow
5 for reasonable exceptions from the limits under this clause
6 on a case-by-case basis in compelling circumstances.”.

7 (c) CRIMINAL PENALTIES.—

8 (1) SOCIAL SECURITY FRAUD.—

9 (A) IN GENERAL.—Chapter 47 of title 18,
10 United States Code, is amended by inserting at
11 the end the following:

12 **“§ 1041. Social security fraud**

13 “Any person who—

14 “(1) knowingly possesses or uses a social secu-
15 rity account number or social security card knowing
16 that the number or card was obtained from the
17 Commissioner of Social Security by means of fraud
18 or false statement;

19 “(2) knowingly and falsely represents a number
20 to be the social security account number assigned by
21 the Commissioner of Social Security to him or her
22 or to another person, when such number is known
23 not to be the social security account number as-
24 signed by the Commissioner of Social Security to
25 him or her or to such other person;

1 “(3) knowingly, and without lawful authority,
2 buys, sells, or possesses with intent to buy or sell a
3 social security account number or a social security
4 card that is or purports to be a number or card
5 issued by the Commissioner of Social Security;

6 “(4) knowingly alters, counterfeits, forges, or
7 falsely makes a social security account number or a
8 social security card;

9 “(5) knowingly uses, distributes, or transfers a
10 social security account number or a social security
11 card knowing the number or card to be intentionally
12 altered, counterfeited, forged, falsely made, or sto-
13 len; or

14 “(6) without lawful authority, knowingly pro-
15 duces or acquires for any person a social security ac-
16 count number, a social security card, or a number
17 or card that purports to be a social security account
18 number or social security card,

19 shall be fined under this title, imprisoned not more than
20 5 years, or both.”.

21 (B) TABLE OF SECTIONS AMENDMENT.—

22 The table of sections for chapter 47 of title 18,
23 United States Code, is amended by adding after
24 the item relating to section 1040 the following:

“1041. Social security fraud.”.

25 (2) INFORMATION DISCLOSURE.—

1 (A) IN GENERAL.—Notwithstanding any
2 other provision of law and subject to subpara-
3 graph (B), the Commissioner of Social Security
4 shall disclose for the purpose of investigating a
5 violation of section 1041 of title 18, United
6 States Code, or section 274A, 274B, or 274C
7 of the Immigration and Nationality Act (8
8 U.S.C. 1324a, 1324b, and 1324c), after receiv-
9 ing a written request from an officer in a super-
10 visory position or higher official of any Federal
11 law enforcement agency, the following records
12 of the Social Security Administration:

13 (i) Records concerning the identity,
14 address, location, or financial institution
15 accounts of the holder of a social security
16 account number or social security card.

17 (ii) Records concerning the applica-
18 tion for and issuance of a social security
19 account number or social security card.

20 (iii) Records concerning the existence
21 or nonexistence of a social security account
22 number or social security card.

23 (B) LIMITATION.—The Commissioner of
24 Social Security shall not disclose any tax return
25 or tax return information pursuant to subpara-

1 graph (A) except as authorized by section 6103
2 of the Internal Revenue Code of 1986.

3 **SEC. 3103. INCREASING SECURITY AND INTEGRITY OF IM-**
4 **MIGRATION DOCUMENTS.**

5 Not later than 1 year after the date of the enactment
6 of this Act, the Secretary shall submit a report to Con-
7 gress on the feasibility, advantages, and disadvantages of
8 including, in addition to a photograph, other biometric in-
9 formation on each employment authorization document
10 issued by the Department.

11 **SEC. 3104. RESPONSIBILITIES OF THE SOCIAL SECURITY**
12 **ADMINISTRATION.**

13 Title XI of the Social Security Act (42 U.S.C. 1301
14 et seq.) is amended by adding at the end the following
15 new part:

16 “PART E—EMPLOYMENT VERIFICATION
17 “RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL
18 SECURITY

19 “SEC. 1186. (a) CONFIRMATION OF EMPLOYMENT
20 VERIFICATION DATA.—As part of the employment
21 verification system established by the Secretary of Home-
22 land Security under the provisions of section 274A of the
23 Immigration and Nationality Act (8 U.S.C. 1324a) (in
24 this section referred to as the ‘System’), the Commissioner
25 of Social Security shall, subject to the provisions of section

1 274A(d) of the Immigration and Nationality Act (8 U.S.C.
2 1324a(d)), establish a reliable, secure method that, oper-
3 ating through the System and within the time periods
4 specified in section 274A(d) of such Act—

5 “(1) compares the name, date of birth, social
6 security account number, and available citizenship
7 information provided in an inquiry against such in-
8 formation maintained by the Commissioner in order
9 to confirm (or not confirm) the validity of the infor-
10 mation provided regarding an individual whose iden-
11 tity and employment eligibility must be confirmed;

12 “(2) determines the correspondence of the
13 name, date of birth, and number;

14 “(3) determines whether the name and number
15 belong to an individual who is deceased according to
16 the records maintained by the Commissioner;

17 “(4) determines whether an individual is a na-
18 tional of the United States, as defined in section
19 101(a)(22) of the Immigration and Nationality Act
20 (8 U.S.C. 1101(a)(22)); and

21 “(5) determines whether the individual has pre-
22 sented a social security account number that is not
23 valid for employment.

24 “(b) PROHIBITION.—The System shall not disclose or
25 release social security information to employers through

1 the confirmation system (other than such confirmation or
2 nonconfirmation, information provided by the employer to
3 the System, or the reason for the issuance of a further
4 action notice).”.

5 **SEC. 3105. IMPROVED PROHIBITION ON DISCRIMINATION**
6 **BASED ON NATIONAL ORIGIN OR CITIZEN-**
7 **SHIP STATUS.**

8 (a) IN GENERAL.—Section 274B(a) (8 U.S.C.
9 1324b(a)) is amended to read as follows:

10 “(a) PROHIBITION ON DISCRIMINATION BASED ON
11 NATIONAL ORIGIN OR CITIZENSHIP STATUS.—

12 “(1) PROHIBITION ON DISCRIMINATION GEN-
13 ERALLY.—It is an unfair immigration-related em-
14 ployment practice for a person, other entity, or em-
15 ployment agency, to discriminate against any indi-
16 vidual (other than an unauthorized alien defined in
17 section 274A(b)) because of such individual’s na-
18 tional origin or citizenship status, with respect to the
19 following:

20 “(A) The hiring of the individual for em-
21 ployment.

22 “(B) The verification of the individual’s
23 eligibility to work in the United States.

24 “(C) The discharging of the individual
25 from employment.

1 “(2) EXCEPTIONS.—Paragraph (1) shall not
2 apply to the following:

3 “(A) A person, other entity, or employer
4 that employs 3 or fewer employees, except for
5 an employment agency.

6 “(B) A person’s or entity’s discrimination
7 because of an individual’s national origin if the
8 discrimination with respect to that employer,
9 person, or entity and that individual is covered
10 under section 703 of the Civil Rights Act of
11 1964 (42 U.S.C. 2000e–2), unless the discrimi-
12 nation is related to an individual’s verification
13 of employment authorization.

14 “(C) Discrimination because of citizenship
15 status which—

16 “(i) is otherwise required in order to
17 comply with a provision of Federal, State,
18 or local law related to law enforcement;

19 “(ii) is required by Federal Govern-
20 ment contract; or

21 “(iii) the Secretary or Attorney Gen-
22 eral determines to be essential for an em-
23 ployer to do business with an agency or de-
24 partment of the Federal Government or a
25 State, local, or tribal government.

1 “(3) ADDITIONAL EXCEPTION PROVIDING
2 RIGHT TO PREFER EQUALLY QUALIFIED CITIZENS.—
3 Notwithstanding any other provision of this section,
4 it is not an unfair immigration-related employment
5 practice for an employer (as defined in section
6 274A(b)) to prefer to hire, recruit, or refer for a fee
7 an individual who is a citizen or national of the
8 United States over another individual who is an
9 alien if the 2 individuals are equally qualified.

10 “(4) UNFAIR IMMIGRATION-RELATED EMPLOY-
11 MENT PRACTICES RELATING TO THE SYSTEM.—It is
12 also an unfair immigration-related employment prac-
13 tice for a person, other entity, or employment agen-
14 cy—

15 “(A) to discharge or constructively dis-
16 charge an individual solely due to a further ac-
17 tion notice issued by the Employment
18 Verification System created by section 274A
19 until the administrative appeal described in sec-
20 tion 274A(d)(6) is completed;

21 “(B) to use the System with regard to any
22 person for any purpose except as authorized by
23 section 274A(d);

24 “(C) to use the System to reverify the em-
25 ployment authorization of a current employee,

1 including an employee continuing in employ-
2 ment, other than reverification upon expiration
3 of employment authorization, or as otherwise
4 authorized under section 274A(d) or by regula-
5 tion;

6 “(D) to use the System selectively for em-
7 ployees, except where authorized by law;

8 “(E) to fail to provide to an individual any
9 notice required in section 274A(d) within the
10 relevant time period;

11 “(F) to use the System to deny workers’
12 employment or post-employment benefits;

13 “(G) to misuse the System to discriminate
14 based on national origin or citizenship status;

15 “(H) to require an employee or prospective
16 employee to use any self-verification feature of
17 the System or provide, as a condition of appli-
18 cation or employment, any self-verification re-
19 sults;

20 “(I) to use an immigration status
21 verification system, service, or method other
22 than those described in section 274A for pur-
23 poses of verifying employment eligibility; or

24 “(J) to grant access to document
25 verification or System data, to any individual or

1 entity other than personnel authorized to have
2 such access, or to fail to take reasonable safe-
3 guards to protect against unauthorized loss,
4 use, alteration, or destruction of System data.

5 “(5) PROHIBITION OF INTIMIDATION OR RETAL-
6 IATION.—It is also an unfair immigration-related
7 employment practice for a person, other entity, or
8 employment agency to intimidate, threaten, coerce,
9 or retaliate against any individual—

10 “(A) for the purpose of interfering with
11 any right or privilege secured under this sec-
12 tion; or

13 “(B) because the individual intends to file
14 or has filed a charge or a complaint, testified,
15 assisted, or participated in any manner in an
16 investigation, proceeding, or hearing under this
17 section.

18 “(6) TREATMENT OF CERTAIN DOCUMENTARY
19 PRACTICES AS EMPLOYMENT PRACTICES.—A per-
20 son’s, other entity’s, or employment agency’s re-
21 quest, for purposes of verifying employment eligi-
22 bility, for more or different documents than are re-
23 quired under section 274A, or for specific docu-
24 ments, or refusing to honor documents tendered that

1 reasonably appear to be genuine shall be treated as
2 an unfair immigration-related employment practice.

3 “(7) PROHIBITION OF WITHHOLDING EMPLOY-
4 MENT RECORDS.—It is an unfair immigration-re-
5 lated employment practice for an employer that is
6 required under Federal, State, or local law to main-
7 tain records documenting employment, including
8 dates or hours of work and wages received, to fail
9 to provide such records to any employee upon re-
10 quest.

11 “(8) PROFESSIONAL, COMMERCIAL, AND BUSI-
12 NESS LICENSES.—An individual who is authorized to
13 be employed in the United States may not be denied
14 a professional, commercial, or business license on
15 the basis of his or her immigration status.

16 “(9) EMPLOYMENT AGENCY DEFINED.—In this
17 section, the term ‘employment agency’ means any
18 employer, person, or entity regularly undertaking
19 with or without compensation to procure employees
20 for an employer or to procure for employees oppor-
21 tunities to work for an employer and includes an
22 agent of such employer, person, or entity.”.

23 (b) REFERRAL BY EEOC.—Section 274B(b) (8
24 U.S.C. 1324b(b)) is amended by adding at the end the
25 following:

1 “(3) REFERRAL BY EEOC.—The Equal Employ-
2 ment Opportunity Commission shall refer all matters
3 alleging immigration-related unfair employment
4 practices filed with the Commission, including those
5 alleging violations of paragraphs (1), (4), (5), and
6 (6) of subsection (a) to the Special Counsel for Im-
7 migration-Related Unfair Employment Practices of
8 the Department of Justice.”.

9 (c) AUTHORIZATION OF APPROPRIATIONS.—Section
10 274B(l)(3) (8 U.S.C. 1324b(l)(3)) is amended by striking
11 the period at the end and inserting “and an additional
12 \$40,000,000 for each of fiscal years 2014 through 2016.”.

13 (d) FINES.—

14 (1) IN GENERAL.—Section 274B(g)(2)(B) (8
15 U.S.C. 1324b(g)(2)(B)) is amended by striking
16 clause (iv) and inserting the following:

17 “(iv) to pay any applicable civil pen-
18 alties prescribed below, the amounts of
19 which may be adjusted periodically to ac-
20 count for inflation as provided by law—

21 “(I) except as provided in sub-
22 clauses (II) through (IV), to pay a
23 civil penalty of not less than \$2,000
24 and not more than \$5,000 for each in-

1 individual subjected to an unfair immi-
2 gration-related employment practice;

3 “(II) except as provided in sub-
4 clauses (III) and (IV), in the case of
5 an employer, person, or entity pre-
6 viously subject to a single order under
7 this paragraph, to pay a civil penalty
8 of not less than \$4,000 and not more
9 than \$10,000 for each individual sub-
10 jected to an unfair immigration-re-
11 lated employment practice;

12 “(III) except as provided in sub-
13 clause (IV), in the case of an em-
14 ployer, person, or entity previously
15 subject to more than 1 order under
16 this paragraph, to pay a civil penalty
17 of not less than \$8,000 and not more
18 than \$25,000 for each individual sub-
19 jected to an unfair immigration-re-
20 lated employment practice; and

21 “(IV) in the case of an unfair im-
22 migration-related employment practice
23 described in paragraphs (4) through
24 (7) of subsection (a), to pay a civil
25 penalty of not less than \$500 and not

1 more than \$2,000 for each individual
2 subjected to an unfair immigration-re-
3 lated employment practice.”.

4 (2) EFFECTIVE DATE.—The amendment made
5 by paragraph (1) shall take effect on the date that
6 is 1 year after the date of the enactment of this Act
7 and apply to violations occurring on or after such
8 date of enactment.

9 **SEC. 3106. RULEMAKING.**

10 (a) INTERIM FINAL REGULATIONS.—

11 (1) IN GENERAL.—Not later than 1 year after
12 the date of the enactment of this Act—

13 (A) the Secretary, shall issue regulations
14 implementing sections 3101 and 3104 and the
15 amendments made by such sections (except for
16 section 274A(d)(7) of the Immigration and Na-
17 tionality Act); and

18 (B) the Attorney General shall issue regu-
19 lations implementing section 274A(d)(7) of the
20 Immigration and Nationality Act, as added by
21 section 3101, section 3105, and the amend-
22 ments made by such sections.

23 (2) EFFECTIVE DATE.—Regulations issued pur-
24 suant to paragraph (1) shall be effective immediately
25 on an interim basis, but are subject to change and

1 revision after public notice and opportunity for a pe-
2 riod for public comment.

3 (b) FINAL REGULATIONS.—Within a reasonable time
4 after publication of the interim regulations under sub-
5 section (a), the Secretary, in consultation with the Com-
6 missioner of Social Security and the Attorney General,
7 shall publish final regulations implementing this subtitle.

8 **SEC. 3107. OFFICE OF THE SMALL BUSINESS AND EM-**
9 **PLOYEE ADVOCATE.**

10 (a) ESTABLISHMENT OF SMALL BUSINESS AND EM-
11 PLOYEE ADVOCATE.—The Secretary shall establish and
12 maintain within U.S. Citizenship and Immigration Serv-
13 ices the Office of the Small Business and Employee Advo-
14 cate (in this section referred to as the “Office”). The pur-
15 pose of the Office shall be to assist small businesses and
16 individuals in complying with the requirements of section
17 274A of the Immigration and Nationality Act (8 U.S.C.
18 1324a), as amended by this Act, including the resolution
19 of conflicts arising in the course of attempted compliance
20 with such requirements.

21 (b) FUNCTIONS.—The functions of the Office shall
22 include, but not be limited to, the following:

23 (1) Informing small businesses and individuals
24 about the verification practices required by section
25 274A of the Immigration and Nationality Act, in-

1 including, but not limited to, the document verification
2 requirements and the employment verification sys-
3 tem requirements under subsections (c) and (d) of
4 that section.

5 (2) Assisting small businesses and individuals
6 in addressing allegedly erroneous further action no-
7 tices and nonconfirmations issued under subsection
8 (d) of section 274A of the Immigration and Nation-
9 ality Act.

10 (3) Informing small businesses and individuals
11 of the financial liabilities and criminal penalties that
12 apply to violations and failures to comply with the
13 requirements of section 274A of the Immigration
14 and Nationality Act, including, but not limited to, by
15 issuing best practices for compliance with that sec-
16 tion.

17 (4) To the extent practicable, proposing
18 changes to the Secretary in the administrative prac-
19 tices of the employment verification system required
20 under subsection (d) of section 274A of the Immi-
21 gration and Nationality Act to mitigate the problems
22 identified under paragraph (2).

23 (5) Making recommendations through the Sec-
24 retary to Congress for legislative action to mitigate
25 such problems.

1 (c) AUTHORITY TO ISSUE ASSISTANCE ORDER.—

2 (1) IN GENERAL.—Upon application filed by a
3 small business or individual with the Office (in such
4 form, manner, and at such time as the Secretary
5 shall by regulations prescribe), the Office may issue
6 an assistance order if—

7 (A) the Office determines the small busi-
8 ness or individual is suffering or about to suffer
9 a significant hardship as a result of the manner
10 in which the employment verification laws
11 under subsections (c) and (d) of section 274A
12 of the Immigration and Nationality Act are
13 being administered by the Secretary; or

14 (B) the small business or individual meets
15 such other requirements as are set forth in reg-
16 ulations prescribed by the Secretary.

17 (2) DETERMINATION OF HARDSHIP.—For pur-
18 poses of paragraph (1), a significant hardship shall
19 include—

20 (A) an immediate threat of adverse action;

21 (B) a delay of more than 60 days in resolv-
22 ing employment verification system problems;

23 (C) the incurring by the small business or
24 individual of significant costs if relief is not
25 granted; or

1 (D) irreparable injury to, or a long-term
2 adverse impact on, the small business or indi-
3 vidual if relief is not granted.

4 (3) STANDARDS WHEN ADMINISTRATIVE GUID-
5 ANCE NOT FOLLOWED.—In cases where a U.S. Citi-
6 zenship and Immigration Services employee is not
7 following applicable published administrative guid-
8 ance, the Office shall construe the factors taken into
9 account in determining whether to issue an assist-
10 ance order under this subsection in the manner most
11 favorable to the small business or individual.

12 (4) TERMS OF ASSISTANCE ORDER.—The terms
13 of an assistance order under this subsection may re-
14 quire the Secretary within a specified time period—

15 (A) to determine whether any employee is
16 or is not authorized to work in the United
17 States; or

18 (B) to abate any penalty under section
19 274A of the Immigration and Nationality Act
20 that the Office determines is arbitrary, capri-
21 cious, or disproportionate to the underlying of-
22 fense.

23 (5) AUTHORITY TO MODIFY OR RESCIND.—Any
24 assistance order issued by the Office under this sub-
25 section may be modified or rescinded—

1 (A) only by the Office, the Director or
2 Deputy Director of U.S. Citizenship and Immi-
3 gration Services, or the Secretary or the Sec-
4 retary's designee; and

5 (B) if rescinded by the Director or Deputy
6 Director of U.S. Citizenship and Immigration
7 Services, only if a written explanation of the
8 reasons of such official for the modification or
9 rescission is provided to the Office.

10 (6) SUSPENSION OF RUNNING OF PERIOD OF
11 LIMITATION.—The running of any period of limita-
12 tion with respect to an action described in paragraph
13 (4)(A) shall be suspended for—

14 (A) the period beginning on the date of the
15 small business or individual's application under
16 paragraph (1) and ending on the date of the
17 Office's decision with respect to such applica-
18 tion; and

19 (B) any period specified by the Office in
20 an assistance order issued under this subsection
21 pursuant to such application.

22 (7) INDEPENDENT ACTION OF OFFICE.—Noth-
23 ing in this subsection shall prevent the Office from
24 taking any action in the absence of an application
25 under paragraph (1).

1 (d) ACCESSIBILITY TO THE PUBLIC.—

2 (1) IN PERSON, ONLINE, AND TELEPHONE AS-
3 SISTANCE.—The Office shall provide information
4 and assistance specified in subsection (b) in person
5 at locations designated by the Secretary, online
6 through an Internet website of the Department
7 available to the public, and by telephone.

8 (2) AVAILABILITY TO ALL EMPLOYERS.—In
9 making information and assistance available, the Of-
10 fice shall prioritize the needs of small businesses and
11 individuals. However, the information and assistance
12 available through the Office shall be available to any
13 employer.

14 (e) AVOIDING DUPLICATION THROUGH COORDINA-
15 TION.—In the discharge of the functions of the Office, the
16 Secretary shall consult with the Secretary of Labor, the
17 Secretary of Agriculture, the Commissioner, the Attorney
18 General, the Equal Employment Opportunity Commission,
19 and the Administrator of the Small Business Administra-
20 tion in order to avoid duplication of efforts across the Fed-
21 eral Government.

22 (f) DEFINITIONS.—In this section:

23 (1) The term “employer” has the meaning
24 given that term in section 274A(b) of the Immigra-
25 tion and Nationality Act.

1 (2) The term “small business” means an em-
2 ployer with 49 or fewer employees.

3 (g) FUNDING.—There shall be appropriated, from the
4 Comprehensive Immigration Reform Trust Fund estab-
5 lished by section 9(a)(1) of this Act, such sums as may
6 be necessary to carry out the functions of the Office.

7 **Subtitle B—Protecting United** 8 **States Workers**

9 **SEC. 3201. PROTECTIONS FOR VICTIMS OF SERIOUS VIOLA-** 10 **TIONS OF LABOR AND EMPLOYMENT LAW OR** 11 **CRIME.**

12 (a) IN GENERAL.—Section 101(a)(15)(U) (8 U.S.C.
13 1101(a)(15)(U)) is amended—

14 (1) in clause (i)—

15 (A) by amending subclause (I) to read as
16 follows:

17 “(I) the alien—

18 “(aa) has suffered substantial
19 physical or mental abuse or substan-
20 tial harm as a result of having been a
21 victim of criminal activity described in
22 clause (iii) or of a covered violation
23 described in clause (iv); or

24 “(bb) is a victim of criminal ac-
25 tivity described in clause (iii) or of a

1 covered violation described in clause
2 (iv) and would suffer extreme hard-
3 ship upon removal;”;

4 (B) in subclause (II), by inserting “, or a
5 covered violation resulting in a claim described
6 in clause (iv) that is not the subject of a frivo-
7 lous lawsuit by the alien” before the semicolon
8 at the end; and

9 (C) by amending subclauses (III) and (IV)
10 to read as follows:

11 “(III) the alien (or in the case of an
12 alien child who is younger than 16 years of
13 age, the parent, legal guardian, or next
14 friend of the alien) has been helpful, is
15 being helpful, or is likely to be helpful to—

16 “(aa) a Federal, State, or local
17 law enforcement official, a Federal,
18 State, or local prosecutor, a Federal,
19 State, or local judge, the Department
20 of Homeland Security, the Equal Em-
21 ployment Opportunity Commission,
22 the Department of Labor, or other
23 Federal, State, or local authorities in-
24 vestigating or prosecuting criminal ac-
25 tivity described in clause (iii); or

1 “(bb) any Federal, State, or local
2 governmental agency or judge inves-
3 tigating, prosecuting, or seeking civil
4 remedies for any cause of action,
5 whether criminal, civil, or administra-
6 tive, arising from a covered violation
7 described in clause (iv) and presents a
8 certification from such Federal, State,
9 or local governmental agency or judge
10 attesting that the alien has been help-
11 ful, is being helpful, or is likely to be
12 helpful to such agency in the inves-
13 tigation, prosecution, or adjudication
14 arising from a covered violation de-
15 scribed in clause (iv); and

16 “(IV) the criminal activity described
17 in clause (iii) or the covered violation de-
18 scribed in clause (iv)—

19 “(aa) violated the laws of the
20 United States; or

21 “(bb) occurred in the United
22 States (including Indian country and
23 military installations) or the terri-
24 tories and possessions of the United
25 States;”;

1 (2) in clause (ii)(II), by striking “and” at the
2 end;

3 (3) by moving clause (iii) 2 ems to the left;

4 (4) in clause (iii), by inserting “child abuse;
5 elder abuse;” after “stalking;”;

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

7 “(iv) a covered violation referred to in this
8 clause is—

9 “(I) a serious violation involving 1 or more
10 of the following or any similar activity in viola-
11 tion of any Federal, State, or local law: serious
12 workplace abuse, exploitation, retaliation, or
13 violation of whistleblower protections;

14 “(II) a violation giving rise to a civil cause
15 of action under section 1595 of title 18, United
16 States Code; or

17 “(III) a violation resulting in the depriva-
18 tion of due process or constitutional rights.”.

19 (b) SAVINGS PROVISION.—Nothing in section
20 101(a)(15)(U)(iv)(I) of the Immigration and Nationality
21 Act, as added by subsection (a), may be construed as al-
22 tering the definition of retaliation or discrimination under
23 any other provision of law.

1 (c) TEMPORARY STAY OF REMOVAL.—Section 274A
2 (8 U.S.C. 1324a), as amended by section 3101, is further
3 amended—

4 (1) in subsection (e) by adding at the end the
5 following:

6 “(10) CONDUCT IN ENFORCEMENT ACTIONS.—
7 If the Secretary undertakes an enforcement action
8 at a facility about which a bona fide workplace claim
9 has been filed or is contemporaneously filed, or as
10 a result of information provided to the Secretary in
11 retaliation against employees for exercising their
12 rights related to a bona fide workplace claim, the
13 Secretary shall ensure that—

14 “(A) any aliens arrested or detained who
15 are necessary for the investigation or prosecu-
16 tion of a bona fide workplace claim or criminal
17 activity (as described in subparagraph (T) or
18 (U) of section 101(a)(15)) are not removed
19 from the United States until after the Sec-
20 retary—

21 “(i) notifies the appropriate law en-
22 forcement agency with jurisdiction over
23 such violations or criminal activity; and

24 “(ii) provides such agency with the
25 opportunity to interview such aliens;

1 “(B) no aliens entitled to a stay of removal
2 or abeyance of removal proceedings under this
3 section are removed; and

4 “(C) the Secretary shall stay the removal
5 of an alien who—

6 “(i) has filed a claim regarding a cov-
7 ered violation described in clause (iv) of
8 section 101(a)(15)(U) and is the victim of
9 the same violations under an existing in-
10 vestigation;

11 “(ii) is a material witness in any
12 pending or anticipated proceeding involving
13 a bona fide workplace claim or civil rights
14 claim; or

15 “(iii) has filed for relief under such
16 section if the alien is working with law en-
17 forcement as described in clause (i)(III) of
18 such section.”; and

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

20 “(m) VICTIMS OF CRIMINAL ACTIVITY OR LABOR
21 AND EMPLOYMENT VIOLATIONS.—The Secretary of
22 Homeland Security may permit an alien to remain tempo-
23 rarily in the United States and authorize the alien to en-
24 gage in employment in the United States if the Secretary
25 determines that the alien—

1 “(1) has filed for relief under section
2 101(a)(15)(U); or

3 “(2)(A) has filed, or is a material witness to, a
4 bona fide claim or proceedings resulting from a cov-
5 ered violation (as defined in section
6 101(a)(15)(U)(iv)); and

7 “(B) has been helpful, is being helpful, or is
8 likely to be helpful, in the investigation, prosecution
9 of, or pursuit of civil remedies related to the claim
10 arising from a covered violation, to—

11 “(i) a Federal, State, or local law enforce-
12 ment official;

13 “(ii) a Federal, State, or local prosecutor;

14 “(iii) a Federal, State, or local judge;

15 “(iv) the Department of Homeland Secu-
16 rity;

17 “(v) the Equal Employment Opportunity
18 Commission; or

19 “(vi) the Department of Labor.”.

20 (d) CONFORMING AMENDMENTS.—Section 214(p) (8
21 U.S.C. 1184(p)) is amended—

22 (1) in paragraph (1), by striking “in section
23 101(a)(15)(U)(iii).” both places it appears and in-
24 serting “in clause (iii) of section 101(a)(15)(U) or
25 investigating, prosecuting, or seeking civil remedies

1 for claims resulting from a covered violation de-
2 scribed in clause (iv) of such section.”; and

3 (2) in the first sentence of paragraph (6)—

4 (A) by striking “in section
5 101(a)(15)(U)(iii)” and inserting “in clause
6 (iii) of section 101(a)(15)(U) or claims result-
7 ing from a covered violation described in clause
8 (iv) of such section”; and

9 (B) by inserting “or claim arising from a
10 covered violation” after “prosecution of such
11 criminal activity”.

12 (e) MODIFICATION OF LIMITATION ON AUTHORITY
13 TO ADJUST STATUS FOR VICTIMS OF CRIMES.—Section
14 245(m)(1) (8 U.S.C. 1255(m)(1)) is amended, in the mat-
15 ter before subparagraph (A), by inserting “or an investiga-
16 tion or prosecution regarding a workplace or civil rights
17 claim” after “prosecution”.

18 (f) EXPANSION OF LIMITATION ON SOURCES OF IN-
19 FORMATION THAT MAY BE USED TO MAKE ADVERSE
20 DETERMINATIONS.—

21 (1) IN GENERAL.—Section 384(a)(1) of the Il-
22 legal Immigration Reform and Immigrant Responsi-
23 bility Act of 1996 (8 U.S.C. 1367(a)(1)) is amend-
24 ed—

1 (A) in each of subparagraphs (A) through
2 (D), by striking the comma at the end and in-
3 serting a semicolon;

4 (B) subparagraph (E), by striking “the
5 criminal activity,” and inserting “abuse and the
6 criminal activity or bona fide workplace claim
7 (as defined in subsection (e));”;

8 (C) in subparagraph (F), by striking “, the
9 trafficker or perpetrator,” and inserting “), the
10 trafficker or perpetrator; or”;

11 (D) by inserting after subparagraph (F)
12 the following:

13 “(G) the alien’s employer; or”.

14 (2) WORKPLACE CLAIM DEFINED.—Section 384
15 of such Act (8 U.S.C. 1367) is amended by adding
16 at the end the following:

17 “(e) WORKPLACE CLAIMS.—

18 “(1) WORKPLACE CLAIMS DEFINED.—

19 “(A) IN GENERAL.—In subsection (a)(1),
20 the term ‘workplace claim’ means any claim, pe-
21 tition, charge, complaint, or grievance filed
22 with, or submitted to, a Federal, State, or local
23 agency or court, relating to the violation of ap-
24 plicable Federal, State, or local labor or employ-
25 ment laws.

1 “(B) CONSTRUCTION.—Subparagraph (A)
2 may not be construed to alter what constitutes
3 retaliation or discrimination under any other
4 provision of law.

5 “(2) PENALTY FOR FALSE CLAIMS.—Any per-
6 son who knowingly presents a false or fraudulent
7 claim to a law enforcement official in relation to a
8 covered violation described in section
9 101(a)(15)(U)(iv) of the Immigration and Nation-
10 ality Act for the purpose of obtaining a benefit
11 under this section shall be subject to a civil penalty
12 of not more than \$1,000.

13 “(3) LIMITATION ON STAY OF ADVERSE DETER-
14 MINATIONS.—In the case of an alien applying for
15 status under section 101(a)(15)(U) of the Immigra-
16 tion and Nationality Act and seeking relief under
17 that section, the prohibition on adverse determina-
18 tions under subsection (a) shall expire on the date
19 that the alien’s application for status under such
20 section is denied and all opportunities for appeal of
21 the denial have been exhausted.”.

22 (g) REMOVAL PROCEEDINGS.—Section 239(e) (8
23 U.S.C. 1229(e)) is amended—

24 (1) in paragraph (1)—

1 (A) by striking “In cases where” and in-
2 serting “If”; and

3 (B) by striking “paragraph (2),” and in-
4 serting “paragraph (2) or as a result of infor-
5 mation provided to the Secretary of Homeland
6 Security in retaliation against individuals for
7 exercising or attempting to exercise their em-
8 ployment rights or other legal rights,”; and

9 (2) in paragraph (2), by adding at the end the
10 following:

11 “(C) At a facility about which a bona fide
12 workplace claim has been filed or is contem-
13 poraneously filed.”.

14 **SEC. 3202. EMPLOYMENT VERIFICATION SYSTEM EDU-**
15 **CATION FUNDING.**

16 (a) **DISPOSITION OF CIVIL PENALTIES.**—Penalties
17 collected under subsections (e)(4) and (f)(3) of section
18 274A of the Immigration and Nationality Act, amended
19 by section 3101, shall be deposited, as offsetting receipts,
20 into the Comprehensive Immigration Reform Trust Fund
21 established under section 9(a)(1).

22 (b) **EXPENDITURES.**—Amounts deposited into the
23 Trust Fund under subsection (a) shall be made available
24 to the Secretary and the Attorney General to provide edu-
25 cation to employers and employees regarding the require-

1 ments, obligations, and rights under the Employment
2 Verification System.

3 (c) DETERMINATION OF BUDGETARY EFFECTS.—

4 (1) EMERGENCY DESIGNATION FOR CONGRES-
5 SIONAL ENFORCEMENT.—In the Senate, amounts
6 made available under this section are designated as
7 an emergency requirement pursuant to section
8 403(a) of S. Con. Res. 13 (111th Congress), the
9 concurrent resolution on the budget for fiscal year
10 2010.

11 (2) EMERGENCY DESIGNATION FOR STATUTORY
12 PAYGO.—Amounts made available under this section
13 are designated as an emergency requirement under
14 section 4(g) of the Statutory Pay-As-You-Go Act of
15 2010 (Public Law 111–139; 2 U.S.C. 933(g)).

16 **SEC. 3203. DIRECTIVE TO THE UNITED STATES SEN-**
17 **TENCING COMMISSION.**

18 (a) IN GENERAL.—Pursuant to its authority under
19 section 994 of title 28, United States Code, and in accord-
20 ance with subsection (b), the United States Sentencing
21 Commission shall promulgate sentencing guidelines or
22 amend existing sentencing guidelines to modify, if appro-
23 priate, the penalties imposed on persons convicted of of-
24 fenses under—

1 (1) section 274A of the Immigration and Na-
2 tionality Act (8 U.S.C. 1324a), as amended by sec-
3 tion 3101;

4 (2) section 16 of the Fair Labor Standards Act
5 of 1938 (29 U.S.C. 216); and

6 (3) any other Federal law covering similar con-
7 duct.

8 (b) REQUIREMENTS.—In carrying out subsection (a),
9 the Sentencing Commission shall provide sentencing en-
10 hancements for any person convicted of an offense de-
11 scribed in subsection (a) if such offense involves—

12 (1) the intentional confiscation of identification
13 documents;

14 (2) corruption, bribery, extortion, or robbery;

15 (3) sexual abuse;

16 (4) serious bodily injury;

17 (5) an intent to defraud; or

18 (6) a pattern of conduct involving multiple vio-
19 lations of law that—

20 (A) creates, through knowing and inten-
21 tional conduct, a risk to the health or safety of
22 any victim; or

23 (B) denies payments due to victims for
24 work completed.

1 **Subtitle C—Other Provisions**

2 **SEC. 3301. FUNDING.**

3 (a) ESTABLISHMENT OF THE INTERIOR ENFORCE-
4 MENT ACCOUNT.—There is hereby established in the
5 Treasury of the United States an account which shall be
6 known as the Interior Enforcement Account.

7 (b) APPROPRIATIONS.—There are authorized to be
8 appropriated to the Interior Enforcement Account
9 \$1,000,000,000 to carry out this title and the amend-
10 ments made by this title, including the following appro-
11 priations:

12 (1) In each of the 5 years beginning on the date
13 of the enactment of this Act, the appropriations nec-
14 essary to increase to a level not less than 5,000, by
15 the end of such 5-year period, the total number of
16 personnel of the Department assigned exclusively or
17 principally to an office or offices in U.S. Citizenship
18 and Immigration Services and U.S. Immigration and
19 Customs Enforcement (and consistent with the mis-
20 sions of such agencies), dedicated to administering
21 the System, and monitoring and enforcing compli-
22 ance with sections 274A, 274B, and 274C of the
23 Immigration and Nationality Act (8 U.S.C. 1324a,
24 1324b, and 1324c), including compliance with the
25 requirements of the Electronic Verification System

1 established under section 274A(d) of the Immigra-
2 tion and Nationality Act (8 U.S.C. 1324a(d)), as
3 amended by section 3101. Such personnel shall per-
4 form compliance and monitoring functions, including
5 the following:

6 (A) Verify compliance of employers partici-
7 pating in such System with the requirements
8 for participation that are prescribed by the Sec-
9 retary.

10 (B) Monitor such System for multiple uses
11 of social security account numbers and immi-
12 gration identification numbers that could indi-
13 cate identity theft or fraud.

14 (C) Monitor such System to identify dis-
15 criminatory or unfair practices.

16 (D) Monitor such System to identify em-
17 ployers who are not using such System prop-
18 erly, including employers who fail to make
19 available appropriate records with respect to
20 their queries and any notices of confirmation,
21 nonconfirmation, or further action.

22 (E) Identify instances in which an em-
23 ployee alleges that an employer violated the em-
24 ployee's privacy or civil rights, or misused such

1 System, and create procedures for an employee
2 to report such an allegation.

3 (F) Analyze and audit the use of such Sys-
4 tem and the data obtained through such System
5 to identify fraud trends, including fraud trends
6 across industries, geographical areas, or em-
7 ployer size.

8 (G) Analyze and audit the use of such Sys-
9 tem and the data obtained through such System
10 to develop compliance tools as necessary to re-
11 spond to changing patterns of fraud.

12 (H) Provide employers with additional
13 training and other information on the proper
14 use of such System, including training related
15 to privacy and employee rights.

16 (I) Perform threshold evaluation of cases
17 for referral to the Special Counsel for Immigra-
18 tion-Related Unfair Employment Practices of
19 the Department of Justice or the Equal Em-
20 ployment Opportunity Commission, and other
21 officials or agencies with responsibility for en-
22 forcing anti-discrimination, civil rights, privacy,
23 or worker protection laws, as may be appro-
24 priate.

1 (J) Any other compliance and monitoring
2 activities that the Secretary determines are nec-
3 essary to ensure the functioning of such Sys-
4 tem.

5 (K) Investigate identity theft and fraud de-
6 tected through such System and undertake the
7 necessary enforcement or referral actions.

8 (L) Investigate use of or access to fraudu-
9 lent documents and undertake the necessary en-
10 forcement actions.

11 (M) Perform any other investigations that
12 the Secretary determines are necessary to en-
13 sure the lawful functioning of such System, and
14 undertake any enforcement actions necessary as
15 a result of such investigations.

16 (2) The appropriations necessary to acquire, in-
17 stall, and maintain technological equipment nec-
18 essary to support the functioning of such System
19 and the connectivity between U.S. Citizenship and
20 Immigration Services and U.S. Immigration and
21 Customs Enforcement, the Department of Justice,
22 and other agencies or officials with respect to the
23 sharing of information to support such System and
24 related immigration enforcement actions.

1 (3) The appropriations necessary to establish a
2 robust redress process for employees who wish to ap-
3 peal contested nonconfirmations to ensure the accu-
4 racy and fairness of such System.

5 (4) The appropriations necessary to provide a
6 means by which individuals may access their own
7 employment authorization data to ensure the accu-
8 racy of such data, independent of an individual's em-
9 ployer.

10 (5) The appropriations necessary to carry out
11 the identity authentication mechanisms described in
12 section 274A(c)(1)(F) of the Immigration and Na-
13 tionality Act, as amended by section 3101(a).

14 (6) The appropriations necessary for the Office
15 for Civil Rights and Civil Liberties and the Office of
16 Privacy of the Department to perform the respon-
17 sibilities of such Offices related to such System.

18 (7) The appropriations necessary to make
19 grants to States to support the States in assisting
20 the Federal Government in carrying out the provi-
21 sions of this title and the amendments made by this
22 title.

23 (c) ESTABLISHMENT OF REIMBURSABLE AGREE-
24 MENT BETWEEN THE DEPARTMENT OF HOMELAND SE-
25 CURITY AND THE SOCIAL SECURITY ADMINISTRATION.—

1 Effective for fiscal years beginning on or after the date
2 of enactment of this Act, the Secretary and the Commis-
3 sioner of Social Security shall enter into and maintain an
4 agreement that—

5 (1) provides funds to the Commissioner for the
6 full costs of the responsibilities of the Commissioner
7 under this section, including—

8 (A) acquiring, installing, and maintaining
9 technological equipment and systems necessary
10 for the fulfillment of the responsibilities of the
11 Commissioner under this section; and

12 (B) responding to individuals who contest
13 a further action notice provided by the employ-
14 ment verification system established under sec-
15 tion 274A of the Immigration and Nationality
16 Act, as amended by section 3101;

17 (2) provides such funds quarterly in advance of
18 the applicable quarter based on estimating method-
19 ology agreed to by the Commissioner and the Sec-
20 retary; and

21 (3) requires an annual accounting and reconcili-
22 ation of the actual costs incurred and the funds pro-
23 vided under the agreement which shall be reviewed
24 by the Office of the Inspector General of the Social
25 Security Administration and the Department.

1 (d) AUTHORIZATION OF APPROPRIATIONS TO THE
2 ATTORNEY GENERAL.—There are authorized to be appro-
3 priated to the Attorney General such sums as may be nec-
4 essary to carry out the provisions of this title and the
5 amendments made by this title, including enforcing com-
6 pliance with section 274B of the Immigration and Nation-
7 ality Act, as amended by section 3105.

8 (e) AUTHORIZATION OF APPROPRIATIONS TO THE
9 SECRETARY OF STATE.—There are authorized to be ap-
10 propriated to the Secretary of State such sums as may
11 be necessary to carry out the provisions of this title and
12 the amendments made by this title.

13 **SEC. 3302. EFFECTIVE DATE.**

14 Except as otherwise specifically provided, this title
15 and the amendments made by this title shall take effect
16 on the date of the enactment of this Act.

17 **SEC. 3303. MANDATORY EXIT SYSTEM.**

18 (a) ESTABLISHMENT.—

19 (1) IN GENERAL.—Not later than December 31,
20 2015, the Secretary shall establish a mandatory exit
21 data system that shall include a requirement for the
22 collection of data from machine-readable visas, pass-
23 ports, and other travel and entry documents for all
24 categories of aliens who are exiting from air and sea
25 ports of entry.

1 (2) BIOMETRIC EXIT DATA SYSTEM.—Not later
2 than 2 years after the date of the enactment of this
3 Act, the Secretary shall establish a mandatory bio-
4 metric exit data system at the 10 United States air-
5 ports that support the highest volume of inter-
6 national air travel, as determined by Department of
7 Transportation international flight departure data.

8 (3) REPORT.—Not later than 3 years after the
9 date of the enactment of this Act, the Secretary
10 shall submit a report to Congress that analyzes the
11 effectiveness of biometric exit data collection at the
12 10 airports referred to in paragraph (2).

13 (4) MANDATORY BIOMETRIC EXIT DATA SYS-
14 TEM.—Absent intervening action by Congress, the
15 Secretary, not later than 6 years after the date of
16 the enactment of this Act, shall establish a manda-
17 tory biometric exit data system at all the Core 30
18 international airports in the United States, as so
19 designated by the Federal Aviation Administration.

20 (5) EXPANSION OF BIOMETRIC EXIT DATA SYS-
21 TEM TO MAJOR SEA AND LAND PORTS.—Not later
22 than 6 years after the date of the enactment of this
23 Act, the Secretary shall submit a plan to Congress
24 for the expansion of the biometric exit system to

1 major sea and land entry and exit points within the
2 United States based upon—

3 (A) the performance of the program estab-
4 lished pursuant to paragraph (2);

5 (B) the findings of the study conducted
6 pursuant to paragraph (3); and

7 (C) the projected costs to develop and de-
8 ploy an effective biometric exit data system.

9 (6) DATA COLLECTION.—There are authorized
10 to be appropriated, from the Comprehensive Immi-
11 gration Reform Trust Fund established under sec-
12 tion 9(a)(1), such sums as may be necessary to
13 carry out this section

14 (b) INTEGRATION AND INTEROPERABILITY.—

15 (1) INTEGRATION OF DATA SYSTEM.—The Sec-
16 retary shall fully integrate all data from databases
17 and data systems that process or contain informa-
18 tion on aliens, which are maintained by—

19 (A) the Department, at—

20 (i) the U.S. Immigration and Customs
21 Enforcement;

22 (ii) the U.S. Customs and Border
23 Protection; and

24 (iii) the U.S. Citizenship and Immi-
25 gration Services;

1 (B) the Department of Justice, at the Ex-
2 ecutive Office for Immigration Review; and

3 (C) the Department of State, at the Bu-
4 reau of Consular Affairs.

5 (2) INTEROPERABLE COMPONENT.—The fully
6 integrated data system under paragraph (1) shall be
7 an interoperable component of the exit data system.

8 (3) INTEROPERABLE DATA SYSTEM.—The Sec-
9 retary shall fully implement an interoperable elec-
10 tronic data system to provide current and immediate
11 access to information in the databases of Federal
12 law enforcement agencies and the intelligence com-
13 munity that is relevant to determine—

14 (A) whether to issue a visa; or

15 (B) the admissibility or deportability of an
16 alien.

17 (4) TRAINING.—The Secretary shall establish
18 ongoing training modules on immigration law to im-
19 prove adjudications at United States ports of entry,
20 consulates, and embassies.

21 (c) INFORMATION SHARING.—The Secretary shall re-
22 port to the appropriate Federal law enforcement agency,
23 intelligence agency, national security agency, or compo-
24 nent of the Department of Homeland Security any alien
25 who was lawfully admitted into the United States and

1 whose individual data in the integrated exit data system
2 shows that he or she has not departed the country when
3 he or she was legally required to do so, and shall ensure
4 that—

5 (1) if the alien has departed the United States
6 when he or she was legally required to do so, the in-
7 formation contained in the integrated exit data sys-
8 tem is updated to reflect the alien’s departure; or

9 (2) if the alien has not departed the United
10 States when he or she was legally required to do so,
11 reasonably available enforcement resources are em-
12 ployed to locate the alien and to commence removal
13 proceedings against the alien.

14 **SEC. 3304. IDENTITY-THEFT RESISTANT MANIFEST INFOR-**
15 **MATION FOR PASSENGERS, CREW, AND NON-**
16 **CREW ONBOARD DEPARTING AIRCRAFT AND**
17 **VESSELS.**

18 (a) DEFINITIONS.—Except as otherwise specifically
19 provided, in this section:

20 (1) IDENTITY-THEFT RESISTANT COLLECTION
21 LOCATION.—The term “identity-theft resistant col-
22 lection location” means a location within an airport
23 or seaport—

24 (A) within the path of the departing alien,
25 such that the alien would not need to signifi-

1 cantly deviate from that path to comply with
2 exit requirements at which air or vessel carrier
3 employees, as applicable, either presently or
4 routinely are available if an alien needs proc-
5 essing assistance; and

6 (B) which is equipped with technology that
7 can securely collect and transmit identity-theft
8 resistant departure information to the Depart-
9 ment.

10 (2) US-VISIT.—The term “US-VISIT” means
11 the United States-Visitor and Immigrant Status In-
12 dicator Technology system.

13 (b) IDENTITY THEFT RESISTANT MANIFEST INFOR-
14 MATION.—

15 (1) PASSPORT OR VISA COLLECTION REQUIRE-
16 MENT.—Except as provided in subsection (c), an ap-
17 propriate official of each commercial aircraft or ves-
18 sel departing from the United States to any port or
19 place outside the United States shall ensure trans-
20 mission to U.S. Customs and Border Protection of
21 identity-theft resistant departure manifest informa-
22 tion covering alien passengers, crew, and non-crew.
23 Such identity-theft resistant departure manifest in-
24 formation—

1 (A) shall be transmitted to U.S. Customs
2 and Border Protection at the place and time
3 specified in paragraph (3) by means approved
4 by the Secretary; and

5 (B) shall set forth the information speci-
6 fied in paragraph (4) or other information as
7 required by the Secretary.

8 (2) MANNER OF COLLECTION.—Carriers board-
9 ing alien passengers, crew, and noncrew subject to
10 the requirement to provide information upon depart-
11 ure for US-VISIT processing shall collect identity-
12 theft resistant departure manifest information from
13 each alien at an identity-theft resistant collection lo-
14 cation at the airport or seaport before boarding that
15 alien on transportation for departure from the
16 United States, at a time as close to the originally
17 scheduled departure of that passenger’s aircraft or
18 sea vessel as practicable.

19 (3) TIME AND MANNER OF SUBMISSION.—

20 (A) IN GENERAL.—The appropriate official
21 specified in paragraph (1) shall ensure trans-
22 mission of the identity-theft resistant departure
23 manifest information required and collected
24 under paragraphs (1) and (2) to the Data Cen-
25 ter or Headquarters of U.S. Customs and Bor-

1 der Protection, or such other data center as
2 may be designated.

3 (B) TRANSMISSION.—The biometric depart-
4 ture information may be transmitted to the De-
5 partment over any means of communication au-
6 thorized by the Secretary for the transmission
7 of other electronic manifest information con-
8 taining personally identifiable information and
9 under transmission standards currently applica-
10 ble to other electronic manifest information.

11 (C) SUBMISSION ALONG WITH OTHER IN-
12 FORMATION.—Files containing the identity-
13 theft resistant departure manifest informa-
14 tion—

15 (i) may be sent with other electronic
16 manifest data prior to departure or may be
17 sent separately from any topically related
18 electronic manifest data; and

19 (ii) may be sent in batch mode.

20 (4) INFORMATION REQUIRED.—The identity-
21 theft resistant departure information required under
22 paragraphs (1) through (3) for each covered pas-
23 senger or crew member shall contain alien data from
24 machine-readable visas, passports, and other travel
25 and entry documents issued to the alien.

1 (c) EXCEPTION.—The identity-theft resistant depar-
2 ture information specified in this section is not required
3 for any alien active duty military personnel traveling as
4 passengers on board a departing Department of Defense
5 commercial chartered aircraft.

6 (d) CARRIER MAINTENANCE AND USE OF IDENTITY-
7 THEFT RESISTANT DEPARTURE MANIFEST INFORMA-
8 TION.—Carrier use of identity-theft resistant departure
9 manifest information for purposes other than as described
10 in standards set by the Secretary is prohibited. Carriers
11 shall immediately notify the Chief Privacy Officer of the
12 Department in writing in the event of unauthorized use
13 or access, or breach, of identity-theft resistant departure
14 manifest information.

15 (e) COLLECTION AT SPECIFIED LOCATION.—If the
16 Secretary determines that an air or vessel carrier has not
17 adequately complied with the provisions of this section, the
18 Secretary may, in the Secretary's discretion, require the
19 air or vessel carrier to collect identity-theft resistant de-
20 parture manifest information at a specific location prior
21 to the issuance of a boarding pass or other document on
22 the international departure, or the boarding of crew, in
23 any port through which the carrier boards aliens for inter-
24 national departure under the supervision of the Secretary
25 for such period as the Secretary considers appropriate to

1 ensure the adequate collection and transmission of biomet-
2 ric departure manifest information.

3 (f) FUNDING.—There shall be appropriated to the In-
4 terior Enforcement Account \$500,000,000 to reimburse
5 carriers for their reasonable actual expenses in carrying
6 out their duties as described in this section.

7 (g) DETERMINATION OF BUDGETARY EFFECTS.—

8 (1) EMERGENCY DESIGNATION FOR CONGRES-
9 SIONAL ENFORCEMENT.—In the Senate, amounts
10 made available under this section are designated as
11 an emergency requirement pursuant to section
12 403(a) of S. Con. Res. 13 (111th Congress), the
13 concurrent resolution on the budget for fiscal year
14 2010.

15 (2) EMERGENCY DESIGNATION FOR STATUTORY
16 PAYGO.—Amounts made available under this section
17 are designated as an emergency requirement under
18 section 4(g) of the Statutory Pay-As-You-Go Act of
19 2010 (Public Law 111–139; 2 U.S.C. 933(g)).

20 **SEC. 3305. PROFILING.**

21 (a) PROHIBITION.—In making routine or sponta-
22 neous law enforcement decisions, such as ordinary traffic
23 stops, Federal law enforcement officers may not use race
24 or ethnicity to any degree, except that officers may rely

1 on race and ethnicity if a specific suspect description ex-
2 ists.

3 (b) EXCEPTIONS.—

4 (1) SPECIFIC INVESTIGATION.—In conducting
5 activities in connection with a specific investigation,
6 Federal law enforcement officers may consider race
7 and ethnicity only to the extent that there is trust-
8 worthy information, relevant to the locality or time
9 frame, that links persons of a particular race or eth-
10 nicity to an identified criminal incident, scheme, or
11 organization. This standard applies even where the
12 use of race or ethnicity might otherwise be lawful.

13 (2) NATIONAL SECURITY.—In investigating or
14 preventing threats to national security or other cata-
15 strophic events (including the performance of duties
16 related to air transportation security), or in enforce-
17 ing laws protecting the integrity of the Nation’s bor-
18 ders, Federal law enforcement officers may not con-
19 sider race or ethnicity except to the extent permitted
20 by the Constitution and laws of the United States.

21 (3) DEFINED TERM.—In this section, the term
22 “Federal law enforcement officer” means any offi-
23 cer, agent, or employee of the United States author-
24 ized by law or by a Government agency to engage

1 in or supervise the prevention, detection, investiga-
2 tion, or prosecution of any violation of Federal law.

3 (c) STUDY AND REGULATIONS.—

4 (1) DATA COLLECTION.—Not later than 180
5 days after the date of the enactment of this Act, the
6 Secretary shall begin collecting data regarding the
7 individualized immigration enforcement activities of
8 covered Department officers.

9 (2) STUDY.—Not later than 180 days after
10 data collection under paragraph (1) commences, the
11 Secretary shall complete a study analyzing the data.

12 (3) REGULATIONS.—Not later than 90 days
13 after the date the study required by paragraph (2)
14 is completed, the Secretary, in consultation with the
15 Attorney General, shall issue regulations regarding
16 the use of race, ethnicity, and any other suspect
17 classifications the Secretary deems appropriate by
18 covered Department officers.

19 (4) REPORTS.—Not later than 30 days after
20 completion of the study required by paragraph (2),
21 the Secretary shall submit the study to—

22 (A) the Committee on Homeland Security
23 and Governmental Affairs of the Senate;

24 (B) the Committee on Homeland Security
25 of the House of Representatives;

1 (C) the Committee on Appropriations of
2 the Senate;

3 (D) the Committee on Appropriations of
4 the House of Representatives;

5 (E) the Committee on the Judiciary of the
6 Senate; and

7 (F) the Committee on the Judiciary of the
8 House of Representatives.

9 (5) DEFINED TERM.—In this subsection, the
10 term “covered Department officer” means any offi-
11 cer, agent, or employee of United States Customs
12 and Border Protection, United States Immigration
13 and Customs Enforcement, or the Transportation
14 Security Administration.

15 **SEC. 3306. ENHANCED PENALTIES FOR CERTAIN DRUG OF-**
16 **FENSES ON FEDERAL LANDS.**

17 (a) CULTIVATING OR MANUFACTURING CONTROLLED
18 SUBSTANCES ON FEDERAL PROPERTY.—Section
19 401(b)(5) of the Controlled Substances Act (21 U.S.C.
20 841(b)(5)) is amended by striking “as provided in this
21 subsection” and inserting “for not more than 10 years,
22 in addition to any other term of imprisonment imposed
23 under this subsection,”.

24 (b) USE OF HAZARDOUS SUBSTANCES.—Pursuant to
25 its authority under section 994 of title 28, United States

1 Code, the United States Sentencing Commission shall
2 amend the Federal Sentencing Guidelines and policy state-
3 ments to ensure that the guidelines provide an additional
4 penalty increase of 2 offense levels above the sentence oth-
5 erwise applicable for a violation of section 401(a) of the
6 Controlled Substances Act (21 U.S.C. 841(a)) if the of-
7 fense—

8 (1) includes the use of a poison, chemical, or
9 other hazardous substance to cultivate or manufac-
10 ture controlled substances on Federal property;

11 (2) creates a hazard to humans, wildlife, or do-
12 mestic animals;

13 (3) degrades or harms the environment or nat-
14 ural resources; or

15 (4) pollutes an aquifer, spring, stream, river, or
16 body of water.

17 (c) STREAM DIVERSION OR CLEAR CUTTING ON
18 FEDERAL PROPERTY.—

19 (1) PROHIBITION ON STREAM DIVERSION OR
20 CLEAR CUTTING ON FEDERAL PROPERTY.—Section
21 401(b) of the Controlled Substances Act is amended
22 by adding at the end the following:

23 “(8) DESTRUCTION OF BODIES OF WATER.—
24 Any person who violates subsection (a) in a manner
25 that diverts, redirects, obstructs, or drains an aquifer

1 fer, spring, stream, river, or body of water or clear
2 cuts timber while cultivating or manufacturing a
3 controlled substance on Federal property shall be
4 fined in accordance with title 18, United States
5 Code.”.

6 (2) FEDERAL SENTENCING GUIDELINES EN-
7 HANCEMENT.—Pursuant to its authority under sec-
8 tion 994 of title 28, United States Code, the United
9 States Sentencing Commission shall amend the Fed-
10 eral Sentencing Guidelines and policy statements to
11 ensure that the guidelines provide an additional pen-
12 alty increase of 2 offense levels for above the sen-
13 tence otherwise applicable for a violation of section
14 401(a) of the Controlled Substances Act (21 U.S.C.
15 841(a)) if the offense involves the diversion, redirec-
16 tion, obstruction, or draining of an aquifer, spring,
17 stream, river, or body of water or the clear cut of
18 timber while cultivating or manufacturing a con-
19 trolled substance on Federal property.

20 (d) BOOBY TRAPS ON FEDERAL LAND.—Section
21 401(d)(1) of the Controlled Substances Act (21 U.S.C.
22 841(d)(1)) is amended by inserting “cultivated,” after “is
23 being”.

24 (e) USE OR POSSESSION OF FIREARMS IN CONNec-
25 TION WITH DRUG OFFENSES ON FEDERAL LANDS.—Pur-

1 suant to its authority under section 994 of title 28, United
2 States Code, the United States Sentencing Commission
3 shall amend the Federal Sentencing Guidelines and policy
4 statements to ensure that the guidelines provide an addi-
5 tional penalty increase of 2 offense levels above the sen-
6 tence otherwise applicable for a violation of section 401(a)
7 of the Controlled Substances Act (21 U.S.C. 841(a)) if
8 the offense involves the possession of a firearm while culti-
9 vating or manufacturing controlled substances on Federal
10 lands.

11 **Subtitle D—Asylum and Refugee** 12 **Provisions**

13 **SEC. 3401. TIME LIMITS AND EFFICIENT ADJUDICATION OF** 14 **GENUINE ASYLUM CLAIMS.**

15 Section 208(a)(2) (8 U.S.C. 1158(a)(2)) is amend-
16 ed—

17 (1) in subparagraph (A), by inserting “or the
18 Secretary of Homeland Security” after “Attorney
19 General” both places such term appears;

20 (2) by striking subparagraphs (B) and (D);

21 (3) by redesignating subparagraph (C) as sub-
22 paragraph (B);

23 (4) in subparagraph (B), as redesignated, by
24 striking “subparagraph (D)” and inserting “sub-
25 paragraphs (C) and (D)”; and

1 (5) by inserting after subparagraph (B), as re-
2 designated, the following:

3 “(C) CHANGED CIRCUMSTANCES.—Not-
4 withstanding subparagraph (B), an application
5 for asylum of an alien may be considered if the
6 alien demonstrates, to the satisfaction of the
7 Attorney General or the Secretary of Homeland
8 Security, the existence of changed cir-
9 cumstances that materially affect the appli-
10 cant’s eligibility for asylum.

11 “(D) MOTION TO REOPEN CERTAIN MERI-
12 TORIOUS CLAIMS.—Notwithstanding subpara-
13 graph (B) or section 240(c)(7), an alien may
14 file a motion to reopen an asylum claim during
15 the 2-year period beginning on the date of the
16 enactment of the Border Security, Economic
17 Opportunity, and Immigration Modernization
18 Act if the alien—

19 “(i) was denied asylum based solely
20 upon a failure to meet the 1-year applica-
21 tion filing deadline in effect on the date on
22 which the application was filed;

23 “(ii) was granted withholding of re-
24 moval pursuant to section 241(b)(3) and
25 has not obtained lawful permanent resi-

1 dence in the United States pursuant to any
2 other provision of law;

3 “(iii) is not subject to the safe third
4 country exception under subparagraph (A)
5 or a bar to asylum under subsection (b)(2)
6 and should not be denied asylum as a mat-
7 ter of discretion; and

8 “(iv) is physically present in the
9 United States when the motion is filed.”.

10 **SEC. 3402. REFUGEE FAMILY PROTECTIONS.**

11 (a) CHILDREN OF REFUGEE OR ASYLEE SPOUSES
12 AND CHILDREN.—A child of an alien who qualifies for ad-
13 mission as a spouse or child under section 207(c)(2)(A)
14 or 208(b)(3) of the Immigration and Nationality Act (8
15 U.S.C. 1157(c)(2)(A) and 1158(b)(3)) shall be entitled to
16 the same status as such alien if the child—

17 (1) is accompanying or following to join such
18 alien; and

19 (2) is otherwise eligible under section
20 207(c)(2)(A) or 208(b)(3) of the Immigration and
21 Nationality Act.

22 **SEC. 3403. CLARIFICATION ON DESIGNATION OF CERTAIN**
23 **REFUGEES.**

24 (a) TERMINATION OF CERTAIN PREFERENTIAL
25 TREATMENT IN IMMIGRATION OF AMERASIANS.—Section

1 584 of the Foreign Operations, Export Financing, and Re-
2 lated Programs Appropriations Act, 1988 (8 U.S.C. 1101
3 note) is amended by adding at the end the following:

4 “(f) No visa may be issued under this section if the
5 petition or application for such visa is submitted on or
6 after the date of the enactment of the Border Security,
7 Economic Opportunity, and Immigration Modernization
8 Act.”.

9 (b) REFUGEE DESIGNATION.—Section 207(c)(1) (8
10 U.S.C. 1157(c)(1)) is amended—

11 (1) by inserting “(A)” before “Subject to the
12 numerical limitations”; and

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

14 “(B)(i) The President, upon a recommendation of the
15 Secretary of State made in consultation with the Secretary
16 of Homeland Security, and after appropriate consultation,
17 may designate specifically defined groups of aliens—

18 “(I) whose resettlement in the United States is
19 justified by humanitarian concerns or is otherwise in
20 the national interest; and

21 “(II) who—

22 “(aa) share common characteristics that
23 identify them as targets of persecution on ac-
24 count of race, religion, nationality, membership

1 in a particular social group, or political opinion;
2 or

3 “(bb) having been identified as targets as
4 described in item (aa), share a common need
5 for resettlement due to a specific vulnerability.

6 “(ii) An alien who establishes membership in a group
7 designated under clause (i) to the satisfaction of the Sec-
8 retary of Homeland Security shall be considered a refugee
9 for purposes of admission as a refugee under this section
10 unless the Secretary determines that such alien ordered,
11 incited, assisted, or otherwise participated in the persecu-
12 tion of any person on account of race, religion, nationality,
13 membership in a particular social group, or political opin-
14 ion.

15 “(iii) A designation under clause (i) is for purposes
16 of adjudicatory efficiency and may be revoked by the
17 President at any time after notification to Congress.

18 “(iv) Categories of aliens established under section
19 599D of the Foreign Operations, Export Financing, and
20 Related Programs Appropriations Act, 1990 (Public Law
21 101–167; 8 U.S.C. 1157 note)—

22 “(I) shall be designated under clause (i) until
23 the end of the first fiscal year commencing after the
24 date of the enactment of the Border Security, Eco-

1 nomic Opportunity, and Immigration Modernization
2 Act; and

3 “(II) shall be eligible for designation thereafter
4 at the discretion of the President, considering,
5 among other factors, whether a country under con-
6 sideration has been designated by the Secretary of
7 State as a ‘Country of Particular Concern’ for en-
8 gaging in or tolerating systematic, ongoing, and
9 egregious violations of religious freedom.

10 “(v) A designation under clause (i) shall not influence
11 decisions to grant, to any alien, asylum under section 208,
12 protection under section 241(b)(3), or protection under
13 the Convention Against Torture and Other Cruel, Inhu-
14 man or Degrading Treatment or Punishment, done at
15 New York December 10, 1984.

16 “(vi) A decision to deny admission under this section
17 to an alien who establishes to the satisfaction of the Sec-
18 retary that the alien is a member of a group designated
19 under clause (i) shall—

20 “(I) be in writing; and

21 “(II) state, to the maximum extent feasible, the
22 reason for the denial.

23 “(vii) Refugees admitted pursuant to a designation
24 under clause (i) shall be subject to the number of admis-
25 sions and be admissible under this section.”.

1 **SEC. 3404. ASYLUM DETERMINATION EFFICIENCY.**

2 Section 235(b)(1)(B)(ii) (8 U.S.C. 1225(b)(1)(B)(ii))
3 is amended by striking “asylum.” and inserting “asylum
4 by an asylum officer. The asylum officer, after conducting
5 a nonadversarial asylum interview and seeking supervisory
6 review, may grant asylum to the alien under section 208
7 or refer the case to a designee of the Attorney General,
8 for a de novo asylum determination, for relief under the
9 Convention Against Torture and Other Cruel, Inhuman or
10 Degrading Treatment or Punishment, done at New York
11 December 10, 1984, or for protection under section
12 241(b)(3).”.

13 **SEC. 3405. STATELESS PERSONS IN THE UNITED STATES.**

14 (a) IN GENERAL.—Chapter 1 of title II (8 U.S.C.
15 1151 et seq.) is amended by adding at the end the fol-
16 lowing:

17 **“SEC. 210A. PROTECTION OF CERTAIN STATELESS PER-**
18 **SONS IN THE UNITED STATES.**

19 “(a) STATELESS PERSONS.—

20 “(1) IN GENERAL.—In this section, the term
21 ‘stateless person’ means an individual who is not
22 considered a national under the operation of the
23 laws of any country.

24 “(2) DESIGNATION OF SPECIFIC STATELESS
25 GROUPS.—The Secretary of Homeland Security, in
26 consultation with the Secretary of State, may, in the

1 discretion of the Secretary, designate specific groups
2 of individuals who are considered stateless persons,
3 for purposes of this section.

4 “(b) STATUS OF STATELESS PERSONS.—

5 “(1) RELIEF FOR CERTAIN INDIVIDUALS DE-
6 TERMINED TO BE STATELESS PERSONS.—The Sec-
7 retary of Homeland Security or the Attorney Gen-
8 eral may, in his or her discretion, provide conditional
9 lawful status to an alien who is otherwise inadmis-
10 sible or deportable from the United States if the
11 alien—

12 “(A) is a stateless person present in the
13 United States;

14 “(B) applies for such relief;

15 “(C) has not lost his or her nationality as
16 a result of his or her voluntary action or know-
17 ing inaction after arrival in the United States;

18 “(D) except as provided in paragraphs (2)
19 and (3), is not inadmissible under section
20 212(a); and

21 “(E) is not described in section
22 241(b)(3)(B)(i).

23 “(2) INAPPLICABILITY OF CERTAIN PROVI-
24 SIONS.—The provisions under paragraphs (4), (5),

1 (7), and (9)(B) of section 212(a) shall not apply to
2 any alien seeking relief under paragraph (1).

3 “(3) WAIVER.—The Secretary or the Attorney
4 General may waive any other provisions of such sec-
5 tion, other than subparagraphs (B), (C), (D)(ii),
6 (E), (G), (H), or (I) of paragraph (2), paragraph
7 (3), paragraph (6)(C)(i) (with respect to misrepresen-
8 tations relating to the application for relief under
9 paragraph (1)), or subparagraphs (A), (C), (D), or
10 (E) of paragraph (10) of section 212(a), with re-
11 spect to such an alien for humanitarian purposes, to
12 assure family unity, or if it is otherwise in the public
13 interest.

14 “(4) SUBMISSION OF PASSPORT OR TRAVEL
15 DOCUMENT.—Any alien who seeks relief under this
16 section shall submit to the Secretary of Homeland
17 Security or the Attorney General—

18 “(A) any available passport or travel docu-
19 ment issued at any time to the alien (whether
20 or not the passport or document has expired or
21 been cancelled, rescinded, or revoked); or

22 “(B) an affidavit, sworn under penalty of
23 perjury—

1 “(i) stating that the alien has never
2 been issued a passport or travel document;

3 or

4 “(ii) identifying with particularity any
5 such passport or travel document and ex-
6 plaining why the alien cannot submit it.

7 “(5) WORK AUTHORIZATION.—The Secretary of
8 Homeland Security may authorize an alien who has
9 applied for and is found prima facie eligible for or
10 been granted relief under paragraph (1) to engage
11 in employment in the United States.

12 “(6) TRAVEL DOCUMENTS.—The Secretary may
13 issue appropriate travel documents to an alien who
14 has been granted relief under paragraph (1) that
15 would allow him or her to travel abroad and be ad-
16 mitted to the United States upon return, if other-
17 wise admissible.

18 “(7) TREATMENT OF SPOUSE AND CHIL-
19 DREN.—The spouse or child of an alien who has
20 been granted conditional lawful status under para-
21 graph (1) shall, if not otherwise eligible for admis-
22 sion under paragraph (1), be granted conditional
23 lawful status under this section if accompanying, or
24 following to join, such alien if—

1 “(A) the spouse or child is admissible (ex-
2 cept as otherwise provided in paragraphs (2)
3 and (3)) and is not described in section
4 241(b)(3)(B)(i); and

5 “(B) the qualifying relationship to the
6 principal beneficiary existed on the date on
7 which such alien was granted conditional lawful
8 status.

9 “(c) ADJUSTMENT OF STATUS.—

10 “(1) INSPECTION AND EXAMINATION.—At the
11 end of the 1-year period beginning on the date on
12 which an alien has been granted conditional lawful
13 status under subsection (b), the alien may apply for
14 lawful permanent residence in the United States if—

15 “(A) the alien has been physically present
16 in the United States for at least 1 year;

17 “(B) the alien’s conditional lawful status
18 has not been terminated by the Secretary of
19 Homeland Security or the Attorney General,
20 pursuant to such regulations as the Secretary
21 or the Attorney General may prescribe; and

22 “(C) the alien has not otherwise acquired
23 permanent resident status.

24 “(2) REQUIREMENTS FOR ADJUSTMENT OF
25 STATUS.—The Secretary of Homeland Security or

1 the Attorney General, under such regulations as the
2 Secretary or the Attorney General may prescribe,
3 may adjust the status of an alien granted condi-
4 tional lawful status under subsection (b) to that of
5 an alien lawfully admitted for permanent residence
6 if such alien—

7 “(A) is a stateless person;

8 “(B) properly applies for such adjustment
9 of status;

10 “(C) has been physically present in the
11 United States for at least 1 year after being
12 granted conditional lawful status under sub-
13 section (b);

14 “(D) is not firmly resettled in any foreign
15 country; and

16 “(E) is admissible (except as otherwise
17 provided under paragraph (2) or (3) of sub-
18 section (b)) as an immigrant under this chapter
19 at the time of examination of such alien for ad-
20 justment of status.

21 “(3) RECORD.—Upon approval of an applica-
22 tion under this subsection, the Secretary of Home-
23 land Security shall establish a record of the alien’s
24 admission for lawful permanent residence as of the
25 date that is 1 year before the date of such approval.

1 “(4) NUMERICAL LIMITATION.—The number of
2 aliens who may receive an adjustment of status
3 under this section for a fiscal year shall be subject
4 to the numerical limitation of section 203(b)(4).

5 “(d) PROVING THE CLAIM.—In determining an
6 alien’s eligibility for lawful conditional status or adjust-
7 ment of status under this subsection, the Secretary of
8 Homeland Security or the Attorney General shall consider
9 any credible evidence relevant to the application. The de-
10 termination of what evidence is credible and the weight
11 to be given that evidence shall be within the sole discretion
12 of the Secretary or the Attorney General.

13 “(e) REVIEW.—

14 “(1) ADMINISTRATIVE REVIEW.—No appeal
15 shall lie from the denial of an application by the
16 Secretary, but such denial will be without prejudice
17 to the alien’s right to renew the application in pro-
18 ceedings under section 240.

19 “(2) MOTIONS TO REOPEN.—Notwithstanding
20 any limitation imposed by law on motions to reopen
21 removal, deportation, or exclusion proceedings, any
22 individual who is eligible for relief under this section
23 may file a motion to reopen proceedings in order to
24 apply for relief under this section. Any such motion
25 shall be filed within 2 years of the date of the enact-

1 ment of the Border Security, Economic Opportunity,
2 and Immigration Modernization Act.

3 “(f) LIMITATION.—

4 “(1) APPLICABILITY.—The provisions of this
5 section shall only apply to aliens present in the
6 United States.

7 “(2) SAVINGS PROVISION.—Nothing in this sec-
8 tion may be construed to authorize or require—

9 “(A) the admission of any alien to the
10 United States;

11 “(B) the parole of any alien into the
12 United States; or

13 “(C) the grant of any motion to reopen or
14 reconsider filed by an alien after departure or
15 removal from the United States.”.

16 (b) JUDICIAL REVIEW.—Section 242(a)(2)(B)(ii) (8
17 U.S.C. 1252(a)(2)(B)(ii)) is amended by striking
18 “208(a).” and inserting “208(a) or 210A.”.

19 (c) CONFORMING AMENDMENT.—Section 203(b)(4)
20 (8 U.S.C. 1153(b)(4)) is amended by inserting “to aliens
21 granted an adjustment of status under section 210A(c)
22 or” after “level.”.

23 (d) CLERICAL AMENDMENT.—The table of contents
24 for the Immigration and Nationality Act is amended by

1 inserting after the item relating to section 210 the fol-
2 lowing:

“Sec. 210A. Protection of stateless persons in the United States.”.

3 **SEC. 3406. U VISA ACCESSIBILITY.**

4 Section 214(p)(2)(A) (8 U.S.C. 1184(p)(2)(A)) is
5 amended by striking “10,000.” and inserting “18,000, of
6 which not more than 3,000 visas may be issued for aliens
7 who are victims of a covered violation described in section
8 101(a)(15)(U).”.

9 **SEC. 3407. WORK AUTHORIZATION WHILE APPLICATIONS**
10 **FOR U AND T VISAS ARE PENDING.**

11 (a) U VISAS.—Section 214(p) (8 U.S.C. 1184(p)), as
12 amended by section 3406 of this Act, is further amend-
13 ed—

14 (1) in paragraph (6), by striking the last sen-
15 tence; and

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

17 “(7) WORK AUTHORIZATION.—Notwithstanding
18 any provision of this Act granting eligibility for em-
19 ployment in the United States, the Secretary of
20 Homeland Security shall grant employment author-
21 ization to an alien who has filed an application for
22 nonimmigrant status under section 101(a)(15)(U)
23 on the date that is the earlier of—

24 “(A) the date on which the alien’s applica-
25 tion for such status is approved; or

1 “(B) a date determined by the Secretary
2 that is not later than 180 days after the date
3 on which the alien filed the application.”.

4 (b) T VISAS.—Section 214(o) (8 U.S.C. 1184(o)) is
5 amended by adding at the end the following:

6 “(8) Notwithstanding any provision of this Act
7 granting eligibility for employment in the United
8 States, the Secretary of Homeland Security shall
9 grant employment authorization to an alien who has
10 filed an application for nonimmigrant status under
11 section 101(a)(15)(T) on the date that is the earlier
12 of—

13 “(A) the date on which the alien’s applica-
14 tion for such status is approved; or

15 “(B) a date determined by the Secretary
16 that is not later than 180 days after the date
17 on which the alien filed the application.”.

18 **SEC. 3408. REPRESENTATION AT OVERSEAS REFUGEE**

19 **INTERVIEWS.**

20 Section 207(c) (8 U.S.C. 1157(c)) is amended by
21 adding at the end the following:

22 “(5) The adjudicator of an application for ref-
23 ugee status under this section shall consider all rel-
24 evant evidence and maintain a record of the evidence
25 considered.

1 “(6) An applicant for refugee status may be
2 represented, including at a refugee interview, at no
3 expense to the Government, by an attorney or ac-
4 credited representative who—

5 “(A) was chosen by the applicant; and

6 “(B) is authorized by the Secretary of
7 Homeland Security to be recognized as the rep-
8 resentative of such applicant in an adjudication
9 under this section.

10 “(7)(A) A decision to deny an application for
11 refugee status under this section—

12 “(i) shall be in writing; and

13 “(ii) shall provide, to the maximum extent
14 feasible, information on the reason for the de-
15 nial, including—

16 “(I) the facts underlying the deter-
17 mination; and

18 “(II) whether there is a waiver of in-
19 admissibility available to the applicant.

20 “(B) The basis of any negative credibility find-
21 ing shall be part of the written decision.

22 “(8)(A) An applicant who is denied refugee sta-
23 tus under this section may file a request with the
24 Secretary for a review of his or her application not
25 later than 120 days after such denial.

1 “(B) A request filed under subparagraph (A)
2 shall be adjudicated by refugee officers who have re-
3 ceived training on considering requests for review of
4 refugee applications that have been denied.

5 “(C) The Secretary shall publish the standard
6 applied to a request for review.

7 “(D) A request for review may result in the de-
8 cision being granted, denied, or reopened for a fur-
9 ther interview.

10 “(E) A decision on a request for review under
11 this paragraph—

12 “(i) shall be in writing; and

13 “(ii) shall provide, to the maximum extent
14 feasible, information on the reason for the de-
15 nial.”.

16 **SEC. 3409. LAW ENFORCEMENT AND NATIONAL SECURITY**

17 **CHECKS.**

18 (a) REFUGEES.—Section 207(c)(1) (8 U.S.C.
19 1157(c)(1)) is amended by adding at the end the fol-
20 lowing: “No alien shall be admitted as a refugee until the
21 identity of the applicant, including biographic and biomet-
22 ric data, has been checked against all appropriate records
23 or databases maintained by the Secretary of Homeland
24 Security, the Attorney General, the Secretary of State,
25 and other Federal records or databases that the Secretary

1 of Homeland Security considers necessary, to determine
2 any national security, law enforcement, or other grounds
3 on which the alien may be inadmissible to the United
4 States or ineligible to apply for or be granted refugee sta-
5 tus.”.

6 (b) ASYLEES.—Section 208(d)(5)(A)(i) (8 U.S.C.
7 1158(d)(5)(A)(i)) is amended to read as follows:

8 “(i) asylum shall not be granted until
9 the identity of the applicant, using bio-
10 graphic and biometric data, has been
11 checked against all appropriate records or
12 databases maintained by the Secretary of
13 Homeland Security, the Attorney General,
14 the Secretary of State, and other Federal
15 records or databases that the Secretary of
16 Homeland Security considers necessary, to
17 determine any national security, law en-
18 forcement, or other grounds on which the
19 alien may be inadmissible to the United
20 States or ineligible to apply for or be
21 granted asylum;”.

22 **SEC. 3410. TIBETAN REFUGEE ASSISTANCE.**

23 (a) SHORT TITLE.—This section may be cited as the
24 “Tibetan Refugee Assistance Act of 2013”.

1 (b) TRANSITION FOR DISPLACED TIBETANS.—Not-
2 withstanding the numerical limitations specified in sec-
3 tions 201 and 202 of the Immigration and Nationality Act
4 (8 U.S.C. 1151 and 1152), 5,000 immigrant visas shall
5 be made available to qualified displaced Tibetans described
6 in subsection (c) during the 3-year period beginning on
7 October 1, 2013.

8 (c) QUALIFIED DISPLACED TIBETAN DESCRIBED.—

9 (1) IN GENERAL.—An individual is a qualified
10 displaced Tibetan if such individual—

11 (A) is a native of Tibet; and

12 (B) has been continuously residing in India
13 or Nepal since before the date of the enactment
14 of this Act.

15 (2) NATIVE OF TIBET DESCRIBED.—For pur-
16 poses of paragraph (1)(A), an individual shall be
17 considered a native of Tibet if such individual—

18 (A) was born in Tibet; or

19 (B) is the son, daughter, grandson, or
20 granddaughter of an individual who was born in
21 Tibet.

22 (d) DERIVATIVE STATUS FOR SPOUSES AND CHIL-
23 DREN.—A spouse or child (as defined in subparagraphs
24 (A), (B), (C), (D), or (E) of section 101(b)(1) of the Im-
25 migration and Nationality Act (8 U.S.C. 1101(b)(1)))

1 shall, if not otherwise entitled to an immigrant status and
2 the immediate issuance of a visa under this section, be
3 entitled to the same status, and the same order of consid-
4 eration, provided under this section, if accompanying, or
5 following to join, the spouse or parent of such spouse or
6 child.

7 (e) DISTRIBUTION OF VISA NUMBERS.—The Sec-
8 retary of State shall ensure that immigrant visas provided
9 under subsection (b) are made available to qualified dis-
10 placed Tibetans described in subsection (c) or (d) in an
11 equitable manner, giving preference to those qualified dis-
12 placed Tibetans who—

13 (1) are not resettled in India or Nepal; or

14 (2) are most likely to be resettled successfully
15 in the United States.

16 **SEC. 3411. TERMINATION OF ASYLUM OR REFUGEE STATUS.**

17 (a) TERMINATION OF STATUS.—Except as provided
18 in subsections (b) and (c), any alien who is granted asylum
19 or refugee status under this Act or the Immigration and
20 Nationality Act (8 U.S.C. 1101 et seq.), who, without good
21 cause as determined by the Secretary or the Attorney Gen-
22 eral, subsequently returns to the country of such alien's
23 nationality or, in the case of an alien having no nation-
24 ality, returns to any country in which such alien last habit-
25 ually resided, and who applied for such status because of

1 persecution or a well-founded fear of persecution in that
2 country on account of race, religion, nationality, member-
3 ship in a particular social group, or political opinion, shall
4 have his or her refugee or asylum status terminated.

5 (b) WAIVER.—The Secretary has discretion to waive
6 subsection (a) if it is established to the satisfaction of the
7 Secretary or the Attorney General that the alien had good
8 cause for the return. The waiver may be sought prior to
9 departure from the United States or upon return.

10 (c) EXCEPTION FOR CERTAIN ALIENS FROM
11 CUBA.—Subsection (a) shall not apply to an alien who is
12 eligible for adjustment to that of an alien lawfully admit-
13 ted for permanent residence pursuant to the Cuban Ad-
14 justment Act of 1966 (Public Law 89–732).

15 **SEC. 3412. ASYLUM CLOCK.**

16 Section 208(d)(2) (8 U.S.C. 1158(d)(2)) is amended
17 by striking “is not entitled to employment authorization”
18 and all that follows through “prior to 180 days after” and
19 inserting “shall be provided employment authorization
20 180 days after”.

1 **Subtitle E—Shortage of Immigra-**
2 **tion Court Resources for Re-**
3 **moval Proceedings**

4 **SEC. 3501. SHORTAGE OF IMMIGRATION COURT PER-**
5 **SONNEL FOR REMOVAL PROCEEDINGS.**

6 (a) IMMIGRATION COURT JUDGES.—The Attorney
7 General shall increase the total number of immigration
8 judges to adjudicate current pending cases and efficiently
9 process future cases by at least—

- 10 (1) 75 in fiscal year 2014;
11 (2) 75 in fiscal year 2015; and
12 (3) 75 in fiscal year 2016.

13 (b) NECESSARY SUPPORT STAFF FOR IMMIGRATION
14 COURT JUDGES.—The Attorney General shall address the
15 shortage of support staff for immigration judges by ensur-
16 ing that each immigration judge has the assistance of the
17 necessary support staff, including the equivalent of 1 staff
18 attorney or law clerk and 1 legal assistant.

19 (c) ANNUAL INCREASES IN BOARD OF IMMIGRATION
20 APPEALS PERSONNEL.—The Attorney General shall in-
21 crease the number of Board of Immigration Appeals staff
22 attorneys (including the necessary additional support
23 staff) to efficiently process cases by at least—

- 24 (1) 30 in fiscal year 2014;
25 (2) 30 in fiscal year 2015; and

1 (3) 30 in fiscal year 2016.

2 (d) FUNDING.—There shall be appropriated, from
3 the Comprehensive Immigration Reform Trust Fund es-
4 tablished under section 9(a)(1), such sums as may be nec-
5 essary to carry out this section.

6 **SEC. 3502. IMPROVING IMMIGRATION COURT EFFICIENCY**
7 **AND REDUCING COSTS BY INCREASING AC-**
8 **CESS TO LEGAL INFORMATION.**

9 (a) CLARIFICATION REGARDING THE AUTHORITY OF
10 THE ATTORNEY GENERAL TO APPOINT COUNSEL TO
11 ALIENS IN IMMIGRATION PROCEEDINGS.—Section 292 (8
12 U.S.C. 1362) is amended—

13 (1) by inserting “(a)” before “In any”;

14 (2) by striking “(at no expense to the Govern-
15 ment)”;

16 (3) by striking “he shall” and inserting “the
17 person shall”; and

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

19 “(b) The Government is not required to provide coun-
20 sel to aliens under subsection (a). However, the Attorney
21 General may, in the Attorney General’s sole and
22 unreviewable discretion, appoint or provide counsel to
23 aliens in immigration proceedings conducted under section
24 240 of this Act.”.

1 (b) APPOINTMENT OF COUNSEL IN CERTAIN CASES;
2 RIGHT TO REVIEW CERTAIN DOCUMENTS IN REMOVAL
3 PROCEEDINGS.—Section 240(b) (8 U.S.C. 1229a(b)) is
4 amended—

5 (1) in paragraph (4)—

6 (A) by redesignating subparagraphs (B)
7 and (C) as subparagraphs (C) and (D), respec-
8 tively;

9 (B) in subparagraph (A), by striking “, at
10 no expense to the Government,”;

11 (C) by inserting after subparagraph (A)
12 the following new subparagraph:

13 “(B) the alien shall, at the beginning of
14 the proceedings or at a reasonable time there-
15 after, automatically receive a complete copy of
16 all relevant documents in the possession of the
17 Department of Homeland Security, including all
18 documents (other than documents protected
19 from disclosure by privilege, including national
20 security information referenced in subparagraph
21 (C), law enforcement sensitive information, and
22 information prohibited from disclosure pursuant
23 to any other provision of law) contained in the
24 file maintained by the Government that in-
25 cludes information with respect to all trans-

1 actions involving the alien during the immigra-
2 tion process (commonly referred to as an ‘A-
3 file’), and all documents pertaining to the alien
4 that the Department of Homeland Security has
5 obtained or received from other government
6 agencies, unless the alien waives the right to re-
7 ceive such documents by executing a knowing
8 and voluntary waiver in a language that he or
9 she understands fluently,”; and

10 (D) by adding at the end the following:

11 “The Government is not required to provide counsel
12 to aliens under this paragraph. However, the Attor-
13 ney General may, in the Attorney General’s sole and
14 unreviewable discretion, appoint or provide counsel
15 at government expense to aliens in immigration pro-
16 ceedings.”; and

17 (2) by adding at the end the following new
18 paragraph:

19 “(8) FAILURE TO PROVIDE ALIEN REQUIRED
20 DOCUMENTS.—In the absence of a waiver under sub-
21 paragraph (B) of paragraph (4), a removal pro-
22 ceeding may not proceed until the alien has received
23 the documents as required under such subpara-
24 graph.”.

1 (c) APPOINTMENT OF COUNSEL FOR UNACCOM-
2 PANIED ALIEN CHILDREN AND ALIENS WITH A SERIOUS
3 MENTAL DISABILITY.—Section 292 (8 U.S.C. 1362), as
4 amended by subsection (a), is further amended by adding
5 at the end the following:

6 “(c) Notwithstanding subsection (b), the Attorney
7 General shall appoint counsel, at the expense of the Gov-
8 ernment if necessary, to represent an alien in a removal
9 proceeding who has been determined by the Secretary to
10 be an unaccompanied alien child, is incompetent to rep-
11 resent himself or herself due to a serious mental disability
12 that would be included in section 3(1) of the Americans
13 with Disabilities Act of 1990 (42 U.S.C. 12102(1)), or is
14 considered particularly vulnerable when compared to other
15 aliens in removal proceedings, such that the appointment
16 of counsel is necessary to help ensure fair resolution and
17 efficient adjudication of the proceedings.”.

18 (d) FUNDING.—There shall be appropriated, from
19 the Comprehensive Immigration Reform Trust Fund es-
20 tablished under section 9(a)(1), such sums as may be nec-
21 essary to carry out this section and the amendments made
22 by this section.

23 **SEC. 3503. OFFICE OF LEGAL ACCESS PROGRAMS.**

24 (a) ESTABLISHMENT OF OFFICE OF LEGAL ACCESS
25 PROGRAMS.—The Attorney General shall maintain, within

1 the Executive Office for Immigration Review, an Office
2 of Legal Access Programs to develop and administer a sys-
3 tem of legal orientation programs to make immigration
4 proceedings more efficient and cost effective by educating
5 aliens regarding administrative procedures and legal
6 rights under United States immigration law and to estab-
7 lish other programs to assist in providing aliens access to
8 legal information.

9 (b) LEGAL ORIENTATION PROGRAMS.—The legal ori-
10 entation programs—

11 (1) shall provide programs to assist detained
12 aliens in making informed and timely decisions re-
13 garding their removal and eligibility for relief from
14 removal in order to increase efficiency and reduce
15 costs in immigration proceedings and Federal cus-
16 tody processes and to improve access to counsel and
17 other legal services;

18 (2) may provide services to detained aliens in
19 immigration proceedings under sections 235, 238,
20 240, and 241(a)(5) of the Immigration and Nation-
21 ality Act (8 U.S.C. 1225, 1228, 1229a, and
22 1231(a)(5)) and to other aliens in immigration and
23 asylum proceedings under sections 235, 238, and
24 240 of the Immigration and Nationality Act (8
25 U.S.C. 1225, 1228, and 1229a); and

1 (3) shall identify unaccompanied alien children,
2 aliens with a serious mental disability, and other
3 particularly vulnerable aliens for consideration by
4 the Attorney General pursuant to section 292(e) of
5 the Immigration and Nationality Act, as added by
6 section 3502(e).

7 (c) PROCEDURES.—The Secretary, in consultation
8 with the Attorney General, shall establish procedures that
9 ensure that legal orientation programs are available for
10 all detained aliens within 5 days of arrival into custody
11 and to inform such aliens of the basic procedures of immi-
12 gration hearings, their rights relating to those hearings
13 under the immigration laws, information that may deter
14 such aliens from filing frivolous legal claims, and any
15 other information deemed appropriate by the Attorney
16 General, such as a contact list of potential legal resources
17 and providers.

18 (d) RULE OF CONSTRUCTION.—Nothing in this sub-
19 section shall be construed to create any substantive or pro-
20 cedural right or benefit that is legally enforceable by any
21 party against the United States or its agencies or officers
22 or any other person.

23 (e) FUNDING.—There shall be appropriated, from the
24 Comprehensive Immigration Reform Trust Fund estab-

1 lished under section 9(a)(1), such sums as may be nec-
2 essary to carry out this section.

3 **SEC. 3504. CODIFYING BOARD OF IMMIGRATION APPEALS.**

4 (a) DEFINITION OF BOARD MEMBER.—Section
5 101(a) (8 U.S.C. 1101(a)) is amended by adding at the
6 end the following:

7 “(53) The term ‘Board Member’ means an at-
8 torney whom the Attorney General appoints to serve
9 on the Board of Immigration Appeals within the Ex-
10 ecutive Office of Immigration Review, and is quali-
11 fied to review decisions of immigration judges and
12 other matters within the jurisdiction of the Board of
13 Immigration Appeals.”.

14 (b) BOARD OF IMMIGRATION APPEALS.—Section
15 240(a)(1) (8 U.S.C. 1229a(a)(1)) is amended by adding
16 at the end the following: “The Board of Immigration Ap-
17 peals and its Board Members shall review decisions of im-
18 migration judges under this section.”.

19 (c) APPEALS.—Section 240(b)(4) (8 U.S.C.
20 1229a(b)(4)), as amended by section 3502(b), is further
21 amended—

22 (1) in subparagraph (B), by striking “, and”
23 and inserting a semicolon;

24 (2) in subparagraph (C), by striking the period
25 and inserting “; and”; and

1 (3) by inserting after subparagraph (C) the fol-
2 lowing:

3 “(D) the alien or the Department of
4 Homeland Security may appeal the immigration
5 judge’s decision to a 3-judge panel of the Board
6 of Immigration Appeals.”.

7 (d) DECISION AND BURDEN OF PROOF.—Section
8 240(c)(1)(A) (8 U.S.C. 1229a(c)(1)(A)) is amended to
9 read as follows:

10 “(A) IN GENERAL.—At the conclusion of
11 the proceeding, the immigration judge shall de-
12 cide whether an alien is removable from the
13 United States. The determination of the immi-
14 gration judge shall be based only on the evi-
15 dence produced at the hearing. On appeal, the
16 Board of Immigration Appeals shall issue a
17 written opinion. The opinion shall address all
18 dispositive arguments raised by the parties. The
19 panel may incorporate by reference the opinion
20 of the immigration judge whose decision is
21 being reviewed, provided that the panel also ad-
22 dresses any arguments made by the nonpre-
23 vailing party regarding purported errors of law,
24 fact, or discretion.”.

1 **SEC. 3505. IMPROVED TRAINING FOR IMMIGRATION**
2 **JUDGES AND BOARD MEMBERS.**

3 (a) IN GENERAL.—Section 240 (8 U.S.C. 1229a) is
4 amended by adding at the end the following:

5 “(f) IMPROVED TRAINING.—

6 “(1) IMPROVED TRAINING FOR IMMIGRATION
7 JUDGES AND BOARD MEMBERS.—

8 “(A) IN GENERAL.—In consultation with
9 the Attorney General and the Director of the
10 Federal Judicial Center, the Director of the Ex-
11 ecutive Office for Immigration Review shall re-
12 view and modify, as appropriate, training pro-
13 grams for immigration judges and Board Mem-
14 bers.

15 “(B) ELEMENTS OF REVIEW.—Each such
16 review shall study—

17 “(i) the expansion of the training pro-
18 gram for new immigration judges and
19 Board Members;

20 “(ii) continuing education regarding
21 current developments in the field of immi-
22 gration law; and

23 “(iii) methods to ensure that immigra-
24 tion judges are trained on properly crafting
25 and dictating decisions.

1 “(2) IMPROVED TRAINING AND GUIDANCE FOR
2 STAFF.—The Director of the Executive Office for
3 Immigration Review shall—

4 “(A) modify guidance and training regard-
5 ing screening standards and standards of re-
6 view; and

7 “(B) ensure that Board Members provide
8 staff attorneys with appropriate guidance in
9 drafting decisions in individual cases, consistent
10 with the policies and directives of the Director
11 of the Executive Office for Immigration Review
12 and the Chairman of the Board of Immigration
13 Appeals.”.

14 (b) FUNDING.—There shall be appropriated, from the
15 Comprehensive Immigration Reform Trust Fund estab-
16 lished under section 9(a)(1), such sums as may be nec-
17 essary to carry out this section and the amendment made
18 by this section.

19 **SEC. 3506. IMPROVED RESOURCES AND TECHNOLOGY FOR**
20 **IMMIGRATION COURTS AND BOARD OF IMMI-**
21 **GRATION APPEALS.**

22 (a) IMPROVED ON-BENCH REFERENCE MATERIALS
23 AND DECISION TEMPLATES.—The Director of the Execu-
24 tive Office for Immigration Review shall ensure that immi-
25 gration judges are provided with updated reference mate-

1 rials and standard decision templates that conform to the
2 law of the circuits in which they sit.

3 (b) PRACTICE MANUAL.—The Director of the Execu-
4 tive Office for Immigration Review shall produce a prac-
5 tice manual describing best practices for the immigration
6 courts and shall make such manual available electronically
7 to counsel and litigants who appear before the immigra-
8 tion courts.

9 (c) RECORDING SYSTEM AND OTHER TECH-
10 NOLOGIES.—

11 (1) PLAN REQUIRED.—The Director of the Ex-
12 ecutive Office for Immigration Review shall provide
13 the Attorney General with a plan and a schedule to
14 replace the immigration courts' tape recording sys-
15 tem with a digital recording system that is compat-
16 ible with the information management systems of
17 the Executive Office for Immigration Review.

18 (2) AUDIO RECORDING SYSTEM.—Consistent
19 with the plan described in paragraph (1), the Direc-
20 tor shall pilot a digital audio recording system not
21 later than 1 year after the enactment of this Act,
22 and shall begin nationwide implementation of that
23 system as soon as practicable.

24 (d) IMPROVED TRANSCRIPTION SERVICES.—Not
25 later than 1 year after the enactment of this Act, the Di-

1 rector of the Executive Office for Immigration Review
2 shall report to the Attorney General on the current tran-
3 scription services utilized by the Office and recommend
4 improvements to this system regarding quality and timeli-
5 ness of transcription.

6 (e) IMPROVED INTERPRETER SELECTION.—Not later
7 than 1 year after the enactment of this Act, the Director
8 of the Executive Office for Immigration Review shall re-
9 port to the Attorney General on the current interpreter
10 selection process utilized by the Office and recommend im-
11 provements to this process regarding screening, hiring,
12 certification, and evaluation of staff and contract inter-
13 preters.

14 (f) FUNDING.—There shall be appropriated, from the
15 Comprehensive Immigration Reform Trust Fund estab-
16 lished under section 9(a)(1), such sums as may be nec-
17 essary to carry out this section.

18 **SEC. 3507. TRANSFER OF RESPONSIBILITY FOR TRAF-**
19 **FICKING PROTECTIONS.**

20 (a) TRANSFER OF RESPONSIBILITY.—

21 (1) IN GENERAL.—All unexpended balances ap-
22 propriated or otherwise available to the Department
23 of Health and Human Services and its Office of Ref-
24 ugee Resettlement in connection with the functions
25 provided for in paragraphs (5) and (6) of section

1 235(c) of the William Wilberforce Trafficking Vic-
2 tims Protection Reauthorization Act of 2008 (8
3 U.S.C. 1232(c)), shall, subject to section 202 of the
4 Budget and Accounting Procedures Act of 1950, be
5 transferred to the Department of Justice. Funds
6 transferred pursuant to this paragraph shall remain
7 available until expended and shall be used only for
8 the purposes for which the funds were originally au-
9 thORIZED and appropriated.

10 (2) CONTRACT AUTHORITY.—The Attorney
11 General may award grants to, and enter into con-
12 tracts to carry out the functions set forth in para-
13 graphs (5) and (6) of Section 235(c) of the William
14 Wilberforce Trafficking Victims Protection Reau-
15 thORIZATION Act of 2008.

16 (b) CONFORMING AMENDMENTS.—Section 235(c) of
17 the William Wilberforce Trafficking Victims Protection
18 Reauthorization Act of 2008 (8 U.S.C. 1232(c)) is amend-
19 ed—

20 (1) in paragraph (5)—

21 (A) by striking “Secretary of Health and
22 Human Services” each place it appears and in-
23 serting “Attorney General”; and

24 (B) by striking the last sentence; and

25 (2) in paragraph (6)—

1 (A) by striking “Secretary of Health and
2 Human Services” each place it appears and in-
3 serting “Attorney General”;

4 (B) in subparagraphs (B)(ii), (D), and
5 (F), by striking “Secretary” each place it ap-
6 pears and inserting “Attorney General”; and

7 (C) in subparagraph (F), by striking “and
8 Human Services”.

9 **Subtitle F—Prevention of Traf-**
10 **ficking in Persons and Abuses**
11 **Involving Workers Recruited**
12 **Abroad**

13 **SEC. 3601. DEFINITIONS.**

14 (a) IN GENERAL.—Except as otherwise provided by
15 this subtitle, the terms used in this subtitle shall have the
16 same meanings, respectively, as are given those terms in
17 section 3 of the Fair Labor Standards Act of 1938 (29
18 U.S.C. 203).

19 (b) OTHER DEFINITIONS.—

20 (1) FOREIGN LABOR CONTRACTOR.—The term
21 “foreign labor contractor” means any person who
22 performs foreign labor contracting activity, including
23 any person who performs foreign labor contracting
24 activity wholly outside of the United States, except

1 that the term does not include any entity of the
2 United States Government.

3 (2) FOREIGN LABOR CONTRACTING ACTIVITY.—

4 The term “foreign labor contracting activity” means
5 recruiting, soliciting, or related activities with re-
6 spect to an individual who resides outside of the
7 United States in furtherance of employment in the
8 United States, including when such activity occurs
9 wholly outside of the United States.

10 (3) PERSON.—The term “person” means any
11 natural person or any corporation, company, firm,
12 partnership, joint stock company or association or
13 other organization or entity (whether organized
14 under law or not), including municipal corporations.

15 (4) WORKER.—the term “worker” means an in-
16 dividual or exchange visitor who is the subject of for-
17 eign labor contracting activity.

18 **SEC. 3602. DISCLOSURE.**

19 (a) REQUIREMENT FOR DISCLOSURE.—Any person
20 who engages in foreign labor contracting activity shall as-
21 certain and disclose in writing in English and in the pri-
22 mary language of the worker at the time of the worker’s
23 recruitment, the following information:

24 (1) The identity and address of the employer
25 and the identity and address of the person con-

1 ducting the recruiting on behalf of the employer, in-
2 cluding any subcontractor or agent involved in such
3 recruiting.

4 (2) All assurances and terms and conditions of
5 employment, from the prospective employer for
6 whom the worker is being recruited, including the
7 work hours, level of compensation to be paid, the
8 place and period of employment, a description of the
9 type and nature of employment activities, any
10 withholdings or deductions from compensation and
11 any penalties for terminating employment.

12 (3) A signed copy of the work contract between
13 the worker and the employer.

14 (4) The type of visa under which the foreign
15 worker is to be employed, the length of time for
16 which the visa will be valid, the terms and conditions
17 under which the visa may be renewed, and a clear
18 statement of any expenses associated with securing
19 or renewing the visa.

20 (5) An itemized list of any costs or expenses to
21 be charged to the worker and any deductions to be
22 taken from wages, including any costs for housing or
23 accommodation, transportation to and from the
24 worksite, meals, health insurance, workers' com-

1 pensation, costs of benefits provided, medical exami-
2 nations, healthcare, tools, or safety equipment costs.

3 (6) The existence of any labor organizing effort,
4 strike, lockout, or other labor dispute at the place of
5 employment.

6 (7) Whether and the extent to which workers
7 will be compensated through workers' compensation,
8 private insurance, or otherwise for injuries or death,
9 including work-related injuries and death, during the
10 period of employment and, if so, the name of the
11 State workers' compensation insurance carrier or the
12 name of the policyholder of the private insurance,
13 the name and the telephone number of each person
14 who must be notified of an injury or death, and the
15 time period within which such notice must be given.

16 (8) A statement, in a form specified by the Sec-
17 retary—

18 (A) stating that—

19 (i) no foreign labor contractor, agent,
20 or employee of a foreign labor contractor,
21 may lawfully assess any fee (including visa
22 fees, processing fees, transportation fees,
23 legal expenses, placement fees, and other
24 costs) to a worker for any foreign labor
25 contracting activity; and

1 (ii) the employer may bear such costs
2 or fees for the foreign labor contractor, but
3 that these fees cannot be passed along to
4 the worker;

5 (B) explaining that—

6 (i) no additional significant require-
7 ments or changes may be made to the
8 original contract signed by the worker
9 without at least 24 hours to consider such
10 changes and the specific consent of the
11 worker, obtained voluntarily and without
12 threat of penalty; and

13 (ii) any significant changes made to
14 the original contract that do not comply
15 with clause (i) shall be a violation of this
16 subtitle and be subject to the provisions of
17 section 3610 of this Act; and

18 (C) describing the protections afforded the
19 worker by this section and by section 202 of the
20 William Wilberforce Trafficking Victims Protec-
21 tion Reauthorization Act of 2008 (8 U.S.C.
22 1375b) and any applicable visa program, in-
23 cluding—

1 (i) relevant information about the pro-
2 cedure for filing a complaint provided for
3 in section 3610; and

4 (ii) the telephone number for the na-
5 tional human trafficking resource center
6 hotline number.

7 (9) Any education or training to be provided or
8 required, including—

9 (A) the nature, timing, and cost of such
10 training;

11 (B) the person who will pay such costs;

12 (C) whether the training is a condition of
13 employment, continued employment, or future
14 employment; and

15 (D) whether the worker will be paid or re-
16 munerated during the training period, including
17 the rate of pay.

18 (b) RELATIONSHIP TO LABOR AND EMPLOYMENT
19 LAWS.—Nothing in the disclosure required by subsection
20 (a) shall constitute a legal conclusion as to the worker’s
21 status or rights under the labor and employment laws.

22 (c) PROHIBITION ON FALSE AND MISLEADING IN-
23 FORMATION.—No foreign labor contractor or employer
24 who engages in any foreign labor contracting activity shall
25 knowingly provide materially false or misleading informa-

1 tion to any worker concerning any matter required to be
2 disclosed under subsection (a). The disclosure required by
3 this section is a document concerning the proper adminis-
4 tration of a matter within the jurisdiction of a department
5 or agency of the United States for the purposes of section
6 1519 of title 18, United States Code.

7 **SEC. 3603. PROHIBITION ON DISCRIMINATION.**

8 (a) IN GENERAL.—It shall be unlawful for an em-
9 ployer or a foreign labor contractor to fail or refuse to
10 hire, discharge, intimidate, threaten, restrain, coerce, or
11 blacklist any individual or otherwise discriminate against
12 an individual with respect to compensation, terms, condi-
13 tions, or privileges of employment, because of such individ-
14 ual's race, color, creed, sex, national origin, religion, age,
15 or disability.

16 (b) DETERMINATIONS OF DISCRIMINATION.—For the
17 purposes of determining the existence of unlawful dis-
18 crimination under subsection (a)—

19 (1) in the case of a claim of discrimination
20 based on race, color, creed, sex, national origin, or
21 religion, the same legal standards shall apply as are
22 applicable under title VII of the Civil Rights Act of
23 1964 (42 U.S.C. 2000e et seq.);

24 (2) in the case of a claim of discrimination
25 based on unlawful discrimination based on age, the

1 same legal standards shall apply as are applicable
2 under the Age Discrimination in Employment Act of
3 1967 (29 U.S.C. 621 et seq.); and

4 (3) in the case of a claim of discrimination
5 based on disability, the same legal standards shall
6 apply as are applicable under title I of the Ameri-
7 cans With Disabilities Act of 1990 (42 U.S.C.
8 12111 et seq.).

9 **SEC. 3604. RECRUITMENT FEES.**

10 No employer, foreign labor contractor, or agent or
11 employee of a foreign labor contractor, shall assess any
12 fee (including visa fees, processing fees, transportation
13 fees, legal expenses, placement fees, and other costs) to
14 a worker for any foreign labor contracting activity.

15 **SEC. 3605. REGISTRATION.**

16 (a) REQUIREMENT TO REGISTER.—

17 (1) IN GENERAL.—Subject to paragraph (2),
18 prior to engaging in any foreign labor contracting
19 activity, any person who is a foreign labor contractor
20 or who, for any money or other valuable consider-
21 ation paid or promised to be paid, performs a for-
22 eign labor contracting activity on behalf of a foreign
23 labor contractor, shall obtain a certificate of reg-
24 istration from the Secretary of Labor pursuant to

1 regulations promulgated by the Secretary under sub-
2 section (c).

3 (2) EXCEPTION FOR CERTAIN EMPLOYERS.—An
4 employer, or employee of an employer, who engages
5 in foreign labor contracting activity solely to find
6 employees for that employer's own use, and without
7 the participation of any other foreign labor con-
8 tractor, shall not be required to register under this
9 section.

10 (b) NOTIFICATION.—

11 (1) ANNUAL EMPLOYER NOTIFICATION.—Each
12 employer shall notify the Secretary, not less fre-
13 quently than once every year, of the identity of any
14 foreign labor contractor involved in any foreign labor
15 contracting activity for, or on behalf of, the em-
16 ployer, including at a minimum, the name and ad-
17 dress of the foreign labor contractor, a description of
18 the services for which the foreign labor contractor is
19 being used, whether the foreign labor contractor is
20 to receive any economic compensation for the serv-
21 ices, and, if so, the identity of the person or entity
22 who is paying for the services.

23 (2) ANNUAL FOREIGN LABOR CONTRACTOR NO-
24 TIFICATION.—Each foreign labor contractor shall
25 notify the Secretary, not less frequently than once

1 every year, of the identity of any subcontractee,
2 agent, or foreign labor contractor employee involved
3 in any foreign labor contracting activity for, or on
4 behalf of, the foreign labor contractor.

5 (3) NONCOMPLIANCE NOTIFICATION.—An em-
6 ployer shall notify the Secretary of the identity of a
7 foreign labor contractor whose activities do not com-
8 ply with this subtitle.

9 (4) AGREEMENT.—Not later than 7 days after
10 receiving a request from the Secretary, an employer
11 shall provide the Secretary with the identity of any
12 foreign labor contractor with which the employer has
13 a contract or other agreement.

14 (c) REGULATIONS.—Not later than 180 days after
15 the date of the enactment of this Act, the Secretary shall
16 promulgate regulations to establish an efficient electronic
17 process for the timely investigation and approval of an ap-
18 plication for a certificate of registration of foreign labor
19 contractors, including—

20 (1) a declaration, subscribed and sworn to by
21 the applicant, stating the applicant's permanent
22 place of residence, the foreign labor contracting ac-
23 tivities for which the certificate is requested, and
24 such other relevant information as the Secretary
25 may require;

1 (2) a set of fingerprints of the applicant;

2 (3) an expeditious means to update registra-
3 tions and renew certificates;

4 (4) providing for the consent of any foreign
5 labor recruiter to the designation by a court of the
6 Secretary as an agent available to accept service of
7 summons in any action against the applicant, if the
8 applicant has left the jurisdiction in which the action
9 is commenced, otherwise has become unavailable to
10 accept service, or is subject to personal jurisdiction
11 in no State;

12 (5) providing for the consent of any foreign
13 labor recruiter to jurisdiction in the Department or
14 any Federal or State court in the United States for
15 any action brought by any aggrieved individual or
16 worker;

17 (6) providing for cooperation in any investiga-
18 tion by the Secretary or other appropriate authori-
19 ties;

20 (7) providing for consent to the forfeiture of the
21 bond for failure to cooperate with these provisions;

22 (8) providing for consent to be liable for viola-
23 tions of this subtitle by any agents or subcontractees
24 of any level in relation to the foreign labor con-
25 tracting activity of the agent or subcontractee to the

1 same extent as if the foreign labor contractor had
2 committed the violation; and

3 (9) providing for consultation with other appro-
4 priate Federal agencies to determine whether any
5 reason exists to deny registration to a foreign labor
6 contractor.

7 (d) TERM OF REGISTRATION.—Unless suspended or
8 revoked, a certificate under this section shall be valid for
9 2 years.

10 (e) APPLICATION FEE.—

11 (1) REQUIREMENT FOR FEE.—In addition to
12 any other fees authorized by law, the Secretary shall
13 impose a fee, to be deposited in the general fund of
14 the Treasury, on a foreign labor contractor that sub-
15 mits an application for a certificate of registration
16 under this section.

17 (2) AMOUNT OF FEE.—The amount of the fee
18 required by paragraph (1) shall be set at a level that
19 the Secretary determines sufficient to cover the full
20 costs of carrying out foreign labor contract registra-
21 tion activities under this subtitle, including worker
22 education and any additional costs associated with
23 the administration of the fees collected.

24 (f) REFUSAL TO ISSUE; REVOCATION.—In accord-
25 ance with regulations promulgated by the Secretary, the

1 Secretary shall refuse to issue or renew, or shall revoke
2 and debar from eligibility to obtain a certificate of reg-
3 istration for a period of not greater than 5 years, after
4 notice and an opportunity for a hearing, a certificate of
5 registration under this section if—

6 (1) the applicant for, or holder of, the certifi-
7 cation has knowingly made a material misrepresen-
8 tation in the application for such certificate;

9 (2) the applicant for, or holder of, the certifi-
10 cation is not the real party in interest in the applica-
11 tion or certificate of registration and the real party
12 in interest—

13 (A) is a person who has been refused
14 issuance or renewal of a certificate;

15 (B) has had a certificate revoked; or

16 (C) does not qualify for a certificate under
17 this section;

18 (3) the applicant for, or holder of, the certifi-
19 cation has been convicted within the preceding 5
20 years of—

21 (A) any felony under State or Federal law
22 or crime involving robbery, bribery, extortion,
23 embezzlement, grand larceny, burglary, arson,
24 violation of narcotics laws, murder, rape, as-
25 sult with intent to kill, assault which inflicts

1 grievous bodily injury, prostitution, peonage, or
2 smuggling or harboring individuals who have
3 entered the United States illegally; or

4 (B) any crime relating to gambling, or to
5 the sale, distribution or possession of alcoholic
6 beverages, in connection with or incident to any
7 labor contracting activities; or

8 (4) the applicant for, or holder of, the certifi-
9 cation has materially failed to comply with this sec-
10 tion.

11 (g) RE-REGISTRATION OF VIOLATORS.—The Sec-
12 retary shall establish a procedure by which a foreign labor
13 contractor that has had its registration revoked under sub-
14 section (f) may seek to re-register under this subsection
15 by demonstrating to the Secretary's satisfaction that the
16 foreign labor contractor has not violated this subtitle in
17 the previous 5 years and that the foreign labor contractor
18 has taken sufficient steps to prevent future violations of
19 this subtitle.

20 **SEC. 3606. BONDING REQUIREMENT.**

21 (a) IN GENERAL.—The Secretary shall require a for-
22 eign labor contractor to post a bond in an amount suffi-
23 cient to ensure the ability of the foreign labor contractor
24 to discharge its responsibilities and to ensure protection
25 of workers, including wages.

1 (b) REGULATIONS.—The Secretary, by regulation,
2 shall establish the conditions under which the bond
3 amount is determined, paid, and forfeited.

4 (c) RELATIONSHIP TO OTHER REMEDIES.—The bond
5 requirements and forfeiture of the bond under this section
6 shall be in addition to other remedies under 3610 or any
7 other law.

8 **SEC. 3607. MAINTENANCE OF LISTS.**

9 (a) IN GENERAL.—The Secretary shall maintain—

10 (1) a list of all foreign labor contractors reg-
11 istered under this subsection, including—

12 (A) the countries from which the contrac-
13 tors recruit;

14 (B) the employers for whom the contrac-
15 tors recruit;

16 (C) the visa categories and occupations for
17 which the contractors recruit; and

18 (D) the States where recruited workers are
19 employed; and

20 (2) a list of all foreign labor contractors whose
21 certificate of registration the Secretary has revoked.

22 (b) UPDATES; AVAILABILITY.—The Secretary shall—

23 (1) update the lists required by subsection (a)
24 on an ongoing basis, not less frequently than every
25 6 months; and

1 “(2) has reviewed and made a part of the visa
2 file the foreign labor recruiter disclosures required
3 by section 3602 of the Border Security, Economic
4 Opportunity, and Immigration Modernization Act,
5 including whether the foreign labor recruiter is reg-
6 istered pursuant to that section.”.

7 **SEC. 3609. RESPONSIBILITIES OF SECRETARY OF STATE.**

8 (a) **IN GENERAL.**—The Secretary of State shall en-
9 sure that each United States diplomatic mission has a per-
10 son who shall be responsible for receiving information
11 from any worker who has been subject to violations of this
12 subtitle.

13 (b) **PROVISION OF INFORMATION.**—The responsible
14 person referred to in subsection (a) shall ensure that the
15 information received is provided to the Department of Jus-
16 tice, the Department of Labor, or any other relevant Fed-
17 eral agency.

18 (c) **MECHANISMS.**—The Attorney General and the
19 Secretary shall ensure that there is a mechanism for any
20 actions that need to be taken in response to information
21 received under subsection (a).

22 (d) **ASSISTANCE FROM FOREIGN GOVERNMENT.**—
23 The person designated for receiving information pursuant
24 to subsection (a) is strongly encouraged to coordinate with
25 governments and civil society organizations in the coun-

1 tries of origin to ensure the worker receives additional sup-
2 port.

3 (e) MAINTENANCE AND AVAILABILITY OF INFORMA-
4 TION.—The Secretary of State shall ensure that con-
5 sulates maintain information regarding the identities of
6 foreign labor contractors and the employers to whom the
7 foreign labor contractors supply workers. The Secretary
8 of State shall make such information publicly available in
9 written form and online, including on the websites of
10 United States embassies in the official language of that
11 country.

12 (f) ANNUAL PUBLIC DISCLOSE.—The Secretary of
13 State shall make publicly available online, on an annual
14 basis, data disclosing the gender, country of origin and
15 state, if available, date of birth, wage, level of training,
16 and occupation category, disaggregated by job and by visa
17 category and subcategory.

18 **SEC. 3610. ENFORCEMENT PROVISIONS.**

19 (a) COMPLAINTS AND INVESTIGATIONS.—The Sec-
20 retary—

21 (1) shall establish a process for the receipt, in-
22 vestigation, and disposition of complaints filed by
23 any person, including complaints respecting a for-
24 eign labor contractor's compliance with this subtitle;
25 and

1 (2) either pursuant to the process required by
2 paragraph (1) or otherwise, may investigate employ-
3 ers or foreign labor contractors, including actions oc-
4 ccurring in a foreign country, as necessary to deter-
5 mine compliance with this subtitle.

6 (b) ENFORCEMENT.—

7 (1) IN GENERAL.—A worker who believes that
8 he or she has suffered a violation of this subtitle
9 may seek relief from an employer by—

10 (A) filing a complaint with the Secretary
11 within 3 years after the date on which the viola-
12 tion occurred or date on which the employee be-
13 came aware of the violation; or

14 (B) if the Secretary has not issued a final
15 decision within 120 days of the filing of the
16 complaint and there is no showing that such
17 delay is due to the bad faith of the claimant,
18 bringing an action at law or equity for de novo
19 review in the appropriate district court of the
20 United States, which shall have jurisdiction
21 over such an action without regard to the
22 amount in controversy.

23 (2) PROCEDURE.—

24 (A) IN GENERAL.—Unless otherwise pro-
25 vided herein, a complaint under paragraph

1 (1)(A) shall be governed under the rules and
2 procedures set forth in paragraphs (1) and
3 (2)(A) of section 42121(b) of title 49, United
4 States Code.

5 (B) EXCEPTION.—Notification of a com-
6 plaint under paragraph (1)(A) shall be made to
7 each person or entity named in the complaint
8 as a defendant and to the employer.

9 (C) STATUTE OF LIMITATIONS.—An action
10 filed in a district court of the United States
11 under paragraph (1)(B) shall be commenced
12 not later than 180 days after the last day of the
13 120-day period referred to in that paragraph.

14 (D) JURY TRIAL.—A party to an action
15 brought under paragraph (1)(B) shall be enti-
16 tled to trial by jury.

17 (e) ADMINISTRATIVE ENFORCEMENT.—

18 (1) IN GENERAL.—If the Secretary finds, after
19 notice and an opportunity for a hearing, any foreign
20 labor contractor or employer failed to comply with
21 any of the requirements of this subtitle, the Sec-
22 retary may impose the following against such con-
23 tractor or employer—

24 (A) a fine in an amount not more than
25 \$10,000 per violation; and

1 (B) upon the occasion of a third violation
2 or a failure to comply with representations, a
3 fine of not more than \$25,000 per violation.

4 (d) **AUTHORITY TO ENSURE COMPLIANCE.**—The
5 Secretary is authorized to take other such actions, includ-
6 ing issuing subpoenas and seeking appropriate injunctive
7 relief and recovery of damages, as may be necessary to
8 assure compliance with the terms and conditions of this
9 subtitle.

10 (e) **BONDING.**—Pursuant to the bonding requirement
11 in section 3606, bond liquidation and forfeitures shall be
12 in addition to other remedies under this section or any
13 other law.

14 (f) **CIVIL ACTION.**—

15 (1) **IN GENERAL.**—The Secretary or any person
16 aggrieved by a violation of this subtitle may bring a
17 civil action against any foreign labor contractor that
18 does not meet the requirements under subsection

19 (g)(2) in any court of competent jurisdiction—

20 (A) to seek remedial action, including in-
21 junctive relief;

22 (B) to recover damages on behalf of any
23 worker harmed by a violation of this subsection;
24 and

1 (C) to ensure compliance with require-
2 ments of this section.

3 (2) ACTIONS BY THE SECRETARY OF HOME-
4 LAND SECURITY.—

5 (A) SUMS RECOVERED.—Any sums recov-
6 ered by the Secretary on behalf of a worker
7 under paragraph (1) or through liquidation of
8 the bond held pursuant to section 3606 shall be
9 held in a special deposit account and shall be
10 paid, on order of the Secretary, directly to each
11 worker affected. Any such sums not paid to a
12 worker because of inability to do so within a pe-
13 riod of 5 years shall be credited as an offsetting
14 collection to the appropriations account of the
15 Secretary for expenses for the administration of
16 this section and shall remain available to the
17 Secretary until expended or may be used for en-
18 forcement of the laws within the jurisdiction of
19 the wage and hour division or may be trans-
20 ferred to the Secretary of Health and Human
21 Services for the purpose of providing support to
22 programs that provide assistance to victims of
23 trafficking in persons or other exploited per-
24 sons. The Secretary shall work with any attor-

1 ney or organization representing workers to lo-
2 cate workers owed sums under this section.

3 (B) REPRESENTATION.—Except as pro-
4 vided in section 518(a) of title 28, United
5 States Code, the Attorney General may appear
6 for and represent the Secretary in any civil liti-
7 gation brought under this paragraph. All such
8 litigation shall be subject to the direction and
9 control of the Attorney General.

10 (3) ACTIONS BY INDIVIDUALS.—

11 (A) AWARD.—If the court finds in a civil
12 action filed by an individual under this section
13 that the defendant has violated any provision of
14 this subtitle (or any regulation issued pursuant
15 to this subtitle), the court may award—

16 (i) damages, up to and including an
17 amount equal to the amount of actual
18 damages, and statutory damages of up to
19 \$1,000 per plaintiff per violation, or other
20 equitable relief, except that with respect to
21 statutory damages—

22 (I) multiple infractions of a sin-
23 gle provision of this subtitle (or of a
24 regulation under this subtitle) shall
25 constitute only 1 violation for pur-

1 poses of section 3602(a) to determine
2 the amount of statutory damages due
3 a plaintiff; and

4 (II) if such complaint is certified
5 as a class action the court may
6 award—

7 (aa) damages up to an
8 amount equal to the amount of
9 actual damages; and

10 (bb) statutory damages of
11 not more than the lesser of up to
12 \$1,000 per class member per vio-
13 lation, or up to \$500,000; and
14 other equitable relief;

15 (ii) reasonable attorneys' fees and
16 costs; and

17 (iii) such other and further relief, in-
18 cluding declaratory and injunctive relief, as
19 necessary to effectuate the purposes of this
20 subtitle.

21 (B) CRITERIA.—In determining the
22 amount of statutory damages to be awarded
23 under subparagraph (A), the court is author-
24 ized to consider whether an attempt was made

1 to resolve the issues in dispute before the resort
2 to litigation.

3 (C) BOND.—To satisfy the damages, fees,
4 and costs found owing under this clause, the
5 Secretary shall release as much of the bond
6 held pursuant to section 3606 as necessary.

7 (D) APPEAL.—Any civil action brought
8 under this section shall be subject to appeal as
9 provided in chapter 83 of title 28, United
10 States Code (28 U.S.C. 1291 et seq.).

11 (E) ACCESS TO LEGAL SERVICES COR-
12 PORATION.—Notwithstanding any other provi-
13 sion of law, the Legal Services Corporation and
14 recipients of its funding may provide legal as-
15 sistance on behalf of any alien with respect to
16 any provision of this subtitle.

17 (g) AGENCY LIABILITY.—

18 (1) IN GENERAL.—Beginning 180 days after
19 the Secretary has promulgated regulations pursuant
20 to section 3605(c), an employer who retains the
21 services of a foreign labor contractor shall only use
22 those foreign labor contractors who are registered
23 under section 3605.

24 (2) SAFE HARBOR.—An employer shall not have
25 any liability under this section if the employer hires

1 workers referred by a foreign labor contractor that
2 has a valid registration with the Department pursu-
3 ant to section 3604.

4 (3) LIABILITY FOR AGENTS.—Foreign labor
5 contractors shall be subject to the provisions of this
6 section for violations committed by the foreign labor
7 contractor’s agents or subcontractees of any level in
8 relation to their foreign labor contracting activity to
9 the same extent as if the foreign labor contractor
10 had committed the violation.

11 (h) RETALIATION.—

12 (1) IN GENERAL.—No person shall intimidate,
13 threaten, restrain, coerce, discharge, or in any other
14 manner discriminate or retaliate against any worker
15 or their family members (including a former em-
16 ployee or an applicant for employment) because such
17 worker disclosed information to any person that the
18 worker reasonably believes evidences a violation of
19 this section (or any rule or regulation pertaining to
20 this section), including seeking legal assistance of
21 counsel or cooperating with an investigation or other
22 proceeding concerning compliance with this section
23 (or any rule or regulation pertaining to this section).

24 (2) ENFORCEMENT.—An individual who is sub-
25 ject to any conduct described in paragraph (1) may,

1 in a civil action, recover appropriate relief, including
2 reasonable attorneys' fees and costs, with respect to
3 that violation. Any civil action under this subpara-
4 graph shall be stayed during the pendency of any
5 criminal action arising out of the violation.

6 (i) WAIVER OF RIGHTS.—Agreements by employees
7 purporting to waive or to modify their rights under this
8 subtitle shall be void as contrary to public policy.

9 (j) PRESENCE DURING PENDENCY OF ACTIONS.—

10 (1) IN GENERAL.—If other immigration relief is
11 not available, the Attorney General and the Sec-
12 retary shall grant advance parole to permit a non-
13 immigrant to remain legally in the United States for
14 time sufficient to fully and effectively participate in
15 all legal proceedings related to any action taken pur-
16 suant to this section.

17 (2) REGULATIONS.—Not later than 180 days
18 after the date of the enactment of this Act, the Sec-
19 retary shall promulgate regulations to carry out
20 paragraph (1).

21 **SEC. 3611. DETECTING AND PREVENTING CHILD TRAF-**
22 **FICKING.**

23 The Secretary shall mandate the live training of all
24 U.S. Customs and Border Protection personnel who are
25 likely to come into contact with unaccompanied alien chil-

1 dren. Such training shall incorporate the services of child
2 welfare professionals with expertise in culturally com-
3 petent, trauma-centered, and developmentally appropriate
4 interviewing skills to assist U.S. Customs and Border Pro-
5 tection in the screening of children attempting to enter
6 the United States.

7 **SEC. 3612. PROTECTING CHILD TRAFFICKING VICTIMS.**

8 (a) **SHORT TITLE.**—This section may be cited as the
9 “Child Trafficking Victims Protection Act”.

10 (b) **DEFINED TERM.**—In this section, the term “un-
11 accompanied alien children” has the meaning given such
12 term in section 462 of the Homeland Security Act of 2002
13 (6 U.S.C. 279).

14 (c) **CARE AND TRANSPORTATION.**—Notwithstanding
15 any other provision of law, the Secretary shall ensure that
16 all unaccompanied alien children who will undergo any im-
17 migration proceedings before the Department or the Exec-
18 utive Office for Immigration Review are duly transported
19 and placed in the care and legal and physical custody of
20 the Office of Refugee Resettlement not later than 72
21 hours after their apprehension absent exceptional cir-
22 cumstances, including a natural disaster or comparable
23 emergency beyond the control of the Secretary or the Of-
24 fice of Refugee Resettlement. The Secretary, to the extent
25 practicable, shall ensure that female officers are continu-

1 ously present during the transfer and transport of female
2 detainees who are in the custody of the Department.

3 (d) QUALIFIED RESOURCES.—

4 (1) IN GENERAL.—The Secretary shall provide
5 adequately trained and qualified staff and resources,
6 including the accommodation of child welfare offi-
7 cials, in accordance with subsection (e), at U.S. Cus-
8 toms and Border Protection ports of entry and sta-
9 tions.

10 (2) CHILD WELFARE PROFESSIONALS.—The
11 Secretary of Health and Human Services, in con-
12 sultation with the Secretary, shall hire, on a full- or
13 part-time basis, child welfare professionals who will
14 provide assistance, either in person or by other ap-
15 propriate methods of communication, in not fewer
16 than 7 of the U.S. Customs and Border Protection
17 offices or stations with the largest number of unac-
18 companied alien child apprehensions in the previous
19 fiscal year.

20 (e) CHILD WELFARE PROFESSIONALS.—

21 (1) IN GENERAL.—The Secretary, in consulta-
22 tion with the Secretary of Health and Human Serv-
23 ices, shall ensure that qualified child welfare profes-
24 sionals with expertise in culturally competent, trau-
25 ma-centered, and developmentally appropriate inter-

1 viewing skills are available at each major port of
2 entry described in subsection (d).

3 (2) DUTIES.—Child welfare professionals de-
4 scribed in paragraph (1) shall—

5 (A) develop guidelines for treatment of un-
6 accompanied alien children in the custody of the
7 Department;

8 (B) conduct screening of all unaccom-
9 panied alien children in accordance with section
10 235(a)(4) of the William Wilberforce Traf-
11 ficking Victims Protection Reauthorization Act
12 of 2008 (8 U.S.C. 1232(a)(4));

13 (C) notify the Department and the Office
14 of Refugee Resettlement of children that poten-
15 tially meet the notification and transfer require-
16 ments set forth in subsections (a) and (b) of
17 section 235 of such Act (8 U.S.C. 1232);

18 (D) interview adult relatives accompanying
19 unaccompanied alien children;

20 (E) provide an initial family relationship
21 and trafficking assessment and recommenda-
22 tions regarding unaccompanied alien children's
23 initial placements to the Office of Refugee Re-
24 settlement, which shall be conducted in accord-
25 ance with the time frame set forth in sub-

1 sections (a)(4) and (b)(3) of section 235 of
2 such Act (8 U.S.C. 1232); and

3 (F) ensure that each unaccompanied alien
4 child in the custody of U.S. Customs and Bor-
5 der Protection—

6 (i) receives emergency medical care
7 when necessary;

8 (ii) receives emergency medical and
9 mental health care that complies with the
10 standards adopted pursuant to section 8(c)
11 of the Prison Rape Elimination Act of
12 2003 (42 U.S.C. 15607(c)) whenever nec-
13 essary, including in cases in which a child
14 is at risk to harm himself, herself, or oth-
15 ers;

16 (iii) is provided with climate appro-
17 priate clothing, shoes, basic personal hy-
18 giene and sanitary products, a pillow, lin-
19 ens, and sufficient blankets to rest at a
20 comfortable temperature;

21 (iv) receives adequate nutrition;

22 (v) enjoys a safe and sanitary living
23 environment;

1 (vi) has access to daily recreational
2 programs and activities if held for a period
3 longer than 24 hours;

4 (vii) has access to legal services and
5 consular officials; and

6 (viii) is permitted to make supervised
7 phone calls to family members.

8 (3) FINAL DETERMINATIONS.—The Office of
9 Refugee Resettlement in accordance with applicable
10 policies and procedures for sponsors, shall submit
11 final determinations on family relationships to the
12 Secretary, who shall consider such adult relatives for
13 community-based support alternatives to detention.

14 (4) REPORT.—Not later than 18 months after
15 the date of the enactment of this Act, and annually
16 thereafter, the Secretary shall submit a report to
17 Congress that—

18 (A) describes the screening procedures
19 used by the child welfare professionals to screen
20 unaccompanied alien children;

21 (B) assesses the effectiveness of such
22 screenings; and

23 (C) includes data on all unaccompanied
24 alien children who were screened by child wel-
25 fare professionals;

1 (f) IMMEDIATE NOTIFICATION.—The Secretary shall
2 notify the Office of Refugee Resettlement of an unaccom-
3 panied alien child in the custody of the Department as
4 soon as practicable, but generally not later than 48 hours
5 after the Department encounters the child, to effectively
6 and efficiently coordinate the child’s transfer to and place-
7 ment with the Office of Refugee Resettlement.

8 (g) NOTICE OF RIGHTS AND RIGHT TO ACCESS TO
9 COUNSEL.—

10 (1) IN GENERAL.—The Secretary shall ensure
11 that all unaccompanied alien children, upon appre-
12 hension, are provided—

13 (A) an interview and screening with a child
14 welfare professional described in subsection
15 (e)(1); and

16 (B) an orientation and oral and written
17 notice of their rights under the Immigration
18 and Nationality Act, including—

19 (i) their right to relief from removal;

20 (ii) their right to confer with counsel

21 (as guaranteed under section 292 of such
22 Act (8 U.S.C. 1362)), family, or friends
23 while in the temporary custody of the De-
24 partment; and

1 (iii) relevant complaint mechanisms to
2 report any abuse or misconduct they may
3 have experienced.

4 (2) LANGUAGES.—The Secretary shall ensure
5 that—

6 (A) the video orientation and written no-
7 tice of rights described in paragraph (1) is
8 available in English and in the 5 most common
9 native languages spoken by the unaccompanied
10 children held in custody at that location during
11 the preceding fiscal year; and

12 (B) the oral notice of rights is available in
13 English and in the most common native lan-
14 guage spoken by the unaccompanied children
15 held in custody at that location during the pre-
16 ceding fiscal year.

17 (h) CONFIDENTIALITY.—The Secretary of Health
18 and Human Services shall maintain the privacy and con-
19 fidentiality of all information gathered in the course of
20 providing care, custody, placement, and follow-up services
21 to unaccompanied alien children, consistent with the best
22 interest of the unaccompanied alien child, by not dis-
23 closing such information to other government agencies or
24 nonparental third parties unless such disclosure is—

1 (1) recorded in writing and placed in the child’s
2 file;

3 (2) in the child’s best interest; and

4 (3)(A) authorized by the child or by an ap-
5 proved sponsor in accordance with section 235 of the
6 William Wilberforce Trafficking Victims Protection
7 Reauthorization Act of 2008 (8 U.S.C. 1232) and
8 the Health Insurance Portability and Accountability
9 Act (Public Law 104–191); or

10 (B) provided to a duly recognized law enforce-
11 ment entity to prevent imminent and serious harm
12 to another individual.

13 (i) OTHER POLICIES AND PROCEDURES.—The Sec-
14 retary shall adopt fundamental child protection policies
15 and procedures—

16 (1) for reliable age determinations of children,
17 developed in consultation with medical and child wel-
18 fare experts, which exclude the use of fallible foren-
19 sic testing of children’s bone and teeth;

20 (2) to utilize all legal authorities to defer the
21 child’s removal if the child faces a risk of life-threat-
22 ening harm upon return including due to the child’s
23 mental health or medical condition; and

24 (3) to ensure, in accordance with the Juvenile
25 Justice and Delinquency Prevention Act of 1974 (42

1 U.S.C. 5601 et seq.), that unaccompanied alien chil-
2 dren, while in detention, are—

3 (A) physically separated from any adult
4 who is not an immediate family member; and

5 (B) separated from—

6 (i) immigration detainees and inmates
7 with criminal convictions;

8 (ii) pretrial inmates facing criminal
9 prosecution; and

10 (iii) inmates exhibiting violent behav-
11 ior.

12 (j) REPATRIATION AND REINTEGRATION PRO-
13 GRAM.—

14 (1) IN GENERAL.—The Administrator of the
15 United States Agency for International Develop-
16 ment, in conjunction with the Secretary, the Sec-
17 retary of Health and Human Services, the Attorney
18 General, international organizations, and nongovern-
19 mental organizations in the United States with ex-
20 pertise in repatriation and reintegration, shall create
21 a multi-year program to develop and implement best
22 practices and sustainable programs in the United
23 States and within the country of return to ensure
24 the safe and sustainable repatriation and reintegra-
25 tion of unaccompanied alien children into their coun-

1 try of nationality or of last habitual residence, in-
2 cluding placement with their families, legal guard-
3 ians, or other sponsoring agencies.

4 (2) REPORT ON REPATRIATION AND RE-
5 INTEGRATION OF UNACCOMPANIED ALIEN CHIL-
6 DREN.—Not later than 18 months after the date of
7 the enactment of this Act, and annually thereafter,
8 the Administrator of the Agency for International
9 Development shall submit a substantive report to the
10 Committee on the Judiciary of the Senate and the
11 Committee on the Judiciary of the House of Rep-
12 resentatives on efforts to improve repatriation and
13 reintegration programs for unaccompanied alien chil-
14 dren.

15 (k) TRANSFER OF FUNDS.—

16 (1) AUTHORIZATION.—The Secretary, in ac-
17 cordance with a written agreement between the Sec-
18 retary and the Secretary of Health and Human
19 Services, shall transfer such amounts as may be nec-
20 essary to carry out the duties described in subsection
21 (f)(2) from amounts appropriated for U.S. Customs
22 and Border Protection to the Department of Health
23 and Human Services.

24 (2) REPORT.—Not later than 15 days before
25 any proposed transfer under paragraph (1), the Sec-

1 retary of Health and Human Services, in consulta-
2 tion with the Secretary, shall submit a detailed ex-
3 penditure plan that describes the actions proposed to
4 be taken with amounts transferred under such para-
5 graph to—

6 (A) the Committee on Appropriations of
7 the Senate; and

8 (B) the Committee on Appropriations of
9 the House of Representatives.

10 **SEC. 3613. RULE OF CONSTRUCTION.**

11 Nothing in this subtitle shall be construed to preempt
12 or alter any other rights or remedies, including any causes
13 of action, available under any other Federal or State law.

14 **SEC. 3614. REGULATIONS.**

15 The Secretary shall, in consultation with the Sec-
16 retary of Labor, prescribe regulations to implement this
17 subtitle and to develop policies and procedures to enforce
18 the provisions of this subtitle.

19 **Subtitle G—Interior Enforcement**

20 **SEC. 3701. CRIMINAL STREET GANGS.**

21 (a) INADMISSIBILITY.—Section 212(a)(2) (8 U.S.C.
22 1182(a)(2)) is amended by inserting after subparagraph
23 (I) the following:

24 “(J) ALIENS IN CRIMINAL STREET
25 GANGS.—

1 “(i) IN GENERAL.—Any alien is inad-
2 missible—

3 “(I) who has been convicted of
4 an offense for which an element was
5 active participation in a criminal
6 street gang (as defined in section
7 521(a) of title 18, United States
8 Code) and the alien—

9 “(aa) had knowledge that
10 the gang’s members engaged in
11 or have engaged in a continuing
12 series of offenses described in
13 section 521(c) of title 18, United
14 States Code; and

15 “(bb) acted with the inten-
16 tion to promote or further the fe-
17 lonious activities of the criminal
18 street gang or maintain or in-
19 crease his or her position in the
20 gang; or

21 “(II) subject to clause (ii), who is
22 18 years of age or older, who is phys-
23 ically present outside the United
24 States, whom the Secretary deter-
25 mines by clear and convincing evi-

1 dence, based upon law enforcement in-
2 formation deemed credible by the Sec-
3 retary, has, since the age of 18, know-
4 ingly and willingly participated in a
5 criminal street gang with knowledge
6 that such participation promoted or
7 furthered the illegal activity of the
8 gang.

9 “(ii) WAIVER.—The Secretary may
10 waive clause (i)(II) if the alien has re-
11 nounced all association with the criminal
12 street gang, is otherwise admissible, and is
13 not a threat to the security of the United
14 States.”.

15 (b) GROUNDS FOR DEPORTATION.—Section
16 237(a)(2) (8 U.S.C. 1227(a)(2)) is amended by adding at
17 the end the following:

18 “(G) ALIENS ASSOCIATED WITH CRIMINAL
19 STREET GANGS.—Any alien is removable who
20 has been convicted of an offense for which an
21 element was active participation in a criminal
22 street gang (as defined in section 521(a) of title
23 18, United States Code), and the alien—

24 “(i) had knowledge that the gang’s
25 members engaged in or have engaged in a

1 continuing series of offenses described in
2 section 521(e) of title 18, United States
3 Code; and

4 “(ii) acted with the intention to pro-
5 mote or further the felonious activities the
6 criminal street gang or increase his or her
7 position in such gang.”.

8 (c) GROUND OF INELIGIBILITY FOR REGISTERED
9 PROVISIONAL IMMIGRANT STATUS.—

10 (1) IN GENERAL.—An alien who is 18 years of
11 age or older is ineligible for registered provisional
12 immigrant status if the Secretary determines that
13 the alien—

14 (A) has been convicted of an offense for
15 which an element was active participation in a
16 criminal street gang (as defined in section
17 521(a) of title 18, United States Code, and the
18 alien—

19 (i) had knowledge that the gang’s
20 members engaged in or have engaged in a
21 continuing series of offenses described in
22 section 521(e) of title 18, United States
23 Code; and

24 (ii) acted with the intention to pro-
25 mote or further the felonious activities of

1 the criminal street gang or maintain or in-
2 crease his or her position in such gang; or
3 (B) subject to paragraph (2), any alien
4 who is 18 years of age or older whom the Sec-
5 retary determines by clear and convincing evi-
6 dence, based upon law enforcement information
7 deemed credible by the Secretary, has, since the
8 age of 18, knowingly and willingly participated
9 in a such gang with knowledge that such par-
10 ticipation promoted or furthered the illegal ac-
11 tivity of such gang.

12 (2) WAIVER.—The Secretary may waive the ap-
13 plication of paragraph (1)(B) if the alien has re-
14 nounced all association with the criminal street
15 gang, is otherwise admissible, and is not a threat to
16 the security of the United States.

17 **SEC. 3702. BANNING HABITUAL DRUNK DRIVERS FROM THE**
18 **UNITED STATES.**

19 (a) GROUNDS FOR INADMISSIBILITY.—Section
20 212(a)(2) (8 U.S.C. 1182(a)(2)), as amended by section
21 3701(a), is further amended—

22 (1) by redesignating subparagraph (F) as sub-
23 paragraph (L); and

24 (2) by inserting after subparagraph (E) the fol-
25 lowing:

1 “(F) HABITUAL DRUNK DRIVERS.—An
2 alien convicted of 3 or more offenses for driving
3 under the influence or driving while intoxicated
4 on separate dates is inadmissible.”.

5 (b) GROUNDS FOR DEPORTATION.—Section
6 237(a)(2) (8 U.S.C. 1227(a)(2)), as amended by section
7 3701(b), is further amended by adding at the end the fol-
8 lowing:

9 “(H) HABITUAL DRUNK DRIVERS.—An
10 alien convicted of 3 or more offenses for driving
11 under the influence or driving while intoxicated,
12 at least 1 of which occurred after the date of
13 the enactment of the Border Security, Eco-
14 nomic Opportunity, and Immigration Mod-
15 ernization Act, is deportable.”.

16 (c) IN GENERAL.—

17 (1) AGGRAVATED FELONY.—Section
18 101(a)(43)(F) (8 U.S.C. 1101(a)(43)(F)) is amend-
19 ed by striking “for which the term of imprisonment”
20 and inserting “, including a third drunk driving con-
21 viction, for which the term of imprisonment is”.

22 (2) EFFECTIVE DATE AND APPLICATION.—

23 (A) EFFECTIVE DATE.—The amendment
24 made by paragraph (1) shall take effect on the
25 date of the enactment of this Act.

1 (B) APPLICATION.—

2 (i) IN GENERAL.—Except as provided
3 in subparagraph (ii), the amendment made
4 by paragraph (1) shall apply to a convic-
5 tion for drunk driving that occurred be-
6 fore, on, or after such date of enactment.

7 (ii) TWO OR MORE PRIOR CONVIC-
8 TIONS.—An alien who received 2 or more
9 convictions for drunk driving before the
10 date of the enactment of this Act may not
11 be subject to removal for the commission
12 of an aggravated felony pursuant to sec-
13 tion 237(a)(2)(A)(iii) of the Immigration
14 and Nationality Act (8 U.S.C.
15 1227(a)(2)(A)(iii)) on the basis of such
16 convictions until the date on which the
17 alien is convicted of a drunk driving of-
18 fense after such date of enactment.

19 **SEC. 3703. SEXUAL ABUSE OF A MINOR.**

20 Section 101(a)(43)(A) (8 U.S.C. 1101(a)(43)(A)) is
21 amended by striking “murder, rape, or sexual abuse of
22 a minor;” and inserting “murder, rape, or sexual abuse
23 of a minor, whether or not the minority of the victim is
24 established by evidence contained in the record of convic-

1 tion or by credible evidence extrinsic to the record of con-
2 viction;”.

3 **SEC. 3704. ILLEGAL ENTRY.**

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

6 **“SEC. 275. ILLEGAL ENTRY.**

7 “(a) IN GENERAL.—

8 “(1) CRIMINAL OFFENSES.—An alien shall be
9 subject to the penalties set forth in paragraph (2) if
10 the alien—

11 “(A) enters or crosses the border into the
12 United States at any time or place other than
13 as designated by the Secretary of Homeland Se-
14 curity;

15 “(B) eludes examination or inspection by
16 an immigration officer, or a customs or agri-
17 culture inspection at a port of entry; or

18 “(C) enters or crosses the border to the
19 United States by means of a knowingly false or
20 misleading representation or the concealment of
21 a material fact.

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

1 “(A) shall, for the first violation, be fined
2 under title 18, United States Code, imprisoned
3 not more than 12 months, or both;

4 “(B) shall, for a second or subsequent vio-
5 lation, or following an order of voluntary depar-
6 ture, be fined under such title, imprisoned not
7 more than 3 years, or both;

8 “(C) if the violation occurred after the
9 alien had been convicted of 3 or more mis-
10 demeanors with the convictions occurring on
11 different dates or of a felony for which the alien
12 served a term of imprisonment of 15 days or
13 more, shall be fined under such title, impris-
14 oned not more than 10 years, or both; and

15 “(D) if the violation occurred after the
16 alien had been convicted of a felony for which
17 the alien was sentenced to a term of imprison-
18 ment of not less than 30 months, shall be fined
19 under such title, imprisoned not more than 15
20 years, or both.

21 “(3) PRIOR CONVICTIONS.—The prior convic-
22 tions described in subparagraphs (C) and (D) of
23 paragraph (2) are elements of the offenses described
24 in that paragraph and the penalties in such subpara-
25 graphs shall apply only in cases in which the convic-

1 tion or convictions that form the basis for the addi-
2 tional penalty are—

3 “(A) alleged in the indictment or informa-
4 tion; and

5 “(B) proven beyond a reasonable doubt at
6 trial or admitted by the defendant under oath
7 as part of a plea agreement.

8 “(b) IMPROPER TIME OR PLACE; CIVIL PEN-
9 ALTIES.—Any alien older than 18 years of age who is ap-
10 prehended while knowingly entering, attempting to enter,
11 or crossing or attempting to cross the border to the United
12 States at a time or place other than as designated by im-
13 migration officers shall be subject to a civil penalty, in
14 addition to any criminal or other civil penalties that may
15 be imposed under any other provision of law, in an amount
16 equal to—

17 “(1) not less than \$250 or more than \$5,000
18 for each such entry, crossing, attempted entry, or at-
19 tempted crossing; or

20 “(2) twice the amount specified in paragraph
21 (1) if the alien had previously been subject to a civil
22 penalty under this subsection.

23 “(c) FRAUDULENT MARRIAGE.—An individual who
24 knowingly enters into a marriage for the purpose of evad-
25 ing any provision of the immigration laws shall be impris-

1 oned for not more than 5 years, fined not more than
2 \$250,000, or both.

3 “(d) **COMMERCIAL ENTERPRISES.**—Any individual
4 who knowingly establishes a commercial enterprise for the
5 purpose of evading any provision of the immigration laws
6 shall be imprisoned for not more than 5 years, fined in
7 accordance with title 18, United States Code, or both.”.

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

“Sec. 275. Illegal entry.”.

11 (c) **EFFECTIVE DATE.**—The amendments made by
12 this section shall take effect 1 year after the date of the
13 enactment of this Act.

14 **SEC. 3705. REENTRY OF REMOVED ALIEN.**

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

17 **“SEC. 276. REENTRY OF REMOVED ALIEN.**

18 “(a) **REENTRY AFTER REMOVAL.**—Any alien who
19 has been denied admission, excluded, deported, or re-
20 moved, or who has departed the United States while an
21 order of exclusion, deportation, or removal is outstanding,
22 and subsequently enters, attempts to enter, crosses the
23 border to, attempts to cross the border to, or is at any
24 time found in the United States, shall be fined under title

1 18, United States Code, and imprisoned not more than
2 2 years.

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

6 “(1) was convicted for 3 or more misdemeanors,
7 with the convictions occurring on different dates, be-
8 fore such removal or departure, the alien shall be
9 fined under title 18, United States Code, and im-
10 prisoned not more than 10 years, or both;

11 “(2) was convicted for a felony before such re-
12 moval or departure for which the alien was sen-
13 tenced to a term of imprisonment of not less than
14 30 months, the alien shall be fined under such title,
15 and imprisoned not more than 15 years, or both;

16 “(3) was convicted for a felony before such re-
17 moval or departure for which the alien was sen-
18 tenced to a term of imprisonment of not less than
19 60 months, the alien shall be fined under such title,
20 and imprisoned not more than 20 years, or both;

21 “(4) was convicted for 3 felonies, with the con-
22 victions occurring on different dates before such re-
23 moval or departure, the alien shall be fined under
24 such title, and imprisoned not more than 20 years,
25 or both; or

1 “(5) was convicted, before such removal or de-
2 parture, for murder, rape, kidnapping, or a felony
3 offense described in chapter 77 (relating to peonage
4 and slavery) or 113B (relating to terrorism) of such
5 title, the alien shall be fined under such title, and
6 imprisoned not more than 20 years, or both.

7 “(c) REENTRY AFTER REPEATED REMOVAL.—Any
8 alien who has been denied admission, excluded, deported,
9 or removed 3 or more times and thereafter enters, at-
10 tempts to enter, crosses the border to, attempts to cross
11 the border to, or is at any time found in the United States,
12 shall be fined under title 18, United States Code, and im-
13 prisoned not more than 10 years, or both.

14 “(d) PROOF OF PRIOR CONVICTIONS.—The prior
15 convictions described in subsection (b) are elements of the
16 offenses described in that subsection, and the penalties in
17 such subsection shall apply only in cases in which the con-
18 viction or convictions that form the basis for the additional
19 penalty are—

20 “(1) alleged in the indictment or information;
21 and

22 “(2) proven beyond a reasonable doubt at trial
23 or admitted by the defendant under oath as part of
24 a plea agreement.

1 “(e) AFFIRMATIVE DEFENSES.—It shall be an af-
2 firmative defense to a violation of this section that—

3 “(1) prior to the alleged violation, the alien had
4 sought and received the express consent of the Sec-
5 retary of Homeland Security to reapply for admis-
6 sion into the United States; or

7 “(2) at the time of the prior exclusion, deporta-
8 tion, removal, or denial of admission alleged in the
9 violation, the alien had not yet reached 18 years of
10 age and had not been convicted of a crime or adju-
11 dicated a delinquent minor by a court of the United
12 States, or a court of a state or territory, for conduct
13 that would constitute a felony if committed by an
14 adult.

15 “(f) LIMITATION ON COLLATERAL ATTACK ON UN-
16 DERLYING DEPORTATION ORDER.—In a criminal pro-
17 ceeding under this section, an alien may not challenge the
18 validity of the deportation order described in subsection
19 (a) or subsection (c) unless the alien demonstrates that—

20 “(1) the alien exhausted any administrative
21 remedies that may have been available to seek relief
22 against the order;

23 “(2) the deportation proceedings at which the
24 order was issued improperly deprived the alien of the
25 opportunity for judicial review; and

1 “(3) the entry of the order was fundamentally
2 unfair.

3 “(g) REENTRY OF ALIEN REMOVED PRIOR TO COM-
4 PLETION OF TERM OF IMPRISONMENT.—Any alien re-
5 moved pursuant to section 241(a)(4) who enters, attempts
6 to enter, crosses the border to, attempts to cross the bor-
7 der to, or is at any time found in, the United States shall
8 be incarcerated for the remainder of the sentence of im-
9 prisonment which was pending at the time of deportation
10 without any reduction for parole or supervised release un-
11 less the alien affirmatively demonstrates that the Sec-
12 retary of Homeland Security has expressly consented to
13 the alien’s reentry or the alien is prima facie eligible for
14 protection from removal. Such alien shall be subject to
15 such other penalties relating to the reentry of removed
16 aliens as may be available under this section or any other
17 provision of law.

18 “(h) LIMITATION.—It is not aiding and abetting a
19 violation of this section for an individual to provide an
20 alien with emergency humanitarian assistance, including
21 emergency medical care and food, or to transport the alien
22 to a location where such assistance can be rendered with-
23 out compensation or the expectation of compensation.

24 “(i) DEFINITIONS.—In this section:

1 “(1) FELONY.—The term ‘felony’ means any
2 criminal offense punishable by a term of imprison-
3 ment of more than 1 year under the laws of the
4 United States, any State, or a foreign government.

5 “(2) MISDEMEANOR.—The term ‘misdemeanor’
6 means any criminal offense punishable by a term of
7 imprisonment of not more than 1 year under the ap-
8 plicable laws of the United States, any State, or a
9 foreign government.

10 “(3) REMOVAL.—The term ‘removal’ includes
11 any denial of admission, exclusion, deportation, or
12 removal, or any agreement by which an alien stipu-
13 lates or agrees to exclusion, deportation, or removal.

14 “(4) STATE.—The term ‘State’ means a State
15 of the United States, the District of Columbia, and
16 any commonwealth, territory, or possession of the
17 United States.”.

18 **SEC. 3706. PENALTIES RELATING TO VESSELS AND AIR-**

19 **CRAFT.**

20 Section 243(c) (8 U.S.C. 1253(c)) is amended—

21 (1) by striking “Attorney General” each place
22 such term appears and inserting “Secretary of
23 Homeland Security”;

1 (2) by striking “Commissioner” each place such
2 term appears and inserting “Secretary of Homeland
3 Security”; and

4 (3) in paragraph (1)—

5 (A) in subparagraph (A), by striking
6 “\$2,000” and inserting “\$5,000”;

7 (B) in subparagraph (B), by striking
8 “\$5,000” and inserting “\$10,000”;

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

11 “(C) COMPROMISE.—The Secretary of
12 Homeland Security, in the Secretary’s
13 unreviewable discretion and upon the receipt of
14 a written request, may mitigate the monetary
15 penalties required under this subsection for
16 each alien stowaway to an amount equal to not
17 less than \$2,000, upon such terms that the Sec-
18 retary determines to be appropriate.”; and

19 (D) by inserting at the end the following:

20 “(D) EXCEPTION.—A person, acting with-
21 out compensation or the expectation of com-
22 pensation, is not subject to penalties under this
23 paragraph if the person is—

24 “(i) providing, or attempting to pro-
25 vide, an alien with humanitarian assist-

1 ance, including emergency medical care or
2 food or water; or

3 “(ii) transporting the alien to a loca-
4 tion where such humanitarian assistance
5 can be rendered without compensation or
6 the expectation of compensation.”.

7 **SEC. 3707. REFORM OF PASSPORT, VISA, AND IMMIGRATION**
8 **FRAUD OFFENSES.**

9 (a) **TRAFFICKING IN PASSPORTS.**—Section 1541 of
10 title 18, United States Code, is amended to read as fol-
11 lows:

12 **“§ 1541. Trafficking in passports**

13 “(a) **MULTIPLE PASSPORTS.**—Subject to subsection
14 (b), any person who, during any period of 3 years or less,
15 knowingly—

16 “(1) and without lawful authority produces,
17 issues, or transfers 3 or more passports;

18 “(2) forges, counterfeits, alters, or falsely
19 makes 3 or more passports;

20 “(3) secures, possesses, uses, receives, buys,
21 sells, or distributes 3 or more passports, knowing
22 the passports to be forged, counterfeited, altered,
23 falsely made, stolen, procured by fraud, or produced
24 or issued without lawful authority; or

1 “(4) completes, mails, prepares, presents, signs,
2 or submits 3 or more applications for a United
3 States passport, knowing the applications to contain
4 any materially false statement or representation,
5 shall be fined under this title, imprisoned not more than
6 20 years, or both.

7 “(b) USE IN A TERRORISM OFFENSE.—Any person
8 who commits an offense described in subsection (a) to fa-
9 cilitate an act of international terrorism (as defined in sec-
10 tion 2331) shall be fined under this title, imprisoned not
11 more than 25 years, or both.

12 “(c) PASSPORT MATERIALS.—Any person who know-
13 ingly and without lawful authority produces, buys, sells,
14 possesses, or uses any official material (or counterfeit of
15 any official material) used to make 10 or more passports,
16 including any distinctive paper, seal, hologram, image,
17 text, symbol, stamp, engraving, or plate, shall be fined
18 under this title, imprisoned not more than 20 years, or
19 both.”.

20 (b) FALSE STATEMENT IN AN APPLICATION FOR A
21 PASSPORTS.—Section 1542 of title 18, United States
22 Code, is amended to read as follows:

1 **“§ 1542. False statement in an application for a pass-**
2 **port**

3 “(a) IN GENERAL.—Any person who knowingly
4 makes any material false statement or representation in
5 an application for a United States passport, or mails, pre-
6 pares, presents, or signs an application for a United
7 States passport knowing the application to contain any
8 material false statement or representation, shall be fined
9 under this title, imprisoned not more than 25 years (if
10 the offense was committed to facilitate an act of inter-
11 national terrorism (as defined in section 2331 of this
12 title)), 20 years (if the offense was committed to facilitate
13 a drug trafficking crime (as defined in section 929(a) of
14 this title)), 15 years (in the case of any other offense),
15 or both.

16 “(b) VENUE.—

17 “(1) IN GENERAL.—An offense under sub-
18 section (a) may be prosecuted in any district—

19 “(A) in which the false statement or rep-
20 resentation was made or the application for a
21 United States passport was prepared or signed;
22 or

23 “(B) in which or to which the application
24 was mailed or presented.

25 “(2) OFFENSES OUTSIDE THE UNITED
26 STATES.—An offense under subsection (a) involving

1 an application prepared and adjudicated outside the
2 United States may be prosecuted in the district in
3 which the resultant passport was or would have been
4 produced.

5 “(c) SAVINGS CLAUSE.—Nothing in this section may
6 be construed to limit the venue otherwise available under
7 sections 3237 and 3238 of this title.”.

8 (c) MISUSE OF A PASSPORT.—Section 1544 of title
9 18, United States Code, is amended to read as follows:

10 **“§ 1544. Misuse of a passport**

11 “Any person who knowingly—

12 “(1) misuses or attempts to misuse for their
13 own purposes any passport issued or designed for
14 the use of another;

15 “(2) uses or attempts to use any passport in
16 violation of the laws, regulations, or rules governing
17 the issuance and use of the passport;

18 “(3) secures, possesses, uses, receives, buys,
19 sells, or distributes or attempts to secure, possess,
20 use, receive, buy, sell, or distribute any passport
21 knowing the passport to be forged, counterfeited, al-
22 tered, falsely made, procured by fraud, or produced
23 or issued without lawful authority; or

1 shall be fined under this title, imprisoned not more than
2 10 years, or both.

3 “(b) MISREPRESENTATION.—Any person who know-
4 ingly and falsely represents that such person is an attor-
5 ney or an accredited representative (as that term is de-
6 fined in section 1292.1 of title 8, Code of Federal Regula-
7 tions (or any successor regulation)) in any matter arising
8 under any Federal immigration law shall be fined under
9 this title, imprisoned not more than 15 years, or both.”.

10 (e) IMMIGRATION AND VISA FRAUD.—Section 1546
11 of title 18, United States Code, is amended—

12 (1) by amending the section heading to read as
13 follows:

14 “§ 1546. Immigration and visa fraud”;

15 (2) by redesignating subsection (b) as sub-
16 section (d); and

17 (3) by inserting after subsection (a) the fol-
18 lowing new subsections:

19 “(b) TRAFFICKING.—Any person who, during any pe-
20 riod of 3 years or less, knowingly—

21 “(1) and without lawful authority produces,
22 issues, or transfers 3 or more immigration docu-
23 ments;

24 “(2) forges, counterfeits, alters, or falsely
25 makes 3 or more immigration documents;

1 “(3) secures, possesses, uses, buys, sells, or dis-
2 tributes 3 or more immigration documents, knowing
3 the immigration documents to be forged, counter-
4 feited, altered, stolen, falsely made, procured by
5 fraud, or produced or issued without lawful author-
6 ity; or

7 “(4) completes, mails, prepares, presents, signs,
8 or submits 3 or more immigration documents know-
9 ing the documents to contain any materially false
10 statement or representation,

11 shall be fined under this title, imprisoned not more than
12 20 years, or both.

13 “(c) IMMIGRATION DOCUMENT MATERIALS.—Any
14 person who knowingly and without lawful authority pro-
15 duces, buys, sells, possesses, or uses any official material
16 (or counterfeit of any official material) used to make 10
17 or more immigration documents, including any distinctive
18 paper, seal, hologram, image, text, symbol, stamp, engrav-
19 ing, or plate, shall be fined under this title, imprisoned
20 not more than 20 years, or both.”.

21 (f) ALTERNATIVE IMPRISONMENT MAXIMUM FOR
22 CERTAIN OFFENSES.—Section 1547 of title 18, United
23 States Code, is amended—

1 (1) in the matter preceding paragraph (1), by
2 striking “(other than an offense under section
3 1545)”;

4 (2) in paragraph (1), by striking “15” and in-
5 serting “20”; and

6 (3) in paragraph (2), by striking “20” and in-
7 serting “25”.

8 (g) AUTHORIZED LAW ENFORCEMENT ACTIVITIES.—
9 Chapter 75 of title 18, United States Code, is amended
10 by adding after section 1547 the following:

11 **“§ 1548. Authorized law enforcement activities**

12 “Nothing in this chapter may be construed to pro-
13 hibit—

14 “(1) any lawfully authorized investigative, pro-
15 tective, or intelligence activity of a law enforcement
16 agency of the United States, a State, or a political
17 subdivision of a State, or an intelligence agency of
18 the United States; or

19 “(2) any activity authorized under title V of the
20 Organized Crime Control Act of 1970 (Public Law
21 91–452; 84 Stat. 933).”.

22 (h) TABLE OF SECTIONS AMENDMENT.—The table
23 of sections for chapter 75 of title 18, United States Code,
24 is amended to read as follows:

“Sec.

“1541. Trafficking in passports.

“1542. False statement in an application for a passport.

“1543. Forgery or false use of a passport.

“1544. Misuse of a passport.

“1545. Schemes to provide fraudulent immigration services.

“1546. Immigration and visa fraud.

“1547. Alternative imprisonment maximum for certain offenses.

“1548. Authorized law enforcement activities.”.

1 **SEC. 3708. COMBATING SCHEMES TO DEFRAUD ALIENS.**

2 (a) REGULATIONS, FORMS, AND PROCEDURES.—The
 3 Secretary and the Attorney General, for matters within
 4 their respective jurisdictions arising under the immigra-
 5 tion laws, shall promulgate appropriate regulations, forms,
 6 and procedures defining the circumstances in which—

7 (1) persons submitting applications, petitions,
 8 motions, or other written materials relating to immi-
 9 gration benefits or relief from removal under the im-
 10 migration laws will be required to identify who
 11 (other than immediate family members) assisted
 12 them in preparing or translating the immigration
 13 submissions; and

14 (2) any person or persons who received com-
 15 pensation (other than a nominal fee for copying,
 16 mailing, or similar services) in connection with the
 17 preparation, completion, or submission of such mate-
 18 rials will be required to sign the form as a preparer
 19 and provide identifying information.

20 (b) CIVIL INJUNCTIONS AGAINST IMMIGRATION
 21 SERVICE PROVIDER.—The Attorney General may com-
 22 mence a civil action in the name of the United States to

1 enjoin any immigration service provider from further en-
2 gaging in any fraudulent conduct that substantially inter-
3 feres with the proper administration of the immigration
4 laws or who willfully misrepresents such provider's legal
5 authority to provide representation before the Department
6 of Justice or the Department.

7 (c) DEFINITIONS.—In this section:

8 (1) IMMIGRATION LAWS.—The term “immigra-
9 tion laws” has the meaning given that term in sec-
10 tion 101(a)(17) of the Immigration and Nationality
11 Act (8 U.S.C. 1101(a)(17)).

12 (2) IMMIGRATION SERVICE PROVIDER.—The
13 term “immigration service provider” means any indi-
14 vidual or entity (other than an attorney or individual
15 otherwise authorized to provide representation in im-
16 migration proceedings as provided in Federal regula-
17 tion) who, for a fee or other compensation, provides
18 any assistance or representation to aliens in relation
19 to any filing or proceeding relating to the alien
20 which arises, or which the provider claims to arise,
21 under the immigration laws, executive order, or pres-
22 idential proclamation.

1 **SEC. 3709. INADMISSIBILITY AND REMOVAL FOR PASSPORT**
2 **AND IMMIGRATION FRAUD OFFENSES.**

3 (a) INADMISSIBILITY.—Section 212(a)(2)(A)(i) (8
4 U.S.C. 1182(a)(2)(A)(i)) is amended—

5 (1) in subclause (I), by striking “, or” at the
6 end and inserting a semicolon;

7 (2) in subclause (II), by striking the comma at
8 the end and inserting “; or”; and

9 (3) by inserting after subclause (II) the fol-
10 lowing:

11 “(III) a violation of section 1541,
12 1545, and subsection (b) of section
13 1546 of title 18, United States
14 Code,”.

15 (b) REMOVAL.—Section 237(a)(3)(B)(iii) (8 U.S.C.
16 1227(a)(3)(B)(iii)) is amended to read as follows:

17 “(iii) of a violation of section 1541,
18 1545, and subsection (b) of section 1546
19 of title 18, United States Code,”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 subsections (a) and (b) shall apply to proceedings pending
22 on or after the date of the enactment of this Act, with
23 respect to conduct occurring on or after that date.

1 **SEC. 3710. DIRECTIVES RELATED TO PASSPORT AND DOCU-**
2 **MENT FRAUD.**

3 (a) DIRECTIVE TO THE UNITED STATES SEN-
4 TENCING COMMISSION.—

5 (1) IN GENERAL.—Pursuant to the authority
6 under section 994 of title 28, United States Code,
7 the United States Sentencing Commission shall pro-
8 mulgate or amend the sentencing guidelines, policy
9 statements, and official commentaries, if appro-
10 priate, related to passport fraud offenses, including
11 the offenses described in chapter 75 of title 18,
12 United States Code, as amended by section 3707, to
13 reflect the serious nature of such offenses.

14 (2) REPORT.—Not later than 1 year after the
15 date of the enactment of this Act, the United States
16 Sentencing Commission shall submit a report on the
17 implementation of this subsection to—

18 (A) the Committee on the Judiciary of the
19 Senate; and

20 (B) the Committee on the Judiciary of the
21 House of Representatives.

22 (b) PROTECTION FOR LEGITIMATE REFUGEES AND
23 ASYLUM SEEKERS.—

24 (1) IN GENERAL.—

25 (A) REQUIREMENT FOR GUIDELINES.—

26 The Attorney General, in consultation with the

1 Secretary, shall develop binding prosecution
2 guidelines for Federal prosecutors to ensure
3 that each prosecution of an alien seeking entry
4 into the United States by fraud is consistent
5 with the United States treaty obligations under
6 Article 31(1) of the Convention Relating to the
7 Status of Refugees, done at Geneva July 28,
8 1951 (as made applicable by the Protocol Relat-
9 ing to the Status of Refugees, done at New
10 York January 31, 1967 (19 UST 6223)).

11 (B) NO PRIVATE RIGHT OF ACTION.—The
12 guidelines developed pursuant to subparagraph
13 (A), and any internal office procedures related
14 to such guidelines—

15 (i) are intended solely for the guid-
16 ance of attorneys of the United States; and

17 (ii) are not intended to, do not, and
18 may not be relied upon to, create any right
19 or benefit, substantive or procedural, en-
20 forceable at law by any party in any ad-
21 ministrative, civil, or criminal matter.

22 (2) PROTECTION OF VULNERABLE PERSONS.—
23 A person described in paragraph (3) may not be
24 prosecuted under chapter 75 of title 18, United
25 States Code, or under section 275 or 276 of the Im-

1 migration and Nationality Act (8 U.S.C. 1325 and
2 1326), in connection with the person's entry or at-
3 tempted entry into the United States until after the
4 date on which the person's application for such pro-
5 tection, classification, or status has been adjudicated
6 and denied in accordance with the Immigration and
7 Nationality Act (8 U.S.C. 1101 et seq.).

8 (3) PERSONS SEEKING PROTECTION, CLASSI-
9 FICATION, OR STATUS.—A person described in this
10 paragraph is a person who—

11 (A) is seeking protection, classification, or
12 status; and

13 (B)(i) has filed an application for asylum
14 under section 208 of the Immigration and Na-
15 tionality Act (8 U.S.C. 1158), withholding of
16 removal under section 241(b)(3) of such Act (8
17 U.S.C. 1231(b)(3)), or relief under the Conven-
18 tion against Torture and Other Cruel, Inhuman
19 or Degrading Treatment or Punishment, done
20 at New York, December 10, 1994, pursuant to
21 title 8, Code of Federal Regulations;

22 (ii) indicates immediately after apprehen-
23 sion, that he or she intends to apply for such
24 asylum, withholding of removal, or relief and
25 promptly files the appropriate application;

1 (iii) has been referred for a credible fear
2 interview, a reasonable fear interview, or an
3 asylum-only hearing under section 235 of the
4 Immigration and Nationality Act (8 U.S.C.
5 1225) or part 208 of title 8, Code of Federal
6 Regulations; or

7 (iv) has filed an application for classifica-
8 tion or status under—

9 (I) subparagraph (T) or (U) of para-
10 graph (15), paragraph (27)(J), or para-
11 graph (51) of section 101(a) of the Immi-
12 gration and Nationality Act (8 U.S.C.
13 1101(a)); or

14 (II) section 216(c)(4)(C) or
15 240A(b)(2) of such Act (8 U.S.C.
16 1186a(c)(4)(C) and 1229b(b)(2)).

17 **SEC. 3711. INADMISSIBLE ALIENS.**

18 (a) DETERRING ALIENS ORDERED REMOVED FROM
19 REMAINING IN THE UNITED STATES UNLAWFULLY.—
20 Section 212(a)(9)(A) (8 U.S.C. 1182(a)(9)(A)) is amend-
21 ed—

22 (1) in clause (i), by striking “seeks admission
23 within 5 years of the date of such removal (or within
24 20 years” and inserting “seeks admission not later
25 than 5 years after the date of the alien’s removal (or

1 not later than 20 years after the alien’s removal”;
2 and

3 (2) in clause (ii), by striking “seeks admission
4 within 10 years of the date of such alien’s departure
5 or removal (or within 20 years of” and inserting
6 “seeks admission not later than 10 years after the
7 date of the alien’s departure or removal (or not later
8 than 20 years after”.

9 (b) BIOMETRIC SCREENING.—Section 212 (8 U.S.C.
10 1182) is amended—

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

13 “(C) WITHHOLDING INFORMATION.—Ex-
14 cept as provided in subsection (d)(2), any alien
15 who willfully, through his or her own fault, re-
16 fuses to comply with a lawful request for bio-
17 metric information is inadmissible.”; and

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

20 “(2) The Secretary may waive the application
21 of subsection (a)(7)(C) for an individual alien or a
22 class of aliens.”.

23 (c) PRECLUDING ADMISSIBILITY OF ALIENS CON-
24 VICTED OF SERIOUS CRIMINAL OFFENSES AND DOMESTIC

1 VIOLENCE, STALKING, CHILD ABUSE, AND VIOLATION OF
2 PROTECTION ORDERS.—

3 (1) INADMISSIBILITY ON CRIMINAL AND RE-
4 LATED GROUNDS; WAIVERS.—Section 212 (8 U.S.C.
5 1182), as amended by this Act, is further amend-
6 ed—

7 (A) in subsection (a)(2), as amended by
8 sections 3401 and 3402, is further amended by
9 inserting after subparagraph (J) the following:

10 “(K) CRIMES OF DOMESTIC VIOLENCE,
11 STALKING, OR VIOLATION OF PROTECTIVE OR-
12 DERS; CRIMES AGAINST CHILDREN.—

13 “(i) DOMESTIC VIOLENCE, STALKING,
14 AND CHILD ABUSE.—

15 “(I) IN GENERAL.—Any alien
16 who has been convicted of a crime of
17 domestic violence, a crime of stalking,
18 or a crime of child abuse, child ne-
19 glect, or child abandonment, provided
20 the alien served at least 1 year impris-
21 onment for the crime, or provided the
22 alien was convicted of offenses consti-
23 tuting more than 1 such crime, not
24 arising out of a single scheme of
25 criminal misconduct, is inadmissible.

1 “(II) CRIME OF DOMESTIC VIO-
2 LENCE DEFINED.—In this clause, the
3 term ‘crime of domestic violence’
4 means any crime of violence (as de-
5 fined in section 16 of title 18, United
6 States Code) against a person com-
7 mitted by a current or former spouse
8 of the person, by an individual with
9 whom the person shares a child in
10 common, by an individual who is co-
11 habiting with or has cohabited with
12 the person as a spouse, by an indi-
13 vidual similarly situated to a spouse
14 of the person under the domestic or
15 family violence laws of the jurisdiction
16 where the offense occurs, or by any
17 other individual against a person who
18 is protected from that individual’s
19 acts under the domestic or family vio-
20 lence laws of the United States or any
21 State, Indian tribal government, or
22 unit of local or foreign government.
23 “(ii) VIOLATORS OF PROTECTION OR-
24 DERS.—

1 “(I) IN GENERAL.—Any alien
2 who at any time is enjoined under a
3 protection order issued by a court and
4 whom the court determines has en-
5 gaged in conduct that constitutes
6 criminal contempt of the portion of a
7 protection order that involves protec-
8 tion against credible threats of vio-
9 lence, repeated harassment, or bodily
10 injury to the person or persons for
11 whom the protection order was issued,
12 is inadmissible.

13 “(II) PROTECTION ORDER DE-
14 FINED.—In this clause, the term ‘pro-
15 tection order’ means any injunction
16 issued for the purpose of preventing
17 violent or threatening acts of domestic
18 violence, including temporary or final
19 orders issued by civil or criminal
20 courts (other than support or child
21 custody orders or provisions) whether
22 obtained by filing an independent ac-
23 tion or as an independent order in an-
24 other proceeding.

1 “(iii) APPLICABILITY.—This subpara-
2 graph shall not apply to an alien who has
3 been battered or subjected to extreme cru-
4 elty and who is not and was not the pri-
5 mary perpetrator of violence in the rela-
6 tionship, upon a determination by the At-
7 torney General or the Secretary of Home-
8 land Security that—

9 “(I) the alien was acting in self-
10 defense;

11 “(II) the alien was found to have
12 violated a protection order intended to
13 protect the alien; or

14 “(III) the alien committed, was
15 arrested for, was convicted of, or pled
16 guilty to committing a crime that did
17 not result in serious bodily injury.”;
18 and

19 (B) in subsection (h)—

20 (i) by striking “The Attorney General
21 may, in his discretion, waive the applica-
22 tion of subparagraphs (A)(i)(I), (B), (D),
23 and (E) of subsection (a)(2)” and inserting
24 “The Attorney General or the Secretary of
25 Homeland Security may waive the applica-

1 tion of subparagraphs (A)(i)(I), (B), (D),
2 and (E) of subsection (a)(2)”; and

3 (ii) by inserting “or the Secretary of
4 Homeland Security” after “the Attorney
5 General” each place that term appears.

6 (2) EFFECTIVE DATE.—The amendments made
7 by this subsection shall apply to any acts that oc-
8 curred on or after the date of the enactment of this
9 Act.

10 **SEC. 3712. ORGANIZED AND ABUSIVE HUMAN SMUGGLING**
11 **ACTIVITIES.**

12 (a) ENHANCED PENALTIES.—

13 (1) IN GENERAL.—Title II (8 U.S.C. 1151 et
14 seq.) is amended by adding at the end the following:

15 **“SEC. 295. ORGANIZED HUMAN SMUGGLING.**

16 “(a) PROHIBITED ACTIVITIES.—Whoever, while act-
17 ing for profit or other financial gain, knowingly directs
18 or participates in an effort or scheme to assist or cause
19 5 or more persons (other than a parent, spouse, or child
20 of the offender)—

21 “(1) to enter, attempt to enter, or prepare to
22 enter the United States—

23 “(A) by fraud, falsehood, or other corrupt
24 means;

1 “(B) at any place other than a port or
2 place of entry designated by the Secretary; or

3 “(C) in a manner not prescribed by the im-
4 migration laws and regulations of the United
5 States; or

6 “(2) to travel by air, land, or sea toward the
7 United States (whether directly or indirectly)—

8 “(A) knowing that the persons seek to
9 enter or attempt to enter the United States
10 without lawful authority; and

11 “(B) with the intent to aid or further such
12 entry or attempted entry; or

13 “(3) to be transported or moved outside of the
14 United States—

15 “(A) knowing that such persons are aliens
16 in unlawful transit from 1 country to another
17 or on the high seas; and

18 “(B) under circumstances in which the
19 persons are in fact seeking to enter the United
20 States without official permission or legal au-
21 thority;

22 shall be punished as provided in subsection (c) or
23 (d).

24 “(b) CONSPIRACY AND ATTEMPT.—Any person who
25 attempts or conspires to violate subsection (a) of this sec-

1 tion shall be punished in the same manner as a person
2 who completes a violation of such subsection.

3 “(c) BASE PENALTY.—Except as provided in sub-
4 section (d), any person who violates subsection (a) or (b)
5 shall be fined under title 18, imprisoned for not more than
6 20 years, or both.

7 “(d) ENHANCED PENALTIES.—Any person who vio-
8 lates subsection (a) or (b) shall—

9 “(1) in the case of a violation during and in re-
10 lation to which a serious bodily injury (as defined in
11 section 1365 of title 18) occurs to any person, be
12 fined under title 18, imprisoned for not more than
13 30 years, or both;

14 “(2) in the case of a violation during and in re-
15 lation to which the life of any person is placed in
16 jeopardy, be fined under title 18, imprisoned for not
17 more than 30 years, or both;

18 “(3) in the case of a violation involving 10 or
19 more persons, be fined under title 18, imprisoned for
20 not more than 30 years, or both;

21 “(4) in the case of a violation involving the
22 bribery or corruption of a U.S. or foreign govern-
23 ment official, be fined under title 18, imprisoned for
24 not more than 30 years, or both;

1 “(5) in the case of a violation involving robbery
2 or extortion (as those terms are defined in para-
3 graph (1) or (2), respectively, of section 1951(b)) be
4 fined under title 18, imprisoned for not more than
5 30 years, or both;

6 “(6) in the case of a violation during and in re-
7 lation to which any person is subjected to an invol-
8 untary sexual act (as defined in section 2246(2) of
9 title 18), be fined under title 18, imprisoned for not
10 more than 30 years, or both; or

11 “(7) in the case of a violation resulting in the
12 death of any person, be fined under title 18, impris-
13 oned for any term of years or for life, or both.

14 “(e) **LAWFUL AUTHORITY DEFINED.**—

15 “(1) **IN GENERAL.**—In this section, the term
16 ‘lawful authority’—

17 “(A) means permission, authorization, or
18 license that is expressly provided for in the im-
19 migration laws of the United States or accom-
20 panying regulations; and

21 “(B) does not include any such authority
22 secured by fraud or otherwise obtained in viola-
23 tion of law, nor does it include authority
24 sought, but not approved.

1 “(2) APPLICATION TO TRAVEL OR ENTRY.—No
2 alien shall be deemed to have lawful authority to
3 travel to or enter the United States if such travel or
4 entry was, is, or would be in violation of law.

5 “(f) EFFORT OR SCHEME.—For purposes of this sec-
6 tion, ‘effort or scheme to assist or cause 5 or more per-
7 sons’ does not require that the 5 or more persons enter,
8 attempt to enter, prepare to enter, or travel at the same
9 time so long as the acts are completed within 1 year.

10 **“SEC. 296. UNLAWFULLY HINDERING IMMIGRATION, BOR-**
11 **DER, AND CUSTOMS CONTROLS.**

12 “(a) ILLICIT SPOTTING.—Whoever knowingly trans-
13 mits to another person the location, movement, or activi-
14 ties of any Federal, State, or tribal law enforcement agen-
15 cy with the intent to further a Federal crime relating to
16 United States immigration, customs, controlled sub-
17 stances, agriculture, monetary instruments, or other bor-
18 der controls shall be fined under title 18, imprisoned not
19 more than 10 years, or both.

20 “(b) DESTRUCTION OF UNITED STATES BORDER
21 CONTROLS.—Whoever knowingly and without lawful au-
22 thorization destroys, alters, or damages any fence, barrier,
23 sensor, camera, or other physical or electronic device de-
24 ployed by the Federal Government to control the border
25 or a port of entry or otherwise seeks to construct, exca-

1 vate, or make any structure intended to defeat, circumvent
2 or evade any such fence, barrier, sensor camera, or other
3 physical or electronic device deployed by the Federal gov-
4 ernment to control the border or a port of entry shall be
5 fined under title 18, imprisoned not more than 10 years,
6 or both, and if, at the time of the offense, the person uses
7 or carries a firearm or who, in furtherance of any such
8 crime, possesses a firearm, that person shall be fined
9 under title 18, imprisoned not more than 20 years, or
10 both.

11 “(c) CONSPIRACY AND ATTEMPT.—Any person who
12 attempts or conspires to violate subsection (a) or (b) of
13 this section shall be punished in the same manner as a
14 person who completes a violation of such subsection.”.

15 (2) TABLE OF CONTENTS AMENDMENT.—The
16 table of contents is amended by adding after the
17 item relating to section 294 the following:

“Sec. 295. Organized human smuggling.

“Sec. 296. Unlawfully hindering immigration, border, and customs controls.”.

18 (b) PROHIBITING CARRYING OR USE OF A FIREARM
19 DURING AND IN RELATION TO AN ALIEN SMUGGLING
20 CRIME.—Section 924(c) of title 18, United States Code,
21 is amended—

22 (1) in paragraph (1)—

1 (A) in subparagraph (A), by inserting “,
2 alien smuggling crime,” after “crime of vio-
3 lence” each place that term appears; and

4 (B) in subparagraph (D)(ii), by inserting
5 “, alien smuggling crime,” after “crime of vio-
6 lence”; and

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

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

12 (c) STATUTE OF LIMITATIONS.—Section 3298 of title
13 18, United States Code, is amended by inserting “, 295,
14 296, or 297” after “274(a)”.

15 **SEC. 3713. PREVENTING CRIMINALS FROM RENOUNCING**
16 **CITIZENSHIP DURING WARTIME.**

17 Section 349(a) (8 U.S.C. 1481(a)) is amended—

18 (1) by striking paragraph (6); and

19 (2) redesignating paragraph (7) as paragraph
20 (6).

21 **SEC. 3714. DIPLOMATIC SECURITY SERVICE.**

22 Paragraph (1) of section 37(a) of the State Depart-
23 ment Basic Authorities Act of 1956 (22 U.S.C. 2709(a))
24 is amended to read as follows:

25 “(1) conduct investigations concerning—

1 “(A) illegal passport or visa issuance or
2 use;

3 “(B) identity theft or document fraud af-
4 fecting or relating to the programs, functions,
5 and authorities of the Secretary of State;

6 “(C) violations of chapter 77 of title 18,
7 United States Code; and

8 “(D) Federal offenses committed within
9 the special maritime and territorial jurisdiction
10 of the United States (as defined in section 7(9)
11 of title 18, United States Code);”.

12 **SEC. 3715. SECURE ALTERNATIVES PROGRAMS.**

13 (a) **IN GENERAL.**—The Secretary shall establish se-
14 cure alternatives programs that incorporate case manage-
15 ment services in each field office of the Department to
16 ensure appearances at immigration proceedings and public
17 safety.

18 (b) **CONTRACT AUTHORITY.**—The Secretary shall
19 contract with nongovernmental community-based organi-
20 zations to conduct screening of detainees, provide appear-
21 ance assistance services, and operate community-based su-
22 pervision programs. Secure alternatives shall offer a con-
23 tinuum of supervision mechanisms and options, including
24 community support, depending on an assessment of each
25 individual’s circumstances. The Secretary may contract

1 with nongovernmental organizations to implement secure
2 alternatives that maintain custody over the alien.

3 (c) INDIVIDUALIZED DETERMINATIONS.—In deter-
4 mining whether to use secure alternatives, the Secretary
5 shall make an individualized determination, and for each
6 individual placed on secure alternatives, shall review the
7 level of supervision on a monthly basis. Secure alternatives
8 shall not be used when release on bond or recognizance
9 is determined to be a sufficient measure to ensure appear-
10 ances at immigration proceedings and public safety.

11 (d) CUSTODY.—The Secretary may use secure alter-
12 natives programs to maintain custody over any alien de-
13 tained under the Immigration and Nationality Act, except
14 for aliens detained under section 236A of such Act (8
15 U.S.C. 1226a). If an individual is not eligible for release
16 from custody or detention, the Secretary shall consider the
17 alien for placement in secure alternatives that maintain
18 custody over the alien, including the use of electronic ankle
19 devices.

20 **SEC. 3716. OVERSIGHT OF DETENTION FACILITIES.**

21 (a) DEFINITIONS.—In this section:

22 (1) APPLICABLE STANDARDS.—The term “ap-
23 plicable standards” means the most recent version of
24 detention standards and detention-related policies

1 issued by the Secretary or the Director of U.S. Im-
2 migration and Customs Enforcement.

3 (2) DETENTION FACILITY.—The term “deten-
4 tion facility” means a Federal, State, or local gov-
5 ernment facility, or a privately owned and operated
6 facility, that is used, in whole or in part, to hold in-
7 dividuals under the authority of the Director of U.S.
8 Immigration and Customs Enforcement, including
9 facilities that hold such individuals under a contract
10 or agreement with the Director.

11 (b) DETENTION REQUIREMENTS.—The Secretary
12 shall ensure that all persons detained pursuant to the Im-
13 migration and Nationality Act (8 U.S.C. 1101 et seq.) are
14 treated humanely and benefit from the protections set
15 forth in this section.

16 (c) OVERSIGHT REQUIREMENTS.—

17 (1) ANNUAL INSPECTION.—All detention facili-
18 ties shall be inspected by the Secretary on a regular
19 basis, but not less than annually, for compliance
20 with applicable detention standards issued by the
21 Secretary and other applicable regulations.

22 (2) ROUTINE OVERSIGHT.—In addition to an-
23 nual inspections, the Secretary shall conduct routine
24 oversight of detention facilities, including unan-
25 nounced inspections.

1 (3) AVAILABILITY OF RECORDS.—All detention
2 facility contracts, memoranda of agreement, and
3 evaluations and reviews shall be considered records
4 for purposes of section 552(f)(2) of title 5, United
5 States Code.

6 (4) CONSULTATION.—The Secretary shall seek
7 input from nongovernmental organizations regarding
8 their independent opinion of specific facilities.

9 (d) COMPLIANCE MECHANISMS.—

10 (1) AGREEMENTS.—

11 (A) NEW AGREEMENTS.—Compliance with
12 applicable standards of the Secretary and all
13 applicable regulations, and meaningful financial
14 penalties for failure to comply, shall be a mate-
15 rial term in any new contract, memorandum of
16 agreement, or any renegotiation, modification,
17 or renewal of an existing contract or agreement,
18 including fee negotiations, executed with deten-
19 tion facilities.

20 (B) EXISTING AGREEMENTS.—Not later
21 than 180 days after the date of the enactment
22 of this Act, the Secretary shall secure a modi-
23 fication incorporating these terms for any exist-
24 ing contracts or agreements that will not be re-
25 negotiated, renewed, or otherwise modified.

1 (C) CANCELLATION OF AGREEMENTS.—

2 Unless the Secretary provides a reasonable ex-
3 tension to a specific detention facility that is
4 negotiating in good faith, contracts or agree-
5 ments with detention facilities that are not
6 modified within 1 year of the date of the enact-
7 ment of this Act will be cancelled.

8 (D) PROVISION OF INFORMATION.—In

9 making modifications under this paragraph, the
10 Secretary shall require that detention facilities
11 provide to the Secretary all contracts, memo-
12 randa of agreement, evaluations, and reviews
13 regarding the facility on a regular basis. The
14 Secretary shall make these materials publicly
15 available.

16 (2) FINANCIAL PENALTIES.—

17 (A) REQUIREMENT TO IMPOSE.—Subject

18 to subparagraph (C), the Secretary shall impose
19 meaningful financial penalties upon facilities
20 that fail to comply with applicable detention
21 standards issued by the Secretary and other ap-
22 plicable regulations.

23 (B) TIMING OF IMPOSITION.—Financial

24 penalties imposed under subparagraph (A) shall
25 be imposed immediately after a facility fails to

1 achieve an adequate or the equivalent median
2 score in any performance evaluation.

3 (C) WAIVER.—The requirements of sub-
4 paragraph (A) may be waived if the facility cor-
5 rects the noted deficiencies and receives an ade-
6 quate score in not more than 90 days.

7 (D) MULTIPLE OFFENDERS.—In cases of
8 persistent and substantial noncompliance, in-
9 cluding scoring less than adequate or the equiv-
10 alent median score in 2 consecutive inspections,
11 the Secretary shall terminate contracts or
12 agreements with such facilities within 60 days,
13 or in the case of facilities operated by the Sec-
14 retary, such facilities shall be closed within 90
15 days.

16 (e) REPORTING REQUIREMENTS.—

17 (1) OBJECTIVES.—Not later than June 30 of
18 each year, the Secretary shall prepare and submit to
19 the Committee on the Judiciary of the Senate and
20 the Committee on the Judiciary of the House of
21 Representatives a report on inspection and oversight
22 activities of detention facilities.

23 (2) CONTENTS.—Each report submitted under
24 paragraph (1) shall include—

1 (A) a description of each detention facility
2 found to be in noncompliance with applicable
3 detention standards issued by the Department
4 and other applicable regulations;

5 (B) a description of the actions taken by
6 the Department to remedy any findings of non-
7 compliance or other identified problems, includ-
8 ing financial penalties, contract or agreement
9 termination, or facility closure; and

10 (C) information regarding whether the ac-
11 tions described in subparagraph (B) resulted in
12 compliance with applicable detention standards
13 and regulations.

14 **SEC. 3717. PROCEDURES FOR BOND HEARINGS AND FILING**
15 **OF NOTICES TO APPEAR.**

16 (a) ALIENS IN CUSTODY.—Section 236 (8 U.S.C.
17 1226) is amended by adding at the end the following:

18 “(f) PROCEDURES FOR CUSTODY HEARINGS.—For
19 any alien taken into custody under any provision of this
20 Act, with the exception of minors being transferred to or
21 in the custody of the Office of Refugee Resettlement, the
22 following shall apply:

23 “(1) The Secretary of Homeland Security shall,
24 without unnecessary delay and not later than 72
25 hours after the alien is taken into custody, file the

1 Notice to Appear or other relevant charging docu-
2 ment with the immigration court having jurisdiction
3 over the location where the alien was apprehended,
4 and serve such notice on the alien.

5 “(2) The Secretary shall immediately determine
6 whether the alien shall remain in custody or be re-
7 leased and, without unnecessary delay and not later
8 than 72 hours after the alien was taken into cus-
9 tody, serve upon the alien the custody decision speci-
10 fying the reasons for continued custody and the
11 amount of bond if any.

12 “(3) The Attorney General shall ensure the
13 alien has the opportunity to appear before an immi-
14 gration judge for a custody determination hearing
15 promptly after service of the Secretary’s custody de-
16 cision. The immigration judge may, on the Sec-
17 retary’s motion and upon a showing of good cause,
18 postpone a custody redetermination hearing for no
19 more than 72 hours after service of the custody deci-
20 sion, except that in no case shall the hearing occur
21 more than 6 days (including weekends and holidays)
22 after the alien was taken into custody.

23 “(4) The immigration judge shall advise the
24 alien of the right to postpone the custody determina-
25 tion hearing and shall, on the oral or written request

1 of the individual, postpone the custody determina-
2 tion hearing for a period of not more than 14 days.

3 “(5) Except for aliens that the immigration
4 judge has determined are deportable under section
5 236(e) or certified under section 236A, the immigra-
6 tion judge shall review the custody determination de
7 novo and may continue to detain the alien only if the
8 Secretary demonstrates that no conditions, including
9 the use of alternatives to detention that maintain
10 custody over the alien, will reasonably assure the ap-
11 pearance of the alien as required and the safety of
12 any other person and the community. For aliens
13 whom the immigration judge has determined are de-
14 portable under section 236(e), the immigration judge
15 may review the custody determination if the Sec-
16 retary agrees the alien is not a danger to the com-
17 munity, and alternatives to detention exist that en-
18 sure the appearance of the alien, as required, and
19 the safety of any other person and the community.

20 “(6) In the case of any alien remaining in cus-
21 tody after a custody determination, the Attorney
22 General shall provide de novo custody determination
23 hearings before an immigration judge every 90 days
24 so long as the alien remains in custody. An alien

1 may also obtain a de novo custody redetermination
2 hearing at any time upon a showing of good cause.

3 “(7) The Secretary shall inform the alien of his
4 or her rights under this paragraph at the time the
5 alien is first taken into custody.”.

6 (b) LIMITATIONS ON SOLITARY CONFINEMENT.—

7 (1) IN GENERAL.—Section 236(d) (8 U.S.C.
8 1226(d)) is amended by adding at the end the fol-
9 lowing:

10 “(3) NATURE OF DETENTION.—

11 “(A) DEFINITIONS.—In this paragraph:

12 “(i) ADMINISTRATIVE SEGREGA-
13 TION.—The term ‘administrative segrega-
14 tion’ means a nonpunitive form of solitary
15 confinement for administrative reasons.

16 “(ii) DISCIPLINARY SEGREGATION.—
17 The term ‘disciplinary segregation’ means
18 a punitive form of solitary confinement for
19 disciplinary reasons.

20 “(iii) SERIOUS MENTAL ILLNESS.—
21 The term ‘serious mental illness’ means a
22 substantial disorder of thought or mood
23 that significantly impairs judgment, behav-
24 ior, capacity to recognize reality, or ability
25 to cope with the ordinary demands of life.

1 “(iv) SOLITARY CONFINEMENT.—The
2 term ‘solitary confinement’ means cell con-
3 finement of 22 hours or more per day.

4 “(B) LIMITATIONS ON SOLITARY CONFINEMENT.—
5

6 “(i) IN GENERAL.—The use of soli-
7 tary confinement of an alien in custody
8 pursuant to this section, section 235, or
9 section 241 shall be limited to situations in
10 which such confinement—

11 “(I) is necessary—

12 “(aa) to control a threat to
13 detainees, staff, or the security of
14 the facility;

15 “(bb) to discipline the alien
16 for a serious disciplinary infrac-
17 tion if alternative sanctions
18 would not adequately regulate
19 the alien’s behavior; or

20 “(cc) for good order during
21 the last 24 hours before an alien
22 is released, removed, or trans-
23 ferred from the facility;

24 “(II) is limited to the briefest
25 term and under the least restrictive

1 conditions practicable and consistent
2 with the rationale for placement and
3 with the progress achieved by the
4 alien; and

5 “(III) complies with the require-
6 ments set forth in this subparagraph.

7 “(ii) CHILDREN.—Children who are
8 younger than 18 years of age may not be
9 placed in solitary confinement.

10 “(iii) SERIOUS MENTAL ILLNESS.—

11 “(I) IN GENERAL.—An alien with
12 a serious mental illness may not be
13 placed in involuntary solitary confine-
14 ment due to mental illness unless—

15 “(aa) such confinement is
16 necessary for the alien’s own pro-
17 tection; or

18 “(bb) if the alien requires
19 emergency stabilization or poses
20 a significant threat to staff or
21 others in general population.

22 “(II) MAXIMUM PERIOD.—An
23 alien diagnosed with serious mental
24 illness may not be placed in solitary
25 confinement for more than 15 days

1 unless the Secretary of Homeland Se-
2 curity determines that—

3 “(aa) any less restrictive al-
4 ternative is more likely than not
5 to cause greater harm to the
6 alien than the solitary confine-
7 ment period imposed; or

8 “(bb) the likely harm to the
9 alien is not substantial and the
10 period of solitary confinement is
11 the least restrictive alternative
12 necessary to protect the alien,
13 other detainees, or others.

14 “(iv) OWN PROTECTION.—

15 “(I) IN GENERAL.—Involuntary
16 solitary confinement for an alien’s
17 own protection may be used only for
18 the least amount of time practicable
19 and if no readily available and less re-
20 strictive alternative will maintain the
21 alien’s safety.

22 “(II) MAXIMUM PERIOD.—An
23 alien may not be placed in involuntary
24 solitary confinement for the alien’s
25 own protection for longer than 15

1 days unless the Secretary of Home-
2 land Security determines that any less
3 restrictive alternative is more likely
4 than not to cause greater harm to the
5 alien than the solitary confinement pe-
6 riod imposed.

7 “(III) PROHIBITED FACTORS.—

8 The Secretary of Homeland Security
9 may not rely solely on an alien’s age,
10 physical disability, sexual orientation,
11 gender identity, race, or religion. The
12 Secretary shall make an individualized
13 assessment in each case.

14 “(v) MEDICAL CARE.—An alien placed
15 in solitary confinement—

16 “(I) shall be visited by a medical
17 professional at least 3 times each
18 week;

19 “(II) shall receive at least weekly
20 mental health monitoring by a li-
21 censed mental health clinician; and

22 “(III) shall be removed from soli-
23 tary confinement if—

24 “(aa) a mental health clini-
25 cian determines that such deten-

1 tion is having a significant nega-
2 tive impact on the alien’s mental
3 health; and

4 “(bb) an appropriate alter-
5 native is available.

6 “(vi) NOTIFICATION; ACCESS TO
7 COUNSEL.—If an alien is placed in solitary
8 confinement, the alien—

9 “(I) shall be informed verbally,
10 and in writing, of the reason for such
11 confinement and the intended dura-
12 tion of such confinement, if specified
13 at the time of initial placement; and

14 “(II) shall be offered access to
15 counsel on the same basis as detainees
16 in the general population.

17 “(vii) LONGER SOLITARY CONFINE-
18 MENT PERIODS.—If an alien has been sub-
19 ject to involuntary solitary confinement for
20 more than 14 consecutive days, the Sec-
21 retary of Homeland Security shall conduct
22 a timely review to determine whether con-
23 tinued placement is justified by an extreme
24 disciplinary infraction or is the least re-
25 strictive means of protecting the alien or

1 others. Any alien held in solitary confine-
2 ment for more than 7 days shall be given
3 a reasonable opportunity to challenge such
4 placement with the detention facility ad-
5 ministrator, which will promptly respond to
6 such challenge in writing.

7 “(viii) OVERSIGHT.—The Secretary of
8 Homeland Security shall ensure that—

9 “(I) he or she is regularly in-
10 formed about the use of solitary con-
11 finement in all facilities at which
12 aliens are detained; and

13 “(II) the Department fully com-
14 plies with the provisions under this
15 paragraph.

16 “(C) DISCIPLINARY SEGREGATION.—Dis-
17 ciplinary segregation is authorized only pursu-
18 ant to the order of a facility disciplinary panel
19 following a hearing in which the detainee is de-
20 termined to have violated a facility rule.

21 “(D) ADMINISTRATIVE SEGREGATION.—
22 Administrative segregation is authorized only as
23 necessary to ensure the safety of the detainee
24 or others, the protection of property, or the se-
25 curity or good order of the facility. Detainees in

1 administrative segregation shall be offered pro-
2 gramming opportunities and privileges con-
3 sistent with those available in the general popu-
4 lation, except where precluded by safety or se-
5 curity concerns.”.

6 (2) ANNUAL REPORT.—The Secretary shall—

7 (A) collect and compile information regard-
8 ing the prevalence, reasons for, and duration of
9 solitary confinement in all facilities described in
10 paragraph (3);

11 (B) submit an annual report containing
12 the information described in subparagraph (A)
13 to Congress not later than 30 days after the
14 end of the reporting period; and

15 (C) make the data contained in the report
16 submitted under subparagraph (B) publicly
17 available.

18 (3) RULEMAKING.—The Secretary shall adopt
19 regulations or policies to carry out section 236(d)(3)
20 of the Immigration and Nationality Act, as amended
21 by paragraph (1), at all facilities at which aliens are
22 detained pursuant to section 235, 236, or 241 of
23 such Act.

24 (c) STIPULATED REMOVAL.—Section 240(d) (8
25 U.S.C. 1229a) is amended to read as follows:

1 “(d) **STIPULATED REMOVAL.**—The Attorney General
2 shall provide by regulation for the entry by an immigration
3 judge of an order of removal stipulated to by the alien
4 (or the alien’s representative) and the Service. An immi-
5 gration judge may enter a stipulated removal order only
6 upon a finding at an in-person hearing that the stipulation
7 is voluntary, knowing, and intelligent. A stipulated order
8 shall constitute a conclusive determination of the alien’s
9 removability from the United States.”.

10 **SEC. 3718. SANCTIONS FOR COUNTRIES THAT DELAY OR**
11 **PREVENT REPATRIATION OF THEIR NATION-**
12 **ALS.**

13 Section 243(d) (8 U.S.C. 1253(d)) is amended to
14 read as follows:

15 “(d) **DISCONTINUING GRANTING VISAS TO NATION-**
16 **ALS OF COUNTRIES THAT DENY OR DELAY ACCEPTING**
17 **ALIENS.**—Notwithstanding section 221(e), if the Sec-
18 retary of Homeland Security determines, in consultation
19 with the Secretary of State, that the government of a for-
20 eign country denies or unreasonably delays accepting
21 aliens who are citizens, subjects, nationals, or residents
22 of that country after the Secretary asks whether the gov-
23 ernment will accept an alien under this section, or after
24 a determination that the alien is inadmissible under para-
25 graph (6) or (7) of section 212(a), the Secretary of State

1 shall order consular officers in that foreign country to dis-
2 continue granting visas, or classes of visas, until the Sec-
3 retary of Homeland Security notifies the Secretary of
4 State that the country has accepted the aliens.”.

5 **SEC. 3719. GROSS VIOLATIONS OF HUMAN RIGHTS.**

6 (a) INADMISSIBILITY OF CERTAIN ALIENS.—Section
7 212(a)(3)(E) (8 U.S.C. 1182(a)(3)(E)) is amended by
8 striking clause (iii) and inserting the following:

9 “(iii) COMMISSION OF ACTS OF TOR-
10 TURE, EXTRAJUDICIAL KILLINGS, WAR
11 CRIMES, OR WIDESPREAD OR SYSTEMATIC
12 ATTACKS ON CIVILIANS.—Any alien who
13 planned, ordered, assisted, aided and abet-
14 ted, committed, or otherwise participated,
15 including through command responsibility,
16 in the commission of—

17 “(I) any act of torture (as de-
18 fined in section 2340 of title 18,
19 United States Code);

20 “(II) any extrajudicial killing (as
21 defined in section 3(a) of the Torture
22 Victim Protection Act of 1991 (28
23 U.S.C. 1350 note)) under color of law
24 of any foreign nation;

1 “(III) a war crime (as defined in
2 section 2441 of title 18, United States
3 Code); or

4 “(IV) any of the following acts as
5 a part of a widespread or systematic
6 attack directed against a civilian pop-
7 ulation, with knowledge of the attack:
8 murder, extermination, enslavement,
9 forcible transfer of population, arbi-
10 trary detention, rape, sexual slavery,
11 enforced prostitution, forced preg-
12 nancy, enforced sterilization, or any
13 other form of sexual violence of com-
14 parable gravity; persecution on polit-
15 ical racial, national, ethnic, cultural,
16 religious, or gender grounds; enforced
17 disappearance of persons; or other in-
18 humane acts of a similar character in-
19 tentiously causing great suffering or
20 serious bodily or mental injury,
21 is inadmissible.

22 “(iv) LIMITATION.—Clause (iii) shall
23 not apply to an alien if the Secretary of
24 Homeland Security or the Attorney Gen-
25 eral determine that the actions giving rise

1 to the alien’s inadmissibility under such
2 clause were committed under duress. In
3 determining whether the alien was subject
4 to duress, the Secretary may consider,
5 among relevant factors, the age of the
6 alien at the time such actions were com-
7 mitted.”.

8 (b) DENYING SAFE HAVEN TO FOREIGN HUMAN
9 RIGHTS VIOLATORS.—Section 2(a)(2) of the Torture Vic-
10 tim Protection Act of 1991 (28 U.S.C. 1350 note) is
11 amended—

12 (1) by inserting after “killing” the following: “,
13 a war crime (as defined in subsections (c) and (d)
14 of section 2441 of title 18, United States Code), a
15 widespread or systematic attack on civilians (as de-
16 fined in section 212(a)(3)(E)(iii)(IV) of the Immi-
17 gration and Nationality Act), or genocide (as defined
18 in section 1091(a) of such title 18)”; and

19 (2) by striking “to the individual’s legal rep-
20 resentative” and inserting “to that individual or to
21 that individual’s legal representative”.

22 (c) NONAPPLICABILITY OF CONFIDENTIALITY RE-
23 QUIREMENT WITH RESPECT TO VISA RECORDS.—The
24 President may make public, without regard to the require-
25 ments under section 222(f) of the Immigration and Na-

1 tionality Act (8 U.S.C. 1202(f)), with respect to confiden-
2 tiality of records pertaining to the issuance or refusal of
3 visas or permits to enter the United States, the names
4 of aliens deemed inadmissible on the basis of section
5 212(a)(3)(E)(iii) of such Act, as amended by subsection
6 (a).

7 **SEC. 3720. REPORTING AND RECORDKEEPING REQUIRE-**
8 **MENTS RELATING TO THE DETENTION OF**
9 **ALIENS.**

10 (a) IN GENERAL.—In order for Congress and the
11 public to assess the full costs of apprehending, detaining,
12 processing, supervising, and removing aliens, and how the
13 money Congress appropriates for detention is allocated by
14 Federal agencies, the Assistant Secretary for Immigration
15 and Customs and Enforcement (referred to in this section
16 as the “Assistant Secretary”), the Director of the Execu-
17 tive Office of Immigration Review, and the Commissioner
18 responsible for U.S. Customs and Border Protection (re-
19 ferred to in this section as the “Commissioner”) shall—
20 (1) maintain the information required under
21 subsections (b), (c), and (d); and
22 (2) submit reports on that information to Con-
23 gress and make that information available to the
24 public in accordance with subsection (e).

1 (b) MAINTENANCE OF INFORMATION BY U.S. IMMI-
2 GRATION AND CUSTOMS ENFORCEMENT.—The Assistant
3 Secretary shall record and maintain, in the database of
4 U.S. Immigration and Customs Enforcement relating to
5 detained aliens, the following information with respect to
6 each alien detained pursuant to the Immigration and Na-
7 tionality Act (8 U.S.C. 1101 et seq.):

8 (1) The provision of law that provides specific
9 authority for the alien’s detention and the beginning
10 and end dates of the alien’s detention pursuant to
11 that authority. If the alien’s detention is authorized
12 by different provisions of law during different peri-
13 ods of time, the Assistant Secretary shall record and
14 maintain the provision of law that provides authority
15 for the alien’s detention during each such period.

16 (2) The place where the alien was apprehended
17 or where U.S. Immigration and Customs Enforce-
18 ment assumed custody of the alien.

19 (3) Each location where U.S. Immigration and
20 Customs Enforcement detains the alien until the
21 alien is released from custody or removed from the
22 United States, including any period of redetention.

23 (4) The gender and age of each detained alien
24 in the custody of U.S. Immigration and Customs
25 Enforcement.

1 (5) The number of days the alien is detained,
2 including the number of days spent in any given de-
3 tention facility and the total amount of time spent
4 in detention.

5 (6) The immigration charges that are the basis
6 for the alien's removal proceedings.

7 (7) The status of the alien's removal pro-
8 ceedings and each date on which those proceedings
9 progress from 1 stage of proceeding to another.

10 (8) The length of time the alien was detained
11 following a final administrative order of removal and
12 the reasons for the continued detention.

13 (9) The initial custody determination or review
14 made by U.S. Immigration and Customs Enforce-
15 ment, including whether the alien received notice of
16 a custody determination or review and when the cus-
17 tody determination or review took place.

18 (10) The risk assessment results for the alien,
19 including if the alien is subject to mandatory cus-
20 tody or detention.

21 (11) The reason for the alien's release from de-
22 tention and the conditions of release imposed on the
23 alien, if applicable.

24 (c) MAINTENANCE OF INFORMATION BY EXECUTIVE
25 OFFICE OF IMMIGRATION REVIEW.—The Director of the

1 Executive Office of Immigration Review shall record and
2 maintain, in the database of the Executive Office of Immi-
3 gration Review relating to detained aliens in removal pro-
4 ceedings, the following information with respect to each
5 such alien:

6 (1) The immigration charges that are the basis
7 for the alien's removal proceedings, including any re-
8 vision of the immigration charges and the date of
9 each such revision.

10 (2) The gender and age of the alien.

11 (3) The status of the alien's removal pro-
12 ceedings and each date on which those proceedings
13 progress from one stage of proceeding to another.

14 (4) The statutory basis for any bond hearing
15 conducted and the outcomes of the bond hearing.

16 (5) Whether each court hearing is conducted in
17 person, by audio link, or by video conferencing.

18 (6) The date of each attorney entry of appear-
19 ance before an immigration judge using Form
20 EOIR-28 and the scope of the appearance to which
21 the form related.

22 (d) MAINTENANCE OF INFORMATION BY U.S. CUS-
23 TOMS AND BORDER PROTECTION.—The Commissioner
24 shall record and maintain in the database of U.S. Customs
25 and Border Protection relating to detained aliens the fol-

1 lowing information with respect to each alien detained
2 pursuant to the Immigration and Nationality Act (8
3 U.S.C. 1101 et seq.):

4 (1) The provision of law that provides specific
5 authority for the alien's detention and the beginning
6 and end dates of the alien's detention.

7 (2) The place where the alien was apprehended.

8 (3) The gender and age of the alien.

9 (4) Each location where U.S. Customs and Bor-
10 der Protection detains the alien until the alien is re-
11 leased from custody or removed from the United
12 States, including any period of redetention.

13 (5) The number of days that the alien is de-
14 tained in the custody of U.S. Customs and Border
15 Protection.

16 (6) The immigration charges that are the basis
17 for the alien's removal proceedings while the alien is
18 in the custody of U.S. Customs and Border Protec-
19 tion.

20 (7) The initial custody determination by U.S.
21 Customs and Border Protection, including whether
22 the alien received notice of a custody determination
23 or review, when the custody determination or review
24 took place, and whether U.S. Customs and Border

1 Protection offered the option of stipulated removal
2 to a detained alien.

3 (8) The reason for the alien's release from de-
4 tention and the conditions of release to detention im-
5 posed on the alien, if applicable.

6 (e) REPORTING REQUIREMENTS.—

7 (1) PERIODIC REPORTS.—The Assistant Sec-
8 retary, the Director of the Executive Office of Immi-
9 gration Review, and the Commissioner shall periodi-
10 cally, but not less frequently than annually, submit
11 to Congress a report containing a summary of the
12 information required to be maintained by this sec-
13 tion. Each such report shall include summaries of
14 national-level data as well as summaries of the infor-
15 mation required by this section by State and county.

16 (2) OTHER REPORTS.—The Assistant Secretary
17 shall report to Congress not less frequently than an-
18 nually on—

19 (A) the number of aliens detained for more
20 than 3 months, 6 months, 1 year, and 2 years;
21 and

22 (B) the average period of detention before
23 receipt of a final administrative order of re-
24 moval and after receipt of such an order.

1 (3) AVAILABILITY TO PUBLIC.—The reports re-
2 quired under this subsection and the information for
3 each alien on which the reports are based shall be
4 made available to the public without the need to sub-
5 mit a request under section 552 of title 5, United
6 States Code (commonly referred to as the “Freedom
7 of Information Act”).

8 (4) PRIVACY PROTECTIONS.—No alien’s identity
9 may be disclosed when information described in
10 paragraph (3) is made publicly available.

11 (f) DEFINITIONS.—In this section:

12 (1) CASE OUTCOME.—The term “case outcome”
13 includes a grant of relief from deportation under
14 section 240A of the Immigration and Nationality
15 Act (8 U.S.C. 1229b), voluntary departure pursuant
16 to section 240B of that Act (8 U.S.C. 1229c), re-
17 moval pursuant to section 238 of that Act (8 U.S.C.
18 1228), judicial termination of proceedings, termi-
19 nation of proceedings by U.S. Immigration and Cus-
20 toms Enforcement, cancellation of the notice to ap-
21 pear, or permission to withdraw application for ad-
22 mission without any removal order being issued.

23 (2) PLACE WHERE THE ALIEN WAS APPRE-
24 HENDED.—The term “place where the alien was ap-

1 prehended” refers to the city, county, and State
2 where an alien is apprehended.

3 (3) REASON FOR THE ALIEN’S RELEASE FROM
4 DETENTION.—The term “reason for the alien’s re-
5 lease from detention” refers to release on bond, on
6 an alien’s own recognizance, on humanitarian
7 grounds, after grant of relief, or due to termination
8 of proceedings or removal.

9 (4) REMOVAL PROCEEDINGS.—The term “re-
10 moval proceedings” refers to a removal case of any
11 kind, including expedited removal, administrative re-
12 moval, stipulated removal, reinstatement, and vol-
13 untary removal and removals in which an applicant
14 is permitted to withdraw his or her application for
15 admission.

16 (5) STAGE.—The term “stage”, with respect to
17 a proceeding, refers to whether the alien is in pro-
18 ceedings before an immigration judge, the Board of
19 Immigration Appeals, a United States court of ap-
20 peals, or on remand from a United States court of
21 appeals.

22 **SEC. 3721. POWERS OF IMMIGRATION OFFICERS AND EM-**
23 **EMPLOYEES AT SENSITIVE LOCATIONS.**

24 Section 287 (8 U.S.C. 1357) is amended by adding
25 at the end the following:

1 “(i)(1) In order to ensure individuals’ access to sen-
2 sitive locations, this subsection applies to enforcement ac-
3 tions by officers and agents of U.S. Immigration and Cus-
4 toms Enforcement and officers and agents of U.S. Cus-
5 toms and Border Protection.

6 “(2)(A) An enforcement action may not take place
7 at, or be focused on, a sensitive location, except as follows:

8 “(i) Under exigent circumstances.

9 “(ii) If prior approval is obtained.

10 “(B) If an enforcement action is taking place pursu-
11 ant to subparagraph (A) and the condition permitting the
12 enforcement action ceases, the enforcement action shall
13 cease.

14 “(3)(A) When proceeding with an enforcement action
15 at or near a sensitive location, officers and agents referred
16 to in paragraph (1) shall conduct themselves as discreetly
17 as possible, consistent with officer and public safety, and
18 make every effort to limit the time at or focused on the
19 sensitive location.

20 “(B) If, in the course of an enforcement action that
21 is not initiated at or focused on a sensitive location, offi-
22 cers or agents are led to or near a sensitive location, and
23 no exigent circumstance exists, such officers or agents
24 shall conduct themselves in a discreet manner, maintain
25 surveillance, and immediately consult their supervisor be-

1 fore taking any further enforcement action, in order to
2 determine whether such action should be discontinued.

3 “(C) This section not apply to the transportation of
4 an individual apprehended at or near a land or sea border
5 to a hospital or healthcare provider for the purpose of pro-
6 viding such individual medical care.

7 “(4)(A) Each official specified in subparagraph (B)
8 shall ensure that the employees under the supervision of
9 such official receive annual training on compliance with
10 the requirements of this subsection in enforcement actions
11 at or focused on sensitive locations and enforcement ac-
12 tions that lead officers or agents to or near a sensitive
13 location.

14 “(B) The officials specified in ths subparagraph are
15 the following:

16 “(i) The Chief Counsel of U.S. Immigration
17 and Customs Enforcement.

18 “(ii) The Field Office Directors of U.S. Immi-
19 gration and Customs Enforcement.

20 “(iii) Each Special Agent in Charge of U.S. Im-
21 migration and Customs Enforcement.

22 “(iv) Each Chief Patrol Agent of U.S. Customs
23 and Border Protection.

24 “(v) The Director of Field Operations of U.S.
25 Customs and Border Protection.

1 “(vi) The Director of Air and Marine Oper-
2 ations of U.S. Customs and Border Protection.

3 “(vii) The Internal Affairs Special Agent in
4 Charge of U.S. Customs and Border Protection.

5 “(5)(A) The Director of U.S. Immigration and Cus-
6 toms Enforcement and the Commissioner of U.S. Customs
7 and Border Protection shall each submit to the appro-
8 priate committees of Congress each year a report on the
9 enforcement actions undertaken by U.S. Immigration and
10 Customs Enforcement and U.S. Customs and Border Pro-
11 tection, respectively, during the preceding year that were
12 covered by this subsection.

13 “(B) Each report on an agency for a year under this
14 paragraph shall set forth the following:

15 “(i) The number of enforcement actions at or
16 focused on a sensitive location.

17 “(ii) The number of enforcement actions where
18 officers or agents were subsequently led to or near
19 a sensitive location.

20 “(iii) The date, site, and State, city, and county
21 in which each enforcement action covered by clause
22 (i) or (ii) occurred.

23 “(iv) The component of the agency responsible
24 for each such enforcement action.

1 “(v) A description of the intended target of
2 each such enforcement action.

3 “(vi) The number of individuals, if any, ar-
4 rested or taken into custody through each such en-
5 forcement action.

6 “(vii) The number of collateral arrests, if any,
7 from each such enforcement action and the reasons
8 for each such arrest.

9 “(viii) A certification of whether the location
10 administrator was contacted prior to, during, or
11 after each such enforcement action.

12 “(C) Each report under this paragraph shall be made
13 available to the public without the need to submit a re-
14 quest under section 552 of title 5, United States Code
15 (commonly referred to as the ‘Freedom of Information
16 Act’).

17 “(6) In this subsection:

18 “(A) The term ‘appropriate committees of Con-
19 gress’ means—

20 “(i) the Committee on Homeland Security
21 and Governmental Affairs of the Senate;

22 “(ii) the Committee on the Judiciary of the
23 Senate;

24 “(iii) the Committee on Homeland Security
25 of the House of Representatives; and

1 “(iv) the Committee on the Judiciary of
2 the House of Representatives.

3 “(B) The term ‘enforcement action’ means an
4 arrest, interview, search, or surveillance for the pur-
5 poses of immigration enforcement, and includes an
6 enforcement action at, or focused on, a sensitive lo-
7 cation that is part of a joint case led by another law
8 enforcement agency.

9 “(C) The term ‘exigent circumstances’ means a
10 situation involving the following:

11 “(i) The imminent risk of death, violence,
12 or physical harm to any person, including a sit-
13 uation implicating terrorism or the national se-
14 curity of the United States in some other man-
15 ner.

16 “(ii) The immediate arrest or pursuit of a
17 dangerous felon, terrorist suspect, or other indi-
18 vidual presenting an imminent danger or public
19 safety risk.

20 “(iii) The imminent risk of destruction of
21 evidence that is material to an ongoing criminal
22 case.

23 “(D) The term ‘prior approval’ means the fol-
24 lowing:

1 “(i) In the case of officers and agents of
2 U.S. Immigration and Customs Enforcement,
3 prior written approval for a specific, targeted
4 operation from one of the following officials:

5 “(I) The Assistant Director of Oper-
6 ations, Homeland Security Investigations.

7 “(II) The Executive Associate Direc-
8 tor of Homeland Security Investigations.

9 “(III) The Assistant Director for
10 Field Operations, Enforcement, and Re-
11 moval Operations.

12 “(IV) The Executive Associate Direc-
13 tor for Field Operations, Enforcement, and
14 Removal Operations.

15 “(ii) In the case of officers and agents of
16 U.S. Customs and Border Protection, prior
17 written approval for a specific, targeted oper-
18 ation from one of the following officials:

19 “(I) A Chief Patrol Agent.

20 “(II) The Director of Field Oper-
21 ations.

22 “(III) The Director of Air and Marine
23 Operations

24 “(IV) The Internal Affairs Special
25 Agent in Charge.

1 “(E) The term ‘sensitive location’ includes the
2 following:

3 “(i) Hospitals and health clinics.

4 “(ii) Public and private schools (including
5 pre-schools, primary schools, secondary schools,
6 postsecondary schools (including colleges and
7 universities), and other institutions of learning
8 such as vocational or trade schools).

9 “(iii) Organizations assisting children,
10 pregnant women, victims of crime or abuse, or
11 individuals with mental or physical disabilities.

12 “(iv) Churches, synagogues, mosques, and
13 other places of worship, such as buildings
14 rented for the purpose of religious services.

15 “(v) Such other locations as the Secretary
16 of Homeland Security shall specify for purposes
17 of this subsection.”.

18 **Subtitle H—Protection of Children**
19 **Affected by Immigration En-**
20 **forcement**

21 **SEC. 3801. SHORT TITLE.**

22 This subtitle may be cited as the “Humane Enforce-
23 ment and Legal Protections for Separated Children Act”
24 or the “HELP Separated Children Act”.

1 **SEC. 3802. DEFINITIONS.**

2 In this subtitle:

3 (1) APPREHENSION.—The term “apprehension”
4 means the detention or arrest by officials of the De-
5 partment or cooperating entities.

6 (2) CHILD.—The term “child” means an indi-
7 vidual who has not attained 18 years of age.

8 (3) CHILD WELFARE AGENCY.—The term
9 “child welfare agency” means a State or local agen-
10 cy responsible for child welfare services under sub-
11 titles B and E of title IV of the Social Security Act
12 (42 U.S.C. 601 et seq.).

13 (4) COOPERATING ENTITY.—The term “cooper-
14 ating entity” means a State or local entity acting
15 under agreement with the Secretary.

16 (5) DETENTION FACILITY.—The term “deten-
17 tion facility” means a Federal, State, or local gov-
18 ernment facility, or a privately owned and operated
19 facility, that is used, in whole or in part, to hold in-
20 dividuals under the authority of the Director of U.S.
21 Immigration and Customs Enforcement, including
22 facilities that hold such individuals under a contract
23 or agreement with the Director.

24 (6) IMMIGRATION ENFORCEMENT ACTION.—The
25 term “immigration enforcement action” means the
26 apprehension of 1 or more individuals whom the De-

1 partment has reason to believe are removable from
2 the United States by the Secretary or a cooperating
3 entity.

4 (7) PARENT.—The term “parent” means a bio-
5 logical or adoptive parent of a child, whose parental
6 rights have not been relinquished or terminated
7 under State law or the law of a foreign country, or
8 a legal guardian under State law or the law of a for-
9 eign country.

10 **SEC. 3803. APPREHENSION PROCEDURES FOR IMMIGRA-**
11 **TION ENFORCEMENT-RELATED ACTIVITIES.**

12 (a) APPREHENSION PROCEDURES.—In any immigra-
13 tion enforcement action, the Secretary and cooperating en-
14 tities shall—

15 (1) as soon as possible, but generally not later
16 than 2 hours after an immigration enforcement ac-
17 tion, inquire whether an individual is a parent or
18 primary caregiver of a child in the United States
19 and provide any such individuals with—

20 (A) the opportunity to make a minimum of
21 2 telephone calls to arrange for the care of such
22 child in the individual’s absence; and

23 (B) contact information for—

1 (i) child welfare agencies and family
2 courts in the same jurisdiction as the child;
3 and

4 (ii) consulates, attorneys, and legal
5 service providers capable of providing free
6 legal advice or representation regarding
7 child welfare, child custody determinations,
8 and immigration matters;

9 (2) notify the child welfare agency with jurisdic-
10 tion over the child if the child's parent or primary
11 caregiver is unable to make care arrangements for
12 the child or if the child is in imminent risk of seri-
13 ous harm;

14 (3) ensure that personnel of the Department
15 and cooperating entities do not, absent medical ne-
16 cessity or extraordinary circumstances, compel or re-
17 quest children to interpret or translate for interviews
18 of their parents or of other individuals who are en-
19 countered as part of an immigration enforcement ac-
20 tion; and

21 (4) ensure that any parent or primary caregiver
22 of a child in the United States—

23 (A) absent medical necessity or extraor-
24 dinary circumstances, is not transferred from

1 his or her area of apprehension until the indi-
2 vidual—

3 (i) has made arrangements for the
4 care of such child; or

5 (ii) if such arrangements are unavail-
6 able or the individual is unable to make
7 such arrangements, is informed of the care
8 arrangements made for the child and of a
9 means to maintain communication with the
10 child;

11 (B) absent medical necessity or extraor-
12 dinary circumstances, and to the extent prac-
13 ticable, is placed in a detention facility either—

14 (i) proximate to the location of appre-
15 hension; or

16 (ii) proximate to the individual's ha-
17 bitual place of residence; and

18 (C) receives due consideration of the best
19 interests of such child in any decision or action
20 relating to his or her detention, release, or
21 transfer between detention facilities.

22 (b) REQUESTS TO STATE AND LOCAL ENTITIES.—
23 If the Secretary requests a State or local entity to hold
24 in custody an individual whom the Department has reason
25 to believe is removable pending transfer of that individual

1 to the custody of the Secretary or to a detention facility,
2 the Secretary shall also request that the State or local en-
3 tity provide the individual the protections specified in
4 paragraphs (1) and (2) of subsection (a), if that individual
5 is found to be the parent or primary caregiver of a child
6 in the United States.

7 (c) PROTECTIONS AGAINST TRAFFICKING PRE-
8 SERVED.—The provisions of this section shall not be con-
9 strued to impede, delay, or in any way limit the obligations
10 of the Secretary, the Attorney General, or the Secretary
11 of Health and Human Services under section 235 of the
12 William Wilberforce Trafficking Victims Protection Reau-
13 thorization Act of 2008 (8 U.S.C. 1232) or section 462
14 of the Homeland Security Act of 2002 (6 U.S.C. 279).

15 **SEC. 3804. ACCESS TO CHILDREN, STATE AND LOCAL**
16 **COURTS, CHILD WELFARE AGENCIES, AND**
17 **CONSULAR OFFICIALS.**

18 At all detention facilities, the Secretary shall—

19 (1) prominently post in a manner accessible to
20 detainees and visitors and include in detainee hand-
21 books information on the protections of this subtitle
22 as well as information on potential eligibility for pa-
23 role or release;

24 (2) absent extraordinary circumstances, ensure
25 that individuals who are detained by the Department

1 and are parents of children in the United States
2 are—

3 (A) permitted regular phone calls and con-
4 tact visits with their children;

5 (B) provided with contact information for
6 child welfare agencies and family courts in the
7 relevant jurisdictions;

8 (C) able to participate fully and, to the ex-
9 tent possible, in person in all family court pro-
10 ceedings and any other proceedings that may
11 impact their right to custody of their children;

12 (D) granted free and confidential telephone
13 calls to relevant child welfare agencies and fam-
14 ily courts as often as is necessary to ensure
15 that the best interest of their children, includ-
16 ing a preference for family unity whenever ap-
17 propriate, can be considered in child welfare
18 agency or family court proceedings;

19 (E) able to fully comply with all family
20 court or child welfare agency orders impacting
21 custody of their children;

22 (F) provided access to United States pass-
23 port applications or other relevant travel docu-
24 ment applications for the purpose of obtaining
25 travel documents for their children;

1 (G) afforded timely access to a notary pub-
2 lic for the purpose of applying for a passport
3 for their children or executing guardianship or
4 other agreements to ensure the safety of their
5 children; and

6 (H) granted adequate time before removal
7 to obtain passports, apostilled birth certificates,
8 travel documents, and other necessary records
9 on behalf of their children if such children will
10 accompany them on their return to their coun-
11 try of origin or join them in their country of or-
12 igin; and

13 (3) where doing so would not impact public
14 safety or national security, facilitate the ability of
15 detained alien parents and primary caregivers to
16 share information regarding travel arrangements
17 with their consulate, children, child welfare agencies,
18 or other caregivers in advance of the detained alien
19 individual's departure from the United States.

20 **SEC. 3805. MANDATORY TRAINING.**

21 The Secretary, in consultation with the Secretary of
22 Health and Human Services, the Secretary of State, the
23 Attorney General, and independent child welfare and fam-
24 ily law experts, shall develop and provide training on the
25 protections required under sections 3803 and 3804 to all

1 personnel of the Department, cooperating entities, and de-
2 tention facilities operated by or under agreement with the
3 Department who regularly engage in immigration enforce-
4 ment actions and in the course of such actions come into
5 contact with individuals who are parents or primary care-
6 givers of children in the United States.

7 **SEC. 3806. RULEMAKING.**

8 Not later than 180 days after the date of the enact-
9 ment of this Act, the Secretary shall promulgate regula-
10 tions to implement sections 3803 and 3804 of this Act.

11 **SEC. 3807. SEVERABILITY.**

12 If any provision of this subtitle or amendment made
13 by this subtitle, or the application of a provision or amend-
14 ment to any person or circumstance, is held to be uncon-
15 stitutional, the remainder of this subtitle and amendments
16 made by this subtitle, and the application of the provisions
17 and amendment to any person or circumstance, shall not
18 be affected by the holding.

19 **TITLE IV—REFORMS TO NON-**
20 **IMMIGRANT VISA PROGRAMS**

21 **Subtitle A—Employment-Based**
22 **Nonimmigrant Visas**

23 **SEC. 4101. MARKET-BASED H-1B VISA LIMITS.**

24 (a) IN GENERAL.—Section 214(g) (8 U.S.C.
25 1184(g)) is amended—

1 (1) in paragraph (1)—

2 (A) in the matter preceding subparagraph
3 (A), by striking “(beginning with fiscal year
4 1992)”; and

5 (B) by amending subparagraph (A) to read
6 as follows:

7 “(A) under section 101(a)(15)(H)(i)(b)
8 may not exceed the sum of—

9 “(i) the base allocation calculated
10 under paragraph (9)(A); and

11 “(ii) the allocation adjustment cal-
12 culated under paragraph (9)(B); and”;

13 (2) by redesignating paragraph (10) as sub-
14 paragraph (D) of paragraph (9);

15 (3) by redesignating paragraph (9) as para-
16 graph (10); and

17 (4) by inserting after paragraph (8) the fol-
18 lowing:

19 “(9)(A) Except as provided in subparagraph (C), the
20 base allocation of nonimmigrant visas under section
21 101(a)(15)(H)(i)(b) for each fiscal year shall be equal
22 to—

23 “(i) the sum of—

24 “(I) the base allocation for the most re-
25 cently completed fiscal year; and

1 “(II) the allocation adjustment under sub-
2 paragraph (B) for the most recently completed
3 fiscal year;

4 “(ii) if the number calculated under clause (i)
5 is less than 115,000, 115,000; or

6 “(iii) if the number calculated under clause (i)
7 is more than 180,000, 180,000.

8 “(B)(i) If the number of cap-subject nonimmigrant
9 visa petitions accepted for filing under section
10 101(a)(15)(H)(i)(b) during the first 45 days petitions may
11 be filed for a fiscal year is equal to the base allocation
12 for such fiscal year, an additional 20,000 such visas shall
13 be made available beginning on the 46th day on which pe-
14 titions may be filed for such fiscal year.

15 “(ii) If the base allocation of cap-subject non-
16 immigrant visa petitions accepted for filing under section
17 101(a)(15)(H)(i)(b) for a fiscal year is reached during the
18 15-day period ending on the 60th day on which petitions
19 may be filed for such fiscal year, an additional 15,000
20 such visas shall be made available beginning on the 61st
21 day on which petitions may be filed for such fiscal year.

22 “(iii) If the base allocation of cap-subject non-
23 immigrant visa petitions accepted for filing under section
24 101(a)(15)(H)(i)(b) for a fiscal year is reached during the
25 30-day period ending on the 90th day on which petitions

1 may be filed for such fiscal year, an additional 10,000
2 such visas shall be made available beginning on the 91st
3 day on which petitions may be filed for such fiscal year.

4 “(iv) If the base allocation of cap-subject non-
5 immigrant visa petitions accepted for filing under section
6 101(a)(15)(H)(i)(b) for a fiscal year is reached during the
7 185-day period ending on the 275th day on which peti-
8 tions may be filed for such fiscal year, an additional 5,000
9 such visas shall be made available beginning on the date
10 on which such allocation is reached.

11 “(v) If the number of cap-subject nonimmigrant visa
12 petitions accepted for filing under section
13 101(a)(15)(H)(i)(b) for a fiscal year is at least 5,000
14 fewer than the base allocation, but is not more than 9,999
15 fewer than the base allocation, the allocation adjustment
16 for the following fiscal year shall be $-5,000$.

17 “(vi) If the number of cap-subject nonimmigrant visa
18 petitions accepted for filing under section
19 101(a)(15)(H)(i)(b) for a fiscal year is at least 10,000
20 fewer than the base allocation, but not more than 14,999
21 fewer than the base allocation, the allocation adjustment
22 for the following fiscal year shall be $-10,000$.

23 “(vii) If the number of cap-subject nonimmigrant visa
24 petitions accepted for filing under section
25 101(a)(15)(H)(i)(b) for a fiscal year is at least 15,000

1 fewer than the base allocation, but not more than 19,999
2 fewer than the base allocation, the allocation adjustment
3 for the following fiscal year shall be $-15,000$.

4 “(viii) If the number of cap-subject nonimmigrant
5 visa petitions accepted for filing under section
6 101(a)(15)(H)(i)(b) for a fiscal year is at least 20,000
7 fewer than the base allocation, the allocation adjustment
8 for the following fiscal year shall be $-20,000$.

9 “(C) An allocation adjustment under clause (i), (ii),
10 (iii), or (iv) of subparagraph (B)—

11 “(i) may not increase the total number of non-
12 immigrant visas available for any fiscal year under
13 section 101(a)(15)(H)(i)9b) above 180,000; and

14 “(ii) may not take place to make additional
15 nonimmigrant visas available for any fiscal year in
16 which the national occupational unemployment rate
17 for ‘Management, Professional, and Related Occupa-
18 tions’, as published by the Bureau of Labor Statis-
19 tics each month, averages 4.5 percent or greater
20 over the 12-month period preceding the date of the
21 Secretary’s determination of whether the cap should
22 be increased or decreased.”.

23 (b) INCREASE IN ALLOCATION FOR STEM NON-
24 IMMIGRANTS.—Section 214(g)(5)(C) (8 U.S.C.
25 1184(g)(5)(C)) is amended to read as follows:

1 “(C) has earned a master’s or higher degree, in
2 a field of science, technology, engineering, or math
3 included in the Department of Education’s Classi-
4 fication of Instructional Programs taxonomy within
5 the summary groups of computer and information
6 sciences and support services, engineering, mathe-
7 matics and statistics, biological and biomedical
8 sciences, and physical sciences, from a United States
9 institution of higher education (as defined in section
10 101(a) of the Higher Education Act of 1965 (20
11 U.S.C. 1001(a)) until the number of aliens who are
12 exempted from such numerical limitation during
13 such year exceed 25,000.”.

14 (c) PUBLICATION.—

15 (1) DATA SUMMARIZING PETITIONS.—The Sec-
16 retary shall timely upload to a public website data
17 that summarizes the adjudication of nonimmigrant
18 petitions under section 101(a)(15)(H)(i)(b) of the
19 Immigration and Nationality Act (8 U.S.C.
20 1101(a)(15)(H)(i)(b)) during each fiscal year.

21 (2) ANNUAL NUMERICAL LIMITATION.—As soon
22 as practicable and no later than March 2 of each fis-
23 cal year, the Secretary shall publish in the Federal
24 Register the numerical limitation determined under
25 section 214(g)(1)(A) for such fiscal year.

1 (d) EFFECTIVE DATE AND APPLICATION.—The
2 amendments made by subsection (a) shall take effect on
3 the first day of the first fiscal year beginning after the
4 date of the enactment of this Act and apply to applications
5 for nonimmigrant visas under section 101(a)(15)(H)(i)(b)
6 of the Immigration and Nationality Act (8 U.S.C.
7 1101(a)(15)(H)(i)(b)) for such fiscal year.

8 **SEC. 4102. EMPLOYMENT AUTHORIZATION FOR DEPEND-**
9 **ENTS OF EMPLOYMENT-BASED NON-**
10 **IMMIGRANTS.**

11 Section 214(c) (8 U.S.C. 1184(c)) is amended—

12 (1) by striking “Attorney General” each place
13 such term appears and inserting “Secretary of
14 Homeland Security”; and

15 (2) in paragraph (2), by amending subpara-
16 graph (E) to read as follows:

17 “(E)(i) In the case of an alien spouse admitted under
18 section 101(a)(15)(L), who is accompanying or following
19 to join a principal alien admitted under such section, the
20 Secretary of Homeland Security shall—

21 “(I) authorize the alien spouse to engage in em-
22 ployment in the United States; and

23 “(II) provide the spouse with an ‘employment
24 authorized’ endorsement or other appropriate work
25 permit.

1 “(ii) In the case of an alien spouse admitted under
2 section 101(a)(15)(H)(i)(b), who is accompanying or fol-
3 lowing to join a principal alien admitted under such sec-
4 tion, the Secretary of Homeland Security shall—

5 “(I) authorize the alien spouse to engage in em-
6 ployment in the United States; and

7 “(II) provide such a spouse with an ‘employ-
8 ment authorized’ endorsement or other appropriate
9 work permit, if appropriate.

10 “(iii)(I) Upon the request of the Secretary of State,
11 the Secretary of Homeland Security may suspend employ-
12 ment authorizations under clause (ii) to nationals of a for-
13 eign country that does not permit reciprocal employment
14 to nationals of the United States who are accompanying
15 or following to join the employment-based nonimmigrant
16 husband or wife of such spouse to be employed in such
17 foreign country based on that status.

18 “(II) In subclause (I), the term ‘employment-based
19 nonimmigrant’ means an individual who is admitted to a
20 foreign country to perform employment similar to the em-
21 ployment described in section 101(a)(15)(H)(i)(b).”.

1 **SEC. 4103. ELIMINATING IMPEDIMENTS TO WORKER MO-**
2 **BILITY.**

3 (a) DEFERENCE TO PRIOR APPROVALS.—Section
4 214(c) (8 U.S.C. 1184(c)), as amended by section 4102,
5 is further amended by adding at the end the following:

6 “(15) Subject to paragraph (2)(D) and subsection (g)
7 and section 104(c) and subsections (a) and (b) of section
8 106 of the American Competitiveness in the Twenty-first
9 Century Act of 2000 (Public Law 106–313; 8 U.S.C. 1184
10 note), the Secretary of Homeland Security shall give def-
11 erence to a prior approval of a petition in reviewing a peti-
12 tion to extend the status of a nonimmigrant admitted
13 under subparagraph (H)(i)(b) or (L) of section 101(a)(15)
14 if the petition involves the same alien and petitioner unless
15 the Secretary determines that—

16 “(A) there was a material error with regard to
17 the previous petition approval;

18 “(B) a substantial change in circumstances has
19 taken place;

20 “(C) new material information has been discov-
21 ered that adversely impacts the eligibility of the em-
22 ployer or the nonimmigrant; or

23 “(D) in the Secretary’s discretion, such exten-
24 sion should not be approved.”.

1 (b) EFFECT OF EMPLOYMENT TERMINATION.—Sec-
2 tion 214(n) (8 U.S.C. 1184(n)) is amended by adding at
3 the end the following:

4 “(3) A nonimmigrant admitted under section
5 101(a)(15)(H)(i)(b) whose employment relationship termi-
6 nates before the expiration of the nonimmigrant’s period
7 of authorized admission shall be deemed to have retained
8 such legal status throughout the entire 60-day period be-
9 ginning on the date such employment is terminated. A
10 nonimmigrant who files a petition to extend, change, or
11 adjust their status at any point during such period shall
12 be deemed to have lawful status under section
13 101(a)(15)(H)(i)(b) while that petition is pending.”.

14 (c) VISA REVALIDATION.—Section 222(c) (8 U.S.C.
15 1202(c)) is amended—

16 (1) by inserting “(1)” before “Every alien”;
17 and

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

19 “(2) The Secretary of State may, at the Secretary’s
20 discretion, renew in the United States the visa of an alien
21 admitted under subparagraph (A), (E), (G), (H), (I), (L),
22 (N), (O), (P), (R), or (W) of section 101(a)(15) if the
23 alien has remained eligible for such status and qualifies
24 for a waiver of interview as provided for in subsection
25 (h)(1)(D).”.

1 (d) INTERVIEW WAIVERS FOR LOW RISK VISA AP-
2 PPLICANTS.—Section 222(h)(1) (8 U.S.C. 1202(h)(1)) is
3 amended—

4 (1) in subparagraph (B)(iv), by striking “or” at
5 the end;

6 (2) in subparagraph (C)(ii), by striking “and”
7 at the end and inserting “or”; and

8 (3) by adding at the end the following:

9 “(D) by the Secretary of State, in con-
10 sultation with the Secretary of Homeland Secu-
11 rity, for such aliens or classes of aliens—

12 “(i) that the Secretary determines
13 generally represent a low security risk;

14 “(ii) for which an in-person interview
15 would not add material benefit to the adju-
16 dication process;

17 “(iii) unless the Secretary of State,
18 after a review of all standard database and
19 biometric checks, the visa application, and
20 other supporting documents, determines
21 that an interview is unlikely to reveal de-
22 rogatory information; and

23 “(iv) except that in every case, the
24 Secretary of State retains the right to re-

1 quire an applicant to appear for an inter-
2 view; and”.

3 **SEC. 4104. STEM EDUCATION AND TRAINING.**

4 (a) FEE.—Section 212(a)(5)(A) (8 U.S.C.
5 1182(a)(5)(A)) is amended by adding at the end the fol-
6 lowing:

7 “(v) FEE.—An employer shall submit,
8 along with an application for a certification
9 under this subparagraph, a fee of \$1,000,
10 which shall be deposited in the STEM
11 Education and Training Account estab-
12 lished under section 286(w).”.

13 (b) H-1B NONIMMIGRANT PETITIONER ACCOUNT.—
14 Section 286(s) (8 U.S.C. 1356(s)) is amended by striking
15 paragraphs (3) and (4) and inserting the following:

16 “(3) LOW-INCOME STEM SCHOLARSHIP PRO-
17 GRAM.—

18 “(A) IN GENERAL.—Thirty percent of the
19 amounts deposited into the H-1B Non-
20 immigrant Petitioner Account shall remain
21 available to the Director of the National Science
22 Foundation until expended for scholarships de-
23 scribed in section 414(d) of the American Com-
24 petitiveness and Workforce Improvement Act of
25 1998 (42 U.S.C. 1869c) for low-income stu-

1 dents enrolled in a program of study leading to
2 a degree in science, technology, engineering, or
3 mathematics.

4 “(B) STEM EDUCATION FOR UNDERREP-
5 RESENTED.—The Director shall work in con-
6 sultation with, or direct scholarship funds
7 through, national nonprofit organizations that
8 primarily focus on science, technology, engineer-
9 ing, or mathematics education for underrep-
10 resented groups, such as women and minorities.

11 “(C) LOAN FORGIVENESS.—The Director
12 may expend funds from the Account for pur-
13 poses of loan forgiveness or repayment of stu-
14 dent loans which led to a low-income student
15 obtaining a degree in science, technology, engi-
16 neering, mathematics, or other high demand
17 fields.

18 “(4) NATIONAL SCIENCE FOUNDATION GRANT
19 PROGRAM FOR K–12 SCIENCE, TECHNOLOGY, ENGI-
20 NEERING, AND MATHEMATICS EDUCATION.—

21 “(A) IN GENERAL.—Ten percent of the
22 amounts deposited into the H–1B Non-
23 immigrant Petitioner Account shall remain
24 available to the Director of the National Science
25 Foundation until expended to carry out a direct

1 or matching grant program to support improve-
2 ment in K–12 education, including through pri-
3 vate-public partnerships. Grants awarded pur-
4 suant to this paragraph shall include formula
5 based grants that target lower income popu-
6 lations with a focus on reaching women and mi-
7 norities.

8 “(B) TYPES OF PROGRAMS COVERED.—

9 The Director shall award grants to programs
10 that—

11 “(i) support the development and im-
12 plementation of standards-based instruc-
13 tional materials models and related student
14 assessments that enable K–12 students to
15 acquire an understanding of science, tech-
16 nology, engineering, and mathematics, and
17 to develop critical thinking skills;

18 “(ii) provide systemic improvement in
19 training K–12 teachers and education for
20 students in science, technology, engineer-
21 ing, and mathematics, including by sup-
22 porting efforts to promote gender-equality
23 among students receiving such instruction;

24 “(iii) support the professional develop-
25 ment of K–12 science, technology, engi-

1 neering, and mathematics teachers in the
2 use of technology in the classroom;

3 “(iv) stimulate systemwide K–12 re-
4 form of science, technology, engineering,
5 and mathematics in urban, rural, and eco-
6 nomically disadvantaged regions of the
7 United States;

8 “(v) provide externships and other op-
9 portunities for students to increase their
10 appreciation and understanding of science,
11 technology, engineering, and mathematics
12 (including summer institutes sponsored by
13 an institution of higher education for stu-
14 dents in grades 7 through 12 that provide
15 instruction in such fields);

16 “(vi) involve partnerships of industry,
17 educational institutions, and national or
18 regional community based organizations
19 with demonstrated experience addressing
20 the educational needs of disadvantaged
21 communities;

22 “(vii) provide college preparatory sup-
23 port to expose and prepare students for ca-
24 reers in science, technology, engineering,
25 and mathematics; or

1 “(viii) provide for carrying out sys-
2 temic reform activities under section
3 3(a)(1) of the National Science Foundation
4 Act of 1950 (42 U.S.C. 1862(a)(1)).”.

5 (c) USE OF FEE.—Section 286 (8 U.S.C. 1356) is
6 amended by adding at the end the following:

7 “(w) STEM EDUCATION AND TRAINING ACCOUNT.—

8 “(1) IN GENERAL.—There is established in the
9 general fund of the Treasury a separate account,
10 which shall be known as the ‘STEM Education and
11 Training Account’. Notwithstanding any other sec-
12 tion of this title, there shall be deposited as offset-
13 ting receipts into the Account all of the fees col-
14 lected under section 212(a)(5)(A)(v).

15 “(2) PURPOSES.—

16 “(A) IN GENERAL.—The purposes of the
17 STEM Education and Training Account are to
18 enhance the economic competitiveness of the
19 United States by—

20 “(i) strengthening STEM education,
21 including in computer science, at all levels;

22 “(ii) ensuring that schools have access
23 to well-trained and effective STEM teach-
24 ers;

1 “(iii) supporting efforts to strengthen
2 the elementary and secondary curriculum,
3 including efforts to make courses in com-
4 puter science more broadly available; and

5 “(iv) helping colleges and universities
6 produce more graduates in fields needed by
7 American employers.

8 “(B) DEFINED TERM.—In this paragraph,
9 the term ‘STEM education’ means instruction
10 in a field of science, technology, engineering or
11 math included in the Department of Edu-
12 cation’s Classification of Instructional Pro-
13 grams taxonomy within the summary groups of
14 computer and information sciences and support
15 services, engineering, mathematics and statis-
16 tics, biological and biomedical sciences, and
17 physical sciences.

18 “(3) ALLOCATIONS TO STATES AND TERRI-
19 TORIES.—

20 “(A) IN GENERAL.—Subject to subpara-
21 graph (B), the Secretary of Education shall
22 proportionately allocate 70 percent of the
23 amounts deposited into the STEM Education
24 and Training Account each fiscal year to the 50
25 States, the District of Columbia, the Common-

1 wealth of Puerto Rico, Guam, the United States
2 Virgin Islands, American Samoa, and the
3 Northern Mariana Islands in an amount that
4 bears the same relationship as the proportion
5 the State, district, or territory received under
6 subpart 2 of part A of title I of the Elementary
7 and Secondary Education Act of 1965 (20
8 U.S.C. 6331 et seq.) for the preceding fiscal
9 year bears to the amount all States and terri-
10 tories received under that subpart for the pre-
11 ceding fiscal year.

12 “(B) MINIMUM ALLOCATIONS.—No State
13 or territory shall receive less than an amount
14 equal to 0.5 percent of the total amount made
15 available to all States from the STEM Edu-
16 cation and Training Account. If a State or ter-
17 ritory does not request an allocation from the
18 Account for a fiscal year, the Secretary shall re-
19 allocate the State’s allocation to the remaining
20 States and territories in accordance with this
21 paragraph.

22 “(C) USE OF FUNDS.—Amounts allocated
23 pursuant to this paragraph may be used for the
24 activities described in section 4104(c) of the

1 Border Security, Economic Opportunity, and
2 Immigration Modernization Act.

3 “(4) STEM CAPACITY BUILDING AT MINORITY-
4 SERVING INSTITUTIONS.—

5 “(A) IN GENERAL.—The Secretary of Edu-
6 cation shall allocate 20 percent of the amounts
7 deposited into the STEM Education and Train-
8 ing Account to establish or expand programs to
9 award grants to institutions described in sub-
10 paragraph (C)—

11 “(i) to enhance the quality of under-
12 graduate science, technology, engineering,
13 and mathematics education at such institu-
14 tions; and

15 “(ii) to increase the retention and
16 graduation rates of students pursuing de-
17 grees in such fields at such institutions.

18 “(B) TYPES OF PROGRAMS COVERED.—
19 Grants awarded under this paragraph shall be
20 awarded to—

21 “(i) minority-serving institutions of
22 higher education for—

23 “(I) activities to improve courses
24 and curriculum in science, technology,
25 engineering, and mathematics;

1 “(II) efforts to promote gender
2 equality among students enrolled in
3 such courses;

4 “(III) faculty development;

5 “(IV) stipends for undergraduate
6 students participating in research;
7 and

8 “(V) other activities consistent
9 with subparagraph (A), as determined
10 by the Secretary of Education; and

11 “(ii) to other institutions of higher
12 education to partner with the institutions
13 described in clause (i) for—

14 “(I) faculty and student develop-
15 ment and exchange;

16 “(II) research infrastructure de-
17 velopment;

18 “(III) joint research projects;
19 and

20 “(IV) identification and develop-
21 ment of minority and low-income can-
22 didates for graduate studies in
23 science, technology, engineering, and
24 mathematics degree programs.

1 “(C) INSTITUTIONS INCLUDED.—In this
2 paragraph, the term ‘institutions’ shall in-
3 clude—

4 “(i) colleges eligible to receive funds
5 under the Act of August 30, 1890 (7
6 U.S.C. 321–326a and 328), including
7 Tuskegee University;

8 “(ii) 1994 Institutions, as defined in
9 section 532 of the Equity in Educational
10 Land-Grant Status Act of 1994 (7 U.S.C.
11 301 note);

12 “(iii) part B institutions (as defined
13 in section 322 of the Higher Education
14 Act of 1965 (20 U.S.C. 1061)); and

15 “(iv) Hispanic-serving institutions, as
16 defined in section 502(a)(5) of the Higher
17 Education Act of 1965 (20 U.S.C.
18 1101a(a)(5)).

19 “(D) GRANTING OF BONDING AUTHOR-
20 ITY.—A recipient of a grant awarded under this
21 paragraph is authorized to utilize such funds
22 for the issuance of bonds to fund research in-
23 frastructure development.

24 “(E) LOAN FORGIVENESS.—The Director
25 may expend funds from the allocation under

1 this paragraph for purposes of loan forgiveness
2 or repayment of student loans which led to a
3 low-income student obtaining a degree in
4 science, technology, engineering, mathematics,
5 or other high demand fields.

6 “(5) WORKFORCE INVESTMENT.—The Sec-
7 retary of Education shall allocate 5 percent of the
8 amounts deposited into the STEM Education and
9 Training Account to the Secretary of Labor until ex-
10 pended for statewide workforce investment activities
11 that may also benefit veterans and their spouses, in-
12 cluding youth activities and statewide employment
13 and training and activities for adults and dislocated
14 workers described in section 128(a) of the Workforce
15 Investment Act of 1998 (29 U.S.C. 2853(a)), and
16 the development of licensing and credentialing pro-
17 grams.

18 “(6) AMERICAN DREAM ACCOUNTS.—The Sec-
19 retary of Education shall allocate 3 percent of the
20 amounts deposited into the STEM Education and
21 Training Account to award grants, on a competitive
22 basis, to eligible entities to enable such eligible enti-
23 ties to establish and administer American Dream
24 Accounts under section 4104(e) of the Illegal Immi-

1 gration Reform and Immigrant Responsibility Act of
2 1996.

3 “(7) ADMINISTRATION EXPENSES.—The Sec-
4 retary of Education may expend up to 2 percent of
5 the amounts deposited into the STEM Education
6 and Training Account for administrative expenses,
7 including conducting an annual evaluation of the im-
8 plementation and impact of the activities funded by
9 the STEM Education and Training Account as re-
10 quired under section 4104(c)(3) of the Border Secu-
11 rity, Economic Opportunity, and Immigration Mod-
12 ernization Act.”.

13 (d) STEM EDUCATION GRANTS.—

14 (1) APPLICATION PROCESS.—

15 (A) IN GENERAL.—Each Governor and
16 Chief State School Officer desiring an allocation
17 from the STEM Education and Training Ac-
18 count under section 286(w)(3) of the Immigra-
19 tion and Nationality Act, as added by sub-
20 section (b), shall jointly submit a plan, includ-
21 ing a proposed budget, signed by the Governor
22 and Chief State School Officer, to the Secretary
23 of Education at such time, in such form, and
24 including such information as the Secretary of
25 Education may prescribe pursuant to subpara-

1 graph (B). The plan shall describe how the
2 State plans to improve STEM education to
3 meet the needs of students and employers in
4 the State.

5 (B) RULEMAKING.—The Secretary of Edu-
6 cation shall issue a rule, through a rulemaking
7 procedure that complies with section 553 of
8 title 5, United States Code, prescribing the in-
9 formation that should be included in the State
10 plans submitted under subparagraph (A).

11 (2) ALLOWABLE ACTIVITIES.—A State, district,
12 or territory that receives funding from the STEM
13 Education and Training Account may use such
14 funding to develop and implement science, tech-
15 nology, engineering, and mathematics (STEM) ac-
16 tivities to serve students, including students of
17 underrepresented groups such as minorities, eco-
18 nomically disadvantaged, and females by—

19 (A) strengthening the State’s STEM aca-
20 demic achievement standards;

21 (B) implementing strategies for the re-
22 cruitment, training, placement, and retention of
23 teachers in STEM fields, including computer
24 science;

1 (C) carrying out initiatives designed to as-
2 sist students in succeeding and graduating from
3 postsecondary STEM programs;

4 (D) improving the availability and access
5 to STEM-related worker training programs, in-
6 cluding community college courses and pro-
7 grams;

8 (E) forming partnerships with higher edu-
9 cation, economic development, workforce, indus-
10 try, and local educational agencies; or

11 (F) engaging in other activities, as deter-
12 mined by the State, in consultation with busi-
13 nesses and State agencies, to improve STEM
14 education.

15 (3) NATIONAL EVALUATION.—

16 (A) IN GENERAL.—Using amounts allo-
17 cated under section 286(w)(7) of the Immigra-
18 tion and Nationality Act, as added by sub-
19 section (b), the Secretary of Education shall
20 conduct, directly or through a grant or con-
21 tract, an annual evaluation of the implementa-
22 tion and impact of the activities funded by the
23 STEM Education and Training Account.

24 (B) ANNUAL REPORT.—The Secretary
25 shall submit a report describing the results of

1 each evaluation conducted under subparagraph

2 (A) to—

3 (i) the President;

4 (ii) the Committee on the Judiciary of
5 the Senate;

6 (iii) the Committee on the Judiciary
7 of the House of Representatives;

8 (iv) the Committee on Health, Edu-
9 cation, Labor, and Pensions of the Senate;
10 and

11 (v) the Committee on Education and
12 the Workforce of the House of Representa-
13 tives.

14 (C) DISSEMINATION.—The Secretary shall
15 make the findings of the evaluation widely
16 available to educators, the business community,
17 and the public.

18 (4) RULE OF CONSTRUCTION.—Nothing in this
19 subsection may be construed to permit the Secretary
20 of Education or any other Federal official to approve
21 the content or academic achievement standards of a
22 State.

23 (e) AMERICAN DREAM ACCOUNTS.—

24 (1) DEFINITIONS.—In this subsection:

1 (A) AMERICAN DREAM ACCOUNT.—The
2 term “American Dream Account” means a per-
3 sonal online account for low-income students
4 that monitors higher education readiness and
5 includes a college savings account.

6 (B) APPROPRIATE COMMITTEES OF CON-
7 GRESS.—The term “appropriate committees of
8 Congress” means—

9 (i) the Committee on Health, Edu-
10 cation, Labor, and Pensions of the Senate;

11 (ii) the Committee on Appropriations
12 of the Senate;

13 (iii) the Committee on Finance of the
14 Senate;

15 (iv) the Committee on Education and
16 the Workforce of the House of Representa-
17 tives;

18 (v) the Committee on Appropriations
19 of the House of Representatives;

20 (vi) the Committee on Ways and
21 Means of the House of Representatives;
22 and

23 (vii) any other committee of the Sen-
24 ate or House of Representatives that the
25 Secretary determines appropriate.

1 (C) COLLEGE SAVINGS ACCOUNT.—The
2 term “college savings account” means a savings
3 account that—

4 (i) provides some tax-preferred accu-
5 mulation;

6 (ii) is widely available (such as Quali-
7 fied Tuition Programs under section 529
8 of the Internal Revenue Code of 1986 or
9 Coverdell Education Savings Accounts
10 under section 530 of the Internal Revenue
11 Code of 1986); and

12 (iii) contains funds that may be used
13 only for the costs associated with attending
14 an institution of higher education, includ-
15 ing—

16 (I) tuition and fees;

17 (II) room and board;

18 (III) textbooks;

19 (IV) supplies and equipment; and

20 (V) Internet access.

21 (D) DUAL ENROLLMENT PROGRAM.—The
22 term “dual enrollment program” means an aca-
23 demic program through which a secondary
24 school student is able simultaneously to earn

1 credit toward a secondary school diploma and a
2 postsecondary degree or credential.

3 (E) ELIGIBLE ENTITY.—The term “eligible
4 entity” means—

5 (i) a State educational agency;

6 (ii) a local educational agency;

7 (iii) a charter school or charter man-
8 agement organization;

9 (iv) an institution of higher education;

10 (v) a nonprofit organization;

11 (vi) an entity with demonstrated expe-
12 rience in educational savings or in assist-
13 ing low-income students to prepare for,
14 and attend, an institution of higher edu-
15 cation; or

16 (vii) a consortium of 2 or more of the
17 entities described in clause (i) through (vi).

18 (F) ESEA DEFINITIONS.—The terms
19 “local educational agency”, “parent”, and
20 “State educational agency” have the meanings
21 given the terms in section 9101 of the Elemen-
22 tary and Secondary Education Act of 1965 (20
23 U.S.C. 7801) and the term “charter school”
24 has the meaning given the term in section 5210
25 of such Act.

1 (G) INSTITUTION OF HIGHER EDU-
2 CATION.—The term “institution of higher edu-
3 cation” has the meaning given the term in sec-
4 tion 101(a) of the Higher Education Act of
5 1965 (20 U.S.C. 1001(a)).

6 (H) LOW-INCOME STUDENT.—The term
7 “low-income student” means a student who is
8 eligible to receive a free or reduced price lunch
9 under the Richard B. Russell National School
10 Lunch Act (42 U.S.C. 1751 et seq.).

11 (2) GRANT PROGRAM.—

12 (A) PROGRAM AUTHORIZED.—The Sec-
13 retary of Education is authorized to award
14 grants, on a competitive basis, to eligible enti-
15 ties to enable such eligible entities to establish
16 and administer American Dream Accounts for a
17 group of low-income students.

18 (B) RESERVATION.—From the amount
19 made available each fiscal year to carry out this
20 section under section 286(w)(6) of the Immi-
21 gration and Nationality Act, the Secretary of
22 Education shall reserve not more than 5 per-
23 cent of such amount to carry out the evaluation
24 activities described in paragraph (5)(A).

1 (C) DURATION.—A grant awarded under
2 this subsection shall be for a period of not more
3 than 3 years. The Secretary of Education may
4 extend such grant for an additional 2-year pe-
5 riod if the Secretary of Education determines
6 that the eligible entity has demonstrated signifi-
7 cant progress, based on the factors described in
8 paragraph (3)(B)(xi).

9 (3) APPLICATIONS; PRIORITY.—

10 (A) IN GENERAL.—Each eligible entity de-
11 siring a grant under this subsection shall sub-
12 mit an application to the Secretary of Edu-
13 cation at such time, in such manner, and con-
14 taining such information as the Secretary of
15 Education may require.

16 (B) CONTENTS.—The application de-
17 scribed in subparagraph (A) shall include—

18 (i) a description of the characteristics
19 of a group of not less than 30 low-income
20 public school students who—

21 (I) are, at the time of the appli-
22 cation, attending a grade not higher
23 than grade 9; and

24 (II) will, under the grant, receive
25 an American Dream Account;

1 (ii) a description of how the eligible
2 entity will engage, and provide support
3 (such as tutoring and mentoring for stu-
4 dents, and training for teachers and other
5 stakeholders) either online or in person,
6 to—

7 (I) the students in the group de-
8 scribed in clause (i);

9 (II) the family members and
10 teachers of such students; and

11 (III) other stakeholders such as
12 school administrators and school
13 counselors;

14 (iii) an identification of partners who
15 will assist the eligible entity in establishing
16 and sustaining American Dream Accounts;

17 (iv) a description of what experience
18 the eligible entity or the eligible entity's
19 partners have in managing college savings
20 accounts, preparing low-income students
21 for postsecondary education, managing on-
22 line systems, and teaching financial lit-
23 eracy;

24 (v) a description of how the eligible
25 entity will help increase the value of the

1 college savings account portion of each
2 American Dream Account, such as by pro-
3 viding matching funds or incentives for
4 academic achievement;

5 (vi) a description of how the eligible
6 entity will notify each participating student
7 in the group described in subparagraph
8 (A), on a semiannual basis, of the current
9 balance and status of the student's college
10 savings account portion of the student's
11 American Dream Account;

12 (vii) a plan that describes how the eli-
13 gible entity will monitor participating stu-
14 dents in the group described in clause (i)
15 to ensure that each student's American
16 Dream Account will be maintained if a stu-
17 dent in such group changes schools before
18 graduating from secondary school;

19 (viii) a plan that describes how the
20 American Dream Accounts will be man-
21 aged for not less than 1 year after a ma-
22 jority of the students in the group de-
23 scribed in clause (i) graduate from sec-
24 ondary school;

1 (ix) a description of how the eligible
2 entity will encourage students in the group
3 described in clause (i) who fail to graduate
4 from secondary school to continue their
5 education;

6 (x) a description of how the eligible
7 entity will evaluate the grant program, in-
8 cluding by collecting, as applicable, data
9 about the students in the group described
10 in clause (i) during the grant period, and,
11 if sufficient grant funds are available, after
12 the grant period, including

13 (I) attendance rates;

14 (II) progress reports;

15 (III) grades and course selec-
16 tions;

17 (IV) the student graduation rate
18 (as defined in section 1111
19 (b)(2)(C)(vi) of the Elementary and
20 Secondary Education Act of 1965 (20
21 U.S.C. 6311(b)(2)(C)(vi)));

22 (V) rates of student completion
23 of the Free Application for Federal
24 Student Aid described in section 483

1 of the Higher Education Act of 1965
2 (20 U.S.C. 1090);

3 (VI) rates of enrollment in an in-
4 stitution of higher education; and

5 (VII) rates of completion at an
6 institution of higher education;

7 (xi) a description of what will happen
8 to the funds in the college savings account
9 portion of the American Dream Accounts
10 that are dedicated to participating stu-
11 dents described in clause (i) who have not
12 matriculated at an institution of higher
13 education at the time of the conclusion of
14 the period of American Dream Account
15 management described in clause (viii);

16 (xii) a description of how the eligible
17 entity will ensure that funds in the college
18 savings account portion of the American
19 Dream Accounts will not make families in-
20 eligible for public assistance; and

21 (xiii) a description of how the eligible
22 entity will ensure that participating stu-
23 dents described in clause (i) will have ac-
24 cess to the Internet;

1 (C) PRIORITY.—In awarding grants under
2 this subsection, the Secretary of Education
3 shall give priority to applications from eligible
4 entities that—

5 (i) are described in paragraph
6 (1)(E)(vii);

7 (ii) serve the largest number of low-in-
8 come students;

9 (iii) emphasize preparing students to
10 pursue careers in science, technology, engi-
11 neering, or mathematics; or

12 (iv) in the case of an eligible entity
13 described in clause (i) or (ii) of paragraph
14 (1)(E), provide opportunities for partici-
15 pating students described in clause (i) to
16 participate in a dual enrollment program
17 at no cost to the student.

18 (4) AUTHORIZED ACTIVITIES.—

19 (A) IN GENERAL.—An eligible entity that
20 receives a grant under this subsection shall use
21 such grant funds to establish an American
22 Dream Account for each participating student
23 described in paragraph (3)(B)(i), which will be
24 used to—

- 1 (i) open a college savings account for
2 such student;
- 3 (ii) monitor the progress of such stu-
4 dent online, which—
- 5 (I) shall include monitoring stu-
6 dent data relating to—
- 7 (aa) grades and course se-
8 lections;
- 9 (bb) progress reports; and
10 (cc) attendance and discipli-
11 nary records; and
- 12 (II) may also include monitoring
13 student data relating to a broad range
14 of information, provided by teachers
15 and family members, related to post-
16 secondary education readiness, access,
17 and completion;
- 18 (iii) provide opportunities for such
19 students, either online or in person, to
20 learn about financial literacy, including
21 by—
- 22 (I) assisting such students in fi-
23 nancial planning for enrollment in an
24 institution of higher education; and

1 (II) assisting such students in
2 identifying and applying for financial
3 aid (such as loans, grants, and schol-
4 arships) for an institution of higher
5 education;

6 (iv) provide opportunities for such
7 students, either online or in person, to
8 learn about preparing for enrollment in an
9 institution of higher education, including
10 by providing instruction to students
11 about—

12 (I) choosing the appropriate
13 courses to prepare for postsecondary
14 education;

15 (II) applying to an institution of
16 higher education;

17 (III) building a student portfolio,
18 which may be used when applying to
19 an institution of higher education;

20 (IV) selecting an institution of
21 higher education;

22 (V) choosing a major for the stu-
23 dent's postsecondary program of edu-
24 cation or a career path, including spe-
25 cific instruction on pursuing science,

1 technology, engineering, and mathe-
2 matics majors; and

3 (VI) adapting to life at an insti-
4 tution of higher education; and

5 (v) provide opportunities for such stu-
6 dents, either online or in person, to iden-
7 tify skills or interests, including career in-
8 terests.

9 (B) ACCESS TO AMERICAN DREAM AC-
10 COUNT.—

11 (i) IN GENERAL.—Subject to clause
12 (iii) and (iv), and in accordance with appli-
13 cable Federal laws and regulations relating
14 to privacy of information and the privacy
15 of children, an eligible entity that receives
16 a grant under this subsection shall allow
17 vested stakeholders described in clause (ii),
18 to have secure access, through the Inter-
19 net, to an American Dream Account.

20 (ii) VESTED STAKEHOLDERS.—The
21 vested stakeholders that an eligible entity
22 shall permit to access an American Dream
23 Account are individuals (such as the stu-
24 dent's teachers, school counselors, coun-
25 selors at an institution of higher education,

1 school administrators, or other individuals)
2 that are designated, in accordance with the
3 Family Educational Rights and Privacy
4 Act of 1974 (20 U.S.C. 1232g), by the
5 parent of a participating student in whose
6 name such American Dream Account is
7 held, as having permission to access the
8 account. A student's parent may withdraw
9 such designation from an individual at any
10 time.

11 (iii) EXCEPTION FOR COLLEGE SAV-
12 INGS ACCOUNT.—An eligible entity that re-
13 ceives a grant under this subsection shall
14 not be required to give vested stakeholders
15 described in clause (ii), access to the col-
16 lege savings account portion of a student's
17 American Dream Account.

18 (iv) ADULT STUDENTS.—Notwith-
19 standing clause (i) through (iii), if a par-
20 ticipating student is age 18 or older, an el-
21 igible entity that receives a grant under
22 this subsection shall not provide access to
23 such participating student's American
24 Dream Account without the student's con-
25 sent, in accordance with the Family Edu-

1 cational Rights and Privacy Act of 1974
2 (20 U.S.C. 1232g).

3 (v) INPUT OF STUDENT INFORMA-
4 TION.—Student data collected pursuant to
5 subparagraph (A)(ii)(I) may only be en-
6 tered into an American Dream Account by
7 a school administrator or such administra-
8 tor’s designee.

9 (C) PROHIBITION ON USE OF STUDENT IN-
10 FORMATION.—An eligible entity that receives a
11 grant under this subsection may not use any
12 student-level information or data for the pur-
13 pose of soliciting, advertising, or marketing any
14 financial or nonfinancial consumer product or
15 service that is offered by such eligible entity, or
16 on behalf of any other person.

17 (D) LIMITATION ON THE USE OF GRANT
18 FUNDS.—An eligible entity shall not use more
19 than 25 percent of the grant funds provided
20 under this subsection to provide the initial de-
21 posit into a college savings account portion of
22 a student’s American Dream Account.

23 (5) REPORTS AND EVALUATIONS.—

24 (A) IN GENERAL.—Not later than 1 year
25 after the Secretary of Education has disbursed

1 grants under this subsection, and annually
2 thereafter, the Secretary of Education shall pre-
3 pare and submit a report to the appropriate
4 committees of Congress that includes an evalua-
5 tion of the effectiveness of the grant program
6 established under this subsection.

7 (B) CONTENTS.—The report described in
8 subparagraph (A) shall—

9 (i) list the grants that have been
10 awarded under paragraph (2)(A);

11 (ii) include the number of students
12 who have an American Dream Account es-
13 tablished through a grant awarded under
14 paragraph (2)(A);

15 (iii) provide data (including the inter-
16 est accrued on college savings accounts
17 that are part of an American Dream Ac-
18 count) in the aggregate, regarding stu-
19 dents who have an American Dream Ac-
20 count established through a grant awarded
21 under paragraph (2)(A), as compared to
22 similarly situated students who do not have
23 an American Dream Account;

1 (iv) identify best practices developed
2 by the eligible entities receiving grants
3 under this subsection;

4 (v) identify any issues related to stu-
5 dent privacy and stakeholder accessibility
6 to American Dream Accounts;

7 (vi) provide feedback from partici-
8 pating students and the parents of such
9 students about the grant program, includ-
10 ing—

11 (I) the impact of the program;

12 (II) aspects of the program that
13 are successful;

14 (III) aspects of the program that
15 are not successful; and

16 (IV) any other data required by
17 the Secretary of Education; and

18 (vii) provide recommendations for ex-
19 panding the American Dream Accounts
20 program.

21 (6) ELIGIBILITY TO RECEIVE FEDERAL STU-
22 DENT FINANCIAL AID.—Notwithstanding any other
23 provision of law, any funds that are in the college
24 savings account portion of a student’s American
25 Dream Account shall not affect such student’s eligi-

1 bility to receive Federal student financial aid, includ-
2 ing any Federal student financial aid under the
3 Higher Education Act of 1965 (20 U.S.C. 1001),
4 and shall not be considered in determining the
5 amount of any such Federal student aid.

6 (f) CONFORMING AMENDMENT.—Section 480(j) of
7 the Higher Education Act of 1965 (20 U.S.C. 1087vv(j))
8 is amended by adding at the end the following:

9 “(5) Notwithstanding paragraph (1), amounts
10 made available under the college savings account
11 portion of an American Dream Account under sec-
12 tion 4105(e)(4) of the Illegal Immigration Reform
13 and Immigrant Responsibility Act of 1996 shall not
14 be treated as estimated financial assistance for pur-
15 poses of section 471(3).”.

16 **SEC. 4105. H-1B AND L VISA FEES.**

17 Section 281 (8 U.S.C. 1351) is amended—

18 (1) by striking “The fees” and inserting the fol-
19 lowing:

20 “(a) IN GENERAL.—The fees”;

21 (2) by striking “: Provided, That nonimmigrant
22 visas” and inserting the following: “.

23 “(b) UNITED NATIONS VISITORS.—Nonimmigrant
24 visas”;

1 (3) by striking “Subject to” and inserting the
2 following:

3 “(c) FEE WAIVERS OR REDUCTIONS.—Subject to”;
4 and

5 (4) by adding at the end the following:

6 “(d) H-1B AND L VISA FEES.—In addition to the
7 fees authorized under subsection (a), the Secretary of
8 Homeland Security shall collect, from each employer (ex-
9 cept for nonprofit research institutions and nonprofit edu-
10 cational institutions) filing a petition to hire non-
11 immigrants described in subparagraph (H)(i)(B) or (L)
12 of section 101(a)(15), a fee in an amount equal to—

13 “(1) \$1,250 for each such petition filed by any
14 employer with not more than 25 full-time equivalent
15 employees in the United States; and

16 “(2) \$2,500 for each such petition filed by any
17 employer with more than 25 such employees.”.

18 **Subtitle B—H-1B Visa Fraud and**
19 **Abuse Protections**

20 **CHAPTER 1—H-1B EMPLOYER**

21 **APPLICATION REQUIREMENTS**

22 **SEC. 4211. MODIFICATION OF APPLICATION REQUIRE-**
23 **MENTS.**

24 (a) GENERAL APPLICATION REQUIREMENTS.—

1 (1) WAGE RATES.—Section 212(n)(1)(A) (8
2 U.S.C. 1182(n)(1)(A)) is amended—

3 (A) in clause (i)—

4 (i) in the matter preceding subclause
5 (I), by inserting “if the employer is not an
6 H–1B-dependent employer,” before “is of-
7 fering”;

8 (ii) in subclause (I), by striking
9 “question, or” and inserting “question;
10 or”;

11 (iii) in subclause (II), by striking
12 “employment,” and inserting “employ-
13 ment;” and

14 (iv) in the undesignated material fol-
15 lowing subclause (II), by striking “applica-
16 tion, and” and inserting “application;”;
17 and

18 (B) by striking clause (ii) and inserting the
19 following:

20 “(ii) if the employer is an H–1B-dependent
21 employer, is offering and will offer to H–1B
22 nonimmigrants, during the period of authorized
23 employment for each H–1B nonimmigrant,
24 wages that are not less than the level 2 wages
25 set out in subsection (p); and

1 “(iii) will provide working conditions for
2 H-1B nonimmigrants that will not adversely af-
3 fect the working conditions of other workers
4 similarly employed.”.

5 (2) STRENGTHENING THE PREVAILING WAGE
6 SYSTEM.—Section 212(p) (8 U.S.C. 1182(p)) is
7 amended to read as follows:

8 “(p) COMPUTATION OF PREVAILING WAGE LEVEL.—

9 “(1) IN GENERAL.—

10 “(A) SURVEYS.—For employers of non-
11 immigrants admitted pursuant to section
12 101(a)(15)(H)(i)(b), the Secretary of Labor
13 shall make available to employers a govern-
14 mental survey to determine the prevailing wage
15 for each occupational classification by metro-
16 politan statistical area in the United States.
17 Such survey, or other survey approved by the
18 Secretary of Labor, shall provide 3 levels of
19 wages commensurate with experience, edu-
20 cation, and level of supervision. Such wage lev-
21 els shall be determined as follows:

22 “(i) The first level shall be the mean
23 of the lowest two-thirds of wages surveyed,
24 but in no case less than 80 percent of the
25 mean of the wages surveyed.

1 “(ii) The second level shall be the
2 mean of wages surveyed.

3 “(iii) The third level shall be the
4 mean of the highest two-thirds of wages
5 surveyed.

6 “(B) EDUCATIONAL, NONPROFIT, RE-
7 SEARCH, AND GOVERNMENTAL ENTITIES.—In
8 computing the prevailing wage level for an occu-
9 pational classification in an area of employment
10 for purposes of section 203(b)(1)(D) and sub-
11 sections (a)(5)(A), (n)(1)(A)(i)(II), and
12 (t)(1)(A)(i)(II) of this section in the case of an
13 employee of—

14 “(i) an institution of higher education,
15 or a related or affiliated nonprofit entity;
16 or

17 “(ii) a nonprofit research organization
18 or a governmental research organization;

19 the prevailing wage level shall only take into ac-
20 count employees at such institutions and orga-
21 nizations in the area of employment.

22 “(2) PAYMENT OF PREVAILING WAGE.—The
23 prevailing wage level required to be paid pursuant to
24 section 203(b)(1)(D) and subsections (a)(5)(A),
25 (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) of this section

1 shall be 100 percent of the wage level determined
2 pursuant to those sections.

3 “(3) PROFESSIONAL ATHLETE.—With respect
4 to a professional athlete (as defined in subsection
5 (a)(5)(A)(iii)(II)) when the job opportunity is cov-
6 ered by professional sports league rules or regula-
7 tions, the wage set forth in those rules or regula-
8 tions shall be considered as not adversely affecting
9 the wages of United States workers similarly em-
10 ployed and shall be considered the prevailing wage.

11 “(4) WAGES FOR H-2B EMPLOYEES.—

12 “(A) IN GENERAL.—The wages paid to H-
13 2B nonimmigrants employed by the employer
14 will be the greater of—

15 “(i) the actual wage level paid by the
16 employer to other employees with similar
17 experience and qualifications for such posi-
18 tion; or

19 “(ii) the prevailing wage level for the
20 occupational classification of the position
21 in the geographic area of the employment,
22 based on the best information available as
23 of the time of filing the application.

24 “(B) BEST INFORMATION AVAILABLE.—In
25 subparagraph (A), the term ‘best information

1 available', with respect to determining the pre-
2 vailing wage for a position, means—

3 “(i) a controlling collective bargaining
4 agreement or Federal contract wage, if ap-
5 plicable;

6 “(ii) if there is no applicable wage
7 under clause (i), the wage level commensu-
8 rate with the experience, training, and su-
9 pervision required for the job based on Bu-
10 reau of Labor Statistics data; or

11 “(iii) if the data referred to in clause
12 (ii) is not available, a legitimate and recent
13 private survey of the wages paid for such
14 positions in the metropolitan statistical
15 area.”.

16 (3) WAGES FOR EDUCATIONAL, NONPROFIT,
17 RESEARCH, AND GOVERNMENTAL ENTITIES.—Sec-
18 tion 212 (8 U.S.C. 1182), as amended by sections
19 2312 and 2313, is further amended by adding at the
20 end the following:

21 “(x) DETERMINATION OF PREVAILING WAGE.—In
22 the case of a nonprofit institution of higher education (as
23 defined in section 101(a) of the Higher Education Act of
24 1965 (20 U.S.C. 1001(a))), a related or affiliated non-
25 profit entity, a nonprofit research organization, or a gov-

1 ernmental research organization, the Secretary of Labor
2 shall determine such wage levels as follows:

3 “(1) If the Secretary of Labor uses, or makes
4 available to employers, a governmental survey to de-
5 termine the prevailing wage, such survey shall pro-
6 vide at least 4 levels of wages commensurate with
7 experience, education, and the level of supervision.

8 “(2) If an existing government survey has only
9 2 levels, 2 intermediate levels may be created by di-
10 viding by 3, the difference between the 2 levels of-
11 fered, adding the quotient thus obtained to the first
12 level and subtracting that quotient from the second
13 level.

14 “(3) For institutions of higher education, only
15 teaching positions and research positions may be
16 paid using this special educational wage level.

17 “(4) In computing the prevailing wage level for
18 an occupational classification in an area of employ-
19 ment for purposes of subsections (a)(5)(A),
20 (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) and section
21 203(b)(1)(D) for an employee of an institution of
22 higher education, or a related or affiliated nonprofit
23 entity or a nonprofit research organization or a gov-
24 ernmental research organization, the prevailing wage
25 level shall only take into account employees at such

1 institutions and organizations in the area of employ-
2 ment.”.

3 (b) INTERNET POSTING REQUIREMENT.—Section
4 212(n)(1)(C) (8 U.S.C. 1182(n)(1)(C)) is amended—

5 (1) by redesignating clause (ii) as subclause
6 (II);

7 (2) by striking “(i) has provided” and inserting
8 the following:

9 “(ii)(I) has provided”;

10 (3) by striking “sought, or” and inserting
11 “sought; or”; and

12 (4) by inserting before clause (ii), as redesign-
13 nated by paragraph (2), the following:

14 “(i) has advertised on the Internet website
15 maintained by the Secretary of Labor for the
16 purpose of such advertising, for at least 30 cal-
17 endar days, a detailed description of each posi-
18 tion for which a nonimmigrant is sought that
19 includes a description of—

20 “(I) the wage ranges and other terms
21 and conditions of employment;

22 “(II) the minimum education, train-
23 ing, experience, and other requirements for
24 the position;

1 “(III) the process for applying for the
2 position;

3 “(IV) the title and description of the
4 position, including the location where the
5 work will be performed; and

6 “(V) the name, city, and zip code of
7 the employer; and”.

8 (c) APPLICATION OF REQUIREMENTS TO ALL EM-
9 PLOYERS.—

10 (1) NONDISPLACEMENT.—Section 212(n)(1)(E)
11 (8 U.S.C. 1182(n)(1)(E)) is amended to read as fol-
12 lows:

13 “(E)(i)(I) In the case of an application filed by
14 an employer that is an H–1B skilled worker depend-
15 ent employer, and is not an H–1B dependent em-
16 ployer, the employer did not displace and will not
17 displace a United States worker employed by the
18 employer during the period beginning 90 days before
19 the date on which a visa petition supported by the
20 application is filed and ending 90 days after such fil-
21 ing.

22 “(II) An employer that is not an H–1B skilled
23 worker dependent employer shall not be subject to
24 subclause (I) unless—

1 “(aa) the employer is filing the H–1B peti-
2 tion with the intent or purpose of displacing a
3 specific United States worker from the position
4 to be occupied by the beneficiary of the petition;
5 or

6 “(bb) workers are displaced who—

7 “(AA) provide services, in whole or in
8 part, at 1 or more worksites owned, oper-
9 ated, or controlled by a Federal, State, or
10 local government entity, other than a pub-
11 lic institution of higher education, that di-
12 rects and controls the work of the H–1B
13 worker; or

14 “(BB) are employed as public school
15 kindergarten, elementary, middle school, or
16 secondary school teachers.

17 “(ii)(I) In the case of an application filed by an
18 H–1B-dependent employer, the employer did not dis-
19 place and will not displace a United States worker
20 employed by the employer within the period begin-
21 ning 180 days before the date on which a visa peti-
22 tion supported by the application is filed and ending
23 180 days after such filing.

24 “(II) An application described in this clause is
25 an application filed on or after the date final regula-

1 tions are first promulgated to carry out this sub-
2 paragraph, and before by an H-1B-dependent em-
3 ployer (as defined in paragraph (3)) or by an em-
4 ployer that has been found, on or after the date of
5 the enactment of the American Competitiveness and
6 Workforce Improvement Act of 1998, under para-
7 graph (2)(C) or (5) to have committed a willful fail-
8 ure or misrepresentation during the 5-year period
9 preceding the filing of the application.

10 “(iii) In this subparagraph, the term ‘job zone’
11 means a zone assigned to an occupation by—

12 “(I) the Occupational Information Network
13 Database (O*NET) on the date of the enact-
14 ment of this Act; or

15 “(II) such database or a similar successor
16 database, as designated by the Secretary of
17 Labor, after the date of the enactment of Bor-
18 der Security, Economic Opportunity, and Immi-
19 gration Modernization Act.”.

20 (2) RECRUITMENT.—Section 212(n)(1)(G) (8
21 U.S.C. 1182(n)(1)(G)) is amended to read as fol-
22 lows:

23 “(G) An employer, prior to filing the applica-
24 tion—

1 “(i) has taken good faith steps to recruit
2 United States workers for the occupational clas-
3 sification for which the nonimmigrant or non-
4 immigrants is or are sought, using procedures
5 that meet industry-wide standards and offering
6 compensation that is at least as great as that
7 required to be offered to H–1B nonimmigrants
8 under subparagraph (A);

9 “(ii) has advertised the job on an Internet
10 website maintained by the Secretary of Labor
11 for the purpose of such advertising; and

12 “(iii) if the employer is an H–1B skilled
13 worker dependent employer, has offered the job
14 to any United States worker who applies and is
15 equally or better qualified for the job for which
16 the nonimmigrant or nonimmigrants is or are
17 sought.”.

18 (d) OUTPLACEMENT.—Section 212(n)(1)(F) (8
19 U.S.C. 1182(n)(1)(F)) is amended to read as follows:

20 “(F)(i) An H–1B-dependent employer may
21 not place, outsource, lease, or otherwise con-
22 tract for the services or placement of an H–1B
23 nonimmigrant employee.

24 “(ii) An employer that is not an H–1B-de-
25 pendent employer and not described in para-

1 graph (3)(A)(i) may not place, outsource, lease,
2 or otherwise contract for the services or place-
3 ment of an H-1B nonimmigrant employee un-
4 less the employer pays a fee of \$500 per
5 outplaced worker.

6 “(iii) A fee collected under clause (ii) shall
7 be deposited in the Comprehensive Immigration
8 Reform Trust Fund established under section 9
9 of the Border Security, Economic Opportunity,
10 and Immigration Modernization Act.

11 “(iv) An H-1B dependent employer shall
12 be exempt from the prohibition on outplacement
13 under clause (i) if the employer is a nonprofit
14 institution of higher education, a nonprofit re-
15 search organization, or primarily a health care
16 business and is petitioning for a physician, a
17 nurse, or a physical therapist or a substantially
18 equivalent health care occupation. Such em-
19 ployer shall be subject to the fee set forth in
20 clause (ii).”.

21 (e) H-1B-DEPENDENT EMPLOYER DEFINED.—Sec-
22 tion 212(n)(3) (8 U.S.C. 1182(n)(3)) is amended to read
23 as follows:

1 “(3)(A) The term ‘H–1B-dependent employer’ means
2 an employer (other than nonprofit education and research
3 institutions) that—

4 “(i) in the case of an employer that has 25 or
5 fewer full-time equivalent employees who are em-
6 ployed in the United States, employs more than 7
7 H–1B nonimmigrants;

8 “(ii) in the case of an employer that has at
9 least 26 but not more than 50 full-time equivalent
10 employees who are employed in the United States,
11 employs more than 12 H–1B nonimmigrants; or

12 “(iii) in the case of an employer that has at
13 least 51 full-time equivalent employees who are em-
14 ployed in the United States, employs H–1B non-
15 immigrants in a number that is equal to at least 15
16 percent of the number of such full-time equivalent
17 employees.

18 “(B) In determining the number of employees who
19 are H–1B nonimmigrants under subparagraph (A)(ii), an
20 intending immigrant employee shall not count toward such
21 number.”.

22 (f) H–1B SKILLED WORKER DEPENDENT DE-
23 FINED.—Section 212(n)(3) (8 U.S.C. 1182(n)(3)) is
24 amended—

1 (1) by redesignating subparagraph (B) as sub-
2 paragraph (D); and

3 (2) by inserting after subparagraph (A) the fol-
4 lowing:

5 “(B)(i) For purposes of this subsection, an ‘H–1B
6 skilled worker dependent employer’ means an employer
7 (other than nonprofit education and research institutions)
8 that employs H–1B nonimmigrants in the United States
9 in a number that in total is equal to at least 15 percent
10 of the number of its full-time equivalent employees in the
11 United States employed in occupations contained within
12 Occupational Information Network Database (O*NET)
13 Job Zone 4 and Job Zone 5.

14 “(ii) An H–1B nonimmigrant who is an intending im-
15 migrant shall be counted as a United States worker in
16 making a determination under clause (i).”.

17 (g) INTENDING IMMIGRANTS DEFINED.—Section
18 101(a) (8 U.S.C. 1101(a)), as amended by section
19 3504(a), is further amended by adding at the end the fol-
20 lowing:

21 “(54)(A) The term ‘intending immigrant’
22 means, with respect to the number of aliens em-
23 ployed by an employer, an alien who intends to work
24 and reside permanently in the United States, as evi-
25 denced by—

1 “(i) a pending or approved application for
2 a labor certification filed for such alien by a
3 covered employer; or

4 “(ii) a pending or approved immigrant sta-
5 tus petition filed for such alien by a covered
6 employer.

7 “(B) In this paragraph:

8 “(i) The term ‘covered employer’ means an
9 employer that has filed immigrant status peti-
10 tions for not less than 90 percent of current
11 employees who were the beneficiaries of applica-
12 tions for labor certification that were approved
13 during the 1-year period ending 6 months be-
14 fore the filing of an application or petition for
15 which the number of intending immigrants is
16 relevant.

17 “(ii) The term ‘immigrant status petition’
18 means a petition filed under paragraph (1), (2),
19 or (3) of section 203(b).

20 “(iii) The term ‘labor certification’ means
21 an employment certification under section
22 212(a)(5)(A).

23 “(C) Notwithstanding any other provision of
24 law—

1 “(i) for all calculations under this Act, of
2 the number of aliens admitted pursuant to sub-
3 paragraph (H)(i)(b) or (L) of paragraph (15),
4 an intending immigrant shall be counted as an
5 alien lawfully admitted for permanent residence
6 and shall not be counted as an employee admit-
7 ted pursuant to such a subparagraph; and

8 “(ii) for all determinations of the number
9 of employees or United States workers em-
10 ployed by an employer, all of the employees in
11 any group treated as a single employer under
12 subsection (b), (c), (m), or (o) of section 414 of
13 the Internal Revenue Code of 1986 shall be
14 counted.”.

15 **SEC. 4212. REQUIREMENTS FOR ADMISSION OF NON-**
16 **IMMIGRANT NURSES IN HEALTH PROFES-**
17 **SIONAL SHORTAGE AREAS.**

18 (a) EXTENSION OF PERIOD OF AUTHORIZED ADMIS-
19 SION.—Section 212(m)(3) (8 U.S.C. 1182(m)(3)) is
20 amended to read as follows:

21 “(3) The initial period of authorized admission as a
22 nonimmigrant under section 101(a)(15)(H)(i)(c) shall be
23 3 years, and may be extended once for an additional 3-
24 year period.”.

1 (b) NUMBER OF VISAS.—Section 212(m)(4) (8
2 U.S.C. 1182(m)(4)) is amended by striking “500.” and
3 inserting “300.”.

4 (c) PORTABILITY.—Section 214(n) (8 U.S.C.
5 1184(n)), as amended by section 4103(b), is further
6 amended by adding at the end the following:

7 “(4)(A) A nonimmigrant alien described in subpara-
8 graph (B) who was previously issued a visa or otherwise
9 provided nonimmigrant status under section
10 101(a)(15)(H)(i)(c) is authorized to accept new employ-
11 ment performing services as a registered nurse for a facil-
12 ity described in section 212(m)(6) upon the filing by the
13 prospective employer of a new petition on behalf of such
14 nonimmigrant as provided under subsection (c). Employ-
15 ment authorization shall continue for such alien until the
16 new petition is adjudicated. If the new petition is denied,
17 such authorization shall cease.

18 “(B) A nonimmigrant alien described in this para-
19 graph is a nonimmigrant alien—

20 “(i) who has been lawfully admitted into the
21 United States;

22 “(ii) on whose behalf an employer has filed a
23 nonfrivolous petition for new employment before the
24 date of expiration of the period of stay authorized by
25 the Secretary of Homeland Security, except that, if

1 a nonimmigrant described in section
2 101(a)(15)(H)(i)(c) is terminated or laid off by the
3 nonimmigrant's employer, or otherwise ceases em-
4 ployment with the employer, such petition for new
5 employment shall be filed during the 60-day period
6 beginning on the date of such termination, lay off,
7 or cessation; and

8 “(iii) who, subsequent to such lawful admission,
9 has not been employed without authorization in the
10 United States before the filing of such petition.”.

11 (d) APPLICABILITY.—

12 (1) IN GENERAL.—Beginning on the commence-
13 ment date described in paragraph (2), the amend-
14 ments made by section 2 of the Nursing Relief for
15 Disadvantaged Areas Act of 1999 (Public Law 106–
16 95; 113 Stat. 1313), and the amendments made by
17 this section, shall apply to classification petitions
18 filed for nonimmigrant status. This period shall be
19 in addition to the period described in section 2(e) of
20 the Nursing Relief for Disadvantaged Areas Act of
21 1999 (8 U.S.C. 1182 note).

22 (2) COMMENCEMENT DATE.—Not later than 60
23 days after the date of the enactment of this Act, the
24 Secretary shall determine whether regulations are
25 necessary to implement the amendments made by

1 this section. If the Secretary determines that no
2 such regulations are necessary, the commencement
3 date described in this paragraph shall be the date of
4 such determination. If the Secretary determines that
5 regulations are necessary to implement any amend-
6 ment made by this section, the commencement date
7 described in this paragraph shall be the date on
8 which such regulations (in final form) take effect.

9 **SEC. 4213. NEW APPLICATION REQUIREMENTS.**

10 Section 212(n)(1) (8 U.S.C. 1182(n)(1)) is amended
11 by inserting after clause (iii) of subparagraph (G), as
12 amended by section 4211(c)(2), the following:

13 “(H)(i) The employer has not advertised any
14 available position specified in the application in an
15 advertisement that states or indicates that—

16 “(I) such position is only available to an
17 individual who is or will be an H–1B non-
18 immigrant or an alien participating in optional
19 practical training pursuant to section
20 101(a)(15)(F)(i); or

21 “(II) an individual who is or will be an H–
22 1B nonimmigrant or participant in such op-
23 tional practical training shall receive priority or
24 a preference in the hiring process for such posi-
25 tion.

1 “(ii) The employer has not solely recruited indi-
2 viduals who are or who will be H–1B nonimmigrants
3 or participants in optional practical training pursu-
4 ant to section 101(a)(15)(F)(i) to fill such position.

5 “(I)(i) If the employer (other than an edu-
6 cational or research employer) employs 50 or more
7 employees in the United States, the sum of the num-
8 ber of such employees who are H–1B nonimmigrants
9 plus the number of such employees who are non-
10 immigrants described in section 101(a)(15)(L) may
11 not exceed—

12 “(I) 75 percent of the total number of em-
13 ployees, for fiscal year 2015;

14 “(II) 65 percent of the total number of
15 employees, for fiscal year 2016; and

16 “(III) 50 percent of the total number of
17 employees, for each fiscal year after fiscal year
18 2016.

19 “(ii) In this subparagraph:

20 “(I) The term ‘educational or research em-
21 ployer’ means an employer that is a nonprofit
22 institution of higher education or a nonprofit
23 research organization described in section
24 501(c)(3) of the Internal Revenue Code of 1986

1 and exempt from taxation under 501(a) of that
2 Code.

3 “(II) The term ‘H–1B nonimmigrant’
4 means an alien admitted as a nonimmigrant
5 pursuant to section 101(a)(15)(H)(i)(b).

6 “(III) The term ‘L nonimmigrant’ means
7 an alien admitted as a nonimmigrant pursuant
8 to section 101(a)(15)(L) to provide services to
9 his or her employer involving specialized knowl-
10 edge.

11 “(iii) In determining the percentage of employ-
12 ees of an employer that are H–1B nonimmigrants or
13 L nonimmigrants under clause (i), an intending im-
14 migrant employee shall not count toward such per-
15 centage.

16 “(J) The employer shall submit to the Sec-
17 retary of Homeland Security an annual report that
18 includes the Internal Revenue Service Form W–2
19 Wage and Tax Statement filed by the employer for
20 each H–1B nonimmigrant employed by the employer
21 during the previous year.”.

22 **SEC. 4214. APPLICATION REVIEW REQUIREMENTS.**

23 (a) TECHNICAL AMENDMENT.—Section 212(n)(1) (8
24 U.S.C. 1182(n)(1)), as amended by section 4213, is fur-

1 ther amended in the undesignated paragraph at the end,
2 by striking “The employer” and inserting the following:

3 “(K) The employer”.

4 (b) APPLICATION REVIEW REQUIREMENTS.—Sub-
5 paragraph (K) of such section 212(n)(1), as designated
6 by subsection (a), is amended—

7 (1) by inserting “and through the Department
8 of Labor’s website, without charge.” after “D.C.”;

9 (2) by striking “only for completeness” and in-
10 sserting “for completeness and evidence of fraud or
11 misrepresentation of material fact,”;

12 (3) by striking “or obviously inaccurate” and
13 inserting “, presents evidence of fraud or misrepre-
14 sentation of material fact, or is obviously inac-
15 curate”;

16 (4) by striking “within 7 days of the” and in-
17 sserting “not later than 14 days after”; and

18 (5) by adding at the end the following: “If the
19 Secretary’s review of an application identifies evi-
20 dence of fraud or misrepresentation of material fact,
21 the Secretary may conduct an investigation and
22 hearing in accordance with paragraph (2).”.

23 (c) FILING OF PETITION FOR NONIMMIGRANT
24 WORKER.—Section 212(n)(1) (8 U.S.C. 1182(n)(1)), as

1 amended by section 4213, is further amended by adding
2 at the end the following:

3 “(L) An I–129 Petition for Nonimmigrant
4 Worker (or similar successor form)—

5 “(i) may be filed by an employer with the
6 Secretary of Homeland Security prior to the
7 date the employer receives an approved certifi-
8 cation described in section 101(a)(15)(H)(i)(b)
9 from the Secretary of Labor; and

10 “(ii) may not be approved by the Secretary
11 of Homeland Security until the date such cer-
12 tification is approved.”.

13 **CHAPTER 2—INVESTIGATION AND DIS-**
14 **POSITION OF COMPLAINTS AGAINST**
15 **H-1B EMPLOYERS**

16 **SEC. 4221. GENERAL MODIFICATION OF PROCEDURES FOR**
17 **INVESTIGATION AND DISPOSITION.**

18 Section 212(n) (8 U.S.C. 1182(n)) is amended—

19 (1) in paragraph (2)(A)—

20 (A) by striking “(A) Subject” and insert-
21 ing “(A)(i) Subject”;

22 (B) by inserting after the first sentence
23 the following: “Such process shall include publi-
24 cizing a dedicated toll-free number and publicly

1 available Internet website for the submission of
2 such complaints.”;

3 (C) by striking “12 months” and inserting
4 “24 months”;

5 (D) by striking the last sentence and in-
6 serting the following: “The Secretary shall issue
7 regulations requiring that employers that em-
8 ploy H-1B nonimmigrants, other than non-
9 profit institutions of higher education and non-
10 profit research organizations, through posting
11 of notices or other appropriate means, inform
12 their employees of such toll-free number and
13 Internet website and of their right to file com-
14 plaints pursuant to this paragraph.”; and

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

16 “(ii)(I) Upon the receipt of such a com-
17 plaint, the Secretary may initiate an investiga-
18 tion to determine if such a failure or misrepre-
19 sentation has occurred.

20 “(II) The Secretary may conduct voluntary
21 surveys of the degree to which employers com-
22 ply with the requirements of this subsection.

23 “(III) The Secretary shall—

24 “(aa) conduct annual compliance au-
25 dits of each employer with more than 100

1 employees who work in the United States
2 if more than 15 percent of such employees
3 are H-1B nonimmigrants; and

4 “(bb) make available to the public an
5 executive summary or report describing the
6 general findings of the audits carried out
7 pursuant to this subclause.”; and

8 (2) by adding at the end the following new
9 paragraph:

10 “(6) REPORT REQUIRED.—Not later than 1
11 year after the date of the enactment of the Border
12 Security, Economic Opportunity, and Immigration
13 Modernization Act, and every 5 years thereafter, the
14 Inspector General of the Department of Labor shall
15 submit a report regarding the Secretary’s enforce-
16 ment of the requirements of this section to the Com-
17 mittee on the Judiciary and the Committee on
18 Health, Education, Labor, and Pensions of the Sen-
19 ate and the Committee on the Judiciary and the
20 Committee on Education and the Workforce of the
21 House of Representatives.”.

22 **SEC. 4222. INVESTIGATION, WORKING CONDITIONS, AND**
23 **PENALTIES.**

24 Subparagraph (C) of section 212(n)(2) (8 U.S.C.
25 1182(n)(2)) is amended—

1 (1) in clause (i)—

2 (A) in the matter preceding subclause

3 (I)—

4 (i) by striking “a condition of para-
5 graph (1)(B), (1)(E), or (1)(F)” and in-
6 serting “a condition under subparagraph
7 (A), (B), (C)(i), (E), (F), (G), (H), (I), or
8 (J) of paragraph (1)”; and

9 (ii) by striking “(1)(C)” and inserting
10 “(1)(C)(ii)”;

11 (B) in subclause (I)—

12 (i) by striking “\$1,000” and inserting
13 “\$2,000”; and

14 (ii) by striking “and” at the end;

15 (C) in subclause (II), by striking the pe-
16 riod at the end and inserting a semicolon and
17 “and”; and

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

19 “(III) an employer that violates such subpara-
20 graph (A) shall be liable to any employee harmed by
21 such violations for lost wages and benefits.”; and

22 (2) in clause (ii)—

23 (A) in subclause (I)—

24 (i) by striking “may” and inserting
25 “shall”; and

1 (ii) by striking “\$5,000” and insert-
2 ing “\$10,000”;

3 (B) in subclause (II), by striking the pe-
4 riod at the end and inserting a semicolon and
5 “and”; and

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

7 “(III) an employer that violates such subpara-
8 graph (A) shall be liable to any employee harmed by
9 such violations for lost wages and benefits.”;

10 (3) in clause (iii)—

11 (A) in the matter preceding subclause (I),
12 by striking “90 days” both places it appears
13 and inserting “180 days”;

14 (B) in subclause (I)—

15 (i) by striking “may” and inserting
16 “shall”; and

17 (ii) by striking “and” at the end;

18 (C) in subclause (II), by striking the pe-
19 riod at the end and inserting a semicolon and
20 “and”; and

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

22 “(III) an employer that violates subparagraph
23 (A) of such paragraph shall be liable to any em-
24 ployee harmed by such violations for lost wages and
25 benefits.”;

1 (4) in clause (iv)—

2 (A) by inserting “to take, or threaten to
3 take, a personnel action, or” before “to intimi-
4 date”;

5 (B) by inserting “(I)” after “(iv)”; and

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

7 “(II) An employer that violates this clause shall
8 be liable to any employee harmed by such violation
9 for lost wages and benefits.”; and

10 (5) in clause (vi)—

11 (A) by amending subclause (I) to read as
12 follows:

13 “(I) It is a violation of this clause for an em-
14 ployer who has filed an application under this sub-
15 section—

16 “(aa) to require an H–1B nonimmigrant to
17 pay a penalty for ceasing employment with the
18 employer prior to a date agreed to by the non-
19 immigrant and the employer (the Secretary
20 shall determine whether a required payment is
21 a penalty, and not liquidated damages, pursu-
22 ant to relevant State law); and

23 “(bb) to fail to offer to an H–1B non-
24 immigrant, during the nonimmigrant’s period of
25 authorized employment, on the same basis, and

1 in accordance with the same criteria, as the em-
2 ployer offers to similarly situated United States
3 workers, benefits and eligibility for benefits, in-
4 cluding—

5 “(AA) the opportunity to participate
6 in health, life, disability, and other insur-
7 ance plans;

8 “(BB) the opportunity to participate
9 in retirement and savings plans; and

10 “(CC) cash bonuses and noncash com-
11 pensation, such as stock options (whether
12 or not based on performance).”; and

13 (B) in subclause (III), by striking
14 “\$1,000” and inserting “\$2,000”.

15 **SEC. 4223. INITIATION OF INVESTIGATIONS.**

16 Subparagraph (G) of section 212(n)(2) (8 U.S.C.
17 1182(n)(2)) is amended—

18 (1) in clause (i), by striking “if the Secretary”
19 and all that follows and inserting “with regard to
20 the employer’s compliance with the requirements of
21 this subsection.”;

22 (2) in clause (ii), by striking “and whose iden-
23 tity” and all that follows through “failure or fail-
24 ures.” and inserting “the Secretary of Labor may

1 conduct an investigation into the employer’s compli-
2 ance with the requirements of this subsection.”;

3 (3) in clause (iii), by striking the last sentence;

4 (4) by striking clauses (iv) and (v);

5 (5) by redesignating clauses (vi), (vii), and (viii)
6 as clauses (iv), (v), and (vi), respectively;

7 (6) in clause (iv), as so redesignated, by strik-
8 ing “meet a condition described in clause (ii), unless
9 the Secretary of Labor receives the information not
10 later than 12 months” and inserting “comply with
11 the requirements under this subsection, unless the
12 Secretary of Labor receives the information not later
13 than 24 months”;

14 (7) by amending clause (v), as so redesignated,
15 to read as follows:

16 “(v) The Secretary of Labor shall provide no-
17 tice to an employer of the intent to conduct an in-
18 vestigation. The notice shall be provided in such a
19 manner, and shall contain sufficient detail, to permit
20 the employer to respond to the allegations before an
21 investigation is commenced. The Secretary is not re-
22 quired to comply with this clause if the Secretary de-
23 termines that such compliance would interfere with
24 an effort by the Secretary to investigate or secure
25 compliance by the employer with the requirements of

1 this subsection. A determination by the Secretary
2 under this clause shall not be subject to judicial re-
3 view.”;

4 (8) in clause (vi), as so redesignated, by strik-
5 ing “An investigation” and all that follows through
6 “the determination.” and inserting “If the Secretary
7 of Labor, after an investigation under clause (i) or
8 (ii), determines that a reasonable basis exists to
9 make a finding that the employer has failed to com-
10 ply with the requirements under this subsection, the
11 Secretary shall provide interested parties with notice
12 of such determination and an opportunity for a
13 hearing in accordance with section 556 of title 5,
14 United States Code, not later than 120 days after
15 the date of such determination.”; and

16 (9) by adding at the end the following:

17 “(vii) If the Secretary of Labor, after a hear-
18 ing, finds a reasonable basis to believe that the em-
19 ployer has violated the requirements under this sub-
20 section, the Secretary shall impose a penalty under
21 subparagraph (C).”.

22 **SEC. 4224. INFORMATION SHARING.**

23 Section 212(n)(2) (8 U.S.C. 1182(n)(2)), as amended
24 by sections 4222 and 4223, is further amended by adding
25 at the end the following:

1 “(J) The Director of U.S. Citizenship and Immigra-
2 tion Services shall provide the Secretary of Labor with any
3 information contained in the materials submitted by em-
4 ployers of H–1B nonimmigrants as part of the adjudica-
5 tion process that indicates that the employer is not com-
6 plying with visa program requirements for H–1B non-
7 immigrants. The Secretary of Labor may initiate and con-
8 duct an investigation related to H–1B nonimmigrants and
9 a hearing under this paragraph after receiving information
10 of noncompliance under this subparagraph. This subpara-
11 graph may not be construed to prevent the Secretary of
12 Labor from taking action related to wage and hour and
13 workplace safety laws.

14 “(K) The Secretary of Labor shall facilitate the post-
15 ing of the descriptions described in paragraph (1)(C)(i)
16 on the Internet website of the State labor or workforce
17 agency for the State in which the position will be primarily
18 located during the same period as the posting under para-
19 graph (1)(C)(i).”.

20 **SEC. 4225. TRANSPARENCY OF HIGH-SKILLED IMMIGRA-**
21 **TION PROGRAMS.**

22 Section 416(c) of the American Competitiveness and
23 Workforce Improvement Act of 1998 (8 U.S.C. 1184 note)
24 is amended—

1 (1) by amending paragraph (2) to read as fol-
2 lows:

3 “(2) ANNUAL H-1B NONIMMIGRANT CHARAC-
4 TERISTICS REPORT.—The Bureau of Immigration
5 and Labor Market Research shall submit an annual
6 report to the Committee on the Judiciary of the
7 Senate and the Committee on the Judiciary of the
8 House of Representatives that contains—

9 “(A) information on the countries of origin
10 of, occupations of, educational levels attained
11 by, and compensation paid to, aliens who were
12 issued visas or otherwise provided non-
13 immigrant status under section
14 101(a)(15)(H)(i)(b) of the Immigration and
15 Nationality Act (8 U.S.C.
16 1101(a)(15)(H)(i)(b)) during the previous fiscal
17 year;

18 “(B) a list of all employers who petition
19 for H-1B visas, the number of such petitions
20 filed and approved for each such employer, the
21 occupational classifications for the approved po-
22 sitions, and the number of H-1B non-
23 immigrants for whom each such employer files
24 for adjustment to permanent resident status;

1 “(C) the number of immigrant status peti-
2 tions filed during the prior year on behalf of H-
3 1B nonimmigrants;

4 “(D) a list of all employers who are H-1B-
5 dependent employers;

6 “(E) a list of all employers who are H-1B
7 skilled worker dependent employers;

8 “(F) a list of all employers for whom more
9 than 30 percent of their United States work-
10 force is H-1B or L-1 nonimmigrants;

11 “(G) a list of all employers for whom more
12 than 50 percent of their United States work-
13 force is H-1B or L-1 nonimmigrants;

14 “(H) a gender breakdown by occupation
15 and by country of H-1B nonimmigrants;

16 “(I) a list of all employers who have been
17 approved to conduct outplacement of H-1B
18 nonimmigrants; and

19 “(J) the number of H-1B nonimmigrants
20 categorized by their highest level of education
21 and whether such education was obtained in the
22 United States or in a foreign country.”;

23 (2) by redesignating paragraph (3) as para-
24 graph (5);

1 (3) by inserting after paragraph (2) the fol-
2 lowing:

3 “(3) ANNUAL L-1 NONIMMIGRANT CHARACTER-
4 ISTICS REPORT.—The Bureau of Immigration and
5 Labor Market Research shall submit an annual re-
6 port to the Committee on the Judiciary of the Sen-
7 ate and the Committee on the Judiciary of the
8 House of Representatives that contains—

9 “(A) information on the countries of origin
10 of, occupations of, educational levels attained
11 by, and compensation paid to, aliens who were
12 issued visas or otherwise provided —non-
13 immigrant status under section 101(a)(15)(L)
14 of the Immigration and Nationality Act (8
15 U.S.C. 1101(a)(15)(L)) during the previous fis-
16 cal year;

17 “(B) a list of all employers who petition
18 for L-1 visas, the number of such petitions
19 filed and approved for each such employer, the
20 occupational classifications for the approved po-
21 sitions, and the number of L-1 nonimmigrants
22 for whom each such employer files for adjust-
23 ment to permanent resident status;

1 “(C) the number of immigrant status peti-
2 tions filed during the prior year on behalf of L-
3 1 nonimmigrants;

4 “(D) a list of all employers who are L-1
5 dependent employers;

6 “(E) a gender breakdown by occupation
7 and by country of L-1 nonimmigrants;

8 “(F) a list of all employers who have been
9 approved to conduct outplacement of L-1 non-
10 immigrants; and

11 “(G) the number of L-1 nonimmigrants
12 categorized by their highest level of education
13 and whether such education was obtained in the
14 United States or in a foreign country.

15 “(4) ANNUAL EMPLOYER SURVEY.—The Bu-
16 reau of Immigration and Labor Market Research
17 shall—

18 “(A) conduct an annual survey of employ-
19 ers hiring foreign nationals under the L-1 visa
20 program; and

21 “(B) shall issue an annual report that—

22 “(i) describes the methods employers
23 are using to meet the requirement of tak-
24 ing good faith steps to recruit United
25 States workers for the occupational classi-

1 fication for which the nonimmigrants are
2 sought, using procedures that meet indus-
3 try-wide standards;

4 “(ii) describes the best practices for
5 recruiting among employers; and

6 “(iii) contains recommendations on
7 which recruiting steps employers can take
8 to maximize the likelihood of hiring Amer-
9 ican workers.”; and

10 (4) in paragraph (5), as redesignated, by strik-
11 ing “paragraph (2)” and inserting “paragraphs (2)
12 and (3)”.

13 **CHAPTER 3—OTHER PROTECTIONS**

14 **SEC. 4231. POSTING AVAILABLE POSITIONS THROUGH THE** 15 **DEPARTMENT OF LABOR.**

16 (a) DEPARTMENT OF LABOR WEBSITE.—Section
17 212(n) (8 U.S.C. 1182(n)), as amended by section
18 4221(2), is further amended by adding at the end fol-
19 lowing:

20 “(7)(A) Not later than 90 days after the date of the
21 enactment of the Border Security, Economic Opportunity,
22 and Immigration Modernization Act, the Secretary of
23 Labor shall establish a searchable Internet website for
24 posting positions as required by paragraph (1)(C). Such
25 website shall be available to the public without charge.

1 “(B) The Secretary may work with private companies
2 or nonprofit organizations to develop and operate the
3 Internet website described in subparagraph (A).

4 “(C) The Secretary may promulgate rules, after no-
5 tice and a period for comment, to carry out the require-
6 ments of this paragraph.”.

7 (b) REQUIREMENT FOR PUBLICATION.—The Sec-
8 retary of Labor shall submit to Congress and publish in
9 the Federal Register and other appropriate media a notice
10 of the date that the Internet website required by para-
11 graph (6) of section 212(n) of the Immigration and Na-
12 tionality Act, as amended by subsection (a), will be oper-
13 ational.

14 (c) APPLICATION.—The amendments made by sub-
15 section (a) shall apply to an application filed on or after
16 the date that is 30 days after the date described in sub-
17 section (b).

18 **SEC. 4232. REQUIREMENTS FOR INFORMATION FOR H-1B**

19 **AND L NONIMMIGRANTS.**

20 (a) IN GENERAL.—Section 214 (8 U.S.C. 1184), as
21 amended by section 3608, is further amended by adding
22 at the end the following:

23 “(t) REQUIREMENTS FOR INFORMATION FOR H-1B
24 AND L NONIMMIGRANTS.—

1 “(1) IN GENERAL.—Upon issuing a visa to an
2 applicant for nonimmigrant status pursuant to sub-
3 paragraph (H)(i)(b) or (L) of section 101(a)(15)
4 who is outside the United States, the issuing office
5 shall provide the applicant with—

6 “(A) a brochure outlining the obligations
7 of the applicant’s employer and the rights of
8 the applicant with regard to employment under
9 Federal law, including labor and wage protec-
10 tions; and

11 “(B) the contact information for appro-
12 priate Federal agencies or departments that
13 offer additional information or assistance in
14 clarifying such obligations and rights.

15 “(2) PROVISION OF MATERIAL.—Upon the ap-
16 proval of an application of an applicant referred to
17 in paragraph (1), the applicant shall be provided
18 with the material described in subparagraphs (A)
19 and (B) of paragraph (1)—

20 “(A) by the issuing officer of the Depart-
21 ment of Homeland Security, if the applicant is
22 inside the United States; or

23 “(B) by the appropriate official of the De-
24 partment of State, if the applicant is outside
25 the United States.

1 “(3) EMPLOYER TO PROVIDE IMMIGRATION PA-
2 PERWORK EXCHANGED WITH FEDERAL AGENCIES.—

3 “(A) IN GENERAL.—Not later than 30
4 days after a labor condition application is filed
5 under section 212(n)(1), an employer shall pro-
6 vide an employee or beneficiary of such applica-
7 tion who is or seeking nonimmigrant status
8 under subparagraph (H)(i)(b) or (L) of section
9 101(a)(15) with a copy the original of all appli-
10 cations and petitions filed by the employer with
11 the Department of Labor or the Department of
12 Homeland Security for such employee or bene-
13 ficiary.

14 “(B) WITHHOLDING OF FINANCIAL OR
15 PROPRIETARY INFORMATION.—If a document
16 required to be provided to an employee or bene-
17 ficiary under subparagraph (A) includes any fi-
18 nancial or propriety information of the em-
19 ployer, the employer may redact such informa-
20 tion from the copies provided to such employee
21 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. 4233. FILING FEE FOR H-1B-DEPENDENT EMPLOYERS.**

10 (a) IN GENERAL.—Notwithstanding any other provi-
11 sion of law, there shall be a fee required to be submitted
12 by an employer with an application for admission of an
13 H-1B nonimmigrant as follows:

14 (1) For each fiscal year beginning in fiscal year
15 2015, \$5,000 for applicants that employ 50 or more
16 employees in the United States if more than 30 per-
17 cent and less than 50 percent of the applicant's em-
18 ployees are H-1B nonimmigrants or L non-
19 immigrants.

20 (2) For each of the fiscal years 2015 through
21 2017, \$10,000 for applicants that employ 50 or
22 more employees in the United States if more than
23 50 percent and less than 75 percent of the appli-
24 cant's employees are H-1B nonimmigrants or L
25 nonimmigrants. Fees collected under this paragraph

1 shall be deposited in the Comprehensive Immigration
2 Reform Trust Fund established under section
3 9(a)(1).

4 (b) DEFINITIONS.—In this section:

5 (1) EMPLOYER.—The term “employer”—

6 (A) means any entity or entities treated as
7 a single employer under subsection (b), (c),
8 (m), or (o) of section 414 of the Internal Rev-
9 enue Code of 1986; and

10 (B) does not include a nonprofit institution
11 of higher education or a nonprofit research or-
12 ganization described in section 501(c)(3) of the
13 Internal Revenue Code of 1986 and exempt
14 from taxation under 501(a) of that Code that
15 is—

16 (i) an institution of higher education
17 (as defined in section 101(a) of the Higher
18 Education Act of 1965 (20 U.S.C.
19 1001(a))); or

20 (ii) a research organization.

21 (2) H-1B NONIMMIGRANT.—The term “H-1B
22 nonimmigrant” means an alien admitted as a non-
23 immigrant pursuant to section 101(a)(15)(H)(i)(b)
24 of the Immigration and Nationality Act (8 U.S.C.
25 1101(a)(15)(H)(i)(b)).

1 (3) INTENDING IMMIGRANT.—The term “in-
2 tending immigrant” has the meaning given that
3 term in paragraph (54)(A) of section 101(a)(54)(A)
4 of the Immigration and Nationality Act (8 U.S.C.
5 1101(a)).

6 (4) L NONIMMIGRANT.—The term “L non-
7 immigrant” means an alien admitted as a non-
8 immigrant pursuant to section 101(a)(15)(L) of the
9 Immigration and Nationality Act (8 U.S.C.
10 1101(a)(15)(L)) to provide services to the alien’s
11 employer involving specialized knowledge.

12 (c) EXCEPTION FOR INTENDING IMMIGRANTS.—In
13 determining the percentage of employees of an employer
14 that are H–1B nonimmigrants or L nonimmigrants under
15 subsection (a), an intending immigrant employee shall not
16 count toward such percentage.

17 (d) CONFORMING AMENDMENT.—Section 402 of the
18 Act entitled “An Act making emergency supplemental ap-
19 propriations for border security for the fiscal year ending
20 September 30, 2010, and for other purposes”, approved
21 August 13, 2010 (Public Law 111–230; 8 U.S.C. 1101
22 note) is amended by striking subsection (b).

1 **SEC. 4234. PROVIDING PREMIUM PROCESSING OF EMPLOY-**
2 **MENT-BASED VISA PETITIONS.**

3 Pursuant to section 286(u) of the Immigration and
4 Nationality Act (8 U.S.C. 1356(u)), the Secretary shall
5 establish and collect—

6 (1) a fee for premium processing of employ-
7 ment-based immigrant petitions; and

8 (2) a fee for premium processing of an adminis-
9 trative appeal of any decision on a permanent em-
10 ployment-based immigrant petition.

11 **SEC. 4235. TECHNICAL CORRECTION.**

12 Section 212 (8 U.S.C. 1182) is amended by redesi-
13 gnating the second subsection (t), as added by section
14 1(b)(2)(B) of the Act entitled “An Act to amend and ex-
15 tend the Irish Peace Process Cultural and Training Pro-
16 gram Act of 1998” (Public Law 108–449 (118 Stat.
17 3470)), as subsection (u).

18 **SEC. 4236. APPLICATION.**

19 (a) IN GENERAL.—Except as otherwise specifically
20 provided, the amendments made by this subtitle shall
21 apply to applications filed on or after the date of the en-
22 actment of this Act.

23 (b) SPECIAL REQUIREMENTS.—Notwithstanding any
24 other provision of law, the amendments made by section
25 4211(c) shall not apply to any application or petition filed
26 by an employer on behalf of an existing employee.

1 **SEC. 4237. PORTABILITY FOR BENEFICIARIES OF IMMI-**
2 **GRANT PETITIONS.**

3 (a) INCREASED PORTABILITY.—Section 204(j) (8
4 U.S.C. 1154(j)) is amended—

5 (1) by amending the subsection heading to read
6 as follows:

7 “(j) INCREASED PORTABILITY.—”;

8 (2) by striking “A petition” and inserting the
9 following:

10 “(1) LONG DELAYED APPLICANTS FOR ADJUST-
11 MENT OF STATUS.—A petition”; and

12 (3) by adding at the end the following:

13 “(2) PORTABILITY FOR BENEFICIARIES OF IM-
14 MIGRANT PETITIONS.—Regardless of whether an em-
15 ployer withdraws a petition approved under para-
16 graph (1), (2), or (3) of section 203(b)—

17 “(A) the petition shall remain valid with
18 respect to a new job if—

19 “(i) the beneficiary changes jobs or
20 employers after the petition is approved;
21 and

22 “(ii) the new job is in the same or a
23 similar occupational classification as the
24 job for which the petition was approved;
25 and

1 “(B) the employer’s legal obligations with
2 respect to the petition shall terminate at the
3 time the beneficiary changes jobs or employers.

4 “(3) DOCUMENTATION.—The Secretary of
5 Labor shall develop a mechanism to provide the ben-
6 eficiary or prospective employer with sufficient infor-
7 mation to determine whether a new position or job
8 is in the same or similar occupation as the job for
9 which the petition was approved. The Secretary of
10 Labor shall provide confirmation of application ap-
11 proval if required for eligibility under this sub-
12 section. The Secretary of Homeland Security shall
13 provide confirmation of petition approval if required
14 for eligibility under this subsection.”.

15 (b) ADJUSTMENT OF STATUS FOR EMPLOYMENT-
16 BASED IMMIGRANTS.—Section 245 of the Immigration
17 and Nationality Act (8 U.S.C. 1255) is amended by add-
18 ing at the end the following:

19 “(n) ADJUSTMENT OF STATUS FOR EMPLOYMENT-
20 BASED IMMIGRANTS.—

21 “(1) PETITION.—An alien, and any eligible de-
22 pendents of such alien, who has filed a petition for
23 immigrant status, may concurrently, or at any time
24 thereafter, file an application with the Secretary of
25 Homeland Security for adjustment of status if such

1 petition is pending or has been approved, regardless
2 of whether an immigrant visa is immediately avail-
3 able at the time the application is filed.

4 “(2) SUPPLEMENTAL FEE.—If a visa is not im-
5 mediately available at the time an application is filed
6 under paragraph (1), the beneficiary of such applica-
7 tion shall pay a supplemental fee of \$500, which
8 shall be deposited in the STEM Education and
9 Training Account established under section 286(w).
10 This fee shall not be collected from any dependent
11 accompanying or following to join such beneficiary.

12 “(3) AVAILABILITY.—An application filed pur-
13 suant to paragraph (2) may not be approved until
14 the date on which an immigrant visa becomes avail-
15 able.”.

16 **Subtitle C—L Visa Fraud and** 17 **Abuse Protections**

18 **SEC. 4301. PROHIBITION ON OUTPLACEMENT OF L NON-** 19 **IMMIGRANTS.**

20 Section 214(c)(2)(F) (8 U.S.C. 1184(c)(2)(F)) is
21 amended to read as follows:

22 “(F)(i) An employer who employs L–1 non-
23 immigrants in a number that is equal to at least 15 per-
24 cent of the total number of full-time equivalent employees
25 employed by the employer shall not place, outsource, lease,

1 or otherwise contract for the services or placement of such
2 alien with another employer. In determining the number
3 of employees who are L-1 nonimmigrants, an intending
4 immigrant shall count as a United States worker.

5 “(ii) The employer of an alien described in section
6 101(a)(15)(L) shall not place, outsource, lease, or other-
7 wise contract for the services or placement of such alien
8 with another employer unless—

9 “(I) such alien will not be controlled or super-
10 vised principally by the employer with whom such
11 alien would be placed;

12 “(II) the placement of such alien at the work-
13 site of the other employer is not essentially an ar-
14 rangement to provide labor for hire for the other
15 employer; and

16 “(III) the employer of such alien pays a fee of
17 \$500, which shall be deposited in the STEM Edu-
18 cation and Training Account established under sec-
19 tion 286(w).”.

20 **SEC. 4302. L EMPLOYER PETITION REQUIREMENTS FOR**
21 **EMPLOYMENT AT NEW OFFICES.**

22 Section 214(c)(2) (8 U.S.C. 1184(c)(2)) is amended
23 by adding at the end the following:

24 “(G)(i) If the beneficiary of a petition under this
25 paragraph is coming to the United States to open, or be

1 employed in, a new office, the petition may be approved
2 for up to 12 months only if—

3 “(I) the alien has not been the beneficiary of 2
4 or more petitions under this subparagraph during
5 the immediately preceding 2 years; and

6 “(II) the employer operating the new office
7 has—

8 “(aa) an adequate business plan;

9 “(bb) sufficient physical premises to carry
10 out the proposed business activities; and

11 “(cc) the financial ability to commence
12 doing business immediately upon the approval
13 of the petition.

14 “(ii) An extension of the approval period under clause
15 (i) may not be granted until the importing employer sub-
16 mits an application to the Secretary of Homeland Security
17 that contains—

18 “(I) evidence that the importing employer
19 meets the requirements of this subsection;

20 “(II) evidence that the beneficiary of the peti-
21 tion is eligible for nonimmigrant status under sec-
22 tion 101(a)(15)(L);

23 “(III) a statement summarizing the original pe-
24 tition;

1 “(IV) evidence that the importing employer has
2 complied with the business plan submitted under
3 clause (i)(I);

4 “(V) evidence of the truthfulness of any rep-
5 resentations made in connection with the filing of
6 the original petition;

7 “(VI) evidence that the importing employer has
8 been doing business at the new office through reg-
9 ular, systematic, and continuous provision of goods
10 and services;

11 “(VII) a statement of the duties the beneficiary
12 has performed at the new office during the approval
13 period under clause (i) and the duties the beneficiary
14 will perform at the new office during the extension
15 period granted under this clause;

16 “(VIII) a statement describing the staffing at
17 the new office, including the number of employees
18 and the types of positions held by such employees;

19 “(IX) evidence of wages paid to employees;

20 “(X) evidence of the financial status of the new
21 office; and

22 “(XI) any other evidence or data prescribed by
23 the Secretary.

24 “(iii) A new office employing the beneficiary of an
25 L-1 petition approved under this paragraph shall do busi-

1 ness only through regular, systematic, and continuous pro-
2 vision of goods and services.

3 “(iv) Notwithstanding clause (ii), and subject to the
4 maximum period of authorized admission set forth in sub-
5 paragraph (D), the Secretary of Homeland Security, in
6 the Secretary’s discretion, may approve a subsequently
7 filed petition on behalf of the beneficiary to continue em-
8 ployment at the office described in this subparagraph for
9 a period beyond the initially granted 12-month period if
10 the importing employer has been doing business at the
11 new office through regular, systematic, and continuous
12 provision of goods and services for the 6 months imme-
13 diately preceding the date of extension of petition filing
14 and demonstrates that the failure to satisfy any of the
15 requirements described in those subclauses was directly
16 caused by extraordinary circumstances, as determined by
17 the Secretary in the Secretary’s discretion.”.

18 **SEC. 4303. COOPERATION WITH SECRETARY OF STATE.**

19 Section 214(c)(2) (8 U.S.C. 1184(c)(2)), as amended
20 by section 4302, is further amended by adding at the end
21 the following:

22 “(H) For purposes of approving petitions under this
23 paragraph, the Secretary of Homeland Security shall work
24 cooperatively with the Secretary of State to verify the ex-

1 istence or continued existence of a company or office in
2 the United States or in a foreign country.”.

3 **SEC. 4304. LIMITATION ON EMPLOYMENT OF L NON-**
4 **IMMIGRANTS.**

5 Section 214(c)(2) (8 U.S.C. 1184(c)(2)), as amended
6 by sections 4302 and 4303, is further amended by adding
7 at the end the following:

8 “(I)(i) If the employer employs 50 or more employees
9 in the United States, the sum of the number of such em-
10 ployees who are H–1B nonimmigrants plus the number
11 of such employees who are L nonimmigrants may not ex-
12 ceed—

13 “(I) 75 percent of the total number of employ-
14 ees, for fiscal year 2015;

15 “(II) 65 percent of the total number of employ-
16 ees, for fiscal year 2016; and

17 “(III) 50 percent of the total number of em-
18 ployees, for each fiscal year after fiscal year 2016.

19 “(ii) In this subparagraph:

20 “(I) The term ‘employer’ does not include a
21 nonprofit institution of higher education or a non-
22 profit research organization described in section
23 501(c)(3) of the Internal Revenue Code of 1986 and
24 exempt from taxation under 501(a) of that Code
25 that is—

1 “(aa) an institution of higher education (as
2 defined in section 101(a) of the Higher Edu-
3 cation Act of 1965 (20 U.S.C. 1001(a))); or

4 “(bb) a research organization.

5 “(II) The term ‘H–1B nonimmigrant’ means an
6 alien admitted as a nonimmigrant pursuant to sec-
7 tion 101(a)(15)(H)(i)(b).

8 “(III) The term ‘L nonimmigrant’ means an
9 alien admitted as a nonimmigrant pursuant to sec-
10 tion 101(a)(15)(L) to provide services to the alien’s
11 employer involving specialized knowledge.

12 “(iii) In determining the percentage of employees of
13 an employer that are H–1B nonimmigrants or L non-
14 immigrants under clause (i), an intending immigrant em-
15 ployee shall not count toward such percentage.”.

16 **SEC. 4305. FILING FEE FOR L NONIMMIGRANTS.**

17 (a) IN GENERAL.—Notwithstanding any other provi-
18 sion of law, the filing fee for an application for admission
19 of an L nonimmigrant shall be as follows:

20 (1) For each of the fiscal years beginning in fis-
21 cal year 2014, \$5,000 for applicants that employ 50
22 or more employees in the United States if more than
23 30 percent and less than 50 percent of the appli-
24 cant’s employees are H–1B nonimmigrants or L
25 nonimmigrants.

1 (2) For each of the fiscal years 2014 through
2 2017, \$10,000 for applicants that employ 50 or
3 more employees in the United States if more than
4 50 percent and less than 75 percent of the appli-
5 cant’s employees are H–1B nonimmigrants or L
6 nonimmigrants. Fees collected under this paragraph
7 shall be deposited in the Comprehensive Immigration
8 Reform Trust Fund established under section
9 9(a)(1).

10 (b) DEFINITIONS.—In this section:

11 (1) EMPLOYER.—The term “employer” does
12 not include a nonprofit institution of higher edu-
13 cation or a nonprofit research organization described
14 in section 501(c)(3) of the Internal Revenue Code of
15 1986 and exempt from taxation under 501(a) of
16 that Code that is—

17 (A) an institution of higher education (as
18 defined in section 101(a) of the Higher Edu-
19 cation Act of 1965 (20 U.S.C. 1001(a))); or

20 (B) a research organization.

21 (2) H–1B NONIMMIGRANT.—The term “H–1B
22 nonimmigrant” means an alien admitted as a non-
23 immigrant pursuant to section 101(a)(15)(H)(i)(b)
24 of the Immigration and Nationality Act (8 U.S.C.
25 1101(a)(15)(H)(i)(b)).

1 “(J)(i) The Secretary of Homeland Security may ini-
2 tiate an investigation of any employer that employs non-
3 immigrants described in section 101(a)(15)(L) with re-
4 gard to the employer’s compliance with the requirements
5 of this subsection.

6 “(ii)(I) If the Secretary receives specific credible in-
7 formation from a source who is likely to have knowledge
8 of an employer’s practices, employment conditions, or
9 compliance with the requirements under this subsection,
10 the Secretary may conduct an investigation into the em-
11 ployer’s compliance with the requirements of this sub-
12 section.

13 “(II) The Secretary may withhold the identity of a
14 source referred to in subclause (I) from an employer and
15 the identity of such source shall not be subject to dislo-
16 sure under section 552 of title 5, United States Code.

17 “(iii) The Secretary shall establish a procedure for
18 any person desiring to provide to the Secretary informa-
19 tion described in clause (ii)(I) that may be used, in whole
20 or in part, as the basis for the commencement of an inves-
21 tigation described in such clause, to provide the informa-
22 tion in writing on a form developed and provided by the
23 Secretary and completed by or on behalf of the person.

24 “(iv) No investigation described in clause (ii)(I) (or
25 hearing described in clause (vi) based on such investiga-

1 tion) may be conducted with respect to information about
2 a failure to comply with the requirements under this sub-
3 section, unless the Secretary receives the information not
4 later than 24 months after the date of the alleged failure.

5 “(v)(I) Subject to subclause (III), before commencing
6 an investigation of an employer under clause (i) or (ii),
7 the Secretary shall provide notice to the employer of the
8 intent to conduct such investigation.

9 “(II) The notice required by subclause (I) shall be
10 provided in such a manner, and shall contain sufficient
11 detail, to permit the employer to respond to the allegations
12 before an investigation is commenced.

13 “(III) The Secretary is not required to comply with
14 this clause if the Secretary determines that to do so would
15 interfere with an effort by the Secretary to investigate or
16 secure compliance by the employer with the requirements
17 of this subsection.

18 “(IV) There shall be no judicial review of a deter-
19 mination by the Secretary under this clause.

20 “(vi) If the Secretary, after an investigation under
21 clause (i) or (ii), determines that a reasonable basis exists
22 to make a finding that the employer has failed to comply
23 with the requirements under this subsection, the Secretary
24 shall provide the interested parties with notice of such de-
25 termination and an opportunity for a hearing in accord-

1 ance with section 556 of title 5, United States Code, not
2 later than 120 days after the date of such determination.
3 If such a hearing is requested, the Secretary shall make
4 a finding concerning the matter by not later than 120 days
5 after the date of the hearing.

6 “(vii) If the Secretary, after a hearing, finds a rea-
7 sonable basis to believe that the employer has violated the
8 requirements under this subsection, the Secretary shall
9 impose a penalty under subparagraph (K).

10 “(viii)(I) The Secretary may conduct voluntary sur-
11 veys of the degree to which employers comply with the re-
12 quirements under this section.

13 “(II) The Secretary shall—

14 “(aa) conduct annual compliance audits of each
15 employer with more than 100 employees who work
16 in the United States if more than 15 percent of such
17 employees are nonimmigrants described in
18 101(a)(15)(L); and

19 “(bb) make available to the public an executive
20 summary or report describing the general findings of
21 the audits carried out pursuant to this subclause.”.

22 **SEC. 4307. PENALTIES.**

23 Section 214(c)(2) (8 U.S.C. 1184(c)(2)), as amended
24 by sections 4302, 4303, 4304, and 4306, is further
25 amended by adding at the end the following:

1 “(K)(i) If the Secretary of Homeland Security finds,
2 after notice and an opportunity for a hearing, a failure
3 by an employer to meet a condition under subparagraph
4 (F), (G), or (L) or a misrepresentation of material fact
5 in a petition to employ 1 or more aliens as nonimmigrants
6 described in section 101(a)(15)(L)—

7 “(I) the Secretary shall impose such adminis-
8 trative remedies (including civil monetary penalties
9 in an amount not to exceed \$2,000 per violation) as
10 the Secretary determines to be appropriate;

11 “(II) the Secretary may not, during a period of
12 at least 1 year, approve a petition for that employer
13 to employ 1 or more aliens as such nonimmigrants;
14 and

15 “(III) in the case of a violation of subparagraph
16 (J), the employer shall be liable to the employees
17 harmed by such violation for lost wages and benefits.

18 “(ii) If the Secretary finds, after notice and an oppor-
19 tunity for a hearing, a willful failure by an employer to
20 meet a condition under subparagraph (F), (G), or (L) or
21 a willful misrepresentation of material fact in a petition
22 to employ 1 or more aliens as nonimmigrants described
23 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 \$10,000 per violation)
2 as the Secretary determines to be appropriate;

3 “(II) the Secretary may not, during a period of
4 at least 2 years, approve a petition filed for that em-
5 ployer to employ 1 or more aliens as such non-
6 immigrants; and

7 “(III) in the case of a violation of subparagraph
8 (J), the employer shall be liable to the employees
9 harmed by such violation for lost wages and bene-
10 fits.”.

11 **SEC. 4308. PROHIBITION ON RETALIATION AGAINST L NON-**
12 **IMMIGRANTS.**

13 Section 214(c)(2) (8 U.S.C. 1184(c)(2)), as amended
14 by sections 4302, 4303, 4303, 4306, and 4307, is further
15 amended by adding at the end the following:

16 “(L)(i) It is a violation of this subparagraph for an
17 employer who has filed a petition to import 1 or more
18 aliens as nonimmigrants described in section
19 101(a)(15)(L) to take, fail to take, or threaten to take
20 or fail to take, a personnel action, or to intimidate, threat-
21 en, restrain, coerce, blacklist, discharge, or discriminate
22 in any other manner against an employee because the em-
23 ployee—

24 “(I) has disclosed information that the em-
25 ployee reasonably believes evidences a violation of

1 this subsection, or any rule or regulation pertaining
2 to this subsection; or

3 “(II) cooperates or seeks to cooperate with the
4 requirements of this subsection, or any rule or regu-
5 lation pertaining to this subsection.

6 “(ii) In this subparagraph, the term ‘employee’ in-
7 cludes—

8 “(I) a current employee;

9 “(II) a former employee; and

10 “(III) an applicant for employment.”.

11 **SEC. 4309. REPORTS ON L NONIMMIGRANTS.**

12 Section 214(c)(8) (8 U.S.C. 1184(c)(8)) is amended
13 by inserting “(L),” after “(H),”.

14 **SEC. 4310. APPLICATION.**

15 The amendments made by this subtitle shall apply to
16 applications filed on or after the date of the enactment
17 of this Act.

18 **SEC. 4311. REPORT ON L BLANKET PETITION PROCESS.**

19 Not later than 6 months after the date of the enact-
20 ment of this Act, the Inspector General of the Department
21 shall submit to the Committee on the Judiciary of the Sen-
22 ate and the Committee on the Judiciary of the House of
23 Representatives a report regarding the use of blanket peti-
24 tions under section 214(c)(2)(A) of the Immigration and
25 Nationality Act (8 U.S.C. 1184(c)(2)(A)). Such report

1 shall assess the efficiency and reliability of the process for
2 reviewing such blanket petitions, including whether the
3 process includes adequate safeguards against fraud and
4 abuse.

5 **Subtitle D—Other Nonimmigrant** 6 **Visas**

7 **SEC. 4401. NONIMMIGRANT VISAS FOR STUDENTS.**

8 (a) AUTHORIZATION OF DUAL INTENT FOR F NON-
9 IMMIGRANTS SEEKING BACHELOR'S OR GRADUATE DE-
10 GREES.—Section 101(a)(15)(F) (8 U.S.C.
11 1101(a)(15)(F)) is amended to read as follows:

12 “(F)(i) an alien having a residence in a
13 foreign country who is a bona fide student
14 qualified to pursue a full course of study and
15 who seeks to enter the United States tempo-
16 rarily and solely for the purpose of pursuing
17 such a course of study consistent with section
18 214(m) at an accredited college, university, or
19 language training program, or at an established
20 seminary, conservatory, academic high school,
21 elementary school, or other academic institution
22 in the United States, particularly designated by
23 the alien and approved by the Secretary of
24 Homeland Security after consultation with the
25 Secretary of Education, which institution or

1 place of study shall have agreed to report to the
2 Secretary of Homeland Security the termination
3 of attendance of each nonimmigrant student,
4 and if any such institution of learning or place
5 of study fails to make reports promptly the ap-
6 proval shall be withdrawn, except that such an
7 alien who is not seeking to pursue a degree that
8 is a bachelor's degree or a graduate degree shall
9 have a residence in a foreign country that the
10 alien has no intention of abandoning;

11 “(ii) the alien spouse and minor children of
12 any alien described in clause (i) if accom-
13 panying or following to join such an alien; and

14 “(iii) an alien who is a national of Canada
15 or Mexico, who maintains actual residence and
16 place of abode in the country of nationality,
17 who is described in clause (i) except that the
18 alien's qualifications for and actual course of
19 study may be full or part-time, and who com-
20 mutes to the United States institution or place
21 of study from Canada or Mexico.”.

22 (b) DUAL INTENT.—Section 214(h) (8 U.S.C.
23 1184(h)) is amended to read as follows:

24 “(h) DUAL INTENT.—The fact that an alien is, or
25 intends to be, the beneficiary of an application for a pref-

1 erence status filed under section 204, seeks a change or
2 adjustment of status after completing a legitimate period
3 of nonimmigrant stay, or has otherwise sought permanent
4 residence in the United States shall not constitute evi-
5 dence of intent to abandon a foreign residence that would
6 preclude the alien from obtaining or maintaining—

7 “(1) a visa or admission as a nonimmigrant de-
8 scribed in subparagraph (E), (F)(i), (F)(ii),
9 (H)(i)(b), (H)(i)(c), (L), (O), (P), (V), or (W) of
10 section 101(a)(15); or

11 “(2) the status of a nonimmigrant described in
12 any such subparagraph.”.

13 (c) REQUIREMENT OF STUDENT VISA DATA TRANS-
14 FER AND CERTIFICATION.—

15 (1) IN GENERAL.—The Secretary shall imple-
16 ment real-time transmission of data from the Stu-
17 dent and Exchange Visitor Information System to
18 databases used by U.S. Customs and Border Protec-
19 tion.

20 (2) CERTIFICATION.—

21 (A) IN GENERAL.—Not later than 120
22 days after the date of the enactment of this
23 Act, the Secretary shall certify to Congress that
24 the transmission of data referred to in para-
25 graph (1) has been implemented.

1 (B) TEMPORARY SUSPENSION OF VISA
2 ISSUANCE.—If the Secretary has not made the
3 certification referred to in subparagraph (A)
4 during the 120-day period, the Secretary shall
5 suspend issuance of visas under subparagraphs
6 (F) and (M) of section 101(a)(15) of the Immi-
7 gration and Nationality Act (8 U.S.C.
8 1101(a)(15)) until the certification is made.

9 **SEC. 4402. CLASSIFICATION FOR SPECIALTY OCCUPATION**
10 **WORKERS FROM FREE TRADE COUNTRIES.**

11 (a) NONIMMIGRANT STATUS.—Section
12 101(a)(15)(E) (8 U.S.C. 1101(a)(15)(E)) is amended—

13 (1) in the matter preceding clause (i), by insert-
14 ing “, bilateral investment treaty, or free trade
15 agreement” after “treaty of commerce and naviga-
16 tion”;

17 (2) in clause (ii), by striking “or” at the end;

18 and

19 (3) by adding at the end the following:

20 “(iv) solely to perform services in a
21 specialty occupation in the United States if
22 the alien is a national of a country, other
23 than Chile, Singapore, or Australia, with
24 which the United States has entered into a
25 free trade agreement (regardless of wheth-

1 er such an agreement is a treaty of com-
2 merce and navigation) and with respect to
3 whom the Secretary of Labor determines
4 and certifies to the Secretary of Homeland
5 Security and the Secretary of State that
6 the intending employer has filed with the
7 Secretary of Labor an attestation under
8 section 212(t);

9 “(v) solely to perform services in a
10 specialty occupation in the United States if
11 the alien is a national of the Republic of
12 Korea and with respect to whom the Sec-
13 retary of Labor determines and certifies to
14 the Secretary of Homeland Security and
15 the Secretary of State that the intending
16 employer has filed with the Secretary of
17 Labor an attestation under section 212(t);
18 or

19 “(vi) solely to perform services as an
20 employee and who has at least a high
21 school education or its equivalent, or has,
22 during the most recent 5-year period, at
23 least 2 years of work experience in an oc-
24 cupation which requires at least 2 years of

1 training or experience if the alien is a na-
2 tional of a country—

3 “(I) designated as an eligible
4 sub-Saharan African country under
5 section 104 of the African Growth
6 and Opportunity Act (19 U.S.C.
7 3703); or

8 “(II) designated as a beneficiary
9 country for purposes of the Caribbean
10 Basin Economic Recovery Act (19
11 U.S.C. 2701 et seq.);”.

12 (b) NUMERICAL LIMITATION.—Section 214(g)(11) (8
13 U.S.C. 1184(g)(11)) is amended—

14 (1) in subparagraph (A), by striking “section
15 101(a)(15)(E)(iii)” and inserting “clauses (iii) and
16 (vi) of section 101(a)(15)(E)”;

17 (2) by amending subparagraph (B) to read as
18 follows:

19 “(B) The applicable numerical limitation
20 referred to in subparagraph (A) for each fiscal
21 year is—

22 “(i) 10,500 for each of the nationali-
23 ties identified in clause (iii) of section
24 101(a)(15)(E); and

1 “(ii) 10,500 for all aliens described in
2 clause (vi) of such section.”.

3 (c) FREE TRADE AGREEMENTS.—Section 214(g) (8
4 U.S.C. 1184(g)) is amended by adding at the end the fol-
5 lowing:

6 “(12)(A) The free trade agreements referred to in
7 section 101(a)(15)(E)(iv) are defined as any free trade
8 agreement designated by the Secretary of Homeland Secu-
9 rity with the concurrence of the United States Trade Rep-
10 resentative and the Secretary of State.

11 “(B) The Secretary of State may not approve a num-
12 ber of initial applications submitted for aliens described
13 in clause (iv) or (v) of section 101(a)(15)(E) that is more
14 than 5,000 per fiscal year for each country with which
15 the United States has entered into a Free Trade Agree-
16 ment.

17 “(C) The applicable numerical limitation referred to
18 in subparagraph (A) shall apply only to principal aliens
19 and not to the spouses or children of such aliens.”.

20 (d) NONIMMIGRANT PROFESSIONALS.—Section
21 212(t) (8 U.S.C. 1182(t)) is amended by striking “section
22 101(a)(15)(E)(iii)” each place that term appears and in-
23 serting “clause (iv) or (v) of section 101(a)(15)(E)”.

1 **SEC. 4403. E-VISA REFORM.**

2 (a) NONIMMIGRANT CATEGORY.—Section
3 101(a)(15)(E)(iii) (8 U.S.C. 1101(a)(15)(E)(iii)) is
4 amended by inserting “, or solely to perform services as
5 an employee and who has at least a high school education
6 or its equivalent, or has, within 5 years, at least 2 years
7 of work experience in an occupation which requires at least
8 2 years of training or experience if the alien is a national
9 of the Republic of Ireland,” after “Australia”.

10 (b) TEMPORARY ADMISSION.—Section 212(d)(3)(A)
11 (8 U.S.C. 1182(d)(3)(A)) is amended to read as follows:

12 “(A) Except as otherwise provided in this sub-
13 section—

14 “(i) an alien who is applying for a non-
15 immigrant visa and who the consular officer
16 knows or believes to be ineligible for such visa
17 under subsection (a) (other than subparagraphs
18 (A)(i)(I), (A)(ii), (A)(iii), (C), (E)(i), and
19 (E)(ii) of paragraph (3) of such subsection)—

20 “(I) after approval by the Secretary of
21 Homeland Security of a recommendation
22 by the Secretary of State or by the con-
23 sular officer that the alien be admitted
24 temporarily despite the alien’s inadmis-
25 sibility, may be granted such a visa and
26 may be admitted into the United States

1 temporarily as a nonimmigrant, in the dis-
2 cretion of the Secretary of Homeland Secu-
3 rity; or

4 “(II) absent such recommendation
5 and approval, be granted a nonimmigrant
6 visa pursuant to section 101(a)(15)(E) if
7 such ineligibility is based solely on conduct
8 in violation of paragraph (6), (7), or (9) of
9 section 212(a) that occurred before the
10 date of the enactment of the Border Secu-
11 rity, Economic Opportunity, and Immigra-
12 tion Modernization Act; and

13 “(ii) an alien who is inadmissible under
14 subsection (a) (other than subparagraphs
15 (A)(i)(I), (A)(ii), (A)(iii), (C), (E)(i), and
16 (E)(ii) of paragraph (3) of such subsection), is
17 in possession of appropriate documents or was
18 granted a waiver from such document require-
19 ment, and is seeking admission, may be admit-
20 ted into the United States temporarily as a
21 nonimmigrant, in the discretion of the Sec-
22 retary of Homeland Security, who shall pre-
23 scribe conditions, including exaction of such
24 bonds as may be necessary, to control and regu-
25 late the admission and return of inadmissible

1 aliens applying for temporary admission under
2 this paragraph.”.

3 (c) NUMERICAL LIMITATION.—Section
4 214(g)(11)(B) (8 U.S.C. 1184(g)(11)(B)) is amended by
5 striking the period at the end and inserting “for each of
6 the nationalities identified under section
7 101(a)(15)(E)(iii).”.

8 **SEC. 4404. OTHER CHANGES TO NONIMMIGRANT VISAS.**

9 (a) PORTABILITY.—Paragraphs (1) and (2) of sec-
10 tion 214(n) (8 U.S.C. 1184(n)) are amended to read as
11 follows:

12 “(1) A nonimmigrant alien described in paragraph
13 (2) who was previously issued a visa or otherwise provided
14 nonimmigrant status under section 101(a)(15)(H)(i)(b) or
15 101(a)(15)(O)(i) is authorized to accept new employment
16 pursuant to such section upon the filing by the prospective
17 employer of a new petition on behalf of such nonimmigrant
18 as provided under subsection (a). Employment authoriza-
19 tion shall continue for such alien until the new petition
20 is adjudicated. If the new petition is denied, such author-
21 ization shall cease.

22 “(2) A nonimmigrant alien described in this para-
23 graph is a nonimmigrant alien—

24 “(A) who has been lawfully admitted into the
25 United States;

1 “(B) on whose behalf an employer has filed a
2 nonfrivolous petition for new employment before the
3 date of expiration of the period of stay authorized by
4 the Secretary of Homeland Security; and

5 “(C) who, subsequent to such lawful admission,
6 has not been employed without authorization in the
7 United States before the filing of such petition.”.

8 (b) WAIVER.—The undesignated material at the end
9 of section 214(c)(3) (8 U.S.C. 1184(c)(3)) is amended to
10 read as follows:

11 “The Secretary of Homeland Security shall provide by
12 regulation for the waiver of the consultation requirement
13 under subparagraph (A) in the case of aliens who have
14 been admitted as nonimmigrants under section
15 101(a)(15)(O)(i) because of extraordinary ability in the
16 arts or extraordinary achievement in motion picture or tel-
17 evision production and who seek readmission to perform
18 similar services within 3 years after the date of a consulta-
19 tion under such subparagraph provided that, in the case
20 of aliens admitted because of extraordinary achievement
21 in motion picture or television production, such waiver
22 shall apply only if the prior consultations by the appro-
23 priate union and management organization were favorable
24 or raised no objection to the approval of the petition. Not
25 later than 5 days after such a waiver is provided, the Sec-

1 retary shall forward a copy of the petition and all sup-
 2 porting documentation to the national office of an appro-
 3 priate labor organization. In the case of an alien seeking
 4 entry for a motion picture or television production (i) any
 5 opinion under the previous sentence shall only be advisory;
 6 (ii) any such opinion that recommends denial must be in
 7 writing; (iii) in making the decision the Attorney General
 8 shall consider the exigencies and scheduling of the produc-
 9 tion; (iv) the Attorney General shall append to the decision
 10 any such opinion; and (v) upon making the decision, the
 11 Attorney General shall immediately provide a copy of the
 12 decision to the consulting labor and management organi-
 13 zations.”.

14 **SEC. 4405. TREATMENT OF NONIMMIGRANTS DURING AD-**
 15 **JUDICATION OF APPLICATION.**

16 Section 214 (8 U.S.C. 1184), as amended by sections
 17 3609 and 4233, is further amended by adding at the end
 18 the following:

19 “(u) TREATMENT OF NONIMMIGRANTS DURING AD-
 20 JUDICATION OF APPLICATION.—A nonimmigrant alien
 21 granted employment authorization pursuant to sections
 22 101(a)(15)(A), 101(a)(15)(E), 101(a)(15)(G),
 23 101(a)(15)(H), 101(a)(15)(I), 101(a)(15)(J),
 24 101(a)(15)(L), 101(a)(15)(O), 101(a)(15)(P),
 25 101(a)(15)(Q), 101(a)(15)(R), 214(e), and such other sec-

1 tions as the Secretary of Homeland Security may by regu-
2 lations prescribe whose status has expired but who has,
3 or whose sponsoring employer or authorized agent has,
4 filed a timely application or petition for an extension of
5 such employment authorization and nonimmigrant status
6 as provided under subsection (a) is authorized to continue
7 employment with the same employer until the application
8 or petition is adjudicated. Such authorization shall be sub-
9 ject to the same conditions and limitations as the initial
10 grant of employment authorization.”.

11 **SEC. 4406. NONIMMIGRANT ELEMENTARY AND SECONDARY**
12 **SCHOOL STUDENTS.**

13 Section 214(m)(1)(B) (8 U.S.C. 1184(m)(1)(B)) is
14 amended striking “unless—” and all that follows through
15 “(ii)” and inserting “unless”.

16 **SEC. 4407. J-1 SUMMER WORK TRAVEL VISA EXCHANGE VIS-**
17 **ITOR PROGRAM FEE.**

18 Section 281 (8 U.S.C. 1351), as amended by section
19 4105, is further amended by adding at the end the fol-
20 lowing:

21 “(e) J-1 VISA EXCHANGE VISITOR PROGRAM FEE.—

22 “(1) IN GENERAL.—In addition to the fees au-
23 thorized under subsection (a), the Secretary of State
24 shall collect from designated program sponsors, a
25 \$500 fee for each nonimmigrant entering under the

1 Summer Work Travel program conducted by the
2 Secretary of State pursuant to the Foreign Affairs
3 Reform and Restructuring Act of 1998 (division G
4 of Public Law 105–277; 112 Stat. 2681–761). Fees
5 collected under this subsection shall be deposited
6 into the Comprehensive Immigration Reform Trust
7 Fund established under section 9(a)(1) of the Bor-
8 der Security, Economic Opportunity, and Immigra-
9 tion Modernization Act.

10 “(2) REGULATIONS AND LIMITATIONS.—The
11 Secretary of Homeland Security, in conjunction with
12 the Secretary of State, shall promulgate regulations
13 ensuring that a fee required by paragraph (1) is
14 paid on behalf of all summer work travel non-
15 immigrants under section 101(a)(15)(J) seeking
16 entry into the United States. A fee related to the
17 hiring of such a summer work travel nonimmigrant
18 shall be paid by the designated program sponsor and
19 may not be charged to such summer work travel
20 nonimmigrant. There shall not be more than 1 fee
21 collected per such summer work travel non-
22 immigrant.”

1 **SEC. 4408. J VISA ELIGIBILITY FOR SPEAKERS OF CERTAIN**
2 **FOREIGN LANGUAGES.**

3 (a) IN GENERAL.—Section 101(a)(15)(J) (8 U.S.C.
4 1101(a)(15)(J)) is amended to read as follows:

5 “(J) an alien having a residence in a for-
6 eign country which he has no intention of aban-
7 doning who—

8 “(i) is a bona fide student, scholar,
9 trainee, teacher, professor, research assist-
10 ant, specialist, or leader in a field of spe-
11 cialized knowledge or skill, or other person
12 of similar description, who is coming tem-
13 porarily to the United States as a partici-
14 pant in a program designated by the Di-
15 rector of the United States Information
16 Agency, for the purpose of teaching, in-
17 structing or lecturing, studying, observing,
18 conducting research, consulting, dem-
19 onstrating special skills, or receiving train-
20 ing and who, if such alien is coming to the
21 United States to participate in a program
22 under which such alien will receive grad-
23 uate medical education or training, also
24 meets the requirements of section 212(j),
25 and the alien spouse and minor children of

1 any such alien if accompanying such alien
2 or following to join such alien; or

3 “(ii) is coming to the United States to
4 perform work involving specialized knowl-
5 edge or skill, including teaching on a full-
6 time or part-time basis, that requires pro-
7 ficiency of languages spoken as a native
8 language in countries of which fewer than
9 5,000 nationals were lawfully admitted for
10 permanent residence in the United States
11 in the previous year;”.

12 (b) REQUIREMENT FOR ANNUAL LIST OF COUN-
13 TRIES.—The Secretary of State shall publish an annual
14 list of the countries described in clause (ii) of section
15 101(a)(15)(J) of the Immigration and Nationality Act (8
16 U.S.C. 1101(a)(15)(J)), as added by subsection (a).

17 **SEC. 4409. F-1 VISA FEE.**

18 Section 281 (8 U.S.C. 1351), as amended by sections
19 4105 and 4407, is further amended by adding at the end
20 the following:

21 “(f) F-1 VISA FEE.—

22 “(1) IN GENERAL.—In addition to the fees au-
23 thorized under subsection (a), the Secretary of
24 Homeland Security shall collect a \$100 fee from
25 each nonimmigrant admitted under section

1 101(a)(15)(F)(i). Fees collected under this sub-
2 section shall be deposited into the Comprehensive
3 Immigration Reform Trust Fund established under
4 section 9(a)(1) of the Border Security, Economic
5 Opportunity, and Immigration Modernization Act.

6 “(2) RULEMAKING.—The Secretary of Home-
7 land Security, in conjunction with the Secretary of
8 State, shall promulgate regulations to ensure that—

9 “(A) the fee authorized under paragraph
10 (1) is paid on behalf of all J–1 nonimmigrants
11 seeking entry into the United States;

12 “(B) a fee related to the hiring of a J–1
13 nonimmigrant is not deducted from the wages
14 or other compensation paid to the J–1 non-
15 immigrant; and

16 “(C) not more than 1 fee is collected per
17 J–1 nonimmigrant.”.

18 **SEC. 4410. PILOT PROGRAM FOR REMOTE B NON-**
19 **IMMIGRANT VISA INTERVIEWS.**

20 Section 222 (8 U.S.C. 1202) is amended by adding
21 at the end the following:

22 “(i)(1) Except as provided in paragraph (3), the Sec-
23 retary of State—

24 “(A) shall develop and conduct a pilot program
25 for processing visas under section 101(a)(15)(B)

1 using secure remote videoconferencing technology as
2 a method for conducting any required in person
3 interview of applicants; and

4 “(B) in consultation with the heads of other
5 Federal agencies that use such secure communica-
6 tions, shall help ensure the security of the
7 videoconferencing transmission and encryption con-
8 ducted under subparagraph (A).

9 “(2) Not later than 90 days after the termination of
10 the pilot program authorized under paragraph (1), the
11 Secretary of State shall submit to the appropriate commit-
12 tees of Congress a report that contains—

13 “(A) a detailed description of the results of
14 such program, including an assessment of the effi-
15 cacy, efficiency, and security of the remote
16 videoconferencing technology as a method for con-
17 ducting visa interviews of applicants; and

18 “(B) recommendations for whether such pro-
19 gram should be continued, broadened, or modified.

20 “(3) The pilot program authorized under paragraph
21 (1) may not be conducted if the Secretary of State deter-
22 mines that such program—

23 “(A) poses an undue security risk; and

24 “(B) cannot be conducted in a manner con-
25 sistent with maintaining security controls.

1 “(4) If the Secretary of State makes a determination
2 under paragraph (3), the Secretary shall submit a report
3 to the appropriate committees of Congress that describes
4 the reasons for such determination.

5 “(5) In this subsection:

6 “(A) The term ‘appropriate committees of Con-
7 gress’ means—

8 “(i) the Committee on the Judiciary, the
9 Committee on Foreign Relations, and the Com-
10 mittee on Appropriations of the Senate; and

11 “(ii) the Committee on the Judiciary, the
12 Committee on Foreign Affairs, and the Com-
13 mittee on Appropriations of the House of Rep-
14 resentatives.

15 “(B) The term ‘in person interview’ includes
16 interviews conducted using remote video tech-
17 nology.”.

18 **SEC. 4411. PROVIDING CONSULAR OFFICERS WITH ACCESS**
19 **TO ALL TERRORIST DATABASES AND REQUIR-**
20 **ING HEIGHTENED SCRUTINY OF APPLICA-**
21 **TIONS FOR ADMISSION FROM PERSONS LIST-**
22 **ED ON TERRORIST DATABASES.**

23 Section 222 (8 U.S.C. 1202), as amended by section
24 4410, is further amended by adding at the end the fol-
25 lowing:

1 “(j) PROVIDING CONSULAR OFFICERS WITH ACCESS
2 TO ALL TERRORIST DATABASES AND REQUIRING
3 HEIGHTENED SCRUTINY OF APPLICATIONS FOR ADMIS-
4 SION FROM PERSONS LISTED ON TERRORIST DATA-
5 BASES.—

6 “(1) ACCESS TO THE SECRETARY OF STATE.—

7 “(A) IN GENERAL.—Except as provided in
8 subparagraph (B), the Secretary of State shall
9 have access to all terrorism records and data-
10 bases maintained by any agency or department
11 of the United States for the purposes of deter-
12 mining whether an applicant for admission
13 poses a security threat to the United States.

14 “(B) EXCEPTION.—The head of such an
15 agency or department may only withhold access
16 to terrorism records and databases from the
17 Secretary of State if such head is able to articu-
18 late that withholding is necessary to prevent the
19 unauthorized disclosure of information that
20 clearly identifies, or would reasonably permit
21 ready identification of, intelligence or sensitive
22 law enforcement sources, methods, or activities.

23 “(2) BIOGRAPHIC AND BIOMETRIC SCREEN-
24 ING.—

1 “(A) REQUIREMENT FOR BIOGRAPHIC AND
2 BIOMETRIC SCREENING.—Notwithstanding any
3 other provision of this Act, the Secretary of
4 State shall require every alien applying for ad-
5 mission to the United States to submit to bio-
6 graphic and biometric screening to determine
7 whether the alien’s name or biometric informa-
8 tion is listed in any terrorist watch list or data-
9 base maintained by any agency or department
10 of the United States.

11 “(B) EXCLUSIONS.—No alien applying for
12 a visa to the United States shall be granted
13 such visa by a consular officer if the alien’s
14 name or biometric information is listed in any
15 terrorist watch list or database referred to in
16 subparagraph (A) unless—

17 “(i) screening of the alien’s visa appli-
18 cation against interagency counterter-
19 rorism screening systems which compare
20 the applicant’s information against data in
21 all counterterrorism watch lists and data-
22 bases reveals no potentially pertinent links
23 to terrorism;

24 “(ii) the consular officer submits the
25 application for further review to the Sec-

1 retary of State and the heads of other rel-
2 evant agencies, including the Secretary of
3 Homeland Security and the Director of
4 National Intelligence; and

5 “(iii) the Secretary of State, after
6 consultation with the Secretary of Home-
7 land Security, the Director of National In-
8 telligence, and the heads of other relevant
9 agencies, certifies that the alien is admis-
10 sible to the United States.”.

11 **SEC. 4412. VISA REVOCATION INFORMATION.**

12 Section 428 of the Homeland Security Act of 2002
13 (6 U.S.C. 236) is amended by adding at the end the fol-
14 lowing:

15 “(j) VISA REVOCATION INFORMATION.—If the Sec-
16 retary of State or the Secretary of Homeland Security re-
17 voke a visa—

18 “(1) the fact of the revocation shall be imme-
19 diately provided to the relevant consular officers, law
20 enforcement, and terrorist screening databases; and

21 “(2) a notice of such revocation shall be posted
22 to all Department of Homeland Security port inspec-
23 tors and to all consular officers.”.

1 **SEC. 4413. STATUS FOR CERTAIN BATTERED SPOUSES AND**
2 **CHILDREN.**

3 (a) NONIMMIGRANT STATUS FOR CERTAIN BAT-
4 TERED SPOUSES AND CHILDREN.—Section 101(a)(51) (8
5 U.S.C. 1101(a)(51)), as amended by section
6 2305(d)(6)(B)(i)(III), is further amended—

7 (1) in subparagraph (E), by striking “or” at
8 the end;

9 (2) in subparagraph (F), by striking the period
10 at the end and inserting “; or”; and

11 (3) by adding at the end the following:

12 “(G) section 106 as an abused derivative
13 alien.”.

14 (b) RELIEF FOR ABUSED DERIVATIVE ALIENS.—

15 (1) IN GENERAL.—Section 106 (8 U.S.C.
16 1105a) is amended to read as follows:

17 **“SEC. 106. RELIEF FOR ABUSED DERIVATIVE ALIENS.**

18 “(a) ABUSED DERIVATIVE ALIEN DEFINED.—In this
19 section, the term ‘abused derivative alien’ means an alien
20 who—

21 “(1) is the spouse or child admitted under sec-
22 tion 101(a)(15) or pursuant to a blue card status
23 granted under section 2211 of the Border Security,
24 Economic Opportunity, and Immigration Moderniza-
25 tion Act;

1 “(2) is accompanying or following to join a
2 principal alien admitted under such a section; and

3 “(3) has been subjected to battery or extreme
4 cruelty by such principal alien.

5 “(b) RELIEF FOR ABUSED DERIVATIVE ALIENS.—
6 The Secretary of Homeland Security—

7 “(1) shall grant or extend the status of admis-
8 sion of an abused derivative alien under section
9 101(a)(15) or section 2211 of the Border Security,
10 Economic Opportunity, and Immigration Moderniza-
11 tion Act under which the principal alien was admit-
12 ted for the longer of—

13 “(A) the same period for which the prin-
14 cipal was initially admitted; or

15 “(B) a period of 3 years;

16 “(2) may renew a grant or extension of status
17 made under paragraph (1);

18 “(3) shall grant employment authorization to
19 an abused derivative alien; and

20 “(4) may adjust the status of the abused deriv-
21 ative alien to that of an alien lawfully admitted for
22 permanent residence if—

23 “(A) the alien is admissible under section
24 212(a) or the Secretary of Homeland Security
25 finds the alien’s continued presence in the

1 United States is justified on humanitarian
 2 grounds, to ensure family unity, or is otherwise
 3 in the public interest; and

4 “(B) the status under which the principal
 5 alien was admitted to the United States would
 6 have potentially allowed for eventual adjustment
 7 of status.

8 “(c) EFFECT OF TERMINATION OF RELATIONSHIP.—
 9 Termination of the relationship with principal alien shall
 10 not affect the status of an abused derivative alien under
 11 this section if battery or extreme cruelty by the principal
 12 alien was 1 central reason for termination of the relation-
 13 ship.

14 “(d) PROCEDURES.—Requests for relief under this
 15 section shall be handled under the procedures that apply
 16 to aliens seeking relief under section 204(a)(1)(C).”.

17 (2) TABLE OF CONTENTS AMENDMENT.—The
 18 table of contents in the first section is amended by
 19 striking the item relating to section 106 and insert-
 20 ing the following:

“Sec. 106. Relief for abused derivative aliens.”.

21 **SEC. 4414. NONIMMIGRANT CREWMEN LANDING TEMPO-**
 22 **RARILY IN HAWAII.**

23 (a) IN GENERAL.—Section 101(a)(15)(D)(ii) (8
 24 U.S.C. 1101(a)(15)(D)(ii)) is amended—

1 **“SEC. 214A. TREATMENT OF COMPACT OF FREE ASSOCIA-**
2 **TION MIGRANTS.**

3 “Notwithstanding any other provision of law, with re-
4 spect to eligibility for benefits for the Federal program
5 defined in 402(b)(3)(C) of the Personal Responsibility and
6 Work Opportunity Reconciliation Act of 1996 (8 U.S.C.
7 1612(b)(3)(C)) (relating to the Medicaid program), sec-
8 tions 401(a), 402(b)(1), and 403(a) of the Personal Re-
9 sponsibility and Work Opportunity Reconciliation Act of
10 1996 (8 U.S.C. 1611(a), 1612(b)(1), 1613(a)) shall not
11 apply to any individual who lawfully resides in the United
12 States in accordance with the Compacts of Free Associa-
13 tion between the Government of the United States and
14 the Governments of the Federated States of Micronesia,
15 the Republic of the Marshall Islands, and the Republic of
16 Palau. Any individual to which the preceding sentence ap-
17 plies shall be considered to be a qualified alien for pur-
18 poses of title IV of the Personal Responsibility and Work
19 Opportunity Reconciliation Act of 1996 (8 U.S.C. 1601
20 et seq.), but only with respect to the designated Federal
21 program defined in section 402(b)(3)(C) of such Act (re-
22 lating to the Medicaid program) (8 U.S.C.
23 1612(b)(3)(C)).”.

24 (b) CONFORMING AMENDMENTS.—Section 1108 of
25 the Social Security Act (42 U.S.C. 1308) is amended—

1 limited, pilot basis only, a fee-based premium pro-
2 cessing service to expedite interview appointments. In
3 establishing a pilot processing service, the Secretary
4 may—

5 “(A) determine the consular posts at which
6 the pilot service will be available;

7 “(B) establish the duration of the pilot
8 service;

9 “(C) define the terms and conditions of the
10 pilot service, with the goal of expediting visa
11 appointments and the interview process for
12 those electing to pay said fee for the service;
13 and

14 “(D) resources permitting, during the pilot
15 service, consider the addition of consulates in
16 locations advantageous to foreign policy objec-
17 tives or in highly populated locales.

18 “(2) FEES.—

19 “(A) AUTHORITY TO COLLECT.—The Sec-
20 retary of State is authorized to collect, and set
21 the amount of, a fee imposed for the premium
22 processing service. The Secretary of State shall
23 set the fee based on all relevant considerations
24 including, the cost of expedited service.

1 “(B) USE OF FEES.—Fees collected under
2 the authority of subparagraph (A) shall be de-
3 posited as an offsetting collection to any De-
4 partment of State appropriation, to recover the
5 costs of providing consular services. Such fees
6 shall remain available for obligation until ex-
7 pended.

8 “(C) RELATIONSHIP TO OTHER FEES.—
9 Such fee is in addition to any existing fee cur-
10 rently being collected by the Department of
11 State.

12 “(D) NONREFUNDABLE.—Such fee will be
13 nonrefundable to the applicant.

14 “(3) DESCRIPTION OF PREMIUM PROC-
15 ESSING.—Premium processing pertains solely to the
16 expedited scheduling of a visa interview. Utilizing
17 the premium processing service for an expedited
18 interview appointment does not establish the appli-
19 cant’s eligibility for a visa. The Secretary of State
20 shall, if possible, inform applicants utilizing the pre-
21 mium processing of potential delays in visa issuance
22 due to additional screening requirements, including
23 necessary security-related checks and clearances.

24 “(4) REPORT TO CONGRESS.—

1 “(A) REQUIREMENT FOR REPORT.—Not
2 later than 18 months after the date of the en-
3 actment of the JOLT Act of 2013, the Sec-
4 retary of State shall submit to the appropriate
5 committees of Congress a report on the results
6 of the pilot service carried out under this sec-
7 tion.

8 “(B) APPROPRIATE COMMITTEES OF CON-
9 GRESS DEFINED.—In this paragraph, the term
10 ‘appropriate committees of Congress’ means—

11 “(i) the Committee on the Judiciary,
12 the Committee on Foreign Relations, and
13 the Committee on Appropriations of the
14 Senate; and

15 “(ii) the Committee on the Judiciary,
16 the Committee on Foreign Affairs, and the
17 Committee on Appropriations of the House
18 of Representatives.”.

19 **SEC. 4503. ENCOURAGING CANADIAN TOURISM TO THE**
20 **UNITED STATES.**

21 Section 214 (8 U.S.C. 1184), as amended by sections
22 3609, 4233, and 4405, is further amended by adding at
23 the end the following:

24 “(v) CANADIAN RETIREES.—

1 “(1) IN GENERAL.—The Secretary of Homeland
2 Security may admit as a visitor for pleasure as de-
3 scribed in section 101(a)(15)(B) any alien for a pe-
4 riod not to exceed 240 days, if the alien dem-
5 onstrates, to the satisfaction of the Secretary, that
6 the alien—

7 “(A) is a citizen of Canada;

8 “(B) is at least 55 years of age;

9 “(C) maintains a residence in Canada;

10 “(D) owns a residence in the United States
11 or has signed a rental agreement for accom-
12 modations in the United States for the duration
13 of the alien’s stay in the United States;

14 “(E) is not inadmissible under section 212;

15 “(F) is not described in any ground of de-
16 portability under section 237;

17 “(G) will not engage in employment or
18 labor for hire in the United States; and

19 “(H) will not seek any form of assistance
20 or benefit described in section 403(a) of the
21 Personal Responsibility and Work Opportunity
22 Reconciliation Act of 1996 (8 U.S.C. 1613(a)).

23 “(2) SPOUSE.—The spouse of an alien de-
24 scribed in paragraph (1) may be admitted under the
25 same terms as the principal alien if the spouse satis-

1 fies the requirements of paragraph (1), other than
2 subparagraphs (B) and (D).

3 “(3) IMMIGRANT INTENT.—In determining eli-
4 gibility for admission under this subsection, mainte-
5 nance of a residence in the United States shall not
6 be considered evidence of intent by the alien to
7 abandon the alien’s residence in Canada.

8 “(4) PERIOD OF ADMISSION.—During any sin-
9 gle 365-day period, an alien may be admitted as de-
10 scribed in section 101(a)(15)(B) pursuant to this
11 subsection for a period not to exceed 240 days, be-
12 ginning on the date of admission. Unless an exten-
13 sion is approved by the Secretary, periods of time
14 spent outside the United States during such 240-day
15 period shall not toll the expiration of such 240-day
16 period.”.

17 **SEC. 4504. RETIREE VISA.**

18 (a) NONIMMIGRANT STATUS.—Section 101(a)(15),
19 as amended, is further amended by inserting after sub-
20 paragraph (X) the following:

21 “(Y) subject to section 214(w), an alien
22 who, after the date of the enactment of the
23 JOLT Act of 2013—

24 “(i)(I) uses at least \$500,000 in cash
25 to purchase 1 or more residences in the

1 United States, which each sold for more
2 than 100 percent of the most recent ap-
3 praised value of such residence, as deter-
4 mined by the property assessor in the city
5 or county in which the residence is located;

6 “(II) maintains ownership of residen-
7 tial property in the United States worth at
8 least \$500,000 during the entire period the
9 alien remains in the United States as a
10 nonimmigrant described in this subpara-
11 graph; and

12 “(III) resides for more than 180 days
13 per year in a residence in the United
14 States that is worth at least \$250,000; and

15 “(ii) the alien spouse and children of
16 the alien described in clause (i) if accom-
17 panying or following to join the alien.”

18 (b) VISA APPLICATION PROCEDURES.—Section 214
19 (8 U.S.C. 1184), as amended by sections 3609, 4233,
20 4405, and 4503, is further amended by adding at the end
21 the following:

22 “(w) VISAS OF NONIMMIGRANTS DESCRIBED IN SEC-
23 TION 101(a)(15)(Y).—

24 “(1) The Secretary of Homeland Security shall
25 authorize the issuance of a nonimmigrant visa to

1 any alien described in section 101(a)(15)(Y) who
2 submits a petition to the Secretary that—

3 “(A) demonstrates, to the satisfaction of
4 the Secretary, that the alien—

5 “(i) has purchased a residence in the
6 United States that meets the criteria set
7 forth in section 101(a)(15)(Y)(i);

8 “(ii) is at least 55 years of age;

9 “(iii) possesses health insurance cov-
10 erage;

11 “(iv) is not inadmissible under section
12 212; and

13 “(v) will comply with the terms set
14 forth in paragraph (2); and

15 “(B) includes payment of a fee in an
16 amount equal to \$1,000.

17 “(2) An alien who is issued a visa under this
18 subsection—

19 “(A) shall reside in the United States at a
20 residence that meets the criteria set forth in
21 section 101(a)(15)(Y)(i) for more than 180
22 days per year;

23 “(B) is not authorized to engage in em-
24 ployment in the United States, except for em-
25 ployment that is directly related to the manage-

1 ment of the residential property described in
2 section 101(Y)(i)(II);

3 “(C) is not eligible for any form of assist-
4 ance or benefit described in section 403(a) of
5 the Personal Responsibility and Work Oppor-
6 tunity Reconciliation Act of 1996 (8 U.S.C.
7 1613(a)); and

8 “(D) may renew such visa every 3 years
9 under the same terms and conditions.”.

10 (c) USE OF FEE.—Fees collected under section
11 214(w)(1)(B) of the Immigration and Nationality Act, as
12 added by subsection (b), shall be deposited in the Com-
13 prehensive Immigration Reform Trust Fund established
14 under section 9(a)(1).

15 **SEC. 4505. INCENTIVES FOR FOREIGN VISITORS VISITING**
16 **THE UNITED STATES DURING LOW PEAK SEA-**
17 **SONS.**

18 The Secretary of State shall make publically avail-
19 able, on a monthly basis, historical data, for the previous
20 2 years, regarding the availability of visa appointments for
21 each visa processing post, to allow applicants to identify
22 periods of low demand, when wait times tend to be lower.

1 **SEC. 4506. VISA WAIVER PROGRAM ENHANCED SECURITY**
2 **AND REFORM.**

3 (a) DEFINITIONS.—Section 217(c)(1) (8 U.S.C.
4 1187(c)(1)) is amended to read as follows:

5 “(1) AUTHORITY TO DESIGNATE; DEFINI-
6 TIONS.—

7 “(A) AUTHORITY TO DESIGNATE.—The
8 Secretary of Homeland Security, in consultation
9 with the Secretary of State, may designate any
10 country as a program country if that country
11 meets the requirements under paragraph (2).

12 “(B) DEFINITIONS.—In this subsection:

13 “(i) APPROPRIATE CONGRESSIONAL
14 COMMITTEES.—The term ‘appropriate con-
15 gressional committees’ means—

16 “(I) the Committee on Foreign
17 Relations, the Committee on Home-
18 land Security and Governmental Af-
19 fairs, and the Committee on the Judi-
20 ciary of the Senate; and

21 “(II) the Committee on Foreign
22 Affairs, the Committee on Homeland
23 Security, and the Committee on the
24 Judiciary of the House of Representa-
25 tives.

26 “(ii) OVERSTAY RATE.—

1 “(I) INITIAL DESIGNATION.—The
2 term ‘overstay rate’ means, with re-
3 spect to a country being considered
4 for designation in the program, the
5 ratio of—

6 “(aa) the number of nation-
7 als of that country who were ad-
8 mitted to the United States on
9 the basis of a nonimmigrant visa
10 under section 101(a)(15)(B)
11 whose periods of authorized stay
12 ended during a fiscal year but
13 who remained unlawfully in the
14 United States beyond such peri-
15 ods; to

16 “(bb) the number of nation-
17 als of that country who were ad-
18 mitted to the United States on
19 the basis of a nonimmigrant visa
20 under section 101(a)(15)(B)
21 whose periods of authorized stay
22 ended during that fiscal year.

23 “(II) CONTINUING DESIGNA-
24 TION.—The term ‘overstay rate’
25 means, for each fiscal year after ini-

1 tial designation under this section
2 with respect to a country, the ratio
3 of—

4 “(aa) the number of nation-
5 als of that country who were ad-
6 mitted to the United States
7 under this section or on the basis
8 of a nonimmigrant visa under
9 section 101(a)(15)(B) whose pe-
10 riods of authorized stay ended
11 during a fiscal year but who re-
12 mained unlawfully in the United
13 States beyond such periods; to

14 “(bb) the number of nation-
15 als of that country who were ad-
16 mitted to the United States
17 under this section or on the basis
18 of a nonimmigrant visa under
19 section 101(a)(15)(B) whose pe-
20 riods of authorized stay ended
21 during that fiscal year.

22 “(III) COMPUTATION OF OVER-
23 STAY RATE.—In determining the over-
24 stay rate for a country, the Secretary
25 of Homeland Security may utilize in-

1 formation from any available data-
2 bases to ensure the accuracy of such
3 rate.

4 “(iii) PROGRAM COUNTRY.—The term
5 ‘program country’ means a country des-
6 ignated as a program country under sub-
7 paragraph (A).”.

8 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
9 Section 217 (8 U.S.C. 1187) is amended—

10 (1) by striking “Attorney General” each place
11 the term appears (except in subsection (c)(11)(B))
12 and inserting “Secretary of Homeland Security”;
13 and

14 (2) in subsection (c)—

15 (A) in paragraph (2)(C)(iii), by striking
16 “Committee on the Judiciary and the Com-
17 mittee on International Relations of the House
18 of Representatives and the Committee on the
19 Judiciary and the Committee on Foreign Rela-
20 tions of the Senate” and inserting “appropriate
21 congressional committees”;

22 (B) in paragraph (5)(A)(i)(III), by striking
23 “Committee on the Judiciary, the Committee on
24 Foreign Affairs, and the Committee on Home-
25 land Security, of the House of Representatives

1 and the Committee on the Judiciary, the Com-
2 mittee on Foreign Relations, and the Com-
3 mittee on Homeland Security and Govern-
4 mental Affairs of the Senate” and inserting
5 “appropriate congressional committees”; and

6 (C) in paragraph (7), by striking subpara-
7 graph (E).

8 (c) DESIGNATION OF PROGRAM COUNTRIES BASED
9 ON OVERSTAY RATES.—

10 (1) IN GENERAL.—Section 217(c)(2)(A) (8
11 U.S.C. 1187(c)(2)(A)) is amended to read as fol-
12 lows:

13 “(A) GENERAL NUMERICAL LIMITA-
14 TIONS.—

15 “(i) LOW NONIMMIGRANT VISA RE-
16 FUSAL RATE.—The percentage of nationals
17 of that country refused nonimmigrant visas
18 under section 101(a)(15)(B) during the
19 previous full fiscal year was not more than
20 3 percent of the total number of nationals
21 of that country who were granted or re-
22 fused nonimmigrant visas under such sec-
23 tion during such year.

24 “(ii) LOW NONIMMIGRANT OVERSTAY
25 RATE.—The overstay rate for that country

1 ought to be continued or ter-
2 minated;”.

3 (5) COMPUTATION OF VISA REFUSAL RATES;
4 JUDICIAL REVIEW.—Section 217(c)(6) (8 U.S.C.
5 1187(c)(6)) is amended to read as follows:

6 “(6) COMPUTATION OF VISA REFUSAL RATES
7 AND JUDICIAL REVIEW.—

8 “(A) COMPUTATION OF VISA REFUSAL
9 RATES.—For purposes of determining the eligi-
10 bility of a country to be designated as a pro-
11 gram country, the calculation of visa refusal
12 rates shall not include any visa refusals which
13 incorporate any procedures based on, or are
14 otherwise based on, race, sex, or disability, un-
15 less otherwise specifically authorized by law or
16 regulation.

17 “(B) JUDICIAL REVIEW.—No court shall
18 have jurisdiction under this section to review
19 any visa refusal, the Secretary of State’s com-
20 putation of a visa refusal rate, the Secretary of
21 Homeland Security’s computation of an over-
22 stay rate, or the designation or nondesignation
23 of a country as a program country.”.

1 (6) VISA WAIVER INFORMATION.—Section
2 217(c)(7) (8 U.S.C. 1187(c)(7)), as amended by
3 subsection (b)(2)(C), is further amended—

4 (A) by striking subparagraphs (B) through
5 (D); and

6 (B) by striking “WAIVER INFORMATION.—
7 ” and all that follows through “In refusing”
8 and inserting “WAIVER INFORMATION.—In re-
9 fusing”.

10 (7) WAIVER AUTHORITY.—Section 217(c)(8) (8
11 U.S.C. 1187(c)(8)) is amended to read as follows:

12 “(8) WAIVER AUTHORITY.—The Secretary of
13 Homeland Security, in consultation with the Sec-
14 retary of State, may waive the application of para-
15 graph (2)(A)(i) for a country if—

16 “(A) the country meets all other require-
17 ments of paragraph (2);

18 “(B) the Secretary of Homeland Security
19 determines that the totality of the country’s se-
20 curity risk mitigation measures provide assur-
21 ance that the country’s participation in the pro-
22 gram would not compromise the law enforce-
23 ment, security interests, or enforcement of the
24 immigration laws of the United States;

1 “(C) there has been a general downward
2 trend in the percentage of nationals of the
3 country refused nonimmigrant visas under sec-
4 tion 101(a)(15)(B);

5 “(D) the country consistently cooperated
6 with the Government of the United States on
7 counterterrorism initiatives, information shar-
8 ing, preventing terrorist travel, and extradition
9 to the United States of individuals (including
10 the country’s own nationals) who commit
11 crimes that violate United States law before the
12 date of its designation as a program country,
13 and the Secretary of Homeland Security and
14 the Secretary of State assess that such coopera-
15 tion is likely to continue; and

16 “(E) the percentage of nationals of the
17 country refused a nonimmigrant visa under sec-
18 tion 101(a)(15)(B) during the previous full fis-
19 cal year was not more than 10 percent of the
20 total number of nationals of that country who
21 were granted or refused such nonimmigrant
22 visas.”.

23 (d) TERMINATION OF DESIGNATION; PROBATION.—
24 Section 217(f) (8 U.S.C. 1187(f)) is amended to read as
25 follows:

1 “(f) TERMINATION OF DESIGNATION; PROBATION.—

2 “(1) DEFINITIONS.—In this subsection:

3 “(A) PROBATIONARY PERIOD.—The term
4 ‘probationary period’ means the fiscal year in
5 which a probationary country is placed in pro-
6 bationary status under this subsection.

7 “(B) PROGRAM COUNTRY.—The term ‘pro-
8 gram country’ has the meaning given that term
9 in subsection (c)(1)(B).

10 “(2) DETERMINATION, NOTICE, AND INITIAL
11 PROBATIONARY PERIOD.—

12 “(A) DETERMINATION OF PROBATIONARY
13 STATUS AND NOTICE OF NONCOMPLIANCE.—As
14 part of each program country’s periodic evalua-
15 tion required by subsection (c)(5)(A), the Sec-
16 retary of Homeland Security shall determine
17 whether a program country is in compliance
18 with the program requirements under subpara-
19 graphs (A)(ii) through (F) of subsection (c)(2).

20 “(B) INITIAL PROBATIONARY PERIOD.—If
21 the Secretary of Homeland Security determines
22 that a program country is not in compliance
23 with the program requirements under subpara-
24 graphs (A)(ii) through (F) of subsection (c)(2),
25 the Secretary of Homeland Security shall place

1 the program country in probationary status for
2 the fiscal year following the fiscal year in which
3 the periodic evaluation is completed.

4 “(3) ACTIONS AT THE END OF THE INITIAL
5 PROBATIONARY PERIOD.—At the end of the initial
6 probationary period of a country under paragraph
7 (2)(B), the Secretary of Homeland Security shall
8 take 1 of the following actions:

9 “(A) COMPLIANCE DURING INITIAL PROBA-
10 TIONARY PERIOD.—If the Secretary determines
11 that all instances of noncompliance with the
12 program requirements under subparagraphs
13 (A)(ii) through (F) of subsection (c)(2) that
14 were identified in the latest periodic evaluation
15 have been remedied by the end of the initial
16 probationary period, the Secretary shall end the
17 country’s probationary period.

18 “(B) NONCOMPLIANCE DURING INITIAL
19 PROBATIONARY PERIOD.—If the Secretary de-
20 termines that any instance of noncompliance
21 with the program requirements under subpara-
22 graphs (A)(ii) through (F) of subsection (c)(2)
23 that were identified in the latest periodic eval-
24 uation has not been remedied by the end of the
25 initial probationary period—

1 “(i) the Secretary may terminate the
2 country’s participation in the program; or

3 “(ii) on an annual basis, the Secretary
4 may continue the country’s probationary
5 status if the Secretary, in consultation
6 with the Secretary of State, determines
7 that the country’s continued participation
8 in the program is in the national interest
9 of the United States.

10 “(4) ACTIONS AT THE END OF ADDITIONAL
11 PROBATIONARY PERIODS.—At the end of all proba-
12 tionary periods granted to a country pursuant to
13 paragraph (3)(B)(ii), the Secretary shall take 1 of
14 the following actions:

15 “(A) COMPLIANCE DURING ADDITIONAL
16 PERIOD.—The Secretary shall end the country’s
17 probationary status if the Secretary determines
18 during the latest periodic evaluation required by
19 subsection (c)(5)(A) that the country is in com-
20 pliance with the program requirements under
21 subparagraphs (A)(ii) through (F) of subsection
22 (c)(2).

23 “(B) NONCOMPLIANCE DURING ADDI-
24 TIONAL PERIODS.—The Secretary shall termi-
25 nate the country’s participation in the program

1 if the Secretary determines during the latest
2 periodic evaluation required by subsection
3 (c)(5)(A) that the program country continues to
4 be in noncompliance with the program require-
5 ments under subparagraphs (A)(ii) through (F)
6 of subsection (c)(2).

7 “(5) EFFECTIVE DATE.—The termination of a
8 country’s participation in the program under para-
9 graph (3)(B) or (4)(B) shall take effect on the first
10 day of the first fiscal year following the fiscal year
11 in which the Secretary determines that such partici-
12 pation shall be terminated. Until such date, nation-
13 als of the country shall remain eligible for a waiver
14 under subsection (a).

15 “(6) TREATMENT OF NATIONALS AFTER TERMI-
16 NATION.—For purposes of this subsection and sub-
17 section (d)—

18 “(A) nationals of a country whose designa-
19 tion is terminated under paragraph (3) or (4)
20 shall remain eligible for a waiver under sub-
21 section (a) until the effective date of such ter-
22 mination; and

23 “(B) a waiver under this section that is
24 provided to such a national for a period de-
25 scribed in subsection (a)(1) shall not, by such

1 termination, be deemed to have been rescinded
2 or otherwise rendered invalid, if the waiver is
3 granted prior to such termination.

4 “(7) CONSULTATIVE ROLE OF THE SECRETARY
5 OF STATE.—In this subsection, references to sub-
6 paragraphs (A)(ii) through (F) of subsection (c)(2)
7 and subsection (c)(5)(A) carry with them the con-
8 sultative role of the Secretary of State as provided
9 in those provisions.”.

10 (e) REVIEW OF OVERSTAY TRACKING METHOD-
11 OLOGY.—Not later than 180 days after the date of the
12 enactment of this Act, the Comptroller General of the
13 United States shall conduct a review of the methods used
14 by the Secretary—

15 (1) to track aliens entering and exiting the
16 United States; and

17 (2) to detect any such alien who stays longer
18 than such alien’s period of authorized admission.

19 (f) EVALUATION OF ELECTRONIC SYSTEM FOR
20 TRAVEL AUTHORIZATION.—Not later than 90 days after
21 the date of the enactment of this Act, the Secretary shall
22 submit to Congress—

23 (1) an evaluation of the security risks of aliens
24 who enter the United States without an approved

1 Electronic System for Travel Authorization
2 verification; and

3 (2) a description of any improvements needed
4 to minimize the number of aliens who enter the
5 United States without the verification described in
6 paragraph (1).

7 (g) SENSE OF CONGRESS ON PRIORITY FOR REVIEW
8 OF PROGRAM COUNTRIES.—It is the sense of Congress
9 that the Secretary, in the process of conducting evalua-
10 tions of countries participating in the visa waiver program
11 under section 217 of the Immigration and Nationality Act
12 (8 U.S.C. 1187), should prioritize the reviews of countries
13 in which circumstances indicate that such a review is nec-
14 essary or desirable.

15 (h) ELIGIBILITY OF HONG KONG SPECIAL ADMINIS-
16 TRATIVE REGION FOR DESIGNATION FOR PARTICIPATION
17 IN VISA WAIVER PROGRAM FOR CERTAIN VISITORS TO
18 THE UNITED STATES.—Section 217(c) (8 U.S.C.
19 1187(c)) is amended by adding at the end the following
20 new paragraph:

21 “(12) ELIGIBILITY OF CERTAIN REGION FOR
22 DESIGNATION AS PROGRAM COUNTRY.—The Hong
23 Kong Special Administrative Region of the People’s
24 Republic of China—

1 “(A) shall be eligible for designation as a
2 program country for purposes of this sub-
3 section; and

4 “(B) may be designated as a program
5 country for purposes of this subsection if such
6 region meets requirements applicable for such
7 designation in this subsection.”.

8 **SEC. 4507. EXPEDITING ENTRY FOR PRIORITY VISITORS.**

9 Section 7208(k)(4) of the Intelligence Reform and
10 Terrorism Prevention Act of 2004 (8 U.S.C. 1365b(k)(4))
11 is amended to read as follows:

12 “(4) EXPEDITING ENTRY FOR PRIORITY VISI-
13 TORS.—

14 “(A) IN GENERAL.—The Secretary of
15 Homeland Security may expand the enrollment
16 across registered traveler programs to include
17 eligible individuals employed by international
18 organizations, selected by the Secretary, which
19 maintain strong working relationships with the
20 United States.

21 “(B) REQUIREMENTS.—An individual may
22 not be enrolled in a registered traveler program
23 unless—

1 “(i) the individual is sponsored by an
2 international organization selected by the
3 Secretary under subparagraph (A); and

4 “(ii) the government that issued the
5 passport that the individual is using has
6 entered into a Trusted Traveler Arrange-
7 ment with the Department of Homeland
8 Security to participate in a registered trav-
9 eler program.

10 “(C) SECURITY REQUIREMENTS.—An indi-
11 vidual may not be enrolled in a registered trav-
12 eler program unless the individual has success-
13 fully completed all applicable security require-
14 ments established by the Secretary, including
15 cooperation from the applicable foreign govern-
16 ment, to ensure that the individual does not
17 pose a risk to the United States.

18 “(D) DISCRETION.—Except as provided in
19 subparagraph (E), the Secretary shall retain
20 unreviewable discretion to offer or revoke en-
21 rollment in a registered traveler program to any
22 individual.

23 “(E) INELIGIBLE TRAVELERS.—An indi-
24 vidual who is a citizen of a state sponsor of ter-
25 rorism (as defined in section 301(13) of the

1 Comprehensive Iran Sanctions, Accountability,
2 and Divestment Act of 2010 (22 U.S.C.
3 8541(13)) may not be enrolled in a registered
4 traveler program.”.

5 **SEC. 4508. VISA PROCESSING.**

6 (a) IN GENERAL.—Notwithstanding any other provi-
7 sion of law and not later than 90 days after the date of
8 the enactment of this Act, the Secretary of State shall—

9 (1) require United States diplomatic and con-
10 sular missions—

11 (A) to conduct visa interviews for non-
12 immigrant visa applications determined to re-
13 quire a consular interview in an expeditious
14 manner, consistent with national security re-
15 quirements, and in recognition of resource allo-
16 cation considerations, such as the need to en-
17 sure provision of consular services to citizens of
18 the United States;

19 (B) to set a goal of interviewing 80 percent
20 of all nonimmigrant visa applicants, worldwide,
21 within 3 weeks of receipt of application, subject
22 to the conditions outlined in subparagraph (A);
23 and

24 (C) to explore expanding visa processing
25 capacity in China and Brazil, with the goal of

1 maintaining interview wait times under 15 work
2 days on a consistent, year-round basis, recog-
3 nizing that demand can spike suddenly and un-
4 predictably and that the first priority of United
5 States missions abroad is the protection of citi-
6 zens of the United States; and

7 (2) submit to the appropriate committees of
8 Congress a detailed strategic plan that describes the
9 resources needed to carry out paragraph (1)(A).

10 (b) APPROPRIATE COMMITTEES OF CONGRESS.—In
11 this section, the term “appropriate committees of Con-
12 gress” means—

13 (1) the Committee on the Judiciary, the Com-
14 mittee on Foreign Relations, and the Committee on
15 Appropriations of the Senate; and

16 (2) the Committee on the Judiciary, the Com-
17 mittee on Foreign Affairs, and the Committee on
18 Appropriations of the House of Representatives.

19 (c) SEMI-ANNUAL REPORT.—Not later than 30 days
20 after the end of the first 6 months after the implementa-
21 tion of subsection (a), and not later than 30 days after
22 the end of each subsequent quarter, the Secretary of State
23 shall submit to the appropriate committees of Congress
24 a report that provides—

1 (1) data substantiating the efforts of the Sec-
2 retary of State to meet the requirements and goals
3 described in subsection (a);

4 (2) any factors that have negatively impacted
5 the efforts of the Secretary to meet such require-
6 ments and goals; and

7 (3) any measures that the Secretary plans to
8 implement to meet such requirements and goals.

9 (d) SAVINGS PROVISION.—

10 (1) IN GENERAL.—Nothing in subsection (a)
11 may be construed to affect a consular officer’s au-
12 thority—

13 (A) to deny a visa application under sec-
14 tion 221(g) of the Immigration and Nationality
15 Act (8 U.S.C. 1201(g)); or

16 (B) to initiate any necessary or appro-
17 priate security-related check or clearance.

18 (2) SECURITY CHECKS.—The completion of a
19 security-related check or clearance shall not be sub-
20 ject to the time limits set out in subsection (a).

21 **SEC. 4509. B VISA FEE.**

22 Section 281 (8 U.S.C. 1351), as amended by sections
23 4105, 4407, and 4408, is further amended by adding at
24 the end the following:

1 “(g) B VISA FEE.—In addition to the fees authorized
2 under subsection (a), the Secretary of Homeland Security
3 shall collect a \$5 fee from each nonimmigrant admitted
4 under section 101(a)(15)(B). Fees collected under this
5 subsection shall be deposited into the Comprehensive Im-
6 migration Reform Trust Fund established under section
7 9(a)(1) of the Border Security, Economic Opportunity,
8 and Immigration Modernization Act.”.

9 **Subtitle F—Reforms to the H-2B**
10 **Visa Program**

11 **SEC. 4601. EXTENSION OF RETURNING WORKER EXEMP-**
12 **TION TO H-2B NUMERICAL LIMITATION.**

13 (a) IN GENERAL.—

14 (1) IN GENERAL.—Subparagraph (A) of para-
15 graph (10) of section 214(g) (8 U.S.C. 1184(g)), as
16 redesignated by section 4101(a)(3), is amended by
17 striking “fiscal year 2004, 2005, or 2006 shall not
18 again be counted toward such limitation during fis-
19 cal year 2007.” and inserting “fiscal year 2013 shall
20 not again be counted toward such limitation during
21 fiscal years 2014 through 2018.”.

22 (2) EFFECTIVE PERIOD.—The amendment
23 made by paragraph (1) shall be effective during the
24 period beginning on the effective date described in
25 subsection (c) and ending on September 30, 2018.

1 (b) TECHNICAL AND CLARIFYING AMENDMENTS.—

2 (1) NONIMMIGRANT STATUS.—Section
3 101(a)(15)(P) (8 U.S.C. 1101(a)(15)(P)) is amend-
4 ed—

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

7 (B) in clause (iv), by striking “clause (i),
8 (ii), or (iii),” and inserting “clause (i), (ii), (iii),
9 or (iv)”;

10 (C) by redesignating clause (iv) as clause
11 (v); and

12 (D) by inserting after clause (iii) the fol-
13 lowing:

14 “(iv) is a ski instructor, who has been
15 certified as a level I, II, or III ski and
16 snowboard instructor by the Professional
17 Ski Instructors of America or the Amer-
18 ican Association of Snowboard Instructors,
19 or received an equivalent certification in
20 the alien’s country of origin, and is seeking
21 to enter the United States temporarily to
22 perform instructing services; or”.

23 (2) AUTHORIZED PERIOD OF STAY; NUMERICAL
24 LIMITATION.—Section 214(a)(2)(B) (8 U.S.C.
25 1184(a)(2)(B)) is amended in the second sentence—

1 (A) by inserting “or ski instructors” after
2 “athletes”; and

3 (B) by inserting “or ski instructor” after
4 “athlete”.

5 (3) CONSTRUCTION.—Nothing in the amend-
6 ments made by this subsection may be construed as
7 preventing an alien who is a ski instructor from ob-
8 taining nonimmigrant status under section
9 101(a)(15)(H)(ii)(b) of the Immigration and Nation-
10 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) if such
11 alien is otherwise qualified for such status.

12 (c) EFFECTIVE DATE.—The amendment made by
13 subsection (a) shall take effect as if enacted on January
14 1, 2013.

15 **SEC. 4602. OTHER REQUIREMENTS FOR H-2B EMPLOYERS.**

16 Section 214 (8 U.S.C. 1184), as amended by sections
17 3609, 4233, 4405, 4503, and 4504, is further amended
18 by adding at the end the following:

19 “(x) REQUIREMENTS FOR H-2B EMPLOYERS.—

20 “(1) H-2B NONIMMIGRANT DEFINED.—In this
21 subsection the term ‘H-2B nonimmigrant’ means an
22 alien admitted to the United States pursuant to sec-
23 tion 101(a)(15)(H)(ii)(B).

24 “(2) NON-DISPLACEMENT OF UNITED STATES
25 WORKERS.—An employer who seeks to employ an

1 H-2B nonimmigrant admitted in an occupational
2 classification shall certify and attest that the em-
3 ployer did not displace and will not displace a
4 United States worker employed by the employer in
5 the same metropolitan statistical area where such
6 nonimmigrant will be hired within the period begin-
7 ning 90 days before the start date and ending on the
8 end date for which the employer is seeking the serv-
9 ices of such nonimmigrant as specified on an appli-
10 cation for labor certification under this Act.

11 “(3) TRANSPORTATION COSTS.—The employer
12 shall pay the transportation costs, including reason-
13 able subsistence costs during the period of travel, for
14 an H-2B nonimmigrant hired by the employer—

15 “(A) from the place of recruitment to the
16 place of such nonimmigrant’s employment; and

17 “(B) from the place of employment to such
18 nonimmigrant’s place of permanent residence or
19 a subsequent worksite.

20 “(4) PAYMENT OF FEES.—A fee related to the
21 hiring of an H-2B nonimmigrant required to be
22 paid by an employer under this Act shall be paid by
23 the employer and may not be deducted from the
24 wages or other compensation paid to an H-2B non-
25 immigrant.

1 “(5) H-2B NONIMMIGRANT LABOR CERTIFI-
2 CATION APPLICATION FEE.—

3 “(A) IN GENERAL.—To recover costs of
4 carrying out labor certification activities under
5 the H-2B program, the Secretary of Labor
6 shall impose a \$500 fee on an employer that
7 submits an application for an employment cer-
8 tification for aliens granted H-2B non-
9 immigrant status to the Secretary of Labor
10 under this subparagraph on or after the date
11 that is 30 days after the date of the enactment
12 of the Illegal Immigration Reform and Immig-
13 grant Responsibility Act of 1996.”.

14 “(B) USE OF FEES.—The fees collected
15 under subparagraph (A) shall be deposited in
16 the Comprehensive Immigration Reform Trust
17 Fund established under section 9 of the Border
18 Security, Economic Opportunity, and Immigra-
19 tion Modernization Act.”.

20 **SEC. 4603. EXECUTIVES AND MANAGERS.**

21 Section 214(a)(1) (8 U.S.C. 1184(a)(1)) is amended
22 by adding at the end the following: “Aliens admitted under
23 section 101(a)(15) should include—

24 “(A) executives and managers employed by a
25 firm or corporation or other legal entity or an affil-

1 iate or subsidiary thereof who are principally sta-
2 tioned abroad and who seek to enter the United
3 States for periods of 90 days or less to oversee and
4 observe the United States operations of their related
5 companies, and establish strategic objectives when
6 needed; or

7 “(B) employees of multinational corporations
8 who enter the United States to observe the oper-
9 ations of a related United States company and par-
10 ticipate in select leadership and development train-
11 ing activities, whether or not the activity is part of
12 a formal or classroom training program for a period
13 not to exceed 180 days.

14 Nonimmigrant aliens admitted pursuant to section
15 101(a)(15) and engaged in the activities described in
16 the subparagraph (A) or (B) may not receive a sal-
17 ary from a United States source, except for inci-
18 dental expenses for meals, travel, lodging and other
19 basic services.”.

20 **SEC. 4604. HONORARIA.**

21 Section 212(q) (8 U.S.C. 1182(q)) is amended to
22 read as follows:

23 “(q)(1) Any alien admitted under section
24 101(a)(15)(B) may accept an honorarium payment and
25 associated incidental expenses, for a usual academic activ-

1 ity or activities (lasting not longer than 9 days at any sin-
2 gle institution), as defined by the Attorney General in con-
3 sultation with the Secretary of Education, or for a per-
4 formance, appearance and participation in United States
5 based programming, including scripted or unscripted pro-
6 gramming (with services not rendered for more than 60
7 days in a 6 month period) if the alien has received a letter
8 of invitation from the institution, organization, or media
9 outlet, such payment is offered by an institution, organiza-
10 tion, or media outlet described in paragraph (2) and is
11 made for services conducted for the benefit of that institu-
12 tion, entity or media outlet and if the alien has not accept-
13 ed such payment or expenses from more than 5 institu-
14 tions, organizations, or media outlets in the previous 6-
15 month period. Any alien who is admitted under section
16 101(a)(15)(B) or any other valid visa may perform serv-
17 ices under this section without reentering the United
18 States and without a letter of invitation, if the alien does
19 not receive any remuneration including an honorarium
20 payment or incidental expenses, but may receive prize
21 money.

22 “(2) An institution, organization, or media outlet de-
23 scribed in this paragraph—

24 “(A) an institution of higher education (as de-
25 fined in section 101(a) of the Higher Education Act

1 of 1965 (20 U.S.C. 1001(a)) or a related or affili-
2 ated nonprofit entity;

3 “(B) a nonprofit research organization or a
4 governmental research organization; and

5 “(C) a broadcast network, cable entity, produc-
6 tion company, new media, Internet and mobile based
7 companies, who create or distribute programming
8 content.”.

9 **SEC. 4605. NONIMMIGRANTS PARTICIPATING IN RELIEF OP-**
10 **ERATIONS.**

11 Section 214 (8 U.S.C. 1184), as amended by sections
12 3609, 4233, 4405, 4503, 4504, and 4602, is further
13 amended by adding at the end following:

14 “(y) NONIMMIGRANTS PARTICIPATING IN RELIEF
15 OPERATIONS.—

16 “(1) IN GENERAL.—An alien coming individ-
17 ually, or aliens coming as a group, to participate in
18 relief operations, including critical infrastructure re-
19 pairs or improvements, needed in response to a Fed-
20 eral or State declared emergency or disaster, may be
21 admitted to the United States pursuant to section
22 101(a)(15)(B) for a period of not more than 90 days
23 if each such alien has been employed in a foreign
24 country by 1 employer for not less than 1 year prior
25 to the date the alien is so admitted.

1 “(2) PROHIBITION ON DIRECT PAYMENTS FROM
2 A UNITED STATES SOURCE.—During a period of ad-
3 mission pursuant to paragraph (1), an alien may not
4 receive direct payments from a United States source,
5 except for incidental expenses for meals, travel, lodg-
6 ing, and other basic services.”.

7 **SEC. 4606. NONIMMIGRANTS PERFORMING MAINTENANCE**
8 **ON COMMON CARRIERS.**

9 Section 214 (8 U.S.C. 1184), as amended by sections
10 3609, 4233, 4405, 4503, 4504, 4602, and 4603, is further
11 amended by adding at the end following:

12 “(z) NONIMMIGRANTS PERFORMING MAINTENANCE
13 ON COMMON CARRIER.—

14 “(1) IN GENERAL.—An alien coming individ-
15 ually, or aliens coming as a group, who possess spe-
16 cialized knowledge to perform maintenance or re-
17 pairs for common carriers, including to airlines,
18 cruise lines, and railways, if such maintenance or re-
19 pairs are occurring to equipment or machinery man-
20 ufactured outside of the United States and are need-
21 ed for purposes relating to life, health, and safety,
22 may be admitted to the United States pursuant to
23 section 101(a)(15)(B) for a period of not more than
24 90 days if each such alien has been employed in a

1 foreign country by 1 employer for not less than 1
2 year prior to the date the alien is so admitted.

3 “(2) PROHIBITION ON INCOME FROM A UNITED
4 STATES SOURCE.—During a period of admission
5 pursuant to paragraph (1), an alien may not receive
6 income from a United States source, except for inci-
7 dental expenses for meals, travel, lodging, and other
8 basic services.

9 “(3) FEE.—

10 “(A) IN GENERAL.—An alien admitted
11 pursuant to paragraph (1) shall pay a fee of
12 \$500 in addition to any fee assessed to cover
13 the costs to process an application under this
14 subsection.

15 “(B) USE OF FEE.—The fees collected
16 under subparagraph (A) shall be deposited in
17 the Comprehensive Immigration Reform Trust
18 Fund established under section 9(a)(1) of the
19 Border Security, Economic Opportunity, and
20 Immigration Modernization Act.”.

21 **SEC. 4607. AMERICAN JOBS IN AMERICAN FORESTS.**

22 (a) SHORT TITLE.—This section may be cited as the
23 “American Jobs in American Forests Act of 2013”.

24 (b) DEFINITIONS.—In this section:

25 (1) FORESTRY.—The term “forestry” means—

1 (A) propagating, protecting, and managing
2 forest tracts;

3 (B) felling trees and cutting them into
4 logs;

5 (C) using hand tools or operating heavy
6 powered equipment to perform activities such as
7 preparing sites for planting, tending crop trees,
8 reducing competing vegetation, moving logs, pil-
9 ing brush, and yarding and trucking logs from
10 the forest; and

11 (D) planting seedlings and trees.

12 (2) H-2B NONIMMIGRANT.—The term “H-2B
13 nonimmigrant” means a nonimmigrant described in
14 section 101(a)(15)(H)(ii)(b) of the Immigration and
15 Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)).

16 (3) PROSPECTIVE H-2B EMPLOYER.—The term
17 “prospective H-2B employer” means a United
18 States business that is considering employing 1 or
19 more nonimmigrants described in section
20 101(a)(15)(H)(ii)(b) of the Immigration and Nation-
21 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)).

22 (4) STATE WORKFORCE AGENCY.—Except as
23 used in subsection (e), the term “State workforce
24 agency” means the workforce agency of the State in

1 which the prospective H–2B employer intends to em-
2 ploy H–2B nonimmigrants.

3 (c) DEPARTMENT OF LABOR.—

4 (1) RECRUITMENT.—As a component of the
5 labor certification process required before H–2B
6 nonimmigrants are offered forestry employment in
7 the United States, the Secretary of Labor shall re-
8 quire all prospective H–2B employers, before they
9 submit a petition to hire H–2B nonimmigrants to
10 work in forestry, to conduct a robust effort to re-
11 cruit United States workers, including, to the extent
12 the State workforce agency considers appropriate—

13 (A) advertising at employment or job-
14 placement events, such as job fairs;

15 (B) advertising with State or local work-
16 force agencies, nonprofit organizations, or other
17 appropriate entities, and working with such en-
18 tities to identify potential employees;

19 (C) advertising in appropriate media, in-
20 cluding local radio stations and commonly used,
21 reputable Internet job-search sites; and

22 (D) such other recruitment strategies as
23 the State workforce agency considers appro-
24 priate for the sector or positions for which H–
25 2B nonimmigrants would be considered.

1 (2) SEPARATE PETITIONS.—A prospective H–
2 2B employer shall submit a separate petition for
3 each State in which the employer plans to employ
4 H–2B nonimmigrants in forestry for a period of 7
5 days or longer.

6 (d) STATE WORKFORCE AGENCIES.—The Secretary
7 of Labor may not grant a temporary labor certification
8 to a prospective H–2B employer seeking to employ H–2B
9 nonimmigrants in forestry until after the Director of the
10 State workforce agency—

11 (1) has, after formally consulting with the
12 workforce agency director of each contiguous State
13 listed on the prospective H–2B employer’s applica-
14 tion, determined that—

15 (A) the employer has complied with all re-
16 recruitment requirements set forth in subsection
17 (c) and there is a legitimate demand for the
18 employment of H–2B nonimmigrants in each of
19 those States; or

20 (B) the employer has amended the applica-
21 tion by removing or making appropriate modi-
22 fications with respect to the States in which the
23 criteria set forth in subparagraph (A) have not
24 been met;

1 (2) certifies that the prospective H–2B em-
2 ployer has complied with all recruitment require-
3 ments set forth in subsection (c) or any other appli-
4 cable provision of law; and

5 (3) makes a formal determination that nation-
6 als of the United States are not qualified or avail-
7 able to fill the employment opportunities offered by
8 the prospective H–2B employer.

9 **Subtitle G—W Nonimmigrant Visas**

10 **SEC. 4701. BUREAU OF IMMIGRATION AND LABOR MARKET** 11 **RESEARCH.**

12 (a) DEFINITIONS.—In this section:

13 (1) BUREAU.—Except as otherwise specifically
14 provided, the term “Bureau” means the Bureau of
15 Immigration and Labor Market Research established
16 under subsection (b).

17 (2) COMMISSIONER.—The term “Commis-
18 sioner” means the Commissioner of the Bureau.

19 (3) CONSTRUCTION OCCUPATION.—The term
20 “construction occupation” means an occupation clas-
21 sified by the Bureau of Labor Statistics as being
22 within the construction industry for the purposes of
23 publishing the Bureau’s workforce statistics.

24 (4) METROPOLITAN STATISTICAL AREA.—The
25 term “metropolitan statistical area” means a geo-

1 graphic area designated as a metropolitan statistical
2 area by the Director of the Office of Management
3 and Budget.

4 (5) SHORTAGE OCCUPATION.—The term “short-
5 age occupation” means an occupation that the Com-
6 missioner determines is experiencing a shortage of
7 labor—

8 (A) throughout the United States; or

9 (B) in a specific metropolitan statistical
10 area.

11 (6) W VISA PROGRAM.—The term “W Visa Pro-
12 gram” means the program for the admission of non-
13 immigrant aliens described in subparagraph (W)(i)
14 of section 101(a)(15) of the Immigration and Na-
15 tionality Act (8 U.S.C. 1101(a)(15)), as added by
16 section 4702.

17 (7) ZONE 1 OCCUPATION.—The term “zone 1
18 occupation” means an occupation that requires little
19 or no preparation and is classified as a zone 1 occu-
20 pation on—

21 (A) the Occupational Information Network
22 Database (O*NET) on the date of the enact-
23 ment of this Act; or

24 (B) such Database or a similar successor
25 database, as designated by the Secretary of

1 Labor, after the date of the enactment of this
2 Act.

3 (8) ZONE 2 OCCUPATION.—The term “zone 2
4 occupation” means an occupation that requires some
5 preparation and is classified as a zone 2 occupation
6 on—

7 (A) the Occupational Information Network
8 Database (O*NET) on the date of the enact-
9 ment of this Act; or

10 (B) such Database or a similar successor
11 database, as designated by the Secretary of
12 Labor, after the date of the enactment of this
13 Act.

14 (9) ZONE 3 OCCUPATION.—The term “zone 3
15 occupation” means an occupation that requires me-
16 dium preparation and is classified as a zone 3 occu-
17 pation on—

18 (A) the Occupational Information Network
19 Database (O*NET) on the date of the enact-
20 ment of this Act; or

21 (B) such Database or a similar successor
22 database, as designated by the Secretary of
23 Labor, after the date of the enactment of this
24 Act.

1 (b) ESTABLISHMENT.—There is established a Bureau
2 of Immigration and Labor Market Research as an inde-
3 pendent statistical agency within U.S. Citizenship and Im-
4 migration Services.

5 (c) COMMISSIONER.—The head of the Bureau of Im-
6 migration and Labor Market Research is the Commis-
7 sioner, who shall be appointed by the President, by and
8 with the advice and consent of the Senate.

9 (d) DUTIES.—The duties of the Commissioner are
10 limited to the following:

11 (1) To devise a methodology subject to publica-
12 tion in the Federal Register and an opportunity for
13 public comment regarding the calculation for the
14 index referred to in section 220(g)(2)(C) of the Im-
15 migration and Nationality Act, as added by section
16 4703.

17 (2) To determine and to publish in the Federal
18 Register the annual change to the numerical limita-
19 tion for nonimmigrant aliens described in subpara-
20 graph (W)(i) of section 101(a)(15) of the Immigra-
21 tion and Nationality Act (8 U.S.C. 1101(a)(15)), as
22 added by section 4702.

23 (3) With respect to the W Visa Program, to
24 supplement the recruitment methods employers may

1 use to attract United States workers and current
2 nonimmigrant aliens described in paragraph (2).

3 (4) With respect to the W Visa Program, to de-
4 vise a methodology subject to publication in the Fed-
5 eral Register and an opportunity for public comment
6 to designate shortage occupations in zone 1 occupa-
7 tions, zone 2 occupations, and zone 3 occupations.

8 (5) With respect to the W Visa Program, to
9 designate shortage occupations in any zone 1 occu-
10 pation, zone 2 occupation, or zone 3 occupation and
11 publish such occupations in the Federal Register.

12 (6) With respect to the W Visa Program, to
13 conduct a survey once every 3 months of the unem-
14 ployment rate of zone 1 occupations, zone 2 occupa-
15 tions, or zone 3 occupations that are construction
16 occupations in each metropolitan statistical area.

17 (7) To study and report to Congress on employ-
18 ment-based immigrant and nonimmigrant visa pro-
19 grams in the United States and to make annual rec-
20 ommendations to improve such programs.

21 (8) To carry out any functions required to per-
22 form the duties described in paragraphs (1) through
23 (7).

24 (e) DETERMINATION OF CHANGES TO NUMERICAL
25 LIMITATIONS.—The methodology required under sub-

1 section (d)(1) shall be published in the Federal Register
2 not later than 18 months after the date of the enactment
3 of this Act.

4 (f) DESIGNATION OF SHORTAGE OCCUPATIONS.—

5 (1) METHODS TO DETERMINE.—The Commis-
6 sioner shall—

7 (A) establish the methodology to designate
8 shortage occupations under subsection (d)(4);
9 and

10 (B) publish such methodology in the Fed-
11 eral Register not later than 18 months after the
12 date of the enactment of this Act.

13 (2) PETITION BY EMPLOYER.—The method-
14 ology established under paragraph (1) shall permit
15 an employer to petition the Commissioner for a de-
16 termination that a particular occupation in a par-
17 ticular metropolitan statistical area is a shortage oc-
18 cupation.

19 (3) REQUIREMENT FOR NOTICE AND COM-
20 MENT.—The methodology established under para-
21 graph (1) shall be effective only after publication in
22 the Federal Register and an opportunity for public
23 comment.

24 (g) EMPLOYEE EXPERTISE.—The employees of the
25 Bureau shall have the expertise necessary to identify labor

1 shortages in the United States and make recommenda-
2 tions to the Commissioner on the impact of immigrant and
3 nonimmigrant aliens on labor markets in the United
4 States, including expertise in economics, labor markets,
5 demographics and methods of recruitment of United
6 States workers.

7 (h) INTERAGENCY COOPERATION.—At the request of
8 the Commissioner, the Secretary of Commerce, the Direc-
9 tor of the Bureau of the Census, the Secretary of Labor,
10 and the Commissioner of the Bureau of Labor Statistics
11 shall—

- 12 (1) provide data to the Commissioner;
- 13 (2) conduct appropriate surveys; and
- 14 (3) assist the Commissioner in preparing the
15 recommendations referred to subsection (d)(5).

16 (i) BUDGET.—

17 (1) REPORT.—Not later than 1 year after the
18 date of the enactment of this Act, the Director of
19 U.S. Citizenship and Immigration Services shall sub-
20 mit to Congress a report of the estimated budget
21 that the Bureau will need to carry out the duties de-
22 scribed in subsection (d).

23 (2) AUDIT.—The Comptroller General of the
24 United States shall submit to Congress a report that

1 is an audit of the budget prepared by the Director
2 under paragraph (1).

3 (j) FUNDING.—

4 (1) APPROPRIATION OF FUNDS.—There is here-
5 by appropriated, out of any money in the Treasury
6 not otherwise appropriated, \$20,000,000 to establish
7 the Bureau.

8 (2) USE OF W NONIMMIGRANT FEES.—The
9 amounts collected for fees under section
10 220(e)(6)(B) of the Immigration and Nationality
11 Act, as added by section 4703, shall be used to es-
12 tablish and fund the Bureau.

13 (3) OTHER FEES.—The Secretary may establish
14 other fees for the sole purpose of funding the W
15 Visa Program, including the Bureau, that are re-
16 lated to the hiring of alien workers.

17 **SEC. 4702. NONIMMIGRANT CLASSIFICATION FOR W NON-**
18 **IMMIGRANTS.**

19 Section 101(a)(15)(W), as added by section 2211, is
20 amended by inserting before clause (iii) the following:

21 “(i) to perform services or labor for a
22 registered nonagricultural employer in a
23 registered position (as those terms are de-
24 fined in section 220(a)) in accordance with
25 the requirements under section 220;

1 “(ii) to accompany or follow to join
2 such an alien described in clause (i) as the
3 spouse or child of such alien;”.

4 **SEC. 4703. ADMISSION OF W NONIMMIGRANT WORKERS.**

5 (a) IN GENERAL.—Chapter 2 of title II (8 U.S.C.
6 1181 et seq.) is amended by adding at the end the fol-
7 lowing:

8 **“SEC. 220. ADMISSION OF W NONIMMIGRANT WORKERS.**

9 “(a) DEFINITIONS.—In this section:

10 “(1) BUREAU.—The term ‘Bureau’ means the
11 Bureau of Immigration and Labor Market Research
12 established by section 4701 of the Illegal Immigra-
13 tion Reform and Immigrant Responsibility Act of
14 1996.

15 “(2) CERTIFIED ALIEN.—The term ‘certified
16 alien’ means an alien that the Secretary of State has
17 certified is eligible to be a W nonimmigrant if the
18 alien is hired by a registered employer for a reg-
19 istered position.

20 “(3) COMMISSIONER.—The term ‘Commis-
21 sioner’ means the Commissioner of the Bureau.

22 “(4) CONSTRUCTION OCCUPATION.—The term
23 ‘construction occupation’ means an occupation de-
24 fined by the Bureau of Labor Statistics as being

1 within the construction industry for the purposes of
2 publishing the Bureau's workforce statistics.

3 “(5) DEPARTMENT.—Except as otherwise pro-
4 vided, the term ‘Department’ means the Department
5 of Homeland Security.

6 “(6) ELIGIBLE OCCUPATION.—The term ‘eligi-
7 ble occupation’ means an eligible occupation de-
8 scribed in subsection (e)(3).

9 “(7) EMPLOYER.—

10 “(A) IN GENERAL.—The term ‘employer’
11 means any person or entity hiring an individual
12 for employment in the United States.

13 “(B) TREATMENT OF SINGLE EM-
14 PLOYER.—For purposes of determining the
15 number of employees or United States workers
16 employed by an employer, a single entity shall
17 be treated as 1 employer.

18 “(8) EXCLUDED GEOGRAPHIC LOCATION.—The
19 term ‘excluded geographic location’ means an ex-
20 cluded geographic location described in subsection
21 (f).

22 “(9) INITIAL W NONIMMIGRANT.—The term
23 ‘initial W nonimmigrant’ means a certified alien
24 issued a W nonimmigrant visa by the Secretary of
25 State pursuant to section 101(a)(15)(W)(i) in order

1 to seek initial admission to the United States to
2 commence employment for a registered employer in
3 a registered position subject to the numerical limit
4 at section 220(g).

5 “(10) METROPOLITAN STATISTICAL AREA.—
6 The term ‘metropolitan statistical area’ means a ge-
7 ographic area designated as a metropolitan statis-
8 tical area by the Director of the Office of Manage-
9 ment and Budget.

10 “(11) REGISTERED EMPLOYER.—The term
11 ‘registered employer’ means a nonagricultural em-
12 ployer that the Secretary has designated as a reg-
13 istered employer under subsection (d).

14 “(12) SECRETARY.—Except as otherwise spe-
15 cifically provided, the term ‘Secretary’ means the
16 Secretary of Homeland Security.

17 “(13) SINGLE ENTITY.—The term ‘single enti-
18 ty’ means any group treated as a single employer
19 under subsection (b), (c), (m), or (o) of section 414
20 of the Internal Revenue Code of 1986.

21 “(14) SHORTAGE OCCUPATION.—The term
22 ‘shortage occupation’ means a shortage occupation
23 designated by the Commissioner pursuant to section
24 4701(d)(4) of the Illegal Immigration Reform and
25 Immigrant Responsibility Act of 1996.

1 “(15) SMALL BUSINESS.—The term ‘small busi-
2 ness’ means an employer that employs 25 or fewer
3 full-time equivalent employees.

4 “(16) UNITED STATES WORKER.—The term
5 ‘United States worker’ means an individual who is—

6 “(A) employed or seeking employment in
7 the United States; and

8 “(B)(i) a national of the United States;

9 “(ii) an alien lawfully admitted for perma-
10 nent residence;

11 “(iii) an alien in Registered Provisional
12 Immigrant Status; or

13 “(iv) any other alien authorized to work in
14 the United States with no limitation as to the
15 alien’s employer.

16 “(17) W NONIMMIGRANT.—The term ‘W non-
17 immigrant’ means an alien admitted as a non-
18 immigrant pursuant to section 101(a)(15)(W)(i).

19 “(18) W NONIMMIGRANT VISA.—The term ‘W
20 nonimmigrant visa’ means a visa issued to a cer-
21 tified alien by the Secretary of State pursuant to
22 section 101(a)(15)(W)(i).

23 “(19) W VISA PROGRAM.—The term ‘W Visa
24 Program’ means the program for the admission of

1 nonimmigrant aliens described in section
2 101(a)(15)(W)(i).

3 “(20) ZONE 1 OCCUPATION.—The term ‘zone 1
4 occupation’ means an occupation that requires little
5 or no preparation and is classified as a zone 1 occu-
6 pation on—

7 “(A) the Occupational Information Net-
8 work Database (O*NET) on the date of the en-
9 actment of the Illegal Immigration Reform and
10 Immigrant Responsibility Act of 1996; or

11 “(B) such Database or a similar successor
12 database, as designated by the Secretary of
13 Labor, after the date of the enactment of the
14 Illegal Immigration Reform and Immigrant Re-
15 sponsibility Act of 1996.

16 “(21) ZONE 2 OCCUPATION.—The term ‘zone 2
17 occupation’ means an occupation that requires some
18 preparation and is classified as a zone 2 occupation
19 on—

20 “(A) the Occupational Information Net-
21 work Database (O*NET) on the date of the en-
22 actment of the Illegal Immigration Reform and
23 Immigrant Responsibility Act of 1996; or

24 “(B) such Database or a similar successor
25 database, as designated by the Secretary of

1 Labor, after the date of the enactment of the
2 Illegal Immigration Reform and Immigrant Re-
3 sponsibility Act of 1996.

4 “(22) ZONE 3 OCCUPATION.—The term ‘zone 3
5 occupation’ means an occupation that requires me-
6 dium preparation and is classified as a zone 3 occu-
7 pation on—

8 “(A) the Occupational Information Net-
9 work Database (O*NET) on the date of the en-
10 actment of the Illegal Immigration Reform and
11 Immigrant Responsibility Act of 1996; or

12 “(B) such Database or a similar successor
13 database, as designated by the Secretary of
14 Labor, after the date of the enactment of the
15 Illegal Immigration Reform and Immigrant Re-
16 sponsibility Act of 1996.

17 “(b) ADMISSION INTO THE UNITED STATES.—

18 “(1) W NONIMMIGRANTS.—Subject to this sec-
19 tion, a certified alien is eligible to be admitted to the
20 United States as a W nonimmigrant if the alien is
21 hired by a registered employer for employment in a
22 registered position in a location that is not an ex-
23 cluded geographic location.

24 “(2) SPOUSE AND MINOR CHILDREN.—The—

1 “(A) alien spouse and minor children of a
2 W nonimmigrant may be admitted to the
3 United States pursuant to clause (ii) of section
4 101(a)(15)(W) during the period of the prin-
5 cipal W nonimmigrant’s admission; and

6 “(B) such alien spouse shall be—

7 “(i) authorized to engage in employ-
8 ment in the United States during such pe-
9 riod of admission; and

10 “(ii) provided with an employment au-
11 thorization document, stamp, or other ap-
12 propriate work permit.

13 “(c) W NONIMMIGRANTS.—

14 “(1) CERTIFIED ALIEN.—

15 “(A) APPLICATION.—An alien seeking to
16 be a W nonimmigrant shall apply to the Sec-
17 retary of State at a United States embassy or
18 consulate in a foreign country to be a certified
19 alien.

20 “(B) CRITERIA.—An alien is eligible to be
21 a certified alien if the alien—

22 “(i) is not inadmissible under this
23 Act;

24 “(ii) passes a criminal background
25 check;

1 “(iii) agrees to accept only registered
2 positions in the United States; and

3 “(iv) meets other criteria as estab-
4 lished by the Secretary.

5 “(2) *W* NONIMMIGRANT STATUS.—Only an alien
6 that is a certified alien may be admitted to the
7 United States as a *W* nonimmigrant.

8 “(3) INITIAL EMPLOYMENT.—A *W* non-
9 immigrant shall report to such nonimmigrant’s ini-
10 tial employment in a registered position not later
11 than 14 days after such nonimmigrant is admitted
12 to the United States.

13 “(4) TERM OF ADMISSION.—

14 “(A) INITIAL TERM.—A certified alien may
15 be granted *W* nonimmigrant status for an ini-
16 tial period of 3 years.

17 “(B) RENEWAL.—A *W* nonimmigrant may
18 renew his or her status as a *W* nonimmigrant
19 for additional 3-year periods. Such a renewal
20 may be made while the *W* nonimmigrant is in
21 the United States and shall not require the
22 alien to depart the United States.

23 “(5) PERIODS OF UNEMPLOYMENT.—A *W* non-
24 immigrant—

1 “(A) may be unemployed for a period of
2 not more than 60 consecutive days; and

3 “(B) shall depart the United States if such
4 W nonimmigrant is unable to obtain employ-
5 ment during such period.

6 “(6) TRAVEL.—A W nonimmigrant may travel
7 outside the United States and be readmitted to the
8 United States. Such travel may not extend the pe-
9 riod of authorized admission of such W non-
10 immigrant.

11 “(d) REGISTERED EMPLOYER.—

12 “(1) APPLICATION.—An employer seeking to be
13 a registered employer shall submit an application to
14 the Secretary. Each such application shall include
15 the following:

16 “(A) Documentation to establish that the
17 employer is a bona-fide employer.

18 “(B) The employer’s Federal tax identi-
19 fication number or employer identification num-
20 ber issued by the Internal Revenue Service.

21 “(C) The number of W nonimmigrants the
22 employer estimates it will seek to employ annu-
23 ally.

24 “(2) REFERRAL FOR FRAUD INVESTIGATION.—

25 The Secretary may refer an application submitted

1 under paragraph (1) or subsection (e)(1)(A) to the
2 Fraud Detection and National Security Directorate
3 of U.S. Citizenship and Immigration Services if
4 there is evidence of fraud for potential investigation.

5 “(3) INELIGIBLE EMPLOYERS.—

6 “(A) IN GENERAL.—Notwithstanding any
7 other applicable penalties under law, the Sec-
8 retary may deny an employer’s application to be
9 a registered employer if the Secretary deter-
10 mines, after notice and an opportunity for a
11 hearing, that the employer submitting such ap-
12 plication—

13 “(i) has, with respect to the applica-
14 tion required under paragraph (1), includ-
15 ing any attestations required by law—

16 “(I) knowingly misrepresented a
17 material fact;

18 “(II) knowingly made a fraudu-
19 lent statement; or

20 “(III) knowingly failed to comply
21 with the terms of such attestations; or

22 “(ii) failed to cooperate in the audit
23 process in accordance with regulations pro-
24 mulgated by the Secretary;

1 “(iii) has been convicted of an offense
2 set out in chapter 77 of title 18, United
3 States Code, or any conspiracy to commit
4 such offenses, or any human trafficking of-
5 fense under State or territorial law;

6 “(iv) has, within 2 years prior to the
7 date of application—

8 “(I) received a final adjudication
9 of having committed any hazardous
10 occupation orders violation resulting
11 in injury or death under the child
12 labor provisions contained in section
13 12 of the Fair Labor Standards Act
14 of 1938 (29 U.S.C. 211) and any per-
15 tinent regulation;

16 “(II) received a final adjudication
17 assessing a civil money penalty for
18 any repeated or willful violation of the
19 minimum wage provisions of section 6
20 of the Fair Labor Standards Act of
21 1938 (29 U.S.C. 206); or

22 “(III) received a final adjudica-
23 tion assessing a civil money penalty
24 for any willful violation of the over-
25 time provisions of section 7 of the

1 Fair Labor Standards Act of 1938 or
2 any regulations thereunder; or

3 “(v) has, within 2 years prior to the
4 date of application, received a final adju-
5 dication for a willful violation or repeated
6 serious violations involving injury or
7 death—

8 “(I) of section 5 of the Occupa-
9 tional Safety and Health Act of 1970
10 (29 U.S.C. 654);

11 “(II) of any standard, rule, or
12 order promulgated pursuant to section
13 6 of the Occupational Safety and
14 Health Act of 1970 (29 U.S.C. 655);
15 or

16 “(III) of a plan approved under
17 section 18 of the Occupational Safety
18 and Health Act of 1970 (29 U.S.C.
19 667).

20 “(B) LENGTH OF INELIGIBILITY.—

21 “(i) TEMPORARY INELIGIBILITY.—An
22 employer described in subparagraph (A)
23 may be ineligible to be a registered em-
24 ployer for a period that is not less than the

1 time period determined by the Secretary
2 and not more than 3 years.

3 “(ii) PERMANENT INELIGIBILITY.—
4 An employer who has been convicted of
5 any offense set out in chapter 77 of title
6 18, United States Code, or any conspiracy
7 to commit such offenses, or any human
8 trafficking offense under State or terri-
9 torial law shall be permanently ineligible to
10 be a registered employer.

11 “(4) TERM OF REGISTRATION.—The Secretary
12 shall approve applications meeting the criteria of
13 this subsection for a term of 3 years.

14 “(5) RENEWAL.—An employer may submit an
15 application to renew the employer’s status as a reg-
16 istered employer for additional 3-year periods.

17 “(6) FEE.—At the time an employer’s applica-
18 tion to be a registered employer or to renew such
19 status is approved, such employer shall pay a fee in
20 an amount determined by the Secretary to be suffi-
21 cient to cover the costs of the registry of such em-
22 ployers.

23 “(7) CONTINUED ELIGIBILITY.—Each reg-
24 istered employer shall submit to the Secretary an
25 annual report that demonstrates that the registered

1 employer has provided the wages and working condi-
2 tions the registered employer agreed to provide to its
3 employees.

4 “(e) REGISTERED POSITIONS.—

5 “(1) IN GENERAL.—

6 “(A) APPLICATION.—Each registered em-
7 ployer shall submit to the Secretary an applica-
8 tion to designate a position for which the em-
9 ployer is seeking a W nonimmigrant as a reg-
10 istered position. The Secretary is authorized to
11 determine if the wage to be paid by the em-
12 ployer complies with subparagraph (B)(iv).
13 Each such application shall include a descrip-
14 tion of each such position.

15 “(B) ATTESTATION.—An application sub-
16 mitted under subparagraph (A) shall include an
17 attestation of the following:

18 “(i) The number of full-time equiva-
19 lent employees of the employer.

20 “(ii) The occupational category, as
21 classified by the Secretary of Labor, for
22 which the registered position is sought.

23 “(iii) Whether the occupation for
24 which the registered position is sought is a
25 shortage occupation.

1 “(iv) Except as provided in subsection
2 (g)(4)(C)(i), the wages to be paid to W
3 nonimmigrants employed by the employer
4 in the registered position, including a posi-
5 tion in a shortage occupation, will be the
6 greater of—

7 “(I) the actual wage level paid by
8 the employer to other employees with
9 similar experience and qualifications
10 for such position; or

11 “(II) the prevailing wage level for
12 the occupational classification of the
13 position in the metropolitan statistical
14 area of the employment, as deter-
15 mined by the Secretary, based on the
16 best information available as of the
17 time of filing the application.

18 “(v) The working conditions for W
19 nonimmigrants will not adversely affect the
20 working conditions of other workers em-
21 ployed in similar positions.

22 “(vi) The employer has carried out
23 the recruiting activities required by para-
24 graph (2)(B).

1 “(vii) There is no qualified United
2 States worker who has applied for the po-
3 sition and who is ready, willing, and able
4 to fill such position pursuant to the re-
5 quirements in subparagraphs (B) and (C)
6 of paragraph (2).

7 “(viii) There is not a strike, lockout,
8 or work stoppage in the course of a labor
9 dispute in the occupation at the place of
10 employment at which the W nonimmigrant
11 will be employed. If such strike, lockout, or
12 work stoppage occurs following submission
13 of the application, the employer will pro-
14 vide notification in accordance with all ap-
15 plicable regulations.

16 “(ix)(I) The employer has not laid off
17 and will not layoff a United States worker
18 during the period beginning 90 days prior
19 to and ending 90 days after the date the
20 employer files an application for designa-
21 tion of a position for which the W non-
22 immigrant is sought or hires such W non-
23 immigrant, unless the employer has noti-
24 fied such United States worker of the posi-
25 tion and documented the legitimate rea-

1 sons that such United States worker is not
2 qualified or available for the position.

3 “(II) A United States worker is not
4 laid off for purposes of this subparagraph
5 if, at the time such worker’s employment is
6 terminated, such worker is not employed in
7 the same occupation and in the same met-
8 ropolitan statistical area where the reg-
9 istered position referred to in subclause (I)
10 is located.

11 “(C) BEST INFORMATION AVAILABLE.—In
12 subparagraph (B)(iv)(II), the term ‘best infor-
13 mation available’, with respect to determining
14 the prevailing wage for a position, means—

15 “(i) a controlling collective bargaining
16 agreement or Federal contract wage, if ap-
17 plicable;

18 “(ii) if there is no applicable wage
19 under clause (i), the wage level commensu-
20 rate with the experience, training, and su-
21 pervision required for the job based on Bu-
22 reau of Labor Statistics data; or

23 “(iii) if the data referred to in clause
24 (ii) is not available, a legitimate and recent
25 private survey of the wages paid for such

1 positions in the metropolitan statistical
2 area.

3 “(D) PERMIT.—The Secretary shall pro-
4 vide each registered employer whose application
5 submitted under subparagraph (A) is approved
6 with a permit that includes the number and de-
7 scription of such employer’s approved registered
8 positions.

9 “(E) TERM OF REGISTRATION.—The ap-
10 proval of a registered position under subpara-
11 graph (A) is for a term that begins on the date
12 of such approval and ends on the earlier of—

13 “(i) the date the employer’s status as
14 a registered employer is terminated;

15 “(ii) 3 years after the date of such ap-
16 proval; or

17 “(iii) upon proper termination of the
18 registered position by the employer.

19 “(F) REGISTRY OF REGISTERED POSI-
20 TIONS.—

21 “(i) MAINTENANCE OF REGISTRY.—
22 The Secretary shall develop and maintain
23 a registry of approved registered positions
24 for which the Secretary has issued a per-
25 mit under subparagraph (D).

1 “(ii) AVAILABILITY ON WEBSITE.—

2 The registry required by clause (i) shall be
3 accessible on a website maintained by the
4 Secretary.

5 “(iii) AVAILABILITY ON STATE WORK-
6 FORCE AGENCY WEBSITES.—Each State
7 workforce agency shall be linked to such
8 registry and provide access to such registry
9 through the website maintained by such
10 agency.

11 “(iv) CONDITIONS OF AVAILABILITY
12 ON WEBSITE.—

13 “(I) IN GENERAL.—Each ap-
14 proved registered position for which
15 the Secretary has issued a permit
16 shall be included in the registry of
17 registered positions maintained by the
18 Secretary and shall remain available
19 for viewing on such registry through-
20 out the term of registration referred
21 to in subparagraph (E) or paragraph
22 (5).

23 “(II) INDICATION OF VACANCY.—
24 The Secretary shall ensure that such
25 registry indicates whether each ap-

1 proved registered position in the reg-
2 istry is filled or unfilled.

3 “(III) REQUIREMENT FOR 10-DAY
4 POSTING.—If a W nonimmigrant’s
5 employment in a registered position
6 ends, either voluntarily or involun-
7 tarily, the Secretary shall ensure that
8 such registry indicates that the reg-
9 istered position is unfilled for a period
10 of 10 calendar days, unless such reg-
11 istered position is filled by a United
12 States worker.

13 “(2) REQUIREMENTS.—

14 “(A) ELIGIBLE OCCUPATION.—Each reg-
15 istered position shall be for a position in an eli-
16 gible occupation as described in paragraph (3).

17 “(B) RECRUITMENT OF UNITED STATES
18 WORKERS.—

19 “(i) REQUIREMENTS.—A position may
20 not be a registered position unless the reg-
21 istered employer—

22 “(I) advertises the position for a
23 period of 30 days, including the wage
24 range, location, and proposed start
25 date—

1 “(aa) on the Internet
2 website maintained by the Sec-
3 retary of Labor for the purpose
4 of such advertising; and

5 “(bb) with the workforce
6 agency of the State where the po-
7 sition will be located; and

8 “(II) except as provided for in
9 subsection (g)(4)(B)(i), carries out
10 not less than 3 of the recruiting ac-
11 tivities described in subparagraph (C).

12 “(ii) DURATION OF ADVERTISING.—
13 The 30-day periods required by item (aa)
14 or (bb) of clause (i)(I) may occur at the
15 same time.

16 “(C) RECRUITING ACTIVITIES.—The re-
17 cruiting activities described in this subpara-
18 graph, with respect to a position for which the
19 employer is seeking a W nonimmigrant, shall
20 consist of any combination of the following as
21 defined by the Secretary of Homeland Security:

22 “(i) Advertising such position at job
23 fairs.

24 “(ii) Advertising such position on the
25 employer’s external website.

1 “(iii) Advertising such position on job
2 search Internet websites.

3 “(iv) Advertising such position using
4 presentations or postings at vocational, ca-
5 reer technical schools, community colleges,
6 high schools, or other educational or train-
7 ing sites.

8 “(v) Posting such position with trade
9 associations.

10 “(vi) Utilizing a search firm to seek
11 applicants for such position.

12 “(vii) Advertising such position
13 through recruitment programs with place-
14 ment offices at vocational schools, career
15 technical schools, community colleges, high
16 schools, or other educational or training
17 sites.

18 “(viii) Advertising such position
19 through advertising or postings with local
20 libraries, journals, or newspapers.

21 “(ix) Seeking a candidate for such po-
22 sition through an employee referral pro-
23 gram with incentives.

24 “(x) Advertising such position on
25 radio or television.

1 “(xi) Advertising such position
2 through advertising, postings, or presen-
3 tations with newspapers, Internet websites,
4 job fairs, or community events targeted to
5 constituencies designed to increase em-
6 ployee diversity.

7 “(xii) Advertising such position
8 through career day presentations at local
9 high schools or community organizations.

10 “(xiii) Providing in-house training.

11 “(xiv) Providing third-party training.

12 “(xv) Advertising such position
13 through recruitment, educational, or other
14 cooperative programs offered by the em-
15 ployer and a local economic development
16 authority.

17 “(xvi) Advertising such position twice
18 in the Sunday ads in the primary daily cir-
19 culation newspaper in the area.

20 “(xvii) Any other recruitment activi-
21 ties determined to be appropriate to be
22 added by the Commissioner.

23 “(3) ELIGIBLE OCCUPATION.—

24 “(A) IN GENERAL.—An occupation is an
25 eligible occupation if the occupation—

1 “(i) is a zone 1 occupation, a zone 2
2 occupation, or zone 3 occupation; and

3 “(ii) is not an excluded occupation
4 under subparagraph (B).

5 “(B) EXCLUDED OCCUPATIONS.—

6 “(i) OCCUPATIONS REQUIRING COL-
7 LEGE DEGREES.—An occupation that is
8 listed in the Occupational Outlook Hand-
9 book published by the Bureau of Labor
10 Statistics (or similar successor publication)
11 that is classified as requiring an individual
12 with a bachelor’s degree or higher level of
13 education may not be an eligible occupa-
14 tion.

15 “(ii) COMPUTER OCCUPATIONS.—An
16 occupation in the field of computer oper-
17 ation, computer programming, or computer
18 repair may not be an eligible occupation.

19 “(C) PUBLICATION.—The Secretary of
20 Labor shall publish the eligible occupations,
21 designated as zone 1 occupations, zone 2 occu-
22 pations, or zone 3 occupations, on an on-going
23 basis on a publicly available website.

1 “(4) FILLING OF VACANCIES.—If a W non-
2 immigrant’s employment in a registered position
3 ends, such employer may fill that vacancy—

4 “(A) by hiring a United States worker; or

5 “(B) after the 10 calendar day posting pe-
6 riod in subsection (e)(1)(F)(iv)(III) by hiring—

7 “(i) a W nonimmigrant; or

8 “(ii) if available under subsection
9 (g)(4), a certified alien.

10 “(5) PERIOD OF APPROVAL.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), a registered position shall be
13 approved by the Secretary for a period of 3
14 years.

15 “(B) RETURNING W NONIMMIGRANTS.—

16 “(i) EXTENSION OF PERIOD.—A reg-
17 istered position shall continue to be a reg-
18 istered position at the end of the 3-year
19 period referred to in subparagraph (A) if
20 the W nonimmigrant hired for such posi-
21 tion is the beneficiary of a petition for im-
22 migrant status filed by the registered em-
23 ployer pursuant to this Act or is returning
24 to the same registered employer.

1 “(ii) TERMINATION OF PERIOD.—The
2 term of a registration position extended
3 under clause (i) shall terminate on the
4 date that is the earlier of—

5 “(I) the date an application or
6 petition by or for a W nonimmigrant
7 to obtain immigrant status is ap-
8 proved or denied by the Secretary; or

9 “(II) the date of the termination
10 of such W nonimmigrant’s employ-
11 ment with the registered employer.

12 “(6) FEES.—

13 “(A) REGISTRATION FEE.—

14 “(i) IN GENERAL.—At the time a W
15 nonimmigrant commences employment in
16 the registered position for a registered em-
17 ployer, such employer shall pay a registra-
18 tion fee in an amount determined by the
19 Secretary.

20 “(ii) USE OF FEE.—A fee collected
21 under clause (i) shall be used to fund any
22 aspect of the operation of the W Visa Pro-
23 gram.

24 “(B) ADDITIONAL FEE.—

1 “(i) IN GENERAL.—In addition to the
2 fee required by subparagraph (A), a reg-
3 istered employer, at the time a W non-
4 immigrant commences employment in the
5 registered position for the registered em-
6 ployer, shall pay an additional fee for each
7 such approved registered position as fol-
8 lows:

9 “(I) A fee of \$1,750 for the reg-
10 istered position if the registered em-
11 ployer, at the time of filing the appli-
12 cation for the registered position, is a
13 small business and more than 50 per-
14 cent and less than 75 percent of the
15 employees of the registered employer
16 are not United States workers.

17 “(II) A fee of \$3,500 for the reg-
18 istered position if the registered em-
19 ployer, at the time of filing the appli-
20 cation for the registered position, is a
21 small business and more than 75 per-
22 cent of the employees of the registered
23 employer are not United States work-
24 ers.

1 “(III) A fee of \$3,500 for the
2 registered position if the registered
3 employer, at the time of filing the ap-
4 plication for the registered position, is
5 not a small business and more than
6 15 percent and less than 30 percent
7 of the employees of the registered em-
8 ployer are not United States workers.

9 “(ii) USE OF FEE.—A fee collected
10 under clause (i) shall be used to fund the
11 operations of the Bureau.

12 “(C) PROHIBITION ON OTHER FEES.—A
13 registered employer may not be required to pay
14 an additional fee other than any fees specified
15 in this Act if the registered employer is a small
16 business.

17 “(7) PROHIBITION ON REGISTERED POSITIONS
18 FOR CERTAIN EMPLOYERS.—The Secretary may not
19 approve an application for a registered position for
20 an employer if the employer is not a small business
21 and 30 percent or more of the employees of the em-
22 ployer are not United States workers.

23 “(f) EXCLUDED GEOGRAPHIC LOCATION.—No appli-
24 cation for a registered position filed by a registered em-
25 ployer for an eligible occupation may be approved if the

1 registered position is located in a metropolitan statistical
2 area that has an unemployment rate that is more than
3 8½ percent as reported in the most recent month pre-
4 ceding the date that the application is submitted to the
5 Secretary unless—

6 “(1) the Commissioner has identified the eligi-
7 ble occupation as a shortage occupation; or

8 “(2) the Secretary approves the registered posi-
9 tion under subsection (g)(4).

10 “(g) NUMERICAL LIMITATION.—

11 “(1) REGISTERED POSITIONS.—

12 “(A) IN GENERAL.—Subject to paragraphs
13 (3) and (4), the maximum number of registered
14 positions that may be approved by the Sec-
15 retary for a year is as follows:

16 “(i) For the first year aliens are ad-
17 mitted as W nonimmigrants, 20,000.

18 “(ii) For the second such year,
19 35,000.

20 “(iii) For the third such year, 55,000.

21 “(iv) For the fourth such year,
22 75,000.

23 “(v) For each year after the fourth
24 such year, the level calculated for that year
25 under paragraph (2).

1 “(B) DATES.—The first year referred to in
2 subparagraph (A)(i) shall begin on April 1,
3 2015, and end on March 31, 2016, unless the
4 Secretary determines that such first year shall
5 begin on October 1, 2015, and end on Sep-
6 tember 30, 2016.

7 “(2) YEARS AFTER YEAR 4.—

8 “(A) CURRENT YEAR AND PRECEDING
9 YEAR.—In this paragraph—

10 “(i) the term ‘current year’ shall refer
11 to the 12-month period for which the cal-
12 culation of the numerical limits under this
13 paragraph is being performed; and

14 “(ii) the term ‘preceding year’ shall
15 refer to the 12-month period immediately
16 preceding the current year.

17 “(B) NUMERICAL LIMITATION.—Subject to
18 subparagraph (D), the number of registered po-
19 sitions that may be approved by the Secretary
20 for a year after the fourth year referred to in
21 paragraph (1)(A)(iv) shall be equal to the sum
22 of—

23 “(i) the number of such registered po-
24 sitions available under this paragraph for
25 the preceding year; and

1 “(ii) the product of—

2 “(I) the number of such reg-
3 istered positions available under this
4 paragraph for the preceding year;
5 multiplied by

6 “(II) the index for the current
7 year calculated under subparagraph
8 (C).

9 “(C) INDEX.—The index calculated under
10 this subparagraph for a current year equals the
11 sum of—

12 “(i) one-fifth of a fraction—

13 “(I) the numerator of which is
14 the number of registered positions
15 that registered employers applied to
16 have approved under subsection (e)(1)
17 for the preceding year minus the
18 number of registered positions ap-
19 proved under subsection (e) for the
20 preceding year; and

21 “(II) the denominator of which is
22 the number of registered positions ap-
23 proved under subsection (e) for the
24 preceding year;

25 “(ii) one-fifth of a fraction—

1 “(I) the numerator of which is
2 the number of registered positions the
3 Commissioner recommends be avail-
4 able under this subparagraph for the
5 current year minus the number of
6 registered positions available under
7 this subsection for the preceding year;
8 and

9 “(II) the denominator of which is
10 the number of registered positions
11 available under this subsection for the
12 preceding year;

13 “(iii) three-tenths of a fraction—

14 “(I) the numerator of which is
15 the number of unemployed United
16 States workers for the preceding year
17 minus the number of unemployed
18 United States workers for the current
19 year; and

20 “(II) the denominator of which is
21 the number of unemployed United
22 States workers for the preceding year;
23 and

24 “(iv) three-tenths of a fraction—

1 “(I) the numerator of which is
2 the number of job openings as set out
3 in the Job Openings and Labor Turn-
4 over Survey of the Bureau of Labor
5 Statistics for the current year minus
6 such number of job openings for the
7 preceding year; and

8 “(II) the denominator of which is
9 the number of such job openings for
10 the preceding year;

11 “(D) MINIMUM AND MAXIMUM LEVELS.—
12 The number of registered positions calculated
13 under subparagraph (B) for a 12-month period
14 may not be less than 20,000 nor more than
15 200,000.

16 “(3) ADDITIONAL REGISTERED POSITIONS FOR
17 SHORTAGE OCCUPATIONS.—In addition to the num-
18 ber of registered positions made available for a year
19 under paragraph (1), the Secretary shall make avail-
20 able for a year an additional number of registered
21 positions for shortage occupations in a particular
22 metropolitan statistical area.

23 “(4) SPECIAL ALLOCATIONS OF REGISTERED
24 POSITIONS.—

1 “(A) AUTHORITY TO MAKE AVAILABLE.—

2 In addition to the number of registered posi-
3 tions made available for a year under para-
4 graph (1) or (3), the Secretary shall make addi-
5 tional registered positions available for the year
6 for a specific registered employer as described
7 in this paragraph, if—

8 “(i) the maximum number of reg-
9 istered positions available under paragraph
10 (1) have been approved for the year and
11 none remain available for allocation; or

12 “(ii) such registered employer is lo-
13 cated in a metropolitan statistical area
14 that has an unemployment rate that is
15 more than 8½ percent as reported in the
16 most recent month preceding the date that
17 the application is submitted to the Sec-
18 retary.

19 “(B) RECRUITMENT.—

20 “(i) IN GENERAL.—Except as pro-
21 vided in clause (ii), an initial W non-
22 immigrant may only enter the United
23 States for initial employment pursuant to
24 a special allocation under this paragraph if
25 the registered employer has carried out at

1 least 7 of the recruiting activities described
2 in subsection (e)(2)(C).

3 “(ii) REQUIREMENT TO RECRUIT W
4 NONIMMIGRANTS IN THE UNITED
5 STATES.—A registered employer may reg-
6 ister a position pursuant to a special allo-
7 cation under this paragraph by conducting
8 at least 3 of the recruiting activities de-
9 scribed in subsection (e)(2)(C), however a
10 position registered pursuant to this clause
11 may not be filled by an initial W non-
12 immigrant entering the United States for
13 initial employment.

14 “(iii) 30-DAY POSTING.—

15 “(I) REQUIREMENT.—Any reg-
16 istered employer registering any posi-
17 tion under the special allocation au-
18 thority shall post the position, includ-
19 ing the wage range, location, and ini-
20 tial date of employment, for not less
21 than 30 days—

22 “(aa) on the Internet
23 website maintained by the Sec-
24 retary of Labor for the purpose
25 of such advertising; and

1 “(bb) with the workforce
2 agency of the State where the po-
3 sition will be located.

4 “(II) CONTEMPORANEOUS POST-
5 ING.—The 30-day periods required by
6 items (aa) and (bb) of subclause (I)
7 may occur at the same time.

8 “(C) WAGES.—

9 “(i) INITIAL W NONIMMIGRANTS.—An
10 initial W nonimmigrant entering the
11 United States for initial employment pur-
12 suant to a registered position made avail-
13 able under this paragraph may not be paid
14 less than the greater of—

15 “(I) the level 4 wage set out in
16 the Foreign Labor Certification Data
17 Center Online Wage Library (or simi-
18 lar successor website) maintained by
19 the Secretary of Labor for such occu-
20 pation in that metropolitan statistical
21 area; or

22 “(II) the mean of the highest
23 two-thirds of wages surveyed for such
24 occupation in that metropolitan statis-
25 tical area.

1 “(ii) OTHER W NONIMMIGRANTS.—A
2 W nonimmigrant employed in a registered
3 position referred to in subsection
4 (g)(4)(B)(ii) may not be paid less than the
5 wages required under subsection
6 (e)(1)(B)(iv).

7 “(D) REDUCTION OF FUTURE REGISTERED
8 POSITIONS.—Each registered position made
9 available for a year subject to the wage condi-
10 tions of subparagraph (C)(i) shall reduce by 1
11 the number of registered positions made avail-
12 able under paragraph (g)(1) for the following
13 year or the earliest possible year for which a
14 registered position is available. The limitation
15 contained in subsection (h)(4) shall not be re-
16 duced by any registered position made available
17 under this paragraph.

18 “(h) ALLOCATION OF REGISTERED POSITIONS.—

19 “(1) IN GENERAL.—

20 “(A) FIRST 6-MONTH PERIOD.—The num-
21 ber of registered positions available for the 6-
22 month period beginning on the first day of a
23 year is 50 percent of the maximum number of
24 registered positions available for such year
25 under paragraph (1) or (2) of subsection (g).

1 Such registered positions shall be allocated as
2 described in this subsection.

3 “(B) SECOND 6-MONTH PERIOD.—The
4 number of registered positions available for the
5 6-month period ending on the last day of a year
6 is the maximum number of registered positions
7 available for such year under paragraph (1) or
8 (2) of subsection (g) minus the number of reg-
9 istered positions approved during the 6-month
10 period referred to in subsection (A). Such reg-
11 istered positions shall be allocated as described
12 in this subsection.

13 “(2) SHORTAGE OCCUPATIONS.—

14 “(A) IN GENERAL.—For the first month of
15 each 6-month period referred to in subpara-
16 graph (A) or (B) of paragraph (1) a registered
17 position may not be created in an occupation
18 that is not a shortage occupation.

19 “(B) INITIAL DESIGNATIONS.—Subpara-
20 graph (A) shall not apply in any period for
21 which the Commissioner has not designated any
22 shortage occupations.

23 “(3) SMALL BUSINESSES.—During the second,
24 third, and fourth months of each 6-month period re-
25 ferred to in subparagraph (A) or (B) of paragraph

1 (1), one-third of the number of registered positions
2 allocated for such period shall be approved only for
3 a registered employer that is a small business. Any
4 such registered positions not approved for such
5 small businesses during such months shall be avail-
6 able for any registered employer during the last 2
7 months of each such 6-month period.

8 “(4) ANIMAL PRODUCTION SUBSECTORS.—In
9 addition to the number of registered positions made
10 available for a year under paragraph (1) or (3) of
11 such section (g), the Secretary shall make additional
12 registered positions available for the year for occupa-
13 tions designated by the Secretary of Labor as Ani-
14 mal Production Subsectors. The numerical limitation
15 for such additional registered positions shall be no
16 more than 10 percent of the annual numerical limi-
17 tation provided for in such paragraph (1).

18 “(5) LIMITATION FOR CONSTRUCTION OCCUPA-
19 TIONS.—

20 “(A) IN GENERAL.—Subject to subpara-
21 graph (B), not more than 33 percent of the reg-
22 istered positions made available under para-
23 graph (1) or (2) of subsection (g) for a year
24 may be granted to perform work in a construc-
25 tion occupation.

1 “(B) MAXIMUM LEVEL.—Notwithstanding
2 subparagraph (A), the number of registered po-
3 sitions granted to perform work in a construc-
4 tion occupation under subsection (g)(1) may
5 not exceed 15,000 for a year and 7,500 for any
6 6-month period.

7 “(C) PROHIBITION FOR OCCUPATIONS
8 WITH HIGH UNEMPLOYMENT.—

9 “(i) IN GENERAL.—A registered em-
10 ployer may not hire a certified alien for a
11 registered position to perform work in a
12 construction occupation if the unemploy-
13 ment rate for construction occupations in
14 the corresponding occupational job zone in
15 that metropolitan statistical area was more
16 than 8½ percent.

17 “(ii) DETERMINATION OF UNEMPLOY-
18 MENT RATE.—The unemployment rate
19 used in clause (i) shall be determined—

20 “(I) using the most recent survey
21 taken by the Bureau; or

22 “(II) if a survey referred to in
23 subclause (I) is not available, using a
24 recent and legitimate private survey.

1 “(i) PORTABILITY.—A W nonimmigrant who is ad-
2 mitted to the United States for employment by a reg-
3 istered employer may—

4 “(1) terminate such employment for any rea-
5 son; and

6 “(2) seek and accept employment with another
7 registered employer in any other registered position
8 within the terms and conditions of the W non-
9 immigrant’s visa.

10 “(j) PROMOTION.—A registered employer may pro-
11 mote a W nonimmigrant if the W nonimmigrant has been
12 employed with that employer for a period of not less than
13 12 months. Such a promotion shall not increase the total
14 number of registered positions available to that employer.

15 “(k) PROHIBITION ON OUTPLACEMENT.—A reg-
16 istered employer may not place, outsource, lease, or other-
17 wise contract for the services or placement of a W non-
18 immigrant employee with another employer if more than
19 15 percent of the employees of the registered employer are
20 W nonimmigrants.

21 “(l) W NONIMMIGRANT PROTECTIONS.—

22 “(1) APPLICABILITY OF LAWS.—A W non-
23 immigrant shall not be denied any right or any rem-
24 edy under Federal, State, or local labor or employ-
25 ment law that would be applicable to a United

1 States worker employed in a similar position with
2 the employer because of the alien's status as a non-
3 immigrant worker.

4 “(2) WAIVER OF RIGHTS PROHIBITED.—

5 “(A) IN GENERAL.—A W nonimmigrant
6 may not be required to waive any substantive
7 rights or protections under this Act.

8 “(B) CONSTRUCTION.—Nothing under this
9 paragraph may be construed to affect the inter-
10 pretation of any other law.

11 “(3) PROHIBITION ON TREATMENT AS INDE-
12 PENDENT CONTRACTORS.—

13 “(A) IN GENERAL.—Notwithstanding any
14 other provision of law—

15 “(i) a W nonimmigrant is prohibited
16 from being treated as an independent con-
17 tractor under any Federal or State law;
18 and

19 “(ii) no person, including an employer
20 or labor contractor and any persons who
21 are affiliated with or contract with an em-
22 ployer or labor contractor, may treat a W
23 nonimmigrant as an independent con-
24 tractor.

1 “(B) CONSTRUCTION.—Subparagraph (A)
2 may not be construed to prevent registered em-
3 ployers who operate as independent contractors
4 from employing W nonimmigrants.

5 “(4) PAYMENT OF FEES.—

6 “(A) IN GENERAL.—A fee related to the
7 hiring of a W nonimmigrant required to be paid
8 by an employer under this Act shall be paid by
9 the employer and may not be deducted from the
10 wages or other compensation paid to a W non-
11 immigrant.

12 “(B) EXCLUDED COSTS.—The cost of
13 round trip transportation from a certified
14 alien’s home to the location of a registered posi-
15 tion and the cost of obtaining a foreign pass-
16 port are not fees required to be paid by the em-
17 ployer.

18 “(5) TAX RESPONSIBILITIES.—An employer
19 shall comply with all applicable Federal, State, and
20 local tax laws with respect to each W nonimmigrant
21 employed by the employer.

22 “(6) PROHIBITED ACTIVITIES.—It shall be un-
23 lawful for an employer of a W nonimmigrant to in-
24 timidate, threaten, restrain, coerce, retaliate, dis-
25 charge, or in any other manner, discriminate against

1 an employee or former employee because the em-
2 ployee or former employee—

3 “(A) discloses information to the employer
4 or any other person that the employee or
5 former employee reasonably believes dem-
6 onstrates a violation of this section; or

7 “(B) cooperates or seeks to cooperate in an
8 investigation or other proceeding concerning
9 compliance with the requirements of this sec-
10 tion.

11 “(m) COMPLAINT PROCESS.—The Secretary shall es-
12 tablish a process for the receipt, investigation, and disposi-
13 tion of complaints by an aggrieved applicant, employee,
14 or nonimmigrant (or a person acting on behalf of such
15 applicant, employee, or nonimmigrant) with respect to—

16 “(1) the failure of a registered employer to
17 meet a condition of this section; or

18 “(2) the lay off or nonhiring of a United States
19 worker as prohibited under this section.

20 “(n) ENFORCEMENT.—

21 “(1) IN GENERAL.—The Secretary shall pro-
22 mulgate regulations for the receipt, investigation,
23 and disposition of complaints by an aggrieved W
24 nonimmigrant respecting a violation of this section.

1 “(2) FILING DEADLINE.—No investigation or
2 hearing shall be conducted on a complaint con-
3 cerning a violation under this section unless the
4 complaint was filed not later than 6 months after
5 the date of such violation.

6 “(3) REASONABLE BASIS.—The Secretary shall
7 conduct an investigation under this subsection if
8 there is reasonable basis to believe that a violation
9 of this section has occurred. The process established
10 under this subsection shall provide that, not later
11 than 30 days after a complaint is filed, the Sec-
12 retary shall determine if there is reasonable cause to
13 find such a violation.

14 “(4) NOTICE AND HEARING.—

15 “(A) IN GENERAL.—Not later than 60
16 days after the Secretary makes a determination
17 of reasonable basis under paragraph (3), the
18 Secretary shall issue a notice to the interested
19 parties and offer an opportunity for a hearing
20 on the complaint, in accordance with section
21 556 of title 5, United States Code.

22 “(B) HEARING DEADLINE.—Not later than
23 60 days after the date of a hearing under this
24 paragraph, the Secretary shall make a finding
25 on the matter.

1 “(5) ATTORNEY’S FEES.—

2 “(A) AWARD.—A complainant who prevails
3 in an action under this subsection with respect
4 to a claim related to wages or compensation for
5 employment, or a claim for a violation of sub-
6 section (l) or (m), shall be entitled to an award
7 of reasonable attorney’s fees and costs.

8 “(B) FRIVOLOUS COMPLAINTS.—A com-
9 plainant who files a frivolous complaint for an
10 improper purpose under this subsection shall be
11 liable for the reasonable attorney’s fees and
12 costs of the person named in the complaint.

13 “(6) POWER OF THE SECRETARY.—The Sec-
14 retary may bring an action in any court of com-
15 petent jurisdiction—

16 “(A) to seek remedial action, including in-
17 junctive relief;

18 “(B) to recover the damages described in
19 this subsection and subsection (o); or

20 “(C) to ensure compliance with terms and
21 conditions described in subsection (l)(6).

22 “(7) OTHER RIGHTS OF EMPLOYEES.—The
23 rights and remedies provided to W nonimmigrants
24 under this section are in addition to any other con-
25 tractual or statutory rights and remedies of the

1 workers, and are not intended to alter or affect such
2 rights and remedies.

3 “(o) PENALTIES.—

4 “(1) IN GENERAL.—If, after notice and an op-
5 portunity for a hearing, the Secretary finds a viola-
6 tion of this section, the Secretary may impose ad-
7 ministrative remedies and penalties, including—

8 “(A) back wages;

9 “(B) benefits; and

10 “(C) civil monetary penalties.

11 “(2) CIVIL PENALTIES.—The Secretary may
12 impose, as a civil penalty—

13 “(A) for a violation of this subsection—

14 “(i) a fine in an amount not more
15 than \$2,000 per violation per affected
16 worker and \$4,000 per violation per af-
17 fected worker for each subsequent viola-
18 tion;

19 “(ii) if the violation was willful, a fine
20 in an amount not more than \$5,000 per
21 violation per affected worker; and

22 “(iii) if the violation was willful and if
23 in the course of such violation a United
24 States worker was harmed, a fine in an

1 amount not more than \$25,000 per viola-
2 tion per affected worker; or

3 “(B) for knowingly failing to materially
4 comply with the terms of representations made
5 in petitions, applications, certifications, or at-
6 testations under this section—

7 “(i) a fine in an amount not more
8 than \$4,000 per aggrieved worker; and

9 “(ii) upon the occasion of a third of-
10 fense of failure to comply with representa-
11 tions, a fine in an amount not to exceed
12 \$5,000 per affected worker and designa-
13 tion as an ineligible employer, recruiter, or
14 broker for purposes of any immigrant or
15 nonimmigrant program.

16 “(3) CRIMINAL PENALTY.—Any person who
17 knowingly misrepresents the number of full-time
18 equivalent employees of an employer or the number
19 of employees of a person who are United States
20 workers for the purpose of reducing a fee under sub-
21 section (e)(6) or avoiding the limitation in sub-
22 section (e)(7), shall be fined in accordance with title
23 18, United States Code, in an amount up to
24 \$25,000 or imprisoned not more than 1 year, or
25 both.

1 “(p) MONITORING.—

2 “(1) REQUIREMENT TO MONITOR.—The Sec-
3 retary shall monitor the movement of W non-
4 immigrants in registered positions through—

5 “(A) the Employment Verification System
6 described in section 274A(d); and

7 “(B) the electronic monitoring system de-
8 scribed in paragraph (2).

9 “(2) ELECTRONIC MONITORING SYSTEM.—

10 “(A) REQUIREMENT FOR SYSTEM.—The
11 Secretary, through U.S. Citizenship and Immi-
12 gration Services, shall implement an electronic
13 monitoring system to monitor presence and em-
14 ployment of W nonimmigrants, including a re-
15 quirement that registered employers update the
16 system when W nonimmigrants start and end
17 employment in registered positions.

18 “(B) SYSTEM DESCRIPTION.—Such system
19 shall be modeled on the Student and Exchange
20 Visitor Information System (SEVIS) and
21 SEVIS II tracking system of U.S. Immigration
22 and Customs Enforcement.

23 “(C) INTERACTION WITH REGISTRY.—
24 Such system shall interact with the registry re-
25 ferred to in subsection (e)(1)(F) to ensure that

1 the Secretary designates and updates approved
2 registered positions as being filled or unfilled.”.

3 (b) TABLE OF CONTENTS AMENDMENT.—The table
4 of contents in the first section (8 U.S.C. 1101 et seq.)
5 is amended by adding after the item relating to section
6 219 the following:

“Sec. 220. Admission of W nonimmigrant workers.”.

7 **Subtitle H—Investing in New Ven-**
8 **ture, Entrepreneurial Startups,**
9 **and Technologies**

10 **SEC. 4801. NONIMMIGRANT INVEST VISAS.**

11 (a) INVEST NONIMMIGRANT CATEGORY.—Section
12 101(a)(15) (8 U.S.C. 1101(a)(15)), as amended by sec-
13 tions 2231, 2308, 2309, 3201, 4402, 4504, 4601, and
14 4702, is further amended by inserting after subparagraph
15 (W) the following:

16 “(X) in accordance with the definitions in
17 section 203(b)(6)(A), a qualified entrepreneur
18 who has demonstrated that, during the 3-year
19 period ending on the date on which the alien
20 filed an initial petition for nonimmigrant status
21 described in this clause—

22 “(i) a qualified venture capitalist, a
23 qualified super angel investor, a qualified
24 government entity, a qualified community
25 development financial institution, qualified

1 startup accelerator, or such other type of
2 entity or investors, as determined by the
3 Secretary, or any combination of such enti-
4 ties or investors, has made a qualified in-
5 vestment or combination of qualified in-
6 vestments of not less than \$100,000 in
7 total in the alien's United States business
8 entity; or

9 “(ii) the alien's United States busi-
10 ness entity has created no fewer than 3
11 qualified jobs and during the 2-year period
12 ending on such date has generated not less
13 than \$250,000 in annual revenue arising
14 from business conducted in the United
15 States; or”.

16 (b) ADMISSION OF INVEST NONIMMIGRANTS.—Sec-
17 tion 214 (8 U.S.C. 1184), as amended by sections 3608,
18 4232, 4405, 4503, 4504, 4602, 4605, and 4606, is further
19 amended by adding at the end the following:

20 “(aa) INVEST NONIMMIGRANT VISAS.—

21 “(1) DEFINITIONS.—The definitions in section
22 203(b)(6)(A) apply to this subsection.

23 “(2) INITIAL PERIOD OF AUTHORIZED ADMIS-
24 SION.—The initial period of authorized status as a

1 nonimmigrant described in section 101(a)(15)(X)
2 shall be for an initial 3-year period.

3 “(3) RENEWAL OF ADMISSION.—Subject to
4 paragraph (4), the initial period of authorized non-
5 immigrant status described in paragraph (2) may be
6 renewed for additional 3-year periods if during the
7 most recent 3-year period that the alien was granted
8 such status—

9 “(A) the alien’s United States business en-
10 tity has created no fewer than 3 qualified jobs
11 and a qualified venture capitalist, a qualified
12 super angel investor, a qualified government en-
13 tity, a qualified community development finan-
14 cial institution, qualified startup accelerator, or
15 such other type of entity or investors, as deter-
16 mined by the Secretary, or any combination of
17 such entities or investors, has made a qualified
18 investment or combination of qualified invest-
19 ments of not less than \$250,000 in total to the
20 alien’s United States business entity; or

21 “(B) the alien’s United States business en-
22 tity has created no fewer than 3 qualified jobs
23 and, during the 2-year period ending on the
24 date that the alien petitioned for an extension,
25 has generated not less than \$250,000 in annual

1 revenue arising from business conducted within
2 the United States.

3 “(4) WAIVER OF RENEWAL REQUIREMENTS.—

4 The Secretary may renew an alien’s status as a non-
5 immigrant described in section 101(a)(15)(X) for
6 not more than 1 year at a time, up to an aggregate
7 of 2 years if the alien—

8 “(A) does not meet the criteria under
9 paragraph (3); and

10 “(B) meets the criteria established by the
11 Secretary, in consultation with the Secretary of
12 Commerce, for approving renewals under this
13 subsection, which shall include a finding that—

14 “(i) the alien has made substantial
15 progress in meeting such criteria; and

16 “(ii) such renewal is economically ben-
17 efcial to the United States.

18 “(5) ATTESTATION.—The Secretary may re-
19 quire an alien seeking status as a nonimmigrant de-
20 scribed in section 101(a)(15)(X) to attest, under
21 penalty of perjury, that the alien meets the applica-
22 tion criteria.

23 “(6) X-1 VISA FEE.—In addition to processing
24 fees, the Secretary shall collect a \$1,000 fee from
25 each nonimmigrant admitted under section

1 101(a)(15)(X). Fees collected under this paragraph
2 shall be deposited into the Comprehensive Immigra-
3 tion Reform Trust Fund established under section
4 9(a)(1) of the Border Security, Economic Oppor-
5 tunity, and Immigration Modernization Act.”.

6 **SEC. 4802. INVEST IMMIGRANT VISA.**

7 Section 203(b) (8 U.S.C. 1153(b)) is amended—

8 (1) by redesignating paragraph (6) as para-
9 graph (7); and

10 (2) by inserting after paragraph (5) the fol-
11 lowing:

12 “(6) INVEST IMMIGRANTS.—

13 “(A) DEFINITIONS.—In this paragraph,
14 section 101(a)(15)(X), and section 214(s):

15 “(i) QUALIFIED COMMUNITY DEVEL-
16 OPMENT FINANCIAL INSTITUTION.—The
17 term ‘qualified community development fi-
18 nancial institution’ is defined as provided
19 under section 1805.201 45D(c) of title 12,
20 Code of Federal Regulations, or any simi-
21 lar successor regulations.

22 “(ii) QUALIFIED ENTREPRENEUR.—
23 The term ‘qualified entrepreneur’ means
24 an individual who—

1 “(I) has a significant ownership
2 interest, which need not constitute a
3 majority interest, in a United States
4 business entity;

5 “(II) is employed in a senior ex-
6 ecutive position of such United States
7 business entity;

8 “(III) submits a business plan to
9 U.S. Citizenship and Immigration
10 Services; and

11 “(IV) had a substantial role in
12 the founding or early-stage growth
13 and development of such United
14 States business entity.

15 “(iii) QUALIFIED GOVERNMENT ENTI-
16 TY.—The term ‘qualified government enti-
17 ty’ means an agency or instrumentality of
18 the United States or of a State, local, or
19 tribal government.

20 “(iv) QUALIFIED INVESTMENT.—The
21 term ‘qualified investment’—

22 “(I) means an investment in a
23 qualified entrepreneur’s United States
24 business entity that is—

1 “(aa) a purchase from the
2 United States business entity or
3 equity or convertible debt issued
4 by such entity;

5 “(bb) a secured loan;

6 “(cc) a convertible debt
7 note;

8 “(dd) a public securities of-
9 fering;

10 “(ee) a research and devel-
11 opment award from a qualified
12 government entity to the United
13 States entity;

14 “(ff) other investment deter-
15 mined appropriate by the Sec-
16 retary; or

17 “(gg) a combination of the
18 investments described in items
19 (aa) through (ff); and

20 “(II) may not include an invest-
21 ment from such qualified entre-
22 preneur, the parents, spouse, son, or
23 daughter of such qualified entre-
24 preneur, or from any corporation,
25 company, association, firm, partner-

1 ship, society, or joint stock company
2 over which such qualified entre-
3 preneur has a substantial ownership
4 interest.

5 “(v) QUALIFIED JOB.—The term
6 ‘qualified job’ means a full-time position of
7 a United States business entity owned by
8 a qualified entrepreneur that—

9 “(I) is located in the United
10 States;

11 “(II) has been filled for at least
12 2 years by an individual who is not
13 the qualified entrepreneur or the
14 spouse, son, or daughter of the quali-
15 fied entrepreneur; and

16 “(III) pays a wage that is not
17 less than 250 percent of the Federal
18 minimum wage.

19 “(vi) QUALIFIED STARTUP ACCEL-
20 ERATOR.—The term ‘qualified startup ac-
21 celerator’ means a corporation, company,
22 association, firm, partnership, society, or
23 joint stock company that—

24 “(I) is organized under the laws
25 of the United States or any State and

1 conducts business in the United
2 States;

3 “(II) in the ordinary course of
4 business, provides a program of train-
5 ing, mentorship, and logistical support
6 to assist entrepreneurs in growing
7 their businesses;

8 “(III) is managed by individuals,
9 the majority of whom are citizens of
10 the United States or aliens lawfully
11 admitted for permanent residence;

12 “(IV)(aa) regularly acquires an
13 equity interest in companies that par-
14 ticipate in its programs, where the
15 majority of the capital so invested is
16 committed from individuals who are
17 United States citizens or aliens law-
18 fully admitted for permanent resi-
19 dence, or from entities organized
20 under the laws of the United States
21 or any State; or

22 “(bb) is an entity that has re-
23 ceived not less than \$250,000 in fund-
24 ing from a qualified government entity
25 or entities during the previous 5 years

1 and regularly makes grants to compa-
2 nies that participate in its programs
3 (in which case, such grant shall be
4 treated as a qualified investment for
5 purposes of clause (iv));

6 “(V) during the previous 5 years,
7 has acquired an equity interest in, or,
8 in the case of an entity described in
9 subclause (IV)(bb), regularly made
10 grants to, not fewer than 10 United
11 States business entities that have par-
12 ticipated in its programs and that
13 have—

14 “(aa) each secured at least
15 \$100,000 in initial investments;

16 or

17 “(bb) during any 2-year pe-
18 riod following the date of such
19 acquisition, generated not less
20 than \$500,000 in aggregate an-
21 nual revenue within the United
22 States;

23 “(VI) has its primary location in
24 the United States; and

1 “(VII) satisfies such other cri-
2 teria as may be established by the
3 Secretary.

4 “(vii) QUALIFIED SUPER ANGEL IN-
5 VESTOR.—The term ‘qualified super angel
6 investor’ means an individual or organized
7 group of individuals investing directly or
8 through a legal entity—

9 “(I) each of whom is an accred-
10 ited investor, as defined in section
11 230.501(a) of title 17, Code of Fed-
12 eral Regulations, or any similar suc-
13 cessor regulation, investing the funds
14 owned by such individual or organized
15 group in a qualified entrepreneur’s
16 United States business entity;

17 “(II)(aa) if an individual, is a cit-
18 izen of the United States or an alien
19 lawfully admitted for permanent resi-
20 dence; or

21 “(bb) if an organized group or
22 legal entity, a majority of the individ-
23 uals investing through such group or
24 entity are citizens of the United

1 States or aliens lawfully admitted for
2 permanent residence; and

3 “(III) each of whom in the pre-
4 vious 3 years has made qualified in-
5 vestments in a total amount deter-
6 mined to be appropriate by the Sec-
7 retary, that is not less than \$50,000,
8 in United States business entities
9 which are less than 5 years old.

10 “(viii) QUALIFIED VENTURE CAPI-
11 TALIST.—The term ‘qualified venture capi-
12 talist’ means an entity—

13 “(I) that—

14 “(aa) is a venture capital
15 operating company (as defined in
16 section 2510.3–101(d) of title 29,
17 Code of Federal Regulations (or
18 any successor to such regula-
19 tion)); or

20 “(bb) has management
21 rights, as defined in, and to the
22 extent required by, such section
23 2510.3–101(d) (or successor reg-
24 ulation), in its portfolio compa-
25 nies;

1 “(II) that has capital commit-
2 ments of not less than \$10,000,000;
3 and

4 “(III) the investment adviser,
5 that is registered under the Invest-
6 ment Advisers Act of 1940 (15 U.S.C.
7 80b-2), for which—

8 “(aa) has its primary office
9 location in the United States;

10 “(bb) is owned, directly or
11 indirectly, by individuals, the ma-
12 jority of whom are citizens of the
13 United States or aliens lawfully
14 admitted for permanent residence
15 in the United States;

16 “(cc) has been advising such
17 entity or other similar funds or
18 entities for at least 2 years; and

19 “(dd) has advised such enti-
20 ty or a similar fund or entity
21 with respect to at least 2 invest-
22 ments of not less than \$500,000
23 made by such entity or similar
24 fund or entity during each of the
25 most recent 2 years.

1 “(ix) SECRETARY.—Except as other-
2 wise specifically provided, the term ‘Sec-
3 retary’ means the Secretary of Homeland
4 Security.

5 “(x) SENIOR EXECUTIVE POSITION.—
6 The term ‘senior executive position’ in-
7 cludes the position of chief executive offi-
8 cer, chief technology officer, and chief op-
9 erating officer.

10 “(xi) UNITED STATES BUSINESS EN-
11 TITY.—The term ‘United States business
12 entity’ means any corporation, company,
13 association, firm, partnership, society, or
14 joint stock company that is organized
15 under the laws of the United States or any
16 State and that conducts business in the
17 United States that is not—

18 “(I) a private fund, as defined in
19 202(a) of the Investment Advisers Act
20 of 1940 (15 U.S.C. 80b–2);

21 “(II) a commodity pool, as de-
22 fined in section 1a of the Commodity
23 Exchange Act (7 U.S.C. 1a);

24 “(III) an investment company, as
25 defined in section 3 of the Investment

1 Company Act of 1940 (15 U.S.C.
2 80a-3); or

3 “(IV) an issuer that would be an
4 investment company but for an ex-
5 emption provided in—

6 “(aa) section 3(e) of the In-
7 vestment Company Act of 1940
8 (15 U.S.C. 80a-3(e); or

9 “(bb) section 270.3a-7 of
10 title 17 of the Code of Federal
11 Regulations or any similar suc-
12 cessor regulation.

13 “(B) IN GENERAL.—Visas shall be avail-
14 able, in a number not to exceed 10,000 for each
15 fiscal year, to qualified immigrants seeking to
16 enter the United States for the purpose of cre-
17 ating new businesses, as described in this para-
18 graph.

19 “(C) ELIGIBILITY.—An alien is eligible for
20 a visa under this paragraph if—

21 “(i)(I) the alien is a qualified entre-
22 preneur;

23 “(II) the alien maintained valid non-
24 immigrant status in the United States for
25 at least 2 years;

1 “(III) during the 3-year period ending
2 on the date the alien files an initial peti-
3 tion for such status under this section—

4 “(aa)(AA) the alien has a signifi-
5 cant ownership in a United States
6 business entity that has created no
7 fewer than 5 qualified jobs; and

8 “(BB) a qualified venture capi-
9 talist, a qualified super angel investor,
10 a qualified government entity, a quali-
11 fied community development financial
12 institution, qualified startup accel-
13 erator, or such other entity or type of
14 investors, as determined by the Sec-
15 retary, or any combination of such en-
16 tities or investors, has devoted a
17 qualified investment or combination of
18 qualified investments of not less than
19 \$500,000 in total to the alien’s
20 United States business entity; or

21 “(bb)(AA) the alien has a signifi-
22 cant ownership interest in a United
23 States business entity that has cre-
24 ated no fewer than 5 qualified jobs;
25 and

1 “(BB) during the 2-year period
2 ending on such date has generated not
3 less than \$750,000 in annual revenue
4 within the United States; and

5 “(IV) no more than 2 other aliens
6 have received nonimmigrant status under
7 this section on the basis of an alien’s own-
8 ership of such United States business enti-
9 ty;

10 “(ii)(I) the alien is a qualified entre-
11 preneur;

12 “(II) the alien maintained valid non-
13 immigrant status in the United States for
14 at least 3 years prior to the date of filing
15 an application for such status;

16 “(III) the alien holds an advanced de-
17 gree in a field of science, technology, engi-
18 neering, or mathematics, approved by the
19 Secretary; and

20 “(IV) during the 3-year period ending
21 on the date the alien files an initial peti-
22 tion for such status under this section—

23 “(aa)(AA) the alien has a signifi-
24 cant ownership interest in a United
25 States business entity that has cre-

1 ated no fewer than 4 qualified jobs;
2 and

3 “(BB) a qualified venture capi-
4 talist, a qualified super angel investor,
5 a qualified government entity, a quali-
6 fied community development financial
7 institution, qualified startup accel-
8 erator, or such other entity or type of
9 investors, as determined by the Sec-
10 retary, or any combination of such en-
11 tities or investors, has devoted a
12 qualified investment or combination of
13 qualified investments of not less than
14 \$500,000 in total to the alien’s
15 United States business entity; or

16 “(bb)(AA) the alien has a signifi-
17 cant ownership interest in a United
18 States business entity that has cre-
19 ated no fewer than 3 qualified jobs;
20 and

21 “(BB) during the 2-year period
22 ending on such date has generated not
23 less than \$500,000 in annual revenue
24 within the United States; and

1 “(V) no more than 3 other aliens have
2 received nonimmigrant status under this
3 section on the basis of an alien’s ownership
4 of such United States business entity.

5 “(D) ATTESTATION.—The Secretary may
6 require an alien seeking a visa under this para-
7 graph to attest, under penalties of perjury, to
8 the alien’s qualifications.”.

9 **SEC. 4803. ADMINISTRATION AND OVERSIGHT.**

10 (a) REGULATIONS.—Not later than 16 months after
11 the date of the enactment of this Act, the Secretary, in
12 consultation with the Secretary of Commerce, the Admin-
13 istrator of the Small Business Administration, and other
14 heads of other relevant Federal agencies and departments,
15 shall promulgate regulations to carry out the amendments
16 made by this subtitle. Such regulations shall ensure that
17 such amendments are implemented in a manner that is
18 consistent with the protection of national security and pro-
19 motion of United States economic growth, job creation,
20 and competitiveness.

21 (b) MODIFICATION OF DOLLAR AMOUNTS.—

22 (1) IN GENERAL.—The Secretary may from
23 time to time prescribe regulations increasing or de-
24 creasing any dollar amount specified in section
25 203(b)(6) of the Immigration and Nationality Act,

1 as added by section 4802, section 101(a)(15)(X) of
2 such Act, as added by section 4801, or section
3 214(s), as added by section 4801.

4 (2) AUTOMATIC ADJUSTMENT.—Unless a dollar
5 amount referred to in paragraph (1) is adjusted by
6 the Secretary under paragraph (1), such dollar
7 amount shall automatically adjust on January 1,
8 2016, by the percentage change in the Consumer
9 Price Index (CPI-U) during fiscal year 2015, and
10 on every fifth subsequent January 1 by the percent-
11 age change in the CPI-U during the previous 5 fis-
12 cal years, for any petition filed to classify an alien
13 under this paragraph on or after the date of each
14 automatic adjustment.

15 (c) OTHER AUTHORITY.—The Secretary, in the Sec-
16 retary’s unreviewable discretion, may deny or revoke the
17 approval of a petition seeking classification of an alien
18 under paragraph (6) of section 203(b) of the Immigration
19 and Nationality Act, as added by section 4802, or any
20 other petition, application, or benefit based upon the pre-
21 vious or concurrent filing or approval of a petition for clas-
22 sification of an alien under such paragraph (6), if the Sec-
23 retary determines, in the Secretary’s sole and
24 unreviewable discretion, that the approval or continuation
25 of such petition, application, or benefit is contrary to the

1 national interest of the United States or for other good
2 cause.

3 (d) REPORTS.—Once every 3 years, the Secretary
4 shall submit to Congress a report on this subtitle and the
5 amendments made by this subtitle. Each such report shall
6 include—

7 (1) the number and percentage of entrepreneurs
8 able to meet thresholds for nonimmigrant renewal
9 and adjustment to green card status under the
10 amendments made by this subtitle;

11 (2) an analysis of the program's economic im-
12 pact including job and revenue creation, increased
13 investments and growth within business sectors and
14 regions;

15 (3) a description and breakdown of types of
16 businesses that entrepreneurs granted nonimmigrant
17 or immigrant status are creating;

18 (4) for each report following the Secretary's ini-
19 tial report submitted under this subsection, a de-
20 scription of the percentage of the businesses initially
21 created by the entrepreneurs granted immigrant and
22 nonimmigrant status under this subtitle and the
23 amendments made by this subtitle, that are still in
24 operation; and

1 (5) any recommendations for improving the
2 program established by this subtitle and the amend-
3 ments made by this subtitle.

4 **SEC. 4804. PERMANENT AUTHORIZATION OF EB-5 RE-**
5 **GIONAL CENTER PROGRAM.**

6 (a) REPEAL.—Section 610 of the Departments of
7 Commerce, Justice, and State, the Judiciary, and Related
8 Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note)
9 is repealed.

10 (b) AUTHORIZATION.—Section 203(b)(5) (8 U.S.C.
11 1153(b)(5)) is amended by adding at the end the fol-
12 lowing:

13 “(E) REGIONAL CENTER PROGRAM.—

14 “(i) IN GENERAL.—Visas under this
15 paragraph shall be made available to quali-
16 fied immigrants participating in a program
17 implementing this paragraph that involves
18 a regional center in the United States,
19 which has been designated by the Sec-
20 retary of Homeland Security, in consulta-
21 tion with the Secretary of Commerce, on
22 the basis of a general proposal for the pro-
23 motion of economic growth, including—

24 “(I) increased export sales;

1 “(II) improved regional produc-
2 tivity;

3 “(III) job creation; or

4 “(IV) increased domestic capital
5 investment.

6 “(ii) ESTABLISHMENT OF A REGIONAL
7 CENTER.—A regional center shall have ju-
8 risdiction over a defined geographic area,
9 which shall be described in the proposal
10 and consistent with the purpose of concen-
11 trating pooled investment in defined eco-
12 nomic zones. The establishment of a re-
13 gional center may be based on general pre-
14 dictions, contained in the proposal, con-
15 cerning—

16 “(I) the kinds of commercial en-
17 terprises that will receive investments
18 from aliens;

19 “(II) the jobs that will be created
20 directly or indirectly as a result of
21 such investments; and

22 “(III) other positive economic ef-
23 fects such investments will have.

24 “(iii) COMPLIANCE.—In determining
25 compliance with subparagraph (A)(ii), the

1 Secretary of Homeland Security shall per-
2 mit aliens admitted under the program de-
3 scribed in this subparagraph to establish
4 reasonable methodologies for determining
5 the number of jobs created by the pro-
6 gram, including jobs estimated to have
7 been created indirectly through—

8 “(I) revenues generated from in-
9 creased exports, improved regional
10 productivity, job creation; or

11 “(II) increased domestic capital
12 investment resulting from the pro-
13 gram, including jobs created outside
14 of the geographic boundary of the re-
15 gional center as a result of the immi-
16 grant’s investment in regional center-
17 affiliated commercial enterprises.

18 “(iv) INDIRECT JOB CREATION.—The
19 Secretary shall permit immigrants admit-
20 ted under this paragraph to satisfy the re-
21 quirements under subparagraph (A)(ii)
22 with jobs that are estimated to be created
23 indirectly through investment under this
24 paragraph in accordance with this sub-
25 paragraph.

1 “(F) PREAPPROVAL OF BUSINESS PLANS
2 FOR REGIONAL CENTER INVESTMENTS.—

3 “(i) PETITION.—Before the filing of a
4 petition under this subparagraph by an
5 alien investor, a commercial enterprise af-
6 filiated with a regional center may file a
7 petition with the Secretary of Homeland
8 Security to preapprove a particular invest-
9 ment in the commercial enterprise, as pro-
10 vided in—

11 “(I) a business plan for a specific
12 capital investment project;

13 “(II) investment documents, such
14 as subscription, investment, partner-
15 ship, and operating agreements; and

16 “(III) a credible economic anal-
17 ysis regarding estimated job creation
18 that is based upon reasonable meth-
19 odologies.

20 “(ii) PREAPPROVAL PROCEDURE.—
21 The Secretary shall establish a process to
22 facilitate the preapproval of business plans
23 under this subparagraph related to invest-
24 ment in a regional center commercial en-
25 terprise, which shall include an opportunity

1 for the applicant to address and cure any
2 deficiencies identified by the Secretary in
3 the applicant's business plan, investment
4 documents, or statement regarding job cre-
5 ation prior to a final determination. The
6 Secretary shall impose a fee for the use of
7 the process described in this clause suffi-
8 cient to recover the costs of its administra-
9 tion.

10 “(iii) EFFECT OF PREAPPROVAL OF
11 BUSINESS PLAN FOR INVESTMENT IN RE-
12 GIONAL CENTER COMMERCIAL ENTER-
13 PRISE.—The preapproval of a petition
14 under this subparagraph shall be binding
15 for purposes of the adjudication of peti-
16 tions filed under this subparagraph by im-
17 migrants investing in the commercial en-
18 terprise unless the Secretary determines
19 that there is evidence of fraud, misrepre-
20 sentation, criminal misuse, a threat to na-
21 tional security, or other evidence affecting
22 program eligibility that was not disclosed
23 by the petitioner during the preapproval
24 process.

1 “(iv) EXPEDITED PROCESSING OPTION
2 FOR ALIEN INVESTOR PETITIONS AFFILI-
3 ATED WITH PREAPPROVED BUSINESS
4 PLANS.—The Secretary may establish a
5 premium processing option for alien inves-
6 tors who are investing in a commercial en-
7 terprise that has received preapproval
8 under this subparagraph and may impose
9 a fee for the use of that option sufficient
10 to recover all costs of the option.

11 “(v) CONSIDERATION OF CRIMINAL
12 ACTIVITY IN ESTABLISHING ELIGIBILITY
13 CRITERIA.—The Secretary shall consider
14 the potential for fraud, misrepresentation,
15 criminal misuse, and threats to national
16 security in establishing eligibility criteria
17 for any program the Secretary may estab-
18 lish under this subparagraph.

19 “(G) REGIONAL CENTER FINANCIAL
20 STATEMENTS.—

21 “(i) IN GENERAL.—Each regional cen-
22 ter designated under subparagraph (E)
23 shall annually submit, to the Director of
24 U.S. Citizenship and Immigration Services
25 (referred to in this subparagraph as the

1 ‘Director’), in a manner prescribed by the
2 Secretary of Homeland Security, financial
3 statements, including—

4 “(I) an accounting of all foreign
5 investor money invested through the
6 regional center; and

7 “(II) for each capital investment
8 project—

9 “(aa) an accounting of the
10 aggregate capital invested
11 through the regional center or af-
12 filiated commercial enterprises by
13 immigrants under this para-
14 graph;

15 “(bb) a description of how
16 such funds are being used to exe-
17 cute the approved business plan;

18 “(cc) evidence that 100 per-
19 cent of such investor funds have
20 been dedicated to the project;

21 “(dd) detailed evidence of
22 the progress made toward the
23 completion of the project;

1 “(ee) an accounting of the
2 aggregate direct and indirect jobs
3 created or preserved; and

4 “(ff) a certification by the
5 regional center that such state-
6 ments are accurate.

7 “(ii) AMENDMENT OF FINANCIAL
8 STATEMENTS.—If the Director determines
9 that a financial statement required under
10 clause (i) is deficient, the Director may re-
11 quire the regional center to amend or sup-
12 plement such financial statement.

13 “(iii) SANCTIONS.—

14 “(I) EFFECT OF VIOLATION.—If
15 the Director determines, after review-
16 ing the financial statements submitted
17 under clause (i), that a regional cen-
18 ter, director, or other individual in-
19 volved with a regional center (other
20 than an alien investor) has violated
21 any requirement under clause (i) or
22 that the regional center is conducting
23 itself in a manner inconsistent with its
24 designation, the Director may sanc-

1 tion the violating entity or individual
2 under subclause (II).

3 “(II) AUTHORIZED SANCTIONS.—

4 The Director shall establish a grad-
5 uated set of sanctions for violations
6 referred to in subclause (I), includ-
7 ing—

8 “(aa) fines equal to not
9 more than 5 percent of the total
10 capital invested by immigrant in-
11 vestors in the commercial enter-
12 prise’s approved business plan;

13 “(bb) temporary suspension
14 from participation in the pro-
15 gram described in subparagraph
16 (E), which may be lifted by the
17 Director if the individual or enti-
18 ty cures the alleged violation
19 after being provided such an op-
20 portunity by the Director;

21 “(cc) permanent bar from
22 program participation for 1 or
23 more individuals affiliated with
24 the regional center; and

1 “(dd) termination of re-
2 gional center status.

3 “(H) BONA FIDES OF PERSONS INVOLVED
4 IN REGIONAL CENTERS.—

5 “(i) IN GENERAL.—No person shall be
6 permitted by any regional center to be in-
7 volved with the regional center as its prin-
8 cipal, representative, administrator, owner,
9 officer, board member, manager, executive,
10 general partner, fiduciary, marketer, pro-
11 moter, or other similar position of sub-
12 stantive authority for the operations, man-
13 agement or promotion of the regional cen-
14 ter if the Secretary of Homeland Secu-
15 rity—

16 “(I) determines such person has
17 been found liable within the previous
18 5 years for any criminal or civil viola-
19 tion of any law relating to fraud or
20 deceit, or at any time if such violation
21 involved a criminal conviction with a
22 term of imprisonment of at least 1
23 year or a criminal or civil violation of
24 any law or agency regulation in con-

1 nection with the purchase or sale of a
2 security; or

3 “(II) knows or has reasonable
4 cause to believe that the person is en-
5 gaged in, has ever been engaged in, or
6 seeks to engage in any—

7 “(aa) illicit trafficking in
8 any controlled substance;

9 “(bb) activity relating to es-
10 pionage or sabotage;

11 “(cc) activity related to
12 money laundering (as described
13 in section 1956 or 1957 of title
14 18, United States Code);

15 “(dd) terrorist activity (as
16 defined in clauses (iii) and (iv) of
17 section 212(a)(3)(B));

18 “(ee) human trafficking or
19 human rights offense; or

20 “(ff) violation of any stat-
21 ute, regulation, or Executive
22 Order regarding foreign financial
23 transactions or foreign asset con-
24 trol.

1 “(ii) INFORMATION REQUIRED.—The
2 Secretary shall require such attestations
3 and information, including, the submission
4 of fingerprints to the Federal Bureau of
5 Investigation, and shall perform such
6 criminal record checks and other back-
7 ground checks with respect to a regional
8 center, and persons involved in a regional
9 center as described in clause (i), as the
10 Secretary considers appropriate to deter-
11 mine whether the regional center is in com-
12 pliance with clause (i). The Secretary may
13 require the information and attestations
14 described in this clause from such regional
15 center, and any person involved in the re-
16 gional center, at any time on or after the
17 date of the enactment of the Border Secu-
18 rity, Economic Opportunity, and Immigra-
19 tion Modernization Act.

20 “(iii) TERMINATION.—The Secretary
21 is authorized, in his or her unreviewable
22 discretion, to terminate any regional center
23 from the program under this paragraph if
24 he or she determines that—

1 “(I) the regional center is in vio-
2 lation of clause (i);

3 “(II) the regional center or any
4 person involved with the regional cen-
5 ter has provided any false attestation
6 or information under clause (ii);

7 “(III) the regional center or any
8 person involved with the regional cen-
9 ter fails to provide an attestation or
10 information requested by the Sec-
11 retary under clause (ii); or

12 “(IV) the regional center or any
13 person involved with the regional cen-
14 ter is engaged in fraud, misrepresen-
15 tation, criminal misuse, or threats to
16 national security.

17 “(I) REGIONAL CENTER COMPLIANCE
18 WITH SECURITIES LAWS.—

19 “(i) CERTIFICATION REQUIRED.—The
20 Secretary of Homeland Security shall not
21 approve an application for regional center
22 designation or regional center amendment
23 that does not certify that the regional cen-
24 ter and, to the best knowledge of the appli-
25 cant, all parties to the regional center are

1 in, and will maintain, compliance with the
2 securities laws of the United States.

3 “(ii) TERMINATION OR SUSPEN-
4 SION.—The Secretary shall terminate the
5 designation of any regional center that
6 does not provide the certification described
7 in subclause (i) on an annual basis. In ad-
8 dition to any other authority provided to
9 the Secretary regarding the regional center
10 program described in subparagraph (E),
11 the Secretary may, in his or her
12 unreviewable discretion, suspend or termi-
13 nate the designation of any regional center
14 if he or she determines that the regional
15 center or any party to the regional cen-
16 ter—

17 “(I) is permanently or tempo-
18 rarily enjoined by order, judgment, or
19 decree of any court of competent ju-
20 risdiction in connection with the pur-
21 chase or sale of a security;

22 “(II) is subject to any final order
23 of the Securities and Exchange Com-
24 mission that—

1 “(aa) bars such person from
2 association with an entity regu-
3 lated by the Securities and Ex-
4 change Commission; or

5 “(bb) constitutes a final
6 order based on violations in con-
7 nection with the purchase or sale
8 of a security; or

9 “(III) knowingly submitted or
10 caused to be submitted a certification
11 described in clause (i) that contained
12 an untrue statement of a material fact
13 or omitted to state a material fact
14 necessary in order to make the state-
15 ments made, in the light of the cir-
16 cumstances under which they were
17 made, not misleading.

18 “(iii) SAVINGS PROVISION.—Nothing
19 in this subparagraph may be construed to
20 impair or limit the authority of the Securi-
21 ties and Exchange Commission under the
22 Federal securities laws.

23 “(iv) DEFINED TERM.—For the pur-
24 pose of this subparagraph, the term ‘party
25 to the regional center’ shall include the re-

1 gional center, its agents, employees, and
2 attorneys, and any persons in active con-
3 cert or participation with the regional cen-
4 ter.

5 “(J) DENIAL OR REVOCATION.—If the Sec-
6 retary of Homeland Security determines, in his
7 or her unreviewable discretion, that the ap-
8 proval of a petition, application, or benefit de-
9 scribed in this subparagraph is contrary to the
10 national interest of the United States for rea-
11 sons relating to fraud, misrepresentation, crimi-
12 nal misuse, or threats to national security, the
13 Secretary may deny or revoke the approval of—

14 “(i) a petition seeking classification of
15 an alien as an alien investor under this
16 paragraph;

17 “(ii) a petition to remove conditions
18 under section 216A before granting lawful
19 permanent resident status or any other pe-
20 tition, application, or benefit based upon
21 the previous or concurrent filing or ap-
22 proval of a petition for classification of an
23 alien under this paragraph; or

24 “(iii) an application for designation as
25 a regional center.”.

1 (c) ASSISTANCE BY THE SECRETARY OF COM-
2 MERCE.—

3 (1) IN GENERAL.—The Secretary of Commerce,
4 upon the request of the Secretary, shall provide con-
5 sultation assistance for determining whether—

6 (A) a proposed regional center should be
7 designated, terminated, or subject to other ad-
8 judicative action; or

9 (B) a petitioner or applicant for a benefit
10 under section 203(b)(5) of the Immigration and
11 Nationality Act, as amended by subsection (b),
12 has met the requirements under such paragraph
13 with respect to job creation.

14 (2) RULEMAKING.—The Secretary and the Sec-
15 retary of Commerce may each adopt such rules and
16 regulations as are necessary to carry out the con-
17 sultation process provided for in paragraph (1).

18 (3) SAVINGS PROVISION.—Nothing in this sub-
19 section shall be construed to require consultation
20 with the Secretary of Commerce to continue the des-
21 ignation of a regional center approved before the
22 date of the enactment of this Act.

23 (d) EFFECTIVE DATE.—The amendments made by
24 this section—

1 (1) shall be effective upon the enactment of this
2 Act; and

3 (2) shall apply to—

4 (A) any application to designate a regional
5 center, and any person involved with the re-
6 gional center, that is pending or approved on or
7 after the date of the enactment of this Act; and

8 (B) any regional center approved before
9 the date of the enactment of this Act, on or
10 after a delayed effective date that is 1 year
11 after such date of enactment with respect to
12 any person involved in the regional center on or
13 after such delayed effective date.

14 **SEC. 4805. CONDITIONAL PERMANENT RESIDENT STATUS**
15 **FOR CERTAIN EMPLOYMENT-BASED IMMI-**
16 **GRANTS, SPOUSES, AND CHILDREN.**

17 (a) IN GENERAL.—Section 216A (8 U.S.C. 1186b)
18 is amended to read as follows:

19 **“SEC. 216A. CONDITIONAL PERMANENT RESIDENT STATUS**
20 **FOR CERTAIN EMPLOYMENT-BASED IMMI-**
21 **GRANTS, SPOUSES, AND CHILDREN.**

22 “(a) IN GENERAL.—

23 “(1) CONDITIONAL BASIS FOR STATUS.—Not-
24 withstanding any other provision of this Act, em-
25 ployment-based immigrants (as defined in subsection

1 (f) (1) or (2)), alien spouses, and alien children (as
2 defined in subsection (f)(3)) shall be considered, at
3 the time of obtaining the status of an alien lawfully
4 admitted for permanent residence, to have obtained
5 such status on a conditional basis subject to the pro-
6 visions of this section.

7 “(2) NOTICE OF REQUIREMENTS.—

8 “(A) AT TIME OF OBTAINING PERMANENT
9 RESIDENCE.—At the time an employment-based
10 immigrant, alien spouse, or alien child obtains
11 permanent resident status on a conditional
12 basis under paragraph (1), the Secretary of
13 Homeland Security shall provide for notice to
14 the alien, spouse, or child respecting the provi-
15 sions of this section and the requirements of
16 subsection (c)(1) to have the conditional basis
17 of such status removed.

18 “(B) AT TIME OF REQUIRED PETITION.—

19 In addition, the Secretary of Homeland Secu-
20 rity shall attempt to provide notice to an em-
21 ployment-based immigrant, alien spouse, or
22 alien child, at or about the beginning of the 90-
23 day period described in subsection (d)(3), of the
24 requirements of subsection (c)(1).

1 “(C) EFFECT OF FAILURE TO PROVIDE
2 NOTICE.—The failure of the Secretary of
3 Homeland Security to provide a notice under
4 this paragraph shall not affect the enforcement
5 of the provisions of this section with respect to
6 an employment-based immigrant, alien spouse,
7 or alien child.

8 “(b) TERMINATION OF STATUS IF FINDING THAT
9 QUALIFYING EMPLOYMENT IMPROPER.—

10 “(1) ALIEN INVESTOR.—In the case of an alien
11 investor with permanent resident status on a condi-
12 tional basis under subsection (a), if the Secretary of
13 Homeland Security determines, before the second
14 anniversary of the alien’s obtaining the status of
15 lawful admission for permanent residence, that—

16 “(A) the investment in the commercial en-
17 terprise was intended as a means of evading the
18 immigration laws of the United States;

19 “(B)(i) the alien did not invest, or was not
20 actively in the process of investing, the requisite
21 capital; or

22 “(ii) the alien was not sustaining the ac-
23 tions described in clause (i) throughout the pe-
24 riod of the alien’s residence in the United
25 States; or

1 “(C) subject to the exception in subsection
2 (d)(4), the alien was otherwise not conforming
3 to the requirements under section 203(b)(5),
4 the Secretary shall so notify the alien investor and,
5 subject to paragraph (3), shall terminate the perma-
6 nent resident status of the alien (and the alien
7 spouse and alien child) involved as of the date of the
8 determination.

9 “(2) EMPLOYEE OF A FEDERAL NATIONAL SE-
10 CURITY, SCIENCE, AND TECHNOLOGY LABORATORY,
11 CENTER OR AGENCY.—In the case of an employee of
12 a Federal national security, science, and technology
13 laboratory, center, or agency (as defined pursuant to
14 section 203(b)(2)(C)) with permanent resident sta-
15 tus on a conditional basis under subsection (a), if
16 the Secretary of Homeland Security, in consultation
17 with the relevant employing department or agency,
18 determines, before the first anniversary of the alien’s
19 obtaining the status of lawful admission for perma-
20 nent residence, that—

21 “(A) the qualifying employment was in-
22 tended as a means of evading the immigration
23 laws of the United States;

1 “(B) the alien has not completed or is not
2 likely to complete 12 months of qualifying con-
3 tinuous employment; or

4 “(C) the alien did not otherwise conform
5 with the requirements of section 203(b)(2),
6 the Secretary shall so notify the alien involved and,
7 subject to paragraph (3), shall terminate the perma-
8 nent resident status of the alien (and the alien
9 spouse and alien child) involved as of the date of the
10 determination.

11 “(3) HEARING IN REMOVAL PROCEEDING.—Any
12 alien whose permanent resident status is terminated
13 under paragraph (1) or (2) may request a review of
14 such determination in a proceeding to remove the
15 alien. In such proceeding, the burden of proof shall
16 be on the Secretary of Homeland Security to estab-
17 lish, by a preponderance of the evidence, that a con-
18 dition described in paragraph (1) or (2), as appro-
19 priate, is met.

20 “(c) REQUIREMENTS OF TIMELY PETITION AND
21 INTERVIEW FOR REMOVAL OF CONDITION.—

22 “(1) IN GENERAL.—

23 “(A) PETITION AND INTERVIEW.—In order
24 for the conditional basis established under sub-

1 section (a) for an employment-based immigrant,
2 alien spouse, or alien child to be removed—

3 “(i) the employment-based immigrant
4 shall submit to the Secretary of Homeland
5 Security, during the period described in
6 subsection (d)(3), a petition which requests
7 the removal of such conditional basis and
8 which states, under penalty of perjury, the
9 facts and information described in para-
10 graph (1) or (2) of subsection (d), as ap-
11 propriate; and

12 “(ii) in accordance with subsection
13 (d)(3), the employment-based immigrant
14 must appear for a personal interview be-
15 fore an officer or employee of U.S. Citizen-
16 ship and Immigration Services respecting
17 such facts and information.

18 “(B) SEPARATE PETITION NOT RE-
19 QUIRED.—An alien spouse or alien child shall
20 not be required to file separate petitions under
21 subparagraph (A)(i) if the employment-based
22 immigrant’s petition includes such alien spouse
23 or alien child.

24 “(C) EFFECT ON SPOUSE OR CHILD.—If
25 the alien spouse or alien child obtains perma-

1 nent residence on a conditional basis after the
2 employment-based immigrant files a petition
3 under subparagraph (A)(i)—

4 “(i) the conditional basis of the per-
5 manent residence of the alien spouse or
6 alien child shall be removed upon approval
7 of the employment-based immigrant’s peti-
8 tion under this subsection;

9 “(ii) the permanent residence of the
10 alien spouse or alien child shall be uncon-
11 ditional if—

12 “(I) the employment-based immi-
13 grant’s petition is approved before the
14 date on which the spouse or child ob-
15 tains permanent residence; or

16 “(II) the employment-based im-
17 migrant dies after the approval of a
18 petition under section 203(b)(5); and

19 “(iii) the alien child shall not be
20 deemed ineligible for approval under sec-
21 tion 203(b)(5) or removal of conditions
22 under this section if the alien child reaches
23 21 years of age during—

1 “(I) the pendency of the employ-
2 ment-based immigrant’s petition
3 under section 203(b)(5); or

4 “(II) conditional residency under
5 such section.

6 “(D) ADDITIONAL FEE.—Notwithstanding
7 any other provision under this section, the Sec-
8 retary may require the employment-based immi-
9 grant to pay an additional fee for a petition
10 filed under subparagraph (A)(i) that includes
11 the alien’s spouse and child or children.

12 “(2) TERMINATION OF PERMANENT RESIDENT
13 STATUS FOR FAILURE TO FILE PETITION OR HAVE
14 PERSONAL INTERVIEW.—

15 “(A) IN GENERAL.—In the case of an alien
16 with permanent resident status on a conditional
17 basis under subsection (a), if—

18 “(i) no petition is filed with respect to
19 the alien in accordance with the provisions
20 of paragraph (1)(A); or

21 “(ii) unless there is good cause shown,
22 the employment-based immigrant fails to
23 appear at the interview described in para-
24 graph (1)(B) (if required under subsection
25 (d)(4)),

1 the Secretary of Homeland Security shall termi-
2 nate the permanent resident status of the alien
3 (and the alien’s spouse and children if it was
4 obtained on a conditional basis under this sec-
5 tion or section 216) as of the second anniver-
6 sary of the alien’s lawful admission for perma-
7 nent residence.

8 “(B) HEARING IN REMOVAL PRO-
9 CEEDING.—In any removal proceeding with re-
10 spect to an alien whose permanent resident sta-
11 tus is terminated under subparagraph (A), the
12 burden of proof shall be on the alien to estab-
13 lish compliance with the conditions of para-
14 graphs (1)(A) and (1)(B).

15 “(3) DETERMINATION AFTER PETITION AND
16 INTERVIEW.—

17 “(A) IN GENERAL.—If—

18 “(i) a petition is filed in accordance
19 with the provisions of paragraph (1)(A);
20 and

21 “(ii) the employment-based immigrant
22 appears at any interview described in para-
23 graph (1)(B),

24 the Secretary of Homeland Security shall make
25 a determination, not later than 90 days after

1 the date of such filing or interview (whichever
2 is later), as to whether the facts and informa-
3 tion described in paragraph (1) or (2) of sub-
4 section (d), as appropriate, and alleged in the
5 petition are true.

6 “(B) REMOVAL OF CONDITIONAL BASIS IF
7 FAVORABLE DETERMINATION.—

8 “(i) HEADER.—If the Secretary of
9 Homeland Security determines with re-
10 spect to a petition filed by an alien inves-
11 tor that such facts and information are
12 true, the Secretary shall so notify the alien
13 investor and shall remove the conditional
14 basis of the alien’s status effective as of
15 the second anniversary of the alien’s lawful
16 admission for permanent residence.

17 “(ii) REMOVAL OF CONDITIONAL
18 BASIS FOR EMPLOYEE OF A FEDERAL NA-
19 TIONAL SECURITY, SCIENCE, AND TECH-
20 NOLOGY LABORATORY, CENTER OR AGEN-
21 CY.—If the Secretary of Homeland Secu-
22 rity determines with respect to a petition
23 filed by an employee of a Federal national
24 security, science, and technology labora-
25 tory, center, or agency that such facts and

1 information are true, the Secretary shall so
2 notify the alien and shall remove the condi-
3 tional basis of the alien's status effective
4 as of the first anniversary of the alien's
5 lawful admission for permanent residence.

6 “(C) TERMINATION IF ADVERSE DETER-
7 MINATION.—If the Secretary of Homeland Se-
8 curity determines that such facts and informa-
9 tion are not true, the Secretary shall so notify
10 the alien involved and, subject to subparagraph
11 (D), shall terminate the permanent resident
12 status of an employment-based immigrant, alien
13 spouse, or alien child as of the date of the de-
14 termination.

15 “(D) HEARING IN REMOVAL PRO-
16 CEEDING.—Any alien whose permanent resident
17 status is terminated under subparagraph (C)
18 may request a review of such determination in
19 a proceeding to remove the alien. In such pro-
20 ceeding, the burden of proof shall be on the
21 Secretary of Homeland Security to establish, by
22 a preponderance of the evidence, that the facts
23 and information described in subsection (d)(1)
24 and alleged in the petition are not true.

25 “(d) DETAILS OF PETITION AND INTERVIEW.—

1 “(1) CONTENTS OF PETITION BY ALIEN INVES-
2 TOR.—Each petition filed by an alien investor under
3 section (c)(1)(A) shall contain facts and information
4 demonstrating that the alien—

5 “(A)(i) invested, or is actively in the proc-
6 ess of investing, the requisite capital; and

7 “(ii) sustained the actions described in
8 clause (i) throughout the period of the alien’s
9 residence in the United States; and

10 “(B) except as provided in paragraph (4),
11 is otherwise conforming to the requirements
12 under section 203(b)(5).

13 “(2) CONTENTS OF PETITION BY EMPLOYEE OF
14 A FEDERAL NATIONAL SECURITY, SCIENCE, AND
15 TECHNOLOGY LABORATORY, CENTER, OR AGENCY.—
16 Each petition under subsection (c)(1)(A) filed by an
17 employee of a Federal national security, science, and
18 technology laboratory, center, or agency shall con-
19 tain facts and information demonstrating that the
20 alien is conforming to the requirements of section
21 203(b)(2).

22 “(3) PERIOD FOR FILING PETITION.—

23 “(A) 90-DAY PERIOD BEFORE ANNIVER-
24 SARY.—Except as provided in subparagraph

1 (B), the petition under subsection (c)(1)(A)
2 must be filed as follows:

3 “(i) In the case of an alien investor,
4 during the 90-day period before the second
5 anniversary of the alien’s lawful admission
6 for permanent residence.

7 “(ii) In the case of an employee of a
8 Federal national security, science, and
9 technology laboratory, center, or agency,
10 during the 90-day period before the first
11 anniversary of the alien’s lawful admission
12 for permanent residence.

13 “(B) LATE PETITIONS.—Such a petition
14 may be considered if filed after such date, but
15 only if the alien establishes to the satisfaction
16 of the Secretary of Homeland Security good
17 cause and extenuating circumstances for failure
18 to file the petition during the period described
19 in subparagraph (A).

20 “(C) FILING OF PETITIONS DURING RE-
21 MOVAL.—In the case of an alien who is the sub-
22 ject of removal hearings as a result of failure
23 to file a petition on a timely basis in accordance
24 with subparagraph (A), the Secretary of Home-
25 land Security may stay such removal pro-

1 ceedings against an alien pending the filing of
2 the petition under subparagraph (B).

3 “(4) PERSONAL INTERVIEW.—The interview
4 under subsection (c)(1)(B) shall be conducted within
5 90 days after the date of submitting a petition under
6 subsection (c)(1)(A) and at a local office of U.S.
7 Citizenship and Immigration Services, designated by
8 the Secretary of Homeland Security, which is con-
9 venient to the parties involved. The Secretary, in the
10 discretion of the Secretary, may waive the deadline
11 for such an interview or the requirement for such an
12 interview in such cases as may be appropriate.

13 “(5) SPECIAL RULE FOR ALIEN INVESTORS IN
14 A REGIONAL CENTER.—Each petition under sub-
15 section (c)(1)(A) filed by an alien investor who in-
16 vests in accordance with section 203(b)(5)(E) shall
17 contain facts and information demonstrating that
18 the alien is complying with the requirements under
19 section 203(b)(5), except—

20 “(A) the alien shall not be subject to the
21 requirements under section 203(b)(5)(A)(ii);
22 and

23 “(B) the petition shall contain the most re-
24 cent financial statement filed by the regional

1 center in which the alien has invested in accord-
2 ance with section 203(b)(5)(G).

3 “(e) TREATMENT OF PERIOD FOR PURPOSES OF
4 NATURALIZATION.—For purposes of title III, in the case
5 of an alien who is in the United States as a lawful perma-
6 nent resident on a conditional basis under this section, the
7 alien shall be considered to have been admitted as an alien
8 lawfully admitted for permanent residence and to be in
9 the United States as an alien lawfully admitted to the
10 United States for permanent residence, if the alien has
11 had the conditional basis removed pursuant to this section.

12 “(f) FRAUD, MISREPRESENTATION, CRIMINAL MIS-
13 USE, OR THREATS TO THE PUBLIC SAFETY OR NATIONAL
14 SECURITY.—If the Secretary of Homeland Security deter-
15 mines, in his or her sole and unreviewable discretion, that
16 the conditional permanent resident status granted to an
17 employment-based immigrant under subsection (a), or to
18 an alien researcher described in section 203(b)(2)(A)(ii)
19 is contrary to the national interest of the United States
20 for reasons relating to fraud, misrepresentation, criminal
21 misuse, or threats to national security, the Secretary
22 shall—

23 “(1) notify the immigrant involved of such de-
24 termination; and

1 “(2) terminate the permanent resident status of
2 the immigrant involved (and the alien spouse and
3 alien children of such immigrant) as of the date of
4 such determination.

5 “(g) DEFINITIONS.—In this section:

6 “(1) The term ‘alien investor’ means an alien
7 who obtains the status of an alien lawfully admitted
8 for permanent residence (whether on a conditional
9 basis or otherwise) under section 203(b)(5).

10 “(2) The term ‘alien spouse’ and the term ‘alien
11 child’ mean an alien who obtains the status of an
12 alien lawfully admitted for permanent residence
13 (whether on a conditional basis or otherwise) by vir-
14 tue of being the spouse or child, respectively, of an
15 alien investor or an employee of a Federal national
16 security, science, and technology laboratory, center,
17 or agency.

18 “(3) The term ‘commercial enterprise’ includes
19 a limited partnership.

20 “(4) The term ‘employment-based immigrant’
21 means an alien described in paragraph (1) or (5).

22 “(5) The term ‘employee of a Federal national
23 security, science, and technology laboratory, center,
24 or agency’ means an alien who obtains the status of
25 an alien lawfully admitted for permanent residence

1 (whether on a conditional basis or otherwise) under
2 section 203(b)(2)(A)(ii).”.

3 (b) CONFORMING AMENDMENT.—Section 216(e) (8
4 U.S.C. 1186a(e)) is amended by inserting before the pe-
5 riod at the end the following: “, if the alien has had the
6 conditional basis removed pursuant to this section”.

7 (c) CLERICAL AMENDMENT.—The table of contents
8 is amended by striking the item relating to section 216A
9 and inserting the following:

“Sec. 216A. Conditional permanent resident status for certain employment-
based immigrants, spouses, and children.”.

10 **SEC. 4806. EB-5 VISA REFORMS.**

11 (a) ALIENS NOT SUBJECT TO DIRECT NUMERICAL
12 LIMITATION.—Section 201(b)(1) (8 U.S.C. 1151(b)(1)),
13 as amended by sections 2103(c)(2), 2212(d)(2), 2307(b),
14 and 2402, is further amended by adding at the end the
15 following:

16 “(P) Aliens who are the spouse or a child of an
17 alien admitted as an employment-based immigrant
18 under section 203(b)(5).”.

19 (b) TECHNICAL AMENDMENT.—Section 203(b)(5), as
20 amended by this Act, is further amended by striking “At-
21 torney General” each place it appears and inserting “Sec-
22 retary of Homeland Security”.

23 (c) TARGETED EMPLOYMENT AREAS.—

1 (1) IN GENERAL.—Section 203(b)(5)(B) (8
2 U.S.C. 1153(b)(5)(B)) is amended to read as fol-
3 lows:

4 “(B) SET-ASIDE FOR TARGETED EMPLOY-
5 MENT AREAS.—

6 “(i) IN GENERAL.—Not fewer than
7 5,000 of the visas made available under
8 this paragraph in each fiscal year shall be
9 reserved for qualified immigrants who in-
10 vest in a new commercial enterprise de-
11 scribed in subparagraph (A), which—

12 “(I) is investing such capital in a
13 targeted employment area; and

14 “(II) will create employment in
15 such targeted employment area.

16 “(ii) DURATION OF HIGH UNEMPLOY-
17 MENT AND POVERTY AREA DESIGNA-
18 TION.—A designation of a high unemploy-
19 ment or poverty area as a targeted employ-
20 ment area shall be valid for 5 years and
21 may be renewed for additional 5-year peri-
22 ods if the area continues to meet the defi-
23 nition of a high unemployment or poverty
24 area. An investor who has made the re-
25 quired amount of investment in such a tar-

1 geted employment area during its period of
2 designation shall not be required to in-
3 crease the amount of investment based
4 upon expiration of the designation.”.

5 (d) ADJUSTMENT OF MINIMUM EB-5 INVESTMENT
6 AMOUNT.—Section 203(b)(5)(C)(i) (8 U.S.C.
7 1153(b)(5)(C)(i)) is amended—

8 (1) by striking “The Attorney General” and in-
9 serting “The Secretary of Commerce”;

10 (2) by striking “Secretary of State” and insert-
11 ing “Secretary of Homeland Security”; and

12 (3) by adding at the end the following: “Unless
13 adjusted by the Secretary of Commerce, the amount
14 specified in this clause shall automatically adjust, on
15 January 1, 2016, by the percentage change in the
16 Consumer Price Index (CPI-U) during fiscal year
17 2015, and on every fifth subsequent January 1 by
18 the cumulative percentage change in the CPI-U dur-
19 ing the previous 5 fiscal years, for any petition filed
20 to classify an alien under this paragraph on or after
21 the date of each automatic adjustment.”.

22 (e) DEFINITIONS.—

23 (1) IN GENERAL.—Section 203(b)(5) (8 U.S.C.
24 1153(b)(5)), as amended by subsections (b) and (c)
25 and section 4804, is further amended—

1 (A) by striking subparagraph (D) and in-
2 serting following:

3 “(D) CALCULATION OF FULL-TIME EM-
4 PLOYMENT.—Job creation under this paragraph
5 may consist of employment measured in full-
6 time equivalents, such as intermittent or sea-
7 sonal employment opportunities and construc-
8 tion jobs. A full-time employment position is
9 not a requirement for indirect job creation.”;
10 and

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

12 “(K) DEFINITIONS.—In this paragraph:

13 “(i) The term ‘capital’ means all real,
14 personal, or mixed assets, whether tangible
15 or intangible, owned or controlled by the
16 investor, or held in trust for the benefit of
17 the investor, to which the investor has un-
18 restricted access, which shall be valued at
19 fair market value in United States dollars,
20 in accordance with Generally Accepted Ac-
21 counting Principles, at the time it is in-
22 vested under this paragraph.

23 “(ii) The term ‘full-time employment’
24 means employment in a position that re-
25 quires at least 35 hours of service per

1 week, regardless of how many employees
2 fill the position.

3 “(iii) The term ‘high unemployment
4 and poverty area’ means—

5 “(I) an area consisting of a cen-
6 sus tract or contiguous census tracts
7 that has an unemployment rate that
8 is at least 150 percent of the national
9 average unemployment rate and in-
10 cludes at least 1 census tract with 20
11 percent of its residents living below
12 the poverty level as determined by the
13 Bureau of the Census; or

14 “(II) an area that is within the
15 boundaries established for purposes of
16 a Federal or State economic develop-
17 ment incentive program, including
18 areas defined as Enterprise Zones,
19 Renewal Communities, Promise
20 Zones, and Empowerment Zones.

21 “(iv) The term ‘rural area’ means—

22 “(I) any area other than an area
23 within a metropolitan statistical area
24 or within the outer boundary of any
25 city or town having a population of

1 20,000 or more (based on the most
2 recent decennial census of the United
3 States); or

4 “(II) any city or town having a
5 population of fewer than 20,000
6 (based on the most recent decennial
7 census of the United States) that is
8 located within a State having a popu-
9 lation of fewer than 1,500,000 (based
10 on the most recent decennial census of
11 the United States).

12 “(v) The term ‘targeted employment
13 area’ means a rural area or a high unem-
14 ployment and poverty area.”.

15 (2) EFFECTIVE DATE.—The amendment made
16 by paragraph (1) shall apply to any application for
17 a visa under section 203(b)(5) of the Immigration
18 and Nationality Act that is filed on or after the date
19 that is 1 year after the date of the enactment of this
20 Act.

21 (f) AGE DETERMINATION FOR CHILDREN OF ALIEN
22 INVESTORS.—Section 203(h) (8 U.S.C. 1153(h)) is
23 amended by adding at the end the following:

24 “(5) AGE DETERMINATION FOR CHILDREN OF
25 ALIEN INVESTORS.—An alien admitted under sub-

1 section (d) as a lawful permanent resident on a con-
2 ditional basis as the child of an alien lawfully admit-
3 ted for permanent residence under subsection (b)(5),
4 whose lawful permanent resident status on a condi-
5 tional basis is terminated under section 216A, shall
6 continue to be considered a child of the principal
7 alien for the purpose of a subsequent immigrant pe-
8 tition by such alien under subsection (b)(5) if the
9 alien remains unmarried and the subsequent petition
10 is filed by the principal alien not later than 1 year
11 after the termination of conditional lawful perma-
12 nent resident status. No alien shall be considered a
13 child under this paragraph with respect to more
14 than 1 petition filed after the alien's 21st birth-
15 day.”.

16 (g) ENHANCED PAY SCALE FOR CERTAIN FEDERAL
17 EMPLOYEES ADMINISTERING THE EB-5 PROGRAM.—The
18 Secretary may establish, fix the compensation of, and ap-
19 point individuals to, designated critical administrative,
20 technical, and professional positions needed to administer
21 sections 203(b)(5) and 216A of the Immigration and Na-
22 tionality Act (8 U.S.C. 1153(b)(5) and 1186b).

23 (h) DELEGATION OF CERTAIN EB-5 AUTHORITY.—

24 (1) IN GENERAL.—The Secretary of Homeland
25 Security may delegate to the Secretary of Commerce

1 authority and responsibility for determinations
2 under sections 203(b)(5) and 216A (with respect to
3 alien entrepreneurs) of the Immigration and Nation-
4 ality Act (8 U.S.C. 1153(b)(5) and 1186a), includ-
5 ing determining whether an alien has met employ-
6 ment creation requirements.

7 (2) REGULATIONS.—The Secretary of Home-
8 land Security and the Secretary of Commerce may
9 each adopt such rules and regulations as are nec-
10 essary to carry out the delegation authorized under
11 paragraph (1), including regulations governing the
12 eligibility criteria for obtaining benefits pursuant to
13 the amendments made by this section.

14 (3) USE OF FEES.—Adjudication fees described
15 in section 286(m) of the Immigration and Nation-
16 ality Act (8 U.S.C. 1356(m)) shall remain available
17 until expended to reimburse the Secretary of Com-
18 merce for the costs of any determinations made by
19 the Secretary of Commerce under paragraph (1).

20 (i) CONCURRENT FILING OF EB-5 PETITIONS AND
21 APPLICATIONS FOR ADJUSTMENT OF STATUS.—Section
22 245 (8 U.S.C. 1255), as amended by section 4237(b), is
23 further amended—

1 (1) in subsection (k), in the matter preceding
2 paragraph (1), by striking “or (3)” and inserting
3 “(3), (5), or (7)”; and

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

5 “(o) At the time a petition is filed for classification
6 under section 203(b)(5), if the approval of such petition
7 would make a visa immediately available to the alien bene-
8 ficiary, the alien beneficiary’s application for adjustment
9 of status under this section shall be considered to be prop-
10 erly filed whether the application is submitted concur-
11 rently with, or subsequent to, the visa petition.”.

12 **SEC. 4807. AUTHORIZATION OF APPROPRIATIONS.**

13 (a) **FUNDING.**—There are authorized to be appro-
14 priated from the Trust Fund established under section
15 9(a) such sums as may be necessary to carry out sections
16 1110, 2101, 2104, 2212, 2213, 2221, 2232, 3301, 3501,
17 3502, 3503, 3504, 3505, 3506, 3605, 3610, 4221, and
18 4401 of this Act.

19 (b) **AVAILABILITY OF FUNDS.**—Amounts appro-
20 priated pursuant to this section shall remain available
21 until expended unless otherwise specified in this Act.

1 **Subtitle I—Student and Exchange**
2 **Visitor Programs**

3 **SEC. 4901. SHORT TITLE.**

4 This subtitle may be cited as the “Student Visa In-
5 tegrity Act”.

6 **SEC. 4902. SEVIS AND SEVP DEFINED.**

7 In this subtitle:

8 (1) SEVIS.—The term “SEVIS” means the
9 Student and Exchange Visitor Information System
10 of the Department of Homeland Security.

11 (2) SEVP.—The term “SEVP” means the Stu-
12 dent and Exchange Visitor Program of the Depart-
13 ment of Homeland Security.

14 **SEC. 4903. INCREASED CRIMINAL PENALTIES.**

15 Section 1546(a) of title 18, United States Code, is
16 amended by striking “10 years” and inserting “15 years
17 (if the offense was committed by an owner, official, em-
18 ployee, or agent of an educational institution with respect
19 to such institution’s participation in the Student and Ex-
20 change Visitor Program), 10 years”.

21 **SEC. 4904. ACCREDITATION REQUIREMENT.**

22 Section 101(a)(52) (8 U.S.C. 1101(a)(52)) is amend-
23 ed to read as follows:

24 “(52) Except as provided in section 214(m)(4), the
25 term ‘accredited college, university, or language training

1 program’ means a college, university, or language training
2 program that is accredited by an accrediting agency recog-
3 nized by the Secretary of Education.”.

4 **SEC. 4905. OTHER ACADEMIC INSTITUTIONS.**

5 Section 214(m) (8 U.S.C. 1184(m)) is amended by
6 adding at the end the following:

7 “(3) The Secretary of Homeland Security shall re-
8 quire accreditation of an academic institution (except for
9 seminaries or other religious institutions) for purposes of
10 section 101(a)(15)(F) if—

11 “(A) that institution is not already required to
12 be accredited under section 101(a)(15)(F)(i); and

13 “(B) an appropriate accrediting agency recog-
14 nized by the Secretary of Education is able to pro-
15 vide such accreditation.

16 “(4) The Secretary of Homeland Security, in the Sec-
17 retary’s discretion, may waive the accreditation require-
18 ment in section 101(a)(15)(F)(i) with respect to an ac-
19 credited college, university, or language training program
20 if the academic institution—

21 “(A) is otherwise in compliance with the re-
22 quirements of such section; and

23 “(B) is, on the date of the enactment of the Il-
24 legal Immigration Reform and Immigrant Responsi-
25 bility Act of 1996, a candidate for accreditation or,

1 after such date, has been a candidate for accredita-
2 tion for at least 1 year and continues to progress to-
3 ward accreditation by an accreditation agency recog-
4 nized by the Secretary of Education.”.

5 **SEC. 4906. PENALTIES FOR FAILURE TO COMPLY WITH**
6 **SEVIS REPORTING REQUIREMENTS.**

7 Section 641 of the Illegal Immigration Reform and
8 Immigrant Responsibility Act of 1996 (8 U.S.C. 1372) is
9 amended—

10 (1) in subsection (c)(1)—

11 (A) by striking “institution,” each place it
12 appears and inserting “institution,”; and

13 (B) in subparagraph (D), by striking
14 “and” at the end;

15 (2) in subsection (d)(2), by striking “fails to
16 provide the specified information” and all that fol-
17 lows and inserting “does not comply with the report-
18 ing requirements set forth in this section, the Sec-
19 retary of Homeland Security may—

20 “(A) impose a monetary fine on such insti-
21 tution in an amount to be determined by the
22 Secretary; and

23 “(B) suspend the authority of such institu-
24 tion to issue a Form I-20 to any alien.”.

1 **SEC. 4907. VISA FRAUD.**

2 (a) IMMEDIATE WITHDRAWAL OF SEVP CERTIFI-
3 CATION.—Section 641(d) of the Illegal Immigration Re-
4 form and Immigrant Responsibility Act of 1996 (8 U.S.C.
5 1372(d)) is amended—

6 (1) in paragraph (1)(A), by striking “institu-
7 tion,” and inserting “institution,”; and

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

9 “(3) EFFECT OF REASONABLE SUSPICION OF
10 FRAUD.—If the Secretary of Homeland Security has
11 reasonable suspicion that an owner of, or a des-
12 ignated school official at, an approved institution of
13 higher education, an other approved educational in-
14 stitution, or a designated exchange visitor program
15 has committed fraud or attempted to commit fraud
16 relating to any aspect of the Student and Exchange
17 Visitor Program, or if such owner or designated
18 school official is indicted for such fraud, the Sec-
19 retary may immediately—

20 “(A) suspend such certification without
21 prior notification; and

22 “(B) suspend such official’s or such
23 school’s access to the Student and Exchange
24 Visitor Information System (SEVIS).”.

25 (b) EFFECT OF CONVICTION FOR VISA FRAUD.—Sec-
26 tion 641(d) of the Illegal Immigration Reform and Immi-

1 grant Responsibility Act of 1996, as amended by sub-
2 section (a), is further amended by adding at the end the
3 following:

4 “(5) PERMANENT DISQUALIFICATION FOR
5 FRAUD.—A designated school official at, or an owner
6 of, an approved institution of higher education, an
7 other approved educational institution, or a des-
8 ignated exchange visitor program who is convicted
9 for fraud relating to any aspect of the Student and
10 Exchange Visitor Program shall be permanently dis-
11 qualified from filing future petitions and from hav-
12 ing an ownership interest or a management role (in-
13 cluding serving as a principal, owner, officer, board
14 member, general partner, designated school official,
15 or any other position of substantive authority for the
16 operations or management of the institution) in any
17 United States educational institution that enrolls
18 nonimmigrant alien students described in subpara-
19 graph (F) or (M) of section 101(a)(15) of the Immi-
20 gration and Nationality Act (8 U.S.C.
21 1101(a)(15)).”.

22 **SEC. 4908. BACKGROUND CHECKS.**

23 (a) IN GENERAL.—Section 641(d) of the Illegal Im-
24 migration Reform and Immigrant Responsibility Act of
25 1996 (8 U.S.C. 1372(d)), as amended by section 4907 of

1 this Act, is further amended by adding at the end the fol-
2 lowing:

3 “(6) BACKGROUND CHECK REQUIREMENT.—

4 “(A) IN GENERAL.—An individual may not
5 serve as a designated school official or be grant-
6 ed access to SEVIS unless the individual is a
7 national of the United States or an alien law-
8 fully admitted for permanent residence and dur-
9 ing the most recent 3-year period—

10 “(i) the Secretary of Homeland Secu-
11 rity has—

12 “(I) conducted a thorough back-
13 ground check on the individual, in-
14 cluding a review of the individual’s
15 criminal and sex offender history and
16 the verification of the individual’s im-
17 migration status; and

18 “(II) determined that the indi-
19 vidual—

20 “(aa) has not been convicted
21 of any violation of United States
22 immigration law; and

23 “(bb) is not a risk to the na-
24 tional security of the United
25 States; and

1 “(ii) the individual has successfully
2 completed an on-line training course on
3 SEVP and SEVIS, which has been devel-
4 oped by the Secretary.

5 “(B) INTERIM DESIGNATED SCHOOL OFFI-
6 CIAL.—

7 “(i) IN GENERAL.—An individual may
8 serve as an interim designated school offi-
9 cial during the period that the Secretary is
10 conducting the background check required
11 by subparagraph (A)(i)(I).

12 “(ii) REVIEWS BY THE SECRETARY.—
13 If an individual serving as an interim des-
14 ignated school official under clause (i) does
15 not successfully complete the background
16 check required by subparagraph (A)(i)(I),
17 the Secretary shall review each Form I–20
18 issued by such interim designated school
19 official.

20 “(7) FEE.—The Secretary is authorized to col-
21 lect a fee from an approved school for each back-
22 ground check conducted under paragraph (6)(A)(i).
23 The amount of such fee shall be equal to the average
24 amount expended by the Secretary to conduct such
25 background checks.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall take effect on the date that is 1 year
3 after the date of the enactment of this Act.

4 **SEC. 4909. REVOCATION OF AUTHORITY TO ISSUE FORM I-**
5 **20 OF FLIGHT SCHOOLS NOT CERTIFIED BY**
6 **THE FEDERAL AVIATION ADMINISTRATION.**

7 Immediately upon the enactment of this Act, the Sec-
8 retary shall prohibit any flight school in the United States
9 from accessing SEVIS or issuing a Form I-20 to an alien
10 seeking a student visa pursuant to subparagraph (F)(i)
11 or (M)(i) of section 101(a)(15) of the Immigration and
12 Nationality Act (8 U.S.C. 1101(a)(15)) if the flight school
13 has not been certified to the satisfaction of the Secretary
14 and by the Federal Aviation Administration pursuant to
15 part 141 or part 142 of title 14, Code of Federal Regula-
16 tions (or similar successor regulations).

17 **SEC. 4910. REVOCATION OF ACCREDITATION.**

18 At the time an accrediting agency or association is
19 required to notify the Secretary of Education and the ap-
20 propriate State licensing or authorizing agency of the final
21 denial, withdrawal, suspension, or termination of accredi-
22 tation of an institution pursuant to section 496 of the
23 Higher Education Act of 1965 (20 U.S.C. 1099b), such
24 accrediting agency or association shall notify the Secretary
25 of Homeland Security of such determination and the Sec-

1 retary of Homeland Security shall immediately withdraw
2 the school from the SEVP and prohibit the school from
3 accessing SEVIS.

4 **SEC. 4911. REPORT ON RISK ASSESSMENT.**

5 Not later than 180 days after the date of the enact-
6 ment of this Act, the Secretary shall submit to the Com-
7 mittee on the Judiciary of the Senate and the Committee
8 on the Judiciary of the House of Representatives a report
9 that contains the risk assessment strategy that will be em-
10 ployed by the Secretary to identify, investigate, and take
11 appropriate action against schools and school officials that
12 are facilitating the issuance of Form I-20 and the mainte-
13 nance of student visa status in violation of the immigra-
14 tion laws of the United States.

15 **SEC. 4912. IMPLEMENTATION OF GAO RECOMMENDATIONS.**

16 Not later than 180 days after the date of the enact-
17 ment of this Act, the Secretary shall submit to the Com-
18 mittee on the Judiciary of the Senate and the Committee
19 on the Judiciary of the House of Representatives a report
20 that describes—

- 21 (1) the process in place to identify and assess
22 risks in the SEVP;
- 23 (2) a risk assessment process to allocate
24 SEVP's resources based on risk;

1 (3) the procedures in place for consistently en-
2 suring a school's eligibility, including consistently
3 verifying in lieu of letters;

4 (4) how SEVP identified and addressed missing
5 school case files;

6 (5) a plan to develop and implement a process
7 to monitor State licensing and accreditation status
8 of all SEVP-certified schools;

9 (6) whether all flight schools that have not been
10 certified to the satisfaction of the Secretary and by
11 the Federal Aviation Administration have been re-
12 moved from the program and have been restricted
13 from accessing SEVIS;

14 (7) the standard operating procedures that gov-
15 ern coordination among SEVP, Counterterrorism
16 and Criminal Exploitation Unit, and U.S. Immigra-
17 tion and Customs Enforcement field offices; and

18 (8) the established criteria for referring cases of
19 a potentially criminal nature from SEVP to the
20 counterterrorism and intelligence community.

21 **SEC. 4913. IMPLEMENTATION OF SEVIS II.**

22 Not later than 2 years after the date of the enact-
23 ment of this Act, the Secretary shall complete the deploy-
24 ment of both phases of the second generation Student and

1 Exchange Visitor Information System (commonly known
2 as “SEVIS II”).

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