The amendment (No. 1157) was rejected.

Mr. KENNEDY. Mr. President, I move to reconsider the vote.

Mrs. MURRAY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TEXT OF AMENDMENT SUBMITTED MONDAY, MAY 21, 2007

SA 1150, Mr. REID (for Mr. KENNEDY (for himself and Mr. SPECTER)) proposed an amendment to the bill S. 1348, to provide for comprehensive immigration reform and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. EFFECTIVE DATE TRIGGERS.

(a) With the exception of the probationary benefits conferred by section 601(h), the provisions of subtitle C of title IV, and the admission of aliens under Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)), as amended by title IV,

(1) the programs established by title IV of this Act; and

(2) the programs established by title VI of this Act that grant legal status to any individual or adjust the current status of any individual who is unlawfully present in the United States to that of an alien lawfully admitted for permanent residence, shall become effective on the date that the President submits a written certification to the President and the Congress that the following requirements have been met:

(a) the Department of Homeland Security is detaining all removable aliens apprehended crossing the southern border, except as specifically mandated by law or humanitarian circumstances, and the Department of Homeland Security shall, subject to the availability of appropriations, increase by not less than 500 the number of positions authorized under section 5203 of this Act of 2004 (Public Law 108-110) to carry out paragraph (1) of subsection (a) of section 5202 (as redesignated by section 103 of title IV of this Act);

(b) in each of the fiscal years 2008 through 2012, the Secretary shall, subject to the availability of appropriations, increase by not less than 200 the number of positions for personnel within the Department designated to investigate alien smuggling;

(c) the Attorney General shall increase the number of positions for full-time active duty border patrol agents equal to not less than 20 percent of the net increase in border patrol agents during each such fiscal year;

(d) the Department of Homeland Security shall, subject to the availability of appropriations, increase by not less than 200 the number of positions for full-time active duty border patrol agents; and

(e) the Secretary of Defense or a designee of the Secretary of Defense shall establish a program to actively recruit current military personnel and (4) as paragraphs (2), (3), (4), and (5), redesignated, the following:

SECTION 110. ENFORCEMENT PERSONNEL.

(a) IN GENERAL.—The Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, increase the number of positions for full-time active duty border patrol agents within the Department of Homeland Security (above the number of such positions for which funds were appropriated for the preceding fiscal year), by not less than—

(1) 2,000 in fiscal year 2008;

(2) 2,400 in fiscal year 2009;

(3) 2,400 in fiscal year 2010;

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

(5) 2,400 in fiscal year 2012.

(b) Northern Border.—In each of the fiscal years 2008 through 2012, in addition to the border patrol agents assigned along the northern border of the United States during the previous fiscal year, the Secretary shall assign a number of border patrol agents equal to not less than 20 percent of the net increase in border patrol agents during each such fiscal year.

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

SECTION 101. BORDER ENFORCEMENT.

SUBTITLE A—ASSETS FOR CONTROLLING UNITED STATES BORDERS

SEC. 101. ENFORCEMENT PERSONNEL.

(A) IMMIGRATION AND CUSTOMS ENFORCEMENT OFFICERS.—In each of the fiscal years 2008 through 2012, the Secretary shall, subject to the availability of appropriations, increase by not less than 500 the number of positions for full-time active duty CBP officers and provide appropriate training, equipment, and support to such additional CBP officers.

(B) INVESTIGATIVE PERSONNEL.—

(A) IMMIGRATION AND CUSTOMS ENFORCEMENT INVESTIGATORS.—Section 5203 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-110; 118 Stat. 5734) is amended by striking “300” and inserting “1000”.

(B) ADDITIONAL PERSONNEL.—In addition to the positions under section 5203 of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended by subparagraph (A), during each of the fiscal years 2008 through 2012, the Secretary shall, subject to the availability of appropriations, increase by not less than 200 the number of positions for personnel within the Department assigned to investigate alien smuggling.

(C) DEPUTY UNITED STATES MARSHALS.—In each of the fiscal years 2008 through 2012, the Attorney General shall assign a number of positions for full-time active duty Deputy United States Marshals that assist in matters related to immigration.

(D) RECRUITMENT OF FORMER MILITARY PERSONNEL.—

(A) IN GENERAL.—The Commissioner of the United States Customs and Border Protection of the Department of Homeland Security shall, subject to the availability of appropriations, increase by not less than 50 the number of positions for personnel within the Department designated to investigate alien smuggling.

(B) RECRUITMENT OF FORMER MILITARY PERSONNEL.—

(1) IN GENERAL.—The Commissioner of the United States Customs and Border Protection of the Department of Homeland Security shall, subject to the availability of appropriations, increase by not less than 50 the number of positions for personnel within the Department designated to participate in programs to actively recruit current military personnel

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

SECTION 103. INFRASTRUCTURE

(A) ACQUISITION.—Subject to the availability of appropriations for such purpose, the Secretary shall procure additional unmanned aerial vehicles, cameras, poles, sensors, and other technology to achieve operational control of the borders of the United States.

(B) AVAILABILITY OF EQUIPMENT.—The Secretary and the Secretary of Defense shall develop and implement a plan to use authorities provided to the Secretary of Defense under title 10, United States Code, to increase the availability and use of Department of Defense equipment, including unmanned aerial vehicles, tethered aerostat radars, and other surveillance equipment, to assist the Secretary in carrying out surveillance activities conducted at or near the international land borders of the United States to prevent illegal immigration.

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

SEC. 102. TECHNOLOGICAL ASSETS.

(A) ACQUISITION.—Subject to the availability of appropriations for such purpose, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2008 through 2012 to carry out this section.

SEC. 103. INFRASTRUCTURE.

Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1330 note) is amended—

(1) in subsection (a), by striking “Attorney General, in consultation with the Commissioner of Immigration and Naturalization,” and inserting “Secretary of Homeland Security”; and

(2) in subsection (b)—

(A) by redesigning paragraphs (1), (2), (3), and (4) as paragraphs (2), (3), (4), and (5), respectively;

(B) by inserting before paragraph (2), as redesignated, the following:

(5) $6625 established pursuant to subparagraph (A) to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.
“(1) FENCING NEAR SAN DIEGO, CALIFORNIA.—In carrying out subsection (a), the Secretary shall provide for the construction along the 14 miles of the international land border of the United States with Mexico along the Pacific Ocean and extending eastward, of second and third fences, in addition to the existing reinforced fence, and for roads between the fences.

SEC. 104. PORTS OF ENTRY.

Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Public Law 104-208, is amended by the addition, at the end of that section, of the following new subsection:

(e) CONSTRUCTION AND IMPROVEMENTS.—The Secretary is authorized to:

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

“(2) make necessary improvements to the ports of entry.

Subtitle B—Other Border Security Initiatives

SEC. 111. BIOMETRIC ENTRY–EXIT SYSTEM.

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

(1) by redesignating subsection (c) as subsection (g);

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

(3) by inserting after subsection (b) the following:

“(c) The Secretary is authorized to require aliens entering or departing the United States to provide biometric data and other information relating to their immigration status.’’.

(b) INSPECTION OF APPLICANTS FOR ADMISSIBILITY.—Section 212 (8 U.S.C. 1182) is amended by adding at the end the following:

“(5) AUTHORITY TO COLLECT BIOMETRIC DATA.—In conducting inspections under section 212(b) of this title, immigration officers are authorized to collect biometric data from—

“(A) any applicant for admission or any alien who is paroled under section 212(d)(5), seeking to or permitted to land temporarily as an alien crewman, or seeking to or permitted transit through the United States; or

“(B) any lawful permanent resident who is entering the United States and who is not regarded as seeking admission pursuant to section 101(a)(13)(C)’’.

(c) COLLECTION OF BIOMETRIC DATA FROM ALIENS ENTERING OR DEPARTING THE UNITED STATES.—Section 202 (8 U.S.C. 1222) is amended by adding at the end the following:

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

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

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

“(C) as follows of biometric data.—Any alien who fails or has failed to comply with a lawful request for biometric data under section 212(c), 235(d), or 252(d) is inadmissible; and

(2) in subsection (d), by inserting after paragraph (1) the following:

“(2) The Secretary may waive the application of paragraphs (A) or (C) for an individual alien or class of aliens.’’.

(e) IMPLEMENTATION.—Section 7208 of the 911 Commission Implementation Act of 2004 (8 U.S.C. 1222) is amended—

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

“(3) IMPLEMENTATION.—In full implementation of the automated biometric entry–exit data system under this section, the Secretary is not required to comply with the requirements of chapter 5 of title 5; United States Code (commonly referred to as the Administrative Procedure Act) or any other law relating to rulemaking, information collection, or publication in the Federal Register;’’;

(2) in subsection (1)(A)—

“(I) by striking ‘‘There are authorized’’ and inserting the following:

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

“(II) by adding at the end the following:’’;

“(2) IMPLEMENTATION AT ALL LAND BORDER PORTS OF ENTRY.—There are authorized to be appropriated such sums as may be necessary for each fiscal year beginning after 2008 to implement the automated biometric entry and exit data system at all land border ports of entry.’’.

SEC. 112. UNLAWFUL FLIGHT FROM IMMIGRATION OR CUSTOMS CONTROLS.

(a) IN GENERAL.—Section 758 of Title 18, United States Code, is amended to read as follows:

“758. Unlawful Flight from Immigration or Customs Controls

“(a) EVADING A CHECKPOINT.—Any person who, while operating a motor vehicle or vessel, knowingly flies or evades a checkpoint operated by the Department of Homeland Security, or any other Federal law enforcement agency, and then knowingly or recklessly disregards or disobeys the lawful command of any law enforcement agent, shall be fined not more than five years, or both.

“(b) FAILURE TO STOP.—Any person who, while operating a motor vehicle, aircraft, or vessel, knowingly or recklessly disregards or disobeys the lawful command of an officer of the Department of Homeland Security or any other Federal law enforcement agency, and then knowingly or recklessly disregards or disobeys the lawful command of any law enforcement agent, shall be fined not more than two years, or both.

“(c) ALTERNATIVE PENALTIES.—Notwithstanding the penalties provided in subsection (b), any person who violates such subsection shall—

“(1) be fined under this title, imprisoned not more than 10 years, or both, if the violation involved the operation of a motor vehicle, aircraft, or vessel;

“(A) in excess of the applicable or posted speed limit;

“(B) in excess of the rated capacity of the motor vehicle, aircraft, or vessel; or

“(C) in an otherwise dangerous or reckless manner;

“(2) be fined under this title, imprisoned not more than 20 years, or both, if the violation created a substantial and foreseeable risk of serious bodily injury or death to any person;

“(d) ATTEMPT AND CONSPIRACY.—Any person who attempts or conspires to commit any offense under this section shall be punished in the same manner as a person who completes the offense.

“(e) FORFEITURE.—Any property, real or personal, constituting or traceable to the gross proceeds of the offense and any property, real or personal, used or intended to be used to commit or facilitate the commission of the offense shall be subject to forfeiture.

“(f) Definitions.—For purposes of this section—

“(1) the term ‘checkpoint’ includes, but is not limited to, any customs or immigration inspection at a port of entry;

“(2) the term ‘lawful command’ includes, but is not limited to, a command to stop, decrease speed, alter course, or land, whether communicated orally, visually, by means of lights or sirens, or by radio, telephone, or other wire communication;

“(3) the term ‘law enforcement agent’ means any Federal, State, local or tribal official authorized to enforce criminal law, when acting under authority grantcd under subsection (b) of this section, an air traffic controller;

“(4) the term ‘motor vehicle’ means any motorized or self-propelled means of terrestrial transportation; and

“(5) The term ‘serious bodily injury’ has the meaning given in section 2115(2) of this title.’.’’

SEC. 113. RELEASE OF ALIENS FROM NON-CONTIGUOUS COUNTRIES.

Section 229(a)(2) (8 U.S.C. 1229(a)(2)) is amended—

(1) by striking ‘‘on’’;

(2) in subparagraph (A)—

“(i) has not been admitted or paroled into the United States; and

“(ii) was apprehended within 100 miles of the international border of the United States or presents a flight risk, as determined by the Secretary of Homeland Security; or’’

SEC. 114. SEIZURE OF CONVEYANCE WITH CONCEALED COMPARTMENTS: EXPANDING THE DEFINITION OF CONVEYANCES WITH HIDDEN COMPARTMENTS SUBJECT TO FORFEITURE.

(a) IN GENERAL.—Section 1703 of Title 19, United States Code is amended—

(1) by amending the title of such section to read as follows:

“1703. Seizure and forfeiture of vessels, vehicles, other conveyances and instruments of international traffic’’;

(2) by amending the title of subsection (a) to read as follows:

“(a) ‘‘Vessels, vehicles, other conveyances and instruments of international traffic subject to seizure and forfeiture’’;

(3) by amending the title of subsection (b) to read as follows:

“(b) Vessels, vehicles, other conveyances and instruments of international traffic defined’’;

(4) by inserting ‘‘, vehicle, other conveyance or instrument of international traffic’’ after ‘‘conveyance with concealed compartments’’ appearing in the text of subsections (a) and (b); and

May 24, 2007
(b) AUTHORIZATION OF APPROPRIATIONS.—
(1) IN GENERAL.—There are authorized to be appropriated to the Secretary to carry out subsection (a)–
(A) $276,000,000 for fiscal year 2008; and
(B) $276,000,000 for fiscal year 2009.
(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) shall remain available until expended.

SEC. 125. SURVEILLANCE TECHNOLOGIES PROGRAMS.

(a) AERIAL SURVEILLANCE PROGRAM.—
(1) IN GENERAL.—In conjunction with the border surveillance plan developed under section 121 of the Homeland Security Act of 2002 (6 U.S.C. 1701 note), the Secretary of Homeland Security, in consultation with the Secretary of Defense, shall develop a plan to implement technologies for border security, including unmanned aerial vehicles, to enhance the security of the international border between the United States and Mexico on a variety of topographies, and areas, including populated and unpopulated areas located on or near an international border of the United States, in order to evaluate, for a range of circumstances:
(i) the significance of previous experiences with such technologies in border security or critical infrastructure protection;
(ii) the cost and effectiveness of various technologies for border security, including varying levels of technical complexity; and
(iii) liability, safety, and privacy concerns relating to the utilization of such technologies for border security.
(2) CONTINUED USE OF AERIAL SURVEILLANCE TECHNOLOGIES.—The Secretary may continue the operation of aerial surveillance technologies while assessing the effectiveness of the utilization of such technologies.

(b) SECURE COMMUNICATION.—
SEC. 123. SECURE COMMUNICATION.

The Secretary shall, as expeditiously as practicable, develop and implement a plan to improve the use of satellite communications and other technologies to ensure clear and secure 2-way communication capabilities.

(c) UNMANNED AERIAL SYSTEMS.—
SEC. 124. UNMANNED AERIAL SYSTEMS.

(a) UNMANNED AERIAL AND ASSOCIATED INFRASTRUCTURE.—The Secretary shall acquire and maintain unmanned aircraft systems for use along the border, including related equipment such as—
(1) additional sensors;
(2) critical spares;
(3) satellite command and control; and
(4) other necessary equipment for operational support.

(b) INTEGRATED AND AUTOMATED SURVEILLANCE PROGRAM.—
SEC. 126. INTEGRATED AND AUTOMATED SURVEILLANCE PROGRAM.

(a) REQUIREMENT FOR PROGRAM.—Subject to the availability of appropriations, the Secretary shall establish a program to procure...
shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a report on a detailed plan of any steps that the Secretary has taken or plans to take in response to such findings.

(5) AUTHORIZATION OF APPROPRIATIONS.—

There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

SEC. 126. SURVEILLANCE PLAN. 

(a) REQUIREMENT FOR PLAN.—The Secretary shall submit a comprehensive plan for the systematic surveillance of the international land and maritime borders of the United States.

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

(1) An assessment of existing technologies employed on the international land and maritime borders of the United States.

(2) A description of the compatibility of new surveillance technologies with surveillance technologies in use by the Secretary on the date of the enactment of this Act.

(3) A description of how the Commissioner of Customs and Border Protection of the Department of Homeland Security is working, or is expected to work, with the Under Secretary for Science and Technology of the Department to identify and test surveillance technology.

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

(5) Identification of any obstacles that may impede such deployment.

(6) A detailed estimate of all costs associated with such deployment and with continued maintenance of such technologies.

(7) A description of how the Secretary is working with the Administrator of the Federal Aviation Administration on safety and airspace control issues associated with the use of unmanned aerial vehicles.

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

SEC. 127. NATIONAL STRATEGY FOR BORDER SECURITY. 

(a) REQUIREMENTS FOR STRATEGY.—The Secretary, in consultation with the heads of other appropriate Federal agencies, shall develop a National Strategy for Border Security that describes actions to be carried out to achieve operational control over all ports of entry into the United States and the international land and maritime borders of the United States.

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

(1) The implementation schedule for the comprehensive plan for systematic surveillance described in section 126.

(2) An assessment of the threat posed by terrorists and terrorist groups that may try to infiltrate the United States at locations along the international land and maritime borders of the United States.

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

(A) to prevent the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States; and

(B) to sustain and extend critical infrastructure at or near such ports of entry or borders.

(4) An assessment of the legal requirements that prevent achieving and maintaining operational control over all ports of entry into the international land and maritime borders of the United States.

(5) An assessment of the most appropriate, practical, and cost-effective means of defending the international land and maritime borders of the United States against threats to national security and illegal immigration; intelligence capacities, technology, equipment, personnel, and training needed to address security vulnerabilities.

(c) SUBMISSION TO CONGRESS.—The Secretary shall submit to Congress any update of such Strategy that the Secretary determines is necessary, not later than 30 days after such update is developed.

SEC. 128. IMEDIATE ACTION.—Nothing in this section or section 111 may be construed to relieve the Secretary of the responsibility to
take all actions necessary and appropriate to achieve and maintain operational control over the entire international land and maritime borders of the United States.

SEC. 128. BORDER PATROL TRAINING CAPACITY REVIEW.

(a) In General.—The Comptroller General of the United States shall conduct a review of the training provided to Border Patrol agents by the Secretary to ensure that such training is provided as efficiently and cost-effectively as possible.

(b) Components of Review.—The review under subsection (a) shall include the following components:

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

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

(3) A comparison, based on the review and breakdown under paragraph (2), of the costs, effectiveness, scope, and quality, including geographic characteristics, with other similar training programs provided by State and local agencies, nonprofit organizations, universities, and the private sector.

(4) An evaluation of whether utilizing comparable training programs that are provided as efficiently and long-distance learning programs may affect:

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

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

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

SEC. 129. BIOMETRIC DATA ENHANCEMENTS.

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

(1) in consultation with the Attorney General, enhance connectivity between the Automated Biometric Fingerprint Identification System (IDENT) of the Department and the Integrated Automated Fingerprint Identification System (LAFIS) of the Federal Bureau of Investigation to ensure more expeditious data searches; and

(2) consult with the Secretary of State, collect all fingerprints from each alien required to provide fingerprints during the alien’s initial enrollment in the integrated entry and exit data system described in section 107 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1361a).

SEC. 130. US-VISIT SYSTEM.

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

(1) equipping all land border ports of entry with the U.S.-Visitor and Immigrant Status Indicator Technology (US–VISIT) system implemented under section 109 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1361b);

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

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

SEC. 131. DOCUMENT FRAUD DETECTION.

(a) Training.—Subject to the availability of appropriations, the Secretary shall provide all U.S. Customs and Border Protection officers with training in identifying and detecting fraudulent travel documents. Such training shall be developed in consultation with the Foreign Document Laboratory of the U.S. Immigration and Customs Enforcement.

(b) Forensic Document Laboratory.—The Secretary shall provide to all U.S. Customs and Border Protection officers with access to the Forensic Document Laboratory.

(c) Grant Program.—To the extent that sums are appropriated to carry out this section, there are authorized to be appropriated to the Secretary such sums as may be necessary for the fiscal years 2008 through 2012 to carry out this section.

SEC. 132. BORDER RELIEF GRANT PROGRAM.

(a) Grants Authorized.—

(1) In General.—The Secretary is authorized to award grants to eligible law enforcement agencies for the provision of assistance to such agency to respond to criminal activity that occurs in the jurisdiction of such agency by virtue of such agency’s proximity to the United States border; and

(2) in consultation with the Attorney General, determine the relationship between any lack of security along the United States border and the rise, if any, of criminal activity in that county; and

(b) In consultation with the head of the Forensic Document Laboratory.

(2) Priority.—The Secretary shall give priority to applications from eligible law enforcement agencies serving a community—

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

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

(i) Canada; or

(ii) Mexico.

(3) Eligible Law Enforcement Agency.—Grants awarded pursuant to subsection (a) may be used only to provide additional resources for an eligible law enforcement agency to address criminal activity occurring along any such border, including—

(1) additional officers;

(2) to hire additional personnel; and

(3) to upgrade and maintain law enforcement technology;

(4) for operations costs, including overtime and transportation costs; and

(5) other such resources as are available to assist that agency.

(c) Application.—

(1) In General.—Each eligible law enforcement agency seeking a grant under this section shall submit an application to the Secretary in such manner, and accompanied by such information as the Secretary may reasonably require.

(2) Contents.—Each application submitted pursuant to paragraph (1) shall—

(A) describe the activities for which assistance under this section is sought; and

(B) provide such additional assurances as the Secretary determines to be essential to ensure compliance with the requirements of this section.

(d) Eligible Law Enforcement Agency.—The term "eligible law enforcement agency" means a tribal, State, or local law enforcement agency—

(1) located in a county with more than 100 miles from a United States border with—

(i) Canada; or

(ii) Mexico; or

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

(2) High Impact Area.—The term "High Impact Area" means any county designated by the Secretary as such, taking into consideration—

(A) whether local law enforcement agencies in that county have the resources to protect the lives, property, safety, or welfare of the residents of that county;

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

(c) the unique challenges that local law enforcement faces due to a lack of security along the United States border.

(e) Authorization of Appropriations.—

(1) In General.—There are authorized to be appropriated $50,000,000 for each of fiscal years 2008 through 2012 to carry out the provisions of this section.

(2) Division of Authorized Funds.—Of the amounts authorized under paragraph (1)—

(A) $20,000,000 shall be set aside for eligible law enforcement agencies located in States with the largest number of undocumented alien apprehensions; and

(B) such funds shall be set aside for areas designated as a High Impact Area under subsection (d).

(f) Supplement Not Supplant.—Amounts appropriated for grants under this section shall be used to supplement and not supplant other State and local public funds obligated for the purposes provided under this title.

SEC. 133. PORT OF ENTRY INFRASTRUCTURE ASSESSMENT STUDY.

(a) Requirement To Update.—Not later than January 31 of each year, the Administrator of General Services, in consultation with U.S. Customs and Border Protection, shall update the Port of Entry Infrastructure Assessment Study prepared by U.S. Customs and Border Protection in accordance with the matter relating to the ports of entry infrastructure assessment that is set out in the joint explanatory statement in the congressional report accompanying H.R. 4000 of the 106th Congress, 1st session (House of Representatives Rep. No. 106-319, on page 67) and submit such updated study to Congress.

(b) Consultation.—In preparing the updated studies required in subsection (a), the Administrator of General Services shall consult with the Director of the Office of Management and Budget, the Secretary, and the Commissioner.

(c) Content.—Each updated study required in subsection (a) shall—

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

(2) include the projects identified in the National Border Security Plan established by section 6 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1361); and

(3) prioritize the projects described in paragraphs (1) and (2) based on the ability of a project to—

(A) fulfill immediate security requirements; and

(B) facilitate trade across the borders of the United States.

(d) Project Implementation.—The Commissioner shall implement the infrastructure and technology improvement projects described in subsection (c) in the order of priority assigned to such project under subsection (c) (3).
(e) Diversion from Priorities.—The Commissioner may divest from the priority order if the Commissioner determines that significantly changed circumstances, such as immediate or localized capacity shortfalls in infrastructure in Mexico or Canada, compellingly alter the need for a project in the United States.

SEC. 134. NATIONAL LAND BORDER SECURITY PLAN.  

(a) In General.—Not later than 1 year after the date of the enactment of this Act, an appropriate Federal or State agency to which pursuant to subsection (c) of section 132 the Secretary assigned responsibility for border security, including alien smuggling, shall submit a National Land Border Security Plan to Congress.

(b) Vulnerability Assessment.—

(1) In general.—The plan required in subsection (a) shall include a vulnerability assessment of each port of entry located on the northern border or the southern border.

(2) Use of Alternate Detention Facilities.—Subject to the availability of appropriations, the Secretary shall fully utilize all possible options to cost effectively increase available detention capacities, and shall utilize detention facilities that are owned and operated by the Federal Government if the use of such facilities is cost effective.

(c) Demonstration Sites. —The purposes of the Commission are—

(1) to study the overall enforcement strategies, programs and policies of Federal agencies along the United States-Mexico border;

(2) to make recommendations to the President and Congress with respect to such strategies, programs and policies; and

(3) to promulgate recommendations.

(2) Purpose.—The purposes of the Commission are—

(a) to study the overall enforcement strategies, programs and policies of Federal agencies along the United States-Mexico border;

(b) to make recommendations to the President and Congress with respect to such strategies, programs and policies; and

(c) to promulgate recommendations.
(A) The Governors of the States of California, New Mexico, Arizona, and Texas shall each appoint 4 voting members of whom—
(i) 1 shall be a local elected official from the State;
(ii) 1 shall be a local law enforcement official from the State’s border region; and
(iii) the remaining 2 shall be individuals from the State’s communities of academia, religious leaders, civic leaders or community leaders.

(B) 2 nonvoting members, of whom—
(i) 1 shall be appointed by the Secretary;
(ii) 1 shall be appointed by the Attorney General; and
(iii) 1 shall be appointed by the Secretary of State.

(2) Each Governor under paragraph (3)(A) may appoint 2 members of the Commission appointed by each Governor.

(3) QUALIFICATIONS.—
(A) IN GENERAL.—Members of the Commission shall—
(i) individuals with expertise in migration, border enforcement and protection, civil and human rights, community relations, cross-border trade and commerce or other pertinent qualifications or experience; and
(ii) representative of a broad cross section of perspective from the region along the international border between the United States and Mexico.

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

(C) NONGOVERNMENTAL APPOINTEES.—An individual appointed to a voting position on the Commission may not be an officer or employee of the Federal Government.

(5) DEADLINE FOR APPOINTMENT.—All members of the Commission shall be appointed not later than 6 months after the enactment of this Act. If any member of the Commission described in paragraph (3)(A) is not appointed at that time, the Commission shall carry out its duties under this section without the participation of such member.

(6) TERM OF SERVICE.—The term of office for members shall be for the life of the Commission.

(7) VACANCIES.—Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(8) MEETINGS.—
(A) INITIAL MEETING.—The Commission shall meet and begin the operations of the Commission as soon as practicable.

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

(9) QUORUM.—Nine members of the Commission shall constitute a quorum.

(10) CHAIR AND VICE CHAIR.—The voting members of the Commission shall elect a Chairman and Vice Chairman from among its members. One of the voting members shall be the chairman of the Commission.

(d) COMPENSATION.—Members of the Commission shall serve without pay.

(e) REIMBURSEMENT OF EXPENSES.—All members of the Commission shall be reimbursed for all expenses necessary to the performance of their duties.

(f) REPORT.—Not later than 2 years after the date of the first meeting called pursuant to (a)(8)(A), the Commission shall submit a report to the President and Congress that contains—
(1) findings with respect to the duties of the Commission;
(2) recommendations regarding border enforcement policies, strategies, and programs; and
(3) suggestions for the implementation of the Commission’s recommendations; and shall provide the Department of Homeland Security with administrative support and other services for the performance of the Commission’s functions. To the extent any provision of the Act authorizes the Commission with administrative support and other services for the performance of the Commission’s functions, as to whether the Commission should continue to exist after the date of the termination described in subsection (g), and if so, a description of the purposes and duties recommended to be carried out by the Commission after such date.

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

(h) SUNSET.—Unless the Commission is reauthorized by Congress, the Commission shall terminate not more than 90 days after the date the Commission submits the report described in subsection (e).

TITLE II—INTERIOR ENFORCEMENT

SEC. 201. ADDITIONAL IMMIGRATION PERSONNEL

(a) DEPARTMENT OF HOMELAND SECURITY.—
(1) TRIAL ATTORNEYS.—In each of the fiscal years 2008 through 2012, the Attorney General, subject to the availability of appropriations for such purpose, shall increase the number of attorneys in the United States Attorneys’ office to litigate immigration cases in the Federal courts by not less than 50 compared to the number of such positions for which funds were made available during the preceding fiscal year.

(2) IMMIGRATION JUDGES.—In each of the fiscal years 2008 through 2012, the Attorney General, subject to the availability of appropriations for such purpose, shall—
(A) increase by not less than 20 the number of full-time immigration judges compared to the number of such positions for which funds were made available during the preceding fiscal year; and
(B) increase by not less than 80 the number of positions for personnel to support the immigration Judges described in subparagraph (A) compared to the number of such positions for which funds were made available during the preceding fiscal year.

(b) BOARD OF IMMIGRATION APPEALS MEMBERS.—In each of the fiscal years 2008 through 2012, the Attorney General, subject to the availability of appropriations, shall—
(1) increase the number of positions for full-time staff attorneys in the Board of Immigration Appeals by not less than 10 compared to the number of such positions for which funds were made available during the preceding fiscal year; and
(2) increase the number of positions for personnel to support the Board of Immigration Appeals by not less than 10 compared to the number of such positions for which funds were made available during the preceding fiscal year.

(c) ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—In each of the fiscal years 2008 through 2012, the Director of the Administrative Office of the United States Courts, subject to the availability of appropriations, shall—
(1) increase the number of attorneys in the Federal Defenders Program who litigate immigration cases in the Federal courts by not less than 50 compared to the number of such positions for which funds were made available during the preceding fiscal year; and
(2) increase the number of positions for full-time staff attorneys in the Federal Defenders Program by not less than 10 compared to the number of such positions for which funds were made available during the preceding fiscal year.

(3) AUTHORIZATION OF APPOINTMENTS.—There are authorized to be appointed to the Secretary for each of the fiscal years 2008 through 2012 such sums as may be necessary to carry out paragraphs (a) and (b).

(2) DEPARTMENT OF JUSTICE.—
(1) JUDICIAL CLERKS.—The Attorney General shall, subject to the availability of appropriations for such purpose, for each such law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 65 of title 5 (5 USCIS 6301 et seq.).

(2) IMMIGRATION JUDGES.—In each of the fiscal years 2008 through 2012, the Attorney General, subject to the availability of appropriations for such purpose, shall increase the number of such positions by not less than 20 compared to the number of such positions for which funds were made available during the preceding fiscal year.

(4) IMMIGRATION JUDGES.—In each of the fiscal years 2008 through 2012, the Attorney General, subject to the availability of appropriations for such purpose, shall—
(A) increase by not less than 50 the number of full-time immigration judges compared to the number of such positions for which funds were made available during the preceding fiscal year; and
(B) increase by not less than 100 the number of attorneys in the United States Attorneys’ office to litigate immigration cases in the Federal courts by not less than 50 compared to the number of such positions for which funds were made available during the preceding fiscal year.
were made available during the preceding fiscal year.

(4) LEGAL ORIENTATION PROGRAM.—

(a) IN GENERAL.—

(i) AMENDMENTS.—Section 241(a) (8 U.S.C. 1221(a)(1)) is amended by striking "Attorney General" the first place it appears, except for the first reference in clause (a)(4)(B)(i), and inserting "Secretary of Homeland Security".

(b) by striking "Attorney General" any other place it appears and inserting "Secretary":

(C) EXTENSION OF PERIOD.

(D) TOLLING OF PERIOD.

(F) ATTORNEY GENERAL REVIEW.

(G) by redesignating paragraph (7) as paragraph (8) and inserting after paragraph (8) the following:

(P) ATTORNEY GENERAL REVIEW.—If the Secretary authorizes an extension of detention under subparagraph (E), the alien may seek review of that determination before the Attorney General. If the Attorney General concludes that the alien should be released, then the Secretary shall release the alien pursuant to subparagraph (I).

(H) RENEWAL AND DELEGATION OF CERTIFICATION.

(1) RENEWAL.—The Secretary may renew a certification under subparagraph (E)(ii) every 6 months, without limitation, after providing the alien with an opportunity to request reconsideration of the certification and to submit documents or other evidence in support of that request.

(2) DELEGATION.—Notwithstanding any other provision of law, the Secretary may delegate the authority to make or renew certifications under subparagraph (E)(ii), (I)(ii), (II)(i), (III), or (V) of subparagraph (E)(ii) below the level of the Assistant Secretary for Immigration and Customs Enforcement.
mandated to the alien order, including the failure to make timely
petitioning before, on, or after the date of the enact-
mation of this Act; and
(ii) the alien fails to comply with the con-
ditions of release;
(iii) upon reconsideration, the Secretary
determines that the alien can be detained under
paragraph E.

(K) APPLICABILITY.—This paragraph and
paragraphs (6) and (7) shall apply to any
alien returned to custody under subpara-
graph (I) as if the removal period terminated
on the day of the redetention.

(L) DETENTION REVIEW PROCESS FOR ALIENS WHO HAVE EFFECTED AN ENTRY AND FAIL TO COOPERATE WITH REMOVAL.—The Secretary
declares an alien should be released from
detention, the Secretary may, in the Sec-

SEC. 203. AGGRAVATED FELONY.
(a) DEFINITION OF AGGRAVATED FELONY.—
Section 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended—
(1) by striking “The term ‘aggravated felony’ means” and inserting “Notwith-
standing any other provision of law, the term ‘aggravated felony’ applies to an of-
fense described in subparagraphs (B), (C), (D), (E), (F), (J), (K), or (L) of section
101(a)(42) (relating to peonage, slavery and trafficking in persons), section
1227(a)(2)(A) (relating to interstate and foreign travel and transportation in aid of
racketeering enterprises), section 1951 of title 18 (relating to laundring of mone-
tary instruments), section 237(a)(3)(B) of title 18 (relating to engaging in monetary transactions in property derived from specified unlawful
activity), or section 237(a)(3) of title 19 (relating to engaging in monetary trans-
action in property derived from specified unlawful activity), or section 237(a)(3) of title 19 (relating to engaging in monetary transactions in property derived from specified unlawful activity), or section 237(a)(3) of title 19 (relating to engaging in monetary transactions in property derived from specified unlawful activity), or section 237(a)(3) of title 19 (relating to engaging in monetary transactions in property derived from specified unlawful activity), or section 237(a)(3) of title 19 (relating to engaging in monetary transactions in property derived from specified unlawful activity), or section 237(a)(3) of title 19 (relating to engaging in monetary transactions in property derived from specified unlawful activity), or section 237(a)(3) of title 19 (relating to engaging in monetary transactions in property derived from specified unlawful activity), or section 237(a)(3) of title 19 (relating to engaging in monetary transactions in property derived from specified unlawful activity), or section 237(a)(3) of title 19 (relating to engaging in monetary transactions in property derived from specified unlawful activity), or section 237(a)(3) of title 19 (relating to engaging in monetary transactions in property derived from specified unlawful activity), or section 237(a)(3) of title 19 (relating to engaging in monetary transactions in property derived from specified unlawful activity), or section 237(a)(3) of title 19 (relating to engaging in monetary transactions in property derived from specified unlawful activity), or section 237(a)(3) of title 19 (relating to engaging in monetary transactions in property derived from specified unlawful activity), or section 237(a)(3)}

SEC. 205. INCREASED CRIMINAL PENALTIES RELAT-ED TO GANG VIOLENCE AND RE-
(a) DEFINITION OF CRIMINAL GANG.—Section
101(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by inserting after subparagraph (B) the following:

(1) by redesigning subparagraph (F) as
subparagraph (J); and

(b) INADMISSIBILITY.—Section 212(a)(2) (8 U.S.C. 1182(a)(2)) is amended—
(1) by redesigning subparagraph (F) as
subparagraph (J); and

(2) by inserting after subparagraph (E) the following:

(F) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—Any alien, in or admitted to the United States, at any time who has partici-
pated in a criminal gang (as defined in sec-
tion 1939d(2) of title 18, knowing or having reason to know that such participation promoted, furthered, aided, or supported the illegal ac-
tivity of the criminal gang, is inadmis-
sibility.

(c) DEPORTABILITY.—Section 237(a)(2) of the
Immigration and Nationality Act (8 U.S.C. 1227(a)(2)) is amended by adding at the end the following:

(F) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—Any alien, in or admitted to the United States, at any time who has partici-
pated in a criminal gang (as defined in sec-
tion 1939d(2) of title 18, knowing or having reason to know that such participation promoted, furthered, aided, or supported the illegal ac-
tivity of the criminal gang, is deportable. The Sec-
retary of Homeland Security or the Attorney
General may in his discretion waive this sub-
paragraph.

(D) TEMPORARY PROTECTED STATUS.—Sec-
tion 244 (8 U.S.C. 1254a) is amended—
(1) by striking “Attorney General” each
place it appears and inserting “Secretary of
Homeland Security”;
(2) in subparagraph (c)(2)(B), by adding at
the end the following:

(111 the alien participates in, or at any
time after admission has participated in, the
activities of a criminal gang (as defined in
section 1939d(2) of title 18), knowing or having reason to
know that such participation will promote,
father, aid, or support the illegal activity of
the criminal gang, is deportable. The Sec-
retary of Homeland Security or the Attorney
General may in his discretion waive this sub-
paragraph.

(E) PENALTIES RELATED TO REMOVAL.—Sec-
tion 233(a) (8 U.S.C. 1225a) is amended—
(1) by redesigning subparagraph (A) as
subparagraph (B); and
(2) by inserting at the end the following:

(5) Criminal penalties relating to
removal.—Section 233 (8 U.S.C. 1225) is amended—
(1) by striking the undesignated matter
after subsection (a) and inserting the fol-
lowing:

(1) any alien subject to a final administra-
tive removal, deportation, or exclusion order
that was issued before, on, or after the date
of the enactment of this Act, unless (a) that
order was issued and the alien was subse-
quently released or paroled before the enact-
ment of this Act, (b) the alien requests compli-
ance with and remains in compliance with the
terms and conditions of that release or parole;
and
(b) the action or event occurring or exist-
ing before, on, or after the date of the enact-
ment of this Act.

(F) ALIENS ASSOCIATED WITH CRIMINAL
GANGS.—Any alien, in or admitted to the United
States, at any time who has partici-
pated in a criminal gang (as defined in sec-
tion 1939d(2) of title 18, knowing or having reason to know
that such participation will promote,
father, aid, or support the illegal activity
of the criminal gang, is deportable. The Sec-
retary of Homeland Security or the Attorney
General may in his discretion waive this sub-
paragraph.

(G) PENALTIES RELATED TO REMOVAL.—Sec-
tion 233(a) (8 U.S.C. 1225) is amended—
(1) by striking the undesignated matter
after subsection (a) and inserting the fol-
lowing:

(1) any alien subject to a final administra-
tive removal, deportation, or exclusion order
that was issued before, on, or after the date
of the enactment of this Act, unless (a) that
order was issued and the alien was subse-
quently released or paroled before the enact-
ment of this Act, (b) the alien requests compli-
ance with and remains in compliance with the
terms and conditions of that release or parole;
and
(b) the action or event occurring or exist-
ing before, on, or after the date of the enact-
ment of this Act.
(ii) by striking "or both;"

(2) in subsection (b), by striking "— not more than $1000 or imprisoned for not more than one year, or both;" and inserting "— under title 18, United States Code, and imprisoned for not more than 5 years, or for not more than 10 years if the alien is a member of any of the classes described in paragraphs (1)(E), (2), (3), and (4) of section 237(a);" and

(5) by inserting after subsection (a) and before subsection (b) the following:

"(1) in paragraph (1), by striking subparagraph (A), by inserting "alien smuggling crime," after "any crime of violence";

(B) in subparagraph (A), by inserting "alien smuggling crime," after "such crime of violence";

(C) in subparagraph (B), by inserting "alien smuggling crime," after "or any crime of violence";

(D) by striking "and" and inserting "—after the end of the preceding paragraph;

"(4) by striking paragraph (4) and inserting "—

"SEC. 206. ILLEGAL ENTRY.

(a) In General.—Section 275 (8 U.S.C. 1325) is amended to read as follows:

"SEC. 275. ILLEGAL ENTRY.

"(a) General Provision.—

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

"(A) knowingly enters or crosses the border into the United States at any time or place other than as designated by the Secretary of Homeland Security;

"(B) knowingly eludes examination or inspection by an immigration officer (including failing to stop at the command of such officer), or a customs or agriculture inspection at a port of entry; or

"(C) knowingly enters or crosses the border to the United States by means of a knowingly false or misleading representation or the knowing concealment of a material fact (including such representation or concealment in the context of arrival, reporting, entry, or departure or requirements of the customs laws, immigration laws, agriculture laws, or shipping laws).

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

"(A) and who has not been convicted of a crime or misdeemeanor, for the first violation, be fined under title 18, United States Code, imprisoned not more than 6 months, or both;

"(B) shall, for a second or subsequent violation, or following an order of voluntary departure, be fined under such title, imprisoned not more than 2 years, or both;

"(C) if the violation occurred after the alien had been convicted of 3 or more misdemeanors, or a felony, shall be fined under such title, imprisoned not more than 10 years, or both;

"(D) if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 30 months, shall be fined under such title, imprisoned not more than 20 years, or both;

"(E) if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 60 months, such alien shall be fined under such title, imprisoned not more than 20 years, or both;

"(3) PRIOR CONVICTIONS.—The prior convictions described in subparagraphs (C) through (E) of paragraph (2) are elements of the offenses described in that paragraph and the penalties in such subparagraphs shall apply only in cases in which the conviction or convictions that form the basis for the additional penalties are—

"(A) alleged in the indictment or information; and

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

"(4) DURATION OF OFFENSES.—An offense under this subsection continues until the alien is discovered within the United States by an immigration officer;

"(5) ATTEMPT.—Any attempt to commit any offense under this section shall be punished in the same manner as for a completion of such offense.

"(b) IMPROPER TIME OR PLACE; CIVIL PENALTIES.—Any alien who is apprehended while entering, attempting to enter, or knowingly crossing or attempting to cross the border to the United States at a time or place other than as designated by immigration officers shall be subject to a civil penalty. In addition to any criminal or other civil penalties that may be imposed under any other provision of law, in an amount equal to—

"(1) not less than $50 or more than $250 for each such entry, crossing, attempted entry, or attempted crossing; or

"(2) twice the amount specified in paragraph (1) if the alien had previously been subject to a civil penalty under this subsection.

"(c) CLERICAL AMENDMENT.—The table of contents is amended by striking the item relating to section 275 and inserting the following:

"Sec. 275. Illegal entry."

"(d) EFFECTIVE DATE.—Subsection (a)(4) of section 275 of the Immigration and Nationality Act, as created by this Act, shall apply only to violations of subsection (a)(1) of Section 275 committed on or after the date of enactment of this Act.

"SEC. 207. ILLEGAL REENTRY.

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

"SEC. 276. REENTRY OF REMOVED ALIEN.

"(a) REENTRY AFTER REMOVAL.—Any alien who has been denied admission, excluded, deported, or removed, or who has departed the United States while an order of exclusion; deportation, or removal is outstanding, and subsequently attempts to enter, or crosses the border to, attempts to cross the border to, or is at any time found in the United States, shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both;

"(2) was convicted for a felony before such removal or departure, the alien shall be fined under such title, imprisoned not more than 20 years, or both;

"(3) was convicted, before such removal or departure, for murder, rape, kidnapping, or a felony offense described in chapter 77 (relating to peonage and slavery) or 115B (relating to terrorism) of such title, the alien shall be fined under such title, imprisoned not more than 20 years, or both;

"(c) REENTRY AFTER REPEATED REMOVAL.—Any alien who has been denied admission, excluded, deported, or removed 3 or more times and thereafter enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in the United States, shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both;

"(d) PROOF OF PRIOR CONVICTIONS.—The prior convictions described in subsection (b) are elements of the crimes described in that subsection, and the penalties in that subsection shall apply only in cases in which the conviction or convictions that form the basis for the additional penalty are—

"(1) alleged in the indictment or information; and

"(2) proven beyond a reasonable doubt at trial or admitted by the defendant.

"(e) AFFIRMATIVE DEFENSES.—It shall be an affirmative defense to a violation of this section that—

"(1) prior to the alleged violation, the alien had sought and received the express consent of the Secretary of Homeland Security to reapply for admission into the United States;

"(2) with respect to an alien previously denied admission and removed, the alien—

"(A) was not required to obtain such advance consent under the Immigration and Nationality Act or any prior Act; and

"(B) had complied with all other laws and regulations governing the alien’s admission into the United States;

"(3) at the time of the prior exclusion, deportation, removal, or denial of admission alleged in the violation, the alien—

"(A) was under the age of eighteen, and

"(B) had not been convicted of a crime or adjudicated a delinquent minor by a court of the United States, or a court of a state or territory, for conduct that would constitute a felony if committed by an adult;

"(4) LIMITATION ON COLLATERAL ATTACK ON UNDERLYING REMOVAL ORDER.—In a criminal proceeding under this section, an alien may not challenge the validity of any prior removal order concerning the alien unless the alien demonstrates by clear and convincing evidence that—

"(1) the alien exhausted all administrative remedies that may have been available to seek relief against the order;

"(2) the removal proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and

"(3) the entry of the order was fundamentally unfair.

"(g) REENTRY OF ALIEN REMOVED PRIOR TO COMPLETION OF TERMS OF REMOVAL.—Any alien removed pursuant to section 241(a) who enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in the United States shall be incarcerated for the remainder of the sentence of imprisonment which was
of removed aliens as may be available under such other penalties relating to the reentry of aliens.

SEC. 208. REFORM OF PASSPORT, VISA, AND IMMIGRATION FRAUD OFFENSES.

(a) PASSPORT, VISA, AND IMMIGRATION FRAUD FRAUD.

(1) In general.—Chapter 75 of title 18; United States Code, is amended to read as follows:

"CHAPTER 75—PASSPORT, VISA, AND IMMIGRATION FRAUD"

"Sec.

1541. Trafficking in passports.

1542. False statement in an application for a passport.

1543. Forger}''.

1544. Schemes to defraud aliens.

1545. Misuse of a passport.

1546. Immigration and visa fraud.

1547. Marriage fraud.

1548. Attestations and consipriacies.

1549. Alternative penalties for certain offenses.

1550. Seizure and forfeiture.

1551. Additional jurisdiction.

1552. Definitions.

1553. Authorized law enforcement activities.

* § 1541. Trafficking in passports

(a) MULTIPLE PASSPORTS.—Any person who, during any period of 3 years or less, knowingly—

(1) and without lawful authority produces, issues, or transfers 10 or more passports;

(2) forges, counterfeits, alters, or falsely makes 10 or more passports;

(3) secures, possesses, uses, receives, buys, sells, or distributes 10 or more passports, knowing the passports to be forged, counterfeited, altered, falsely made, stolen, procured by fraud, or produced or issued without lawful authority;

(4) completes, mails, prepares, presents, signs, or submits 10 or more applications for a United States passport, knowing the applications to contain any false statement or representation,

shall be fined under this title, imprisoned not more than 20 years, or both.

(b) PASSPORT MATERIALS.—Any person who knowingly and without lawful authority produces, issues, or transfers any official material (or counterfeit of any official material) used to make a passport, including any distinctive paper, seal, hologram, image, text, symbol, stamp, engraving, or plate, shall be fined under this title, imprisoned not more than 20 years, or both.

* § 1542. False statement in an application for a passport

(a) IN GENERAL.—Any person who knowingly makes any false statement or representation in an application for a United States passport, knowing the application to contain any false statement or representation, shall be fined under this title, imprisoned not more than 15 years, or both.

(b) MISREPRESENTATION.—Any person who knowingly and falsely represents that such person is an attorney or accredited representative (as that term is defined in section 1291.1 of title 8, Code of Federal Regulations (or any successor regulation to such section)) in any matter arising under Federal immigration laws shall be fined under this title, imprisoned not more than 15 years, or both.

* § 1543. Forger}''.

(a) FORGERY.—Any person who—

(1) knowingly forges, counterfeits, alters, or falsely makes any passport; or

(2) knowingly transfers any passport knowing it to be forged, counterfeited, altered, falsely made, stolen, or to have been produced or issued without lawful authority, shall be fined under this title, imprisoned not more than 15 years, or both.

(b) UNLAWFUL PRODUCTION.—Any person who knowingly and without lawful authority—

(1) produces, issues, authorizes, or verifies a passport in violation of the laws, regulations, or rules governing the issuance of the passport;

(2) produces, issues, authorizes, or verifies a United States passport for or to any person, knowing or in reckless disregard of the fact that such person is not entitled to receive a passport; or

(3) transfers or furnishes a passport to any person for use by any person other than the person for whom the passport was issued or designed, shall be fined under this title, imprisoned not more than 15 years, or both.

* § 1544. Misuse of a passport

(a) Any person who—

(1) uses any passport issued or designed for the use of another;

(2) forges, counterfeits, alters, or falsely makes 10 or more immigration documents;

(3) uses, possesses, buys, sells, or distributes 10 or more immigration documents;

(4) secures, possesses, uses, buys, sells, or distributes 10 or more immigration documents, knowing the immigration documents to be forged, counterfeited, altered, or falsely made, procured by fraud, or produced or issued without lawful authority; or

(5) adopts or uses a false or fictitious name to evade or to attempt to evade the immigration laws;

(6) transfers or furnishes, without lawful authority, an immigration document to another person for use by a person other than the person for whom the immigration document was issued or designed, shall be fined under this title, imprisoned not more than 15 years, or both.

(b) Any person who, during any period of 3 years or less, knowingly—

(1) and without lawful authority produces, issues, or transfers 10 or more immigration documents;

(2) secures, possesses, buys, sells, or distributes 10 or more immigration documents, knowing the immigration documents to be forged, counterfeited, altered, or falsely made, procured by fraud, or produced or issued without lawful authority;

(3) completes, mails, prepares, presents, signs, or submits 10 or more immigration documents knowing the documents to contain any materially false statement or representation, shall be fined under this title, imprisoned not more than 20 years, or both.

(c) IMMIGRATION DOCUMENT MATERIALS.—Any person who knowingly and without lawful authority produces buys, sells, or possesses any official material (or counterfeit of any official material) used to make an immigration document, including any distinctive paper, seal, hologram, image, text, symbol, stamp, engraving, or plate, shall be fined under this title, imprisoned not more than 20 years, or both.

(d) EMPLOYMENT DOCUMENTS.—Whoever uses—

...
"(1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor;

"(2) an identification document knowing (or having reason to know) that the document is false; or

"(3) a false attestation, for a travel document satisfying a requirement of section 274a(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)), shall be fined under this title, imprisoned not more than 10 years, or both.

§ 1547. Marriage fraud

"(a) Evasion or misrepresentation.—Any person who—

"(1) knowingly enters into a marriage for the purpose of evading any provision of the immigration laws; or

"(2) knowingly misrepresents the existence or circumstances of a marriage—

"(A) in an application or document authorized by the immigration laws; or

"(B) during any immigration proceeding conducted by an administrative adjudicator (including an immigration officer or examiner, a consular officer, an immigration judge, or a member of the Board of Immigration Appeals),

shall be fined under this title, imprisoned not more than 5 years, or both.

"(b) Multiple marriages.—Any person who—

"(1) knowingly enters into 2 or more marriages for the purpose of evading any immigration law; or

"(2) knowingly arranges, supports, or facilitates 2 or more marriages designed or intended to evade any immigration law,

shall be fined under this title, imprisoned not more than 10 years, or both.

"(c) Commercial enterprise.—Any person who knowingly establishes a commercial enterprise for the purpose of evading any provision of the immigration laws shall be fined under this title, imprisoned for not more than 10 years, or both.

"(d) Duration of offense.—

"(1) In general.—An offense under subsection (a) or (b) continues until the fraudulent nature of the marriage or marriages is discovered by an immigration officer.

"(2) Commercial enterprise.—An offense under subsection (c) continues until the fraudulent nature of the commercial enterprise is discovered by an immigration officer or other law enforcement officer.

§ 1548. Attempts and conspiracies

"Any person who attempts or conspires to violate any section of this chapter shall be punished in the same manner as a person who completed a violation of that section.

§ 1549. Alternative penalties for certain offenses

"Notwithstanding any other provision of this title, the maximum term of imprisonment that may be imposed for an offense under this chapter—

"(1) if committed to facilitate a drug trafficking crime (as defined in section 928a) is 20 years; and

"(2) if committed to facilitate an act of international terrorism (as defined in section 2331) is 20 years.

§ 1550. Seizure and forfeiture

"(a) Forfeiture.—Any property, real or personal, used to commit or facilitate the commission of a violation of any section of this chapter, proceeds of such violation, and any property traceable to such property or proceeds, shall be subject to forfeiture.

"(b) Applicable law.—Seizures and forfeitures under this section shall be governed by the provisions of chapter 46 relating to civil forfeitures, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in section 2512 of title 19 are performed by the Immigration and Naturalization Service, the Secretary of Homeland Security, the Secretary of State, or the Attorney General.

§ 1551. Additional jurisdiction

"(a) In General.—A person who commits an offense under this chapter within the special maritime and territorial jurisdiction of the United States shall be punished as provided under chapter 46.

"(b) Extraterritorial jurisdiction.—Any person who commits an offense under this chapter outside the United States shall be punished as provided under this chapter if—

"(1) the offense involves a United States passport or immigration document (or any document purporting to be such a document) or any matter, right, or benefit arising under or authorized by Federal immigration laws;

"(2) the offense is in or affects foreign commerce;

"(3) the offense affects, jeopardizes, or poses a significant risk to the lawful administration of Federal immigration laws, or the national security of the United States;

"(4) the offense is committed to facilitate an act of international terrorism (as defined in section 2331) or a drug trafficking crime (as defined in section 928a) that affects or would affect the national security of the United States;

"(5) the offender is a national of the United States or an alien lawfully admitted for permanent residence in the United States (as those terms are defined in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a))), or

"(6) the offender is a stateless person whose habitual residence is in the United States.

§ 1552. Definitions

"As used in this chapter:

"(1) The term ‘falsely make’ means to prepare or complete an immigration document with knowledge or in reckless disregard of the fact that the document—

"(A) contains a statement or representation that is false, fictitious, or fraudulent;

"(B) has no basis in fact or law; or

"(C) otherwise fails to state a fact which is material to the purpose for which the document was completed, designed, or submitted;

"(2) The term ‘application for a United States passport’ includes any document, photograph, or other piece of evidence attached to or submitted in support of the application;

"(3) The term ‘false statement or representation’ includes a personation or an omission.

"(4) The term ‘immigration document’—

"(A) means any application, petition, affidavit of declaration, attestation, form, visa, identification card, alien registration document, employment authorization document, border crossing card, certificate, permit, order, license, or other authorization, grant of authority, or other official document, arising under or authorized by the immigration laws of the United States; and

"(B) includes any other person, photograph, or other piece of evidence attached to or submitted in support of an immigration document;

"(5) The term ‘immigration laws’ includes—

"(A) the laws described in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17));

"(B) the laws relating to the issuance and use of passports; and

"(C) other laws prescribed under the authority of any law described in paragraphs (A) and (B).

"(6) The term ‘immigration proceeding’ includes an adjudication, interview, hearing, or review.

"(7) A person does not exercise ‘lawful authority’ if the person improperly exercises lawful authority the person otherwise holds.

"(8) The term ‘passport’ means—

"(a) the term ‘to present’ means to offer or submit for official processing, examination, or adjudication.

Any such presentation continues until the official processing, examination, or adjudication is complete.

"(9) The term ‘proceeds’ includes any property or interest in property obtained or retained as a consequence of an act or omission in violation of this section.

"(10) The term ‘produce’ means to make, prepare, assemble, issue, print, authenticate, or alter.

"(11) The term ‘State’ means a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

"(12) The ‘use’ of a passport or an immigration document referred to in section 1541(a), section 1543(b), section 1544, section 1546(a), and section 1546(b) of this chapter includes any official authorization to use to demonstrate identity, residence, nationality, citizenship, or immigration status; use to seek or maintain employment; or use in any matter within the jurisdiction of the Federal government or of a State government.

§ 1553. Authorized law enforcement activities

"Nothing in this chapter shall prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1968, as amended.

"(b) Protection for legitimate refugees and asylum seekers...

§ 1554. Prosecution guidelines

—The Attorney General, in consultation with the Secretary of Homeland Security, shall develop binding prosecution guidelines for federal prosecutors to ensure that any prosecution of an alien seeking admittance to the United States by fraud is consistent with the obligations of the United States under Article 31(1) of the Convention Relating to the Status of Refugees, done at Geneva July 28, 1951 (as made applicable by the Protocol Relating to the Status of Refugees, done at New York January 31, 1967 (19 UST 6225)).

§ 1555. No private right of action...

—The guidelines required by subparagraph (1), and any internal office procedures adopted pursuant thereto, are intended solely for the guidance of attorneys for the United States. This section, the guidelines required by subsection (a), and the process for determining such guidelines are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.
(2) in subclause (II), by striking the comma at the end and inserting ‘;’; or; and
(3) by inserting after subclause (II) the following:
’’(III) a violation of (or a conspiracy or attempt to violate) section 1541, 1545, sub-section (b) of section 1546, or subsection (b) of section 1547 of title 18, United States Code,”
(b) REMOVAL.—Section 237(a)(3)(B)(iii) (8 U.S.C. 1227(a)(3)(B)(iii)) is amended to read as follows:
’’(iii) a violation of (or a conspiracy or attempt to violate) section 1541, 1545, 1546, or subsection (b) of section 1547 of title 18, United States Code.’’
(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to proceedings pending on or after the date of the enactment of this Act, with respect to conduct occurring on or after that date.

SEC. 210. INCARCERATION OF CRIMINAL ALIENS.
(a) INSTITUTIONAL REMOVAL PROGRAM.—
(1) CONTINUATION.—The Secretary shall continue to operate the Institutional Removal Program (referred to in this section as the “Program”) and shall develop and implement another program to—
(A) identify removable criminal aliens in Federal and State correctional facilities; (B) ensure that such aliens are not released into the community; and
(C) notify aliens from the United States after the completion of their sentences.
(2) EXPANSION.—The Secretary may extend the scope of the Program to all States.
(b) TECHNOLOGY USAGE.—Technology, such as videoconferencing, shall be used to the maximum extent practicable to make the Program more efficient in remote locations; enable access to Federal databases of aliens, such as IDENT, and live scan technology shall be used to the maximum extent practicable to enhance access to State and local law enforcement agencies in remote locations.
(c) REPORT TO CONGRESS.—Not later than 6 months after the date of the enactment of this Act, and annually thereafter, the Secretary shall submit a report to Congress on the participation of States in the Program and in any other program authorized under subsection (a).
(d) AUTHORIZATION OF APPROPRIATIONS.—
(1) IN GENERAL.—There are appropriated such sums as may be necessary in each of the fiscal years 2008 through 2012 to carry out the Program.
(2) CONDITIONS ON VOLUNTARY DEPARTURE.—
(1) VOLUNTARY DEPARTURE AGREEMENT.—Voluntary departure may only be granted as part of an affirmative agreement by the alien.
(2) CONCESSIONS BY THE SECRETARY.—In connection with the alien’s agreement to depart voluntarily, the Secretary of Homeland Security may permit the alien to voluntarily depart the United States at the alien’s own expense under this subsection instead of being subject to proceedings under section 240.
(3) ADVISALS.—Agreements relating to voluntary departure granted during removal proceedings under section 240, or at the conclusion of such proceedings, shall be presented on the record before the immigration judge. The immigration judge shall advise the alien of the consequences of a voluntary departure agreement before accepting such agreement.
(4) FAILURE TO COMPLY WITH AGREEMENT.—If an alien agrees to voluntary departure under this section and fails to depart the United States, the immigration judge shall order the alien to be deported.

SEC. 211. ENCOURAGING ALIENS TO DEPART VOLUNTARILY.
(a) IN GENERAL.—Section 240B (8 U.S.C. 1229c) is amended—
(1) IN subclause (a)—
(A) by amending paragraph (1) to read as follows:
’’(1) INSTEAD OF REMOVAL PROCEEDINGS.—If an alien is not described in paragraph (2)(A)(iii) or (4) of section 237(a), the Secretary of Homeland Security may permit the alien to voluntarily depart the United States at the alien’s own expense under this subsection instead of being subject to proceedings under section 240.’’; (B) by striking paragraph (3);
(C) by redesignating paragraph (2) as paragraphs (3) and (4), respectively;
(D) by adding after paragraph (1) the following:
’’(2) PRIOR GRANT OF VOLUNTARY DEPARTURE.—If an alien agrees to voluntary departure under this section and fails to depart the United States, the alien is—
(A) ineligible for the benefits of the agreement; and
(B) subject to the penalties described in subsection (d); and
(C) subject to an alternate order of removal if voluntary departure was granted under subsection (a)(2) or (b);’’;
(2) BY Amending subsection (d) to read as follows:
’’(d) PENALTIES FOR FAILURE TO DEPART.—If an alien is permitted to voluntarily depart under this section, the alien shall depart the United States within the time period specified or otherwise violates the terms of a voluntary departure agreement, the alien will be subject to the following penalties:
’’(1) CIVIL PENALTY.—The alien shall be liable for a civil penalty of $3,000. The order allowing voluntary departure shall specify the amount of the penalty, which shall be acknowledged by the alien on the record. If the alien failed to depart voluntarily within the time allowed, no further procedure will be necessary to establish the amount of the penalty. The Secretary may collect the civil penalty at any time thereafter and by whatever means provided by law. An alien will be ineligible for any benefits under this chapter until this civil penalty is paid in full.
’’(2) INELIGIBILITY FOR RELIEF.—The alien shall be ineligible during the time the alien remains in the United States and for a period of 5 years after the alien’s departure for any further relief under this section and sections 203A, 245, 248, and 249. The order permitting the alien to depart voluntarily shall inform the alien of the ineligibility of the penalties under this section.
’’(3) REOPENING.—The alien shall be ineligible to reopen any final order of removal on the reasons that the alien failed to depart voluntary departure, or upon the alien’s other violations of the conditions for voluntary departure, during the period described in paragraph (2). This paragraph does not preclude a motion to reopen to seek withholding of removal under section 241(b)(3) or protection against torture, if the motion—
(A) presents material evidence of changed country conditions arising after the date of the order granting voluntary departure in the country to which the alien would be removed; and
(B) makes a sufficient showing to the satisfaction of the Attorney General that the alien is otherwise eligible for such protection;’’;
(3) by inserting after paragraph (1) the following:
’’(2) RULEMAKING.—The Secretary may promulgate regulations to limit eligibility or impose additional conditions for voluntary departure under subsection (a) with respect to any class of aliens. The Secretary or Attorney General may by regulation limit eligibility or impose additional conditions for voluntary departure under subsections (a)(2) or (b) of this section for any class or classes of aliens.”’; and
(4) IN subsection (b), by striking at the end the parenthetical following “[Notwithstanding section 2241 of title 28, United States Code, any other habeas corpus provision, and any other provision of law (statutory, constitutional, or otherwise)]” and inserting “[Notwithstanding section 2241 of title 28, United States Code, any other habeas corpus provision, and any other provision of law (statutory, constitutional, or otherwise), no court shall have jurisdiction to affect, reinstate, enjoin, delay, stay, or toll the period
allowed for voluntary departure under this section.”.

(b) RULEMAKING.—The Secretary shall pro-
mulgate regulations to provide for the impo-
sition of a monetary penalty on an alien to be paid
before voluntary departure under section 240B(d) of the Immi-
gration and Nationality Act (8 U.S.C. 1229c(d)).

(c) EFFECTIVE DATES.—
(1) IN GENERAL.—Except as provided in
paragraph (2), the amendments made by this
section shall take effect with respect to removal
ordered on or after the date on which the
enactment of this Act is published in the
Federal Register.

(2) EXCEPTION.—The amendment made by
subsection (a)(6) shall take effect on the date of
the enactment of this Act and shall apply
with respect to any petition for review which is
filed on or after such date.

SEC. 212. DETERRING ALIENS ORDERED
REMOVED FROM REMAINING IN THE
UNITED STATES UNLAWFULLY.

(a) INADMISSIBLE ALIENS.—Section 212(a)(9)(A) (8 U.S.C. 1182(a)(9)(A)) is amend-
ed—

(1) in clause (i), by striking “seeks admis-
sion within 5 years of the date of such re-
moval (or within 20 years)” and inserting “seeks admission not later than 5 years
after the date of the alien’s removal (or not later
than 20 years after the alien’s removal”; and

(2) in clause (ii), by striking “seeks admis-
sion within 5 years of the date of such re-
moval (or within 20 years of)” and inserting “seeks admission not later than
10 years after the date of the alien’s
departure or removal (or not later than
20 years after)”.

(b) BAR ON DISCRETIONARY RELIEF.—Sec-
tion 244(d) (8 U.S.C. 1254a(d)) is amend-
ed—

(1) by inserting the following:

"(c) INELIGIBILITY FOR RELIEF.—"

"(1) IN GENERAL.—Unless a timely motion
to reconsider under section 244(c)(6) or a
timely motion to reopen under section
244(c)(7) is granted, an alien described in sub-
section (a) is inadmissible to the United States and for a period of 10 years
after the alien’s departure or removal.

(2) SAVINGS PROVISION.—Nothing in para-
graph (1) shall preclude a motion to reopen
to seek withholding of removal under section
241(b)(3) or protection against torture, if the motion—

"(A) presents material evidence of changed
country conditions arising after the date of
the final removal; or

"(B) makes a sufficient showing to the sat-
sification of the Attorney General that the
alien is otherwise eligible for such protec-
tion.”.

(c) EFFECTIVE DATES.—The amendments
made by this section shall take effect on the
date of the enactment of this Act with re-
spect to aliens who are subject to a final
order of removal entered on or after such
date.

SEC. 213. PROHIBITION OF THE SALE OF FIRE-
ARMS TO, OR THE POSSESSION OF
FIREARMS BY CERTAIN ALIENS.

Section 921 of title 18, United States Code, is amend-
ed—

(1) in subsection (d)(5)—in subparagraph
(B), by striking “(y)(2)” and all that follows
and inserting “(y) is in the United States
not as an alien lawfully admitted for perma-
nent residence”;

(2) in subsection (g)(5)—in subparagraph
(B), by striking “(y)(2)” and all that follows
and inserting “(y), is in the United States
not as an alien lawfully admitted for perma-
nent residence;” and

(3) in subsection (y)—

(A) in the header, by striking “Admitted
Under Nonimmigrant Visa” and inserting “not Lawfully Admitted For Permanent
Residence”;

(B) in paragraph (1), by amending subpara-
graph (B) to read as follows:

"(B) the alien was lawfully admitted for
permanent residence; the alien has the same
meaning as in section 101(a)(20) of the Immi-
gration and Nationality Act (8 U.S.C. 1101(a)(20)).”;

(C) a statistical breakdown of the back-
ground and security check delays by appli-
cant country of origin; and

(D) in paragraph (3)(A), by striking “ad-
mitted to the United States under a non-
immigrant visa” and inserting “lawfully ad-
mitted to the United States but not as an
alien lawfully admitted for permanent resi-
dence”.

SEC. 214. UNIFORM STATUTE OF LIMITATIONS
FOR CRIMINAL ILLEGAL ALIEN
IMMIGRATION, PASS-
PORT, AND NATURALIZATION OF-
FENSES.

(a) IN GENERAL.—Section 3291 of title 18,
United States Code, is amended to read as
follows:

"§3291. IMMIGRATION, PASSPORT, AND NAT-
URALIZATION OFFENSES.

"(1) No person—

(A) who is being prosecuted, tried, or
punished for a violation of any section of
chapters 66 (relating to nationality and citi-
zenship offenses), 75 (relating to passport,
visa, and immigration offenses), or for a vi-
olation of any criminal provision under sec-
ction 243, 266, 274, 275, 276, 277, or 278 of the Im-
migration and Nationality Act (8 U.S.C. 1253,
1255, 1256, 1257, 1258, 1259, 1260, 1261, and
1262; and for an attempt or conspiracy to violate any such
section, unless the indictment is returned or the
information filed not later than 10 years after
the commission of the offense.”;

(b) CLEANCORE AMENDMENT.—The table of
sections for chapter 213 of title 18, United
States Code, is amended by striking the item
relating to section 3291 and inserting the fol-
lowing:

"3291. Immigration, passport, and naturaliza-
tion offenses.”.

SEC. 215. DIPLOMATIC SECURITY SERVICE.

(a) REIMBURSEMENT FOR COSTS ASSOCIATED
WITH PROCESSING CRIMINAL ILLEGAL
ALIENS.—Section 3291 of title 18, United
States Code, is amended to read as follows:

"(1) conduct investigations concerning—

(A) illegal passport or visa issuance or use;

(B) identity theft or document fraud
af-
fecting or relating to the programs, func-
tions, and authorities of the Department
of State;

(C) violations of chapter 77 of title 18,
United States Code; and

(D) Federal offenses committed within
the specified maritime and territorial jurisdic-
tion defined in paragraph (9) of section 7
of title 18, United States Code, except as
that jurisdiction relates to the premises of
United States Secret Service missions and related resi-
dences.”;

(b) CONSTRUCTION.—Nothing in this section
shall be construed to limit the investigative
authority of any other Federal department or
agency.

SEC. 216. STREAMLINED PROCESSING OF BACK-
GROUND CHECKS CONDUCTED FOR
IMMIGRATION PURPOSES.

(a) INFORMATION SHARING; INTERAGENCY
TASK FORCE.—Section 105 (8 U.S.C. 1105) is
amended by adding at the end the follow-

ing—

"(e) Interagency Task Force—

"(1) IN GENERAL.—The Secretary of Home-
land Security and the Attorney General
shall establish an interagency task force to
resolve cases in which an application or peti-
tion for immigration benefits conferred
under this Act has been delayed due to an
outstanding background check investigation
for more than 2 years after the date on which
such application or petition was initially
filed.

"(b) MEMBERSHIP.—The interagency task
force established under paragraph (1) shall
include representatives from Federal agen-
cies with immigration, law enforcement, or
national security responsibilities under this
Act.”.

(b) AUTHORIZATION OF APPROPRIATIONS.—
There are authorized to be appropriated to the
Department of Justice $400,000,000 for each of the fiscal years
2008 through 2012 for enhance-
ments to existing systems for conducting background and security checks necessary to
support immigration security and orderly
processing of applications.

(c) REPORT ON BACKGROUND AND SECURITY
CHECKS.—The report required under paragraph (1) shall include—

(A) a description of the background and
security check program;

(B) a statistical breakdown of the back-
ground and security check delays associated with different types of immigration applica-
tions;

(C) a statistical breakdown of the back-
ground and security check delays by appli-
cant country of origin; and

(D) the steps that the Director of the Fed-
eral Bureau of Investigation is taking to ex-
pedite background and security checks that
have been pending for more than 180 days.

SEC. 217. STATE CRIMINAL ALIEN ASSISTANCE
PROGRAM.

(a) REIMBURSEMENT FOR COSTS ASSOCIATED
WITH PROCESSING CRIMINAL ILLEGAL
ALIENS.—The Secretary may reimburse
States and units of local government for
expenses associated with processing undocu-
mented criminal aliens through the criminal
justice system, including—

(1) indigent defense;

(2) criminal prosecution;

(3) autopsies;

(4) translators and interpreters; and

(5) courts costs.

(b) AUTHORIZATION OF APPROPRIATIONS.—
There are authorized to be appropriated $400,000,000 for each of the fiscal years
2006 through 2013 to carry out subsection (a).

(2) COMPENSATION UPON REQUEST.—Section
242(i)(5) (8 U.S.C. 1232(i)(5)) is amended to read as
follows—

"(5) There are authorized to be appro-
riated to carry this subsection—

(A) such sums as may be necessary for fis-
cal year 2008;

(B) $750,000,000 for fiscal year 2009;

(C) $850,000,000 for fiscal year 2010; and

(D) $950,000,000 for each of the fiscal years
2011 through 2013.”.

(c) TECHNICAL AMENDMENT.—Section 501 of
the Immigration Reform and Control Act of
1986 (8 U.S.C. 1365) is amended by striking
"Secretary of Immigration and National Security"
and inserting "Secretary of Homeland Secu-
rit".

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SEC. 219. REDUCING ILLEGAL IMMIGRATION AND ALIEN SMUGGLING ON TRIBAL LANDS.

(a) Grant Authorized.—The Secretary may award grants to Indian tribes with lands adjacent to an international border of the United States that have been adversely affected by illegal immigration for processing at a detention facility operated by the Department.

(b) Use of Funds.—Grants awarded under subsection (a) may be used for—

(1) law enforcement activities;
(2) health care services;
(3) environmental restoration; and
(4) the preservation of cultural resources.

(c) Report.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit a report to the Committee on the Judiciary of the House of Representatives that—

(1) describes the level of access of Border Patrol agents on tribal lands;
(2) describes the extent to which enforcement of immigration laws may be improved by enhanced access to tribal lands;
(3) contains a strategy for improving such access through cooperation with tribal authorities; and
(4) identifies grants provided by the Department for Indian tribes, either directly or through State or local grants, relating to border security expenses.

(d) Authorization of Appropriations.—There are authorized to be appropriated such sums as may be necessary for each of fiscal years 2008 through 2012 to carry out this section.

SEC. 220. ALTERNATIVES TO DETENTION.

The Secretary shall conduct a study of—

(1) the effectiveness of alternatives to detention, including electronic monitoring devices and intensive supervision programs, in ensuring alien appearance at court and compliance with the terms of supervision;
(2) the effectiveness of the Intensive Supervision Appearance Program and the costs and benefits of expanding that program to all States; and
(3) other alternatives to detention, including—

(A) release on an order of recognizance;
(B) appearance bonds; and
(C) electronic monitoring devices.

SEC. 221. STATE AND LOCAL ENFORCEMENT OF FEDERAL IMMIGRATION LAWS.

(a) In General.—The Secretary shall reimburse a State, or local law enforcement entity, for costs incurred under subparagraphs (A) and (B) of subsection (c) for transfer to Federal custody.

(b) Authorization of Appropriations.—There are authorized to be appropriated such sums as may be necessary for each of fiscal years 2008 through 2012 to carry out this section.

(c) Authorization of Appropriations.—

(1) In subparagraph (A), by amending clause (vii) to read as follows:

[(vii) Clause (i) shall not apply to a citizen of the United States who has been convicted of an offense described in subparagraph (A), (I), or (K) of section 101(a)(43), unless the Secretary of Homeland Security in the Secretary’s sole and unreviewable discretion, determines that the citizen poses no risk to the alien with respect to whom a petition described in clause (i) is filed,; and
(2) in subparagraph (B)(i), by amending subparagraph (A) to read as follows:

[(A) Subclause (I) shall not apply in the case of an alien admitted for permanent residence who has been convicted of an offense described in subparagraph (A), (I), or (K) of section 101(a)(43), unless the Secretary of Homeland Security in the Secretary’s sole and unreviewable discretion, determines that the alien lawfully admitted for permanent residence poses no risk to the alien with respect to whom a petition described in subclause (I) is filed.; and
(B) Nonimmigrants.—Section 101(a)(15)(K) (8 U.S.C. 1101(a)(15)(K)), is amended by inserting “(other than a citizen described in section 204(a)(1)(A)(viii))” after “citizen of the United States” each place that phrase appears.

SEC. 222. PROTECTING IMMIGRANTS FROM CONVICTED SEX OFFENDERS.

(a) Immigrants.—Section 204(a)(1) (8 U.S.C. 1154(a)(1)), is amended by—

(1) in subparagraph (A), by amending clause (vii) to read as follows:

[(vii) Clause (i) shall not apply to a citizen of the United States who has been convicted of an offense described in subparagraph (A), (I), or (K) of section 101(a)(43), unless the Secretary of Homeland Security in the Secretary’s sole and unreviewable discretion, determines that the citizen poses no risk to the alien with respect to whom a petition described in clause (i) is filed,; and
(2) in subparagraph (B)(i), by amending subparagraph (A) to read as follows:

[(A) Subclause (I) shall not apply in the case of an alien admitted for permanent residence who has been convicted of an offense described in subparagraph (A), (I), or (K) of section 101(a)(43), unless the Secretary of Homeland Security in the Secretary’s sole and unreviewable discretion, determines that the citizen poses no risk to the alien with respect to whom a petition described in subclause (I) is filed.; and
(B) Nonimmigrants.—Section 101(a)(15)(K) (8 U.S.C. 1101(a)(15)(K)), is amended by inserting “(other than a citizen described in section 204(a)(1)(A)(viii))” after “citizen of the United States” each place that phrase appears.

SEC. 233. LAUNDERING OF MonEY INSTRUMENTS.

Section 1956(c)(7)(D) of title 18, United States Code, is amended—
TITLE III—WORKSITE ENFORCEMENT

SEC. 320. PURPOSES.

(a) To continue to prohibit the hiring, recruitment, or referral of unauthorized aliens;

(b) To require that each employer take reasonable steps to verify the identity and work authorization status of all its employees, without regard to national origin and citizenship status;

(c) To authorize the Secretary of Homeland Security to access records of other Federal agencies for the purposes of confirming identity, authenticating lawful presence and preventing identity theft and fraud related to unlawful employment;

(d) To ensure that the Commissioner of Social Security has the necessary authority to provide information to the Secretary of Homeland Security that would assist in the enforcement of the immigration laws;

(e) To authorize the Secretary of Homeland Security to confirm issuance of state identity documents, including driver’s licenses, and to obtain and transmit individual photographic images held by states for identity authentication purposes.

(f) To collect information on employee hires.

(g) To electronically secure a social security number in the Employment Eligibility Verification System (EEVS) at the request of an individual who has been confirmed to be the holder of that number, and to prevent fraudulent use of the number by others.

(h) To provide for record retention of EEVS inquiries, to prevent identity fraud and employment authorization fraud.

(i) To employ fast track regulatory and procurement procedures to expedite implementation of this Title and pertinent sections of the INA for a period of two years from enactment:

(1) To establish the following:

(A) a document verification process requiring employers to inspect, copy, and retain identity and work authorization documents;

(B) an EEVS requiring employers to obtain confirmation of an individual’s identity and work authorization;

(ii) procedures for employers to register for the EEVS and to confirm work eligibility through the EEVS;

(iii) streamlined enforcement procedures to encourage adjudication of violations of this Title;

(iv) a system for the imposition of civil penalties and their enforcement, remission or mitigation;

(v) an enhancement of criminal and civil penalties;
“(6) An employer is presumed to have acted with knowledge or reckless disregard if the employer fails to comply with written standards, procedures or instructions issued by the Department of Homeland Security, procedures or instructions shall be objective and verifiable.

(b) DEFINITIONS.

(1) DEFINITION OF UNAUTHORIZED ALIEN.—As used in this section, the term ‘unauthorized alien’ means, with respect to the employment of an individual at a particular time, that the alien is not at that time either—

(A) an alien lawfully admitted for permanent residence; or

(B) authorized to be so employed by this Act or by the Secretary.

(2) DEFINITION OF EMPLOYER.—For purposes of this section, the term ‘employer’ means any person or entity hiring, recruiting, or referring an individual for employment in the United States.

(c) DOCUMENT VERIFICATION REQUIREMENTS.—

(1) Any employer hiring, recruiting, or referring an individual for employment in the United States shall, with notice to the public provided by the Secretary and if a reasonable person would be so employed by this Act or by the Secretary.

(2) The employer must at least, under penalty of perjury and on a form prescribed by the Secretary, that it has verified the individual is authorized to work in the United States, including the requirements of subsection (d) and the following paragraphs:

(a) Attestation after examination of documentation.

(i) The employer must attest, under penalty of perjury and on a form prescribed by the Secretary, that it has verified the identity and work authorization status of the individual by examining:

(B) a document described in subparagraph (B) or (C); or

(C) a document described in subparagraph (C) and a document described in subparagraph (D).

(b) Such attestation may be manifested by a handwritten or electronic signature. An employer or entity satisfactorily verifying the requirements of this paragraph with respect to examination of documentation if the employer has followed applicable regulations and any written procedures or instructions provided by the Secretary and if a reasonable person would conclude that the documentation is genuine and establishes the employee’s identity and authorization to work, taking into account any information provided to the employer by the Secretary, including photographs.

(B) EstabliShing employment authorization and identity.—A document described in this subparagraph is an individual’s—

(i) United States passport, or passport card issued pursuant to the Secretary of State’s authority under 22 U.S.C. 211a; or

(ii) permanent resident card or other document issued by the Secretary or Secretary of State to aliens authorized to work in the United States, if the document—

(1) contains a photograph of the individual, biometric data, such as fingerprints, or such other personal identifying information relating to the individual as the Secretary of State, by regulation, determines is sufficient for the purposes of this subsection; and

(2) is evidence of authorization for employment in the United States; and

(iii) contains security features to make it resistant to tampering, counterfeiting, and fraudulent use; or

(iv) temporary interim benefits card valid under section 218(b) (c) of the Immigration and Nationality Act, as amended by Section 602 of the Comprehensive Immigration Act of 2007, bearing a photograph and an expiration date, and issued by the Secretary or aliens applying for temporary worker status under the Z visa.

(C) Establishing identity of individual.—A document described in this subparagraph includes—

(i) an individual’s drivers license or identity card issued by a State, the Commonwealth of the Northern Mariana Islands, or an outlying possession of the United States, if the document is certified to the Secretary of Homeland Security that it is in compliance with the minimum standards required under section 202 of the REAL ID Act of Public Law 109-13 (49 U.S.C. 30301 note) and implementing regulations issued by the Secretary of Homeland Security once those requirements become effective; or

(ii) an individual’s driver’s license or identity card issued by a State, the Commonwealth of the Northern Mariana Islands, or an outlying possession of the United States which is not compliant with section 202 of the REAL ID Act of 2005 if—

(I) the identity card contains the individual’s photograph as well as the individual’s name, date of birth, gender, height, eye color and address,

(II) the card has been approved for this purpose in accordance with time tables and procedures established by the Secretary pursuant to subsection (c)(2)(F) of this section; and

(iii) the card is presented by the individual and examined by the employer in combination with a U.S. birth certificate, or other document, or a Certificate of Citizenship, or such other documents as may be prescribed by the Secretary,

(iii) for individuals under 18 years of age who are unable to present a document listed in clause (i) or (ii), documentation of personal identity of such other type as the Secretary finds provides a reliable means of identification, provided it contains security features to make it resistant to tampering, counterfeiting, and fraudulent use; or

(iv) other documentation evidencing identity as identified by the Secretary in his discretion, with notice to the public provided in the Federal Register, to be acceptable for purposes of this section, provided that the document, including any electronic security measures linked to the document, contains security features that make the document as resistant to tampering, counterfeiting, and fraudulent use as the documents listed in (B)(i), (B)(ii), or (C)(i).

(D) Documents evidencing employment authorization and identity—Documents presented in this subsection may be accepted as evidence of employment authorization—

(i) a social security account number card issued by the Social Security Administration or an outlying possession of the United States which the Secretary declares, by publication in the Federal Register, to be acceptable for purposes of this section, provided that the document, including any electronic security measures linked to the document contains security features that make it resistant to tampering, counterfeiting, and fraudulent use;

(ii) any other documentation evidencing authorization for employment in the United States which the Secretary declares, by publication in the Federal Register, to be acceptable for purposes of this section, provided that the document, including any electronic security measures linked to the document contains security features that make it resistant to tampering, counterfeiting, and fraudulent use;

(E) Authority to prohibit use of certain documents.—If the Secretary finds that any document or class of documents described in subparagraphs (B), (C), or (D) as establishing employment authorization or identity does not reliably establish such authorization or identity, or is being used fraudulently, the Secretary shall, with notice to the public provided in the Federal Register, prohibit or restrict the use of that document or class of documents for purposes of this subsection.

(F) After June 1, 2013, no driver’s license or state identity card may be accepted if it does not comply with the REAL ID Act of 2005. This paragraph (c)(1)(F) shall have no effect on paragraphs (c)(1)(B), (c)(2)(C)(i), (c)(2)(C)(iii), or (c)(1)(D).

(3) DOCUMENTATION UTILIZATION OF EMPLOYMENT AUTHORIZATION.—The individual must attest, under penalty of perjury on the form prescribed by the Secretary, that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Secretary to be so employed, for purposes of employment. Such attestation may be manifested by either a handwritten or electronic signature.

(4) RETENTION OF VERIFICATION FORM.—After completion of such form in accordance with paragraphs (1) and (2), the employer must retain a paper, microfiche, microfilm, or electronic version of the form and make it available for inspection by officers of the Department of Homeland Security (or persons designated by the Secretary) or the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during a period beginning on the date of the employment, recruiting, or referral of the individual and ending—

(A) in the case of the recruiting or referral for a fee (without hiring) of an individual, seven years after the date of such recruiting or referral; and

(B) in the case of the hiring of an individual, seven years after the date of such hiring; or

(ii) two years after the date the individual’s employment is terminated, whichever is earlier.

(5) Copying of documentation and recordkeeping required.

(A) Notwithstanding any other provision of law, the employer shall copy all documents presented by an individual pursuant to this subsection and shall retain a paper, microfiche, microfilm, or electronic copy as prescribed in paragraph (3), but only (except as otherwise permitted under law) for the purposes of complying with the requirements of this subsection. Such records may reflect the signatures of the employer and the employee, as well as the date of receipt.

(B) The employer shall also maintain records of Social Security Administration correspondence regarding name and number mismatches or no-matches and the steps taken to resolve such issues.

(C) The employer shall maintain records of all actions and copies of any correspondence or action taken by the employer to clarify or resolve any issue that raises reasonable doubt as to the identity of the alien’s identity or work authorization.

(D) The employer shall maintain such records as prescribed by the Secretary. The Secretary may prescribe the manner of recordkeeping and may require that additional records be kept or that additional documents be copied and maintained. The Secretary may require that these documents be transmitted electronically, and may develop automated capabilities to request such documents.

(6) PENALTIES.—An employer that fails to comply with any requirement of this subsection shall be penalized under subsection (e).

(7) NO AUTHORIZATION OF NATIONAL IDENTIFICATION CARDS.—Nothing in this section shall be construed to authorize, directly or indirectly, the issuance, use, or possession of national identification cards or the establishment of national identification card.
“(7) The employer shall use the procedures for document verification set forth in this paragraph for all employees without regard to national origin or citizenship status.

“(d) Application of the System.—(1) In general.—The Secretary, in cooperation with the Secretary of Homeland Security, shall establish a program, called the Employee Verification System...”

“(A) Registration of Employers.—The Secretary, through notice in the Federal Register, shall prescribe procedures that employers shall follow to register in the EEVS. The Secretary shall notify employers subject to both newly hired and current employees. The Secretary shall establish a program, called the Employee Verification System...”

“(B) Renewal of Registration.—An employer required under subsection (a) to register in the EEVS must register in the EEVS and conform to the following procedures in the event of hiring, recruiting, or re-verifying an individual for employment in the United States:

“(1) Registration of Employers.—The Secretary, through notice in the Federal Register, shall prescribe procedures that employers shall follow to register in the EEVS. In prescribing these procedures the Secretary shall have authority to require employers to provide:

“(i) an individual’s social security account number;

“(ii) the employer’s Employment Identification Number (EIN);

“(iii) the entity’s main office address;

“(iv) the name, position, and social security number of the employer’s employees accessing the EEVS.

“(2) Provision of Additional Information.—The employer shall provide the information required under paragraph (1) in the EEVS. The Secretary shall require employers to undergo such training as the Secretary deems necessary to ensure proper use and security of the EEVS. The Secretary shall require employers to undergo such training as the Secretary deems necessary to ensure proper use and security of the EEVS to the extent practicable, such training shall be made available electronically.

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“(4) Procedures for Participants in the EEVS.—(A) In general.—An employer participating in the EEVS must register in the EEVS and conform to the following procedures in the event of hiring, recruiting, or re-verifying an individual for employment in the United States:

“(i) Notification of Employers.—The Secretary, through notice in the Federal Register, shall prescribe procedures that employers shall follow to notify the employer of a request for further action.

“(ii) Employer’s Request for Further Action.—The employer shall provide the information required under paragraph (1) in the EEVS and shall use EEVS as described in subsection (d)(5).

“(5) Procedures for Participants in the EEVS.—(A) In general.—An employer participating in the EEVS must register in the EEVS and conform to the following procedures in the event of hiring, recruiting, or re-verifying an individual for employment in the United States:

“(1) Notification of Employers.—The Secretary, through notice in the Federal Register, shall prescribe procedures that employers shall follow to notify the employer of a request for further action.

“(ii) Employer’s Request for Further Action.—The employer shall provide the information required under paragraph (1) in the EEVS and shall use EEVS as described in subsection (d)(5).

“(B) renewal of registration.—An employer required under subsection (a) to register in the EEVS must register in the EEVS and conform to the following procedures in the event of hiring, recruiting, or re-verifying an individual for employment in the United States:

“(1) Registration of Employers.—The Secretary, through notice in the Federal Register, shall prescribe procedures that employers shall follow to register in the EEVS. In prescribing these procedures the Secretary shall have authority to require employers to provide:

“(i) an individual’s social security account number;

“(ii) the employer’s Employment Identification Number (EIN);

“(iii) the entity’s main office address;

“(iv) the name, position, and social security number of the employer’s employees accessing the EEVS.

“(2) Provision of Additional Information.—The employer shall provide the information required under paragraph (1) in the EEVS. The Secretary shall require employers to undergo such training as the Secretary deems necessary to ensure proper use and security of the EEVS. The Secretary shall require employers to undergo such training as the Secretary deems necessary to ensure proper use and security of the EEVS to the extent practicable, such training shall be made available electronically.

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“(ii) Employer’s Request for Further Action.—The employer shall provide the information required under paragraph (1) in the EEVS and shall use EEVS as described in subsection (d)(5).

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“(i) an individual’s social security account number;

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“(i) Notification of Employers.—The Secretary, through notice in the Federal Register, shall prescribe procedures that employers shall follow to notify the employer of a request for further action.

“(ii) Employer’s Request for Further Action.—The employer shall provide the information required under paragraph (1) in the EEVS and shall use EEVS as described in subsection (d)(5).

“(B) renewal of registration.—An employer required under subsection (a) to register in the EEVS must register in the EEVS and conform to the following procedures in the event of hiring, recruiting, or re-verifying an individual for employment in the United States:

“(1) Registration of Employers.—The Secretary, through notice in the Federal Register, shall prescribe procedures that employers shall follow to register in the EEVS. In prescribing these procedures the Secretary shall have authority to require employers to provide:

“(i) an individual’s social security account number;

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“(iii) the entity’s main office address;

“(iv) the name, position, and social security number of the employer’s employees accessing the EEVS.

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“(i) Notification of Employers.—The Secretary, through notice in the Federal Register, shall prescribe procedures that employers shall follow to notify the employer of a request for further action.

“(ii) Employer’s Request for Further Action.—The employer shall provide the information required under paragraph (1) in the EEVS and shall use EEVS as described in subsection (d)(5).

“(B) renewal of registration.—An employer required under subsection (a) to register in the EEVS must register in the EEVS and conform to the following procedures in the event of hiring, recruiting, or re-verifying an individual for employment in the United States:

“(1) Registration of Employers.—The Secretary, through notice in the Federal Register, shall prescribe procedures that employers shall follow to register in the EEVS. In prescribing these procedures the Secretary shall have authority to require employers to provide:

“(i) an individual’s social security account number;

“(ii) the employer’s Employment Identification Number (EIN);

“(iii) the entity’s main office address;

“(iv) the name, position, and social security number of the employer’s employees accessing the EEVS.

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“(i) Notification of Employers.—The Secretary, through notice in the Federal Register, shall prescribe procedures that employers shall follow to notify the employer of a request for further action.

“(ii) Employer’s Request for Further Action.—The employer shall provide the information required under paragraph (1) in the EEVS and shall use EEVS as described in subsection (d)(5).

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“(1) Registration of Employers.—The Secretary, through notice in the Federal Register, shall prescribe procedures that employers shall follow to register in the EEVS. In prescribing these procedures the Secretary shall have authority to require employers to provide:

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“...(Continued)
(IV) FINALLY.—The EEVS shall provide a final confirmation or nonconfirmation within 10 business days from the date of the employee’s contesting of the further action notice. If the employee is required to take the steps required by the Secretary and the agency that the employee has contacted to resolve a further action notice, the Secretary shall extend the period of investigation until the secondary verification procedure allows the Secretary to provide final confirmation or nonconfirmation. If the employee correctly follows the steps required by the Secretary and the appropriate agency, a final nonconfirmation may be issued to that employee.

(V) RE-EXAMINATION.—Nothing in this section shall prevent the Secretary from reexamining a case where a final confirmation has been provided if subsequently received information indicates that the individual may not be work authorized.

In no case shall an employer terminate employment of an individual solely because of a failure of the individual to have identity and work eligibility confirmed under this section until a nonconfirmation becomes final and the period to timely file an administrative appeal has passed, and in the case where an administrative appeal has been timely filed within the period to timely file a petition for judicial review has passed. When final confirmation or nonconfirmation is provided, the confirmation or nonconfirmation shall provide an appropriate code indicating such confirmation or nonconfirmation. An individual’s failure to contest a further action notice shall not be considered an admission of guilt with respect to any violation of this section or any provision of law.

(D) CONSEQUENCES OF NONCONFIRMATION.—

(i) TERMINATION OF CONTINUED EMPLOYMENT.—If the employer has received a final nonconfirmation regarding an individual, the employer shall terminate employment (or recruitment or referral) of the individual, unless the individual files an administrative appeal of a final nonconfirmation notice under paragraph (7) within the time period prescribed in that paragraph and the Secretary or the Commissioner stays the final nonconfirmation notice pending the resolution of the administrative appeal.

(ii) CONTINUED EMPLOYMENT AFTEP FINAL NONCONFIRMATION.—If the employer continues to employ (or to recruit or refer) an individual after receipt of a final nonconfirmation notice, the employer shall be liable to the individual for the additional income and other compensation due to the employee, including any additional income and other compensation due to the employee, in an amount equal to the additional income and other compensation due to the employee, plus $40,000,000 for each fiscal year 2007 through 2009.

(E) OBLIGATION TO RESPOND TO QUERIES AND ADDITIONAL INFORMATION.

(i) Employers are required to comply with requests from the Secretary through EEVS and their compliance with the requirements prescribed in this section. Unless the Secretary of Homeland Security may, to the extent 

(F) IMPESSIBLE USE OF THE EEVS.—

(i) An employer may use the EEVS to verify an individual prior to extending the individual an offer of employment.

(ii) An employer may not require an individual to verify employment eligibility through the EEVS as a condition of extending to that individual an offer of employment.

(iii) An employer may not require that an individual verify employment eligibility through the EEVS if such a requirement is a violation of section (a)(1)(B).

(iv) An employer may require that an individual verify employment eligibility through the EEVS if such a requirement is a violation of section (a)(1)(B).

(v) The Secretary is authorized, with notice and opportunity for hearing in the Federal Register, to implement, clarify, and supplement the requirements of this paragraph. In order to facilitate the functioning of the EEVS or to prevent fraud or identity theft in the use of the EEVS.

(G) BASED ON A REVIEW OF THE EEVS AND THE DOCUMENT VERIFICATION PROCEDURES TO IDENTIFY FRAUDULENT USE AND TO ASSOCIATE THE SECURITY OF THE DOCUMENTS BEING USED TO SECURE THE PROMISES OF ROPEER AND PRIVATE ORGANIZATIONS FOR OUTREACH ACTIVITIES UNDER THE CAMPAIGN.

(H) BASED ON A REVIEW OF THE EEVS AND THE DOCUMENT VERIFICATION PROCEDURES TO IDENTIFY FRAUDULENT USE AND TO ASSOCIATE THE SECURITY OF THE DOCUMENTS BEING USED TO SECURE THE PROMISES OF ROPEER AND PRIVATE ORGANIZATIONS FOR OUTREACH ACTIVITIES UNDER THE CAMPAIGN.

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to the appeal. The Secretary and the Commiss-
ioner may, on a case by case basis for good cause, extend this period in order to en-
sure accurate resolution of an appeal before him, but the time for filing an initial non-
confirmation notice shall be limited to the weight of the evidence.

(C) EXHAUSTION OF ADMINISTRATIVE REM-
EDIES.—A court may review a final noncon-
firmation order only if—

(1) the petitioner has exhausted all ad-
niministrative remedies available to the alien as of right, and

(2) another court has not decided the va-

didity of the order, unless the reviewing court finds that the petition presents grounds that could not have been presented in the prior judicial proceeding or that the remedy provided by the prior proceeding was inadequate or ineffective to test the validity of the order.

(D) LIMIT ON INJUNCTIVE RELIEF.—Regard-

less of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provi-
sions from the system or to the application of such provisions to an individual petitioner.

(9) MANAGEMENT OF EMPLOYMENT ELIGI-
IBILITY VERIFICATION SYSTEM.

(A) IN GENERAL.—The Secretary is author-
ized to establish, manage and modify an EEVS that shall—

(i) respond to inquiries made by partic-
ipating employers at any time through the internet concerning an individual’s eligibility and the individual is authorized to be employed;

(ii) maintain records of the inquiries that were made, of confirmations provided (or not provided), and of the codes provided to em-
ployers as evidence of their compliance with their obligations under the EEVS; and

(iii) provide information to, and request action by, employers and individuals using the system, including notifying employers of the expiration or other relevant change in an employee’s employment authorization, and directly requiring the employee to convert to the em-
ployee a request to contact the appropriate Federal or State agency.

(B) DESIGN AND OPERATION OF SYSTEM.—The EEVS and the efficiency, accuracy, and secu-

rity for confirming the authenticity of the

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(C) The Secretary is authorized, with no-
tice to the public provided in the Federal Register, to issue regulations concerning operational and technical aspects of the EEVS and the efficiency, accuracy, and secu-

rity of the EEVS.

(D) ACCESS TO INFORMATION.—(I) Notwith-

standing any other provision of law, the Secretary of Homeland Security shall have access to relevant records de-
dscribed at paragraph (9)(8)(v), for the pur-
poses of preventing identity theft and fraud in the use of the EEVS and enforcing the provisions of this section governing employ-
ment verification. State or other non-federal agencies may access such records for the purpose of preventing identity theft and fraud in the use of the EEVS and enforcing the provisions of this section governing employment verification. State or other non-federal agencies may access such records for the purpose of preventing identity theft and fraud in the use of the EEVS and enforcing the provisions of this section governing employment verification. State or other non-federal agencies may access such records for the purpose of preventing identity theft and fraud in the use of the EEVS and enforcing the provisions of this section governing employment verification. State or other non-federal agencies may access such records for the purpose of preventing identity theft and fraud in the use of the EEVS and enforcing the provisions of this section governing employment verification. 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which, operating through the EEVS and within the time periods specified, compares the name, alien identification or authorization number, or other relevant information provided under this section against such records maintained or accessed by the Secretary in order to confirm (or not confirm) the validity of the information provided, the corresponding number and number under which the alien is authorized to be employed in the United States (or, to the extent that the Secretary determines to be feasible and appropriate, the Secretary's records verify United States citizenship), and such other information as the Secretary may prescribe.

(iii) The Secretary shall have authority to prescribe when a confirmation, nonconfirmation or further action notice shall be issued.

(iv) The Secretary shall perform regular audits under the EEVS, as described in paragraph (a) or (b) of this section, to ensure that the Secretary will determine if a comparison has been conducted, whether the information obtained from such audits, as well as any information obtained from the Commissioner of Social Security pursuant to section 205(a)(16) of the Social Security Act, is accurate and complete. If the Secretary determines that there was a violation of the requirements of this section, the Secretary shall issue the employer a civil penalty.

(v) The Secretary shall make appropriate arrangements to allow employers who are otherwise unable to access the EEVS to use federal government facilities or public facilities in order to utilize the EEVS.

(vi) The Secretary shall update their information in a manner that promotes maximum accuracy and shall provide a complete, prompt correction of erroneous information.

(b) Limitation on use of the employment eligibility verification system.—Notwithstanding any other provision of law, nothing in this subsection shall be construed to permit or allow any department, bureau, or other agency of the United States Government to utilize any information, database, or other records assembled under this subsection for any purpose other than for the enforcement and administration of the immigration laws, anti-terrorism laws, or for enforcement of Federal criminal law related to the functions of the EEVS, including prohibitions on forgery, fraud and identity theft.

(c) Unauthorized use or disclosure of information.—Any employee of the Department of Homeland Security or another Federal or State agency who knowingly uses or discloses the information assembled under this subsection for a purpose other than one authorized under this title shall pay a civil penalty of $5,000-$50,000 for each violation.

(d) Conforming amendments.—Public Law 104-208, Subtitle A, sections 401-405 are repealed, provided that nothing in this subsection shall be construed to limit the authority of the Secretary to alter or modify the participation of Basic Pilot employers in the EEVS established by this subsection.

(13) Funds.—In addition to any appropriated funds, the Secretary is authorized to use funds provided in sections 286(m) and (n), for the maintenance and operation of the EEVS and for the development and implementation of any pilot program for the pre-penalty notice of the Secretary of Homeland Security or the Secretary of the Treasury for the purposes of this section.

(14) The employer shall use the procedures established for the section to participate in the EEVS, if the employer determines to be appropriate.

(15) Authority in investigations.—In conducting investigations and hearings under this subsection—

(A) Immigration officers shall have reasonable access to examine evidence of any employer being investigated; and

(B) immigration officers designated by the Secretary may compel by subpoena the attendance of witnesses and the production of evidence at any designated place in an investigation or case under this section. In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph, the Secretary may request that the Attorney General apply in an appropriate district court of the United States for an order requiring compliance with such subpoena, and any failure to obey such order may be punished as a contempt thereof. Failure to cooperate with such subpoena shall be subject to further penalties, including but not limited to further fines and the voiding of any mitigation of penalties or termination of proceedings under subsection (e)(3)(B).

(16) Compliance procedures.—

(A) Pre-penalty notice.—If the Secretary has reasonable cause to believe that there has been a civil violation of this section or the requirements of this section, including but not limited to subsections (b), (c), (d) and (k), and determines that further proceedings are warranted, the Secretary shall issue to the employer concerned a written notice of the intention to issue a claim for a monetary or other penalty. Such pre-notice shall notify:

(i) describe the violation;

(ii) specify the laws and regulations allegedly violated;

(iii) disclose the material facts which establish the alleged violation;

(iv) inform such employer that he or she shall have a reasonable opportunity to make representations as to why a claim for a monetary or other penalty should not be imposed.

(B) Remission or mitigation of penalties.—Whenever any employer receives a written pre-penalty notice of a fine or other penalty in accordance with subparagraph (A), the employer may file, within 15 days from receipt of such notice, with the Secretary a petition for the remission or mitigation of such fine or penalty, or a petition for termination of the proceedings. The petition may include any relevant evidence or other basis for the Secretary to consider in the matter, and shall be filed and considered in accordance with procedures to be established by the Secretary. If the Secretary finds that the conduct of the employer incurred erroneously, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine or penalty, the Secretary may remit or mitigate the same upon such terms and conditions as the Secretary deems reasonable and just, or continue the proceeding in accordance with the immigration adjudication service for purposes of sections 286(m) and (n).

(C) Penalty claim.—After considering evidence and representations, if any, offered by the employer pursuant to paragraph (B), the Secretary shall determine whether there was a violation and promptly issue a written final determination setting forth the findings of fact and conclusions of law on which the determination is based. If the Secretary determines that there was a violation, the Secretary shall issue the final determination with a written penalty claim. The penalty claim shall specify all charges in the information provided under clauses (i) through (iii) of subparagraph (A) and any mitigation or remission of the penalty that the Secretary deems appropriate.

(D) Civil Penalties.—(1) Hiring or continuing to employ unauthorized aliens.—Any employer that violates any provision of subsection (a)(1)(A) or (a)(2) shall:

(i) pay a civil penalty of $5,000 for each unauthorized alien with respect to which each violation of either subsection (a)(1)(A) or (a)(2) occurred;

(ii) pay a civil penalty of $10,000 for each unauthorized alien with respect to which a violation of either subsection (a)(1)(A) or (a)(2) occurred;

(iii) remit or mitigate the penalty incurred under subsection (e)(4) for an employer who fails to comply with a previously issued and final order under this section.

(E) Remittance or mitigation of penalty of $2,000 for each violation.

(F) Conforming amendments.—Public Law 104-208, Subtitle A, sections 401-405 are repealed, provided that nothing in this subsection shall be construed to limit the authority of the Secretary to alter or modify the participation of Basic Pilot employers in the EEVS established by this subsection.
with a previously issued and final order under this section shall be fined $15,000 for each violation.

"(C) OTHER PENALTIES.—The Secretary may impose additional penalties for violations, including cease and desist orders, specially designed compliance plans to prevent further violations, and notify the Secretary of a failure to comply in the event of a further violation, and in appropriate cases, the remedy provided by paragraph (g)(2). All penalties in this section may be assessed at any time, and may continue for up to five years to account for inflation as provided by law.

"(D) The Secretary is authorized to reduce or mitigate penalties imposed upon employers, based on findings of good faith, but not limited to, the employer’s hiring volume, compliance history, good-faith implementation of a compliance program, participation in temporary worker program, and voluntary disclosure of violations of this subsection to the Secretary.

"(5) ORDER OF INTERNAL REVIEW AND CERTIFICATION OF COMPLIANCE.—

If the Secretary has reasonable cause to believe that an employer has failed to comply with this section, the Secretary is authorized, at any time, to require that the employer provide information and audit the records thereof at reasonable times and with reasonable frequency, and any other protections as provided by section 28, except as specifically provided below. The Secretary may extend the 60-day deadline for good cause.

The Secretary is authorized to publish in the Federal Register standards or methods for enforcement of any terms or provisions of this section, or to mitigate penalties imposed upon employers, based on findings of good faith, but not limited to, the employer’s hiring volume, compliance history, good-faith implementation of a compliance program, participation in temporary worker program, and voluntary disclosure of violations of this subsection to the Secretary.

"(6) JUDICIAL REVIEW.—

"(A) With respect to a lien imposed on a person or organization, or where an order is issued under this section, an appeal may be filed with the Court of Appeals in the United States. In any such suit, the validity of the order, unless the reviewing court dismisses the appeal, shall be filed with the court of appeals.

"(B) A petition for judicial review under this section may be filed not more than 30 days after the date on which the Secretary makes the final determination. If an employer has been notified of a notice of lien for taxes payable to the United States for the period for which the lien is sought to be enforced, the petition shall be filed no later than 30 days after the date of notice of such lien.

"(C) ENFORCEMENT OF A LIEN.—A lien obtained through this process shall be considered a debt as defined by 28 U.S.C. § 3002 and enforceable pursuant to the Federal Debt Collection Procedures.

"(D) CRIMINAL PENALTIES AND INJUNCTIONS FOR PATTERN OR PRACTICE VIOLATIONS.—

"(1) CRIMINAL PENALTY.—Any employer who violates paragraph (a)(1) or (a)(2) shall be fined not more than $5,000 for each violation.

"(2) ENJOINING OF PATTERN OR PRACTICE VIOLATIONS.—Whenever the Secretary or the Attorney General has reasonable cause to believe that an employer is engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the employer, and the Secretary may bring a civil action against the employer in the United States District Court for the District of Columbia.

"(7) ENFORCEMENT OF ORDERS.—If an employer fails to comply with a final determination issued against that employer under this section, the Secretary may bring enforcement proceedings within 60 days of the date of the final determination, in accordance with the Federal Acquisition Regulations. The Secretary may bring enforcement proceedings within 60 days of the date of the final determination, in accordance with the Federal Acquisition Regulations.

"(8) CRIMINAL PENALTIES AND INJUNCTIONS.

"(1) CRIMINAL PENALTY.—Any employer who violates paragraph (a)(1) or (a)(2) shall be fined not more than $5,000 for each violation.

"(2) INJUNCTIONS.—In any civil action begun to enforce the Secretary’s determination, the Secretary may seek injunctive relief, against any purchaser, holder of a security interest, mechanic’s lien or judgment lien creditor, except with respect to property or transactions specified in sections 6221 or 6223 of the Internal Revenue Code of 1986 for which a notice of tax lien properly filed on the same date would not be valid. The notice of lien shall be considered a notice of lien for taxes payable to the United States for the period for which the lien is sought to be enforced.

"(8) VIOLATION OF ORDER.—If an employer fails to comply with a final determination issued against that employer under this section, the Secretary may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the employer, and the Secretary may bring a civil action against the employer in the United States District Court for the District of Columbia.

"(9) PROHIBITION OF INDEMNITY BONDS.—

"(1) PROHIBITION.—It is unlawful for an employer, in the hiring, recruiting, or referring for employment of any alien, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this section relating to such hiring, recruiting, or referring of the individual.

"(2) CIVIL PENALTY.—Any employer which is deemed such a violation occurs, imprisons the employee cannot be located, to the general fund of the Treasury.

"(3) GOVERNMENT CONTRACTS.—Any employer who does not hold Federal contracts, grants, or cooperative agreements is determined by the Secretary to be a repeat violator of this section, the employer shall be subject to debarment from the receipt of Federal contracts, grants, or cooperative agreements for up to two years in accordance with the procedures and standards prescribed by the Federal Acquisition Regulations.
(k) No Match Notice.—

(1) For the purpose of this subsection, no match notice is written notice from the Social Security Administration (SSA) to an employer who has filed an employment W-2 that employees’ names or corresponding social security account numbers fail to match SSA records. The Secretary, in consultation with the Homeland Security Administration, is authorized to establish by regulation requirements for verifying the identity and work authorization of employees who are the subject of no-match notices. The Secretary shall establish by regulation requirements for verifying the identity and work authorization of employees who are the subject of no-match notices. The Secretary shall establish by regulation requirements for verifying the identity and work authorization of employees who are the subject of no-match notices. The Secretary shall establish by regulation requirements for verifying the identity and work authorization of employees who are the subject of no-match notices.

(2) Contractors and recipients.—Whenever an employer who holds Federal contracts, grants, or cooperative agreements is determined by the Secretary to be a violator of this section or is convicted of a crime under this section, the employer shall be subject to debarment from the receipt of new Federal contracts, grants, or cooperative agreements for a period of up to two years in accordance with the procedures and standards prescribed by the Federal Acquisition Regulation. Prior to debarment, the Secretary, in cooperation with the Administrator of General Services, shall advise all agencies holding contracts, grants, or cooperative agreements with the employer of the proceedings to debar the employer from the receipt of new Federal contracts, grants, or cooperative agreements for a period of up to two years. After consideration of the views of agencies holding contracts, grants or cooperative agreements with the employer, the Secretary may waive operation of this subsection or may limit the duration or scope of the debarment.

(2) Indictments for violations of this section or adequate evidence of actions that could form the basis for indictment under the Immigration and Nationality Act, shall limit the duration or scope of the proposed debarment, or may refer to an appropriate lead agency the decision of whether to impose a debarment, or, for what duration, and under what scope in accordance with the procedures and standards prescribed by the Federal Acquisition Regulation. However, any proposed debarment predicated on an administrative determination of liability for civil penalty by the Secretary or the Attorney General shall not be reviewable in any debarment proceeding.

(3) Indictments for violations of this section or adequate evidence of actions that could form the basis for indictment under the Immigration and Nationality Act, shall limit the duration or scope of the proposed debarment, or may refer to an appropriate lead agency the decision of whether to impose a debarment, or, for what duration, and under what scope in accordance with the procedures and standards prescribed by the Federal Acquisition Regulation. However, any proposed debarment predicated on an administrative determination of liability for civil penalty by the Secretary or the Attorney General shall not be reviewable in any debarment proceeding.

(1) Documentation.—In providing documentation or endorsement of authorization of aliens (other than those lawfully admitted for permanent residence) authorized to be employed in the United States, the Secretary shall provide that any limitations prescribed by the Immigration and Nationality Act, shall limit the duration or scope of the proposed debarment, or may refer to an appropriate lead agency the decision of whether to impose a debarment, or, for what duration, and under what scope in accordance with the procedures and standards prescribed by the Federal Acquisition Regulation. However, any proposed debarment predicated on an administrative determination of liability for civil penalty by the Secretary or the Attorney General shall not be reviewable in any debarment proceeding.

(2) Preemption.—The provisions of this section preempt any State or local law that requires the use of the EEEVS in fashion that conflicts with federal policies, procedures or timetables or procedures, civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or re- cruite for fee for employment, unauthorized aliens.

(3) Deposit of Amounts Received.—Except as otherwise specified, civil penalties collected under this section shall be deposited by the Secretary into the general fund of the Treasury.
SEC. 305. INCREASING SECURITY AND INTEGRITY OF SOCIAL SECURITY CARDS.

(a) FAULT-TOLERANT AND WEAR-RESISTANT SOCIAL SECURITY CARDS.—

(1) ISSUANCE.—The Secretary shall issue a social security card to an individual at the time of issuance of a social security account number to such individual. The social security card shall be fraud-resistant, tamper-resistant and wear-resistant."

(b) COMPLETION.—Not later than two years after the date of enactment of this title, the Commissioner of Social Security shall begin work to administer and issue wear-resistant Social Security cards.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the authority and requirements made by this section.

SEC. 306. INCREASING SECURITY AND INTEGRITY OF IDENTITY DOCUMENTS

(a) PURPOSE.—The purpose of Homeland Security, shall establish the State Records Improvement Grant Program (referred to in this section as ‘the Program’), under which the Secretary may award grants to States for the purpose of advancing the purposes of this Act and of issuing or implementing plans to issue driver’s license and identity cards that can be used for purposes of verifying identity under this Title and that comply with the state license requirements in sections 205 of 2005 (division B of Public Law 109–13; 49 U.S.C. 30301 note).

(b) STIPULATION.—States that do not certify their intent to comply with the REAL ID Act and implementing regulations or that do not submit a compliance plan acceptable to the Secretary are not eligible for grants under the Program. Such states shall not issue REAL ID cards until such time as the Secretary determines that the purposes of this Act are being met.

(c) CONDITIONS.—All grants under the Program shall be conditionally awarded on the recipient agreeing to comply with conditions approved by the Secretary. Such conditions may include:

(1) adhering to the timeframes as set forth in section 202 of the REAL ID Act;

(2) ensuring introduction and maintenance of such security features and other measures necessary to make the documents issued by the recipient resistant to tampering, counterfeiting, and fraudulent use as the Secretary may prescribe; and

(3) ensuring implementation and maintenance of such safeguards for the security of information contained in such documents as the Secretary may prescribe.

(d) AUTHORIZATION OF APPROPRIATIONS IN GENERAL.—There is authorized to be appropriated $300,000,000 for each of fiscal years 2007 through 2011 to carry out the provisions of this section.

SEC. 307. VOLUNTARY ADVANCED VERIFICATION PROGRAM TO COMBAT IDENTITY THEFT.

(a) VOLUNTARY ADVANCED VERIFICATION PROGRAM.—The Secretary shall establish and make available a voluntary program allowing employers to obtain an employee’s fingerprints for purposes of verifying the identity and work authorization of the employee.

(b) IMPLEMENTATION DATE.—No later than 18 months after the date of enactment of this Act, the Secretary shall implement the voluntary advanced verification program and make it available to employers willing to volunteer in the program.

(c) VOLUNTARY PARTICIPATION.—The fingerprints verification program is voluntary; employers are not required to participate in it.

(d) LIMITED RETENTION PERIOD FOR FINGERPRINTS.—The Secretary shall only maintain fingerprint records of U.S. Citizen that were submitted by an employer through the EEVS
for 10 business days, upon which such records shall be purged from any EEVs-related system unless the fingerprints have been ordered to be retained for purposes of a fraud or similar investigation by government agency with an independent criminal or other investigative authority.

(2) Exception: For purposes of preventing identity theft or other harm, a U.S. Citizen or an employee may request in writing that his fingerprint records be retained for employee verification purposes by the Secretary. In such cases of written consent, the Secretary may retain such fingerprint records until notified in writing by the U.S. Citizen of his withdrawal of consent, at which time the Secretary shall purge such fingerprint records within 10 business days unless the fingerprint records have been ordered to be retained for purposes of a fraud or similar investigation by government agency with an independent criminal or other investigative authority.

(c) LIMITED USE OF FINGERPRINTS SUBMITTED FOR PROGRAM.—The Secretary and the employer may use any fingerprints taken from the employee and transmitted for purposes of verifying identity and employment eligibility during the employee verification process. Such transmitted fingerprints may not be used for any other purpose. This provision does not alter any other provisions regarding the use of non-fingerprint information in the EEVS.

308. RESPONSIBILITIES OF THE SOCIAL SECURITY ADMINISTRATION

Section 205(c)(12) of the Social Security Act, 42 U.S.C. 405(c)(2), is amended by adding at the end the following new subparagraphs:

(4) TIGHTENING REQUIREMENTS FOR THE PROVISION OF SOCIAL SECURITY NUMBERS ON FORM W-2 WAGE AND TAX STATEMENTS.—Section 6721 of the Internal Revenue Code of 1986 (relating to withholding and security account number requirements) is amended by striking paragraph (2)(A) of the heading and inserting paragraph (2)(B).”

309. IMMIGRATION ENFORCEMENT SUPPORT BY THE INTERNAL REVENUE SERVICE AND THE SOCIAL SECURITY ADMINISTRATION

(a) TIGHTENING REQUIREMENTS FOR THE PROVISION OF SOCIAL SECURITY NUMBERS.—The Commissioner of Social Security in consultation with the Secretary of Homeland Security, and notwithstanding section 6103 of title 26, shall establish a system for identifying and correcting such deficiencies and discrepancies is adopted to ensure the accuracy of the Social Security Administration’s databases.

(b) EXCEPTION.—(A) IN GENERAL.—Except as provided in subparagraph (B), paragraph (1) shall not apply in any case in which the employer—

(i) receives confirmation that the discrepancy described in section 205(c)(2)(I) of the Social Security Act has been resolved, or

(ii) corrects a clerical error made by the employer with respect to the social security account number of an employee furnished under section 6051(a)(2).

(B) EXCEPTION.—(B) IN GENERAL.—Except as provided in subparagraph (B), paragraph (2) shall not apply in any case in which the employer—

(i) confirms that the discrepancy described in section 205(c)(2)(I) of the Social Security Act has been resolved, or

(ii) makes a minor error correction by the employer with respect to the social security account number of an employee furnished under section 6051(a)(2).

(c) SAFEGUARDING OF FINGERPRINT INFORMATION.—The Secretary, subject to specifications and limitations set forth under this section and other relevant provisions of this Act, shall be responsible for safely and securely maintaining and storing all fingerprints submitted under this program.

310. AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated—

(1) $2,000,000 for the urban community of Atlanta, Georgia, and $1,000,000 for the community of Los Angeles, California, for the purpose of conducting the operations of the Immigration and Enforcement Service.

(2) $1,000,000 for the urban community of Chicago, Illinois, for the purpose of conducting the operations of the Immigration and Enforcement Service.

(3) $500,000 for the urban community of Houston, Texas, for the purpose of conducting the operations of the Immigration and Enforcement Service.

(4) $500,000 for the urban community of Miami, Florida, for the purpose of conducting the operations of the Immigration and Enforcement Service.

(5) $250,000 for the urban community of New York, New York, for the purpose of conducting the operations of the Immigration and Enforcement Service.

(6) $250,000 for the urban community of Seattle, Washington, for the purpose of conducting the operations of the Immigration and Enforcement Service.

(7) $100,000 for the urban community of San Antonio, Texas, for the purpose of conducting the operations of the Immigration and Enforcement Service.

(8) $100,000 for the urban community of Philadelphia, Pennsylvania, for the purpose of conducting the operations of the Immigration and Enforcement Service.

(9) $100,000 for the urban community of St. Louis, Missouri, for the purpose of conducting the operations of the Immigration and Enforcement Service.

(10) $50,000 for the urban community of Chicago, Illinois, for the purpose of conducting the operations of the Immigration and Enforcement Service.
(C) monitor the EEVS for multiple uses of Social Security Numbers and any immigration identification numbers for evidence that could indicate identity theft or fraud; (D) ensure that the EEVS to identify discriminatory practices; (E) monitor the EEVS to identify employers who are not using the system properly, including employers who fail to make appropriate records with respect to their queries and any notices of confirmation, nonconfirmation, or further action; (F) monitor the EEVS to identify employees who allege that an employer violated their privacy rights; (G) analyze and audit the use of the EEVS and the data obtained through the EEVS to identify fraud trends, including fraud trends across industries, geographical areas, or employers; (H) analyze and audit the use of the EEVS and the data obtained through the EEVS to develop compliance tools as necessary to respond to changing patterns of fraud; (I) provide employers with additional training and other information on the proper use of the EEVS; (J) perform threshold evaluation of cases for referral to the U.S. Immigration and Customs Enforcement and to liaise with the U.S. Immigration and Customs Enforcement with respect to these referrals; (K) any other compliance and monitoring activities that, in the Secretary's judgment, are necessary to ensure the functioning of the EEVS; (L) investigate identity theft and fraud detected through the EEVS and undertake the necessary enforcement actions; (M) investigate use of fraudulent documents or access to fraudulent documents through local facilitation and undertake the necessary actions; (N) provide support to the U.S. Citizenship and Immigration Services with respect to the evaluation of cases for referral to the U.S. Immigration and Customs Enforcement; (O) perform any other investigations that, in the Secretary's judgment, are necessary to ensure the functioning of the EEVS, and undertake any enforcement actions necessary as a result of these investigations.

(2) The appropriations necessary to acquire, install, and maintain technological equipment necessary to support the functioning of the EEVS and the connectivity between the U.S. Citizenship and Immigration Services and the U.S. Immigration and Customs Enforcement with respect to the sharing of information to support the EEVS and related immigration enforcement actions. (b) To be authorized to be appropriated to Commissioner of Social Security such sums as may be necessary to carry out the provisions of this Act, including Section 308 of this Act.

TITLE IV—NEW TEMPORARY WORKER PROGRAM

SUBTITLE A—SEASONAL NON-AGRICULTURAL AND SEASONAL NON-AGRICULTURAL TEMPORARY WORKERS

SEC. 401. NONIMMIGRANT TEMPORARY WORKER.

(a) In General—Section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) is amended—

(1) in subparagraph (H)—

(A) by striking subsection (ii)(b); (B) by striking 'or (ii)' and inserting '; or'; (C) by striking and the alien spouse and inserting or and the alien spouse'; and (D) by striking 'or at the end of subparagraph (U); (b) by striking the period at the end of subparagraph (U); and

(2) by striking the end of the following new subparagraphs—

‘‘(W) [Reserved];’’ (X) [Reserved]; or (Y) subject to section 218A, an alien having a residence in a foreign country which the alien has no intention of abandoning and who is coming temporarily to the United States—

(i) to perform temporary labor or services other than the labor or services described in clause (1)(b), (1)(b)(1), (1)(c), or (3) of subparagraph (H), subparagraph (D), (E), (L), (L), (O), (P), or (Q), or section 214(h) (if United States workers who are able, willing, and qualified to perform such labor or services cannot be found in the United States); (ii) to perform seasonal non-agricultural labor or services as may be necessary to carry out the certification described in section (a)(15)(Y)(ii) of this Act; (iii) as the spouse or child of an alien described in clause (1) or (ii) of this subparagraph;’’.

(b) References.—All references in the immigration laws as amended by this Title to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act shall be considered reference to both that section of the Act and to section (a)(15)(Y)(ii) of the Act.

(c) Effective Date.—The effective date of the amendment made by this subsection is July 25, 2007, as prescribed in regulations.

SEC. 402. ADMISSION OF NONIMMIGRANT WORKERS.

(a) New Workers—Chapter 2 of title II of the Act (8 U.S.C. 1181 et seq.) is amended by striking section 218 and inserting the following:

‘‘SEC. 218A. ADMISSION OF NONIMMIGRANTS.

(1) In general—The Secretary of Labor shall prescribe by regulation the procedures for a United States employer to obtain a labor certification of a job opportunity under the terms set forth in section 218B.

(2) Petition.—The Secretary of Homeland Security shall prescribe by regulation the procedures for a United States employer to petition the Secretary of Homeland Security for authorization to employ an alien as a Y nonimmigrant worker and violance for such authorization under the terms set forth in subsection (c).

(3) Y Nonimmigrant Visa.—The Secretary of State and the Secretary of Homeland Security shall, in consultation with the Secretary of Labor, prescribe by regulation the procedures for an alien to apply for a Y nonimmigrant visa and the evidence required to demonstrate eligibility for such visa under the terms set forth in subsection (e).

(4) Regulations.—The regulations, referenced in paragraphs (1), (2), and (3) shall describe, at a minimum—

(A) the procedures for collection and verification of biometric data from an alien seeking a Y nonimmigrant visa or admission as a Y nonimmigrant worker; and (B) the procedure and standards for validating an employment arrangement between a United States employer and an alien seeking a visa or admission described in (A), (B) Application for Certification of a Job Opportunity Offered to Y Nonimmigrant Workers.—An employer desiring to employ a Y nonimmigrant worker shall, with respect to a specific opening that the employer seeks to fill with such a Y nonimmigrant, submit an application for labor certification of the job opportunity in accordance with the procedures established by section 218B.

(c) Petition to Employ Nonimmigrant Workers.—

(1) In General.—An employer that seeks authorization to employ a Y nonimmigrant worker must file a petition with the Secretary of Homeland Security. The petition must be accompanied by—

(A) evidence that the employer has obtained certification under section 218B from the Secretary of Labor for the position sought to be filled by a Y nonimmigrant worker and that such certification remains valid; (B) evidence that the job offer was and remains valid; (C) the name and other biographical information of the alien beneficiary and any accompanying spouse or child; (D) any biometrics from the beneficiary that the Secretary of Homeland Security may require by regulation.

(2) Timing of Filing.—A petition under this subsection must be filed with the Secretary of Homeland Security within 180 days of the date of certification under section 218B by the Secretary of Labor for the job opportunity.

(3) Expiration of Certification.—If a labor certification is not filed in support of a petition under this subsection with the Secretary of Homeland Security within 180 days of the date of certification by the Secretary of Labor, then the certification expires and the employer shall support a Y nonimmigrant petition or be the basis for nonimmigrant visa issuance.

(4) Ability to Request Documentation.—The Secretary of Homeland Security may request information to verify the attestations the employer made during the labor certification process, and any other fact relevant to the adjudication of the petition.

(5) Adjudication of Petition.—(A) Post-Adjudication Action.—After review of the petition, if the Secretary—

(i) is satisfied that the petition meets all of the requirements of this section and any other requirements the Secretary has prescribed in regulations, he may approve the petition and by fax, cable, electronic, or any other means assure expedited delivery—

(ii) transmit copy of the notice of action on the petition to the petitioner; and

(III) in the case of approved petitions, transmit notice of the approval to the Secretary of State;

(ii) finds that the employer is not eligible or that the petition is otherwise not approv—

the Secretary may—

(i) deny the petition without seeking addi—

tional evidence and inform the petitioner—

(aa) that the petition was denied and the reason for the denial; and (bb) of any available process for admin—

istrative appeal of the decision; and

(cc) that the denial is without prejudice to the filing of any subsequent petitions, ex—

cept as provided in section 218B(e)(4).

(iii) issue a request for documentation of the attestations or any other information or evidence that is material to the petition; or

(III) audit, investigate or otherwise review the petition in such manner as he may determine and refer evidence of fraud to appropriate law enforcement agencies based on that audit.

(B) Validity of Approved Petition.—An approved petition shall have the same period of validity as the certification described in subsection (c)(1)(A) and expire on the same date that the certification expires, except that the Secretary of Homeland Security may terminate in his discretion an approved petition if—

(i) when he determines that any material fact, including, but not limited to the prof—

fered wage rate, the geographic location of the employment, or the duration of the position, has changed in a way that would invalidate the recruitment actions; or
“(ii) when he or the Secretary of Labor makes a finding of fraud or misrepresentation concerning the facts on the petition or any other representation made by the employer in the application for Labor or Secretary of Homeland Security.

“(C) ADMINISTRATIVE REVIEW.—The Secretary of State shall have the authority to perform such labor or services cannot be performed by a nonimmigrant who demonstrates an intent and other expenses associated with the production of documentation of evidence from employers, employer as- signed by the Secretary of State, in consulta-

“(d) AUTHORIZATION TO GRANT Y NON- IMMIGRANT VISAA—

(1) IN GENERAL.—Consular officer may grant a nonimmigrant temporary visa to a Y nonimmigrant who demonstrates an intent to perform labor or services in the United States (other than the labor or services described in section 101(a)(15)(H), paragraph (D), (E), (I), (L), (O), (P), or (R) of section 101(a)(15) of United States workers who are able, willing, and qualified to perform such labor or services cannot be found in the United States).

(2) APPLICANTS FROM CANADA.—Notwithstanding any waivers of the visa requirement under section 212(a)(7)(B)(i)(II), a national of Canada seeking admission as a Y nonimmigrant will be inadmissible if not in pos-

“(e) REQUIREMENTS FOR ADMISSION.—An alien shall be eligible for nonimmigrant sta-

(1) ELIGIBILITY TO WORK.—The alien shall estab-

(2) EVIDENCE OF EMPLOYMENT OFFER.—The alien’s evidence of employment shall be pro-

(A) PROCESSING FEES.—An alien making an application for a Y nonimmigrant visa shall be required to pay, in addition to any fees otherwise required by law, a processing fee in an amount suffi-

(B) STATE IMPACT FEE.—Aliens making an application for a Y-1 nonimmigrant visa shall pay a state impact fee of $500 and an additional $250 for each dependent accompanied or following to join the alien, not to exceed $2,500 for all dependents.

(C) DEPOSIT AND SPENDING OF FEES.—The processing fees under subparagraph (A) shall be depos-

(D) DEPOSIT AND DISPOSSESSION OF STATE IMPACT ASSISTANCE FUND.—The funds de-

(E) INSTRUCTION.—Nothing in this para-

(4) MEDICAL EXAMINATION.—The alien shall undergo a medical examination (includ-

(2) Waiver.—The Secretary may In his dis-

(3) CONSTRUCTION.—Nothing in this sub-

(G) BACKGROUND CHECKS.—The Secretary of Homeland Security shall not admit, and the Secretary of State shall not issue a visa to, an alien as a nonimmigrant or as a nonimmigrant status unless all appropriate background checks have been completed to the satisfaction of the Secretaries of State and Homeland Secu-

(h) GROUNDS OF INELIGIBILITY.—

(1) IN GENERAL.—An alien is ineligible for a nonimmigrant visa or nonimmigrant sta-

(2) MUST NOT BE INELIGIBLE.—The alien shall include in the application submitted under this paragraph a signed certification in which the alien certifies the following:

(3) MVDI PEER’S—The alien shall have read and understands all of the questions and statements on the applica-

(4) EXTENSIONS OF THE PERIOD OF ADMIS-

(1) APPLICATION CONTENT AND WAIVER.—

(A) APPLICATION FORM.—The alien shall sub-

(2) CONTENT.—In addition to any other in-

(3) CONSTRUCTION.—In determining an alien’s eligibility for a Y nonimmigrant status, the Secretary of State shall require an alien to provide information concerning: 

(i) physical and mental health; 

(ii) criminal history, including all arrests and dispositions, and gang membership; 

(iii) immigration status, as described in subsection (m).

(4) FEES.

(5) MEDICAL EXAMINATION.

(6) Must not be inadmissible.

(7) Must not be ineligible.

(8) Spous or Child of Nonimmigrant.—An alien seeking admission as a derivative Y-3 nonimmigrant must demonstrate, in ad-

(9) Supplementary Periods.

(1) Waived grounds of inadmissibility.

In determining an alien’s admissibility as a Y nonimmigrant, such alien shall be found to be inadmissible if subject to the grounds of inadmissibility under section 212(a)(2).

(2) Waiver.—The Secretary may in his dis-

(3) Construction.—Nothing in this sub-

(4) Extensions of the period of admission.
(A) In general.—The periods of authorized admission described in paragraph (1) may not, except as provided in subparagraph (C)(2) of paragraph (1), be extended beyond the maximum period of admission set forth in that paragraph.

(B) Extension of Y-1 nonimmigrant status.—An alien who has been admitted to the United States in Y-1 nonimmigrant status for a period of two years under paragraph (1)(A), or as the Y-1 nonimmigrant spouse or child of such Y-1 nonimmigrant, may not be readmitted to the United States as Y-1 or Y-3 nonimmigrant after expiration of such period of authorized admission, regardless of whether the alien was employed or present in the United States for all or part of such period.

(C) Y-2B nonimmigrants.—An alien who has been admitted to the United States in Y-2B nonimmigrant status may not, after expiration of such period of authorized admission, be readmitted to the United States as Y-1 nonimmigrant after expiration of the alien’s period of authorized admission, regardless of whether the alien was employed or present in the United States for all or any part of such period, unless the alien has resided and been physically present outside the United States for the immediate prior 12 months.

(D) Extension on admission.—

(1) Y-1 nonimmigrants.—An alien who has been admitted to the United States in Y-1 nonimmigrant status for a period of two years under paragraph (1)(A), or as the Y-1 nonimmigrant spouse or child of such Y-1 nonimmigrant, may not be readmitted to the United States as Y-1 or Y-3 nonimmigrant after expiration of such period of authorized admission, regardless of whether the alien was employed or present in the United States for all or part of such period.

(2) Y-2B nonimmigrants.—An alien who has been admitted to the United States in Y-2B nonimmigrant status may not, after expiration of such period of authorized admission, be readmitted to the United States as Y-1 nonimmigrant after expiration of the alien’s period of authorized admission, regardless of whether the alien was employed or present in the United States for all or any part of such period, unless the alien has resided and been physically present outside the United States for the immediate prior 12 months.

(E) Readmission with new employment.—Nothing in this paragraph shall be construed to prevent an Y nonimmigrant, whose period of authorized admission has not yet expired or been terminated under subsection (l), and who leaves the United States in a timely fashion after completion of the employment described in the petition of the non-immigrant’s most recent employer, from re-entering the United States as a Y nonimmigrant to work for new employer, if the alien and the new employer have complied with all applicable requirements of this section as set forth in section 213.

(F) International commuters.—An alien who maintains actual residence and place of abode outside the United States and commutes regularly into the United States to work as Y-1 nonimmigrant, shall be granted an authorized period of admission of three years. The limitations described in paragraphs (3) and (4) shall not apply to commuters described in this paragraph.

(G) Aliens in lawfully present periods.—(1) Termination.—(A) In general.—The period of authorized admission of a Y nonimmigrant shall terminate immediately if:

(i) the Secretary of Homeland Security determines that the alien was not eligible for such Y nonimmigrant status at the time of visa application or admission;

(ii) the alien is not a national of a foreign territory contiguous to the United States; and

(iii) the alien is not subject to the bars on unauthorized presence in the United States, that establishes that such unemployment was caused by—

(A) a period of physical or mental disability of the alien or the spouse, son, daughter, or parent (as defined in section 101 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611)) of the alien;

(B) a period of temporary unemployment that is the direct result of a force majeure event.

(2) Return to foreign residence.—Any alien whose period of authorized admission terminates under paragraph (1) shall be required to leave the United States immediately and register such departure at a designated port of entry in a manner to be prescribed by the Secretary.

(3) Invalidation of documentation.—Any documentation that is issued by the Secretary of Homeland Security for a period of temporary unemployment under section (m) to any alien, whose period of authorized admission terminates under paragraph (1), shall automatically be rendered invalid for any purpose except departure.

(4) Visits outside the United States.—(A) In general.—Under regulations established by the Secretary of Homeland Security, a Y nonimmigrant—

(i) may travel outside of the United States; and

(ii) may be readmitted for a period not more than the remaining time left until the alien accrues the maximum period of admission set forth in subsection (l), and without having to obtain a new visa if—

(A) the period of authorized admission has not expired or been terminated;

(B) the alien is the bearer of valid documentary evidence of Y nonimmigrant status that satisfies the conditions set forth in subsection (m); and

(C) the alien is not subject to the bars on extension or admission described in subsection (l).

(B) Effect on period of authorized admission.—The period of authorized admission of a Y nonimmigrant, who, after the date of the enactment of section 213, enters the United States under paragraph (A) shall not extend the most recent period of authorized admission in the United States.

(C) Bars to Y nonimmigrant admission.—An alien may not be granted Y nonimmigrant status if—

(A) the alien has violated any material term or condition of such status granted previously, including failure to comply with the change of address reporting requirements under section 258;

(B) the alien is inadmissible as a nonimmigrant, except for those grounds previously waived under subsection (f); or

(C) the granting of such status would allow the alien to remain in the United States in the status described in subsection (l).

(D) Subject to paragraph (2), the alien is unemployed within the United States for—

(i) more than the remaining time left in the period of authorized admission; or

(ii) in the case of a Y-1 nonimmigrant, an aggregate period of 120 days, provided that the alien’s 14-day period to lawfully depart the United States shall not be considered to begin until the date that the alien has been provided notice of the termination; or

(iii) in the case of a Y-2B nonimmigrant, an aggregate period of 30 days, provided that the alien’s 14-day period to lawfully depart the United States shall not be considered to begin until the date that the alien has been provided notice of the termination; or

(E) the alien is a Y-1 nonimmigrant whose spouse or parent in Y-1 nonimmigrant status is an alien described in subparagraphs (A), (B), or (D).

(3) Permanent bars for overstays.—(1) In general.—Any Y nonimmigrant who remains beyond the period of temporary unemployment authorized by employer policy, maternity leave, or similar leave from employment authorized by employer policy, State law, or Federal law; or

(C) any other period of temporary unemployment that is the direct result of a force majeure event.

(2) 14-day period to lawfully depart from the United States shall not be considered to begin until the date that the alien has been provided notice of the termination;

(E) the alien is a Y nonimmigrant who remains beyond the period of temporary unemployment authorized by employer policy, maternity leave, or similar leave from employment authorized by employer policy, State law, or Federal law; or

(3) any other period of temporary unemployment that is the direct result of a force majeure event.

(2) Return to foreign residence.—Any alien whose period of authorized admission terminates under paragraph (1) shall be required to leave the United States immediately and register such departure at a designated port of entry in a manner to be prescribed by the Secretary.

(3) Invalidation of documentation.—Any documentation that is issued by the Secretary of Homeland Security for a period of temporary unemployment under section (m) to any alien, whose period of authorized admission terminates under paragraph (1), shall automatically be rendered invalid for any purpose except departure.

(4) Visits outside the United States.—(A) In general.—Under regulations established by the Secretary of Homeland Security, a Y nonimmigrant—

(i) may travel outside of the United States; and

(ii) may be readmitted for a period not more than the remaining time left until the alien accrues the maximum period of admission set forth in subsection (l), and without having to obtain a new visa if—

(A) the period of authorized admission has not expired or been terminated;

(B) the alien is the bearer of valid documentary evidence of Y nonimmigrant status that satisfies the conditions set forth in subsection (m); and

(C) the alien is not subject to the bars on extension or admission described in subsection (l).

(B) Effect on period of authorized admission.—The period of authorized admission of a Y nonimmigrant, who, after the date of the enactment of section 213, enters the United States under paragraph (A) shall not extend the most recent period of authorized admission in the United States.

(C) Bars to Y nonimmigrant admission.—An alien may not be granted Y nonimmigrant status if—

(A) asylum under section 208(a);

(B) withholding of removal, under section 241(b)(3); or

(C) protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984.

(4) Exception.—Overstay of the authorized period of admission may be excused in the discretion of the Secretary where it is demonstrated that—

(A) the period of overstay was due to extraordinary circumstances beyond the control of the alien and the Secretary finds the period commensurate with the circumstances; and

(B) the alien has otherwise violated his Y nonimmigrant status.

(G) Penalty for illegal entry or overstay.—(1) Illega 1 entry.—Any alien who after the date of the enactment of this section, unlawfully enters, attempts to enter, or crosses the border, and is physically present in the United States after such date in violation of the immigration laws, is barred permanently from any future benefits under the immigration laws, except as provided in paragraphs (3) or (4).

(2) Overstay.—Any alien, other than a Y nonimmigrant, who, after the enactment of this section remains unlawfully in the United States beyond the period of authorized admission, is barred for a period of ten years from any future benefits under the immigration laws, except as provided in paragraph (3) or (4).

(3) Relief.—Notwithstanding the bar in paragraph (1) or (2), an alien may apply for—

(A) asylum under section 208(a); and

(B) withholding of removal under section 241(b)(3); or

(C) protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984.

(4) Exception.—Overstay of the authorized period of admission may be excused in
the discretion of the Secretary where it is demonstrated that:

(1) the position of overstay was due to extraordinary circumstances beyond the control of the alien and the period commensurate with the circumstances;

(2) the alien has not otherwise violated his nonimmigrant status.

(2) PORTABILITY.—A Y nonimmigrant worker, who was previously issued a visa or otherwise nonimmigrant status, may accept a new offer of employment with a subsequent employer, if:

(a) the alien remains in the United States under the immigration laws in a classific-

section 265 through electronic or paper notifica-

tion.

(b) Conforming Amendment Regarding Cre-

ation 265 of the Immigration and National-

Act (8 U.S.C. 1336) is amended by in-

serting— the end the following new sub-

sections.—

(1) TEMPORARY WORKER PROGRAM

ACCOUNT.—(A) In general.—There is established in

the United States a separate account, which shall be deposited and used as follows:

(i) D ISTRIBUTION CRITERIA .

(ii) L EGISLATIVE APPROPRIATIONS .

(iii) L EGAL ISSUES .

(iv) U NEXPENDED FUNDS .

(2) USE OF FUNDS.—Amounts deposited into the Temporary Worker Program Account shall remain available until expended as follows:

(A) for the administration of the Standing Commission on Immigration and Labor Markets, established under section 409 of the

Title VI of (name of Act), except as specifically provided other-

wise in such sections.

(B) any amounts needed by the Standing Commission on Immigration and Labor Markets have been expended, for the Secretaries of Labor and Homeland Security, as follows:

(i) one-third to the Secretary of Labor to carry out the functions and responsibilities of the Census; divided by

(ii) after adjusting for allocations under an educational account, which shall be deposited into the account all fines and civil penalties collected under sections 409; and $5,000,000; or

(iii) $5,000,000; or

(iv) the average growth rate in noncitizen resident population for the 20 States with the largest growth rates in noncitizen resident population, as deter-

mined by the Secretary of Health and Human Services, so that each such State receives the percentage of the amount distrib-

uted under this clause that is equal to the noncitizen resident population of the State divided by the noncitizen resi-

dent population of all States, based on the most recent 3-year period for which data is available from the Bureau of the Census;

(2) MINIMUM DISTRIBUTION.—Except as provided in clause (iii), State shall distribute not less than 30 percent of the grant funds received under this paragraph to local government not later than 180 days after receiving such funds.

(3) EXCEPTION.—If an eligible unit of local government that has been determined to carry out the activities described in subparagraph (D) cannot be found in a State, the State does not need to comply with clause (ii).

(4) UNEXPENDED FUNDS.—Any grant funds distributed by a State to a unit of local government that remain unexpended as of the end of the grant period shall revert to the appropriations and be available for redistribution to another unit of local government.

(5) USE OF FUNDS.—States and units of local government shall use grant funds received under this paragraph to provide health services, educational services, and related services to noncitizens within their jurisdic-

tion directly, or through contracts with eligible service providers, including—

(i) health care providers;

(ii) local educational agencies; and

(iii) other charitable and religious organiza-

tions.

(6) STATE DEFINED.—In this paragraph, the term 'State’ means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northwick-Islands.

(7) CERTIFICATION.—In order to receive a payment under this section, the State shall

with the Secretary of Education, shall estab-
lish the State Impact Assistance Grant Program (referred to in this subsection as the 'Program'), under which the Secretary may provide financial assistance to States to provide health services to noncitizens in accord-

ance with this paragraph.

(8) STATE ALLOCATIONS.—The Secretary of Health and Human Services shall annually allocate the amounts available in the State Impact Assistance Account among the States as follows:

(i) NONCITIZEN POPULATION.—Eighty per-

cent of such amounts shall be allocated so that each State receives the greater of—

(ii) $5,000,000; or

(iii) $5,000,000; or

(iv) the average growth rate in noncitizen resident population for the 20 States with the largest growth rates in noncitizen resident population, as deter-

mined by the Secretary of Health and Human Services, so that each such State receives the percentage of the amount distrib-

uted under this clause that is equal to the noncitizen resident population of the State divided by the noncitizen resi-
dent population of all States, based on the most recent 3-year period for which data is available from the Bureau of the Census;

(ii) HIGH GROWTH RATES.—Twenty percent of such amounts shall be allocated among the 20 States with the largest growth rates in noncitizen resident population, as deter-

mined by the Secretary of Health and Human Services, so that each such State receives the percentage of the amount distrib-

uted under this clause that is equal to the noncitizen resident population of the State divided by the noncitizen resi-
dent population of all States, based on the most recent 3-year period for which data is available from the Bureau of the Census;
provide the Secretary of Health and Human Services with a certification that the State's proposed uses of the fund are consistent with (D)...

(1) file in accordance with subsection (b) an application for labor certification of the position that the employer seeks to fill with a Y nonimmigrant that contains—
(A) the attestation described in subsection (c);
(B) a description of the nature and location of the work to be performed;
(C) the anticipated period (expected beginning and ending dates) for which the workers will be needed; and
(D) the number of job opportunities in which the employer seeks to employ the workers;
(2) include with the application filed under paragraph (1) a copy of the job offer describing the wages and other terms and conditions of employment and the bona fide occupational qualifications that shall be possessed by a worker to be employed in the job opportunity in question; and
(3) be required to pay, with respect to an application to employ a Y-1 worker—
(A) an application processing fee for each alien, in an amount sufficient to recover the full cost to the Secretary of Labor of administering and other expenses associated with adjudication; and
(B) a secondary fee, to be deposited in the Treasury in accordance with section 286(c), of—
(i) $500, in the case of an employer employing 25 employees or less;
(ii) $750, in the case of an employer employing between 26 and 150 employees;
(iii) $1,000, in the case of an employer employing between 151 and 500 employees; or
(iv) $1,250, in the case of an employer employing more than 500 employees; provided that an employer who provides a Y nonimmigrant health insurance coverage shall not be required to pay the impact fee.

(b) REQUIRED PROCEDURE.—Except where the Secretary of Labor has determined that there is a shortage of United States workers in the occupation and area of intended employment to which the Y nonimmigrant is sought, each employer seeking to employ Y nonimmigrants shall comply with the following requirements:

(1) EFFORTS TO RECRUIT UNITED STATES WORKERS.—An employer who seeks to employ a Y nonimmigrant shall—
(i) authorize the designated state agency to post the job opportunity on the Internet in the best information available on the intranet of the State and notice the position in the designated state agency's newspaper of general circulation;
(ii) authorize the designated state agency to notify labor organizations in the State in which the job is located and, if applicable, the occupational union which represents the employees in the same or substantially equivalent job classification of the job opportunity;
(iii) post the availability of the job opportunity for which the employer is seeking a worker in conspicuous locations at the place of employment for all employees to see for a period of time beginning not later than 90 days before the date on which an application is filed under subsection (a)(1) and ending no earlier than 14 days before such filing date;
(iv) advertise the availability of the job opportunity in professional, trade, or ethnic publications that are likely to be read by a potential worker for not fewer than 10 consecutive days during the period beginning not later than 90 days before the date on which an application is filed under subsection (a)(1) and ending no earlier than 14 days before such filing date;
(v) advertise the availability of the job opportunity in professional, trade, or ethnic publications that are likely to be read by a potential worker for not fewer than 10 consecutive days during the period beginning not later than 90 days before the date on which an application is filed under subsection (a)(1) and ending no earlier than 14 days before such filing date;
(vi) advertise the availability of the job opportunity in professional, trade, or ethnic publications that are likely to be read by a potential worker for not fewer than 10 consecutive days during the period beginning not later than 90 days before the date on which an application is filed under subsection (a)(1) and ending no earlier than 14 days before such filing date;
(vii) advertise the availability of the job opportunity in professional, trade, or ethnic publications that are likely to be read by a potential worker for not fewer than 10 consecutive days during the period beginning not later than 90 days before the date on which an application is filed under subsection (a)(1) and ending no earlier than 14 days before such filing date;
(viii) advertise the availability of the job opportunity in professional, trade, or ethnic publications that are likely to be read by a potential worker for not fewer than 10 consecutive days during the period beginning not later than 90 days before the date on which an application is filed under subsection (a)(1) and ending no earlier than 14 days before such filing date;

(ii) determined that there is no such bargaining representative, such regulations shall require, among other things, that such surveys are statistically valid and recently conducted.

(D) LABOR DISPUTE.—There is not a strike, lockout, or work stoppage in the course of a labor dispute in the occupation at the place of employment at which the Y nonimmigrant will be employed. If such strike, lockout, or work stoppage occurs following submission of the application, the employer may be required to provide competitive wage level data on data from another wage survey approved by the state workforce agency under regulations promulgated by the Secretary of Labor.

(E) PROVIDER OF INSURANCE.—If the position for which the Y nonimmigrant is sought is not covered by the State workers' compensation law, the employer will provide, at no cost to the Y nonimmigrant, insurance covering injury and disease arising out of, and in the course of, the worker's employment, which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

(F) NOTICE TO EMPLOYER.—If, after determining that the employer has provided notice of the filing of the application to the bargaining representative of the employer's employees in the occupational classification and area of employment for which the Y nonimmigrant was sought; or

(G) RECRUITMENT.—Except where the Secretary of Labor has determined that there is area of employment, taking into account experience and skill levels of employees.

(1) calculation.—The wage levels under paragraph (A) shall be calculated based on the highest wage level at the time of the filing of the application.

(3) Prevailing competitive wage level.—For purposes of subclause (i)(ii), the prevailing competitive wage level shall be determined as follows:

(I) If the job opportunity is covered by a collective bargaining agreement in which a union and the employer, the prevailing competitive wage level shall be the wage rate set forth in the collective bargaining agreement.

(III) If the job opportunity is not covered by such an agreement and it is on a project that is covered by a wage determination under a provision of subchapter IV of chapter 31 of title 40, United States Code, or the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), the prevailing competitive wage level shall be the appropriate statutory wage.

(1) If the job opportunity is not covered by such an agreement and it is on a project covered by a wage determination under a provision of subchapter IV of chapter 31 of title 40, United States Code, or the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), the prevailing competitive wage level shall be based on published wage data for the comparable occupation, as defined by the Bureau of Labor Statistics, including the Occupational Employment Statistics survey, Current Employment Statistics data, National Compensation Survey, and Occupational Projections Program. If the Bureau of Labor Statistics does not have wage data applicable to such occupation, the employer may base the prevailing competitive wage level on data from another wage survey approved by the state workforce agency under regulations promulgated by the Secretary of Labor.

(2) Effort to recruit United States workers.—An employer who seeks to employ a Y nonimmigrant shall first offer the job with, at a minimum, the same wages, benefits, and working conditions, to any eligible United States worker who applies, is qualified for the job and is available at the time of need.

(3) definition.—For purposes of this subsection, 'designated state agency' shall mean the state agency designated to perform the functions described in subsection (a) in the area of employment in the State in which the employer is located.

(4) APPLICATION.—An application under this section for the purpose of a position that an employer seeks to fill with a Y nonimmigrant shall be filed with the Secretary of Labor and shall include an attestation by the employer of the following:

(II) calculated on a periodic basis on data from another wage survey approved by the state workforce agency under regulations promulgated by the Secretary of Labor.

(III) Prevailing competitive wage level.—For purposes of subclause (i)(ii), the prevailing competitive wage level shall be determined as follows:

(1) If the job opportunity is covered by a collective bargaining agreement in which a union and the employer, the prevailing competitive wage level shall be the wage rate set forth in the collective bargaining agreement.

(III) If the job opportunity is not covered by such an agreement and it is on a project that is covered by a wage determination under a provision of subchapter IV of chapter 31 of title 40, United States Code, or the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), the prevailing competitive wage level shall be the appropriate statutory wage.

(1) If the job opportunity is not covered by such an agreement and it is on a project covered by a wage determination under a provision of subchapter IV of chapter 31 of title 40, United States Code, or the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), the prevailing competitive wage level shall be based on published wage data for the comparable occupation, as defined by the Bureau of Labor Statistics, including the Occupational Employment Statistics survey, Current Employment Statistics data, National Compensation Survey, and Occupational Projections Program. If the Bureau of Labor Statistics does not have wage data applicable to such occupation, the employer may base the prevailing competitive wage level on data from another wage survey approved by the state workforce agency under regulations promulgated by the Secretary of Labor.

(2) Effort to recruit United States workers.—An employer who seeks to employ a Y nonimmigrant shall first offer the job with, at a minimum, the same wages, benefits, and working conditions, to any eligible United States worker who applies, is qualified for the job and is available at the time of need.

(3) Definition.—For purposes of this subsection, 'designated state agency' shall mean the state agency designated to perform the functions described in subsection (a) in the area of employment in the State in which the employer is located.

(4) Application.—An application under this section for the purpose of a position that an employer seeks to fill with a Y nonimmigrant shall be filed with the Secretary of Labor and shall include an attestation by the employer of the following:

(1) with respect to an application for labor certification of a position that an employer seeks to fill with a Y-1 or Y-2B nonimmigrant:

(1) protection of United States workers.—The employment of a Y nonimmigrant will not adversely affect the wages and working conditions of workers in the United States similarly employed; and

(II) competitive wage shall be the wage rate set forth in the collective bargaining agreement.

(III) No Bargaining Representative.—If there is no such bargaining representative, the employer may offer the job opportunity at the prevailing competitive wage level.

(3) notice to employer.—If the employer has provided notice of the filing of the application to the bargaining representative of the employer's employees in the occupational classification and area of employment for which the Y nonimmigrant was sought; or

(4) Recruitment.—Except where the Secretary of Labor has determined that there is...
a shortage of United States workers in the occupation and area of intended employment for which the Y nonimmigrant is sought—

(i) there are not sufficient workers who are willing, able, and qualified, and who will be available at the time and place needed, to perform the labor or services described in the application and—

(ii) good faith efforts have been taken to recruit United States workers, in accordance with regulations promulgated by the Secretary of Labor, which efforts included—

(I) notification upon separation from or transfer of employment—a copy of each application filed under this section and documentation supporting each attestation, in accordance with regulations promulgated by the Secretary of Labor, will—

(i) be provided to every Y nonimmigrant employed in an occupation and area of intended employment and, in accordance with section 218A of the Immigration and Nationality Act, the employer is not required to provide any United States worker; and

(ii) remain available for examination for 5 years after the date on which the application is filed.

(K) Notification upon Separation from or Transfer of Employment—The employer shall refer all petitions approved under section 18 of the Occupational Safety and Health Act, or any regulations promulgated by the Secretary of Labor, to the Secretary of Homeland Security at the employer’s petition or application for a labor certification under any immigrant or nonimmigrant program, regardless of whether such application or petition requires a labor certification.

(A) has, with respect to the application required under subsection (a), including attestations required under subsection (b)—

(i) misrepresented a material fact; or

(ii) failed or is unlikely to cooperate in the audit process in accordance with regulations promulgated by the Secretary of Labor;

(B) has been convicted of any of the offenses contained in chapter 77 of the United States Code (slave labor) or any conspiracy to commit such offenses, or any human trafficking offense under state or territorial law;

(C) has been certified for the expeditious review of such petition or application by the Secretary of Labor;

(D) has, within three years prior to the date of application, committed an act, including a citation for—

(i) a willful violation;

(ii) repeated serious violations involving injury or death of section 5 of the Occupational Safety and Health Act, or any regulations promulgated pursuant to section 6 of the Occupational Safety and Health Act, or any regulations prescribed pursuant to section 18 of the Occupational Safety and Health Act;

(iii) any repeat offense under section 5 of the Occupational Safety and Health Act;

(iv) any violation of any standard, rule, or order promulgated pursuant to section 6 of the Occupational Safety and Health Act, or any regulations prescribed pursuant to section 18 of the Occupational Safety and Health Act;

(E) is a bona fide job site that cannot be used for which the Y nonimmigrant is sought is a bona fide job site;

(F) the wages that the employer would be required by law to provide for the Y nonimmigrant were used in conducting recruitment.

(H) Ineligibility—The employer is not currently ineligible from using the Y nonimmigrant program described in this section.

(I) Bonafide Offer of Employment—The job for which the Y nonimmigrant is sought is a bona fide job, and—

(i) for which the employer needs labor or services;

(ii) which has been and is clearly open to any United States worker; and

(iii) for which the employer will be able to place the Y nonimmigrant on the payroll in a position which is not a substitute for another position occupied by a United States worker; and

(iv) for which the employer, which efforts included—

(I) notification upon separation from or transfer to another employer not more than 90 days after the date on which the application was filed with the Department of Labor and employed on the date that is 14 days before such filing date; and

(ii) the wages that the employer would be required by law to provide for the Y nonimmigrant used in conducting recruitment.

(J) Actual Need for Labor or Services—The application was filed not more than 60 days before the date on which the employer needed labor or services for which the Y nonimmigrant is sought.

(K) Audit of Attestations—

(1) Reference by Secretary of Homeland Security—The Secretary of Homeland Security shall refer all petitions approved under section 18 of the Occupational Safety and Health Act, or any regulations promulgated by the Secretary of Labor for potential audit.

(2) Audits Authorized—The Secretary of Labor may audit any approved petition referred pursuant to paragraph (1), in accordance with regulations promulgated by the Secretary of Labor.

(e) Ineligible Employers—

(1) in general—In addition to any other applicable penalties under law, the Secretary of Labor and the Secretary of Homeland Security shall not, for the period described in paragraph (2), approve any employer’s petition or application for a labor certification under any immigrant or nonimmigrant program if the Secretary of Labor determines, after giving the employer opportunity for a hearing, that the employer submitting such documents—

(A) discloses information to the employer or any other person that the employee or former employee reasonably believes demonstrates a violation of this Act or [title of bill]; or

(B) cooperates or seeks to cooperate in an investigation or other proceeding concerning any violation of this Act or [title of bill];

(2) Rulemaking—The Secretary of Labor shall promulgate regulations that establish a process by which a nonimmigrant alien described in section 101(a)(15)(Y) or 101(a)(15)(H) who files a frivolous complaint (as defined by the Federal Rules of Civil Procedure) regarding a violation of this Act, [title of bill] or any other Federal labor or employment law, or any other rule or regulation of the Department of Labor, or other provision of law, is other wise eligible to remain and work in the United States prior to the expiration of the maximum period of stay authorized for that alien based on the current period of stay of 120 consecutive days or such additional time period as the Secretary shall determine through rulemaking is necessary to collect such information or take evidence from the nonimmigrant alien regarding a complaint or agency investigation. This period shall be allowed to exceed the maximum period of stay authorized for that alien based on the current period of stay if the Secretary of Labor designates the nonimmigrant alien as a necessary witness.

(F) Labor Recruiters—With respect to the employment of Y nonimmigrant workers—
‘‘(1) IN GENERAL.—Each employer that engages in foreign labor contracting activity and each foreign labor contractor shall ascertain and disclose, to each such worker who is employed or will be employed at the time of the worker’s recruitment—

‘‘(A) the place of employment;

‘‘(B) the compensation for the employment;

‘‘(C) a description of employment activities;

‘‘(D) the period of employment;

‘‘(E) any other employee benefit to be provided or required, including any travel or transportation expenses to be assessed;

‘‘(F) the existence of any arrangement with any owner, employer, foreign contractor, or its agent where such person receives a commission from the provision of items or services to workers;

‘‘(G) the extent to which workers will be compensated through workers’ compensation, private insurance, or otherwise for injuries or death, including—

‘‘(i) work related injuries and death during the period of employment;

‘‘(ii) the name and telephone number of each State workers’ compensation insurance carrier or the name of the policyholder of the private insurance;

‘‘(iii) the name and the telephone number of each State in which the worker is subject to notification of an injury or death; and

‘‘(iv) the time period within which such notice must be given;

‘‘(H) the nature and cost of such training; and

‘‘(I) any education or training to be provided or required, including—

‘‘(i) the name and cost of such training;

‘‘(ii) the entity that will pay such costs; and

‘‘(iii) whether the training is a condition of employment, continued employment, or future employment; and

‘‘(K) a statement, in a form specified by the Secretary of Labor, describing the protections of this Act and of the Trafficking Victims Protection Act of 2000, P.L. 106-386, for workers recruited abroad.

‘‘(2) FALSE OR MISLEADING INFORMATION.—No foreign labor contractor or employer who engages in foreign labor contracting activity shall knowingly provide materially false or misleading information to any worker concerning any matter required to be disclosed in paragraphs (1) and (2).

‘‘(3) LANGUAGES.—The information required to be disclosed under paragraph (1) shall be provided in writing in English or, as necessary and reasonable, in the language of the worker being recruited. The Secretary of Labor shall make forms available in English, Spanish, and other languages, as necessary and reasonable, which may be used in providing workers with information required under this section.

‘‘(4) TERMS.—Any person conducting a foreign labor contracting activity shall not assess any fee to a worker for such foreign labor contracting activity.

‘‘(5) POWERS OF THE SECRETARY.—If a foreign labor contractor or employer charges the employee regarding employment under this program—

‘‘(A) the Secretary of Labor may seek remedial action, including injunctive relief;

‘‘(B) to recover the damages described in subsection (k); or

‘‘(C) to ensure compliance with terms and conditions described in subsection (g).

‘‘(6) SOLICITOR OF LABOR.—Except as provided in section 51(a)(2) of title 28, United States Code, the Solicitor of Labor may appear for and represent the Secretary of Labor in any civil litigation brought under this subsection. All such litigation shall be subject to the direction and control of the Attorney General.

‘‘(7) PROCEDURES IN ADDITION TO OTHER RIGHTS OF EMPLOYERS.—The rights and remedies provided to workers under this section are in addition to any other contractual or statutory rights and protections afforded to workers, and are not intended to alter or affect such rights and remedies.
(k) PENALTIES.—With respect to violations of the provisions of this section relating to the employment of Y-1 or Y-2B nonimmigrants:

(1) IN GENERAL.—If, after notice and an opportunity for a hearing, the Secretary of Labor finds a violation of this section, the Secretary may impose administrative remedies and penalties including—

(A) back wages;

(B) benefits; and

(C) civil monetary penalties.

(2) CIVIL MONETARY PENALTIES.—The Secretary of Labor may impose, as civil penalty—

(A) a fine in an amount not more than $2,000 per violation per affected worker and $4,000 per violation per affected worker for each subsequent violation;

(B) a fine in an amount not more than $5,000 per violation per affected worker;

(C) if the violation was willful, a fine in an amount not more than $5,000 per violation per affected worker; and

(D) if the violation was willful and if in the course of such violation a United States worker was harmed, a fine in an amount not more than $25,000 per violation per affected worker

(3) USE OF CIVIL PENALTIES.—All penalties made in petitions, applications, certifications, or attestations under any immigrant or nonimmigrant program, or with representations made in materials required by section (h) (concerning labor recruiters)—

(A) a fine in an amount not more than $4,000 per affected worker; and

(B) upon the occasion of a third offense of failure to comply with representations, a fine in an amount not to exceed $5,000 per affected worker and designation as an ineligible employer or broker for purposes of any immigrant or nonimmigrant program.

(4) CRIMINAL PENALTIES.—If knowingly or recklessly failing to comply with the terms of representations made in petitions, applications, certifications, or attestations under any immigrant or nonimmigrant program, or with representations made in materials required by section (h) (concerning labor recruiters)—

(A) back wages;

(B) benefits; and

(C) civil monetary penalties.

(5) USE OF CRIMINAL PENALTIES.—All penalties collected under this subsection shall be deposited in the Treasury in accordance with section 286(c).

(6) CRIMINAL PENALTIES.—If a willful and knowing violation of subsection (g) causes extreme physical or financial harm to an individual, the person in violation of such subsection may be imprisoned for not more than 6 months and fined in an amount not less than $6,000 and not more than $35,000 per violation per affected worker.

(7) FORCING OR FAILING TO COMPLY WITH AGREEMENTS.—If a willful and knowing violation of subsection (g) is committed with the intent to cause a person adverse to the interests of the United States to take action, or not to take action, which action, or failure to take action, is required or authorized under section 101(a)(15)(Y), or the spouse or child of such nonimmigrant in derivative status under (Y)(ii), (Y)(iii), or (Y)(iv), or (Y)(v)

(A) back wages;

(B) benefits;

(C) civil monetary penalties.

(8) FORCED LABOR.—A violation of section 218B means an alien who is

(A) a national of the United States; or

(B) an alien who—

(i) was lawfully admitted for permanent residence;

(ii) was admitted as a refugee under section 208; or

(iii) granted asylum under section 208; or

(iv) otherwise authorized, under this Act or by the Secretary of Homeland Security, to be employed in the United States; or

(v) is a spouse or child of such nonimmigrant.

(9) FOREIGN LABOR CONTRACTOR.—The term "foreign labor contractor" means an alien who for any compensation or other valuable consideration paid or promised to a person who for any compensation or other valuable consideration paid or promised to a person who in the course of such violation a United States worker was harmed, a fine in an amount not less than $6,000 and not more than $35,000 per violation per affected worker.

(10) FORGIVING OR FAILING TO COMPLY WITH AGREEMENTS.—If a willful and knowing violation of subsection (g) is committed with the intent to cause a person adverse to the interests of the United States to take action, or not to take action, which action, or failure to take action, is required or authorized under section 101(a)(15)(Y), or the spouse or child of such nonimmigrant in derivative status under (Y)(ii), (Y)(iii), or (Y)(iv)

(A) back wages;

(B) benefits;

(C) civil monetary penalties.

(11) FULL TIME.—The term "full time," with respect to a job in agricultural labor or services, means any job in which the individual is employed 5.75 or more hours per day; and for any job, in any period of authorized admission or portion of such period, employment or study for at least 90% of the total number of work-hours in such period, calculated at a rate of 1,575 work-hours per year (1,438 work-hours per year for agricultural employment). Each credit-hour of study shall be counted as the equivalent of 50 work-hours.

(12) JOB OPPORTUNITY.—The term "job opportunity" means an offer of full-time and temporary employment at a place in the United States to which United States workers can be referred.

(13) STATUTORY CONSTRUCTION.—Nothing in this paragraph is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

(14) MISDEMEANORS.—A violation of this subsection, with regard to a conviction in a foreign jurisdiction, means a crime for which a sentence of no more than 364 days in prison may be imposed.

(15) REGULATORY DUTY.—The term "regulatory duty" means a decision subsequently to the filing of the application under section 218B with respect to the control of the employer making such filing which restricts the employer's access to water for irrigation purposes and reduces or limits the employer's ability to produce an agricultural commodity, thereby reducing the need for labor.

(16) SEASONAL.—Labor is performed on a "seasonal" basis if—

(A) ordinarily, it pertains to or is of the kind exclusively performed at certain seasonal periods of the year;

(B) it is of a nature which cannot be performed year-round; or

(C) the employee's access to water for irrigation purposes and reduces or limits the employer's ability to produce an agricultural commodity, thereby reducing the need for labor.

SEC. 404. AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT.

(a) IN GENERAL.—Title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.) is amended inserting the following after section 218B:

(1) APPLICABILITY TO EMPLOYER APPLICATIONS.—(a) APPLICATIONS TO THE SECRETARY OF LABOR.—
(I) IN GENERAL.—No alien may be admitted to the United States as an H-2A worker, or otherwise provided status as an H-2A worker, unless the employer has filed with the Secretary of Labor an application containing—

(A) the assurances described in subsection (b) of this paragraph; and

(B) description of the nature and location of the work to be performed;

(C) the anticipated period (expected beginning and ending dates) for which the work is to be performed and

(D) the number of job opportunities in which the employer seeks to employ the worker.

(2) ACCOMPANIED BY JOB OFFER.—Each application filed under paragraph (1) shall be accompanied by a copy of the job offer describing the wages and other terms and conditions of employment and the bona fide occupational qualifications that shall be possessed by a worker to be employed in the job opportunity in question.

(b) ASSURANCES FOR INCLUSION IN APPLICATIONS.—The assurances referred to in subsection (a)(1) are the following:

(1) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.—With respect to job opportunity that is covered under a collective bargaining agreement:

(A) CONTRACT DISCHARGED.—The job opportunity is covered by a union contract which was negotiated at arm’s length between the bona fide union and the employer.

(B) STRIKES OR OTHER UNAUTHORIZED REMOVAL OF WORKERS.—The specific job opportunity for which the employer is requesting an H-2A worker is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute.

(C) NOTIFICATION OF BARGAINING REMOVAL OF WORKERS.—The employer, at the time of filing the application, has provided notice of the filing under this paragraph to the bargaining representative of the employer’s employees in the occupational classification at the place or places of employment for which aliens are sought.

(D) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job opportunity is temporary or seasonal.

(E) OFFERS TO UNITED STATES WORKERS.—The employer has offered or will offer the job to any United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is, or the nonimmigrants are, sought and will be available at the time of need.

(F) PROVISION OF INSURANCE.—If the job opportunity is not covered by the State workers’ compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker’s employment which will provide benefits at least equal to those provided under the State’s workers’ compensation law for comparable employment.

(G) REMOVAL OF WORKERS.—No person or entity shall remove a United States worker from an H-2A job opportunity before the arrival of H-2A workers in order to force the hiring of United States workers under this clause.

(H) EMPLOYMENT OF UNITED STATES WORKERS.—

(i) RECRUITMENT.—The employer has taken or will take the following steps to recruit United States workers for the job opportunities for which the H-2A nonimmigrant is, or H-2A nonimmigrants are, sought:

(A) CONTACTING FORMER WORKERS.—The employer shall contact former workers, if there are other job offers pending described in such subparagraph, places a United States worker as described in such subparagraph.

(B) PROVISION OF INSURANCE.—If the job opportunity is not covered by the State workers’ compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker’s employment which will provide benefits at least equal to those provided under the State’s workers’ compensation law for comparable employment.

(V) UNITED STATES WORKER.—For purpose of this subparagraph, the term “United States worker” means an alien described in section 101(a)(15)(C) who is a United States citizen or otherwise provided status under section 101(a)(15)(C).

(4) STATUTORY CONSTRUCTION.—Nothing in this subparagraph shall be construed to prohibit an employer from using such legitimate selection criteria for a type of job that are normal or customary to the type of job involved so long as such criteria are applied in a nondiscriminatory manner.

(v) UNITED STATES WORKER.—For purpose of this subsection, the term ‘‘United States worker’’ means an alien described in section 101(a)(15)(C) who is a United States citizen or otherwise provided status under section 101(a)(15)(C).
writing to comply with the requirements of this section and sections 218E, 218F, and 218G.

(2) TREATMENT OF ASSOCIATION ACTING AS EMPLOYER.—Any association acting as an employer under paragraph (1) is a joint or sole employer of the temporary or seasonal agricultural workers it employs. To the extent that the association dually files an application under paragraph (1) and (2), the association may be used for the certification of job opportunities for which the employer is subject to such application is employed by the employer.

(3) USE OF APPLICATION FILED—Except in cases where high-benefit, wages, or working conditions are offered under section (a), in order to protect similarly United States workers from adverse effects with respect to benefits, wages, and working conditions, employment offers which shall accompany an application under section 218C(b)(2) shall include any of the following benefit wage, and working condition provisions:

(1) Requirement to provide housing or housing allowance.—(A) In general.—An employer applying under section 218C(a) for H-2A workers shall provide or pay for the worker subsistence and transportation to and from the place of employment. If the requirement set out in clause (ii) is satisfied by the employer, the employer shall provide the housing or the housing allowance.

(B) Minimum benefits, wages, and working conditions.—In cases where higher benefit, wages, or working conditions are offered under section (a), the employer shall not be required to offer housing at no cost to all workers in job opportunities for which the employer has applied under section (a) and to all other workers in the same occupation at the place of employment, whose place of residence is beyond normal commuting distance.

(C) Wage, type of housing.—In complying with subparagraph (A), an employer may, at the employer’s election, provide housing that meets applicable local standards for temporary labor camps or secure housing that meets applicable local standards for rental or public accommodation housing or other substantially similar class of habitation. In the absence of applicable local standards, State standards for rental or public accommodation housing or other substantially similar class of habitation shall apply.

(2) Limitation.—An application may not be withdrawn while any alien provided status under section 101(a)(15)(H)(ii) (a) or (b) to such application is employed by the employer.

(3) Obligations under other statutes.—Any obligation incurred by an employer under any other law or regulation as a result of the recruitment of United States workers or H-2A workers under an offer of terms and conditions of employment required as a result of an application under paragraph (a) is unaffected by withdrawal of such application.

(4) Review and approval of applications.—(A) Responsibility of employers.—The employer shall make available for public examination, within 1 working day after the date on which an application under subsection (a) is filed, at the employer’s principal place of business or worksite, a copy of each application and any accompanying documents as are necessary.

(B) Review of an application.—The Secretary of Labor shall, on a current basis, review and approve any application filed under subsection (a) following public availability of the application (and any accompanying documents as are necessary). Unless the Secretary of Labor finds that the application is incomplete or obviously inaccurate, the Secretary of Labor shall not file the application with the Secretary of Labor an application as described in subsection (a). Such certification shall be provided within 7 days of the filing.

SEC. 218D. H-2A EMPLOYMENT REQUIREMENTS.

(a) Preferential Treatment of Aliens Prohibited.—Employers seeking to hire United States workers shall offer the United States workers terms that are better or substantially better than the terms offered to alien workers. The Secretary of Labor shall issue regulations that address the preferential treatment of aliens.

(b) Minimum Benefits, Wages, and Working Conditions.—Except in cases where higher benefits, wages, or working conditions are offered under section (a), in order to protect similarly United States workers from adverse effects with respect to benefits, wages, and working conditions, employment offers which shall accompany an application under section 218C(b)(2) shall include any of the following benefit wage, and working condition provisions:

(1) Requirement to provide housing or housing allowance.—(A) In general.—An employer applying under section 218C(a) for H-2A workers shall provide or pay for the worker subsistence and transportation to and from the place of employment. If the requirement set out in clause (ii) is satisfied by the employer, the employer shall provide the housing or the housing allowance.

(B) Minimum benefits, wages, and working conditions.—In cases where higher benefit, wages, or working conditions are offered under section (a), the employer shall not be required to offer housing at no cost to all workers in job opportunities for which the employer has applied under section (a) and to all other workers in the same occupation at the place of employment, whose place of residence is beyond normal commuting distance.

(C) Wage, type of housing.—In complying with subparagraph (A), an employer may, at the employer’s election, provide housing that meets applicable local standards for temporary labor camps or secure housing that meets applicable local standards for rental or public accommodation housing or other substantially similar class of habitation. In the absence of applicable local standards, State standards for rental or public accommodation housing or other substantially similar class of habitation shall apply.

(2) Limitation.—An application may not be withdrawn while any alien provided status under section 101(a)(15)(H)(ii)(a) or (b) to such application is employed by the employer.

(3) Obligations under other statutes.—Any obligation incurred by an employer under any other law or regulation as a result of the recruitment of United States workers or H-2A workers under an offer of terms and conditions of employment required as a result of an application under paragraph (a) is unaffected by withdrawal of such application.

(e) Review and Approval of Applications.—(A) Responsibility of employers.—The employer shall make available for public examination, within 1 working day after the date on which an application under subsection (a) is filed, at the employer’s principal place of business or worksite, a copy of each application and any accompanying documents as are necessary.

(B) Review of an application.—The Secretary of Labor shall, on a current basis, review and approve any application filed under subsection (a) following public availability of the application (and any accompanying documents as are necessary). Unless the Secretary of Labor finds that the application is incomplete or obviously inaccurate, the Secretary of Labor shall not file the application with the Secretary of Labor an application as described in subsection (a). Such certification shall be provided within 7 days of the filing.

SEC. 218E. HOUSING ALLOWANCE AS ALTERNATIVE.

(1) In general.—If the requirement set out in clause (ii) is satisfied by the employer, the employer may provide the worker a housing allowance instead of offering housing under subparagraph (A). Upon the request of a worker seeking assistance in locating housing, the employer shall make a good faith effort to assist the worker in identifying and locating housing in the area of intended employment. If the employer cannot assist the worker in securing a place of residence, the employer may provide to a worker, or assists a worker in locating housing which the worker occupies, pursuant to this clause shall not be deemed a housing obligation for the employer.

(2) Certification.—The requirement of this subsection is satisfied by the Secretary of Labor if the State certifies to the Secretary of Labor that there is adequate housing available in the area of intended employment for migrant farm workers and H-2A workers who are seeking temporary housing while employed in agricultural work. Such certification shall expire after 3 years unless renewed by the Governor of the State.

(3) Amount of allowance.—(i) Nonmetropolitan counties.—If the place of employment of the workers provided an offer of terms and conditions of employment under this subparagraph is located in a nonmetropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for nonmetropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

(ii) Metropolitan counties.—If the place of employment of the workers provided an offer of terms and conditions of employment under this subparagraph is located in a metropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for metropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

(4) Place of employment.—A worker who completes the period of employment for the job opportunity involved shall be reimbursed by the employer for the cost of the worker’s transportation and subsistence from the place from which the worker came to work for the employer or to the employer’s place of employment, if the worker traveled from such place to the place of employment.

(5) Place of employment.—A worker who completes the period of employment for the job opportunity involved shall be reimbursed by the employer for the cost of the worker’s transportation and subsistence from the place of employment to the place from which the worker, disregarding intervening employment, came to work for the employer or to the employer’s place of employment, if the worker has contracted with a subsequent employer who has not agreed to provide or pay for the worker’s transportation and subsistence from the place of employment to the place from which the worker came to work for the employer or to the employer’s place of employment, if the worker traveled from such place to the place of employment.

(6) Limitation.—No reimbursement for loss of employment.—Except as provided in clause (i), the amount of reimbursement provided under subparagraph (A) or (B) to a worker or alien shall not exceed the lesser of:

(A) the actual cost to the worker or alien of the transportation and subsistence involved; or

(B) the most economical and reasonable common carrier transportation charges and subsistence costs for the distance involved.
“(i) Distance traveled.—No reimbursement under subparagraph (A) or (B) shall be required if the distance traveled is 100 miles or less, or the worker is not residing in employment quarters or housing quarters, whichever is more applicable, because of an allowance as provided in paragraph (1)(G).

“(D) Early termination.—If the worker is laid off for contract impossibility as described in paragraph (4)(D)) before the anticipated ending date of employment, the employer shall provide transportation and subsistence required by subparagraph (B) and, notwithstanding whether the worker has completed 30 percent of the period of employment, shall provide transportation, reimbursement required by subparagraph (A).

“(E) TRANSPORTATION BETWEEN LIVING QuARTERS AND WORKSITE.—The employer shall provide transportation between the worker’s living quarters and the employer’s worksite without cost to the worker, and such transportation will be in accordance with applicable laws and regulations.

“(3) REQUIRED WAGES.—

“(A) IN GENERAL.—An employer applying for any certification under section 21C(a) shall offer to pay, and shall pay, all workers in the occupation for which the employer has applied for workers, not less than the applicable United States minimum wage.

“(B) LIMITATION.—The employer shall calculate, determine the wage rate. No worker shall be paid less than the prevailing wage rate that would otherwise have prevailed if all alien farm workers had not been employed in the United States.

“(C) PHOTOGRAPH.—Effective on the date of the enactment of the Agricultural Job Opportunities, Benefits, and Security Act of 2007 and continuing for 3 years thereafter, no adverse effect wage rate for any occupation in any State shall be more than the adverse effect wage rate for that State in effect on January 1, 2003, as established by section 655.107 of title 20, Code of Federal Regulations.

“(C) REQUIRED WAGES AFTER 3-YEAR FREEZE.—

“(1) FIRST ADJUSTMENT.—If Congress does not set a new wage standard applicable to this section before the first March 1 that is not less than 3 years after the date of enactment of this subchapter, or if the adverse effect wage rate for any occupation in any State had been previously adjusted, beginning on March 1, 2006, by the lesser of:

“(I) the 12-month percentage change in the Consumer Price Index for All Urban Consumers between December of the second preceding year and December of the preceding year; and

“(II) 4 percent.

“(II) SUBSEQUENT ANNUAL ADJUSTMENTS.—Beginning on the first March 1 that is not less than 4 years after the date of enactment of this subchapter, the adverse effect wage rate for any occupation in any State shall be increased by the lesser of:

“(I) the 12-month percentage change in the Consumer Price Index for All Urban Consumers between December of the second preceding year and December of the preceding year; and

“(II) 4 percent.

“(D) DEDUCTIONS.—The employer shall make all deductions from the worker’s wages that are authorized by law or are reasonable and customary in the occupation and area of employment. The job offer shall specify all deductions not required by law which the employer will make from the worker’s wages.

“(E) FREQUENCY OF PAY.—The employer shall pay the worker not less frequently than twice monthly, or in accordance with the prevailing practice in the area of employment, whichever is more frequent.

“(F) HOURS AND EARNINGS STATEMENTS.—The employer shall furnish to the worker, on or before each payday, in 1 or more written statements:

“(i) the worker’s total earnings for the pay period;

“(ii) the worker’s hourly rate of pay, piece rate of pay, or both;

“(iii) the hours of employment which have been offered to the worker (broken out by hours offered in accordance with and over the ¾ guarantee described in paragraph (4));

“(iv) the hours actually worked by the worker;

“(v) an itemization of the deductions made from the worker’s wages; and

“(vi) if piece rates of pay are used, the units produced daily.

“(G) REPORT ON WAGE PROTECTIONS.—Not later than December 31, 2009, the Comptroller General of the United States shall submit a report to the Secretary of Labor, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives, report that addresses:

“(i) whether the employment of H-2A or unauthorized aliens in the United States agricultural workforce has depressed United States farm workers wages below the levels that would otherwise have prevailed if alien farm workers had not been employed in the United States;

“(ii) whether alternative wage standards, such as a prevailing wage standard, would be necessary to prevent wages of United States farm workers had not been employed in the United States;

“(iii) whether any changes are warranted in the current methodologies for calculating the adverse effect wage rate and the prevailing wage rate; and

“(v) recommendations for future wage protection under this section.

“(H) COMMISSION ON WAGE STANDARDS.—

“(i) ESTABLISHMENT.—There is established the Commission on Agricultural Wage Standards under the H-2A program (in this subparagraph referred to as the ‘Commission’).

“(ii) COMPOSITION.—The Commission shall consist of 10 members as follows:

“(I) Four representatives of agricultural employers and 1 representative of the Department of Agriculture, each appointed by the Secretary of Agriculture;

“(II) Four representatives of agricultural workers and 1 representative of the Department of Labor, each appointed by the Secretary of Labor.

“(iii) FUNCTIONS.—The Commission shall conduct a study that shall address:

“(I) whether the employment of H-2A or unauthorized aliens in the United States agricultural workforce has depressed United States farm worker, wages below the levels that would otherwise have prevailed if alien farm workers had not been employed in the United States;

“(II) whether an adverse effect wage rate is necessary to prevent wages of United States farm workers in occupations in which H-2A workers are employed from falling below the levels that would otherwise have prevailed if alien farm workers had not been employed in the United States;

“(iii) whether alternative wage standards, such as a prevailing wage standard, would be necessary to prevent wages of United States farm workers had not been employed in the United States;

“(iv) whether an adverse effect wage rate is necessary to prevent wages of United States farm workers in occupations in which H-2A workers are employed from falling below the levels that would otherwise have prevailed if alien farm workers had not been employed in the United States;

“(v) an itemization of the deductions made from the worker’s wages; and

“(vi) if piece rates of pay are used, the units produced daily.

“(G) REPORT ON WAGE PROTECTIONS.—Not later than December 31, 2009, the Comptroller General of the United States shall submit a report to the Secretary of Labor, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives, report that addresses:

“(i) whether the employment of H-2A or unauthorized aliens in the United States agricultural workforce has depressed United States farm workers wages below the levels that would otherwise have prevailed if alien farm workers had not been employed in the United States;

“(ii) whether alternative wage standards, such as a prevailing wage standard, would be necessary to prevent wages of United States farm workers had not been employed in the United States;

“(iii) whether any changes are warranted in the current methodologies for calculating the adverse effect wage rate and the prevailing wage rate; and

“(v) recommendations for future wage protection under this section.

“(iv) The Commission may for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, and offer such evidence as the Commission considers appropriate.

“(v) INTERIM REPORT.—The Commission shall issue an interim report, published in the Federal Register, with opportunity and comment, for a period of at least 90 days.

“(vi) FINAL REPORT.—After considering recommendations from interested persons (including an opportunity for comment from the public and affected States), the Commission shall submit a report to the Congress that finds that the fair amount of wages has been offered and conducted under clause (iii) not later than December 31, 2009.

“(vii) TERMINATION DATE.—The Commission shall terminate upon submitting its final report.

“(4) GUARANTEE OF EMPLOYMENT.—

“(A) OFFER TO WORK.—The employer shall guarantee to offer the worker employment for the hourly equivalent of at least ¾ of the work days of the total period of employment, beginning with the day after the arrival of the worker at the place of employment and ending on the expiration date specified in the job offer. For purposes of this subparagraph, the hourly equivalent means the number of hours in the work days as stated in the job offer and shall exclude the worker’s Sabbath and Federal holidays.

“(B) ABANDONMENT OF EMPLOYMENT, TERMINATION FOR CAUSE.—If the employer attempts to terminate the employee or worker, the services of the worker are no longer required for reasons beyond the control of the employer due to any form of natural disaster, including a flood, hurricane, drought, pest infestation, or regulatory drought, or plant or animal disease or pest infestation, or regulatory drought, before the expiration of the period of guaranteed employment, then the employer shall pay the worker the difference between the guaranteed number of work hours and the work hours actually worked by the worker.

“(C) VIOLATION OF CONTRACT.—The Commission shall have authority to order the employer to cease and desist from engaging in any violation of this section and may impose a civil penalty of up to $10,000 for each violation.

“(D) CONTRACT IMPOSSIBILITY.—If, before the expiration of the period of employment specified in the job offer, the services of the worker are no longer required for reasons beyond the control of the employer due to any form of natural disaster, including a flood, hurricane, drought, pest infestation, or regulatory drought, or plant or animal disease or pest infestation, or regulatory drought, before the guarantee of wages in occupations in which H-2A workers are employed from falling below the wage levels that would have prevailed in the absence of the employment of H-2A workers in those occupations;

“(E) WHETHER ALTERNATIVE WAGE STANDARDS, SUCH AS A PREVAILING WAGE STANDARD, WOULD BE NEEDED TO PREVENT WAGES OF UNITED STATES FARM WORKERS HAD NOT BEEN EMPLOYED IN THE UNITED STATES; and

“(F) WHETHER ANY CHANGES ARE WARRANTED IN THE CURRENT METHODOLOGIES FOR CALCULATING THE ADVERSE EFFECT WAGE RATE AND THE PREVAILING WAGE RATE; and

“(G) RECOMMENDATIONS FOR FUTURE WAGE PROTECTION UNDER THIS SECTION.
employer; and

— provided by an H

worker within the United States.

operation, or causing to be operated, of any

applicable Federal and State safety stand-

Protection Act (29 U.S.C. 1841(b)) and other

Migrant and Seasonal Agricultural Worker

Minced by the Secretary of Labor pursuant to

apply to the transportation of an H

travel to or from the place of employment,

paragraph (2)(D).

 vide the return transportation required in

fer is not effected, the employer shall pro-

common carriers excluded.

— does not apply to—

provide the transportation made by H

employer to the general pub-

(II) does not apply to

transportation made by H

employer, unless the employer specifically re-

arranged such transportation made by H

worker himself, using 1 of the work-

vehicles, unless specifically request-

employer directly or through a farm labor contractor.

(III) clarification.—Providing a job offer to an H-2A worker that causes the worker to travel or from the place of employment, or the payment or reimbursement of the transportation costs of an H-2A worker by an H-2A employer, shall not constitute an arrangement of, or participation in, such transportation.

(IV) Agricultural machinery and equipment

excluded.—This subsection does not apply to the transportation of an H-2A worker on a tractor, combine, harvester, picker, or other similar machinery or equipment while such worker is actually engaged in the planting, cultivating, or harvesting of agricultural commodities or the care of livestock or poultry or engaged in transportation incidental thereto.

(V) common carriers excluded.—This subsection does not apply to common carrier motor vehicle transportation in which the person is engaged in the transportation of passengers for hire and holds a valid certificate of authorization for such purposes from the appropriate Federal, State, or local agency.

(B) applicability of standards, licensing, and insurance requirements.

(I) in general.—When using, or causing to be used, any vehicle for the purpose of providing transportation to which this sub-

paragrap apply, each employer shall—

(1) ensure that each such vehicle conforms to the standards prescribed by the Secretary of Labor under section 401(b) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1811(b)) and other applicable Federal and State safety standards.

(2) ensure that each driver has a valid and appropriate license, as provided by State law, to operate the vehicle; and

(3) have an insurance policy or a liability bond that is in effect which insures the employer against liability for damage to persons or property arising from the ownership, operation, or use of the vehicle, operated by any vehicle used to transport any H-2A worker.

(II) amount of insurance required.—The level of insurance required shall be determined by the Secretary pursuant to regulations to be issued under this sub-

section.

(III) Effect of workers’ compensation coverage.—If the employer of any H-2A worker provides workers’ compensation coverage for such worker in the case of bodily injury or illness covered by State law, the employer shall make the following adjustments in the requirements of subparagraph (Bi)(III) relating to having an insurance policy or liability bond apply:

(1) an insurance policy or liability bond shall be required of the employer, if such workers are transported only under circum-

stances for which there is coverage under such State law.

(II) an insurance policy or liability bond shall be required of the employer for circum-

stances under which coverage for the transportation of workers is not pro-

vided under such State law.

(c) Compliance with Labor laws.—An employer shall assure that, except as otherwise provided in this section, the employer will comply with all applicable Federal, State, and local labor laws, including laws affecting migrant and seasonal agricultural workers, with respect to all United States workers and alien workers employed by the employer, except that a violation of this assurance shall not be a violation of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.).

(d) copy of job offer.—The employer shall provide to the worker, not later than the day the work commences, a copy of the employer’s application and job offer duly signed by the employer. The employer will require the worker to enter into a separate employment contract covering the em-

ployment in question, such separate employ-

ment contract:

(e) range production of livestock.—Nothing in this section, section 218C, or section 218E shall preclude the Secretary of Labor and the Secretary from continuing to apply special procedures and requirements to the admission and employment of aliens in occupations involving the range production of livestock.

(f) evidence on nonimmigrant status.—Each H-2A nonimmigrant shall be issued documentary evidence of nonimmigrant status, which—

(1) shall be machine-readable, tamper-re-

sistant, and shall contain a digitized photo-

graphic and alphanumeric identifiers that can be authenticated;

(2) shall, during the alien’s authorized pe-

period of admission as an H-2A nonimmigrant, serve as an identity document for the pur-

pose of applying for admission to the United States—

(A) instead of a passport and visa if the alien—

(i) is a national of a foreign territory con-

tiguous to the United States; and

(ii) is applying for admission at a land border port of entry; or

(B) in conjunction with a valid passport, if the alien is applying for admission at an air or sea port of entry;

(3) may be renewed during the period of its validity by an employer as evidence of employment authorization and identity under section 274A(b)(1)(B); and

(4) shall be issued to the H-2A non-

immigrant by the Secretary promptly after such alien’s admission to the United States as an H-2A nonimmigrant and reporting to the employer’s worksite under, or at the dis-

cretion of the Secretary, may be issued by the Secretary of State at a consulate instead of a visa.

SEC. 218E. PROCEDURE FOR ADMISSION AND EXTENSION OF STAY OF H-2A WORKERS.

(A) Petitioning for admission.—An em-

ployer, or an association acting as an agent

or joint employer for its members, that

seeks the admission into the United States of an H-2A worker may file a petition with the Secretary. The petition shall be accom-

panied by an accepted and currently valid petition fee, an authorized expedited delivery postage label under section 218C(e)(2)(B) covering the petitioner.

(B) expedited admission by the sec-

retary.—The Secretary shall establish a procedure for expedited adjudication of petitions filed under subsection (a) and within 7 working days shall, by fax, cable, or other means assuring expedited delivery, transmit a copy of notice of action on the petition to the petitioner and, in the case of approved petitions, to the appropriate immigration official at the United States consular consulate (as the case may be) where the peti-

tioner has indicated that the alien benefi-

ciary (or beneficiaries) will apply for a visa or other document in connection with the petition.

(C) Criteria for admissibility.—

(1) in general.—An H-2A worker shall be considered admissible to the United States if the alien is otherwise admissible under this section, section 218C, and section 218D, and the alien is not ineligible under paragraph (2).

(2) disqualification.—An alien shall be considered inadmissible to the United States and ineligible for nonimmigrant status under section 212(a)(15)(H)(ii)(A) if the alien has, at any time during the past 5 years—

(A) violated a material provision of this section; including the requirement to pay wages at rates equal to the prevailing rate of pay for the alien’s authorized period of admission under this section has expired; or

(B) otherwise violated a term or condition of admission into the United States as a non-

immigrant, including overstaying the period of authorized admission as such a non-

immigrant.

(D) waiver of ineligibility for unlawful

presence.—

(A) in general.—An alien who has not previously been admitted to the United States pursuant to this section, and who is otherwise eligible for admission in accord-

ance with paragraphs (1) and (2), shall not be deemed inadmissible by virtue of section 212(a)(9)(B). If an alien described in the pre-

ceding sentence is present in the United States, the alien may apply for abroad for H-2A status, but may not be granted that status in the United States.

(B) maintenance of waiver.—An alien

provided an initial waiver of ineligibility pursuant to subparagraph (A) may only be considered eligible for such waiver unless the alien violates the terms of this section or again becomes ineligible under section 212(a)(9)(B) by virtue of unlawful presence in the United States after the date of the initial waiver of ineligibility pursuant to subparagraph (A).

(4) Period of admission. — (A) in gen-

eral.—The alien shall be ad-

mitted for the period of employment in the ap-

plication certified by the Secretary of Labor me to section 218C(e)(2)(B), to not ex-

ceed 18 months except par-

graph (2), supplemented by a period of not more than a week before the beginning of the period of employment for the purpose of travel to the worksite and a period of 14 days following the period of employment for the purpose of departure or extension based on a subsequent offer of employment, except that—

(A) the alien is not authorized to be em-

ployed during such 14-day period except in the case of an alien for which the alien was pre-

viously authorized; and

(B) the total period of employment, in-

cluding such 14-day period, may not exceed 18 months except that the Secretary may authorize such employment up to a maximum of 24 months if the Secretary determines that the alien meets the criteria for permanent employment under section 212(a)(15)(H)(ii)(A).

(2) optional period for non-seasonal agricul-

tural workers.—Notwithstanding
any other provision of law, an alien being admitted to perform agricultural non-seasonal work may, at the employer’s option, be admitted for a period not to exceed three years. An alien admitted pursuant to the terms of this paragraph may not be accompanied or subsequently joined by dependents, including a spouse or child in derivative nonimmigrant status.

(4) CONSTRUCTION.—Nothing in this subsection shall limit the authority of the Secretary to extend the stay of the alien under any other provision of this Act.

(e) ABANDONMENT OF EMPLOYMENT.—

(1) IN GENERAL.—An alien admitted or provided status under section 101(a)(15)(H)(ii)(a) who abandons the employment described in a petition for an extension of stay filed for an extension of the alien’s period of authorized status as an H-2A alien (including any extensions) was for a period of not more than 10 months and such alien has been outside the United States for at least 2 months during the 12 months preceding the date the alien again is applying for admission to the United States as an H-2A worker.

SEC. 218F. WORKER PROTECTIONS AND LABOR STANDARDS ENFORCEMENT.

“(a) Enforcement Authority.—

“(1) INVESTIGATION OF COMPLAINTS.—

“(A) AGGRIEVED PERSON OR THIRD-PARTY COMPLAINT.—The Secretary shall establish a process for the receipt, investigation, and disposition of complaints respecting a petitioner’s failure to meet a condition of paragraph (1)(A), (1)(B), (1)(D), (1)(F), (2)(A), (2)(B), or (2)(G) of section 218C(b) (substantial failure to meet a condition of paragraph (2)(A), (2)(B), or (2)(H) of section 218C(b), or a material misrepresentation of material facts in an application under section 218C(a). Complaints may be filed by any aggrieved person or organization (including bargaining representatives).

“(b) DETERMINATION ON COMPLAINT.—Under subsection (a), the Secretary of Labor shall provide, within 30 days after the date such a complaint is filed, for a determination as to whether or not a reasonable basis exists to believe that such a failure or misrepresentation has occurred.

“(c) FAILURE TO MEET CONDITIONS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, that the employer has failed or misrepresented a material fact in an application under section 218C(a), the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $1,000 per violation) as the Secretary of Labor determines to be appropriate; and

“(d) WILFUL FAILURES AND WILFUL MISREPRESENTATIONS.—If the Secretary of Labor finds, after notice and opportunity for hearing, willful failure to meet a condition of paragraph (1)(A)(i), (1)(B), (1)(D), (1)(F), (2)(A), (2)(B), or (2)(G) of section 218C(b) (substantial failure to meet a condition of paragraph (2)(A), (2)(B), or (2)(H) of section 218C(b), or a material misrepresentation of material facts in an application under section 218C(a), or a violation of subsection (d)(1)(A)(i) or (d)(1)(B), the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $1,000 per violation) as the Secretary of Labor determines to be appropriate;
/(ii) the Secretary of Labor may seek appropriate legal or equitable relief to effectuate the purposes of subsection (d)(1); and
/(iii) the Secretary of Labor shall notify the employer of the employment of H-2A workers for a period of 2 years.
/(B) Displacement of United States Workers.—If the Secretary of Labor finds, after notice and opportunity for hearing, that a willful failure to meet a condition of section 218(b) or a willful misrepresentation of a material fact in an application under section 218(b)(2), or a willful misrepresentation of a material fact in an application under section 218(c) or during the period of 30 days preceding such period of employment—
/(1) the Secretary shall notify the Secretary of such finding and, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $15,000 per violation) as the Secretary of Labor determines to be appropriate; and
/(ii) the Secretary may disqualify the employer from the employment of H-2A workers for a period of 3 years.
/(F) Limitations on Civil Money Penalties.—The Secretary of Labor shall not impose civil money penalties pursuant to subsection (d)(1) in excess of $90,000.
/(G) Failures to Pay Wages or Required Benefits.—If the Secretary of Labor determines, after notice and opportunity for hearing, that the employer has failed to pay the wages, or provide the housing allowance, transportation, appropriate legal or equitable relief to effectuate the purposes of subsection (d)(1); and
/(ii) the Secretary may disqualify the employer from the employment of H-2A workers for a period of 3 years.
/(P) Limitations on Civil Money Penalties.—The Secretary of Labor shall not impose civil money penalties pursuant to subsection (d)(1) in excess of $90,000.
/(G) Failures to Pay Wages or Required Benefits.—If the Secretary of Labor determines, after notice and opportunity for hearing, that the employer has failed to pay the wages, or provide the housing allowance, transportation, appropriate legal or equitable relief to effectuate the purposes of subsection (d)(1); and
/(ii) the Secretary may disqualify the employer from the employment of H-2A workers for a period of 3 years.
/(P) Limitations on Civil Money Penalties.—The Secretary of Labor shall not impose civil money penalties pursuant to subsection (d)(1) in excess of $90,000.
/(G) Failures to Pay Wages or Required Benefits.—If the Secretary of Labor determines, after notice and opportunity for hearing, that the employer has failed to pay the wages, or provide the housing allowance, transportation, appropriate legal or equitable relief to effectuate the purposes of subsection (d)(1); and
/(ii) the Secretary may disqualify the employer from the employment of H-2A workers for a period of 3 years.
any other person, that the employee reasonably believes evidences a violation of section 218C or 218D or any rule or regulation pertaining to section 218C or 218D, or because the employer or the employer's agent is or is about to be, in an investigation or other proceeding concerning the employer's compliance with the requirements of section 218C or 218D or any rule or regulation pertaining to either of such sections.

(2) DISCRIMINATION AGAINST H-2A WORKERS.—It is a violation of this subsection for any person who files a complaint under section 218C(a), to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against a H-2A employer or a H-2A worker who has, with just cause, filed a complaint with the Secretary of Labor regarding a denial of the rights enumerated and enforceable under subsection (b) or instituted, or caused to be instituted, a private right of action under subsection (c) regarding the denial of the rights enumerated under subsection (b), or has testified or is about to testify in any court proceeding brought under subsection (c).

(e) AUTHORIZATION TO SEEK OTHER APPROPRIATE ENFORCEMENT.—The Secretary of Labor, or any representative established under such a process under which an H-2A worker who files a complaint regarding a violation of subsection (d) and is otherwise eligible to remain in the United States, is allowed to seek other appropriate enforcement in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.

(f) ROLE OF ASSOCIATIONS.—

(1) VIOLATION BY A MEMBER OF AN ASSOCIATION.—An employer on whose behalf an application is filed by an association acting as its agent is fully responsible for such application, and for complying with the terms and conditions of sections 218C and 218D, as though the employer and the United States were acting as one entity. If such an employer is determined, under this section, to have committed a violation, the penalty for such violation shall apply only to that member of the association unless the Secretary of Labor determines that the association or other member participated in, had knowledge, or reason to know of the violation, in which case the penalty shall be invoked against the association or other association member as well.

(2) VIOLATIONS BY AN ASSOCIATION ACTING AS AN EMPLOYER.—If an association filing an application as sole or joint employer is determined to have committed a violation under this section, the penalty for such violation shall apply only to the association unless the Secretary of Labor determines that an association member or members participated in or had knowledge, or reason to know of the violation, in which case the penalty shall be invoked against the association member or members as well.

SEC. 218G. DEFINITIONS.

For purposes of this section and section 218C, 218D, 218E, and 218F:

(1) 'AGRICULTURAL EMPLOYMENT.—The term 'agricultural employment' means any service or activity that is considered to be agricultural under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or otherwise, under section 312(g) of the Internal Revenue Code of 1986 or the performance of agricultural labor or services described in section 101(a)(15)(H)(ii)(A).


(3) DISPLACE.—The term 'displace', in the case of an application with respect to 1 or more H-2A workers by an employer, means laying off an employee who is offered an alternative employment opportunity with the same employer, as an alternative to such loss of employment, similar employment opportunity with the same employer (or, in the case of a placement of worker with another employer under section 218C(b)(2)(E), with either employer described in section (b)) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

(4) TEMPORARY.—The term 'temporary' means a decision subsequent to the filing of the application under section 218C by an entity not under the control of the employer making such filing which restricts the employer's access to water for irrigation purposes and reduces or limits the employer's ability to produce an agricultural commodity, thereby reducing the need for labor.

(5) 'EXCEPT AS OTHERWISE PROVIDED, the term 'Secretary' means the Sec- retary of Homeland Security.

(6) 'TEMPORARY.—A worker is employed on a temporary basis if—

(A) ordinarily, it pertains to or is of the kinds exclusively performed at certain seasons or periods of the year; and

(B) from its nature, it may not be continuous or carried on throughout the year.

(6) SEASONAL.—A worker is employed on a seasonal basis if—

(A) ordinarily, it pertains to or is of the kinds exclusively performed at certain seasons or periods of the year; and

(B) from its nature, it may not be continuous or carried on throughout the year.

(7) UNITED STATES WORKER.—The term 'United States worker' means any worker, including temporary workers, who is an alien lawfully admitted for permanent residence, or any other alien, who is authorized to work in the job opportunity within the United States, except an alien admitted or otherwise provided status under section 101(a)(15)(H)(ii)(A).

1 The term 'alien' means a noncitizen of the United States, or, when used with respect to an alien admitted for temporary stay, means an alien admitted for a temporary period of stay. (8 U.S.C. 1101(a)(3).)
Labor under this Act and the amendments made by this Act.

(d) **Deadline for Issuance of Regulations.**—All regulations to implement the duties of the Secretary of State, and the Secretary of Labor created under sections 212C, 212D, 212E, 212F, and 212G of the Immigration and Nationality Act, as amended by section 204 of this Act, shall take effect on the effective date of section 404 and shall be issued not later than one year after the date of enactment of this Act, or such later date as the regulations are promulgated, whichever is sooner.

**SEC. 407. REPORTS TO CONGRESS.**

(a) **Annual Report.**—Not later than September 30 of each year, the Secretary shall submit to Congress a report that identifies, for the previous year:

(1) the number of job opportunities approved for employment of aliens admitted under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), and the number of workers actually admitted, disaggregated by State and by occupation;

(2) the number of such aliens reported to have abandoned employment pursuant to subsection (a)(4) of such Act;

(3) the number of such aliens who departed the United States within the period specified in subsection (d) of such Act;

(4) the number of such aliens who applied for adjustment of status pursuant to section 623;

(5) the number of such aliens whose status was adjusted under section 623;

(6) the number of such aliens who applied for permanent residence pursuant to section 214A(j) of the Immigration and Nationality Act, as amended by section 405 of this Act; and

(b) **Implementation Report.**—Not later than 180 days after the date of the enactment of this Act, the Secretary shall prepare and submit to Congress a report that describes the measures being taken and the progress made in implementing this Act.

**SEC. 408. EFFECTIVE DATE.**

Except as otherwise provided, sections 404 and 405 shall take effect 1 year after the date of enactment of this Act. Except as otherwise provided, sections 406, 407, and 408 shall take effect 1 year after the date of enactment of this Act.

**SEC. 409. NUMERICAL LIMITATIONS.**

Section 214(g) of the Act (8 U.S.C. 1184(g)) is amended—

(1) in paragraph (1)—

(A) by striking "(beginning with fiscal year 1991)'; and

(B) by striking subparagraph (B) and inserting the following:

"(B) under section 101(a)(15)(Y)(i), may not exceed—

(i) 400,000 for the first fiscal year in which the program is implemented;

(ii) the subsequent fiscal year, subject to clause (iii), the number for the previous fiscal year as adjusted in accordance with the method set forth in paragraph (2); and

(iii) 200,000 for any fiscal year,''

and

(2) by renumbering paragraph (2) as paragraph (3), and renumbering all subsequent paragraphs accordingly, and inserting the following as paragraph (2):

"(2) **Maintaining the Numerical Limitation.**—With respect to the numerical limitation set in section 214A(j) of the Immigration and Nationality Act (8 U.S.C. 1116(a)(1))—

(A) if the total number of visas allocated for that fiscal year are allotted within the first half of that fiscal year, then an additional 10 percent of the allocated number shall be made available immediately and the allocated amount for the following fiscal year shall be reduced by 15 percent of the original allocated amount in the prior fiscal year;

(B) if the total number of visas allocated for that fiscal year are allotted within the second half of that fiscal year, then the allocated amount for the following fiscal year shall increase by 10 percent of the original allocated amount in the prior fiscal year; and

(C) with the exception of the first subsequent fiscal year to the fiscal year in which the program is implemented, if fewer visas were allotted the previous fiscal year than the number of visas allocated for that year and the reason was not due to processing delays or other regulations, then the allocated amount for the following fiscal year shall decrease by 10 percent of the allocated amount in the prior fiscal year.

(3) in paragraph (9)(A)—

(1) by striking "an alien who has already been counted toward the numerical limitation of paragraph (1)(B) during fiscal year 2004, 2005, or 2006 shall not be again counted toward such limitation during fiscal year 2007," and inserting "an alien who has been present in the United States as an H-2B nonimmigrant during any 1 of 3 fiscal years immediately preceding the fiscal year of the approved start date of a petition for a nonimmigrant worker described in Section 101(a)(15)(H)(ii)(B) shall not be counted toward such limitation for the fiscal year in which the petition is approved. Such alien shall be considered a returning worker.");

(4) to study the allocation of immigrant visas through the merit-based system;

(5) to make recommendations to the President and Congress with respect to such programs,

(6) to study the numerical limits imposed by law on admissions of nonimmigrants;

(7) to study the allocation of immigrant visas to occupations not identified in this section;

(8) to educate nationals of the home country regarding United States temporary worker programs.

(b) **Authority of the Commission.**—The Commission shall be composed of—

(A) 6 voting members—

(i) who shall be appointed by the President, with the advice and consent of the Senate, not later than 6 months after the establishment of the Y Nonimmigrant Worker Program;

(ii) who shall serve for 3-year staggered terms, which can be extended for 1 additional 3-year term;

(iii) who shall select a Chair from among the voting members to serve a 2-year term, which can be extended for 1 additional 2-year term;

(iv) who shall have expertise in economics, demographics, labor, business, or immigration law;

(v) who may not be an employee of the Federal Government or of any State or local government; and

(vi) no more than 3 of whom may be members of the same political party.

(B) 7 ex-officio members, including—

(i) the Secretary;

(ii) the Secretary of State;

(iii) the Attorney General;

(iv) the Secretary of Labor;

(v) the Secretary of Commerce;

(vi) the Secretary of Health and Human Services; and

(vii) the Secretary of Agriculture.

(4) **Vacancies.**—Any vacancy in the Commission shall be filled in the same manner as the original appointment.

**SEC. 410. REQUIREMENTS FOR PARTICIPATING PROGRAMS.**

(a) **In General.**—The Secretary of State, in cooperation with the Secretary and the Attorney General, may, as a condition of authorizing the grant of nonimmigrant visas for Y nonimmigrants who are citizens or nationals of any foreign country, negotiate with such foreign country to enter into a bilateral agreement with the United States that conforms to the requirements under subsection (b).

(b) **Requirements of Bilateral Agreements.**—It is the sense of Congress that each agreement negotiated under subsection (a) shall require the participating home country to—

(1) accept the return of nationals who are ordered removed from the United States within 3 days of such removal;

(2) cooperate with the United States Government to—

(A) identify, track, and reduce gang membership, violence, and human trafficking and smuggling; and

(B) control illegal immigration;

(3) provide the United States Government with—

(A) passport information and criminal records of aliens who are seeking admission to, or who are present in, the United States; and

(B) admission and entry data to facilitate United States entry-exit data systems;

(4) educate nationals of the home country regarding United States temporary worker programs to ensure that such nationals are not exploited; and

(b) to study the allocation of immigrant visas to occupations not identified in this section;

(5) provide to housing providers incentives in the alien’s home country for returning workers; and

(6) agree to such other terms as the Secretary of State considers appropriate and necessary.

**SEC. 411. COMPLIANCE INVESTIGATORS.**

(a) **Compliance of Secretary of Labor.**—The Secretary of Labor, subject to the availability of appropriations for such purpose, shall increase, by not less than 200 per year for each of the five fiscal years after the date of enactment of [name of bill], the number of compliance investigators and attorneys dedicated to the enforcement of labor standards, including those contained in sections 218A, 218B, and 218C, the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) and the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) in geographic and occupational areas in which a high percentage of workers are Y nonimmigrants.

**SEC. 412. STANDING COMMISSION ON IMMIGRATION AND LABOR MARKETS.**

(a) **Establishment of Commission.**—

(1) **In General.**—There is established an independent Federal agency within the Executive Branch to be known as the Standing Commission on Immigration and Labor Markets (referred to in this section as the "Commission").

(2) **Purposes.**—The purposes of the Commission are—

(A) to study nonimmigrant programs and the numerical limits imposed by law on admissions of nonimmigrants;

(B) to study the numerical limits imposed by law on immigrant visas;

(C) to study the allocation of immigrant visas through the merit-based system;

(D) to make recommendations to the President and Congress with respect to such programs.

(b) **Membership.**—The Commission shall be composed of—

(A) 6 voting members—

(i) who shall be appointed by the President, with the advice and consent of the Senate, not later than 6 months after the establishment of the Y Nonimmigrant Worker Program;

(ii) who shall serve for 3-year staggered terms, which can be extended for 1 additional 3-year term;

(iii) who shall select a Chair from among the voting members to serve a 2-year term, which can be extended for 1 additional 2-year term;

(iv) who shall have expertise in economics, demographics, labor, business, or immigration law;

(v) who may not be an employee of the Federal Government or of any State or local government; and

(vi) no more than 3 of whom may be members of the same political party.

(B) 7 ex-officio members, including—

(i) the Secretary;

(ii) the Secretary of State;

(iii) the Attorney General;

(iv) the Secretary of Labor;

(v) the Secretary of Commerce;

(vi) the Secretary of Health and Human Services; and

(vii) the Secretary of Agriculture.

(4) **Vacancies.**—Any vacancy in the Commission shall be filled in the same manner as the original appointment.

**SEC. 413. MEETINGS.**

(A) **Initial Meeting.**—The Commission shall meet and begin carrying out the duties described in subsection (b) as soon as practicable after the date of enactment.

(B) **Subsequent Meetings.**—After its initial meeting, the Commission shall meet at least once per quarter upon the call of the Chair or majority of its members.

(C) **Quorum.**—Four voting members of the Commission shall constitute a quorum.
(b) DUTIES OF THE COMMISSION.—The Commission shall—
   (1) examine and analyze—
      (A) the development and implementation of the Immigration and Nationality Act; and
      (B) the criteria for the admission of nonimmigrant workers;
   (C) be funded for determining the annual numerical limitations of nonimmigrant workers;
   (D) the impact of nonimmigrant workers on immigration; and
   (E) the impact of nonimmigrant workers on the economy, unemployment rate, wages, workforce, and businesses of the United States;

   (f) the numerical limits imposed by law on immigrant visas and its effect on the economy, unemployment rate, wages, workforce, and businesses of the United States;
   (g) the allocation of immigrant visas through the evaluation system established by Title V of this Act; and
   (f) any other matters regarding the programs that the Commission considers appropriate.

   (2) not later than 18 months after the date of enactment, and every year thereafter, submit a report to the President and Congress that—
      (A) contains the findings of the analysis conducted under paragraph (1);
      (B) makes recommendations regarding the necessary adjustments to the programs studied to meet the labor market needs of the United States; and
      (C) makes other recommendations regarding the expansion of legislative or administrative actions, that the Commission determines to be in the national interest.

   (c) INFORMATION AND ASSISTANCE FROM FEDERAL AGENCIES.
      (1) INFORMATION.—The head of any Federal department or agency that receives a request from the Commission for information, including suggestions, estimates, and statistics, as the Commission considers necessary to carry out the provisions of this section, shall furnish such information to the Commission, to the extent allowed by law.

      (2) ASSISTANCE.—
         (A) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall, on a reimbursable basis, provide the Commission with administrative support and other services for the performance of the Commission’s functions.

         (B) OTHER FEDERAL AGENCIES.—The departments and agencies of the United States may provide the Commission with such services, funds, facilities, staff, and other support services as the heads of such departments and agencies determine advisable and authorized by law.

      (d) PERSONNEL MATTERS.—
         (1) STAFF.—
            (A) APPOINTMENT AND COMPENSATION.—The Chair, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions.

            (B) FEDERAL EMPLOYEES.—
               (i) Except as provided under clause (i), the executive director and any personnel of the Commission who are employees shall be considered to be employees under section 5315 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of such title.

               (ii) COMMISSION MEMBERS.—Clause (i) shall not apply to members of the Commission.

         (2) DETAILEES.—Any employee of the Federal Government may be detailed to the Commission without reimbursement from the Commission, subject to the rights, status, and privileges of his or her regular employment without interruption.

   (3) CONSULTANT SERVICES.—The Commission may procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, at rates not to exceed the daily rate or basic salary of a person occupying a position at level IV of the Executive Schedule under section 5315 of such title.

   (e) COMPENSATION AND TRAVEL EXPENSES.—
      (1) COMPENSATION.—Each voting member of the Commission may be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the position.

      (2) TRAVEL EXPENSES.—Members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, under section 5702(b) of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

      (f) FUNDING.—Fees and fines deposited into the Temporary Worker Program Account under section 206(w) of the Immigration and Nationality Act as[section 402 of (name of the Act), may be used by the Commission to carry out its duties under this section.

   SEC. 412. AGENCY REPRESENTATION AND CO-ORDINATION.
      Section 274a(e) (8 U.S.C. 1324a(e) is amended
      (1) in paragraph (2),
         (A) in subparagraph (A), by striking the comma at the end and inserting a semicolon;
         (B) in subparagraph (B), by striking ‘‘and’’ and inserting ‘‘, and’’;
         (C) in subparagraph (C), by striking ‘‘paragraph (2);’’ and inserting ‘‘paragraph (1);’’ and
         (D) by inserting after subparagraph (C) the following:

            ‘‘(D) United States Immigration and Customs Enforcement officials may not misrepresent to employees or employers that they are a member of any agency or organization that provides domestic violence services, enforces health and safety law, provides health care services, or any other services intended to protect life and safety.’’

   SEC. 413. BILATERAL EFFORTS WITH MEXICO TO REDUCE MIGRATION PRESSURES AND COSTS.
       (a) FINDINGS.—Congress makes the following findings:
         (1) Migration from Mexico to the United States is directly linked to the degree of economic opportunity and the standard of living in Mexico.

         (2) Mexico comprises a prime source of migration to the United States.

         (3) Remittances from Mexican citizens working in the United States reached a record high of nearly $17,000,000,000 in 2004.

         (4) Migration patterns may be reduced from Mexico to the United States by addressing the degree of economic opportunity available in Mexico.

         (5) Many Mexican assets are held extra-legally, and cannot be readily used as collateral for loans.

         (6) A majority of Mexican businesses are small or medium size with limited access to financial capital.

         (7) These assets constitute a major impediment to broad-based economic growth in Mexico.

       (b) DUTIES OF THE COMMISSION.—The Commission may do the following:
         (1) identify and encourage the development of policies that accelerate the legal recognition of formal land titles, to enable Mexican citizens to use their assets to procure capital;

         (2) recommend initiatives that facilitate the development of an effective rural lending system for small- and medium-sized farmers that—
            (A) provide long term credits to borrowers;

            (B) develop a viable network of regional and local lending institutions; and

            (C) extend financing for alternative rural economic activities beyond direct agricultural production.

         (3) recommending efforts to reduce the transaction costs of remittance flows in order to increase the pool of savings available to help finance domestic investment in Mexico;

         (4) encouraging Mexican financial institutions and corporations to adopt internationally recognized corporate governance practices, including anticorruption and transparency principles;

         (5) enhancing Mexican efforts to strengthen governance at all levels, including efforts to improve transparency and accountability, and to eliminate corruption, which is the single biggest obstacle to development;

         (6) providing the Government of Mexico in implementing all provisions of the Inter-American Development Bank’s 2001 agreement on Security and Prosperity Partnership for Prosperity to help generate economic growth and improve the standard of living in Mexico, which will lead to reduced migration, by—
            (i) increasing access for poor and under served populations in Mexico to the financial services sector, including credit unions;

            (ii) assisting Mexican efforts to formalize its extra-legal sector, including the issuance of formal land titles, to enable Mexican citizens to use their assets to procure capital;

            (iii) facilitating Mexican efforts to establish an effective rural lending system for small- and medium-sized farmers that will—
               (A) provide long term credits to borrowers;

               (B) develop a viable network of regional and local lending institutions; and

               (C) extend financing for alternative rural economic activities beyond direct agricultural production;

            (iv) recommending efforts to reduce the transaction costs of remittance flows in order to increase the pool of savings available to help finance domestic investment in Mexico; and

            (v) encouraging Mexican efforts to strengthen governance at all levels, including efforts to improve transparency and accountability, and to eliminate corruption, which is the single biggest obstacle to development;

         (7) advising the Government of Mexico in implementing all provisions of the Inter-American Development Bank’s 2001 agreement on Security and Prosperity Partnership for Prosperity to help generate economic growth and improve the standard of living in Mexico, which will lead to reduced migration, by—

         (8) assisting the Government of Mexico to strengthen education and training opportunities throughout the country, with a particular emphasis on improving rural education; and

         (9) encouraging the Government of Mexico to create incentives for persons who have migrated to the United States to return to Mexico.

   (c) SENSE OF CONGRESS REGARDING BILATERAL PARTNERSHIP ON HEALTH CARE.—It is the sense of Congress that the Government of the United States and the Government of Mexico should enter into a partnership to expand health care services, reduce uncompensated and burdensome health care costs incurred by the United States due to legal and illegal immigration, including—

       (1) increasing health care access for poor and under served populations in Mexico;

       (2) assisting Mexico in increasing its emergency and trauma health care facilities along the border, with the aid of expanding prenatal care in the United States-Mexico border region;

       (3) assisting the return of stable, incapacitated workers temporarily employed in the United States to Mexico in order to receive extended, long-term care in their home communities; and

       (4) helping the Government of Mexico to establish a program with the private sector...
to cover the health care needs of Mexican nationals temporarily employed in the United States.

SEC. 414. WILLING WORKER-WILLING EMPLOYER ELECTRONIC DATABASE.

(a) ELECTRONIC JOB REGISTRY LINK.—

(1) The Secretary of Labor shall establish a publicly accessible Web page on the internet website of the Department of Labor that provides a single Internet link to each State workforce agency’s statewide electronic registry of jobs available throughout the United States for federal employees and any other interested parties.

(2) The Secretary of Labor shall promulgate regulations regarding the maintenance of electronic job registry records by the employer for the purpose of audit or investigations.

(3) The Secretary of Labor shall ensure that job opportunities advertised on a State workforce agency statewide electronic job registry established under this section are accessible—

(A) by the State workforce agencies, which may further disseminate job opportunity information to interested parties; and

(B) through the Internet, for access by workers, employers, labor organizations and other interested parties.

(4) The Secretary of Labor may work with private companies and nonprofit organizations in the development and operation of the electronic link and system under paragraph (1).

(b) ELECTRONIC REGISTRY OF CERTIFIED APPLICANTS.—

(1) The Secretary of Labor shall compile, on a current basis, a registry by employer and by occupational classification of the applications filed under this program. Such registry shall include the wage rate, number of workers sought, period of intended employment, and date of need. The Secretary of Labor shall make the registry available through an Internet website.

(2) The Secretary of Labor may consult with the Secretary of Homeland Security, and others as appropriate, in the establishment of the registry described in paragraph (1) to ensure its compatibility with any system designed to track nonimmigrant employment that is operated and maintained by the Secretary of Homeland Security.

(3) The Secretary of Labor shall ensure that the electronic job registry established under this subsection is accessible by the State workforce agencies, which may further disseminate job opportunity information to other interested parties.

SEC. 415. ENUMERATION OF SOCIAL SECURITY NUMBER.

The Secretary of Homeland Security, in coordination with the Commissioner of the Social Security Administration, shall implement a system to allow for the prompt enumeration of a Social Security number after the Secretary of Homeland Security has granted an alien Y nonimmigrant status.

SEC. 416. CONTRACTING.

Nothing in this section shall be construed to limit the authority of the Secretary of Homeland Security or Secretary of Labor to contract with or license United States entities, as provided for in regulation, to implement this title, that are—

(A) currently licensed; or

(B) that are not currently licensed.

Any inherently governmental work already performed by employees of the Department of Homeland Security or the Department of Labor, or any inherently governmental work generated by the requirements of this legislation, shall continue to be performed by federal employees and any current commercial work, or new commercial work generated by the requirements of this legislation, that is subject to public-private competition under OMB Circular A-76 or any other relevant law shall continue to be subject to public-private competition.

SEC. 417. FEDERAL RULEMAKING REQUIREMENTS.

(a) The Secretaries of Labor and Homeland Security shall each issue an interim final rule within six months of the date of enactment of this title, and the amendments made by this title. Each such interim final rule shall become effective immediately upon publication in the Federal Register. Such rule shall set sunset two years after issuance unless the relevant Secretary issues a final rule within two years of the issuance of the interim final rule.

(b) The exemption provided under subsection (a) shall sunset no later than two years after the date of enactment of this title, provided it shall not be construed to impose any requirements on, or affect the validity of, any rule issued or other action taken by either Secretary under such exemption.

Subtitle C—Nonimmigrant Visa Reform

SEC. 418. STUDENT VISAS.

(a) In General.—Section 101(a)(15)(F) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F)) is amended—

(1) in clause (i)—

(A) by striking “who is” and inserting “who is—”;

(B) by striking “consistent with section 214(i)” and inserting “consistent with section 214(m)”;

(C) by striking the comma at the end and inserting the following: “(II) engaged in temporary employment for optional practical training for an aggregate period of not more than 24 months and not to exceed 36 months;”;

(D) by striking the period at the end and inserting a semicolon;

(E) by inserting “under this program” after “such employment occurs:”;

(2) D ISQUALIFICATION.

(i) An alien who maintains a full-time status in an educational institution and has a Social Security number issued to him under this program is eligible for registration and intends to register, period of intended employment, and is employed in an off-campus position unrelated to the alien’s field of study if—

(A) the alien has enrolled full-time at the educational institution to which he has been admitted; and

(B) the employer provides the educational institution and the Secretary of Labor with attestation that the employer has—

(i) had at least 31 days recruiting United States workers to fill the position; and

(ii) will pay the alien and other similarly situated workers at a rate equal to not less than the greater of—

(A) the actual wage level for the occupation at the place of employment; or

(B) the prevailing wage rate for the occupation in the area of employment; and

(C) the alien will not be employed more than—

(i) 20 hours per week during the academic term; or

(ii) 40 hours per week during vacation periods and between academic terms.

(b) D ISQUALIFICATION.—If the Secretary of Labor determines that an employer has provided an attestation under paragraph (1)(B) that is materially false or has failed to pay wages in accordance with the attestation, the employer, after notice and opportunity for hearing, may be disqualified for a period of no more than 5 years from employing an alien student under paragraph (1).

(c) S A TISFACTION OF REQUIREMENTS.—The Secretary of Homeland Security engaged in by a student pursuant to paragraph (1) of this subsection shall, for purposes of section 210 of the Social Security Act (42 U.S.C. 410) and section 3212 of the Internal Revenue Code (26 U.S.C. 3121), be considered to be a purpose related to section 214(a)(15)(F) of the Immigration and Nationality Act.

(d) CLEARING THE IMMIGRANT INTENT PROVISION.—Subsection (b) of section 214 of the Immigration and Nationality Act (8 U.S.C. 1184(h)(1)(b) is amended—

(1) by striking the parenthetical phrase “other than nonimmigrant described in subsection (a)(15),” and

(2) by striking “and” and inserting “or” in place thereof.

(e) G RANTING DUAL INTENT TO CERTAIN NONIMMIGRANT STUDENTS.—Subsection (h) of section 214 of the Immigration and Nationality Act (8 U.S.C. 1184(b)(1)) is amended—

(1) by inserting “(F)” following “(H)(1)” and inserting in its place “(H)(1) except subclause (b) of such section”;

(2) by striking “under section 101(a)(15)” and inserting in its place “under the immigration laws”;

(3) by inserting “dual intent” after “immigrant”; and

(4) by striking “or obtaining” and inserting in its place “or obtaining a change of status”;

SEC. 419. H-1B STREAMLINING AND SIMPLIFICATION.

(a) H-1B AMENDMENTS.—Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)) is amended—

(1) by striking clauses (e) and (f) from the definition of ‘‘外国人专用定住者(外国人用特留者)’’; and

(2) by striking “in each fiscal year, subject to clause (ii)” and inserting in its place “in each fiscal year, subject to clause (ii) and clause (iii), the number for the previous fiscal year.”
Statement filed with the Internal Revenue Service confirming whether the Form W-2 Wage and Tax Statement filed by the employer for the alien meets a condition described in the application filed by the alien in section 214(g)(5) of the Immigration and Nationality Act (§ 8 U.S.C. 1182(c)(5)), as renumbered by Section 405, is amended to read as follows:

"(3) In the case of an alien nonimmigrant to fill the job or jobs, (i) in subparagraph (B), by striking ‘‘if there is no H-1B nonimmigrant who has been petitioned under section 214(b) of such Act, as amended by subsection (a), is further amended—

(A) by striking ‘‘if the Secretary of Labor receives the information not later than 14 days after the date of the enactment of this Act.’’;

(B) by striking clause (ii), subjecting the employer to the annual numeric limitation described in clause (i), the Secretary may issue a visa or otherwise grant nonimmigrant status pursuant to section 1101(a)(15)(H)(i)(b) in the United States.

(c) The annual numeric limitation described in paragraph (2);

1. By paragraph (2) of section 214(g) of the Immigration and Nationality Act (§ 8 U.S.C. 1182(c)(5)), as renumbered by Section 405, is amended—

1. In the case of an alien described in subparagraph (F)(ii), subjecting the employer to the annual numeric limitation described in clause (i), the preceding sentence shall apply to an employer regardless of whether or not the employer is an H-1B dependent-employer; and

2. By striking paragraph (3).
required to comply with this clause if the Secretary determines that such compliance would interfere with an effort by the Secretary to investigate or secure compliance by the employer with the requirements of this subsection. A determination by the Secretary under this clause shall not be subject to judicial review.

(ii) Investigating and auditing by Department of Homeland Security—

(1) Department of Homeland Security investigations—Section 214(c)(2) of such Act, as amended by this section, is further amended by adding at the end the following:

(‘‘(I) The Secretary of Homeland Security may initiate an investigation of any employer found to have been described in section 101(a)(15)(L) with regard to the employer’s compliance with the requirements of this subsection.

(ii) If the Secretary of Homeland Security receives specific credible information from a source who is likely to have knowledge of an employer’s practices, employment conditions, or compliance with the requirements under this subsection, the Secretary may conduct an investigation into the employer’s compliance with the requirements under such subsection, the Secretary may impose a penalty under section 101(a)(15)(L), the Secretary of Homeland Security shall work cooperatively with the Attorney General of the United States or the Federal Bureau of Investigation if the Secretary determines that to do so would interfere with an effort by the Secretary to investigate or secure compliance by the employer with the requirements of this subsection. There shall be no judicial review of a determination by the Secretary under this clause.

(iv) For purposes of determining the eligibility of an alien for classification under section 101(a)(15)(L), the Secretary of Homeland Security shall consider the employer’s compliance with the requirements of this subsection. A determination by the Secretary of Homeland Security to the effect that the alien is not eligible for classification under section 101(a)(15)(L) shall be made after the date of the determination.

(b) Investigations and audits by Department of Homeland Security—

(1) Department of Homeland Security investigations—Section 214(c)(2) of such Act, as amended by this section, is further amended by adding at the end the following:

(‘‘(I) The Secretary of Homeland Security may initiate an investigation of any employer described in section 101(a)(15)(L) with regard to the employer’s compliance with the requirements of this subsection.

(ii) If the Secretary of Homeland Security receives specific credible information from a source who is likely to have knowledge of an employer’s practices, employment conditions, or compliance with the requirements under this subsection, the Secretary may conduct an investigation into the employer’s compliance with the requirements under such subsection, the Secretary may impose a penalty under section 101(a)(15)(L), the Secretary of Homeland Security shall work cooperatively with the Attorney General of the United States or the Federal Bureau of Investigation if the Secretary determines that to do so would interfere with an effort by the Secretary to investigate or secure compliance by the employer with the requirements of this subsection. There shall be no judicial review of a determination by the Secretary under this clause.

(IV) For purposes of determining the eligibility of an alien for classification under section 101(a)(15)(L), the Secretary of Homeland Security shall consider the employer’s compliance with the requirements of this subsection. A determination by the Secretary of Homeland Security to the effect that the alien is not eligible for classification under section 101(a)(15)(L) shall be made after the date of the determination.

(c) Auditors—Section 214(c)(2)(A) of such Act, as amended by this section, is further amended by adding the following:

(‘‘(B) Upon the issuance of an H-1B visa to an alien who is the spouse or child of a citizen of the United States, the Secretary of Homeland Security shall provide the applicant with—

(i) a brochure outlining the employer’s obligations and the employee’s rights under Federal law, including labor and wage protections; and

(ii) the contact information for Federal agencies that can offer more information or assistance in clarifying employer obligations and workers’ rights.’’.

(d) Information provided to H-1B nonimmigrants upon visa issuance—Section 214(b)(2)(C) of such Act, as amended by this section, is further amended by inserting after subparagraph (C):

(‘‘(b) Auditors—Section 214(c)(2)(A) of such Act, as amended by this section, is further amended by adding the following:

(‘‘(B) Upon the issuance of an H-1B visa to an alien who is the spouse or child of a citizen of the United States, the Secretary of Homeland Security shall provide the applicant with—

(i) a brochure outlining the employer’s obligations and the employee’s rights under Federal law, including labor and wage protections; and

(ii) the contact information for Federal agencies that can offer more information or assistance in clarifying employer obligations and workers’ rights.’’.

(B) Upon the issuance of an H-1B visa to an alien who is the spouse or child of a citizen of the United States, the Secretary of Homeland Security shall provide the applicant with—

(i) a brochure outlining the employer’s obligations and the employee’s rights under Federal law, including labor and wage protections; and

(ii) the contact information for Federal agencies that can offer more information or assistance in clarifying employer obligations and workers’ rights.’’.

(iii) a statement summarizing the original petition;

(iv) evidence that the importing employer has fully complied with the business plan submitted under clause (i)(I);

(v) evidence of the truthfulness of any representations made in connection with the filing of the original petition;

(vi) evidence that the importing employer, during the preceding 12 months, has been doing business at the new facility through regular, systematic, and continuous commercial operations; and

(vii) a statement describing the staffing plans for the new facility, including the number of employees and the types of positions held by such employees;
(2) **AUDITS.—** Section 214(c)(2)(I) of such Act, as added by paragraph (1), is amended by adding at the end the following:

iv) The Secretary of Homeland Security shall conduct annual audits of employers that employ nonimmigrants. The Secretary shall conduct annual audits of employers that employ nonimmigrants described in section 101(a)(15)(L) during the applicable calendar year.

(3) **REPORTING REQUIREMENT.—** Section 214(c)(2) of such Act is amended by inserting “(L),” after “(H),”.

(c) **PENALTIES.—** Section 214(c)(2) of such Act, as amended by this section, is further amended by adding at the end the following:

“(J)(i) If the Secretary of Homeland Security finds, after notice and an opportunity for a hearing, a failure by an employer to meet a condition under subparagraph (F), (G), (H), (I), (J), (K) or (L) or a misrepresentation of material fact in a petition to employ 1 or more aliens as nonimmigrants described in section 101(a)(15)(L),—

“(1) the Secretary of Homeland Security may impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $2,000 per violation) as the Secretary determines to be appropriate; and

“(II) the Secretary of Homeland Security may not, during a period of at least 2 years, approve a petition for that employer to employ 1 or more aliens as such nonimmigrants described in section 101(a)(15)(L).

“(J)(ii) If the Secretary of Homeland Security finds, after notice and an opportunity for a hearing, a willful failure by an employer to meet the requirement under subparagraph (F), (G), (H), (I), (J), (K) or (L) or a misrepresentation of material fact in a petition to employ 1 or more aliens as nonimmigrants described in section 101(a)(15)(L)—

“(1) the Secretary of Homeland Security may impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $10,000 per violation) as the Secretary determines to be appropriate; and

“(II) the Secretary of Homeland Security may not, during a period of at least 2 years, approve a petition filed for that employer to employ 1 or more aliens as such nonimmigrants described in section 101(a)(15)(L).

“(J)(iii) If the Secretary of Homeland Security finds, after notice and an opportunity for a hearing, a willful failure by an employer to meet a condition under subparagraph (F), (G), (H), (I), (J), (K) or (L) or a misrepresentation of material fact in a petition to employ 1 or more aliens as nonimmigrants described in section 101(a)(15)(L)—

“(1) the Secretary of Homeland Security may impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $10,000 per violation) as the Secretary determines to be appropriate; and

“(II) the Secretary of Homeland Security may not, during a period of at least 2 years, approve a petition filed for that employer to employ 1 or more aliens as such nonimmigrants described in section 101(a)(15)(L).”

### SEC. 424. LIMITATIONS ON APPROVAL OF L-1 PETITIONS FOR START-UP COMPANIES

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended—

(a) by striking “Attorney General” each place it appears inserted “Secretary of Homeland Security”;

(b) in subparagraph (E), by striking “In the case” and inserting “Except as provided in subparagraph (H)”; and

(c) by adding at the end the following:

“(O)(i) If the beneficiary of a petition under this subsection is coming to the United States to be employed in a new office, the petition may be approved for a period not to exceed 12 months only if the alien has not previously been employed by the beneficiary of such petition under this subsection for a period longer than 6 months immediately preceding the date of the petition filing and demonstrates that the failure to satisfy any of the requirements described in such subsections was directly caused by extraordinary circumstances, as determined by the Secretary in his discretion.

“(H)(i) The Secretary of Homeland Security may authorize the spouse of an alien described under section 101(a)(15)(L), who is a dependent of a beneficiary under subparagraph (G), to engage in employment in the United States during the initial 12-month period described in subparagraph (G)(i).

“(ii) A spouse described in clause (i) may be provided employment authorization upon the approval of an extension under subparagraph (G)(ii).

“(i) For purposes of determining the eligibility of an alien for classification under section 101(a)(15)(L) of this Act, the Secretary of Homeland Security may describe the procedures with the Department of State to verify a company or office’s existence in the United States and abroad.

### SEC. 425. MEDICAL SERVICES IN UNDERSERVED AREAS

(a) **PERMANENT AUTHORIZATION OF THE CONRAD PROGRAM.—** Section 220(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended—

(1) by striking “Attorney General” each place it appears inserted “Secretary of Homeland Security”;

(2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall take effect as if enacted on June 1, 2007.

(b) **PILOT PROGRAM REQUIREMENTS.—** Section 214(i) of the Immigration and Nationality Act (8 U.S.C. 1184(i)) is amended—

(1) by adding at the end the following:

“(4)(A) Notwithstanding paragraph (1)(B), the Secretary of Homeland Security may grant to a total of 50 waivers for a State under section 212(e) in a fiscal year if, after the first 30 such waivers for the State are granted in that fiscal year—

“(i) an interested State agency requests a waiver; and

“(ii) the requirements under subparagraph (B) are met.

(2) The requirements under this subparagraph are met if—

“(i) fewer than 20 percent of the physician vacancies in the health professional shortage area in the State, as designated by the Secretary of Health and Human Services, were filled in the most recent fiscal year;

“(ii) all of the waivers allotted for the State under paragraph (1)(B) were used in the most recent fiscal year; and

“(iii) all underserved highly rural States—
"(1) used the minimum guaranteed number of waivers under section 212(e) in health professional shortage areas in the most recent fiscal year; or

"(ii) agreed to waive the right to receive the minimum guaranteed number of such waivers.

"(C) In this paragraph:

"(i) ‘health professional shortage area’ means the meaning given the term in section 332(a)(1) of the Public Health Service Act (42 U.S.C. 254e(a)(1));

"(ii) ‘the term “minimum guaranteed number” means the latest available decennial census conducted by the Bureau of Census.

"(iii) The term ‘minimum guaranteed number’—

"(1) for the first fiscal year of the pilot program, 15;

"(ii) for each subsequent fiscal year, the sum of—

(aa) the minimum guaranteed number for the second fiscal year; and

(bb) 3, if any State received additional waivers under this paragraph in the first fiscal year;

"(III) for the third fiscal year, the sum of—

(aa) the minimum guaranteed number for the second fiscal year; and

(bb) 3, if any State received additional waivers under this paragraph in the first fiscal year;

"(c) TERMINATION DATE.—The authority provided by the amendments made by subsection (b) shall expire on September 30, 2011.

(d) Section 212(i) of the Immigration and Nationality Act (8 U.S.C. 1152(i)) is amended to read—

(1) revising the preamble of paragraph (2) to read—

"(2) An alien who is coming to the United States to practice primary care or specialty medicine as a member of the medical profession may not be admitted as a nonimmigrant under section 1101(a)(15)(H)(i)(b) of this title unless—"

(2) redesignating paragraph (2) as paragraph (3);

(3) adding new paragraph (2) to read—

"(2)(A) An alien who is coming to the United States to receive graduate medical education or training who seeks to acquire nonimmigrant status as a nonimmigrant under section 1101(a)(15)(J) to receive graduate medical education or training may not change status under section 1101(a)(15)(H)(ii)(b) until the alien graduates from the medical school or training program and meets the requirements of paragraph (3)(B).

"(B) Any occupation that an alien described in paragraph (2)(A) may be employed in while receiving graduate medical education or training shall not be deemed a ‘specialty occupation’ within the meaning of section 1184(i) for purposes of section 1101(a)(15)(J).

(e) Section 101(a)(15)(J) is amended by adding—

"(except an alien coming to the United States to receive graduate medical education or training) after ‘abandoning’—

(f) Section 214(h) of the Immigration and Nationality Act (8 U.S.C. 1154(h)) is amended by inserting—

"(E) (J) who is coming to the United States to receive graduate medical education or training, after ‘subparagraph’ where that term first appears.

(g) Medical residents ineligible for H-1B nonimmigrant status under section 214(l) of the Immigration and Nationality Act (8 U.S.C. 1154(i)) is amended to read—

"(1) Except as provided in paragraph (3), for purposes of paragraphs (b)(1)(b), (b)(3), section 101(a)(15)(E)(ii), and paragraph (2), the term ‘specialty occupation’—

"(A) means an occupation that requires—

"(i) theoretical and practical application of a body of highly specialized knowledge, and

"(ii) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States; and

"(B) shall not include graduate medical education or training.

(h) Section 214(i) of the Immigration and Nationality Act (8 U.S.C. 1154(i)) is amended to read—

(1) in paragraph (1)(C)(i) by striking ‘Attorney General’ and inserting ‘Secretary of Homeland Security’;

(2) in paragraph (1)(C) by striking subclause (i) and inserting the following:

"(i) the alien has accepted employment with an organization or facility that health care organization and agrees to continue to work for a total of not less than 3 years; and

(ii) the alien begins employment within 90 days of—

"(I) receiving such waiver; or

"(II) receiving nonimmigrant status or employment authorization pursuant to an application described in paragraph (2)(A) (if such application is filed with 90 days of eligibility of completing graduate medical education or training under a program approved pursuant to section 212(i)) whichever is latest.

(3) by striking at the end—

"(c) the following:

(4) in paragraph (2), by amending subparagraph (A) to read—

"(d) Section 214(l) of the Immigration and Nationality Act (8 U.S.C. 1151(l)) is amended to read as follows:

"(1) For each fiscal year until visas needed for petitions described in section 501(1)(c) of this Act first become only, plus any immigrant visas not required for the class specified in (d) of which:

(i) at least 10,000 will be for exceptional aliens in nonimmigrant status under section 101(a)(15)(V); and

(ii) no more than 90,000 will be for aliens who were the beneficiaries of an application that was pending or approved at the time of the effective date of this section, per Section 502(d) of the (Insert Title of Act).

(B) In general.—The worldwide level of merit-based, special, and employment creation immigrants under this subsection for a fiscal year is—

"(A) for the first five fiscal years shall be equal to the number of immigrant visas made available to aliens seeking immigrant visas under section 203(b) of this Act for fiscal year 2005, plus any immigrant visas not required for the class specified in (c), of which:

(i) at least 10,000 will be for exceptional aliens in nonimmigrant status under section 101(a)(15)(V); and

(ii) no more than 90,000 will be for aliens who were the beneficiaries of an application that was pending or approved at the time of the effective date of this section, per Section 502(d) of the (Insert Title of Act).

(C) (i) 380,000, for each fiscal year starting in the first fiscal year in which aliens described in section 101(a)(15)(Z) of this Act become eligible for an immigrant visa, plus any immigrant visas not required for the class specified in (c), of which:

(ii) the temporary supplemental allocation of additional visas described in paragraph (2) for nonimmigrants described in section 101(a)(15)(Z) of this Act.
this Act are eligible for an immigrant visa, the
number calculated pursuant to section 505(3)(C).

“(B) in the sixth fiscal year in which aliens
described in section 101(a)(15)(Z) of this Act
are eligible for an immigrant visa, the number
calculated pursuant to section 505(3)(C)
of this Act shall be made available in a number not to
equal the number of Z nonimmigrants who became
aliens for permanent residence based on the
merit-based evaluation system in the prior fiscal
year until no further Z nonimmigrants ad-
just status;

“(C) starting in the seventh fiscal year in
which aliens described in section 101(a)(15)(Z)
of this Act are eligible for an immigrant visa,
the number equal to the number of Z nonimmigrants
who became aliens admitted for permanent residence based on the merit-
based evaluation system in the prior fiscal
year until no further Z nonimmigrants ad-
just status;

“(D) The Standing Commission on Immi-
gration and Labor Markets established pur-
suant to Section 407 of the Immigration and
National Interest Act (8 U.S.C. 1154(a)(1)) is amended by

striking paragraphs (1), (2), and (3) and
inserting the following:

“(1) MEROIT-BASED IMMIGRANTS.—Visas shall first
be made available in a number not to exceed 55 percent of such worldwide level,
plus any visas not required for the classes in
paragraphs (2) and (3), to qualified immi-
giants selected through a merit-based evalua-
tion system.

“(A) The merit-based evaluation system shall initially consist of the following cri-
teria and weights:

<table>
<thead>
<tr>
<th>Category (terminal degree)</th>
<th>Description</th>
<th>Max pts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bachelor's degree</td>
<td>500</td>
<td>47</td>
</tr>
<tr>
<td>Associate's degree</td>
<td>450</td>
<td></td>
</tr>
<tr>
<td>High School diploma</td>
<td>300</td>
<td></td>
</tr>
</tbody>
</table>

Bilingual or foreign language proficiency 0–5 pts

High School diploma 0–10 pts

Graduate degree 0–5 pts

Exempt fee 7.1 pts

(1) U.S. employer in Specialty Occupations (O*NET) – 20 pts

U.S. employer in High Demand Occupations (RILS) largest 10 yr. job growth, top

16 pts

U.S. employer in STEM or health occupations, parent for at least 1

year – 8 pts

Extraordinary (or ordinary) A U.S. employer willing to pay 50% of LPR

application fee either 1) offers a job, or 2) tests for a cur-
rent employee 6 pts

Years in the U.S. firm 2 pts (max 10 pts)

Worker’s age 20

M.D., M.B.A. 25

Graduate degree, etc. 20

National inter-
critical in-
structure
Employer en-
dorsement

Experience

Age of worker

Education

“(B) The Secretary of Homeland Security, after consultation with the Secretaries of Commerce and Labor, shall establish proce-
dures to adjudicate petitions filed pursuant to
the merit-based evaluation system. The Secretary may establish a time period in a fiscal year in which such petitions must be submitted.

“(C) The Standing Commission on Immi-
gration and Labor Markets established pur-
suant to Section 407 of the [Insert title of Act] shall submit recommendations to Con-
grress concerning the establishment of proce-
dures for modifying the selection criteria and
relative weights accorded such criteria in
order to ensure that the merit-based evalua-
tion system corresponds to the current
needs of the United States economy and the
national interest.

“(D) No modifications to the selection cri-
teria and relative weights accorded such cri-
tera that are established by the [Insert title of Act] should criteria that are established by the

earlier than the sixth fiscal year in which aliens described in section 101(a)(15)(Z)
of this Act are eligible for an immigrant visa.

“(E) The application of the selection crit-
tera in any particular fiscal year shall be

subject to any provisions of law, including but not limited to sections 204(c).

“(F) Any petition filed pursuant to this
paragraph that has not been found by the
Secretary to have qualified in the merit-
based evaluation system shall be deemed de-
nied on the first day of the third fiscal year
following the date of such application. Such
denial shall not preclude the petitioner from
filing successive petitions pursuant to this
paragraph. Notwithstanding this paragraph,
the Secretary may deny petition when denial
is appropriate under other provisions of law,
including but not limited to sections 204(o).

(2) redesignating paragraph (4) as para-
graph (2), by striking “7.1 percent” and in-
serting “7.1 percent”;

(3) redesigning paragraph (5) as para-
graph (3), by striking “7.1 percent” and in-
serting “7.1 percent”;

(4) redesigning paragraph (6) as para-
graph (4).

(c) PROCEDURE FOR GRANTING IMMIGRANT
STATUS.—Section 204(a)(1) of the Immigra-
tion and Nationality Act (8 U.S.C. 1154(a)(1)) is amended by striking subparagraphs (E) and (F).

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Subject to paragraph (2),
the amendments made by this section shall
take effect on the first day of the fiscal year
subsequent to the fiscal year of enactment.

(2) PENDING AND APPROVED PETITIONS AND
APPLICATIONS.—Petitions for an employ-
ment-based visa filed for classification under
section 203(b)(1), (2), or (3) of the Immigra-
tion and Nationality Act (as such provisions
existed prior to the enactment of this sec-
tion) that were filed prior to the date of
the introduction of the [Insert title of Act] and
were pending or approved at the time of
the effective date of this section, shall be treated as if such provision remained effective and an
approved petition may serve as the basis for
issuance of an immigrant visa.

(3) Aliens with applications for labor certification pur-
suant to section 212(a)(5)(A) of the Immigra-
tion and Nationality Act shall preserve the
merit-based visa priority date accorded by the

effective date of filing of such labor certification
application.

(e) CONFORMING AMENDMENTS.—

(1) Section 201 of the Immigration and
Nationality Act (8 U.S.C. 1151) is amended by

striking “employment-based” each place it
appear and inserting “merit-based”.

(2) Section 202 of the Immigration and
Nationality Act (8 U.S.C. 1152) is amended by

striking “employment-based” each place it
appear and inserting “merit-based”.

(3) Section 203(b) of the Immigration and
Nationality Act (8 U.S.C. 1153(b)) is amended by

striking the heading and first sentence and
inserting the following:

“(B) Preference allocation for merit-based,
special and employment creation immi-
grians. Aliens subject to the worldwide level
specified in section 203(d) for merit-based,
special and employment creation immi-
grians shall be allotted visas as follows:

(B) striking “employment based” and
inserting “merit-based” and striking “each of
paragraphs” through inserting
paragraphs (1) through inserting
paragraph (1)” in subparagraph (6)(B)(i); and

“Applications for employment visas shall be
determined based on the merit-based evalua-
tion system.”
by the following:

(a) Cap exempt categories—Paraphr.

(b) By striking paragraph (4) and inserting the following:

(c) By striking subparagraph (D).

(d) By striking paragraph (5).

(e) By striking paragraph (6).

(f) By striking paragraph (7).

(g) By striking paragraph (8).

(h) By striking paragraph (9).

(i) By striking paragraph (10).

(j) By striking paragraph (11).

(k) By striking paragraph (12).

(l) By striking paragraph (13).

(m) By striking paragraph (14).

(n) By striking paragraph (15).

(o) By striking paragraph (16).

(p) By striking paragraph (17).

(q) By striking paragraph (18).

(r) By striking paragraph (19).

(s) By striking paragraph (20).

(t) By striking paragraph (21).

(u) By striking paragraph (22).

(v) By striking paragraph (23).

(w) By striking paragraph (24).

(x) By striking paragraph (25).

(y) By striking paragraph (26).

(z) By striking paragraph (27).

(aa) By striking paragraph (28).

(bb) By striking paragraph (29).

(cc) By striking paragraph (30).

(dd) By striking paragraph (31).

(ee) By striking paragraph (32).

(ff) By striking paragraph (33).

(gg) By striking paragraph (34).

(hh) By striking paragraph (35).

(ii) By striking paragraph (36).

(jj) By striking paragraph (37).

(kk) By striking paragraph (38).

(ll) By striking paragraph (39).

(ww) By striking paragraph (40).

(xx) By striking paragraph (41).

(yy) By striking paragraph (42).

(zz) By striking paragraph (43).

[... -- end of text --]
(3) Record survey of Z nonimmigrants intending to adjust status.—No later than the conclusion of the thirteenth fiscal year after the effective date of section 215B of the Immigration and Nationality Act, the Secretary will determine the total number of qualified applicants not described in paragraph (2) who have followed the procedures set forth in section 215B. The number calculated pursuant to this paragraph shall be the lesser of:

(A) the number qualified applicants, as determined by the Secretary pursuant to this paragraph; and

(B) the number calculated pursuant to paragraph (2).

SEC. 504. CREATION OF PROCESS FOR IMMIGRATION OF FAMILY MEMBERS IN HARDSHIP CASES.

(a) In General.—The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by adding a new subsection 203A reading:

"SEC. 203A. IMMIGRANT VISAS FOR HARDSHIP CASES.

"(a) In General.—Immigrant visas under this section may not exceed 5,000 per fiscal year.

"(b) Determination of Eligibility.—The Secretary of Homeland Security may grant an immigrant visa to an applicant who satisfies the following qualifications:

"(1) Family Relationship.—Visas under this section will be given to aliens who are:

"(A) the unmarried sons or daughters of citizens of the United States;

"(B) the unmarried sons or the unmarried daughters of aliens lawfully admitted for permanent residence who are citizens of the United States;

"(C) the married sons or married daughters of citizens of the United States; or

"(D) the brothers or sisters of citizens of the United States who are not more than 21 years of age.

"(2) Necessary Hardship.—The petitioner must demonstrate to the satisfaction of the Secretary of Homeland Security that the lack of an immigrant visa under this clause would result in extreme hardship to the petitioner or beneficiary that cannot be relieved by temporary visits as a non-immigrant.

"(3) Ineligibility to immigrate through other provisions of this Act. The number calculated pursuant to this section (1) must be ineligible to immigrate or adjust status through other means, including but not limited to obtaining an immigrant visa filed for classification under section 201(b)(2)(A) or section 202 (a) or (b) of this Act, and obtaining cancellation of removal under section 240A(b) of this Act determination under section 240A(b) that an alien is eligible to immigrate through other means does not foreclose or restrict any later determination on the question of eligibility by the Secretary of Homeland Security or the Attorney General.

"(c) Processing of Applications.—

"(1) An alien selected for an immigrant visa under this section shall remain eligible to receive such visa only if the alien files an application for an immigrant visa or an application for adjustment of status within the fiscal year in which the visa becomes available, or at such reasonable time as the Secretary may specify after the end of the fiscal year in which the application is approved in the last quarter of the fiscal year.

"(2) All petitions for an immigrant visa under this section shall be automatically terminated if not granted within the fiscal year of filing.

"(3) The Secretary may reserve up to 2,500 of the immigrant visas for approval in the period between March 31 and September 30 of fiscal year.

"(d) Decisions whether an alien qualifies for an immigrant visa under this section are in the unreviewable discretion of the Secretary.

SEC. 505. ELIMINATION OF DIVERSITY VISA PROGRAM.

(a) Section 201 of the Immigration and Nationality Act (8 U.S.C. 1151) is amended—

"(1) in subsection (a)—

"(A) by inserting ‘‘and’’ at the end of paragraph (1);

"(B) by striking ‘‘; and’’ at the end of paragraph (2) and inserting a period; and

"(C) in subsection (d), by striking ‘‘(a), (b), or (c)’’ and inserting ‘‘(a) or (b)’’;

"(2) in subsection (d), by striking subsection (e); and

"(3) in subsection (e), by striking paragraph (2) and redesignating paragraph (3) as paragraph (2).

(b) Section 203 of the Immigration and Nationality Act (8 U.S.C. 1153) is amended—

"(1) by striking subsection (a)(1);

"(2) by redesigning subparagraphs (J), (K), and (L) of section 205(2) as subparagraphs (J), (L), and (K), respectively; and

"(3) in subsection (a), by striking subsection (b), (c), and inserting ‘‘(a) or (b)’’.

(c) Section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) is amended—

"(1) by striking subsection (a)(1);

"(2) by redesigning subparagraphs (J), (K), and (L) of section 205(2) as subparagraphs (J), (L), and (K), respectively; and

"(3) in subsection (a), by striking subsection (b), (c), and inserting ‘‘(a) or (b)’’.

(d) Repeal of Temporary Reduction in Visas. Section 203(c) of the Nicaraguan Adjustment and Central American Relief Act, as amended (Public Law 105-100; 11 U.S.C. 1133), is repealed.

(e) Effective Date.—

"(1) The amendments made by this section shall take effect on October 1, 2008.

"(2) No alien may receive lawful permanent resident status based on the diversity visa program on or after the effective date of this section.

(f) Conforming Amendments.—Section 203 of the Immigration and Nationality Act (8 U.S.C. 1153) is amended by redesigning paragraphs (d), (e), (f), (g), and (h) as paragraphs (c), (d), (e), and (g), respectively.

SEC. 506. FAMILY VISITOR VISAS.

(a) Section 101(a)(15)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(B)) is amended to read as follows:

"(B) an alien other than one coming for the purpose of being employed in his capacity as an expert in the sciences or an alien who is a national of a foreign country who has a family member who is a citizen of the United States who is not a member of the alien’s immediate family who is a citizen of the United States who is not a member of the alien’s immediate family.

(b) Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding at the end the following new subsection:

"(8) Parent Visitor Visas

"(i) In General.—The parent of United States citizen who is at least 21 years of age, or the spouse or child of an alien in nonimmigrant status under 21(a)(15)(B), may be granted nonimmigrant visa under section 101(a)(15)(B) as temporary visitor for pleasure.

"(ii) Requirements.—An alien seeking nonimmigrant visa under this subsection must demonstrate through such documentation as the Secretary may by regulations prescribe, that—

"(1) the alien is United States citizen son or daughter who is at least 21 years of age or the alien’s spouse or parent in nonimmigrant status under 21(a)(15)(Y)(i), is sponsoring the alien’s visit to the United States;

"(2) the sponsoring United States citizen, or spouse or parent in nonimmigrant status under 21(a)(15)(Y)(i), has, according to such procedures as the Secretary may by regulations prescribe, posted on behalf of the alien a bond in the amount of $1,000, which shall be forfeited if the alien overstays the authorized period or otherwise violates the terms and conditions of his or her nonimmigrant status; and

"(3) the alien, the sponsoring United States citizen son or daughter, or the spouse or parent in nonimmigrant status under 21(a)(15)(Y)(i), possesses the ability and financial means to return the alien to his or her country of residence.

"(2) Terms and Conditions.—An alien admitted as a visitor for pleasure under the provisions of this paragraph—

"(A) may not stay in the United States for an aggregate period in excess of 30 days with in any calendar year;

"(B) must, according to such procedures as the Secretary may by regulations prescribe, register with the Secretary upon departure from the United States; and

"(C) may not be employed by the Secretary or be employed.

"(3) Certification.—(A) Report.—No later than January 1 of each year, the Secretary of Homeland Security shall submit a written report to Congress estimating the percentage of aliens overstaying their period of authorized admission exceeds 7 percent, the percentage of aliens overstaying their period of authorized admission.

"(B) Certification.—The Secretary shall determine that, no more visas under this section may be issued to those countries for which nations whose nationals have a disproportionately high rate of aliens overstaying their period of authorized admission under this subsection.

"(C) Termination of Program.—Notwithstanding paragraph (B), if the Secretary determines in any fiscal year that the percentage of aliens overstaying their period of
authorized admission under this subsection exceeds 7% and the percentage is not significantly affected by countries whose nationals have a disproportionately high rate of aliens overstaying their period of authorized admission, the Secretary may, in his discretion, determine that no more visas may be issued under this subsection as of the date of the second report described in subparagraph (A) finding an overstay rate in excess of 7%.

‘‘(D) EFFECT ON EXISTING VISAS.—In the event the determination is made in accordance with subparagraph (A) finding an overstay rate in excess of 7%, no more visas shall be issued under subparagraphs (B) or (C); all visas previously issued under this subsection and still valid on the date such determination is made by the Secretary shall expire on the visa’s date of expiration or 12 months after the date of the determination, whichever is sooner.

‘‘(5) PERMANENT BARS FOR OVERSTAYS.—

‘‘(A) IN GENERAL.—Any alien admitted as visitor for pleasure under the terms and conditions of this subsection who remains in the United States beyond his or her authorized period of admission is permanently barred from resettlement benefits under the immigration laws, except:

‘‘(i) asylum under section 208(a);

‘‘(ii) withholding of removal under section 241(b)(4);

‘‘(iii) protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done June 30, 1980, 26 U.S.T. 1003 (‘‘TORTURE’’), as amended by the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done December 10, 1984, 26 U.S.T. 4170 (‘‘CONVENTION’’); and

‘‘(ii) the alien has not otherwise violated his or her nonimmigrant status.

‘‘(6) BAR ON SPONSOR OF OVERSTAY.—The United States citizen or Y-1 nonimmigrant sponsor of an alien—

‘‘(A) admitted as visitor for pleasure under the terms and conditions of this subsection, and

‘‘(B) who remains in the United States beyond his or her authorized period of admission, and is subsequently found to be permanently barred from resettlement benefits under the immigration laws, except:

‘‘(i) the alien’s period of overstaying was due to extraordinary circumstances beyond the control of the applicant, and the Secretary finds the period commensurate with the circumstances; and

‘‘(ii) the alien has not otherwise violated his or her nonimmigrant status.

‘‘(7) Rule of Construction.—Nothing in this subsection shall be construed, except as determined in this subsection, to make inaplicable the requirements for admissibility and eligibility, as well as the terms and conditions of a Y-1 nonimmigrant under section 101(a)(15)(B).’’

SEC. 507. PREVENTION OF VISA FRAUD.

(a) Section 204 of the Immigration and Nationality Act (8 U.S.C. 1153) is amended by adding at the end the following:

‘‘(h) FRAUD PREVENTION.—The Secretary of Homeland Security may audit and evaluate the information furnished as part of the applications filed under subsection (a) and refer evidence of fraud to appropriate law enforcement agencies based on the audit information.

(b) Sections 236(v)(2)(B) and (C) of the Immigration and Nationality Act (8 U.S.C. 1356(v)(2)(B), (C)), are amended to read as follows:

‘‘(B) SECRETARY OF HOMELAND SECURITY.—

One-third of the amounts deposited into the Fraud Prevention and Detection Account shall remain available to the Secretary of Homeland Security until expended for programs and activities to prevent and detect immigration benefit fraud, including but not limited to fraud with respect to petitions under paragraph (1) or (2)(A) of section 214(c) to grant an alien nonimmigrant status described in subparagraph (H)(i), (H)(ii), or (L) of section 101(a)(15).

‘‘(C) SECRETARY OF LABOR.—One third of the amounts deposited into the Fraud Prevention and Detection Account shall remain available to the Secretary of Labor until expended for programs and activities described in section 212(n), and for fraud detection and prevention activities not otherwise authorized under this subsection, to be conducted by the Secretary of Labor that focus on industries likely to employ nonimmigrants.

SEC. 508. INCREASING PER-COUNTRY LIMITS FOR FAMILY-BASED AND EMPLOYMENT-BASED IMMIGRANTS.

(a) Section 202(a) of the Immigration and Nationality Act (8 U.S.C. 1152(a) is amended by adding paragraph (2) to read as follows:

‘‘(2) COUNTRY LEVELS FOR FAMILY-SPOUSE AND EMPLOYMENT-BASED IMMI-

grantS.—Subject to paragraphs (3), (4), (5), (6), and (7), the total number of immigrant visas made available to an alien country or a dependent area under subsections (a) and (b) of section 202 in any fiscal year may not exceed 10 percent (in the case of a single foreigner), 20 percent (in the case of the spouse or an alien child of a United States citizen or a dependent of a United States citizen or Y-1 nonimmigrant) of the per country level in paragraph (2) of section 202, or 10 percent (in the case of a husband, wife, or parent of an alien) of the per country level in paragraph (2) of section 202, or 10 percent (in the case of an alien brother, sister, child, or son or daughter of a United States citizen or Y-1 nonimmigrant) of the per country levels in paragraph (2) of section 202, whichever is the lesser amount.

‘‘(3) RULES FOR FAVORABLE TREATMENT OF IMMIGRANTS—In the event that the per country level in paragraph (2) of section 202(b)(1) is not met, the per country level will not apply for such visas.

‘‘(7) EXCEPTION FOR Z IMMIGRANTS.—(Paraph 2) shall not apply to aliens who are nonimmigrants described in section 101(a)(15)(Z) of this Act who are eligible to seek lawful permanent resident status based on a petition for classification under section 204(b)(1) of this Act.

TITLE VI—IMMIGRANTS IN THE UNITED STATES PREVIOUSLY IN UNLAWFUL STATUS

SEC. 601. (a) IN GENERAL.—Notwithstanding any other provision of law, including section 244(h) of the Immigration and Nationality Act (hereinafter ‘‘the Act’’) (8 U.S.C. 1254a(h)), the Secretary may permit an alien, after removal of such alien as described in this section, to return lawfully in the United States under the conditions set forth in this title.

(b) DEFINITION OF NONIMMIGRANTS.—Section 101(a)(15) of the Act (8 U.S.C. 1101(a)(15)) is amended by inserting at the end the following new subparagraph:

‘‘(2) subject to the following, to the following:

‘‘(i) The alien is inadmissible to the United States under section 212(a) of the Act (8 U.S.C. 1182(a)), except as provided in paragraph (2);

‘‘(ii) Nothing in this paragraph shall require the Secretary to consider removal proceedings against an alien;

‘‘(ii) Subject to the execution of an outstanding administrative final order of removal, deportation, or exclusion;

‘‘(iii) is described in or is subject to section 241(d)(5) of the Act;

‘‘(iv) has ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

‘‘(v) is an alien—

(i) for whom there are reasonable grounds for believing that the alien has committed a serious criminal offense as described in section 101(h) of the Act outside the United States before arriving in the United States;

‘‘(vi) for whom there are reasonable grounds for regarding the alien as a danger to the security of the United States;

‘‘(vii) has been convicted of—

(i) a felony;

(ii) an aggravated felony as defined at section 101(a)(43) of the Act;

(iii) more than three misdemeanors under Federal or State law;

(iv) a serious criminal offense as described in section 101(h) of the Act;

(2) has entered or attempted to enter the United States illegally on or after January 1, 2007; and

(V) with respect to an applicant for Z-2 or Z-3 nonimmigrant status, a Z-2 nonimmigrant, or a Z-3 nonimmigrant who is under 18 years of age, the alien is ineligible for nonimmigrant status if the principal Z-1 nonimmigrant parent or sponsor of Z-1 nonimmigrant status applicant is ineligible.

(1) The Secretary may in his discretion waive ineligibility under subparagraph (B) or (F) if the alien has been physically removed from the United States and if the alien demonstrates that his departure from
the United States would result in extreme hardship to the alien or the alien’s spouse, parent or child.

(2) **Grounds of Inadmissibility.**—
(A) **Determining an alien’s admissibility under paragraph (1)(A)—**
(i) paragraphs (6)(A)(i) (with respect to an alien present in the United States without being physically present on or before the date of application, but not with respect to an alien who has arrived in the United States on or after January 1, 2007) (6)(B), (6)(C)(i), (6)(C)(ii), (6)(C)(iii), (6)(D), (6)(E), (7), (9)(B), and (10)(B) of section 212(a) of the Act shall not apply, but only with respect to conduct occurring or arising before the date of application;
(B) the Secretary may not waive—
(i) subparagraph (A), (B), (C), (D)(ii), (E), (F), or (J) of section 212(a)(2) of the Act (relating to criminal activities);
(ii) section 212(a)(3) of the Act (relating to security and related grounds);
(iii) with respect to an application for Z nonimmigrant status, section 212(a)(6)(i) of the Act;
(iv) paragraph (6)(A)(i) of section 212(a) of the Act (with respect to any entries occurring on or after January 1, 2007);
(v) section 212(a)(9)(C)(i)(II);
(vi) subparagraph (A), (C), or (D) of section 212(a)(9)(C)(i)(II) (relating to polygamists, child abductors, and unlawful voters);
(vii) the Secretary may in his discretion waive any provision of section 212(a)(9)(C)(i)(II) or subparagraph (A) of paragraph 212(a)(9)(C)(i)(II) on behalf of an individual alien for humanitarian purposes, to ensure family unity, or if such waiver is otherwise in the public interest; and
(B) CONSTRUCTION.—Nothing in this paragraph shall be construed as affecting the application of any provision of this Act (relating to criminals);
(C) **State Impact Assistance Fee.**—In addition to any other amounts required to be paid under section 101(a)(15)(Z)(iii)(I), the Secretary may in his discretion waive the provisions of section 212(a) of the Act; and
(D) **Admissibility.**—The alien must not be inadmissible for Z nonimmigrant status.

(3) **Presence.**—
(A) **IN GENERAL.**—An alien making an initial application for Z-1 nonimmigrant status shall be required to pay a processing fee in an amount sufficient to cover administrative and other expenses associated with processing the extension application; but not more than $1,500 for a single Z nonimmigrant.
(B) **Penalties.**—
(I) **AN ALIEN MAKING AN INITIAL APPLICATION FOR Z-1 NONIMMIGRANT STATUS WILL BE REQUIRED TO PAY A PROCESSING FEE IN AN AMOUNT OF MORE THAN $1,500 FOR A SINGLE Z NONIMMIGRANT.**

(4) **Employment.**—
(A) **Applications for Z nonimmigrant status.**—An alien seeking Z nonimmigrant status shall be required to pay a processing fee in an amount sufficient to recover the full cost of adjudicating the application; but no more than $1,500 for a single Z nonimmigrant.

(5) **Penalties.**—
(A) **AN ALIEN APPLYING FOR EXTENSION OF HIS Z NONIMMIGRANT STATUS WILL BE REQUIRED TO PAY A PROCESSING FEE IN AN AMOUNT OF MORE THAN $1,500 FOR A SINGLE Z NONIMMIGRANT.**

(6) **FEES AND PENALTIES.**—
(A) **Processing Fees.**—An alien applying for Z nonimmigrant status shall be required to pay a processing fee in an amount sufficient to cover administrative and other expenses associated with processing the extension application; but not more than $1,500 for a single Z nonimmigrant.
(B) **Biometric Data.**—Each alien applying for Z nonimmigrant status must submit biometric data in accordance with procedures established by the Secretary of Homeland Security.

(7) **Content of Application Filed by Alien.**—
(A) **Application Form.**—The Secretary of Homeland Security shall create an application form that an alien shall be required to complete as a condition of obtaining Z nonimmigrant status.

(8) **Application Information.**—
(A) **IN GENERAL.**—The application form shall request such information as the Secretary deems necessary and appropriate, including but not limited to, information concerning the alien’s physical and mental health, the end of family or marital relationships, all arrests and dispositions; gang membership, renunciation of gang affiliation; immigration history; employment history; and child abduction.

(9) **Security and Law Enforcement Background Checks.**—
(A) **Submission of Fingerprints.**—The Secretary may not accord Z nonimmigrant status unless the alien submits fingerprints and other biometric data in accordance with procedures established by the Secretary.

(B) **Background Check.**—The Secretary shall utilize fingerprints and other biometric data provided by the alien to conduct appropriate background checks of such alien to determine identity, criminal history, or other law enforcement actions that would render the alien ineligible for classification under this section.

(C) **Treatment of Applicants.**—
(1) **IN GENERAL.**—An alien who files an application for Z nonimmigrant status shall, upon submission of any evidence required under paragraphs (f) and (g) and after the Secretary has conducted appropriate background checks, to include name fingerprint data and fingerprints, that have been obtained by the Secretary during the next business day produced information rendering the applicant ineligible—
(I) **be granted probationary benefits in the form of employment authorization pending final adjudication of the alien’s application;**

(II) **render the alien ineligible for classification under this section.**

(2) **Timing of Probationary Benefits.**—No probationary benefits shall be issued to an alien until the alien has completed appropriate background checks or the end of the next business day, whichever is sooner.

(3) **Construction.**—Nothing in this section shall be construed to override the Secretary’s authority to conduct any appropriate background and security checks subsequent to issuance of evidence of probationary benefits under paragraph (4).

(4) **Probationary Authorization Document.**—The Secretary shall provide each alien described in paragraph (1) with a counternotify-resistant document that reflects the benefits and status set forth in paragraph (1). The Secretary may by regulation establish procedures for the issuance of documents of probationary benefits and, except as provided herein, the conditions under which such documentary evidence expires, terminates, or is renewed. All such documentary evidence of probationary benefits shall expire no later than six months after the date on which the Secretary begins...
to approve applications for Z nonimmigrant status.

(5) Before Application Period.—If an alien is apprehended between the date of enactment and the date on which the period for initial registration closes under subsection (f)(2), and the alien can establish prima facie eligibility for Z nonimmigrant status, the Secretary may, with the assistance of the alien with a reasonable opportunity to file an application under this section after such regulations are promulgated.

(6) Exemptions.—The alien is exempt from the requirements of this section.

(7) Assistance.—The immigration judge shall then terminate or administratively close such proceedings and permit the alien a reasonable opportunity to apply for such classification.

(8) Adjudication of Application Filed by Alien.—

(a) In General.—The Secretary may approve the issuance of documentation of status, as described in subsection (i), to an applicant for a Z nonimmigrant visa who satisfies the requirements of this section.

(b) Evidence of Continuous Physical Presence, Education.—

(A) Presumptive Documents.—A Z nonimmigrant or an applicant for Z nonimmigrant status may presumptively establish such period of presence, employment, or study by submitting records to the Secretary that demonstrate such presence, employment, or study, including records that have been maintained by Social Security Administration, Internal Revenue Service, or any other Federal, State, or local government.

(B) Verification.—Each Federal agency, and each State or local government agency, as a condition of receipt of any funds under Section 296(k), shall within 90 days of enactment ensure that procedures are in place under which such agency shall—

(i) consistent with all otherwise applicable laws, including but not limited to laws governing privacy, provide documentation to an alien upon request to satisfy the documentation requirements of this paragraph; or

(ii) an otherwise applicable provision of law, including section 6103 of title 26, United States Code, provide verification to the Secretary of documentation offered by an alien as evidence of employment, including—

(A) bank records;

(B) business records;

(C) employer records;

(D) records of a labor union or day labor center;

(E) remittance records;

(F) sworn affidavits from nonrelatives who have direct knowledge of the alien’s work, that can be authenticated;

(i) the employer or trade union, to the extent necessary to verify and confirm the identity of any affiant or otherwise prevent the use of affidavits as is necessary to verify and confirm the identity of any affiant or otherwise prevent the use of affidavits as an attempt to gain an extraordinary or exceptional basis for the alien’s application for Z nonimmigrant status; and

(ii) a change of status or where such status expired or terminated.

(c) Evidence of Continuous Employment, Education.—

(A) Presumptive Documents.—A Z nonimmigrant or an applicant for Z nonimmigrant status may presumptively establish such period of authorized admission under subsection (k), serve as valid travel and entry document for the alien admitted to the United States on or before the time of application for the first extension of Z nonimmigrant status, or where such status expired or terminated.

(B) Verification.—Each Federal agency, and each State or local government agency, as a condition of receipt of any funds under Section 296(k), shall within 90 days of enactment ensure that procedures are in place under which such agency shall—

(i) consistent with all otherwise applicable laws, including but not limited to laws governing privacy, provide documentation to an alien upon request to satisfy the documentation requirements of this paragraph; or

(ii) an otherwise applicable provision of law, including section 6103 of title 26, United States Code, provide verification to the Secretary of documentation offered by an alien as evidence of employment, including—

(A) bank records;

(B) business records;

(C) employer records;

(D) records of a labor union or day labor center;

(E) remittance records;

(F) sworn affidavits from nonrelatives who have direct knowledge of the alien’s work, that can be authenticated;

(i) the employer or trade union, to the extent necessary to verify and confirm the identity of any affiant or otherwise prevent the use of affidavits as is necessary to verify and confirm the identity of any affiant or otherwise prevent the use of affidavits as an attempt to gain an extraordinary or exceptional basis for the alien’s application for Z nonimmigrant status; and

(ii) a change of status or where such status expired or terminated.

(d) Additional Documents.—The Secretary may—

(i) designate additional documents to evidence the required period of presence, employment, or study;

(ii) set such terms and conditions on the use of affidavits as is necessary to verify and confirm the identity of any affiant or otherwise prevent the use of affidavits as an attempt to gain an extraordinary or exceptional basis for the alien’s application for Z nonimmigrant status; and

(iii) administer such proceedings, and permit the alien a reasonable opportunity to apply for such classification.

(e) Adjudication of Application Filed by Alien.—

(a) In General.—The Secretary may approve the issuance of documentation of status, as described in subsection (i), to an applicant for a Z nonimmigrant visa who satisfies the requirements of this section.

(b) Evidence of Nonimmigrant Status.—

(A) Evidence of Presence of Z Nonimmigrant Status Shall Be Issued to Each Z Nonimmigrant.

(B) Evidence of Employment Requirements.

(C) Other Documents.—A Z nonimmigrant or an applicant for Z nonimmigrant status who can demonstrate such period of presence, employment, or study by submitting records to the Secretary that demonstrate such presence, employment, or study, including records that have been maintained by the Social Security Administration, the Internal Revenue Service, or any other Federal, State, or local government agency.

(d) Additional Documents.—The Secretary may—

(i) designate additional documents to evidence the required period of presence, employment, or study;

(ii) set such terms and conditions on the use of affidavits as is necessary to verify and confirm the identity of any affiant or otherwise prevent the use of affidavits as an attempt to gain an extraordinary or exceptional basis for the alien’s application for Z nonimmigrant status; and

(iii) administer such proceedings, and permit the alien a reasonable opportunity to apply for such classification.

(f) Adjudication of Application Filed by Alien.—

(a) In General.—The Secretary may approve the issuance of documentation of status, as described in subsection (i), to an applicant for a Z nonimmigrant visa who satisfies the requirements of this section.

(b) Evidence of Nonimmigrant Status.—

(A) Evidence of Presence of Z Nonimmigrant Status Shall Be Issued to Each Z Nonimmigrant.

(B) Features of Documentation.

(C) Other Documents.—A Z nonimmigrant or an applicant for Z nonimmigrant status who can demonstrate such period of presence, employment, or study by submitting records to the Secretary that demonstrate such presence, employment, or study, including records that have been maintained by the Social Security Administration, the Internal Revenue Service, or any other Federal, State, or local government agency.

(d) Additional Documents.—The Secretary may—

(i) designate additional documents to evidence the required period of presence, employment, or study;

(ii) set such terms and conditions on the use of affidavits as is necessary to verify and confirm the identity of any affiant or otherwise prevent the use of affidavits as an attempt to gain an extraordinary or exceptional basis for the alien’s application for Z nonimmigrant status; and

(iii) administer such proceedings, and permit the alien a reasonable opportunity to apply for such classification.

(g) Adjudication of Application Filed by Alien.—

(a) In General.—The Secretary may approve the issuance of documentation of status, as described in subsection (i), to an applicant for a Z nonimmigrant visa who satisfies the requirements of this section.

(b) Evidence of Nonimmigrant Status.—

(A) Evidence of Presence of Z Nonimmigrant Status Shall Be Issued to Each Z Nonimmigrant.

(B) Features of Documentation.

(C) Other Documents.—A Z nonimmigrant or an applicant for Z nonimmigrant status who can demonstrate such period of presence, employment, or study by submitting records to the Secretary that demonstrate such presence, employment, or study, including records that have been maintained by the Social Security Administration, the Internal Revenue Service, or any other Federal, State, or local government agency.

(d) Additional Documents.—The Secretary may—

(i) designate additional documents to evidence the required period of presence, employment, or study;

(ii) set such terms and conditions on the use of affidavits as is necessary to verify and confirm the identity of any affiant or otherwise prevent the use of affidavits as an attempt to gain an extraordinary or exceptional basis for the alien’s application for Z nonimmigrant status; and

(iii) administer such proceedings, and permit the alien a reasonable opportunity to apply for such classification.

(h) Adjudication of Application Filed by Alien.—

(a) In General.—The Secretary may approve the issuance of documentation of status, as described in subsection (i), to an applicant for a Z nonimmigrant visa who satisfies the requirements of this section.

(b) Evidence of Nonimmigrant Status.—

(A) Evidence of Presence of Z Nonimmigrant Status Shall Be Issued to Each Z Nonimmigrant.

(B) Features of Documentation.

(C) Other Documents.—A Z nonimmigrant or an applicant for Z nonimmigrant status who can demonstrate such period of presence, employment, or study by submitting records to the Secretary that demonstrate such presence, employment, or study, including records that have been maintained by the Social Security Administration, the Internal Revenue Service, or any other Federal, State, or local government agency.

(d) Additional Documents.—The Secretary may—

(i) designate additional documents to evidence the required period of presence, employment, or study;

(ii) set such terms and conditions on the use of affidavits as is necessary to verify and confirm the identity of any affiant or otherwise prevent the use of affidavits as an attempt to gain an extraordinary or exceptional basis for the alien’s application for Z nonimmigrant status; and

(iii) administer such proceedings, and permit the alien a reasonable opportunity to apply for such classification.
SEC. 602. EARNED ADJUSTMENT FOR Z STATUS ALIENS.

(a) LAWFUL PERMANENT RESIDENCE.

(1) Z-1 NONIMMIGRANTS.—

(A) PROHIBITION ON IMMIGRANT VISA.—A Z-1 nonimmigrant may not be issued an immigrant visa unless the alien is the beneficiary of a petition under section 214A of the Immigration and Nationality Act.

(B) ADJUSTMENT.—Notwithstanding section 245(a) and (c), the status of any Z-1 nonimmigrant may be adjusted to that of an alien lawfully admitted for permanent residence.

(C) REQUIREMENTS.—A Z-1 nonimmigrant may adjust to permanent resident status if the alien

(i) holds a Z-1 nonimmigrant status for at least three years;

(ii) has been physically present in the United States at least 600 days during each of such three years;

(iii) is not automatically inadmissible under section 212(a)(3) on the basis of fraud or willful misrepresentation; and

(iv) is the beneficiary of a petition approved under section 214A of the Immigration and Nationality Act.

(2) Z-2 NONIMMIGRANTS.—A Z-2 nonimmigrant may adjust to permanent resident status if the alien

(i) holds a Z-2 nonimmigrant status for at least three years;

(ii) has been physically present in the United States at least 600 days during each of such three years;

(iii) is not automatically inadmissible under section 212(a)(3) on the basis of fraud or willful misrepresentation; and

(iv) is the beneficiary of a petition approved under section 214A of the Immigration and Nationality Act.

(b) CONGRESSIONAL RECORD

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country of origin may as a matter of discretion, or shall at the direction of the Secretary of State, accept an application for adjustment of status from such an alien.

(b) Restrictions.—The alien must be the beneficiary of an approved petition under section 204 of the Act or have an approved petition pending that is filed pursuant to the points system under section 203(b)(1)(A) of the Act; and

(1) AGRave Violators.—The alien must not be inadmissible under section 212(a), except for those grounds previously waived under subsection (d)(2); and

(2) FEES AND PENALTIES.—In addition to the fees and penalties applicable to the Secretary of Homeland Security and Secretary of State in connection with the filing of an immigrant petition and application for adjustment of status, a head of household must pay a $4,000 penalty at the time of submission of any immigrant petition on his behalf, regardless of whether the alien submits such petition on his own behalf or the alien is the beneficiary of an immigrant petition filed by another party; and

(D) adjustments under section 203(b)(1)(A)(ii) shall not apply to an alien who, on the date on which the application for adjustment of status is filed under this section, is exempted from removal proceedings, and application for adjustment of status is filed under subsection (m)(1)(B) of this title.

(E) FAILURE TO ESTABLISH LAWFUL ADMISSIBILITY TO THE UNITED STATES.—Unless exempted under section 212(d)(1), an alien who fails to depart and reenter the United States in accordance with paragraph (1) may not become a lawful permanent resident under this section.

(D) Z-2 AND Z-3 NONIMMIGRANTS.—

(A) RESTRICTION ON VISA ISSUANCE OR ADJUSTMENT OF STATUS TO Z-2 OR Z-3 NONIMMIGRANTS.—An alien who meets the alien eligibility criteria for Z-2 or Z-3 nonimmigrant status and applies for or adjustment of status to that of an alien lawfully admitted for permanent residence of a Z-2 nonimmigrant or a Z-3 nonimmigrant status to that of an alien lawfully admitted for permanent residence of the alien’s principal Z-1 nonimmigrant shall not be approved before the adjustment of status of the alien’s principal Z-1 nonimmigrant.

(B) ADJUSTMENT OF STATUS.—

(i) ADJUSTMENT.—Notwithstanding sections 245(a) and (c), the status of any Z-2 or Z-3 nonimmigrant may be adjusted by the Secretary of Homeland Security to that of an alien lawfully admitted for permanent residence.

(ii) REQUIREMENTS.—A Z-2 or Z-3 nonimmigrant, upon adjustment to that of an alien lawfully admitted for permanent residence, and in addition to all other requirements imposed by law, the following requirements shall apply.

(I) STATUS.—The alien must be valid Z-2 or Z-3 nonimmigrant status.

(II) APPROVED PETITION.—The alien must be the beneficiary of an approved petition under section 204 of the Act or have an approved petition that was filed pursuant to the points system under section 203(b)(1)(A) of the Act.

(III) ADMISSIBILITY.—The alien must not be inadmissible under section 212(a), except for those grounds previously waived under subsection (d)(2); and

(IV) FEE.—The alien must pay the fees payable to the Secretary of Homeland Security and Secretary of State in connection with the filing of an immigrant petition and application for an immigrant visa; and

(2) ADJUSTMENT.—During inadmissibility.—The grounds of inadmissibility not applicable under section (d)(2) shall also be considered inadmissible for purposes of admission or adjustment pursuant to this subsection.

(4) APPLICATION OF OTHER LAW.—In processing applications under this subsection on behalf of any alien who has been subjected to extreme cruelty, the Secretary shall apply—

(A) the provisions under section 204(a)(1)(J) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(J)); and

(B) the protections, prohibitions, and penalties authorized by section 245(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1357).

(B) BACK OF THE LINE.—An alien may not adjust status to that of a lawful permanent resident under this section until 30 days after an immigrant visa becomes available for approved petitions filed under sections 201, 202, and 203 of the Act that were filed before May 1, 2005.

(C) INELIGIBILITY FOR PUBLIC BENEFITS.—For purposes of section 215(g) of the Immigration and Nationality Act (8 U.S.C. 1154(g)), an alien whose status has been adjusted under this section shall not be eligible for any Federal means-tested public benefit unless the alien meets the alien eligibility criteria for such benefit under title IV of such Act (8 U.S.C. 1601 et seq.).

(7) MEDICAL EXAMINATION.—An applicant for earned adjustment shall undergo an appropriate medical examination (including a determination of immunization status) that conforms to generally accepted professional standards of medical practice.

(8) PAYMENT OF INCOME TAXES.—(A) IN GENERAL.—An alien whose status is filed under this section, is exempted from removal proceedings, and application for adjustment of status is filed under this section, is exempted from Federal income taxes accrued during the period of status by establishing that—

(i) no such tax liability exists;

(ii) all outstanding liabilities have been paid; or

(iii) the applicant has entered into, and is in compliance with, an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

(B) IRS COOPERATION.—The Secretary of the Treasury shall establish rules and procedures under which the Commissioner of Internal Revenue shall provide documentation to—

(i) the applicant, upon request, to establish the payment of all taxes required under this subsection;

(ii) the Secretary, upon request, regarding the payment of Federal taxes by an alien applying for benefit under this section.

(9) DEPOSIT OF PENALTIES.—Penalties collected under this paragraph shall be deposited into the Immigration Examination Fee Account and shall remain available as provided under subchapter A of chapter 6 of part 26 of such Act (42 U.S.C. 1356).

(10) DEPOSIT OF PENALTIES.—Penalties collected under this paragraph shall be deposited into the Temporary Worker Program Account and shall remain available as provided under section 286(w) of the Immigration and Nationality Act (8 U.S.C. 1356).

SEC. 603. ADMINISTRATIVE REVIEW, REMOVAL PROCEEDINGS, AND JUDICIAL REVIEW.

ACTIONS ON THIS TITLE.—

(1) EXCLUSIVE REVIEW.—Administrative review of a determination respecting nonimmigrant status under this title shall be conducted solely in accordance with this subsection.

(2) ADMINISTRATIVE APPEAL REVIEW.—As excepted as provided in subparagraph (b)(2), an alien whose status under this title has been denied, terminated, or revoked may file not more than one appeal of the denial, termination, or rescission with the Secretary not more than 30 calendar days after the date of the decision or mailing thereof, whichever occurs later in time. The Secretary shall establish an appellate authority to provide for a single level of administrative appellate review of a denial, termination, or rescission of status under (this Act).

(D) SIGNATURE NOT REQUIRED.—Such administrative appellate review shall be based solely upon the administrative record established and maintained in the course of the appeal. The Secretary may decide whether to consider any such record at the time of the determination.

(4) LIMITATION ON MOTIONS TO REOPEN AND RECONSIDER.—During the administrative appellate review process the alien may file not more than one motion to reopen or to reconsider. The Secretary’s decision whether to consider any such motion is committed to the Secretary’s discretion.

(b) REMOVAL OF ALIENS WHO HAVE BEEN DENIED STATUS UNDER THIS TITLE.—

(1) SELF-INITIATED REMOVAL.—Any alien who receives a denial under subsection (a) may request, not later than 30 calendar days after the date of the denial or the mailing thereof, whichever occurs later in time, that the Secretary place the alien in removal proceedings. The Secretary shall place the alien in removal proceedings to which the alien otherwise would be subject, unless the alien is subject to an administratively final order of removal, provided that no court shall have jurisdiction to review the timing of the Secretary’s decision to do so.

If the alien is subject to an administratively final order of removal, the alien may seek review of any denial under this section pursuant to subsection 242(h) as though the order of removal had been entered on the date of the denial, provided that the court shall not review the order of removal except as otherwise provided by law.

(2) ALIENS WHO ARE DETERMINED TO BE INELIGIBLE DUE TO CRIMINAL CONVICTIONS.—

(B) OTHER CRIMINALS.—Notwithstanding any other provision of this Act, an alien whose application for status under this title has been denied or whose status has been terminated or revoked by the Secretary under subsection (c) because the alien has been convicted of a crime that, where convicted, would otherwise be subject to deportation under the Immigration Act of 1996 (8 U.S.C. 1227), a denial shall be placed forthwith in removal proceedings under section 236 of the INA.

(III) FINAL DENIAL, TERMINATION, OR RESCISSION.—The Secretary’s denial, termination, or rescission of the status of any alien described in clauses (i) and (ii) of this subparagraph shall be final for purposes of paragraph (2) of subsection 242(h)(3) of the INA and shall repel the exhaustion of all procedures for purposes of subsections 601(h) (relating to termination of proceedings) of the INA (relating to termination of proceedings) of the INA, notwithstanding paragraphs (a)(2) of this section.

(C) JUDICIAL REVIEW.—Section 242 of the Immigration and Nationality Act is amended by adding at the end the following subsection (b):
(b) Judicial review of eligibility determinations relating to status under Title VI of [this Act].

(1) Exclusive review. —Notwithstanding any other provision of law (statutory or non-statutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1361 of such title, and except as provided in Regulations of the Secretary, the court shall have jurisdiction to review a determination respecting an application for status under title VI of [this Act], including, without limitation, denial, termination, or rescission of such status.

(2) No review for late filings. —An alien may not obtain an application process under title VI of [this Act] beyond the period for receipt of such applications established by subsection 601(a) thereof. The denial of any application filed beyond the expiration of the period established by such subsection shall not be subject to judicial review or remedy. (3) Review of a denial, termination, or rescission of status under Title VI of [this Act]. —A denial, termination, or rescission of status under subsection 601 of [this Act] shall be reviewed only in conjunction with the judicial review of an order of removal under this section, provided that:

(A) the venue provision set forth in (b)(2) shall be void;

(B) the deadline for filing the petition for review in (b)(1) shall control;

(C) the alien has exhausted all administrative remedies available to the alien as of right, including but not limited to the timely filing of an administrative appeal pursuant to subsection 606(a) of [this Act];

(D) the Aliens in Adjudications Act shall decide a challenge to the denial of status only on the administrative record on which the Secretary’s denial, termination, or rescission was based;

(E) Limitation on review. —Notwithstanding any other provision of law (statutory or non-statutory), including section 2241 of title 28 of such title, and sections 1361 and 1361 of such title, no court reviewing denial, termination, or rescission of status under Title VI of [this Act] may review any discretionary decision or action of the Secretary regarding any application or rescission of or application for termination or rescission of such status; and

(4) Limitation on motions to reopen and reconsider. —The alien may file not more than one motion to reopen or to reconsider in proceedings brought under this section.

(4) Judicial review of the Secretary’s denial, termination, or rescission of status under title VI of [this Act] relating to any alien shall be based solely upon the administrative record before the Secretary when he enters final denial, termination, or rescission. The administrative findings of fact are conclusive unless a reasonable adjudicator would be compelled to conclude to the contrary. The legal determinations are conclusive unless manifestly contrary to law. (5) Challenges on validity of the system. —

(A) In general. —Any claim that title VI of [this Act], or any regulation, written policy, or written directive issued or written policy or practice initiated by or under the authority of the Secretary of Homeland Security to implement that title, violates the Constitution of the United States or is otherwise in violation of law is available exclusively in an action instituted in the United States District Court for the District of Columbia in accordance with the procedures prescribed in this paragraph. Nothing in this subparagraph shall preclude an applicant for status under title VI of [this Act] from challenging the validity of an action taken or decision made by the Secretary with respect to his status under that title that was contrary to law in proceeding under section 603 of [this Act] and paragraph (b)(2) of this section.

(B) Deadlines for bringing actions. —Any action under this paragraph:

(1) must, if it asserts a claim that title VI of [this Act] or any regulation, written policy, or written directive issued by or under the authority of the Secretary to implement that title violates the Constitution or is otherwise unlawful, be filed no later than one year after the date of the publication or promulgation of the challenged regulation, policy or directive or, in cases challenging the validity of the Act, within one year of enactment; and

(2) must, if it asserts a claim that an unwritten policy or practice initiated by or under the authority of the Secretary violates the Constitution or is otherwise unlawful, be filed no later than one year after the plaintiff knew or reasonably should have known of the unwritten policy or practice.

(C) Class actions. —Any claim described in subparagraph (A) that is brought as a class action shall be brought in conformity with Public Law 109-2 and the Federal Rules of Civil Procedure.

(D) Preclusive effect. —The final disposition of any action brought pursuant to subsection 606(a) of [this Act] shall be preclusive of any such claim asserted in a subsequent proceeding under this subsection or under subsection 603 of [this Act].

(E) Exhaustion and stay of proceedings. —No claim brought under this paragraph or this subparagraph to exhaust administrative remedies under subsection 603 of [this Act], but nothing shall prevent the court from staying proceedings initiated under this paragraph. The Secretary shall cause to the claimant. The court shall have no authority to stay proceedings initiated under any other section of the INA.

SEC. 604. Mandatory disclosure of information.

(a) In general. —Except as otherwise provided in this section, no Federal agency or bureau, nor any officer, employee or contractor of such agency or bureau, may—

(1) use the information furnished by an applicant or any other applicant, that is not available from the application, that is not available from any other source.

(b) Exceptions to confidentiality. —The court shall have no authority to stay proceedings initiated under any other section of the INA.

(1) Subsection (a) shall not apply with respect to—

(A) an alien whose application has been denied, terminated or revoked based on the Secretary’s finding that the alien is inadmissible or deportable;

(B) an alien whose application for Z nonimmigrant status has been denied, terminated, or revoked under section 601(d)(1)(F); and

(C) an alien whom the Secretary determines has ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, national origin, political affiliation, membership in particular social group, or political opinion.

(2) An alien who the Secretary determines has, in connection with his application for status under title VI of [this Act], or any other application for status under title VI of [this Act], been involved in fraud or willful misrepresentation, concealment of a material fact, or knowingly offered a false statement, representation or document.

(3) An alien who has knowingly and voluntarily waived in writing the confidentiality pursuant to subsection (a). (4) An order from a court of competent jurisdiction.

(5) Nothing in this subsection shall require the Secretary to cause to the application of any proceeding against an alien whose application has been denied, terminated, or revoked based on the Secretary’s finding that the alien is inadmissible or deportable. (c) Authorized disclosures. —Information furnished on or derived from an application described in subsection (a) may be disclosed to—

(1) a law enforcement agency, intelligence agency, national security agency, component of any department or agency of the Federal government, a court, or grand jury in connection with a criminal investigation or prosecution or a national security investigation or prosecution;

(2) an official or a person for purposes of affirmatively identifying a deceased individual, whether or not the death of such individual resulted from a crime.

(d) Auditing and evaluation of information. —The Secretary may audit and evaluate information furnished as part of any application for status under sections 601 and 602, or any application to extend such status under section 601(k) of such Act, or any application to adjust status to that of an alien lawfully admitted for permanent residence under section 602 of such Act, for purposes of identifying fraud or fraud schemes, and may use any evidence detected by means of audits and evaluations for purposes of investigating, prosecuting or referring for prosecution, denying, or terminating immigration benefits.

(e) Use of information in petitions and applications subsequent to adjustment of status. —The Secretary may adjust any alien to lawfully admitted for permanent residence pursuant to section 602 of such Act, then at any time thereafter the Secretary may use the information furnished by the alien in the application for adjustment of status or in the application for status pursuant to sections 601 or 602 to make a determination on any petition or application.

(f) Penalties. —Whoever knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than $500.

(g) Construction. —Nothing in this section shall be construed to limit the use, or release, for immigration enforcement purposes any information contained in files or records of the Secretary or Attorney General pertaining to an applications filed under sections 601 or 602, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

SEC. 605. Employer Protections.

(a) Copies of employment records or other evidence of employment provided by an alien or by an alien’s employer in support of an application for status under title VI of [this Act] shall not be used in prosecution or investigation (civil or criminal) of that employer
under section 247(a) (8 U.S.C. 1324a) or the tax laws of the United States for the prior unlawful employment of that alien, regardless of the adjudication of such application or reconsideration of the denial of such alien’s prima facie eligibility determination.

(b) APPLICABILITY OF OTHER LAW.—Nothing in this section may be used to shield an employer from liability under section 3002 of the Immigration and Nationality Act (8 U.S.C. 1324b) or any other labor or employment law.

SEC. 606. ENUMERATION OF SOCIAL SECURITY NUMBER.

The Secretary of Homeland Security, in coordination with the Commissioner of the Social Security Administration, shall implement a system to allow for the prompt enumeration of a Social Security number after the Secretary of Homeland Security has granted an alien Z nonimmigrant status or any probationary benefits based upon application for such status.

SEC. 607. PRECISION OF SOCIAL SECURITY CREDITS FOR YEARS PRIOR TO ENUMERATION.

(a) INSURED STATUS.—Section 214 of the Social Security Act (42 U.S.C. 414) is amended by—

(1) amending subsection (c) by deleting “For” and inserting “Except as provided in subsection (e), for”; and

(2) inserting at the end the following new subsections:

“(d)(1) Except as provided in paragraph (2) and subsection (e), for purposes of this section and for purposes of determining a qualifying quarter of coverage under 8 U.S.C. 1612(b)(2)(B), no quarter of coverage shall be credited if, with respect to any individual who is assigned a Social Security account number after 2007, such quarter of coverage is earned prior to the year in which such social security account number is assigned.”

“(2) shall not apply with respect to any quarter of coverage earned by an individual who satisfies the criterion specified in subsection (c)(2).”

“(e) Subsection (d) shall not apply with respect to a determination under subsection (a) or (b) for a deceased individual in the case of a child who is a United States citizen and who is insured for child’s insurance benefits under section 202(d) based on the wages and self-employment income of such deceased individual.”

(b) PROSECUTION.—Section 215(e) of such Act (42 U.S.C. 415(e)) is amended—

(1) by striking “and” at the end of paragraph (1);

(2) by striking the period at the end of paragraph (2) and inserting “; and”;

(3) by adding at the end the following new paragraph:

“(d) In computing the average indexed monthly earnings of an individual, there shall not be counted any wages or self-employment income for any year for which no quarter of coverage may be credited to such individual as a result of the application of section 214(d);”

(c) EFFECTIVE DATE.—The amendment made by subsection (a)(2) that provides for a new section 214(e) of the Social Security Act shall be effective with respect to applications for benefits filed after the sixth month following the month this Act is enacted.

SEC. 608. PAYMENT OF PENALTIES AND USE OF PENALTIES COLLECTED.

(a) The Secretary shall by regulation establish penalties allowing for the payment of 80 percent of the penalties described in Section 601(e)(6)(B) and Section 602(a)(1)(C)(v) through an installment payment plan.

(b) Any penalties received under this title with respect to an application for Z-1 nonimmigrant status shall be used in the following order of priority:

1. shall be credited as offsetting collections to appropriations provided pursuant to section 611 for the fiscal year in which this Act is enacted and the subsequent fiscal year;

2. shall be deposited and remain available as otherwise provided under this title.

SEC. 609. LIMITATIONS ON ELIGIBILITY.

(a) In General.—An alien is not ineligible for any immigration benefit under any provision of this section, or any amendment made by this title, solely on the basis that the alien violated section 1543, 1544, or 1546 of title 18, United States Code, or any amendments made by the [NAME OF THIS ACT], during the period beginning on the date of the enactment of such Act and ending on the date on which the alien applies for any benefits under this title, except with respect to any forgery, fraud or misrepresentation on the application for Z nonimmigrant status filed by the alien.

(b) Prosecution.—An alien who commits a violation of section 1543, 1544, or 1546 of such title or any amendments made by the [NAME OF THIS ACT], during the period beginning on the date of the enactment of such Act and ending on the date that the alien applies for eligibility for such benefit may be prosecuted for such violation in the same manner as if the alien was a U.S. citizen.

(c) SENSE OF CONGRESS.—It is the sense of Congress that the alien has abandoned such status if the alien is absent from the United States for more than 365 days, in the aggregate, during the period of conditional residence, and that the alien demonstrates that he or she has not abandoned the alien’s residence. An alien who is absent from the United States due to active service in the uniformed services has not abandoned the alien’s residence in the United States during the period of such service.

(d) PERIODS.—

(1) acquired a degree from an institution of higher education in the United States or has completed at least 2 years, in good standing, toward a degree at a U.S. institution, or has graduated from a U.S. institution; or

(2) the alien has been in the uniformed services for at least 2 years and, if discharged, has received an honorable discharge.

(e) The alien has provided a list of all the secondary educational institutions that the alien attended in the United States; and

(f) The alien is in compliance with the eligibility and admissibility criteria set forth in subsections (a) and (b).

(b) TREATMENT OF PERIOD FOR PURPOSES OF NATURALIZATION.—Soley for purposes of the Naturalization Act (8 U.S.C. 1401 et seq.), an alien who has been granted probationary benefits under section 601(h) or Z nonimmigrant status and has satisfied the requirements of paragraphs (a)(1)(A) through (F) shall begin counting the date that is eight years after the date of enactment of this Act on the date that is eight years after the date of enactment of this subtitle to implement this title and the amendments made by this title.

(c) EXEMPTION FROM NUMERICAL LIMITATIONS.—Nothing in this section may be construed to apply a numerical limitation on the number of aliens who may be eligible for adjustment of status.

SEC. 610. RULEMAKING.

(a) In General.—There are authorized to be appropriated to carry out this title and the amendments made by this title—

(1) INSTITUTION OF HIGHER EDUCATION. —There are authorized to be appropriated—

(A) for the payment of benefits under this title, a sum not to exceed $200 million; and

(B) for the payment of benefits under this title, an amount not to exceed $200 million.

(b) AVAILABILITY OF FUNDS.—Funds appropriated under this section shall remain available until expended.

(c) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary shall take appropriate action to implement the provisions of this title and the amendments made by this title.

SEC. 611. AUTHORIZATION OF APPROPRIATIONS.

(a) In General.—There are authorized to be appropriated such sums as may be necessary to carry out this title and the amendments made by this title.

(b) AVAILABILITY OF FUNDS.—Funds appropriated under this section shall remain available until expended.

(c) SENSE OF CONGRESS.—It is the sense of Congress that funds authorized to be appropriated under this section shall be used to carry out the duties of this Act.

SEC. 612. SHORT TITLE.

This subtitle may be cited as the “Development, Relief, and Education for Alien Minors Act of 2007” or the “DREAM Act of 2007.”

SEC. 613. DEFINITIONS.

In this subtitle:

(1) INSTITUTION OF HIGHER EDUCATION.—The term “institution of higher education” has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001).

(2) UNIFORMED SERVICES.—The term “uniformed services” means the meaning given that term in section 101(a) of title 10, United States Code.

SEC. 614. ADJUSTMENT OF STATUS OF CERTAIN LONG-TERM RESIDENTS WHO ENTERED THE UNITED STATES AS CHILDREN.

(a) SPECIAL RULE FOR CERTAIN LONG-TERM RESIDENTS WHO ENTERED THE UNITED STATES AS CHILDREN.—

(1) IN GENERAL.—Notwithstanding any other provision of law and except as otherwise provided in this subtitle, the Secretary shall by regulation, on or before the date that is three years after the date of enactment of this Act, adjust to the status of an alien lawfully admitted for permanent residence an alien who is an alien lawfully admitted for permanent residence an alien who is an alien who is granted a Z nonimmigrant status and has been issued a probationary Z or Z nonimmigrant visa if the alien demonstrates that—

(A) the alien entered the United States; and

(B) the alien has been in the United States as a child, as defined in paragraph (1) of section 101(a)(32) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(32)).

(b) PROSECUTION.—An alien who commits a violation of section 1543, 1544, or 1546 of such title or any amendments made by the [NAME OF THIS ACT], during the period beginning on the date of the enactment of such Act and ending on the date that the alien applies for eligibility for such benefit may be prosecuted for such violation in the same manner as if the alien was a U.S. citizen.

(c) SENSE OF CONGRESS.—It is the sense of Congress that the alien has abandoned such status if the alien is absent from the United States for more than 365 days, in the aggregate, during the period of conditional residence, and that the alien demonstrates that he or she has not abandoned the alien’s residence. An alien who is absent from the United States due to active service in the uniformed services has not abandoned the alien’s residence in the United States during the period of such service.

(d) PERIODS.—

(1) acquired a degree from an institution of higher education in the United States or has completed at least 2 years, in good standing, toward a degree at a U.S. institution, or has graduated from a U.S. institution; or

(2) the alien has been in the uniformed services for at least 2 years and, if discharged, has received an honorable discharge.

(e) The alien has provided a list of all the secondary educational institutions that the alien attended in the United States; and

(f) The alien is in compliance with the eligibility and admissibility criteria set forth in subsections (a) and (b).

(b) TREATMENT OF PERIOD FOR PURPOSES OF NATURALIZATION.—Soley for purposes of the Naturalization Act (8 U.S.C. 1401 et seq.), an alien who has been granted probationary benefits under section 601(h) or Z nonimmigrant status and has satisfied the requirements of paragraphs (a)(1)(A) through (F) shall begin counting the date that is eight years after the date of enactment of this Act on the date that is eight years after the date of enactment of this subtitle to implement this title and the amendments made by this title.

(c) EXEMPTION FROM NUMERICAL LIMITATIONS.—Nothing in this section may be construed to apply a numerical limitation on the number of aliens who may be eligible for adjustment of status.

(d) REGULATIONS.—

(1) PROPOSED REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary shall publish proposed regulations implementing this section. Such regulations shall be effective immediately on an interim basis, but are subject to change and revision after public notice and opportunity for a period for public comment.

(2) INTERIM, FINAL REGULATIONS.—Within a reasonable time after publication of the interim regulations in accordance with paragraph (1), the Secretary shall publish final regulations implementing this section.

SEC. 615. EXPEDITED PROCESSING OF APPLICATIONS FOR ADMISSION.

Regulations promulgated under this subtitle shall provide that no additional fee will
be charged to an applicant for a Z non-immigrant visa for applying for benefits under this subtitle.

SEC. 616. HIGHER EDUCATION ASSISTANCE.
(a) In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1265) shall have no force or effect with respect to an alien who is a probationary non-immigrant.
(b) Notwithstanding any provision of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), with respect to assistance provided under part C of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), an alien who adjudicates that of a lawful permanent resident under this title, or who is a probationary non-immigrant under this Act, who makes all the demonstration required for adjustment of status under section 623(a); the alien makes all the demonstration specified in section 601(e)(6) shall be entitled to a refund when it pays the penalties and fees specified in section 623(a), if the alien meets the eligibility criteria set forth in section 614(a)(1)(A), (B), and (F), and who meets the eligibility criteria set forth in section 614(a)(1)(A), (B), and (F), shall be eligible for the following assistance under such title IV:
(1) Student loans under parts B, D, and E of such title IV (20 U.S.C. 1071 et seq., 1087a et seq., 1087aa et seq.), subject to the requirements of such parts,
(2) Federal work-study programs under part C of such title IV (20 U.S.C. 2761 et seq.), subject to the requirements of such part,
(3) Services under such title IV (20 U.S.C. 1070 et seq.), subject to the requirements for such services.
SEC. 616. PAYMENT OF FINES AND FEES.
(a) Payment of the penalties and fees specified in section 601(e)(6) shall not be required with respect to an alien who meets the eligibility criteria set forth in section 614(a)(1)(A), (B), and (F), but until the date that is six years and six months after the date of enactment of this Act or the alien reaches the age of 25 years, whichever is later. If the alien makes all of the demonstration specified in section 614(a)(1) by such date, the alien is entitled to a refund when it pays the penalties and fees specified in section 601(e)(6) consistent with the procedures set forth in section 608 within 90 days.
(b) With respect to an alien who meets the eligibility criteria set forth in section 614(a)(1)(A) and (F), but not the eligibility criteria in section 614(a)(1)(B), the individual who pays the penalties specified in section 601(e)(6) shall be entitled to a refund when the alien makes all of the requirements specified in section 614(a)(1).

SEC. 618. GAO REPORT.
Seven years after the date of enactment of this Act, the Attorney General of the United States shall submit a report to the Congress on the implementation under this Act, and the Committee on the Judiciary of the House of Representatives, which sets forth—
(1) the number of aliens who were eligible for adjustment of status under section 623(a);
(2) the number of Z visas that were granted to the adjustment of status under section 623(a); and
(3) the number of aliens who were granted adjustment of status under section 623(a).

SEC. 619. REQUIREMENTS FOR ISSUANCE OF A NON-IMMIGRANT VISA.
(a) REGULATIONS.—The Secretary shall issue regulations to carry out the mandatory requirement in subsection (c) of this section not later than the first three months of the regulation specified in section 614(a)(1) and the eligibility criteria set forth in subsection (c) of this section, including any requirements for the preparation and submission of applications for adjustment of status under section 201, 210, or 245, the Act entitled ‘An Act to provide for the adjustment of status of certain persons who entered the United States and for other purposes’, approved November 2, 1965 (Public Law 89-732; 8 U.S.C. 1155), the Immigration and Nationality Act (8 U.S.C. 1255 note), or the Immigration Reform and Control Act of 1986 (Public Law 99-559; 100 Stat. 3359) or any amendment made by that Act.
(b) EFFECTIVE DATE.—In the case of regulations provided, the term ‘Secretary’ means the Secretary of Homeland Security.

SEC. 620. TEMPORARY.—A worker is employed on a ‘temporary’ basis when the employment is intended not to exceed 10 months.

SEC. 621. SHORT TITLE.
This subtitle may be cited as the ‘Agricultural Job Opportunities, Benefits, and Security Act of 2007’ or the ‘AgJOBS Act of 2007’.

PART I—ADMISSION OF AGRICULTURAL WORKERS
SEC. 622. ADMISSION OF AGRICULTURAL WORKERS.
(a) Z-A NONIMMIGRANT VISA CATEGORY.—
(1) ESTABLISHMENT.—Paragraph (15) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)), as amended by section 601(b), is further amended by adding at the end the following new subparagraph:
'(Z-A)(i) an alien who is coming to the United States to provide agricultural labor or services for an employer, who is coming to the United States to perform any service or activity that is considered to be agricultural labor under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), agricultural labor under section 3121(g) of the Internal Revenue Code of 1986, or the performance of agricultural labor or services described in subparagraph (D), who meets the requirements of section 214A of this Act; or
'(ii) the spouse or minor child of an alien described in clause (i) who is residing in the United States.';
(b) REQUIREMENTS FOR ISSUANCE OF A NONIMMIGRANT VISA.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended after section 214 the following new section:

SEC. 214A. ADMISSION OF AGRICULTURAL WORKERS.
(a) DEFINITIONS.—In this section:
'(1) AGRICULTURAL EMPLOYMENT.—The term ‘agricultural employment’ means any activity that is considered to be agricultural labor under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or agricultural labor under section 3121(g) of the Internal Revenue Code of 1986 or the performance of agricultural labor or services described in section 101(a)(15)(H)(ii)(A) or (i).
'(2) DEPARTMENT.—The term ‘Department’ means the Department of Homeland Security.
'(3) EMPLOYER.—The term ‘employer’ means any person or entity, including any farm labor contractor and any agricultural association who employs workers in agricultural employment.
'(4) QUALIFIED DESIGNATED ENTITY.—The term ‘qualified designated entity’ means—
'(A) an association, including any association of employers designated by the Secretary; or

S6682 CONGRESSIONAL RECORD—SENATE May 24, 2007
"(A) FINGERPRINTS.—An alien seeking a Z-A visa or a Z-A dependent visa shall submit fingerprints to the Secretary at such time and in manner as the Secretary may require.

"(B) BACKGROUND CHECKS.—The Secretary shall utilize fingerprints provided under subparagraph (A) and other biometric data provided by an alien to conduct a background check by searching the alien’s criminal history and any law enforcement actions taken with respect to the alien and ensuring that the alien is not a risk to national security.

"(4) WAIVER OF CERTAIN GROUNDS OF INADMISSIBILITY.—In the determination of an alien’s eligibility for a Z-A visa or a Z-A dependent visa the following shall apply:

"(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (5), (6)(A), (7), and (8) of section 212(a) shall not apply.

"(B) WAIVER OF OTHER GROUNDS.—

"(i) In general.—Except as provided in clause (ii), the Secretary may waive any provision of such section 212(a), other than the paragraphs described in subparagraph (A), in the case of individual aliens for humanitarian purposes, to ensure family unity, or if such waiver is otherwise in the public interest.

"(ii) Grounds that may not be waived.—Except as provided in subparagraph (C), paragraphs (A), (B), and (C) of paragraph (2), and paragraphs (3) and (4) of section 212(a) may not be waived by the Secretary under clause (i).

"(iii) Construction.—Nothing in this subparagraph shall be construed as affecting the authority of the Secretary other than under this subparagraph to waive provisions of such section 212(a).

"(C) USE OF BACKGROUND TO DETERMINE ELIGIBILITY.—An alien is not ineligible for a Z-A visa or a Z-A dependent visa by reason of a ground of inadmissibility under section 212(a) if the alien demonstrates history of employment in the United States evidencing self-support without reliance on public cash assistance.

"(1) IN GENERAL.—An alien seeking a Z-A visa shall submit an application to the Secretary for such a visa, including information regarding the alien's eligibility for a Z-A dependent visa for the spouse of the alien.

"(2) SUBMISSION.—Applications for a Z-A visa under paragraphs (A) and (B) of this subsection shall be submitted by—

"(A) to the Secretary if the applicant is represented by an attorney or a nonprofit religious, charitable, social service, or similar organization; and

"(B) in the case of an alien who files an application for Z-A visa under section 214 of the Act, the alien.

"(III) CONSTRUCTION.—Nothing in this subparagraph shall be construed as affecting the authority of the Secretary other than under this subparagraph to waive provisions of such section 212(a).

"(5) Grounds that may be waived.—The Secretary may charge the fees required under such subsection, and may waive any provisions of such subsection, if the alien submitting the application for a Z-A visa under section 214 of the Act demonstrates that the alien or the alien’s spouse meets the criteria for eligibility for a Z-A visa under paragraph (2) of section 214 of the Act.

"(6) LIMITATION ON USE OF BACKGROUND TO DETERMINE ELIGIBILITY.—An alien applicant for a Z-A visa or a Z-A dependent visa for the spouse of the alien may be granted probationary benefits in the form of employment authorization pending final adjudication of the alien's application; if the Secretary determines that the alien or the alien’s spouse meets the criteria for eligibility for a Z-A visa under section 214 of the Act, the alien shall be issued a Z-A dependent visa and a Z-A visa, respectively, for the alien or the alien’s spouse.

"(7) LIMITATION ON USE OF BACKGROUND TO DETERMINE ELIGIBILITY.—

"(A) IN GENERAL.—An alien who files an application under the provisions of this section shall suffer no detriment as a result of the conduct of any background checks referred to in clause (i) of paragraph (4), and the Secretary shall have full discretion to determine the nature of any such checks referred to in clause (i) of paragraph (4).

"(B) LIMITATION ON USE OF BACKGROUND TO DETERMINE ELIGIBILITY.—An alien who files an application under the provisions of this section shall suffer no detriment as a result of the conduct of any background checks referred to in clause (i) of paragraph (4).

"(C) PROBATIONARY AUTHORIZATION DOCUMENT.—The Secretary shall provide each alien granted probationary benefits described in clauses (i) through (iv) of subparagraph (A), a probationary authorization document.

"(8) TEMPORARY STAY OF REMOVAL AND TEMPORARY STAY OF DEPORTATION.—The Secretary shall provide a temporary stay of removal and deportation to an alien who has not been finally removed or deported.

"(9) TEMPORARY STAY OF REMOVAL AND TEMPORARY STAY OF DEPORTATION.—The Secretary shall provide a temporary stay of removal and deportation to an alien who has not been finally removed or deported.
the arbitrator make a specific finding of the number of days or hours of work lost by the employee as a result of the termination. The arbitrator shall have no authority to order reinstatement, back pay, or front pay to the affected employee. Not later than 30 days after the date of the conclusion of the arbitration proceeding, the arbitrator shall transmit the findings in the form of a written opinion to the parties to the arbitration and the Secretary. Such findings shall be final and conclusive, and no official or court of the United States shall have the power or jurisdiction to review any such findings.

(4) Effect of arbitration findings.—If the Secretary receives a finding of an arbitrator that an employer has terminated the employment of an alien who is granted a Z-A visa, the Secretary shall credit the alien for the number of days of work not performed during such period of termination for the purpose of determining as a result of the employment termination the employment requirement of subsection (f)(2).

(5) Treatment of attorney’s fees.—Each party to an arbitration under this subparagraph shall bear the cost of their own attorney’s fees for the arbitration.

(6) Effect on other actions or proceedings.—Any finding of fact or law, judgment, conclusion, or final order made by an arbitrator in an arbitration before the Secretary shall not be conclusive or binding in any separate or subsequent action or proceeding between the employee and the employer or prior to the employee’s current employment with an employer who, before an arbitrator employed by the Secretary, court, or judge of any State or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts, except that the arbitrator’s specific finding of the number of days or hours of work lost by the employee as a result of the employment termination may be referred to the Secretary pursuant to clause (iv).

(f) Record of employment.—

(A) in general.—Each employer of an alien who is granted a Z-A visa shall annually—

(1) provide a written record of employment to the alien; and

(2) provide a copy of such record to the Secretary.

(B) civil penalties.—

(1) in general.—If the Secretary finds, after notice and opportunity for a hearing, that an employer of an alien granted a Z-A visa has failed to provide the record of employment required under subparagraph (A) or has provided a false statement of material fact in such a record, the employer shall be subject to a civil money penalty in an amount not to exceed $1,000 per violation.

(2) limitation.—The penalty applicable under clause (1) of this paragraph shall not apply unless the alien has provided the employer with evidence of employment authorization granted under this subsection.

(g) Termination of a grant of Z-A visa.—

(1) in general.—The Secretary may terminate an alien’s grant of a Z-A dependent visa if the alien meets the qualifying employment and family responsibility and work opportunity requirements of an alien granted a Z-A visa to that an alien was unable to work in agricultural employment due to the extraordinary circumstances described in subsection (j)(4).

(h) Adjustment to permanent residence.—

(1) Z-A visa.—Except as provided in this subsection, the Secretary shall grant and the alien shall have the right to apply for adjustment of status to lawful permanent resident status and provide for the issuance of a permanent resident card to an alien granted a Z-A visa if the alien meets the following requirements:

(A) the Secretary finds, by a preponderance of the evidence, that the grant of a Z-A visa was the result of fraud or willful misrepresentation (as described in section 274A(c)(3)(C));

(B) the alien—

(i) commits an act that makes the alien inadmissible to the United States as an immigrant, except as provided under subsection (c)(4);

(ii) is convicted of a felony or 3 or more misdemeanors committed in the United States;

(iii) is convicted of an offense, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of $500;

(iv) in the case of an alien granted a Z-A visa, fails to perform the agricultural employment described in subsection (j)(1)(A) unless the alien was unable to work in agricultural employment due to the extraordinary circumstances described in subsection (j)(4).

(i) Reporting requirement.—The Secretary shall promulgate regulations to ensure that the United States, for at least a Z-A visa complies with the qualifying agricultural employment described in subsection (j)(1)(A) at the end of the 5 year work period, which may include periods of application pursuant to this subsection.

(j) Adjustment to permanent residence.—

(1) Z-A visa.—Except as provided in this subsection, the Secretary shall grant and the alien shall have the right to apply for adjustment of status to lawful permanent resident status and provide for the issuance of an alien lawfully admitted for permanent residence under subsection (d)(3).

(A) Qualifying employment.—

(i) in general.—Subject to clauses (i) and (ii), the alien has performed agricultural work described in subsection (j)(1)(A) for 5 years of agricultural employment in the United States for at least 100 work days per year, during the 5-year period beginning on the date of enactment of the AgJobs Act of 2007; or

(ii) 3 years of agricultural employment in the United States for at least a Z-A visa complies with the qualifying agricultural employment described in subsection (j)(1)(A) at the end of the 5 year work period, which may include periods of application pursuant to this subsection.

(B) Proof.—An alien may demonstrate compliance with the requirements of subparagraph (A) by submitting—

(1) the record of employment described in subsection (j)(4); and

(2) such documentation as may be submitted under subsection (d)(3).
"(C) APPLICATION PERIOD.—Not later than 8 years after the date of the enactment of the AgJOBS Act of 2007, the alien must—

(1) apply for adjustment of status; or

(2) obtain any Z-A status as described in section 601(k)(2).

"(D) FINE.—The alien pays to the Secretary a fine of $400; or

"(E) IMMIGRATION OFFICER.—Notwithstanding any other provision of law, the Secretary shall confer the status of lawful permanent resident on the spouse or minor child of an alien granted any adjustment of status under paragraph (1), including any individual who was a minor child on the date such alien applied for and a Z-A visa, or the spouse or minor child applies for such status, or if the principal alien includes the spouse or minor child in an application for adjustment of status to that of a lawful permanent resident.

"(3) GROUNDS FOR DENIAL OF ADJUSTMENT OF STATUS.—The Secretary may deny an alien granted a Z-A visa or a Z-A dependent visa an adjustment of status under this Act and provide for termination of such visa if—

(A) the Secretary finds by a preponderance of the evidence that grant of the Z-A visa was the result of fraud or willful misrepresentation (as described in section 212(a)(6)(C)(i)); or

(B) the alien fails to comply with any applicable Federal tax liability by establishing that—

(i) the alien is over fifteen years of age and has been living in the United States for periods totaling at least twenty years; or

(ii) is over fifty-five years of age and has been living in the United States for periods totaling at least fifteen years.

"(4) GROUNDS FOR REMOVAL.—Any alien granted a Z-A visa status who does not apply for adjustment of Z status or renewal of Z status under section 601(k)(2) prior to the expiration of the application period described in subsection (c)(1)(B) who fails to meet the other requirements of paragraph (1) by the end of the application period, is deportable and may be removed under section 236.

"(5) PAYMENT OF TAXES.—

(A) IN GENERAL.—Not later than the date on which an alien is adjusted under section 601(k)(2) prior to the expiration of the application period described in subsection (c)(1)(B) or who fails to meet the other requirements of paragraph (1) by the end of the application period, is deportable and may be removed under section 236, the alien shall—

(i) file an application for adjustment of status under this Act; or

(ii) be fined in accordance with title 18, or covered up a material fact or makes any false, fictitious, or fraudulent statements or covers up a material fact or makes any false, fictitious, or fraudulent statements in any written or oral document for use in such an application, shall be fined in accordance with title 18.

"(6) IRS COOPERATION.—The Secretary of the Treasury shall establish rules and procedures under which the Commissioner of Internal Revenue shall provide documentation to an alien upon request to establish the payment of all taxes required by this subsection.

"(7) APPLICABLE FEDERAL TAX LIABILITY.—In this paragraph, the term ‘applicable Federal tax liability’ means liability for Federal taxes, including penalties and interest, owed for any period of employment required under paragraph (1)(A) for which the statutory period for assessment of any deficiency for such taxes has not expired.

"(8) ENGLISH LANGUAGE.—

(A) IN GENERAL.—Not later than the date on which a Z-A nonimmigrant’s status is adjusted or renewed under section 601(k)(2), a Z-A nonimmigrant who is 18 years of age or older must pass the naturalization test described in sections 312(a)(1) and (2).

"(B) EXCEPTION.—The requirement of subparagraph (A) shall not apply to any person who, on the date of the filing of the person’s application for an extension of Z-A nonimmigrant status, is unemployed; or

"(i) is unable because of physical or developmental disability or mental impairment to comply therewith;

"(ii) has been living in the United States for periods totaling at least twenty years; or

"(iii) is over fifty-five years of age and has been living in the United States for periods totaling at least fifteen years.

"(9) PRIORITY OF APPLICATION.—A visa status who does not apply for adjustment of status under this subsection shall be processed not later than 1 year after the processing date.

"(10) OTHER APPLICANTS.—The processing of applications for an adjustment of status under this subsection shall be processed not later than 1 year after the processing date.

"(A) IN GENERAL.—A Z-A nonimmigrant’s application for adjustment of status to that of an alien lawfully admitted for permanent residence must be filed in person with a United States consulate abroad.

"(B) PLACE OF APPLICATION.—Unless otherwise directed by the Secretary of State, a Z-A nonimmigrant applying for adjustment of status under this paragraph shall make an application at a consular office in the alien’s country of origin. The Secretary of State may direct a consular office in a country that is not a Z-A nonimmigrant’s country of origin to accept an application for adjustment of status from such an alien, where the application is filed within 1 year of the alien’s departure from such a country on which a Z-A visa status is designated in the United States.

"(C) CONFIDENTIALITY OF INFORMATION.—Applicants for Z-A nonimmigrant status under this subtitle shall be afforded confidentiality as provided under section 904.

"(11) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—

(A) CRIMINAL PENALTY.—Any person who—

(i) applies for a Z-A visa or a Z-A dependent visa who does not apply for adjustment of status described in subsection (j) and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or covers up a material fact or makes any false, fictitious, or fraudulent statements in any written or oral document for use in such an application, shall be fined in accordance with title 18.

(ii) creates or supplies a false writing or document for use in making such an application, shall be fined in accordance with title 18.

(B) APPLICABLE FEDERAL TAX LIABILITY.—The alien who is convicted of a crime under paragraph (1) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(6)(C)(i).

"(12) ADMINISTRATIVE OR JUDICIAL REVIEW.—

(A) ADMINISTRATIVE.—Administrative or judicial review of a determination on an application for a Z-A visa shall be such as is provided under section 603.

(B) PUBLIC OUTREACH.—Beginning not later than the first day of the application period described in subsection (a), the Secretary shall cooperate with qualified designated entities to broadly disseminate information regarding the availability of Z-A nonimmigrant status under this subsection and the requirements to apply for and be granted such a visa.

"(c) NUMERICAL LIMITATIONS.—

(1) WORLDWIDE LEVEL OF IMMIGRATION.—

Section 201(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(1)), as amended by ( ), is further amended by inserting subparagraph (A) and (B) of section 203(c)(2) and by striking “subparagraph (A) or (B)” and inserting “subparagraph (A), (B), or (C)”, and

"(2) NUMERICAL LIMITATIONS ON INDIVIDUAL FOREIGN STATES.—Section 202(a) of the Immigration and Nationality Act (8 U.S.C. 1310) is amended by adding at the end the following new paragraph:

II. NUMERICAL LIMITATION FOR Z-A NON-IMMIGRANTS.—An immigrant visa may be made available to an alien issued a Z-A visa or a Z-A dependent visa as (those terms are defined in section 214A) without regard to the numerical limitations of this section.

"(d) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 214 the following:

"Sec. 214A. Admission of agricultural worker."
the Secretary such sums as may be necessary to implement this subtitle, including any sums needed for costs associated with the initiation of such implementation.

PART II—CORRECTION OF SOCIAL SECURITY RECORDS

SEC. 625. CORRECTION OF SOCIAL SECURITY RECORDS.

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

(1) in subparagraph (B)(i)(I), by striking “or” at the end;

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

(3) by inserting after subparagraph (C) the following:

“(D) who is granted nonimmigrant status pursuant to section 101(a)(15)(A) of the Immigration and Nationality Act,”; and

(4) by striking “1990” and inserting “1990, or in the case of an alien described in subparagraph (D), if such conduct is alleged to have occurred before the date on which the alien was granted such nonimmigrant status.”;

(b) Effective Date.—The amendments made by subsection (a) shall take effect on the first day of the seventh month that begins after the date of the enactment of this Act.

TITLE VII—MISCELLANEOUS

Subtitle A—Miscellaneous Immigration Reform

SEC. 701. WAIVER OF REQUIREMENT FOR FINGERPRINTS FOR MEMBERS OF THE ARMED FORCES.

Notwithstanding any other provision of law or any regulation, for aliens currently serving in the U.S. Armed Forces overseas and applying for naturalization from overseas, the Secretary of Defense shall provide in a form designated by the Secretary of Homeland Security, and the Secretary of Homeland Security shall use the fingerprints provided by the Secretary of Defense for such individuals, if the individual—

(a) may be naturalized pursuant to section 328 or 329 of the Immigration and Nationality Act (8 U.S.C. 1439 or 1440);

(b) was fingerprinted in accordance with the requirements of the Secretary of Defense at the time the individual enlisted in the Armed Forces; and

(c) submits the application to become a naturalized citizen of the United States not later than 12 months after the date the applicant is fingerprinted.

SEC. 702. DECLARATION OF ENGLISH.

(a) English as the common language of the United States.

(b) Preserving and Enhancing the Role of the English Language.—The Government of the United States shall preserve and enhance the role of English as the language of the United States of America. Nothing herein shall diminish or expand any existing rights of the United States relative to services or materials provided by the Government of the United States in any language other than English.

(c) Exceptions.—For the purposes of this section, law is defined as including provisions of the United States Constitution, the United States Code, controlling judicial decisions, regulations, and Presidential Executive Orders.

SEC. 703. PILOT PROJECT REGARDING IMMIGRATION PRACTITIONER COMPLAINTS.

(a) Within 180 days of the enactment of this Act, the Secretary of Homeland Security, in consultation with the Attorney General, shall institute a three-year pilot project to—

(1) Encourage alien victims of immigration practitioner fraud, and related crimes, to come forward and file practitioner fraud complaints with the Department of Homeland Security by utilizing existing statutory and administrative authority;

(2) Cooperate with state, and local law enforcement officials who are responsible for investigating and prosecuting such crimes; and

(3) Increase public awareness regarding the problem of immigration practitioner fraud.

(b) Reporting.—Not later than 1 year after the end of each period, the Secretary of Homeland Security shall submit to Congress a report that includes information concerning—

(1) the number of individuals who file practitioner fraud complaints via the pilot program;

(2) the demographic characteristics, nationality, and immigration status of the complainants;

(3) the number of indictments that result from the pilot; and

(4) the number of successful fraud prosecutions that result from the pilot.

Subtitle B—Assimilation and Naturalization

SEC. 704. THE OFFICE OF CITIZENSHIP AND INTEGRATION.


(a) inserting “and Integration” after “Office of Citizenship” the two times that phrase appears;

(b) in paragraph (1)(2), striking “instructing and training on citizenship responsibilities and requirements for citizenship”;

SEC. 705. SPATIAL PROVISIONS FOR ELDERLY IMMIGRANTS.

Section 312(b) of the Immigration and Nationality Act (8 U.S.C. 1423(b)) is amended by adding at the end the following:—

“(4) To further define the program.

SEC. 706. FUNDING FOR THE OFFICE OF CITIZENSHIP AND IMMIGRATION INTEGRATION.

(a) Authorization of Appropriations.—There is authorized to be appropriated to the Secretary of Homeland Security the sum of $100 million to carry out the mission and operations of the Office of Citizenship and Immigration Integration in U.S. Citizenship and Immigration Services, including the patriotic integration of prospective citizens into—

(1) American common values and traditions, including an understanding of American history and the principles of the Constitution of the United States; and

(2) civic traditions of States, including the Pledge of Allegiance, respect for the flag of the United States, and voting in public elections.

SEC. 707. CITIZENSHIP AND IMMIGRATION COUNCILS.

“(a) Grants Authorized.—The Office of Citizenship and Immigration Integration shall provide grants to state, and municipalities for effective integration of immigrants into American society through the creation of New Americans Integration Councils.

(b) Use of Funds.—(1) IN GENERAL.—Grants awarded under this section shall be used—

“(A) To provide the status of new immigrants, lawful permanent residents, and citizens within the state or municipality;

“(B) To conduct a needs assessment, including the availability of and demand for English language services and instruction classes, for new immigrants, lawful permanent residents, and nonimmigrants, and citizens;

“(C) To convene public hearings and meetings to assist in the development of a comprehensive plan to integrate new immigrants, lawful permanent residents, Z nonimmigrants, and citizens; and

“(D) To develop the comprehensive plan to integrate new immigrants, lawful permanent residents, Z nonimmigrants, and citizens into states and municipalities.

(c) Membership of Integration Councils.—New Americans Integration Councils established under this section shall consist of not less than ten and fifteen individuals from the following sectors:

“(1) State and local government;

“(2) Business;

“(3) Faith-based organizations;

“(4) Civic organizations; and

“(5) Philanthropic leaders; and

“ensuring that the membership experience working with immigration communities.

“(d) Reporting.—The Government Accountability Office, in coordination with the Office of Citizenship and Immigration Integration, shall conduct an annual evaluation of the grant program conducted under this section. Such evaluation shall be conducted by the Office of Citizenship and Immigration Integration:

“(1) To determine and improve upon the program’s effectiveness;

“(2) To develop recommended best practices for states and municipalities who receive grant awards; and

“(3) To further define the program’s goals and objectives.

SEC. 708. HISTORY AND GOVERNMENT TEST.

(a) History and Government Test.—The Secretary shall incorporate a knowledge and understanding of the Oath of Allegiance provided by section 337 of the Immigration and Nationality Act (8 U.S.C. 1448) into the history and government test given to applicants for citizenship under this Act, other than the amendment made by this section, shall be construed to influence the naturalization test redesign process currently underway under the direction of the U.S. Citizenship and Immigration Services.

SEC. 709. ENGLISH LEARNING PROGRAM.

(a) English as a Foreign Language.—The Secretary of Education shall develop an open source electronic program, useable on personal computers and through the Internet, that teaches the English language at various levels of proficiency, up to and including the ability to use the standard English as a Foreign Language, to individuals inside the United States whose primary language is a language other than English. This program shall be available to the public for free, including by placing it on the Department of Education website, and shall ensure that it is readily accessible to public libraries throughout the United States.

SEC. 710. GAO STUDY ON THE APPELLATE PROCESS FOR IMMIGRATION.

(a) In General.—The Comptroller General of the United States shall, not later than 180
days after enactment of this Act, conduct a study on the appellate process for immigration appeals.

(b) REQUIREMENTS.—In conducting the study under subsection (a), the Comptroller General shall consider the possibility of consolidating all appeals from the Board of Immigration Appeals and habeas corpus petitions in the United States Court of Appeals, by—

(1) consolidating all such appeals into an existing circuit court, such as the United States Court of Appeals for the Federal Circuit;

(2) consolidating all such appeals into a central court consisting of active circuit court judges temporarily assigned from the various circuits, in a manner similar to the Foreign Intelligence Surveillance Court of the United States Court of Appeals for the Federal Circuit;

(3) implementing a mechanism by which a panel of active circuit court judges shall have the authority to reassign such appeals from circuits with relatively high caseloads to circuits with relatively low caseloads.

(c) FACTORS TO CONSIDER.—In conducting the study under subsection (a), the Comptroller General, in consultation with the Attorney General, the Secretary, and the Judicial Conference of the United States, shall consider—

(1) the resources needed for each alternative, including judges, attorneys and other support staff, case management techniques included in technical requirements, physical infrastructure, and other procedural and logistical issues as appropriate;

(2) the impact of each plan on various circuits, including their caseload in general and caseload per panel;

(3) the possibility of utilizing case management techniques to ease the impact of any consolidation option, such as requiring certification of reviewability, similar to procedures for habeas and existing summary dismissal procedures in local rules of the courts of appeals;

(4) the effect of reforms in this Act on the ability of the circuit courts to adjudicate such appeals;

(5) potential impact, if any, on litigants; and

(6) other reforms to improve adjudication of immigration matters, including appellate review of motions to reopen and reconsider, and attorney fee awards with respect to review of immigration appeals.

The PRESIDING OFFICER. The Senator from Washington.

MORNING BUSINESS

Mrs. MURRAY. Mr. President, I ask unanimous consent the Senate proceed to morning business and the following Senators on our side be recognized for the time amounts that I will give, alternating with Republican Senators on the other side of the Chamber for the requests they so request, limited to 10 minutes. On the Democratic side the order would be: Senator BYRD for 15 minutes, Senator KERRY for 10 minutes, Senator Boxer for 5 minutes, Senator MURRAY for 10 minutes, Senator COCHRAN for 5 minutes, Senator DODD for 10 minutes, Senator BROWN for 5 minutes, Senator LANDRIEU for 5 minutes, Senator LEVIN for 5 minutes, and Senator DURBIN for 5 minutes.

The PRESIDING OFFICER. Is there objection to the request?

Mr. GRASSLEY. Reserving the right to object. I asked for 20 minutes. How do I fit into that?

Mrs. MURRAY. The unanimous consent would allow for every other Senator to be from that side, at your discretion. I did limit it to 10 minutes and I will be happy to amend the unanimous consent for Senator GRASSLEY for 15 minutes to today's Noon recess.

The PRESIDING OFFICER. Without objection, it is so ordered.

The senior Senator from West Virginia is recognized.

The Senator from West Virginia is awaiting the comments from the senior Senator from West Virginia. Will those Senators having conversations retire from the Chamber.

The Senator from West Virginia is recognized.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS

Mr. BYRD. Mr. President, a few weeks ago, Congress approved legislation that would have changed the course of the U.S. occupation of Iraq. I say occupation because, frankly, that is what this is. Our troops won the battle of the lights. The dictator Saddam Hussein is deposed and executed. His rotten government is no more, replaced with a democratically elected Parliament, President, and Prime Minister. We all are cheered at the skill of our soldiers.

But, sadly, this President has not done justice by our brave troops. The dreadful management of this occupation has resulted in chaos. Iraq is at war with itself and our troops are caught in the middle. That is why this Congress established a new direction for bringing our troops home from this misbegotten occupation. The bill the President vetoed would have refocused our military, not on the civil war in Iraq but, rather, on Osama bin Laden and his base of operations. It is time for the President to take off his blinders and uncover his ears. White House obstinacy cannot continue to drive our military, not on the civil war in Iraq but, rather, on Osama bin Laden and his base of operations. It is time for the President to take off his blinders and uncover his ears. White House obstinacy cannot continue to drive our military.

With this supplemental funding legislation we begin to shift the responsibility for Iraq’s future off the shoulders of our military, and onto the shoulders of the Iraqi Government and the Iraqi people. The White House wanted a blank check for the President’s mangled occupation of Iraq. We are not going to sign on that dotted line—not now, not ever. The legislation that is before the Senate today is a step toward that goal. It is not a giant leap, but it is progress. And it is only a first step. In a few weeks, this Senate is expected to focus on the Defense Department authorization bill. I shall press for a vote for a veto of the proposed Senator CLINTON and I have outlined in the authorization for the Iraq war and to give Congress a chance, just a chance, to decide whether the so-called new mission in Iraq should continue. If this mission is so critical, then let the administration go to the people, the people’s elected Representatives—that is us—let the people’s elected Representatives vote.

In July we will turn our attention to the Pentagon’s fiscal 2008 funding request, and in September we will consider the $145 billion war funding request for the next fiscal year. Each of these bills is an opportunity to shape the future of the mission in Iraq. Clearly, Congress is not turning from the debate on Iraq. On the contrary, we are just beginning this debate.

We have all committed to protecting our men and women. This legislation provides the funding to do just that. We ensure $3 billion for the purchase of mine-resistant, ambush-protected vehicles. The 2,000 additional advanced armored vehicles that will be built with these funds will help to save the lives of American soldiers and American marines as they travel the lonely streets of Baghdad—the lonely streets of Iraq.

If our soldiers are injured in battle, this legislation ensures they will receive treatment of high-quality when they come home. The fiasco at Walter Reed should be seared into our national consciousness. That is why this legislation provides $4.8 billion to ensure that troops and veterans receive the health care that they have earned with their service.

A few weeks ago, we watched Kansas families try to put their lives back together after deadly tornadoes ripped through their homes. The Kansas Governor pointed out that her State’s National Guard equipment was parked in Iraq and not at home, slowing cleanup and recovery efforts. Other States faced the potential for the exact same problem. This supplemental bill provides $1 billion—that is 1 dollar for every minute since Jesus Christ was born—$1 billion for the National Guard and reserve to replace the trucks and heavy equipment that Guard units have been directed to leave in Iraq. A provision today prevents the Secretary of Defense from wasting billions of dollars on new coal-fired plants, a threat of terrorist attacks on American soil. He talks a great deal about the threats of such attacks, but very seldom does he provide resources to protect the country. If the President’s warnings are accurate, the $1 billion contained in this bill should help to save lives.

We include funds for port security and for mass transit security, for explosive detection equipment at airports, and for several initiatives in the 9/11 bill that recently passed the Senate, including a more aggressive screening of cargo on passenger airlines. We will vote—no, we will vote—close our eyes to the huge gaps in our protections at home.

We also work to heal the devastated communities still struggling to recover from Hurricane Katrina and Hurricane Rita. To this day, mangled trash heaps stand where homes and families once lived. This White House, the Bush White House, would build 2 billion dollars to rebuild Baghdad but ignores the overwhelming needs in New Orleans, Slidell, Biloxi, and so many other places at home.