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 Secretary submits a written certification to the President and the Congress that the following objectives have been reached with respect to each of the measures included in subsections (a)(1)-(5):

(1) 90 days after the date of enactment; and

(2) every 90 days thereafter until the terms of this section have been met.

If the President determines that sufficient progress has been made, the President may extend this deadline. The Secretary shall include in the report specific funding recommendations, authorization needed, or other actions that are being undertaken by the Department in conjunction with these measures.

TITLE I—BORDER ENFORCEMENT

SUBTITLE A—ASSETS FOR CONTROLLING UNITED STATES BORDERS

SEC. 101. ENFORCEMENT PERSONNEL.

(a) ADDITIONAL PERSONNEL.—

(1) U.S. CUSTOMS AND BORDER PROTECTION 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.—

(1) IMMIGRATION AND CUSTOMS ENFORCEMENT INVESTIGATORS.—Section 5020 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3734) is amended by striking “1000” and inserting “10000”.

(2) ADDITIONAL PERSONNEL.—In addition to the positions established by section 5020 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 Attorney General 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.

(3) DEPUTY UNITED STATES MARSHALS.—In each of the fiscal years 2008 through 2012, the Attorney General shall, subject to the availability of appropriations, increase by not less than 50 the number of positions for full-time active duty Deputy United States Marshals that assist in matters related to immigration.

(c) RECRUITMENT OF FORMER MILITARY PERSONNEL.—

(1) IN GENERAL.—The Commissioner of United States Customs and Border Protection of the Department of Homeland Security may appoint as investigators any former member of the armed forces who have received training in investigation.

(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 subsection (a).

SEC. 102. TECHNOLOGICAL ASSETS.

(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 necessary for achieving operational control of the borders of the United States.

(b) INCREASE IN FULL-TIME BORDER PATROL AGENTS.—

(1) ANNUAL INCREASES.—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.

(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.

SEC. 103. INFRASTRUCTURE.

Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a 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;

and

(B) by inserting before paragraph (2), as redesignated, the following:
"(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, 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 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 and departing the United States, at locations to be determined by the Secretary, to—

(1) provide for the construction 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."

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 shall—

(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.

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 flees or evades a checkpoint operated by any law enforcement 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 under this title, imprisoned 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, when conveying a command covered under subsection (a) of this section, an air traffic controller, shall be fined under this title, imprisoned not more than two years, or both.

"(c) ALTERNATIVE PENALTIES.—Notwithstanding the penalties provided in subsection (a) or (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 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 2 years, or both, if the violation created a substantial and foreseeable risk of serious bodily injury or death to any person.

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

(1) in subsection (a)(3)(C), by redesignating subparagraph (6) as subparagraph (7); and

(2) by inserting after paragraph (1) the following:

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

"(3) Any alien who fails or has failed to comply with a lawful request for biometric data under section 212(c), 223(d), or 252(d) is inadmissible; and

(4) in subsection (d), by inserting after paragraph (3) the following:

"(3) as follows—

"(A) ANY ALIEN WHO FAILS OR HAS FAILED TO COMPLY WITH A LAWFUL REQUEST FOR BIOMETRIC DATA UNDER SECTION 212(C), 223(D), OR 252(D) IS INADMISSIBLE; AND

"(B) Any law enforcement officer of the Department of Homeland Security may waive the applicability of this subsection for any term of years or life, or both, if the violation resulted in the death of any person.

"(4) 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.

"(5) 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.

"(6) PROCEEDS.—The word ‘proceeds’ as it appears in the text of subsections (a) and (b), and
SEC. 121. DEATHS AT UNITED STATES-MEXICO BORDER.

(a) COLLECTION OF STATISTICS.—The Commissioner of the Bureau of Customs and Border Protection shall collect statistics relating to deaths occurring at the border between the United States and Mexico, including—

(1) the causes of the deaths; and
(2) the totality of deaths involving the United States.
(b) REPORT.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Commissioner shall submit to the Secretary a report that—

(1) analyzes trends with respect to the statistical data described in subsection (a) during the preceding year; and
(2) recommends actions to reduce the deaths described in subsection (a).

SEC. 122. BORDER SECURITY ON CERTAIN FEDERAL LAND.

(a) DEFINITIONS.—In this section:

(1) PROTECTED LAND.—The term ‘‘protected land’’ means land under the jurisdiction of the Secretary concerned.

(b) SECRETARY CONCERNED.—The term ‘‘Secretary concerned’’ means—

(A) with respect to land under the jurisdiction of the Secretary of Agriculture, the Secretary of Agriculture; and

(B) with respect to land under the jurisdiction of the Secretary of the Interior, the Secretary of the Interior.

(c) SUPPORT FOR BORDER SECURITY NEEDS.—

(1) IN GENERAL.—To gain operational control over the international land borders of the United States and to prevent the entry of terrorists, unlawful aliens, narcotics, and other contraband into the United States, the Secretary, in cooperation with the Secretary concerned, shall—

(A) increase U.S. Customs and Border Protection personnel to secure protected land along the international land borders of the United States;

(B) Federal land resource training for U.S. Customs and Border Protection agents dedicated to protecting Federal lands;

(C) Unmanned Aerial Vehicles, aerial assets, Remote Video Surveillance camera systems, and sensors on protected land that is directly adjacent to the international land border of the United States.

(d) BORDERS AND PARK SERVICES.—The Secretary shall—

(1) develop joint recommendations with the National Park Service, the U.S. Fish and Wildlife Service, the U.S. Forest Service, and the relevant agency of the Department of the Interior or the Department of Agriculture to minimize the adverse impact on natural and cultural resources from border protection activities.

(e) ANALYSIS OF DAMAGE TO PROTECTED LANDS.—The Secretary shall conduct an analysis of the damage to protected lands relating to illegal border activity, including the cost of equipment, training, recurring maintenance, construction of facilities of natural and cultural resources, recapitalization of facilities, and operations.

(f) RECOMMENDATIONS.—The Secretary shall—

(1) develop joint recommendations with the National Park Service, the U.S. Fish and Wildlife Service, and the U.S. Forest Service for an appropriate cost recovery mechanism relating to items identified in subsection (c); and

(2) not later than one year from the date of enactment, submit to the appropriate congressional committees (as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101)), including the Senate Committees on Appropriations and the House Appropriations Committees, the recommendations developed under paragraph (1).

SEC. 123. SECURE COMMUNICATION.

The Secretary shall, as expeditiously as practicable, develop and implement a plan to ensure continuous monitoring of each mile of each border.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary to carry out subsection (a)—

(A) $178,400,000 for fiscal year 2008; and

(B) $276,000,000 for fiscal year 2009.

(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to this subsection (b) shall remain available until expended.

SEC. 125. SURVEILLANCE TECHNOLOGIES PROGRAM.

(a) AERIAL SURVEILLANCE PROGRAM.—

(1) IN GENERAL.—In conjunction with the border surveillance plan developed under section 120 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 8 U.S.C. 1701 note), the Secretary, not later than 90 days after the date of enactment of this Act, shall develop and implement a program to fully integrate the use of aerial surveillance technologies, including unmanned aerial vehicles, to enhance the security of the international border between the United States and Canada and the international border between the United States and Mexico.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary to carry out subsection (a)—

(A) $178,400,000 for fiscal year 2008; and

(B) $276,000,000 for fiscal year 2009.

(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to this subsection (b) shall remain available until expended.

SEC. 126. UNMANNED AERIAL VEHICLES SYSTEMS.

(a) AERIAL SURVEILLANCE TECHNOLOGIES.—The Secretary shall—

(1) acquire and maintain unmanned aircraft systems for use at border, including related equipment such as—

(A) additional sensors;

(B) critical spares;

(C) satellite communications equipment and control; and

(D) other necessary equipment for operational support.

(2) REPORT.—The Secretary shall submit to Congress a report describing—

(A) unmanned aircraft capabilities at the Canada-United States border; and

(B) unmanned aircraft capabilities at the Mexico-United States border; and

(C) any other issues necessary for implementation of the program.

(3) ADDITIONAL REQUIREMENTS.—

(A) IN GENERAL.—The program developed under this subsection shall include the use of a variety of aerial surveillance technologies in 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.

(B) 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.

(c) REPORT TO CONGRESS.—Not later than 180 days after implementing the program under this subsection, the Secretary shall submit a report to Congress describing the program developed under this subsection. The Secretary shall include in the report a description of the program together with such recommendations as the Secretary finds appropriate for future programs.

(6) AUTHORIZATION OF APPROPRIATIONS.—

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

(b) INTEGRATED AND AUTOMATED SURVEILLANCE PROGRAM.—

(1) APPLICATION.—Subject to the availability of appropriations, the Secretary shall establish a program to procure
additional unmanned aerial vehicles, cameras, poles, sensors, satellites, radar coverage, and other technologies necessary to achieve operational control of the international land and maritime borders of the United States. The Secretary shall develop performance metrics to establish a security perimeter known as a “virtual fence” along such international borders to provide a barrier to illegal immigration, smuggling of contraband, and other criminal activity.

(2) PROGRAM COMPONENTS.—The Secretary shall allocate such resources necessary to establish a security perimeter that integrates with the Integrated and Automated Surveillance Program and that is capable of being deployed as necessary to achieve operational control over all ports of entry into the United States and the international land and maritime borders of the United States.

(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.

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

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

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

(6) A description of how the Secretary is working with the Administrator of the Federal Aviation Administration on safety and continued maintenance of such technologies.

(7) A description of the Secretary’s roles and missions.

(8) An assessment of the cost requirements, performance objectives, and capabilities of such deployment.

(9) An assessment of staffing needs for all border security functions, taking into account threat and vulnerability information Feed.

(10) An assessment of the effectiveness of surveillance technologies used for border security and the effect of the use of such efforts and technologies on civil rights, personal property rights, privacy rights, and civil liberties.

(11) An assessment of the extent to which new surveillance technologies are being deployed and by whom.

(b) IMPLICATIONS.—Nothing in this section shall affect the implementation of any other Federal, State, or local law or regulation.

(c) IMPLEMENTATION.—Nothing in this section shall affect the implementation of any other Federal, State, or local law or regulation.

S126. 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.

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

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

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

(6) A description of the Secretary’s roles and missions.

(7) An assessment of the cost requirements, performance objectives, and capabilities of such deployment.

(8) An assessment of staffing needs for all border security functions, taking into account threat and vulnerability information Feed.

(9) An assessment of the effectiveness of surveillance technologies used for border security and the effect of the use of such efforts and technologies on civil rights, personal property rights, privacy rights, and civil liberties.

(10) An assessment of the extent to which new surveillance technologies are being deployed and by whom.

(b) IMPLICATIONS.—Nothing in this section shall affect the implementation of any other Federal, State, or local law or regulation.

(c) IMPLEMENTATION.—Nothing in this section shall affect the implementation of any other Federal, State, or local law or regulation.

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. The strategy shall be carried out by the Secretary, in consultation with the Administrator of the Department of Homeland Security and the heads of other appropriate Federal agencies, 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) An assessment of the cost requirements, performance objectives, and capabilities of such deployment.

(2) An assessment of staffing needs for all border security functions, taking into account threat and vulnerability information Feed.

(3) An assessment of the effectiveness of surveillance technologies used for border security and the effect of the use of such efforts and technologies on civil rights, personal property rights, privacy rights, and civil liberties.

(4) An assessment of the extent to which new surveillance technologies are being deployed and by whom.

(b) IMPLICATIONS.—Nothing in this section shall affect the implementation of any other Federal, State, or local law or regulation.

(c) IMPLEMENTATION.—Nothing in this section shall affect the implementation of any other Federal, State, or local law or regulation.
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 non-Federal training programs, proficiency testing, 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, establish connectivity between the Automated Biometric Fingerprint Identification System (IDENT) of the Department and the Integrated Automated Fingerprint Identification System (IAFIS) 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 103(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1363a).

SEC. 130. US-VISIT SYSTEM.

Not later than 6 months after the date of 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 of the United States with the U.S.-Visitor and Immigrant Status Indicator Technology (US–VISIT) system implemented under section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1363a);

(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 National Institute of Standards and Technology and the Forensic Document Laboratory of the U.S. Immigration and Customs Enforcement.

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

(c) Assessment.—

(1) Requirement for Assessment.—The Inspector General of the Department shall conduct an independent assessment of the accuracy and reliability of the Forensic Document Laboratory.

(2) Report to Congress.—Not later than 6 months after the date of the enactment of this Act, the Inspector General shall submit to Congress the findings of the assessment required by paragraph (1).

(d) Authorization of Appropriations.—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of 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, subject to the availability of appropriations, to an eligible law enforcement agency to provide assistance to such agency to address:

(A) criminal activity that occurs in the jurisdiction of such agency by virtue of such agency’s proximity to the United States border; and

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

(2) Duration.—Grants may be awarded under this subsection during fiscal years 2008 through 2012.

(b) Components of Review.

(1) An evaluation of the length and content of the basic training provided to Border Patrol agents.

(2) 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.

(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 non-Federal training programs, proficiency testing, 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.

(c) Application.

(1) In General.—Not later than 6 months after the date of enactment of this Act, the Secretary shall require each State and local public entity eligible to receive a grant under this section during fiscal years 2008 through 2012 to submit an application to the Secretary of a plan for the implementation of the grant.

(2) Application Content.—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) Definitions.—For the purposes of this section:

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

(A) located in a county with more than 10 miles from a United States border with—

(i) Canada; or

(ii) Mexico; or

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

(C) whether unique challenges that local law enforcement face 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) ½ shall be set aside for eligible law enforcement agencies located in States with the largest number of undocumented alien apprehensions; and

(B) ¼ 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 conference report accompanying H.R. 2600 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 under 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 Nationalland Border Security Plan required by section 311; and

(3) prioritize the projects described in paragraphs (1) and (2) 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 each project under subsection (c)(3).
(e) Divergence from Priorities.—The Commissioner may diverge from the priority order if the Commissioner determines that significantly changed circumstances, such as immediate needs or the capacity of 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 amendment to the Secretary, after consultation with representatives of Federal, State, and local law enforcement agencies and private entities that are involved in international trade across the northern border or the southern border, 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) Port security coordinators.—The Secretary may establish 1 or more port security coordinators at each port of entry located on the northern border or the southern border—

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

(B) to assist, to the extent practicable, with the preparation of the plan required in subsection (a).

SEC. 135. PORT OF ENTRY TECHNOLOGY DEMONSTRATION PROGRAM.

(a) Establishment.—The Secretary shall carry out a technology demonstration program to—

(1) test and evaluate new port of entry technologies;

(2) refine port of entry technologies and operational concepts; and

(3) train personnel under realistic conditions.

(b) Technology and Facilities.—

(1) Technology Testing.—Under the technology demonstration program, the Secretary shall test technologies that enhance port of entry operations, including operations related to—

(A) identification and verification;

(B) communications;

(C) port tracking;

(D) identification of persons and cargo;

(E) investigations;

(F) personal detection;

(G) decision support; and

(H) the detection and identification of weapons of mass destruction.

(2) Development of Facilities.—At a demonstration site selected pursuant to subsection (c)(2), the Secretary shall develop facilities to provide appropriate training to law enforcement personnel who have responsibility for border security, including—

(A) cross-training among agencies;

(B) advanced law enforcement training; and

(C) equipment orientation.

(c) Demonstration Sites.—

(1) Number.—The Secretary shall carry out the demonstration program at not less than 3 sites and not more than 5 sites.

(2) Selection Criteria.—To ensure that at least 1 of the facilities selected as a port of entry demonstration site for the demonstration program has the most up-to-date design, contains sufficient space to conduct the demonstration program, has a traffic volume low enough to easily incorporate new technologies without interrupting normal processing activity, and can efficiently carry out a demonstration and port of entry operations, the Secretary will select at least 1 port of entry selected as a demonstration site that—

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

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

(C) have serviced an average of not more than 50,000 vehicles per month during the 1-year period ending on the date of the enactment of this Act.

(d) Relationship with Other Agencies.—The Secretary shall permit personnel from any Federal, State, or local entity to utilize a demonstration site described in subsection (c) to test technologies that enhance port of entry operations, including technologies described in subparagraphs (A) through (H) of subsection (b)(1).

(e) Report.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary shall submit to Congress a report on the activities carried out at each demonstration site under the technology demonstration program established under this section.

(f) Content.—The report submitted under paragraph (1) shall include an assessment by the Secretary of the feasibility of incorporating any demonstrated technology for use throughout the U.S. Customs and Border Protection.

SEC. 136. COMBATING HUMAN SMUGGLING.

(a) Requirement for Plan.—The Secretary shall develop and implement a plan to improve coordination between the U.S. Immigration and Customs Enforcement and the U.S. Customs and Border Protection of the Department and any other Federal, State, local, or tribal authorities, as determined appropriate by the Secretary, to improve coordination efforts to combat human smuggling.

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

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

(2) adequate and effective personnel training;

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

(4) effective utilization of—

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

(B) investigatory techniques, equipment, and procedures that prevent, detect, and prosecute international money laundering and other operations that are utilized in smuggling;

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

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

(c) Report.—Not later than 1 year after implementing the plan described in subsection (a), the Secretary shall submit to Congress a report on such plan, including any recommendations for legislative action to improve efforts to combating human smuggling.

(d) Savings Provision.—Nothing in this section may be construed to provide additional authority for any other entity to enforce Federal immigration laws.

SEC. 137. INCREASE OF FEDERAL DETENTION SPACE AND THE UTILIZATION OF FACILITIES.

(a) Construction or Acquisition of Detention Facilities.—

(1) In General.—The Secretary shall construct or acquire, in addition to existing facilities for the detention of aliens, at least 20 detention facilities in the United States that have a total capacity of not less than 20,000 individuals at any time for aliens detained pending removal or a decision on removal of such aliens from the United States subject to available appropriations.

(b) Construction of or Acquisition of Detention Facilities.—

(1) Requirement to Construct or Acquire.—The Secretary shall construct or acquire additional detention facilities in the United States to accommodate the beds required by section 5204(a) of the Intelligence Reform and Terrorism Protection Act of 2004, as amended by subsection (a), subject to available appropriations.

(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.

(3) Use of Installations Under Base Closure Laws.—In acquiring additional detention facilities under this subsection, the Secretary shall consider the transfer of appropriate portions of military installations approved for closure or realignment under the Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2607 note) for use in accordance with subsection (a).

(4) Determination of Location.—The location of any detention facility constructed or acquired in accordance with this subsection shall be determined, with the concurrence of the Secretary, by the senior officer responsible for Detention and Removal Operations in the Department. The detention facilities shall be located so as to satisfy the needs of officers and employees of the Department to increase to the maximum extent practicable the annual rate and level of removals of illegal aliens from the United States.

(c) Annual Report to Congress.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, in consultation with the heads of other appropriate Federal agencies, the Secretary shall submit to Congress an assessment of the additional detention facilities and bed space required in accordance with the Secretary, to the maximum extent practicable the annual rate and level of removals of illegal aliens from the United States.

(d) Technical and Conforming Amendment.—Section 241(g)(1) (8 U.S.C. 1231(g)(1)) is amended by striking “may expend” and inserting “shall expend”.

(e) Authorization of Appropriations.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 138. UNITED STATES–MEXICO BORDER ENFORCEMENT REVIEW COMMISSION.

(a) Establishment of Commission.—

(1) In General.—There is established an independent commission to be known as the United States-Mexico Border Enforcement Review Commission (in this section as the “Commission”).

(2) Purposes.—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;

(C) to study the overall immigration policies of the United States-Mexico border; and

(D) to study the overall immigration policies of the United States-Mexico border.

(b) Membership.—The Commission shall be composed of 17 voting members, who shall be appointed as follows:
(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 or region;
   (ii) 1 shall be a local law enforcement official from the State’s border region; and
   (iii) 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; and
   (ii) 1 shall be appointed by the Attorney General;

(C) NONGOVERNMENTAL APPOINTEES.—An individual or entity to voting member to the Commission may not be an officer or employee of the Federal Government.

(2) QUALIFICATIONS.—(i) 1 shall be appointed by the Secretary;
   (ii) 1 shall be appointed by the Secretary;
   (iii) 2 shall be from the State’s border region;
   (iv) 1 shall be a local elected official from the State’s border region;
   (v) 1 shall be a local law enforcement official from the State’s border region;
   (vi) 2 shall be members of the same political party.

(3) SERVICE.—The Commission shall be ex officio, and shall serve without pay.

(4) MEETINGS.—The Commission shall meet and begin the operations of the Commission as soon as practicable.

(5) DUTIES.—The Commission shall, examine, and make recommendations regarding border enforcement policies, strategies, and programs, including recommendations regarding—
   (i) the protection of human and civil rights of community residents and migrants along the international border between the United States and Mexico;
   (ii) the adequacy and effectiveness of human and civil rights training of enforcement personnel on such border;
   (iii) the adequacy of the complaint process within the Departments and programs of the Department that are employed when an individual files a grievance;
   (iv) the effect of the operations, technology, and enforcement infrastructure along such border on the—
      (A) environment;
      (B) cross border traffic and commerce; and
      (C) the quality of life of border communities;
   (v) local law enforcement involvement in the enforcement of Federal immigration law; and
   (vi) any other matters regarding border enforcement policies, strategies, and programs the Commission determines appropriate.

(6) INFORMATION AND ASSISTANCE FROM FEDERAL AGENCIES.—The Commission may seek directly from any department or agency of the United States such information, including suggestions, estimates, and statistics, as allowed by law and as the Commission considers necessary to carry out the provisions of this section. Upon the request of the Chairman of the Commission for the fiscal years 2008 through 2012, the Attorney General, subject to the availability of appropriations for such purpose, shall increase the number of positions for attorneys in the Office of Immigration Litigation by not less than 50 compared to the number of such positions for which funds were made available during the preceding fiscal year.

(7) STAFF ATTORNEYS.—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.

(8) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General for each of the fiscal years 2008 through 2012 such sums as may be necessary to carry out this subsection, including the hiring of necessary support staff.

(B) 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 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.

(C) ADDITIONAL IMMIGRATION PERSONNEL.—

(1) DEPARTMENT OF HOMELAND SECURITY.—
   (A) TRIAL ATTORNEYS.—In each of the fiscal years 2008 through 2012, the Secretary, subject to the availability of appropriations for such purpose, shall increase the number of positions for attorneys in the Office of General Counsel of the Department who represent the Department in immigration matters by not less than 100 compared to the number of such positions for which funds were made available during the preceding fiscal year.
   (B) USCIS ADJUDICATORS.—In each of the fiscal years 2008 through 2012, the Secretary, subject to the availability of appropriations for such purpose, shall increase the number of positions for adjudicators in the United States Citizenship and Immigration Service by not less than 100 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.—The Director of the Executive Office for Immigration Review shall continue to operate a legal orientation program to provide basic information about immigration court procedures for immigration detainees and expand the legal orientation program to provide such information on a nationwide basis.

(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out such legal orientation program.

SEC. 202. DETENTION AND REMOVAL OF ALIENS ORDERED REMOVED.

(A) IN GENERAL.—

(1) AMENDMENTS.—Section 241(a) (8 U.S.C. 1221(a)(1)) is amended—

(A) 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) by redesignating paragraph (1)—

(i) in subparagraph (B), by amending clause (ii) to read as follows—

(ii) If a court, the Board of Immigration Appeals, or an immigration judge orders a stay of the removal of the alien, the expiration date of the stay of removal;

(iii) by amending subparagraph (C) to read as follows—

(C) EXTENSION OF PERIOD.—The removal period shall be extended beyond a period of 90 days if the alien may remain in detention during such extended period if the alien fails or refuses to—

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

(ii) fully cooperate with the Secretary’s efforts to establish the alien’s identity and carry out the removal order, including falling to make timely application in good faith for travel or other documents necessary to the alien’s departure, or conspiring or acting to prevent the alien’s removal; and

(D) by adding at the end the following:

(D) TOLLING OF PERIOD.—If, at the time described in subparagraph (B), the alien is not in the custody of the Secretary under the authority of this Act, the removal period shall not begin until the alien is taken into such custody. If the Secretary lawfully transfers custody of the alien during the removal period to another Federal agency or to a State or local government agency in connection with the official duties of such agency, the removal period shall be tolled, and shall recommence on the date in which the alien is returned to the custody of the Secretary;

(E) in paragraph (2), by adding at the end the following:

(D) in paragraph (2), by adding at the end the following:

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

(i) to prevent the alien from absconding;

(ii) for the protection of the community; or

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

(F) in paragraph (6), by striking “removal period,” and inserting “removal period, in the discretion of the Immigration Judge, whether the alien shall be removed or released, and—

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

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

(7) PAROLE.—If an alien detained pursuant to paragraph (6) is an applicant for admission, and the Secretary, in the Secretary’s discretion, may parole the alien under section 212(d)(5) and may parole the alien under section 212(d)(5)(A) and (B) shall not be returned to custody unless either the alien violates the conditions of the alien’s parole or the alien’s removal becomes reasonably foreseeable, provided that in no circumstance shall such alien be considered?

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

(A) DETENTION REVIEW PROCESS FOR ALIENS WHO HAVE EFFECTED AN ENTRY AND FULLY COOPERATE WITH REMOVAL.—The Secretary of Homeland Security shall establish an administrative review process to determine whether an alien described in subparagraph (B) should be detained or released after the removal period in accordance with this paragraph.

(B) ALIEN DESCRIBED.—An alien is described in this subparagraph if the alien—

(i) has made all reasonable efforts to comply with the alien’s removal order;

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

(iii) has not conspired or acted to prevent removal.

(C) EVIDENCE.—In making a determination under subparagraph (A), the Secretary—

(i) shall consider any evidence submitted by the alien;

(ii) may consider any other evidence, including—

(i) any information or assistance provided by the Department of State or other Federal agency; and

(ii) any other information available to the Secretary pertaining to the ability to remove the alien.

(D) AUTHORITY TO DETAIN FOR ADDITIONAL PERIOD.—The Secretary, in the exercise of the Secretary’s discretion and without any limitations other than those specified in this section, may detain an alien for 90 days beyond the removal period (including any extension of the removal period under paragraph (1)(C)).

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

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

(ii) certifies in writing—

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

(II) is a recipient of a written recommendation from the Secretary of State, that the release of the alien would likely have serious adverse foreign policy consequences; and

(III) based on information available to the Secretary (including classified, sensitive, or national security information, and regardless of the grounds upon which the alien was ordered removed), that there is reason to believe that the release of the alien would threaten the national security of the United States;

(IV) that—

(aa) the release of the alien would threaten the safety of the community or any person, and conditions of release cannot reasonably be expected to ensure the safety of the community or any person; and

(bb) the alien—

(A) has been convicted of 1 or more aggravated felonies (as defined in section 101(a)(41)(A)), or of 3 or more crimes or conspiracies to commit any such aggravated felonies for an aggregate term of imprisonment of at least 5 years; or

(B) has committed a crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) and, because of a mental condition or personality disorder and behavior associated with that condition or disorder, is likely to engage in acts of violence in the future; or

or

(C) 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). The Attorney General, in consultation with the Secretary, shall promulgate regulations governing review under this paragraph.

(G) ADMINISTRATIVE REVIEW PROCESS.—The Secretary, without any limitations other than those specified in this section, may detain an alien pending a determination under subparagraph (E)(ii), if the Secretary determines the administrative review process identified in subparagraph (A) not later than 30 days after the expiration of the removal period (including any extension of the removal period under paragraph (1)(C)).

(H) REMOVAL AND DESTRUCTION OF CERTIFICATION.—

(I) 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. If the Secretary does not renew such certification, the Secretary shall release the alien to the State or local government agency that detained the alien.

(ii) DELEGATION.—Notwithstanding any other provision of law, the Secretary may delegate the authority to make or renew a certification described in subparagraph (I), (II), or (V) of subparagraph (E)(ii) below the level of the Assistant Secretary for Immigration and Customs Enforcement.

(The Secretary may request that the Attorney General, or a designee of the Attorney General, provide for a
SEC. 203. AGREGAVATED 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 “Notwithstanding any other provision of law, the term ‘aggravated felony’ applies to an of- 
fense described in subparagraphs (A) through (T) if such offense has been committed — (i) by striking — (ii) in subparagraph (A), by striking — (iii) in subparagraph (B), by striking — (iv) in subparagraph (C), by striking — (v) in subparagraph (D), by striking — (vi) in subparagraph (E), by striking — (vii) in subparagraph (F), by striking — (viii) in subparagraph (G), by striking — (ix) in subparagraph (H), by striking — (x) in subparagraph (I), by striking — (xi) in subparagraph (J), by striking — (xii) in subparagraph (K), by striking — (xiii) in subparagraph (L), by striking — (xiv) in subparagraph (M), by striking — (xv) in subparagraph (N), by striking — (xvi) in subparagraph (O), by striking — (xvii) in subparagraph (P), by striking — (xviii) in subparagraph (Q), by striking — (xix) in subparagraph (R), by striking — (xx) in subparagraph (S), by striking — (xxi) in subparagraph (T), by striking — (xxii) in subparagraph (U), by striking — (xxiii) in subparagraph (V), by striking — (xxiv) in subparagraph (W), by striking — (xxv) in subparagraph (X), by striking — (xxvi) in subparagraph (Y), by striking — (xxvii) in subparagraph (Z), by striking — (xxviii) in subparagraph (AA), by striking — (xxix) in subparagraph (BB), by striking — (xxx) in subparagraph (CC), by striking — (xxxi) in subparagraph (DD), by striking — (xxxii) in subparagraph (EE), by striking — (xxxiii) in subparagraph (FF), by striking — (xxxiv) in subparagraph (GG), by striking — (xxxv) in subparagraph (HH), by striking — (xxxvi) in subparagraph (II), by striking — (xxxvii) in subparagraph (JJ), by striking — (xxxviii) in subparagraph (KK), by striking — (xxxix) in subparagraph (LL), by striking — (xl) in subparagraph (MM), by striking — (xli) in subparagraph (NN), by striking — (xlii) in subparagraph (OO), by striking — (xliii) in subparagraph (PP), by striking — (xliv) in subparagraph (QQ), by striking — (xlv) in subparagraph (RR), by striking — (xlvi) in subparagraph (SS), by striking — (xlvii) in subparagraph (TT), by striking — (xlviii) in subparagraph (UU), by striking — (xlix) in subparagraph (VV), by striking — (l) in subparagraph (WW), by striking — (li) in subparagraph (XX), by striking — (lii) in subparagraph (YY), by striking — (liii) in subparagraph (ZZ), by striking — (liv) in subparagraph (AAA), by striking — (lv) in subparagraph (BBB), by striking — (lx) in subparagraph (CCC), by striking — (lxi) in subparagraph (DDD), by striking — (lxii) in subparagraph (EEE), by striking — (lxiii) in subparagraph (FFF), by striking — (lxiv) in subparagraph (GGG), by striking — (lxv) in subparagraph (HHH), by striking — (lxvi) in subparagraph (III), by striking — (lxvii) in subparagraph (JJJ), by striking — (lxviii) in subparagraph (KKK), by striking — (lxix) in subparagraph (LLL), by striking — (lxx) in subparagraph (MMM), by striking — (lxxi) in subparagraph (NNN), by striking — (lxxii) in subparagraph (OOO), by striking — (lxxiii) in subparagraph (PPP), by striking — (lxxiv) in subparagraph (QQQ), by striking — (lxxv) in subparagraph (RRR), by striking — (lxxvi) in subparagraph (SSS), by striking — (lxxvii) in subparagraph (TTT), by striking — (lxxviii) in subparagraph (UUU), by striking — (lxxix) in subparagraph (VVV), by striking — (lxxx) in subparagraph (WWW), by striking — (lxxxi) in subparagraph (XXX), by striking — (lxxxii) in subparagraph (YYY), by striking — (lxxxiii) in subparagraph (ZZZ), by striking — (lxxxiv) in subparagraph (AAA), by striking — (lxxxv) in subparagraph (BBBB), by striking — (lxxxvi) in subparagraph (CCCCC), by striking — (lxxxvii) in subparagraph (DDDDD), by striking — (lxxxviii) in subparagraph (EEEE), by striking — (lxxxix) in subparagraph (FFFFF), by striking — (xc) in subparagraph (GGGGG), by striking — (xci) in subparagraph (HHHHH), by striking — (xcii) in subparagraph (IIIIII), by striking — (xciii) in subparagraph (JJJJJJ), by striking — (xciv) in subparagraph (KKKKKK), by striking — (xcv) in subparagraph (LLLLLL), by striking — (xcvi) in subparagraph (MMMMMM), by striking — (xcvii) in subparagraph (NNNNNN), by striking — (xcviii) in subparagraph (OOOOOO), by striking — (xcix) in subparagraph (PPPPPPP), by striking — (xcx) in subparagraph (QQQQQQQ), by striking — (xcxi) in subparagraph (RRRRRRRR), by striking — (xcxii) in subparagraph (SSSSSSSS), by striking — (xcxiii) in subparagraph (TTTTTTTT), by striking — (xcxiv) in subparagraph (UUUUUUUU), by striking — (xcxv) in subparagraph (VVVVVVVVV), by striking — (xcxvi) in subparagraph 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(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
(3) in subsection (c), by striking ‘‘providing or using a firearm during and in relation to an alien smuggling crime.’’—Section 924(c) of title 18, United States Code, is amended—
(1) in paragraph (1), by striking—
(A) in 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 (D)(ii), by inserting ‘‘, alien smuggling crime,’’ after ‘‘crime of violence’’; and
(2) by striking at the end of the following—
‘‘(6) For purposes of this subsection, the term ‘‘alien smuggling crime’’ means any felony punishable under section 274(a), 277, or 278 of title 8 and Nationality Act (8 U.S.C. 1324(a), 1327, and 1328).’’

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 Requirements.—
(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 clearly being required under the customs laws, immigration laws, agriculture laws, or shipping laws).
(2) Criminal Penalties.—Any alien who violates any provision under paragraph (1)—
(A) for the first violation, be fined under title 18, United States Code, imprisoned not more than 5 years, 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 for which the alien received a term of imprisonment of not less than 30 months, shall be fined under such title, imprisoned n’ot 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 n’ot more than 15 years, or both; and
(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
(4) was convicted for 3 felonies before such removal or departure, the alien shall be fined under such title, imprisoned not more than 20 years, or both;
(5) 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 113B (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 remains in 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 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.’’

(d) Clerical Amendment.—The table of contents is amended by striking the item relating to section 275 and inserting the following:
‘‘Sec. 275. Illegal entry.’’

(e) 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(c)(8 U.S.C. 1326) is amended to read as follows:

‘‘SEC. 276. REENTRY OF REMOVED ALIEN.
(a) REENTRY OF REMOVED ALIEN.—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, crosses the border to, attempts to cross the border to, or is at any time found in the United States at a time or place other than as designated by immigration officers, shall be incarcerated for the remainder of the sentence of imprisonment which was
pending at the time of deportation without any reduction for parole or supervised release unless the alien affirmatively demonstrates that the Secretary of Homeland Security has been duly consulted by the alien’s reentry. Such alien shall be subject to such other penalties relating to the reentry of removed aliens as may be available under this act or any other provision of law.

“(b) LIMITATION.—It is not aiding and abetting a violation of this section for an individual to provide an alien with emergency medical care and food, or to transport the alien to a location where such assistance can be rendered without compensation or the expectation of compensation.

“(1) DEFINITIONS.—In this section:

“(1) FELONY.—The term ‘felony’ means any criminal offense punishable by term of imprisonment of more than one year under the applicable laws of the United States, any State, or a foreign government.

“(2) MISDEMEANOR.—The term ‘misdemeanor’ means any criminal offense punishable by a term of imprisonment of not more than one year under the applicable laws of the United States, any State, or a foreign government.

“(3) REMOVAL.—The term ‘removal’ includes any denial of admission, exclusion, deportation, or removal, or any agreement by which an alien stipulates or agrees to exclusion, deportation, or removal.

“(4) STATE.—The term ‘State’ means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.”.

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

(a) PASSPORT, Visa, and Immigration 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. Forged or unauthorized production of a passport.

“1544. Misuse of a passport.

“1545. Schemes to defraud aliens.

“1546. Immigration and visa fraud.

“1547. Marriage fraud.

“1548. Attempts and conspiracies.

“1549. Alternative penalties for certain offenses.

“1550. Seizure and forfeiture.

“1551. Additional jurisdiction.

“1552. 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; or

“(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, buys, sells, possesses, or uses 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 or mails, prepares, presents, or signs 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) VICINITY.—An offense under subsection (a) may be prosecuted in any district.

“(1) In which the false statement or representation was made or the application for a United States passport was prepared or signed, or

“(2) In which or to which the application was mailed or presented.

“(2) An offense under subsection (a) involving an application prepared and adjudicated outside the United States may be prosecuted in any district in which the resultant passport was mailed or presented.

“(c) SAVINGS CLAUSE.—Nothing in this section may be construed to limit the venue otherwise available under sections 3237 and 3238 of this title.

“§ 1543. Forged or unauthorized production of a passport

“(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.—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; or

“(2) forges, counterfeits, alters, or falsely makes any immigration document; or

“(3) completes, mails, prepares, presents, signs, or submits any immigration document knowing it to contain any materially false statement or representation;

“(4) secures, possesses, transfers, receives, buys, sells, or distributes any immigration document knowing it to be forged, counterfeited, altered, falsely made, stolen, 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; or

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

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

“(4) 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—
§ 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 a consular officer, a immigration judge, or a member of the Board of Immigration Appeals),

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

§ 1547. Marriage fraud

(a) FRAUDULENT MARRIAGE.—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 20 years, or both.

§ 1548. Commercial enterprise

(a) 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.

§ 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 924(a)) 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 981(d) shall be performed by such officers and, if no such person is designated for that purpose by the Secretary of Homeland Security, the Secretary of State, or the Attorney General.

§ 1551. Additional jurisdiction

(a) General authority.—Any person who commits an offense under this chapter within the special maritime and territorial jurisdiction of the United States shall be subject to prosecution 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 924(a)); or

(5) that 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)(2) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(2)) or 8 U.S.C. 1101(a)(10)).

(b) Extradition.—Any person who willfully aids, abets, or conspires to commit an offense described in paragraph (1) or (2) of subsection (a) shall be subject to prosecution 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 924(a)); or

(5) that 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)(2) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(2)) or 8 U.S.C. 1101(a)(10)).

(c) Extraterritorial jurisdiction.—

(1) The term 'extraterritorial jurisdiction' includes any document, photograph, or other piece of evidence attached to or submitted in support of the application.

(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 homelink, bond, bond for the guidance of attorneys for the United States, or any officially authorized use; use to travel; and section 1546(b) of this chapter includes an act of, international terrorism (as defined in section 2331) or a drug trafficking crime (as defined in section 924(a)); or

(B) includes any document, 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) the laws described in paragraphs (A) and (B).

(6) The term 'immigration proceeding' includes—

(A) an adjudication, interview, hearing, or review;

(7) A person does not exercise 'lawful authority' if the person unconstitutionally exercises lawful authority the person otherwise holds.

(8) The term 'passport' means—

(9) 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.

(10) The term 'produces' includes any property or interest in property obtained or retained as a consequence of an act or omission in violation of this section.

(11) The term 'produces' includes to make, prepare, assemble, issue, print, authenticate, or alter.

(12) The term 'State' means a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

(13) The term '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 use to travel; 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.

§ 1553. Authorized law enforcement activities


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

(1) 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 asylum into 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)).

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, subsection (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) ensure that criminal aliens in Federal and State correctional facilities;

(B) ensure that such aliens are not released into the community; and

(C) remove 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 procedures as remote locations as feasible to access to Federal databases of aliens, such as IDENT, and live scan technology shall be used to the maximum extent practicable to provide immediate 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.—There are authorized to be appropriated such sums as may be necessary in each of the fiscal years 2008 through 2012 to carry out the Program.

SEC. 211. ENCOURAGING ALIENS TO DEPART VOLUNTARILY.

(a) IN GENERAL.—Section 240B (8 U.S.C. 1229c) is amended—

(1) in subsection (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), 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 removal proceedings under section 240;’’;

(B) by striking paragraph (3);

(C) by redesigning paragraph (2) as paragraph (3);

(D) by adding after paragraph (1) the following:

‘‘(2) BEFORE THE CONCLUSION OF REMOVAL PROCEEDINGS.—If an alien is not described in paragraph (2)(A) or (2)(C), the Attorney General may permit the alien to voluntarily depart the United States at the alien’s own expense under this subsection after the initiation of removal proceedings under section 240 and before the conclusion of such proceedings before an immigration judge.’’;

(E) in paragraph (3), as redesignated—

(i) by amending subparagraph (A) to read as follows:

‘‘(A) INSTEAD OF REMOVAL.—Subject to subparagraph (C), permission to voluntarily depart under paragraph (1) shall not be valid for any period of more than 120 days. The Secretary may require an alien permitted to voluntarily depart under paragraph (1) to post a voluntary departure bond, to be surchargeable for failure to depart, to be surrendered upon proof that the alien will depart from the United States within the time specified;’’;

(ii) by redesigning subparagraphs (B), (C), and (D) as paragraphs (C), (D), and (E), respectively;

(iii) by adding after subparagraph (A) the following:

‘‘(B) BEFORE THE CONCLUSION OF REMOVAL PROCEEDINGS.—Permission to voluntarily depart under paragraph (2) shall not be valid for any period in excess of 60 days, and may be granted only after a finding that the alien has the means to depart the United States and intends to do so. An alien permitted to voluntarily depart under paragraph (2) shall post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, to be surrendered upon proof that the alien will depart from the United States within the time specified. An immigration judge may waive the requirement to post a voluntary departure bond in individual cases where the alien has presented compelling evidence that the posting of a bond will pose a serious financial hardship and the alien has presented credible evidence that the alien is otherwise eligible to depart from the United States within the time allowed for any period in excess of 60 days. The Secretary may permit the alien to depart voluntarily under paragraph (2) if the alien has presented compelling evidence that the alien is otherwise eligible to depart;’’;

(iv) in subparagraph (C), as redesignated, by striking ‘‘subparagraphs (C) and (D)’’ and inserting ‘‘subparagraphs (D) and (E)’’;

(v) in subparagraph (D), as redesignated, by striking ‘‘subparagraph (B)’’ each place that term appears and inserting ‘‘subparagraph (C)’’;

(vi) in subparagraph (E), as redesignated, by striking ‘‘paragraph (4)’’ and inserting ‘‘paragraphs (1) and (2)’’;

(2) in subsection (b)(2), by striking ‘‘a period exceeding 60 days’’ and inserting ‘‘any period in excess of 60 days’’;

(3) by amending subsection (c) to read as follows:

‘‘(C) CONDITIONS ON VOLUNTARY DEPARTURE.—

(1) VOLUNTARY DEPARTURE AGREEMENT.—Voluntary departure may only be granted as part of an affirmative agreement by the alien.

(2) CONCESSIONS BY THE SECRETARY.—In connection with the alien’s agreement to depart voluntarily under paragraph (1), the Secretary of Homeland Security may agree to a reduction in the period of inadmissibility under subparagraph (A) or (B)(1) of section 212(a)(9).

(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 within the time allowed for voluntary departure or fails to comply with any other terms of the agreement (including failure to timely post any required bond), the alien is—

(A) ineligible for the benefits of the agreement;

(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);’’;

(4) 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 subsection (d)(1), voluntarily depart from 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 Secretary thereafter establishes that the alien failed to depart voluntarily within the time allowed, no further procedure will be necessary to establish the amount of the liability and 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 has been collected.

(2) INELIGIBILITY FOR RELIEF.—The alien shall be ineligible during the time the alien remains in the United States and for a period of 10 years after the alien’s departure for any further relief under this section and sections 280A, 245, 246, and 249. The order permitting the alien to depart voluntarily shall inform the alien of the ineligibility of the penalties under this subsection.

(3) REOPENING.—The alien shall be ineligible to reopen the final order of removal of the alien to depart voluntarily. If the alien does not depart, 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 208(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;’’;

(5) by amending subsection (e) to read as follows:

‘‘(e) ELIGIBILITY.—

(1) PRIOR GRANT OF VOLUNTARY DEPARTURE.—An alien shall not be permitted to voluntarily depart under this section if the Secretary of Homeland Security or the Attorney General previously permitted the alien to depart voluntarily.

(2) RULEMAKING.—The Secretary may promulgate regulations to limit eligibility or impose additional conditions for voluntary departure under subsection (a) 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.’’;

(6) in subsection (f), by adding at the end the following:

‘‘Notwithstanding section 222a(2)(D) of this Act, sections 1361, 1651, and 2241 of title 28, United States Code, any other habeas corpus provision, and any other State or Federal law (statutory, regulatory, or otherwise), no court shall have jurisdiction to affect, restate, enjoin, delay, stay, or toll the period
allowed for voluntary departure under this section.”.

(b) RULEMAKING.—The Secretary shall promulgate regulations to provide for the imposition of a penalty of $250,000 for each violation of this section on or after the date such penalty takes effect.

(c) EFFECTIVE DATES.—
(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to all orders granting voluntary departure under section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c) made on or after the date that is 180 days after the enactment of this Act.

(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) INAPMISSIBLE ALIENS.—Section 212(a)(9)(A) (8 U.S.C. 1182(a)(9)(A)) is amended—
(1) in clause (i), by striking “seeks admission within 5 years of the date of such removal or within 20 years” and inserting “seeks admission within 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 admission within 5 years after the date of such removal 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.—Section 224(d) (8 U.S.C. 1224d) is amended—
(1) in subsection (a), by striking “Commissioner” and inserting “Secretary of Homeland Security”; and
(2) by adding at the end the following:

“(c) INELIGIBILITY FOR RELIEF.—
(1) IN GENERAL.—Unless a timely motion to reconsider under section 240(c)(6) or a timely motion to reopen under section 240(c)(7) is granted, an alien described in subsection (a) is inadmissible to the United States and for a period of 10 years after the alien’s departure from the United States.

(2) SAVINGS PROVISION.—Nothing in paragraph (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 order of removal 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.”.

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

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

Section 922 of title 18, United States Code, is amended—
(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 permanent 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 permanent 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 striking subparagraph (B) to read as follows:—
(1) the alien is lawfully admitted for permanent residence’ has the same meaning as in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20));

(C) by striking “not Lawfully Admitted for Permanent Residence” and inserting “but not lawfully admitted for permanent residence”;

and

(D) in paragraph (3)(A), by striking “Admitted to the United States under a nonimmigrant visa” and inserting “lawfully admitted to the United States but not as an alien lawfully admitted for permanent residence”.

SEC. 214. UNIFORM STATUTE OF LIMITATIONS FOR CRIMINAL ILLEGAL ALIEN, PASSPORT, AND NATURALIZATION OFFENSES.

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

“3291. IMMIGRATION, PASSPORT, AND NATURALIZATION OFFENSES.

‘No person shall be prosecuted, tried, or punished for a violation of any section of chapters 69 (relating to nationality and citizenship offenses), 75 (relating to passport, visa, and immigration offenses), or for a violation of any criminal provision under section 243, 266, 274, 275, 276, 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1253, 1425, 1426, 1427, 1428, 1429, 1430, 1431, and 1432) 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) CLERICAL 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 following:

“3291. Immigration, passport, and naturalization offenses.”.

SEC. 215. DIPLOMATIC SECURITY SERVICE.

(a) SECTION 2709(a)(1) OF TITLE 22.—Section 2709(a)(1) of title 22, United States Code, is amended—
(1) conduct investigations concerning—
(A) illegal passport or visa issuance or use;
(B) identity theft or document fraud affecting or relating to the programs, functions, and authorities of the Department of Homeland Security;
(C) violations of chapter 77 of title 18, United States Code; and
(D) federal offenses committed within the scope of diplomatic and territorial jurisdiction defined in paragraph (9) of section 7 of title 18, United States Code, except as that jurisdiction relates to the premises of United States diplomatic, consular missions and related residences;

(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 BACKGROUND CHECKS CONDUCTED FOR IMMIGRATION BENEFITS.

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

“(e) DUTIES.—
(1) IN GENERAL.—The Secretary of Homeland Security and the Attorney General shall establish an interagency task force to resolve cases in which an application or petition for an immigration benefit conferred under this Act has been denied due to an outstanding background check investigation for more than 2 years after the date on which such application or petition was initially filed.

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

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Director of the Federal Bureau of Investigation such sums as are necessary for each fiscal year, 2008 through 2012 for enhancements 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.—
(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Director of the Federal Bureau of Investigation shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the background and security checks conducted by the Federal Bureau of Investigation on behalf of United States Citizenship and Immigration Services.

(2) CONTENT.—The report required under paragraph (1) shall include—
(A) a description of the background and security check program;
(B) a statistical breakdown of the background and security check delays associated with different types of immigration applications;
(C) a statistical breakdown of the background and security check delays by applicant country of origin; and
(D) the steps that the Director of the Federal Bureau of Investigation is taking to expedite 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 costs associated with processing undocumented criminal aliens through the criminal justice system, including—
(1) indigent defense;
(2) criminal prosecution;
(3) autopsies;
(4) translators and interpreters; and
(5) court costs.

(b) AUTHORIZATION OF APPROPRIATIONS.—
(1) PROCESSING CRIMINAL ILLEGAL ALIENS.—There are authorized to be appropriated $500,000,000 for fiscal year 2008, $550,000,000 for fiscal year 2009, $600,000,000 for fiscal year 2010, and $650,000,000 for each of the fiscal years 2011 through 2013.

(2) COMPENSATION UPON REQUEST.—Section 241(i)(5) (8 U.S.C. 1225(i)) is amended to read as follows:

“(5) There are authorized to be appropriated to carry this subsection—
(A) such sums as may be necessary for fiscal year 2008;
(B) $750,000,000 for fiscal year 2009;
(C) $850,000,000 for fiscal year 2010; and
(D) $900,000,000 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. 1324) is amended by striking ‘‘Secretary of Homeland Security’’.

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SEC. 218. TRANSPORTATION AND PROCESSING OF ILLEGAL ALIENS-APPROVED BY STATE AND LOCAL LAW ENFORCEMENT OFFICERS.
(a) IN GENERAL.—The Secretary may provide sufficient transportation and officers to take illegal aliens apprehended by State and local law enforcement officers into custody for processing at a detention facility operated by the Department.
(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for the years 2008 through 2012 to carry out this section.

SEC. 219. REDUCING ILLEGAL IMMIGRATION AND ALIEN SMUGGLING ON TRIBAL LANDS.
(a) GRANTS 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.
(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 Senate and 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 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 tribal officials; 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 the 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 immigration orders; and
(2) the effectiveness of the Intensive Supervision Appearance Program and the costs and benefits of expanding that program to all States.

SEC. 221. STATE AND LOCAL ENFORCEMENT OF ILLEGAL IMMIGRATION LAWS.
(a) IN GENERAL.—Section 237(g) (8 U.S.C. 1357(g)) is amended—
(1) in paragraph (2), by adding at the end the following:
"If such training is provided by a State or political subdivision of a State to an officer or employee of such State or political subdivision law enforcement agency as a condition of such training (including applicable overtime costs) shall be reimbursed by the Secretary of Homeland Security."; and
(2) in paragraph (4), by adding at the end the following:
"The cost of any equipment required to be purchased under such written agreement and necessary to perform the functions under this subsection shall be reimbursed by the Secretary of Homeland Security.".

SEC. 222. PROTECTING IMMIGRANTS FROM CONVICTED SEX OFFENDERS.
(a) IMMIGRANTS.—Section 204(a)(1) (8 U.S.C. 1154a(a)(1)) is amended—
(1) in subparagraph (A), by adding clause (vii) to read as follows:
"(vii) shall not apply to a citizen of the United States who has been convicted of an offense described in subparagraph (A), (I), (K), or (K) of section 101(a)(3), unless the Secretary of Homeland Security, in consultation with the Attorney General, determines that the alien poses a risk to the alien with respect to whom a petition described in clause (i) is filed,"; and
(2) in subparagraph (B)(i), by adding subsection (II) to read as follows:
"(II) 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), (K), or (K) of section 101(a)(3), 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 the petition described in subclause (I) is filed."

(b) NONIMMIGRANTS.—Section 101(a)(15)(K) (8 U.S.C. 1101(a)(15)(K)), is amended by inserting "(other than an alien described in section 204(a)(1)(A)(vii))" after "citizen of the United States" each place that phrase appears.

SEC. 223. LAW ENFORCEMENT AUTHORITY OF STATES AND POLITICAL SUBDIVISIONS TO TRANSFER ALIENS TO FEDERAL CUSTODY.
The Secretary shall conduct a study of—
(a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.) is amended by adding after section 240C the following new section:
"SEC. 240D. LAW ENFORCEMENT AUTHORITY OF STATES AND POLITICAL SUBDIVISIONS TO TRANSFER ALIENS TO FEDERAL CUSTODY.
"(a) TRANSFERS OF ALIENS TO FEDERAL CUSTODY.—
"(1) AUTHORIZATION OF TRANSFERS.—The Secretary of Homeland Security, if appropriate, may authorize the transfer of an alien lawfully admitted to the United States or otherwise lawfully present in the United States to a local or State law enforcement agency for the purpose of facilitating the transfer of that alien to Federal custody.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section and the amendments thereto.

(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 Senate and 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 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 tribal officials; 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 the fiscal years 2008 through 2012 to carry out this section.

SEC. 224. LAUNDERING OF MONETARY INSTRUMENTS.
Section 1956(c)(7)(D) of title 18, United States Code, is amended—
(1) by inserting “section 1590 (relating to trafficking with respect to peonage, slavery, involuntary servitude, or forced labor),” after “section 1382 (relating to destruction of property with an intent to impede the special maritime and territorial jurisdiction),”’; and

(2) by inserting “section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324a) relating to (b) (including harboring certain aliens),” after “section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to the employment of un-authorized aliens);”.

SEC. 225. Cooperatives: Enforcement Programs.

Not later than 2 years after the date of enactment of this Act, the Attorney General shall issue a directive to expand the Justice Prisoner and Alien Transfer System (JPATS) so that it also provides additional services with respect to aliens who are illegally present in the United States. Such expansion should include—

(1) increasing the daily operations of such System with buses and air hubs in 3 geographic regions;

(2) allocating a set number of seats for such a System for each metropolitan area;

(3) allowing metropolitan areas to trade or give some of seats allocated to them under the System for such aliens to other areas in their region based on the transportation needs of each area; and

(4) requiring an annual report that analyzes the number of seats that each metropolitan area is allocated under this System for such aliens and modifies such allocation if necessary.

SEC. 226. Expansion of the Justice Prisoner and Alien Transfer System.

Not later than one year after the date of enactment of this Act, the Attorney General shall issue a directive to expand the Justice Prisoner and Alien Transfer System (JPATS) so that it also provides additional services with respect to aliens who are illegally present in the United States. Such expansion should include—

(1) increasing the daily operations of such System with buses and air hubs in 3 geographic regions;

(2) allocating a set number of seats for such a System for each metropolitan area;

(3) allowing metropolitan areas to trade or give some of seats allocated to them under the System for such aliens to other areas in their region based on the transportation needs of each area; and

(4) requiring an annual report that analyzes the number of seats that each metropolitan area is allocated under this System for such aliens and modifies such allocation if necessary.


(a) In General.—Pursuant to the authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall promulgate or amend the sentencing guidelines, policy statements, and official commentaries related to passport fraud offenses, including the offenses described in subsections (b), (c), and (d) of section 1341 of title 18, United States Code, as amended by section 208 of this Act, to reflect the serious nature of such offenses.

(b) Report.—Not later than one year after the date of the enactment of this Act, the United States Sentencing Commission shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the implementation of this section.

SEC. 228. Cancellation of Visas.

Section 222(g) (8 U.S.C. 1322(g)) is amended—

(1) in paragraph (1)—

(A) by striking “Attorney General” and inserting “Secretary”; and

(B) by inserting “or otherwise violated any of the terms of the nonimmigrant classification in which the alien was admitted,” before “such visa,” and

(C) by inserting “and any other nonimmigrant visa issued by the United States that is in the possession of the alien” after “such visa,” and

(2) in paragraph (2)(A), by striking “‘other than the visa described in paragraph (1)” and inserting “‘other than the visa described in paragraph (1)” after “issued in a consular office located in the country of the alien’s nationality” and inserting “(other than a visa described in paragraph (1)) issued in a consular office located in the country of the alien’s nationality or foreign residence”.

TITLE III—WORKSITE ENFORCEMENT

SEC. 301. Purposes.

SEC. 302. Unlawful Employment of Aliens.


SEC. 305. Assure Security and Integrity of Social Security Cards.


SEC. 307. Voluntary Advanced Verification Program to Combat Identity Theft.

SEC. 308. Responsibilities of the Social Security Administration.

SEC. 309. Immigration Enforcement Support for the Internal Revenue Service.

SEC. 310. Authorization of appropriations.

SEC. 311. Effect on other Federal agencies.

SEC. 312. Worksite Enforcement.

SEC. 313. Protections for recipients of immigration benefits.


SEC. 316. Authorization of appropriations.


SEC. 318. Authorization of appropriations.

SEC. 319. Authorization of appropriations.

SEC. 320. Authorization of appropriations.


SEC. 322. Authorization of appropriations.

SEC. 323. Authorization of appropriations.

SEC. 324. Authorization of appropriations.

SEC. 325. Authorization of appropriations.


SEC. 327. Authorization of appropriations.

SEC. 328. Authorization of appropriations.


SEC. 331. Authorization of appropriations.

SEC. 332. Authorization of appropriations.

SEC. 333. Authorization of appropriations.
‘(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 Secretary to enforce the requirements of this subsection, 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 alien at a particular time, that the alien is not at that time either—

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

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

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

‘(c) DOCUMENT VERIFICATION REQUIREMENTS.—

‘Any employer hiring, recruiting, or referring an individual for employment in the United States, and the Secretary, shall verify that the individual is authorized to work in the United States, including the requirements of subsection (d) and the following paragraphs:

‘(1) Attestation after examination of documentation.

‘(A) IN GENERAL.—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 of the individual by examining:

‘(i) a document described in subparagraph (B); or

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

‘Such attestation may be manifested by a handwritten or electronic signature. An employer of an employee the requirement 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 employment 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;

‘(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—

‘(I) contains a photograph of the individual, biometric data, such as fingerprints, or such other personal identifying information relating to the individual as the Secretary determines, as necessary, to determine if the individual is lawfully present in the United States; and

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

‘(i) temporary interim benefits card valid under section 218(c) of the Immigration and Nationality Act, as amended by Section 602 of the Comprehensive Immigration Reform Act of 2007, bearing a photograph and an expiration date; or

‘(b) ENUMERATING IDENTIFICATION OF INDIVIDUAL.—A document described in this subparagraph includes—

‘(i) 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, or any other document or class of documents 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 2005 (49 U.S.C. 13701 note) and implementing regulations issued by the Secretary of Homeland Security; 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 timetables and procedures established by the Secretary pursuant to subsection (c)(1)(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 for individuals over 18 years of age, a Certificate of Citizenship, or a Certificate of Naturalization, or a Certificate of Lawful Permanent Resident Status if the card is presented by the individual and ending

‘(B) DOCUMENTS ESTABLISHING BOTH EMPLOYMENT AUTHORIZATION AND IDENTITY.—The employer shall maintain records as prescribed in this subsection. The Secretary, in consultation with the Commissioner of Social Security Administration, shall, with the concurrence of the Secretary of Homeland Security, promulgate regulations to establish procedures for verifying the identity and work authorization of individuals 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 identity, work authorization, or that the document contains security features to make it resistant to tampering, counterfeiting, and fraudulent use; or

‘(III) contains security features to make the document as resistant to tampering, counterfeiting, and fraudulent use as the documents listed in subparagraph (B)(i), (B)(ii), or (C)(i).

‘(d) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION.—The documents described in subparagraph (B)(ii), or (C)(i) may be accepted as evidence of employment authorization—

‘(i) a social security account number card issued by the Social Security Administration; or

‘(ii) the card is presented by the individual.

‘(e) RETENTION OF VERIFICATION FORM.—

‘(1) Attestation form—The employer shall maintain records as prescribed in this subsection. The Secretary, in consultation with the Commissioner of Social Security Administration, shall, with the concurrence of the Secretary of Homeland Security, promulgate regulations to establish procedures for verifying the identity and work authorization of individuals 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 identity, work authorization, or that the document contains security features to make it resistant to tampering, counterfeiting, and fraudulent use; or

‘(2) R ETENTION OF VERIFICATION FORM.—The employer shall maintain records as prescribed in this subsection. The Secretary, in consultation with the Commissioner of Social Security Administration, shall, with the concurrence of the Secretary of Homeland Security, promulgate regulations to establish procedures for verifying the identity and work authorization of individuals 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 identity, work authorization, or that the document contains security features to make it resistant to tampering, counterfeiting, and fraudulent use; or

‘(3) RETENTION OF VERIFICATION FORM.—The employer shall maintain records as prescribed in this subsection. The Secretary, in consultation with the Commissioner of Social Security Administration, shall, with the concurrence of the Secretary of Homeland Security, promulgate regulations to establish procedures for verifying the identity and work authorization of individuals 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 identity, work authorization, or that the document contains security features to make it resistant to tampering, counterfeiting, and fraudulent use; or

‘(4) COPYING OF DOCUMENTATION AND RECORDKEEPING.—

‘(A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE EMPLOYER SHALL COPY ALL DOCUMENTS PRESENTED BY AN INDIVIDUAL PURSUANT TO THIS SUBSECTION AND RETAIN A COPY FOR A PERIOD OF NOT LESS THAN THREE YEARS;

‘(B) The employer shall 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 for a period of not less than three years.

‘(E) AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS.—If the Secretary finds that any document or class of documents described in subparagraph (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)(1)(C)(i), (c)(1)(C)(ii), or (c)(1)(D).

‘(g) VERIFICATION 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 by this Act for the purpose of employment. Such attestation may be manifested by either a handwritten or electronic signature.

‘(h) 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 officials of the Department of Homeland Security or persons designated by the Secretary, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during a period beginning on the date of completion of the recruiting, referral, or the individual and ending—

‘(1) 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

‘(2) in the case of the hiring of an individual, the employment is terminated, whichever is earlier.

‘(i) copying of documentation and record keeping required.

‘(A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE EMPLOYER SHALL COPY ALL DOCUMENTS PRESENTED BY AN INDIVIDUAL PURSUANT TO THIS SUBSECTION AND RETAIN A PAPER, MICROFICHE MICROFILM, OR ELECTRONIC COPY AS DESCRIBED IN PARAGRAPH (3), BUT ONLY (EXCEPT AS OTHERWISE PERMITTED UNDER LAW) FOR THE PURPOSES OF COMPLYING WITH THE REQUIREMENTS OF THIS SUBSECTION. SUCH COPIES 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 for a period of not less than three years.

‘(E) The Secretary may prescribe the manner of recording 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.

‘(i) PENALTIES.—An employer that fails to comply with any requirement of this subsection shall be penalized under subsection (e).
(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) Employment Verification System.—(1) In general.—The Secretary, in cooperation with the Secretary of Commerce and the Commissioner of Social Security, and the states, shall implement and specify the procedures for EEEVS. The participating employers shall timely register with the Secretary, and shall use EEEVS as described in subsection (d)(5).

(2) Implementation Schedule.—

(A) As of the date of enactment of this section, the Secretary shall require employers to participate in the EEEVS and shall complete on such date as the Secretary shall specify in subsection 274A(a)(1).

(B) The Secretary, in cooperation with the Secretary of Commerce and the Commissioner of Social Security, and the states, shall implement and specify the procedures for EEEVS. The participating employers shall timely register with the Secretary, and shall use EEEVS as described in subsection (d)(5).

(3) Participation in EEEVS.—The Secretary, through its Federal Register, shall prescribe procedures that employers must follow to register in the EEEVS. In prescribing these procedures the Secretary shall have authority to require employers to provide:

(I) the employer’s name;

(II) the employer’s Employment Identification Number (EIN);

(III) address;

(IV) name, position and social security number of the employer’s employees accessing the system;

(V) such other information as the Secretary deems necessary to ensure proper use and security of the EEEVS.

The Secretary shall require employers to undergo such training as the Secretary deems necessary to ensure proper use and security of the EEEVS. To the extent practicable, such training shall be made available electronically.

(J) Provision of Additional Information.—The employer shall provide to the Secretary all required information set forth in this section.

(K) Procedures for Participants in the EEEVS.—(A) In general.—An employer participating in the EEEVS must register in the EEEVS and conform to the following procedures in the event of hiring, recruiting, or referring an individual for employment in the United States:

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

(I) an individual’s social security account number;

(II) the individual does not attest to United States nationality under subsection (c)(2) of this section, such identification or authorization established by the Department of Homeland Security as the Secretary of Homeland Security shall specify, and

(III) other such information as the Secretary may require to determine the identity and work authorization of an employee.

(ii) Presentation of Documentation.—The employer, and the individual whose identity and employment eligibility are being confirmed, shall fulfill the requirements of subsection (c)(2) of this section.

(iii) Presentation of Biometrics.—Employers who are enrolled in the Voluntary Advanced Verification Program to Combat Identity Theft, as established by the Department of Homeland Security as the Secretary of Homeland Security shall specify, and

(iv) Submission of Fingerprints.—In addition to the documentation evidence of identity and work eligibility, electronically provide the fingerprints of the individual to the Department of Homeland Security.

(B) Seeking Confirmation.—(1) The employer shall use the EEEVS to provide to the Secretary all required information in order to obtain confirmation of the identity and employment eligibility of any individual no earlier than the date of hire and no later than on the first day of employment (or recruitment or referral, as the case may be). An employer may not, however, make the starting date of an individual’s employment the date of receipt by the employer of confirmation of the identity and employment eligibility.

(2) For revalidation of an employee with a limited period of work authorization (including Z card holder), all required verification procedures must be complete on the date the employee’s work authorization expires.

(3) For initial verification of an employee hired before the employer is subject to the employment eligibility verification system, all required procedures must be complete on such date as the Secretary shall specify in subsection 274A(a)(1).

(C) Confirmation or Nonconfirmation.—(1) Initial response.—The verification system shall provide a confirmation, or a nonconfirmation, or a notice that further action is required ("further action notice"). The employer shall communicate to the individual that is the subject of the verification all information provided to the Secretary by the EEEVS for communication to the individual.

(D) Confirmation upon Initial Inquiry.—When the employer hires an individual for appropriate confirmation of an individual’s identity and work eligibility under the EEEVS, the employer shall record the confirmation in such manner as the Secretary may specify.

(E) Further Action Notice upon Inquiry and Secondary Verification.—(1) Further action notice.—If the employer receives a further action notice of an individual’s identity or work eligibility under the EEEVS, the employer shall inform the individual in such manner as the Secretary determines appropriate, of such notice. Additionally, the Secretary shall provide a method of notifying employers of a confirmation, nonconfirmation or a notice that further action is required ("further action notice"). The employer shall communicate to the individual that is the subject of the verification all information provided to the Secretary by the EEEVS for communication to the individual.

(F) Confirmation upon Initial Inquiry and Secondary Verification.—(1) Confirmation upon Initial Inquiry.—When the employer hires an individual for appropriate confirmation of an individual’s identity and work eligibility under the EEEVS, the employer shall record the confirmation in such manner as the Secretary may specify.

(G) Further Action Notice upon Initial Inquiry and Secondary Verification.—(1) Further action notice.—If the employer receives a further action notice of an individual’s identity or work eligibility under the EEEVS, the employer shall inform the individual in such manner as the Secretary determines appropriate, of such notice. Additionally, the Secretary shall provide a method of notifying employers of a confirmation, nonconfirmation or a notice that further action is required ("further action notice"). The employer shall communicate to the individual that is the subject of the verification all information provided to the Secretary by the EEEVS for communication to the individual.

(H) Confirmation upon Initial Inquiry and Secondary Verification.—(1) Confirmation upon Initial Inquiry.—When the employer hires an individual for appropriate confirmation of an individual’s identity and work eligibility under the EEEVS, the employer shall record the confirmation in such manner as the Secretary may specify.
“(IV) Finality.—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 fails 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 fails to take 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 in timely period to timely file a petition for judicial review has passed. When final confirmation or nonconfirmation is provided, the confirmation or nonconfirmation system 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.

“(VI) Consequences of Nonconfirmation.—

“(1) 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.

“(2) Continued Employment After Final Nonconfirmation.—If the employer continues to employ (or to recruit or refer) an individual after a final nonconfirmation notice (unless the individual filed an administrative appeal of a final nonconfirmation notice under paragraph (7) within the time period prescribed in that paragraph); the Secretary of Homeland Security and the Commissioner of Social Security shall each develop procedures for organizing, auditing, or investigating any employer participating in the EEVS and their compliance with the requirements set forth in this section. Employers are required to provide the Secretary with information that must be presented, including any additional evidence required by Notice published 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.

“(3) Impermissible Use of the EEVS.—An employer may not use the EEVS to verify an individual prior to extending to the individual an offer of employment.

“(4) 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. Nothing in this paragraph shall be construed to prevent an employer from using a prospective employment verification system under 8 U.S.C. 1324a(r)(2)(B)

“(5) An employer may not terminate an individual’s employment solely because that individual has been issued a further action notice.

“(6) An employer may not take the following actions solely because an individual has been issued a final nonconfirmation notice:

“(i) reduce salary, bonuses or other compensation due to the employee;

“(ii) suspend the employee without pay;

“(iii) reduce the hours that the employee is required to work if such reduction is accompanied by a reduction in salary, bonuses or other compensation due to the employee, except that, with the agreement of the employee, an employer may provide an employee with reasonable time off without pay in order to contest and resolve the further action notice received by the employee; or

“(iv) deny the employee the training necessary to perform the employment duties for which the employee has been hired.

“(VII) An employer may not, in the course of utilizing the procedures for document verification set forth in subsection (c), require the employer to provide a prospective employee with additional documents or different documents than those prescribed under this subsection.

“(VIII) The Secretary of Homeland Security shall develop procedures and protocols to monitor employers’ use of the EEVS and their compliance with the requirements set forth in this section. Employers are required to comply with requests from the Secretary for information related to any monitoring, audit or investigation undertaken pursuant to this subparagraph.

“(IX) The Secretary of Homeland Security, in consultation with the Secretary of Labor, shall establish and maintain a process by which any employer (or any prospective employer in which the employee was hired) who has reason to believe that an employer has violated subparagraphs (i)–(v) may file a complaint against the employer.

“(X) Any employer found to have violated subparagraphs (i)–(v) shall pay civil penalties of up to $10,000 for each violation. This paragraph is intended to, and does not, create any right, benefit, trust, or responsibility, whether substantive or procedural, enforceable at law or equity by a party against another party or by a department, agency, or person, or does it create any right of review in a judicial proceeding.

“(x) No later than 3 months after the date of enactment of this section, the Secretary of Homeland Security, in cooperation with the Secretary of Labor and the Administrator of the Small Business Administration, shall conduct a campaign to disseminate information regarding initial provisions prescribed under this section. Such campaign shall be aimed at increasing the knowledge of employers, employees, and the general public of rights, responsibilities and remedies under this section.

“(B) In order to carry out the campaign under this paragraph, the Secretary of Homeland Security may, to the extent deemed appropriate and subject to the availability of appropriations, contract with public and private organizations for outreach activities under the campaign.

“(C) There are authorized to be appropriated to carry out this paragraph $40,000,000 for each fiscal year 2007 through 2009.

“(D) Based on a regular review of the EEVS and the document verification procedures to identify fraudulent use and to assess the security of the documents being used to verify employment eligibility to the public provided 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.

“(E) Protection from Liability for Actions Taken on the Basis of Information Provided by the Confirmation System.—No employer participating in the EEVS shall be liable under any law for any employment-related action taken in good faith reliance on information provided through the confirmation system.

“(F) Administrative Review.—In General.—An individual who receives a final nonconfirmation notice may, not later than 15 days after the date that such notice is received, file an administrative appeal of such final notice. An individual who did not timely contest a further action notice may not avail himself of this paragraph. Unless the Secretary of Homeland Security, in consultation with the Commissioner of Social Security, specifies otherwise, all administrative appeals shall be filed and carried in accordance with the Administrative Appeal of such final notice. An individual who did not timely contest a further action notice may not avail himself of this paragraph.

“(G) Nationals of the United States.—An individual claiming to be a national of the United States shall file the administrative appeal with the Commissioner of Social Security.

“(H) Review for Error.—The Secretary and the Commissioner shall each develop procedures for resolving administrative appeals regarding final nonconfirmations based upon the information that the individual has provided, including any additional evidence that was not previously considered. Such appeals shall be resolved within 30 days after the individual has submitted all evidence relevant...
to the appeal. The Secretary and the Com- missioner 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 order nonconfirmation notice. The Sec- retary or the Commissioner shall stay the final nonconfirmation notice pending the resolution of the administrative appeal un- less the Commissioner determines that the administrative appeal is frivolous, unlikely to succeed on the merits, or filed for purposes of delay and terminates the stay.

"(D) DAMAGES, FEES AND COSTS.—No money damages, fees or costs may be awarded in the administrative review process, and no court shall have jurisdiction to award any dam- ages, fees or costs relating to such administra- tive review under the Equal Access to Justice Act or any other law.

"(8) JUDICIAL REVIEW.—

"(A) EXCLUSIVE PROCEDURE.—Notwith- standing any other provision of law (statu- tory or otherwise), including sections 1361 and 1651 of title 28, no court shall have juris- diction to consider any claim against the United States, or any of its agencies, offi- cers, or employees, unless the party or parties relating to a final nonconfirmation notice or to the EEVS, except as specifically provided by this paragraph. Judicial review of a final nonconfirmation notice or filed for purposes of delay, and terminates the stay.

"(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 or indirectly conveying to the em- ployee a request to contact the appropriate Federal or State agency.

"(B) DESIGN AND OPERATION OF SYSTEM.—

"(D) ACCESS TO INFORMATION.—

"(D) ACCESS TO INFORMATION.—

"(I) To develop and use algorithms to de- tect and prevent fraud and identity theft, in- cluding new or potential identity theft, and to- dential information and identifiers contained in the records accessed pursuant to this paragraph and subparagraph (d)(5)(E)(i). The Secretary, in consultation with the Commissioner and other appro- priate Federal and State agencies, shall develop policies and procedures to ensure protection of the privacy and security of personally identifiable information and identifiers in the EEVS and the efficiency, accuracy, and security of the EEVS.

"(E) RESPONSIBILITIES OF THE SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY.—

"(i) As part of the EEVS, the Secretary shall establish reliable, secure method,
which, operating through the EEVs and within the time periods specified, compares the name, alien identification or authorization number, or other relevant information provided by the employer against such record maintained or accessed by the Secretary in order to confirm (or not confirm) the validity of the information provided, the corresponding name and number, and to verify whether the alien is authorized to be employed in the United States (or, to the extent that the Secretary determines to be feasible and appropriate, to verify that the Secretary's records verify United States citizenship), and such other information as the Secretary may prescribe.

(ii) As part of the EEVs, the Secretary shall establish reliable, secure method, which, operating through the EEVs, displays the digital photograph described in paragraph (d)(9)(B)(vi) of this section and shall be issued.

(iv) The Secretary shall perform regular audits under the EEVs, as described in paragraph (d)(10), which shall utilize the information obtained from such audits, as well as any information obtained from the Commissioner of Social Security pursuant to subsection (d)(8)(A) of the Comprehensive Immigration Act of 2007, for the purposes of this title and of immigration enforcement in general.

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.

(F) Responsibilities of the Secretary of State.—As part of the EEVs, the Secretary shall provide to the Secretary of Homeland Security access to passport and visa information and other appropriate, whether the Secretary determines to be feasible and appropriate.

(G) Authority to Investigate.—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 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.

(H) Responsibilities of the Secretary of State.—As part of the EEVs, the Secretary shall provide to the Secretary of Homeland Security access to passport and visa information as needed to confirm that passport or passport card presented under section 264(a) of this title or immigration enforcement in general.

(i) 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.

(ii) If an employer has previously been fined under subsection (e)(4)(A), 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; and

(iii) the employer shall 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.

(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 provision of any immigration information and services, for the purpose of integrating adjudication service for purposes of sections 286(m) and (n).

(14) The employer shall use the procedures prescribed in subsection (d) for participation in the Basic Pilot program.

[145x82]April 24, 2007

[145x82]CONGRESSIONAL RECORD

[145x82]S6645

[145x82]Senator Johnson (for himself and Senator Grassley) cited the following:

[145x82]The Commissio

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[145x82]Secretary shall establish reliable, secure method, which, operating through the EEVs, displays the digital photograph described in paragraph (d)(9)(B)(vi) of this section and shall be issued.

(2) Authority to Investigate.—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 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.

(3) Compliance Audit Procedure.—The Secretary shall establish a reliable, secure method, which, operating through the EEVs, displays the digital photograph described in paragraph (d)(9)(B)(vi) of this section and shall be issued.

(4) Civil Penalties.—

(A) 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) if an employer has previously been fined under subsection (e)(4)(A), 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; and

(iii) the employer shall 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.

(1) The employer shall use the procedures prescribed in subsection (d) for participation in the Basic Pilot program.

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(v) The employer shall use the procedures prescribed in subsection (d) for participation in the Basic Pilot program.

(2) Authority to Investigate.—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 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.

(3) Compliance Audit Procedure.—The Secretary shall establish a reliable, secure method, which, operating through the EEVs, displays the digital photograph described in paragraph (d)(9)(B)(vi) of this section and shall be issued.

(4) Civil Penalties.—

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

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(ii) if an employer has previously been fined under subsection (e)(4)(A), 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; and

(iii) the employer shall 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.

(11) 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 for the enforcement and administration of the immigration or alien registration laws, or for enforcement of Federal criminal law related to the functions of the EEVs, including prohibitions on forgery, fraud and identity theft.

(i) Unlawful Use of 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 for the enforcement and administration of the immigration or alien registration laws, or for enforcement of Federal criminal law related to the functions of the EEVs, including prohibitions on forgery, fraud and identity theft.

(12) 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 use any information, database, or other records assembled under this subsection for any purpose other than for the enforcement and administration of the immigration or alien registration laws, or for enforcement of Federal criminal law related to the functions of the EEVs, including prohibitions on forgery, fraud and identity theft.

(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 provision of any immigration information and services, for the purpose of integrating adjudication service for purposes of sections 286(m) and (n).

(14) The employer shall use the procedures prescribed in subsection (d) for participation in the Basic Pilot program.
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 other orders, specifically designed to address the effect in the event of a further violation, and in appropriate cases, the remedy provided by paragraph (q)(2). All penalties in this section may be reduced for up to four years and a half to avoid a showing of good faith by the employer in determining the amount of a penalty.

"(D) The Secretary is authorized to reduce or mitigate penalties imposed upon employers, including, but not limited to, the employer's hiring volume, compliance history, good-faith implementation of the compliance program, participation in temporary worker programs, 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 certify to the Secretary that the employer is in compliance with this section, or has instituted a program to come into compliance. Within 60 days of receiving a notice from the Secretary requiring such a certification, the employer shall certify under penalty of perjury that the employer is in compliance or shall file a petition in accordance with subparagraph (4)(A) or (B). The Secretary is authorized to publish in the Federal Register notices relating to this subsection, and the Secretary may impose additional penalties for violations of this subsection.

"(6) JUDICIAL REVIEW.—

Notwithstanding any other provision of law (statutory or nonstatutory) including sections 1361 and 1651 of title 28, no court shall have jurisdiction to consider a final determination or penalty claim issued under subsection (e), to have violated paragraph (1) of this subsection unless the employer or, if the violation occurs, the employer shall have been afforded a hearing on the matter in accordance with this section relating to such hiring, recruiting, or referring of temporary hired workers, 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.

"(7) ENFORCEMENT OF ORDERS.—If an employer fails to comply with any final determination issued under this subsection, and the final determination is not subject to judicial review as provided in paragraph (5), the Attorney General may file suit in any 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 court may order the employer to pay any alleged liability.

"(8) CIVIL PENALTY.—Any employer which willfully or negligently commits a violation of this section shall, in addition to any other criminal or civil penalty, be subject to a civil penalty of not more than $7,500 for each violation.

"(9) ENFORCEMENT OF A LIEN.—A lien obtained through this process shall be recorded only if the amount of the lien is at least $25,000.

"(10) PROHIBITION OF INDIVIDUAL LIENS.—Any employer which willfully or negligently commits a violation of this section shall, in addition to any other criminal or civil penalty, be subject to a civil penalty of not more than $7,500 for each violation.

"(11) GOVERNMENT CONTRACTS.—Whenever an employer

whom the notice of lien is registered, docketed, or indexed shall be considered for all purposes as the filing precedent to the application of such provisions to an individual or entity under case law providing for the filing of a notice of lien. A notice of lien recorded, docketed, or indexed in accordance with the rules and requirements relating to judgments of the courts of the State where the notice of lien is registered, docketed, or indexed shall be considered for all purposes as the filing prescribed by this section.

"(12) ENFORCEMENT OF PATENT OR PRACTICE VIOLATIONS.—Whenever an employer who does not hold Federal contracts, grants, or cooperative agreements for the performance of Federal work in the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the employer, and the court may order the employer to pay any alleged liability.

"(A) CREATION OF LIEN.—If any employer liable for a fee or penalty under this section neglects or fails to file a petition for review (if applicable) as provided in paragraph 6 of this subsection, such liability is a lien in favor of the United States on all property of such person as if the liability of such person were a liability for a tax assessed under the Internal Revenue Code of 1986. If an employer is found guilty of a violation of this section, the employer shall be subject to debarment from the receipt of Federal contracts, grants, or cooperative agreements for the performance of Federal work in the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the employer, and the court may order the employer to pay any alleged liability.

"(B) GOVERNMENT CONTRACTS.—Whenever an employer who does not hold Federal contracts, grants, or cooperative agreements is determined by the Secretary to be a repeat violator of this subsection, and the notice of lien is registered, docketed, or indexed in accordance with the rules and requirements relating to judgments of the courts of the State where the notice of lien is registered, docketed, or indexed in accordance with the rules and requirements relating to judgments of the courts of the State where the notice of lien is registered, docketed, or indexed shall be considered for all purposes as the filing prescribed by this section.

"(C) ENFORCEMENT OF A LIEN.—A lien obtained through this process shall be recorded only if the amount of the lien is at least $25,000.

"(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 action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of this section, other than with respect to the application of such provisions to an individual or entity under case law providing for the filing of a notice of lien. A notice of lien recorded, docketed, or indexed shall be considered for all purposes as the filing prescribed by this section.

"(E) PROHIBITION OF INDIVIDUAL LIENS.—Any employer which willfully or negligently commits a violation of this section shall, in addition to any other criminal or civil penalty, be subject to a civil penalty of not more than $7,500 for each violation.

"(1) PROHIBITION.—It is unlawful for an employee, in the hiring, recruiting, or referring of employment, 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 willfully or negligently commits a violation of this section shall, in addition to any other criminal or civil penalty, be subject to a civil penalty of not more than $7,500 for each violation.

"(F) GOVERNMENT CONTRACTS.—Whenever an employer who does not hold Federal contracts, grants, or cooperative agreements is determined by the Secretary to be a repeat violator of this subsection, and the notice of lien is registered, docketed, or indexed in accordance with the rules and requirements relating to judgments of the courts of the State where the notice of lien is registered, docketed, or indexed shall be considered for all purposes as the filing prescribed by this section.
“(1) 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 in which the employer is advised that employees’ names or corresponding social security account numbers fail to match SSA records. The Secretary, in consultation with the Commissioner of Social Security, may waive operation of this subsection or is convicted of a crime under this section, the employer shall be subject to debarment from the receipt of 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 debarring the employer, 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, in lieu of proceedings to debar the employer from the receipt of new Federal contracts, grants, or cooperative agreements for a period of up to two years, waives operation of this subsection, limit the duration or scope of the proposed debarment, or may refer to an appropriate lead agency the decision of whether the requirements of the subsection have been satisfied, 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 this section shall be considered a cause for suspension under the procedures and standards for suspension prescribed by the Federal Acquisition Regulation.

“(4) Inadvertent violations of recordkeeping or verification requirements, in the absence of other violations of law, shall not be a basis for determining that an employer is a repeat violator for purposes of this subsection;

“(1) MISCELLANEOUS PROVISIONS.—

“(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 with respect to the type of employment or employer shall be conspicuously stated on the documentation or endorsement.

“(2) PREEMPTION.—The provisions of this section preempt any State or local law that requires the use of the EEOVs in fashion that conflicts with federal policies, procedures or timetables, other federal civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or re-cruit 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.

“(2) CONTRACTORS AND RECIPIENTS.—Whenever an employer who holds Federal contracts, grants, or cooperative agreements is determined by the Secretary to be a repeat violator of this section, the employer may limit the duration or scope of the debarment.

“(1) CHALLENGES TO VALIDITY.—
“(1) In general.—Any right, benefit, or claim not otherwise waived or limited pursuant to this section is available in an action instituted in the United States District Court for the District of Columbia, but shall be limited to determination of—

“(A) whether any regulation issued to implement this section, violates the Constitution of the United States; or

“(B) whether such regulation issued by or under the authority of the Secretary to implement this section, is contrary to applicable provisions of this section or was issued in violation of title 5, chapter 5, United States Code.

“(2) DEADLINES FOR BRINGING ACTIONS.—Any action instituted under this paragraph must be brought no later than 90 days after the date of the challenged section or regulation described in clause (1) or (ii) of subparagraph (A) is first implemented.

“(3) CLASS ACTIONS.—The court may not certify a class under Rule 23 of the Federal Rules of Civil Procedure in any action under this section.

“(4) RULE OF CONSTRUCTION.—In determining whether the Secretary’s interpretation regarding any provision of this section is contrary to law, a court shall accord such interpretation the maximum deference permissible under the Constitution.

“(5) NO ATTORNEYS’ FEES.—Notwithstanding any provision of law, the court shall not award fees or other expenses to any person or entity based upon any action relating to this Title brought pursuant to this section unless—

SEC. 260. EFFECTIVE DATE.

This title shall become effective on the date of enactment.

SEC. 264. DISCLOSURE OF CERTAIN TAXPAYER INFORMATION TO ASSIST IN IMMIGRATION ENFORCEMENT.

(a) DISCLOSURE OF CERTAIN TAXPAYER IDENTIFICATION INFORMATION.—

(1) IN GENERAL.—Section 6102(I) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(D) certifies to the Secretary for the most recent year that such contractor is in compliance with all such requirements.

“(C) submits the findings of the most recent review conducted under subparagraph (B) to the Secretary as part of the report required by paragraph (A) of this section.

“(D) certifies to the Secretary that the contractor is in compliance with all such requirements.

“(E) the certification required by subparagraph (D) shall include a statement that the contractor is in compliance with all such requirements.

“(3) CONFORMING AMENDMENTS.—

“(A) IN GENERAL.—Section 6103(p) of such Code is amended by adding at the end the following new paragraph:

“(B) agrees to conduct an on-site review every 3 years (mid-point review in the case of contracts or agreements of less than 3 years in duration) of each contractor and determine compliance with such requirements.

“(D) certifies to the Secretary for the most recent annual period that such contractor is in compliance with all such requirements.

“(2) COMPLIANCE BY DHS CONTRACTORS WITH CONFIDENTIALITY SAFEGUARDS.—

“(A) IN GENERAL.—Section 6103(p) of such Code is amended by adding at the end the following new paragraph:

“(B) agrees to conduct an on-site review every 3 years (mid-point review in the case of contracts or agreements of less than 3 years in duration) of each contractor and determine compliance with such requirements.

“(C) submits the findings of the most recent review conducted under subparagraph (B) to the Secretary as part of the report required by paragraph (A) of this section.

“(D) certifies to the Secretary that the contractor is in compliance with all such requirements.

“(E) the certification required by subparagraph (D) shall include a statement that the contractor is in compliance with all such requirements.

“(3) CONFORMING AMENDMENTS.—
SEC. 305. INCREASING SECURITY AND INTEGRITY OF SOCIAL SECURITY CARDS.

(a) Fraud-Resistant, Tamper-Resistant and Wear-Resistant Social Security Cards.—

(1) Issuance.—The Commissioner 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 of section 2005 (division B of Public Law 109-13; 49 U.S.C. 30301 note).

(b) States that do not certify their intent to comply with 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. Grants issued to States that do not comply with REAL ID Act may not be used to verify identity under this Title except under conditions approved by the Secretary.

(c) Grants and Contracts Authorized.—

(1) In general.—The Secretary is authorized to award grants to States whose REAL ID implementation plans to issue driver’s license and identity cards are approved by the Secretary.

(2) Conditions.—All grants under the Program shall be conditioned on the recipient agreeing to implement the requirements of this Act and any implementing regulations to the satisfaction of the Secretary.

(d) Authorization of Appropriations.—

There is authorized to be appropriated—

A. Voluntary Advanced Verification Program to Combat Identity Theft.

(a) Voluntary Advanced Verification Program.—The Secretary shall—

(1) establish and make available a voluntary program allowing employers to access an employee’s fingerprints for purposes of determining the identity and work authorization of the employee.

(2) voluntary participation—The program is voluntary; employers are not required to participate in it.

(b) Limited Retention Period for Fingerprints.

(1) 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 EEOVS-related system unless the fingerprints have been ordered to be retained for purposes of a fraud or similar investigation by government agency with independent criminal or other investigative authority.

(2) Exception: For purposes of preventing identity theft or other harm a U.S. Citizen 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 fingerprints have been ordered to be retained for purposes of a fraud or similar investigation by government agency with 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 query only for the purpose 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 EEOVS.

(d) 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.

SEC. 308. RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL SECURITY.—

Section 205(c)(2) of the Social Security Act, 42 U.S.C. 406(c)(2), is amended by adding at the end the following new subparagraphs:

"(1) Responsible cause waive not to apply. Subsection (a) shall not apply with respect to the social security account number of an employee furnished under section 6851(a)(2).

"(2) 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)(1) 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 within 60 days after notification under section 205(c)(2)(1) of the Social Security Act that the social security account number contained in wage records provided to the Social Security Administration by the employer with respect to the employee does not match the social security account number of the employee contained in relevant records otherwise maintained by the Social Security Administration.

"(B) Exception not applicable to frequent offenders. Subparagraph (A) shall not apply—

"(i) in any case in which not less than 50 of the statements required to be made by an employer pursuant to subparagraph (B) fail to include an employee's social security account number or include an incorrect social security account number, or

"(ii) with respect to an employer who has received written notification under section 205(c)(2)(1) of the Social Security Act during each of the 3 preceding taxable years that the social security account numbers in the wage records provided to the Social Security Administration by such employer with respect to 10 more employees do not match relevant records otherwise maintained by the Social Security Administration.

"(B) Enforcement.—(1) In general.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Secretary of Homeland Security, shall establish a unit within the Criminal Investigation Office of the Internal Revenue Service to investigate violations of the Internal Revenue Code of 1986 related to the employment of individuals who are not authorized to work in the United States.

(2) SPECIAL AGENTS; SUPPORT STAFF.—The Secretary of the Treasury shall assign to the unit established pursuant to paragraph (1) a minimum of 10 full-time special agents and necessary support staff and is authorized to employ up to 200 full time special agents for this unit based on investigative requirements and workload.

(3) REPORTS.—During each of the first 5 calendar years beginning after the establishment of such unit and biennially thereafter, the Secretary shall transmit to Congress a report that describes its activities and includes the number of investigations and cases referred for prosecution.

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

(a) TIGHTENING REQUIREMENTS FOR THE PROVISION OF SOCIAL SECURITY NUMBERS ON FORM W-2 WAGE AND TAX STATEMENTS.—

Section 6724 of the Internal Revenue Code of 1986 (relating to verification of the social security account number of employees), as amended by sections 205(c)(12) of the Social Security Act, is amended by striking "$50" and inserting "$200".

(b) EXCEPTION.—(1) I N GENERAL .—

"(a) There are authorized to be appropriated $600,000 in each of fiscal years 2007 and 2008 to establish and operate a system to verify the employment status of individuals who are not lawfully present in the United States, and $250,000 in each of fiscal years 2007 and 2008 for grants to states and localities to assist in establishing and operating such system in those states and localities.

"(b) The Secretary of the Treasury shall, in consultation with the Secretary of Homeland Security, establish a system that allows an employer to verify the employment status of an individual who is not lawfully present in the United States prior to the sale, distribution, or transfer of a controlled substance.

"(c) The Secretary of the Treasury shall maintain and store all fingerprints submitted under this program.

"(d) The Secretary of the Treasury shall, in consultation with the Social Security Administration, establish a secure process whereby an individual can request that the Commissioner preclude any confirmation under the EEOVS based on that individual's Social Security number until it is reactivated by that individual.

"(e) IMMIGRATION ENFORCEMENT SUPPORT BY THE INTERNAL REVENUE SERVICE AND THE SOCIAL SECURITY ADMINISTRATION.—

Section 205(c)(12) of the Social Security Act, 42 U.S.C. 406(c)(2), is amended by adding at the end the following new subparagraphs:

"(1) Responsible cause waive not to apply. Subsection (a) shall not apply with respect to the social security account number of an employee furnished under section 6851(a)(2).

"(2) 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)(1) 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 within 60 days after notification under section 205(c)(2)(1) of the Social Security Act that the social security account number contained in wage records provided to the Social Security Administration by the employer with respect to the employee does not match the social security account number of the employee contained in relevant records otherwise maintained by the Social Security Administration.

"(B) Exception not applicable to frequent offenders. Subparagraph (A) shall not apply—

"(i) in any case in which not less than 50 of the statements required to be made by an employer pursuant to subparagraph (B) fail to include an employee’s social security account number or include an incorrect social security account number, or

"(ii) with respect to an employer who has received written notification under section 205(c)(2)(1) of the Social Security Act during each of the 3 preceding taxable years that the social security account numbers in the wage records provided to the Social Security Administration by such employer with respect to 10 more employees do not match relevant records otherwise maintained by the Social Security Administration.

"(C) The Secretary of the Treasury shall, in consultation with the Social Security Administration, establish a secure process whereby an individual can request that the Commissioner preclude any confirmation under the EEOVS based on that individual’s Social Security number until it is reactivated by that individual.

SEC. 310. AUTHORIZATION OF APPROPRIATIONS.—

Section 6721 of such Code (relating to failure to file correct information returns) is amended by striking "$25,000" and inserting "$5,000,000".

SEC. 311. INCREASE IN PENALTY ON EMPLOYER FAILING TO FILE CORRECT INFORMATION RETURNS.—

Section 6721 of such Code (relating to failure to correct correct information returns) is amended by striking "$25,000" and inserting "$1,000,000".

SEC. 312. INCREASE IN PENALTY ON EMPLOYER FAILING TO FILE CORRECT INFORMATION RETURNS.—

Section 6721 of such Code (relating to failure to correct correct information returns) is amended by striking "$50" and inserting "$200".

SEC. 313. INCREASE IN PENALTY ON EMPLOYER FAILING TO FILE CORRECT INFORMATION RETURNS.—

Section 6721 of such Code (relating to failure to correct correct information returns) is amended by striking "$75,000" and inserting "$300,000".

SEC. 314. INCREASE IN PENALTY ON EMPLOYER FAILING TO FILE CORRECT INFORMATION RETURNS.—

Section 6721 of such Code (relating to failure to correct correct information returns) is amended by striking "$30 in lieu of "$50" and inserting "$120 in lieu of "$200".

SEC. 315. INCREASE IN PENALTY ON EMPLOYER FAILING TO FILE CORRECT INFORMATION RETURNS.—

Section 6721 of such Code (relating to failure to correct correct information returns) is amended by striking "$250,000" and inserting "$1,000,000".

SEC. 316. INCREASE IN PENALTY ON EMPLOYER FAILING TO FILE CORRECT INFORMATION RETURNS.—

Section 6721 of such Code (relating to failure to correct correct information returns) is amended by striking "$550,000" and inserting "$2,000,000".

SEC. 317. INCREASE IN PENALTY ON EMPLOYER FAILING TO FILE CORRECT INFORMATION RETURNS.—

Section 6721 of such Code (relating to failure to correct correct information returns) is amended by striking "$550,000" and inserting "$2,000,000".

SEC. 318. AUTHORIZATION OF APPROPRIATIONS.—

(a) There are authorized to be appropriated to the Secretary of Homeland Security such sums as may be necessary to carry out the provisions of this Act, and the amendments made by this Act, including the following appropriations:

(1) In each of the five years beginning on the date of the enactment of this Act, there are authorized to be appropriated $120 in lieu of $50 for investigations and cases referred for prosecution.

(2) In each of the five years beginning on the date of the enactment of this Act, there are authorized to be appropriated $75 in lieu of $50 for investigative requirements and workload.

(b) EFFECTIVE DATE.—The amendments made by subsections (b) and (c) shall apply to failures occurring after December 31, 2006.
(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) monitor 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 employers where employees 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 the necessary enforcement actions;

(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 enforcement 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, develop, and maintain technological equipment necessary to support the functioning of the EEVS and the connectivity between 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.

(3) Authorized to be appropriated to the Commissioner of Social Security such sums as may be necessary to carry out the provisions of this Act, including Section 308 of the ABA.

TITLE IV—NEW TEMPORARY WORKER PROGRAM

SUBTITLE A—SEASONAL NON-AGRICULTURAL AND OTHER TEMPORARY NON-IMMIGRANT 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 clause (i)(b); (b) by striking ‘‘or (iii)’’ and inserting ‘‘(i)’’; (c) by striking the alien spouse’ and inserting or; (iv) the alien spouse’; (2) by striking ‘‘or at the end of subpar-"
"(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, the Secretary of Labor or Secretary of Homeland Security.

(C) ADMINISTRATIVE REVIEW.—The Secretary and the alien shall have a single level of administrative review with the United States Citizenship and Immigration Services Administrative Appeals Office of a petition denial or termination.

(d) AUTHORIZATION TO GRANT Y NONIMMIGRANT VISA.—

(1) IN GENERAL.—Consular officer may grant an immigrant temporary visa to a Y nonimmigrant who demonstrates an intent to perform labor or services in the United States (other than, in the case of a retired foreign diplomatic representative, an activity described in section 101(a)(15)(H), subparagraph (D), (E), (I), (L), (O), (P), or (Q) of section 101(a)(15)(J) 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)(I), a national of Canada seeking admission as a Y nonimmigrant will be inadmissible if not in possession of—

(1) a valid Y nonimmigrant visa; or

(2) a United States visa required, as described in subsection (m).

(e) REQUIREMENTS FOR ADMISSION.—An alien shall be eligible for nonimmigrant status if the alien meets the following requirements:

(1) ELIGIBILITY TO WORK.—The alien shall establish that he is capable of performing the labor or services required for an occupation described in section 101(a)(15)(Y)(I) or (Y)(II).

(2) EVIDENCE OF EMPLOYMENT OFFER.—The alien’s evidence of employment shall be provided in accordance with the requirements issued by the Secretary of State, in consultation with the Secretary of Labor. In carrying out this paragraph, the Secretary may consider evidence from employers, employer associations, and labor representatives.

(A) PROCESSING FEES.—An alien making an application for a Y nonimmigrant visa shall be required to pay, in addition to any fees otherwise charged, a nonimmigrant visa processing and adjudicating such visa application, a processing fee in an amount sufficient to recover the full cost to the Secretary of Homeland Security of administrative and other expenses associated with processing the alien’s participation in the Y nonimmigrant program, including the costs of production of documentation of employment under subsection (m).

(B) STATE IMPACT FEE.—Aliens making an application for Y-1 nonimmigrants shall pay a state impact fee of $300 and an additional $250 for each dependent accompanying or following to join the alien, not to exceed $250 for each dependent.

(C) DEPOSIT AND SPENDING OF FEES.—The processing fees under subparagraph (A) shall be deposited and remain available until expended as provided by section 286(m) and (n).

(D) DEPOSIT AND DISPOSITION OF STATE IMPACT ASSISTANCE FUNDS.—The funds described in subparagraph (B) shall be deposited and remain available as provided by section 286(x).

(3) CONSTRUCTION.—Nothing in this paragraph shall be construed to affect consular procedures for collection of machine-readable visa fees or reciprocal fees for the issuance of visas.

(4) MEDICAL EXAMINATION.—The alien shall undergo a medical examination (including a determination of immunization status), at the alien’s expense, that conforms to generally accepted standards of medical practice.

(5) APPLICATION CONTENT AND WAIVER.—

(A) APPLICATION FORM.—The alien shall submit to the Secretary of State a completed application, which contains evidence that the alien meets the requirements under paragraphs (1) and (2) have been met.

(B) CONTENT.—In addition to any other information that the Secretary requires to determine eligibility for 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) involvement with groups or individuals that have engaged in terrorism, genocide, persecution, or who seek the overthrow of the United States Government.

(C) KNOWLEDGE.—The alien shall include with the application submitted under this paragraph a signed certification in which the alien certifies that—

(i) the alien has read and understands all of the questions and statements on the application form;

(ii) the alien certifies under penalty of perjury under the laws of the United States that the application, and any evidence submitted with it, are true and correct; and

(iii) the alien authorizes the release of any information contained in the application and any attached evidence for law enforcement purposes.

(6) MUST NOT BE INELIGIBLE.—The alien must not fall within a class of aliens ineligible for nonimmigrant status listed under subsection (h).

(7) MUST NOT BE INADMISSIBLE.—The alien must not be inadmissible as a nonimmigrant to the United States under section 212, except as provided in subsection (f).

(8) SPOUS OR CHILD OF NONIMMIGRANT.—An alien seeking admission as a derivative Y-3 nonimmigrant must demonstrate, in addition to satisfaction of the requirements of paragraphs (2) through (6)—

(A) that the annual wage of the principal Y nonimmigrant paid by the principal nonimmigrant is combined with the annual wage of the principal Y nonimmigrant’s spouse where the Y-3 nonimmigrant is a child and the Y nonimmigrant’s spouse is the primary beneficiary of the principal Y nonimmigrant’s household, is equal to or greater than 150 percent of the U.S. poverty level for a household size equal in size to that of the principal alien (including all dependents, family members supported by the principal alien, and the spouse or child seeking to accompany or join the principal alien), as determined by the Secretary of Health and Human Services for the fiscal year in which the application is filed; and

(B) that the medical care covered by medical insurance, valid in the United States, carried by the principal Y nonimmigrant, the principal Y nonimmigrant’s spouse (where the Y-3 nonimmigrant is a child), or the principal Y nonimmigrant’s alien employer.

(9) GROUNDS OF INADMISSIBILITY.—

(A) WAIVED GROUNDS OF INADMISSIBILITY.—In determining an alien’s admissibility as a Y nonimmigrant, such alien shall be found to be inadmissible to the extent subject to the grounds of inadmissibility under section 212(a)(2).

(B) WAIVER.—The Secretary may, in his discretion, waive the application of any provision of section 212(a) of the Act not listed in paragraph (2) on behalf of an individual alien for humanitarian purposes, to ensure family unity, or if such waiver is otherwise in the public interest.

(3) CONSTRUCTION.—Nothing in this subsection shall be construed as affecting the authority of the Secretary of State other than paragraphs 212(a)(9) to waive the provisions of section 212(a) of the Act.

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

(h) GROUNDS OF INELIGIBILITY.—

(1) IN GENERAL.—An alien is ineligible for Y nonimmigrant status if the alien is described in section 212(a)(9)(A), (B), (D), (E), (F), or (G) of the (Insert Title of Act).

(2) APPLICABILITY TO GROUNDS OF INADMISSIBILITY.—Nothing in this subsection shall be construed to limit the applicability of any ground of inadmissibility under section 212.

(3) PERIOD OF AUTHORIZED ADMISSION.—

(1) IN GENERAL.—Alleged admitted to the United States as nonimmigrants shall be granted the following periods of admission:

(A) Y-1 NONIMMIGRANTS.—Except as provided in (2), aliens granted admission as Y-1 nonimmigrants shall be granted an authorized period of admission of two years.

(B) Y-2B NONIMMIGRANTS.—Aliens granted admission as Y-2B nonimmigrants shall be granted an authorized period of admission of 10 months.

(2) Y-1 NONIMMIGRANTS WITH Y-3 DEPENDENTS.—A Y-1 nonimmigrant who has accompanying or following-to-join derivative family members in Y-3 nonimmigrant status shall be limited to two two-year periods of admission. If the family members accompany the Y-1 nonimmigrant during the alien’s first period of admission the family members may not accompany or join the Y-1 nonimmigrant during the alien’s second period of admission. If the family members accompany the Y-1 nonimmigrant during the alien’s first period of admission, but not his second period of admission, the Y-1 nonimmigrant shall not be granted any additional periods of admission in nonimmigrant status. The period of authorized admission of Y-3 nonimmigrants shall expire the same date as the period of authorized admission of the principal Y-1 nonimmigrant worker.

(3) SUPPLEMENTARY PERIODS.—(Each period of authorized admission described in paragraph (1) shall be supplemented by a period of not more than 1 year beginning on the date of employment for the purpose of travel to the worksite and, except where such period of authorized admission has been terminated under subsection (i), a period of 14 days following the period of employment for the purpose of departure or extension based on subsequent offer of employment, except that—

(A) the period of employment to be employed during such 14-day period except in the employment for which the alien was previously authorized; and

(B) the total period of employment, including such 14-day period, may not exceed the maximum applicable period of admission under the maximum of subsection (j).

(4) EXTENSIONS OF THE PERIOD OF ADMISSION.—
(A) IN GENERAL.—The periods of authorized admission described in paragraphs (1) and (2) of subsection (a) may not, except as provided in subparagraphs (B) and (C) of this subsection, be extended beyond the maximum period of admission set forth in that paragraph.

(B) EXTENSION OF Y-1 NONIMMIGRANT STATUS.—If the alien described in paragraph (1)(A) who has spent 24 months in the United States in Y-1 nonimmigrant status may not seek extension or be readmitted to the United States as Y-1 nonimmigrant unless the alien has resided and been physically present outside the United States for all or part of such period.

(C) R EADMISSION WITH NEW EMPLOYMENT.—(A) Y-1 NONIMMIGRANTS.—An alien who has been admitted to the United States in Y-1 nonimmigrant status for a period of two years or more, or as the Y-3 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.

(B) Y-2B NONIMMIGRANTS.—An alien who has been admitted to the United States in Y-2B nonimmigrant status may not, after expiration of the period of authorized admission, be readmitted to the United States as Y 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 only part of such period, unless the alien has resided and been physically present outside the United States for the immediately preceding two months.

(2) EXCEPTION.—The period of authorized admission of a Y nonimmigrant shall not terminate for unemployment under subparagraph (1)(D) if the alien submits documentation to the Secretary of Homeland Security 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(f) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611)) of the alien;

(B) a period of unauthorized employment, medical leave, maternity leave, or similar leave from employment authorized by employer policy, State law, or Federal law;

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

(3) 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.

(4) INVALIDATION OF DOCUMENTATION.—Any documentation that is issued by the Secretary or the Attorney General under subsection (m) to any alien, whose period of authorized admission terminates under paragraph (1), shall automatically be rendered invalid for any purpose except departure.

(5) 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 (i), 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 documentation 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 admission described in subsection (l).

(B) EFFECT ON PERIOD OF AUTHORIZED ADMISSION.—(i) In general.—The most recent period of authorized admission of such alien in subsection (m) shall extend the most recent period of authorized admission in the United States.

(ii) Bars to readmission.—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 265;

(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 Y status described in subsection (i).

(3) EVIDENCE OF NONIMMIGRANT STATUS.—(A) IN GENERAL.—An 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).

(B) OVERSTAYS.—Any alien, other than a Y nonimmigrant, who, after the date of the enactment of this section, remains 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).

(4) RELIEF.—Withholding of removal under section 231(b)(3); or

(5) PROTECTION AGAINST TERRORISM AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, DONE AT NEW YORK December 19, 1994.

(2) 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 applicant, and the Secretary finds the period commensurate with the circumstances; and

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

(6) PENALTY FOR ILLEGAL ENTRY OR OVERSTAY.—(1) IN GENERAL.—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 thereafter 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) STAY.—Any alien, other than a Y nonimmigrant, who, after the date of the enactment of this section, remains 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), the alien may apply for—

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

(B) withholding of removal under section 240(b)(3); or

(2) PROTECTION AGAINST TERRORISM AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, DONE AT NEW YORK December 19, 1994.

(4) RIGHT TO APPEAL.—Any alien who is denied asylum or withholding of removal by the Secretary under paragraph (1) or (2) may appeal to the Court of Appeals for the appropriate circuit from such denial in the same manner as if such alien had been granted asylum or withholding of removal by the Secretary under paragraph (1) or (2).
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 is made up in the period commensurate with the circumstances;

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

(2) Portability.—A nonimmigrant worker, who was previously issued a visa or otherwise nonimmigrant status and is employed in the United States, may accept a new offer of employment with a subsequent employer, if:

(A) the employer complies with all requirements of the Secretary of Labor under section 218B and the Secretary finds the alien to be qualified for the new job offer;

(B) the alien has been granted admission as a Y nonimmigrant visa within 7 days of admission into the United States.

(2) Employer Notification Requirement.—An employer shall, within three days of making notification in the manner prescribed by the Secretary of Homeland Security, of the following events:

(A) a nonimmigrant worker has reported to the employer whose job offer was the basis for issuance of the alien’s Y nonimmigrant visa within 7 days of admission into the United States;

(B) a nonimmigrant worker has changed jobs under subsection (r) and started employment with a different employer;

(C) the employment of a nonimmigrant worker has terminated; or

(D) a nonimmigrant worker on whose behalf the employer has filed a petition under this subsection that has been approved or denied by the Secretary of Labor and Homeland Security, as follows:

(i) one-third to the Secretary of Labor to carry out the functions and responsibilities, including enforcement of labor standards under sections 218A, 218B, and 218F, and under applicable labor laws promulgated by the Secretary of Labor and Homeland Security, of 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.). Such activities shall include random audits of employers that participate in the Y visa program; and

(ii) two-thirds to the Secretary of Homeland Security to improve immigration services and enforcement activities.

(b) Forming Amendment Regarding Creation of Treasury Accounts.

Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by inserting, at the end the following new subsections:

(1) Employer Notification Program Account.—There is established in the general fund of the Treasury a separate account, which shall be known as the "Employer Notification Program Account." Notwithstanding any other provision of this Act, there shall be deposited into the account all fines and civil penalties collected under sections 218A, 218B, or 218F and Title VI of [name of Act], except as specifically provided otherwise in such sections.

(2) Use of Funds.—Amounts deposited into the Employer Notification 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 [Insert title of Act]; and

(B) after 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, including enforcement of labor standards under sections 218A, 218B, and 218F, and under applicable labor laws promulgated by the Secretary of Labor and Homeland Security, of 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.). Such activities shall include random audits of employers that participate in the Y visa program; and

(ii) two-thirds to the Secretary of Homeland Security to improve immigration services and enforcement activities.

(2) Nonimmigrant Visa.—Nothing in this section shall be construed to prohibit the spouse or child of a nonimmigrant worker to be admitted to the United States under any other existing legal status for which the spouse or child may qualify.

(3) Change of Address.—A nonimmigrant shall comply with the change of address requirements set forth in section 265 through electronic or paper notification.

(2) Construction.—Nothing in this subsection shall be construed to prevent an alien who is precluded from changing status to a particular Y nonimmigrant classification by another provision of this Act, from changing status to another legal status, or from changing status from the period commensurate with the period during which the alien was or continues to be the beneficiary of such petition with the withdrawal of such petition in retaliation for the beneficiary’s exercise of a right protected by section 218B.

(3) Change of Status.—

(A) A nonimmigrant may apply to change status to another nonimmigrant status, subject to the provisions of section 218. If otherwise eligible, the alien may only apply to the Department of Homeland Security to change status from the period commensurate with the period during which the alien was or continues to be the beneficiary of such petition with the withdrawal of such petition in retaliation for the beneficiary’s exercise of a right protected by section 218B.

(B) An alien in Y nonimmigrant status may not change status to another nonimmigrant status.

(C) An alien in Y nonimmigrant status may not change status to any other nonimmigrant status.

(2) Construction.—Nothing in this subsection shall be construed to prevent an alien who is precluded from changing status to a particular Y nonimmigrant classification by another provision of this Act, from changing status to another legal status, or from changing status from the period commensurate with the period during which the alien was or continues to be the beneficiary of such petition with the withdrawal of such petition in retaliation for the beneficiary’s exercise of a right protected by section 218B.

(B) A nonimmigrant worker who has filed a petition under this subsection that has been approved or denied by the Secretary of Labor and Homeland Security, as follows:

(i) one-third to the Secretary of Labor to carry out the functions and responsibilities, including enforcement of labor standards under sections 218A, 218B, and 218F, and under applicable labor laws promulgated by the Secretary of Labor and Homeland Security, of 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.). Such activities shall include random audits of employers that participate in the Y visa program; and

(ii) two-thirds to the Secretary of Homeland Security to improve immigration services and enforcement activities.

(2) Nonimmigrant Visa.—Nothing in this section shall be construed to prohibit the spouse or child of a nonimmigrant worker to be admitted to the United States under any other existing legal status for which the spouse or child may qualify.

(3) Change of Address.—A nonimmigrant shall comply with the change of address requirements set forth in section 265 through electronic or paper notification.

(2) Construction.—Nothing in this subsection shall be construed to prevent an alien who is precluded from changing status to a particular Y nonimmigrant classification by another provision of this Act, from changing status to another legal status, or from changing status from the period commensurate with the period during which the alien was or continues to be the beneficiary of such petition with the withdrawal of such petition in retaliation for the beneficiary’s exercise of a right protected by section 218B.

(D) Construction.—Nothing in this subsection shall be construed to prevent an alien who is precluded from changing status to a particular Y nonimmigrant classification by another provision of this Act, from changing status to another legal status, or from changing status from the period commensurate with the period during which the alien was or continues to be the beneficiary of such petition with the withdrawal of such petition in retaliation for the beneficiary’s exercise of a right protected by section 218B.

(E) Construction.—Nothing in this subsection shall be construed to prevent an alien who is precluded from changing status to a particular Y nonimmigrant classification by another provision of this Act, from changing status to another legal status, or from changing status from the period commensurate with the period during which the alien was or continues to be the beneficiary of such petition with the withdrawal of such petition in retaliation for the beneficiary’s exercise of a right protected by section 218B.

(2) Construction.—Nothing in this subsection shall be construed to prevent an alien who is precluded from changing status to a particular Y nonimmigrant classification by another provision of this Act, from changing status to another legal status, or from changing status from the period commensurate with the period during which the alien was or continues to be the beneficiary of such petition with the withdrawal of such petition in retaliation for the beneficiary’s exercise of a right protected by section 218B.
provide the Secretary of Health and Human Services with a certification that the State’s proposed uses of the fund are consistent with (D).

"(G) ANNUAL REPORT.—The Secretary of Health and Human Services shall inform the States annually of the amount of funds available to each State under the Program."

(c) Not later than 90 days before the date on which the petition is filed.

"(i) authorizing the designated state agency to post the job opportunity on the Internet or in any other way that the State determines to be cost-effective and consistent with section 414 of [Title of bill], with local job banks, and with unemployment agencies and other labor referral and recruitment sources pertinent to the job involved; and

(ii) authorizing the designated state agency to notify labor organizations in the State in which the job is located and, if applicable, the collective bargaining representatives of the employees in the same or substantially equivalent job classification of the job opportunity;

(iii) advertising 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 no 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) advertising the availability of the job opportunity in professional, trade, or ethnic publications that are likely to be patronized by a potential worker for not fewer than 10 consecutive days during the period beginning no 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) advertising the availability of the job opportunity to the bargaining representative of the employer of the following:

(A) an application processing fee for each alien, in an amount sufficient to recover the full cost to the Secretary of Labor of administrative and other expenses associated with adjudication; and

(B) a secondary fee, to be deposited in the Treasury in accordance with section 286(x); of

(i) $500, in the case of an employer employing 25 employees or less;

(ii) $750, in the case of an employer employing between 25 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) REQUIRING 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 Y nonimmigrant shall comply with the following requirements:

(1) EFFORTS TO RECRUIT UNITED STATES WORKERS.—The employer involved shall re-recruit United States workers for the position for which labor certification is sought under this section, by

(A) posting not less than 90 days before the date on which an application is filed under section (a)(1) submitting a copy of the job opportunity, including a description of the wages and working conditions, employment and the minimum education, training, experience and other requirements of the job, to the designated state agency and—

(i) authorizing the designated state agency to post the job opportunity on the Internet or in any other way that the State determines to be cost-effective and consistent with section 414 of [Title of bill], with local job banks, and with unemployment agencies and other labor referral and recruitment sources pertinent to the job involved; and

(ii) authorizing the designated state agency to notify labor organizations in the State in which the job is located and, if applicable, the collective bargaining representatives of the employees in the same or substantially equivalent job classification of the job opportunity;

(iii) advertising 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 no 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;
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, qualified, and who would 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) the selection of recruitment during the period beginning on the date that is 90 days before the date on which the application was filed with the Department of Labor and ending 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 were used in conducting recruitment.

(H) INELIGIBILITY—The employer is not currently ineligible under titles 8, 19, or 21 U.S.C. to receive any United States worker; and

(I) the wages that the employer would be required by law to provide for the Y nonimmigrant were used in conducting recruitment.

(J) PUBLIC AVAILABILITY AND RECORDS REQUIREMENTS. The Secretary of Labor shall promulgate regulations that establish a process by which a nonimmigrant alien described in section 101(a)(15)(Y) is other than an alien subject to the provisions of section 101(a)(15)(C) who is a nonimmigrant alien regarding a complaint or information or take evidence from the nonimmigrant alien as a necessary witness to respond to all waiver requests, and shall maintain on the Department of Labor's website an annual list of counties to which this subsection applies.

(3) EMPLOYERS IN HIGH UNEMPLOYMENT AREAS.—The Secretary may not approve any employer's application under subsection (b) if the work to be performed by the Y nonimmigrant is not agriculture based and the overall unemployment rate during the most recently completed year is more than 7 percent. An employer in a high unemployment area may petition the Secretary for an exception to this provision. The Secretary shall promulgate regulations for the expedited review of such waivers, which shall specify that the employer must satisfy the requirements of section (b) above and in addition must provide documentation of its recruitment efforts, including proof that it has advertised the position in the manner determined by the Secretary. The Secretary may permit an employer to extend the time period for the submission of the offer to be determined by the Secretary.

(4) INELIGIBILITY FOR PETITIONS.—The Secretary of Labor shall not, for the period described in paragraph (2), approve the petitions or applications for any such employer or any nonimmigrant or nonimmigrant program, regardless of whether such application or petition requires a labor certification.

(5) PROHIBITION OF INDEPENDENT CONTRACTORS.—

(A) A Y nonimmigrant is prohibited from being treated as an independent contractor under any federal or state law; and

(B) no person or entity, including an employer or labor contractor and any person who is affiliated with or contract with an employer or labor contractor, may treat a Y nonimmigrant as an independent contractor; and

(C) this provision shall not be construed to prevent employers or labor contractors from employing Y nonimmigrants as employees.

(2) APPLICABILITY OF LAWS.—A Y nonimmigrant shall not be treated as any right or any remedy under Federal, State, or local labor or employment law that would be applicable to a United States worker employed in a similar position with an employer because of the alien's status as a nonimmigrant worker.

(T) TAX RESPONSIBILITIES.—With respect to each employed Y nonimmigrant, an employer shall comply with all applicable Federal, State, and local tax and revenue laws.

(H) OTHER VIOLATIONS.—

(1) REFERRALS BY SECRETARY OF HOMELAND SECURITY.—The Secretary of Homeland Security shall refer the petition of an employer who is a Y nonimmigrant for whom a determination has been made under subparagraph (C) of paragraph (1) with respect to a specific employer to the Department of Justice, Immigration and Naturalization Service, for possible action, and the Secretary of Homeland Security shall no later than 90 days after the date of such determination—

(A) conduct an investigation; and

(B) refer the petition to the Attorney General, the Immigration and Naturalization Service, or both, for possible action.

(2) AUDITS AUTHORIZED.—The Secretary of Labor may authorize an employer or potential employer to conduct an investigation of the employment status, working conditions, and other aspects of the employment of a Y nonimmigrant described in section (b) if the work to be performed by the Y nonimmigrant is not agriculture based and the overall unemployment rate during the most recently completed year is more than 7 percent. An employer in a high unemployment area may petition the Secretary for an exception to this provision. The Secretary shall promulgate regulations for the expedited review of such waivers, which shall specify that the employer must satisfy the requirements of section (b) above and in addition must provide documentation of its recruitment efforts, including proof that it has advertised the position in the manner determined by the Secretary. The Secretary may permit an employer to extend the time period for the submission of the offer to be determined by the Secretary.

(3) EMPLOYERS IN HIGH UNEMPLOYMENT AREAS.—The Secretary may not approve any employer's application under subsection (b) if the work to be performed by the Y nonimmigrant is not agriculture based and the overall unemployment rate during the most recently completed year is more than 7 percent. An employer in a high unemployment area may petition the Secretary for an exception to this provision. The Secretary shall promulgate regulations for the expedited review of such waivers, which shall specify that the employer must satisfy the requirements of section (b) above and in addition must provide documentation of its recruitment efforts, including proof that it has advertised the position in the manner determined by the Secretary. The Secretary may permit an employer to extend the time period for the submission of the offer to be determined by the Secretary.

(4) INELIGIBILITY FOR PETITIONS.—

(A) A Y nonimmigrant is prohibited from being treated as an independent contractor under any federal or state law; and

(B) no person or entity, including an employer or labor contractor and any person who is affiliated with or contract with an employer or labor contractor, may treat a Y nonimmigrant as an independent contractor; and

(C) this provision shall not be construed to prevent employers or labor contractors from employing Y nonimmigrants as employees.

(2) APPLICABILITY OF LAWS.—A Y nonimmigrant shall not be treated as any right or any remedy under Federal, State, or local labor or employment law that would be applicable to a United States worker employed in a similar position with an employer because of the alien's status as a nonimmigrant worker.

(T) TAX RESPONSIBILITIES.—With respect to each employed Y nonimmigrant, an employer shall comply with all applicable Federal, State, and local tax and revenue laws.

(H) OTHER VIOLATIONS.—

(1) REFERRALS BY SECRETARY OF HOMELAND SECURITY.—The Secretary of Homeland Security shall refer the petition of an employer who is a Y nonimmigrant for whom a determination has been made under subparagraph (C) of paragraph (1) with respect to a specific employer to the Department of Justice, Immigration and Naturalization Service, for possible action, and the Secretary of Homeland Security shall no later than 90 days after the date of such determination—

(A) conduct an investigation; and

(B) refer the petition to the Attorney General, the Immigration and Naturalization Service, or both, for possible action.

(2) AUDITS AUTHORIZED.—The Secretary of Labor may authorize an employer or potential employer to conduct an investigation of the employment status, working conditions, and other aspects of the employment of a Y nonimmigrant described in section (b) if the work to be performed by the Y nonimmigrant is not agriculture based and the overall unemployment rate during the most recently completed year is more than 7 percent. An employer in a high unemployment area may petition the Secretary for an exception to this provision. The Secretary shall promulgate regulations for the expedited review of such waivers, which shall specify that the employer must satisfy the requirements of section (b) above and in addition must provide documentation of its recruitment efforts, including proof that it has advertised the position in the manner determined by the Secretary. The Secretary may permit an employer to extend the time period for the submission of the offer to be determined by the Secretary.

(3) EMPLOYERS IN HIGH UNEMPLOYMENT AREAS.—The Secretary may not approve any employer's application under subsection (b) if the work to be performed by the Y nonimmigrant is not agriculture based and the overall unemployment rate during the most recently completed year is more than 7 percent. An employer in a high unemployment area may petition the Secretary for an exception to this provision. The Secretary shall promulgate regulations for the expedited review of such waivers, which shall specify that the employer must satisfy the requirements of section (b) above and in addition must provide documentation of its recruitment efforts, including proof that it has advertised the position in the manner determined by the Secretary. The Secretary may permit an employer to extend the time period for the submission of the offer to be determined by the Secretary.
(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 engaged in such activity 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 and any costs to be charged for each benefit;

(F) any travel or transportation expenses to be assessed;

(G) the existence of any labor organizing effort, strike, lockout, or other labor dispute at the place of employment;

(H) 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.

(2) 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) receipt of a 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 insurance carrier that must be notified of an injury or death; and

(iv) the time period within which such notice must be given.

(3) any education or training to be provided or required, including—

(i) the nature and cost of such training; and

(ii) the entity that will pay such costs;

(4) whether the training is a condition of employment, continued employment, or future employment; and

(5) 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. 106-499, for workers recruited abroad.

(2) False or misleading information.—No foreign labor contractor or employer who engages in foreign contracting activity shall knowingly provide materially false or misleading information to any worker concerning any matter required to be disclosed in paragraph (1).

(3) Languages.—The information required to be disclosed under paragraph (1) shall be provided in writing in English or, as necessary and reasonable, in any other 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.—No employer or foreign labor contractor shall, without justification, violate the terms of any agreement related to the requirements of this section made by that employer or foreign labor contractor regarding employment under this program.

(5) Travel costs.—If the foreign labor contractor or employer charges the employer any fee for such foreign labor contracting activity, such transportation costs shall be reasonable.

(7) Other worker protections.—

(A) Notification.—Not less frequently than once every year, each employer shall notify the Secretary of Labor of the identity of any foreign labor contractor engaged by the employer in any foreign labor contractor activity for, or on behalf of, the employer.

(B) Registration of foreign labor contractors.—

(1) In general.—No person shall engage in foreign labor recruiting activity unless such person has a certificate of registration from the Secretary of Labor specifying the activity or activities that the person is authorized to perform. An employer who retains the services of a foreign labor contractor shall only use those foreign labor contractors who are registered under this subparagraph.

(2) Issuance.—The Secretary shall promulgate regulations to establish an efficient electronic process for the investigation and approval of an application for certificate of registration of foreign labor contractors not later than 14 days after such application is filed, including—

(I) requirements under paragraphs (1), (4), and (5) of section 102 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1812);

(II) an expedient means to update registrations and renew certificates; and

(III) any other requirements that the Secretary may prescribe.

(3) Term.—Unless suspended or revoked, a certificate under this subparagraph shall be valid for 2 years.

(4) Denial, revocation, or suspension.—In accordance with regulations promulgated by the Secretary of Labor, the Secretary may refuse to issue or renew, or may suspend or revoke, a certificate of registration under this subparagraph if—

(I) the application or holder of the certificate has knowingly made a material misrepresentation in the application for such certificate;

(II) the applicant for, or holder of, the certificate has failed or refused to cooperate in the application or certificate of registration and the real party in interest—

(aa) has been refused issuance or renewal of a certificate; or

(bb) has had a certificate suspended or revoked; or

(cc) does not qualify for a certificate under this paragraph;

(III) the applicant, or holder, of the certificate has failed to comply with this Act.

(5) Remedy for violation.—If an employer or foreign labor contractor violates the requirements of this section, the Secretary may, in accordance with section 556 of title 5, United States Code, take such action as the Secretary considers necessary and reasonable, which may include—

(A) to 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 516(a) of title 28, United States Code, the Solicitor of Labor may appear for and represent the Secretary of Labor in any civil litigation brought under this subsection. All such litigation shall be subject to the direction and control of the Attorney General.

(7) Procedures in addition to other rights of employees.—The rights and remedies provided to workers under this section are in addition to any other contractual or statutory rights and remedies of such workers, and are not intended to alter or affect such rights and remedies.
worker was harmed, a fine in an amount not to exceed $5,000 per affected worker and designation as an ineligible individual, or ‘eligible individual’, means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A) with respect to that employment.

"(9) FOREIGN LABOR CONTRACTOR.—The term ‘foreign labor contractor’ means recruiting, soliciting, hiring, employing, or furnishing, an individual who resides outside of the United States for employment in the United States as a non-immigrant alien described in section 101(a)(15)(Y) (iii) granted asylum under section 208; or

"(10) FOREIGN LABOR CONTRACTING ACTIVITY.—The term ‘foreign labor contracting activity’ means recruiting, soliciting, hiring, employing, or furnishing, an individual who resides outside of the United States for employment in the United States as a non-immigrant alien described in section 101(a)(15)(Y) (iii) of subsection 101(a)(15)."

"(11) FULL TIME.—The term ‘full time’, with respect to a job in agricultural labor or services, means any job in which the individual works more than 1438 hours per year (1,438 work-hours per year for agricultural work).

"(12) JOB OPPORTUNITY.—The term ‘job opportunity’ means an opening for temporary or seasonal full-time 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 employer’s rights under a collective bargaining agreement or other employment contract.

"(14) MISCONDUCT.—The term ‘misconduct’, with regard to a conviction in a foreign jurisdiction, means a crime for which the sentence of one year or longer in prison may be imposed.

"(15) REGULATORY DROUGHT.—The term ‘regulatory drought’ means a decision subsec-

"The term ‘penalty’ means the Secretary of Homeland Security.

"SEC. 218C. HOMELAND SECURITY.

"(1) AGGRIEVED PERSON.—A person aggrieved by a violation of this section may be

...(remaining text continues)
“(1) 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);

“(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 workers.

“(2) Accompanied by job offer.—Each application filed under paragraph (1) shall be accompanied by a copy of the job offer describing the 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.

“(2) Union contract described.—The job opportunity is covered by a union contract which was negotiated at arm’s length between a bona fide union and the employer.

“(3) Strike or lockout.—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.

“(4) Notification of bargaining representative.—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 such aliens are sought.

“(5) 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 eligible United States worker as described in such subparagraph.

“(G) 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.

“(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 make reasonable efforts through the sending of a letter by United States Postal Service mail, or otherwise, to contact any United States worker the employer employed during the previous season in the occupation at the place of intended employment for which the employer is applying for workers and has made the availability of job opportunities in the occupation at the place of intended employment known to such previous workers, unless the worker was terminated from employment by the employer for a lawful job-related reason or abandoned the job before the worker completed the period of employment of the job opportunity for which the worker was employed, or was being locked out in the course of a labor dispute.

“(b) Filing a job offer with the local office of the State employment security agency.—Not later than 28 days before the period of employment an employer desiring to employ an H-2A worker in a temporary or seasonal agricultural job opportunity, the employer shall submit a copy of the job offer to the local office of the State employment security agency which serves the area of intended employment and authorize the posting of the job opportunity on its electronic job registry, except that nothing in this subclause shall require the employer to file an interstate job order under section 653 of title 20, Code of Federal Regulations.

“(vi) Advertising of job opportunities.—Not later than 14 days before the period of employment an employer desiring to employ an H-2A worker in a temporary or seasonal agricultural job opportunity, the employer shall advertise the availability of job opportunities for which the employer is seeking workers in a publication in the local labor market that is likely to be patronized by potential farm workers.

“(vii) Emergency procedures.—The Secretary of Labor shall, by regulation, provide a procedure for the expedited receipt of applications in which the employer has not complied with the provisions of this subparagraph because the employer’s need for H-2A workers could not reasonably have been foreseen.

“(ii) Job offers.—The employer has offered or will offer the job to any eligible United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is, or nonimmigrants are, sought.

“(iii) Period of employment.—The employer shall not displace an eligible United States worker who applies to the employer during the period beginning on the date on which the H-2A worker is placed or found in the employment market that is likely to be patronized by potential farm workers.

“(iv) Employment of United States workers.—Before referring a United States worker to an employer described in the matter preceding subclause (I), the Secretary of Labor shall make all reasonable efforts to place the United States worker in an open job acceptable to the worker, if there are other job offers pending with the job service that offer similar job opportunities in the area of intended employment.

“(v) Statutory construction.—Nothing in this subparagraph shall be construed to prohibit an employer from using such legitimate selection criteria to avoid hiring 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.

“(vi) United States worker.—For purpose of this subparagraph, the term ‘United States worker’ means an alien described in 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.—If any association, acting alone or in association with an employer, files an application under paragraph (1) and the association is a joint or sole employer of the temporary or seasonal agricultural workers, the association shall be treated as the employer for the purposes of this section and sections 218E, 218F, and 218G.

"(b) MINIMUM BENEFITS, WAGES, AND WORKING CONDITIONS.—Except in cases where higher benefits, wages, or working conditions are provided by collective bargaining agreements or by orders under section (a), or in order to protect similarly employed United States workers from adverse effects with respect to benefits, wages, and working conditions, employers of such workers may be required to obtain an application under section 218C(b)(2) shall include each of the following:

"(1) REQUIREMENT TO PROVIDE HOUSING OR HOUSING ALLOWANCE.—

"(A) IN GENERAL.—An employer applying under section 218C(a) for H-2A workers shall provide housing for their workers or, instead of offering housing, pay a housing allowance. The employer may provide to H-2A workers. Conversely, no job offer may impose on United States workers any restrictions or obligations which will not be imposed on the employer's H-2A workers.

"(B) HOUSING ALLOWANCE AS ALTERNATIVE.—

"(i) IN GENERAL.—If the requirement set out in clause (ii) is satisfied, the employer may provide to the worker the equivalent of the 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.

"(ii) CERTIFICATION.—The requirement that the alternative is satisfied by the certifying officer of the State shall be determined by the Secretary of Labor.

"(C) HOUSING ALLOCATION.

"(1) REQUIREMENT TO PROVIDE HOUSING OR HOUSING ALLOWANCE.—

"(A) IN GENERAL.—An employer applying under section 218C(a) for H-2A workers shall provide housing for their workers or, instead of offering housing, pay a housing allowance. The employer may provide to H-2A workers. Conversely, no job offer may impose on United States workers any restrictions or obligations which will not be imposed on the employer's H-2A workers.

"(B) HOUSING ALLOWANCE AS ALTERNATIVE.—

"(i) IN GENERAL.—If the requirement set out in clause (ii) is satisfied, the employer may provide to the worker the equivalent of the 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.

"(ii) CERTIFICATION.—The requirement that the alternative is satisfied by the certifying officer of the State shall be determined by the Secretary of Labor.

"(D) HOUSING ALLOWANCE AS ALTERNATIVE.

"(1) REQUIREMENT TO PROVIDE HOUSING OR HOUSING ALLOWANCE.—

"(A) IN GENERAL.—An employer applying under section 218C(a) for H-2A workers shall provide housing for their workers or, instead of offering housing, pay a housing allowance. The employer may provide to H-2A workers. Conversely, no job offer may impose on United States workers any restrictions or obligations which will not be imposed on the employer's H-2A workers.

"(B) HOUSING ALLOWANCE AS ALTERNATIVE.—

"(i) IN GENERAL.—If the requirement set out in clause (ii) is satisfied, the employer may provide to the worker the equivalent of the 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.

"(ii) CERTIFICATION.—The requirement that the alternative is satisfied by the certifying officer of the State shall be determined by the Secretary of Labor.
“(ii) 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 if transportation or housing is required through an allowance as provided in paragraph (1)(G).

(D) Early termination.—If the worker is laid off or employment is terminated 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 certification under section 214(a) shall offer to pay, and shall pay, all workers in the occupation for which the employer has applied for workers, not less than and is not required to pay more than, the prevailing wage in the area of intended employment or the adverse effect wage rate. No worker shall be paid less than the prevailing wage established by section 655.107 of title 20, Code of Federal Regulations, that State in effect on January 1, 2003, as established by section 655.107 of title 20, Code of Federal Regulations.

(B) REASONABLE.—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 shall be in effect for a State under section 655.107 of title 20, Code of Federal Regulations, that is more than the adverse effect wage rate for that State in effect on January 1, 2003, as established by section 655.107 of title 20, Code of Federal Regulations.

(C) REQUIRED WAGES AFTER 3-YEAR FREEZE.—

(I) FIRST ADJUSTMENT.—If Congress does not set a new wage standard applicable to this section before the first March 1 that is not less than 3 years after the date of enactment, the adverse effect wage rate for each State beginning on such March 1 shall be the wage rate that would have resulted if the adverse effect wage rate in effect on March 1, 2003, had been annually adjusted, beginning on March 1, 2006, by the lesser of—

(1) 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

(2) 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 section, and each March 1 thereafter, the adverse effect wage rate then in effect for each State shall be adjusted by the lesser of—

(1) 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

(2) 4 percent.

(D) DEDUCTIONS.—The employer shall make 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, which 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; and

(ii) the worker’s hourly rate of pay, piece rate of pay, or both.

(G) REPORT ON WAGE PROTECTIONS.—Not later than December 31, 2008, the Commissioner General of the United States shall prepare and transmit 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 sufficient to prevent wages in occupations in which H-2A workers are employed from falling below the wage level that would have prevailed in the absence of the employment of H-2A workers in those occupations;

(iii) whether alternative wage standards, such as a prevailing wage standard, would be sufficient to prevent wages in occupations in which H-2A workers are employed from falling below the wage level that would have prevailed in the absence of the employment of H-2A workers in those occupations;

(iv) 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.—An employer applying for certification under paragraph (1) shall submit to the Secretary of Labor, each appointed by the Secretary of Agriculture, each appointed by the Commissioner General of the United States, and each appointed by the Secretary of Homeland Security, a list of names of persons to constitute the Commission (in this section referred to as the ‘Commission’).

(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—

(1) 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;

(2) 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 wage levels that would otherwise have prevailed in the absence of the employment of H-2A workers in those occupations;

(3) whether alternative wage standards, such as a prevailing wage standard, would be sufficient to prevent 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;

(4) whether changes in the current methodologies for calculating the adverse effect wage rate and the prevailing wage rate are warranted;

(5) whether any changes in the current methodologies for calculating the adverse effect wage rate and the prevailing wage rate are warranted;

(6) whether any changes in the current methodologies for calculating the adverse effect wage rate and the prevailing wage rate are warranted; and

(7) any other matters that the Secretary may require.

(IV) FUNDING.—The Secretary shall provide the Commission with such administrative support as the Commission shall request.

(V) REPORT.—The Commission shall submit its final 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, and the Congress not later than December 31, 2011.

(VI) TERMINATION.—The Commission may be terminated 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 3⁄4 of the number of workdays in the period of employment beginning on the first 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 workdays as stated in the job offer and shall exclude the worker’s Sabbath and Federal holidays. If the employer affords the United States or United States worker less employment than that required under this paragraph, the employer shall pay such worker the amount which the worker would have earned in fact, worked for the guaranteed number of hours.

(B) FAILURE TO WORK.—Any hours which the worker fails to work, up to a maximum of 120 hours, shall be deducted from the guaranteed number of hours specified in the job offer for a work day, when the worker has been offered an opportunity to do so, and all hours of work actually performed (including voluntary work in excess of the number of hours specified in the job offer in a work day, on the worker’s Sabbath, or on Federal holidays) may be counted. If the employer decreases the guaranteed number of hours specified in the job offer, the workdays for which the guaranteed number of hours specified in the job offer shall be reduced by such percentage.

(C) BONUS.—If a worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, the worker is not entitled to the 1⁄4 guar-anteé described in subparagraph (A).

(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, earthquake, drought, plant or animal disease or pest infestation, or regulatory drought, before the guarantee under this section expired, the worker shall be entitled to the 1⁄4 guar-anteé described in subparagraph (A).
subsection (A) for the work days that have elapsed from the first work day after the arrival of the worker to the termination of employment. In such cases, the employer will be held liable to transfer the United States worker to other comparable employment acceptable to the worker. If such transfer is not effected, the employer shall provide transportation to an H-2A worker within the United States.

(ii) Defined term.—In this paragraph, the term ‘vehicle’ includes any vehicle that uses or causes to be used any vehicle to transport an H-2A worker within the United States.

(iii) Clarification.—Providing a job offer to an H-2A worker that causes the worker to travel to 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 live stock 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 provisions of this subsection are applicable to the general public as engaging in the transportation of passengers for hire and holds a valid certificate of authorization for such purposes from an appropriate Federal, State, or local agency.

(vi) 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 subparagraph applies, each employer shall—

(A) 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. 181 et seq.),

(B) in conjunction with a valid passport, if the alien is otherwise eligible for admission in accordance with paragraphs (1) and (2), shall not be deemed inadmissible inadmissible in virtue of section 101(a)(15)(H)(ii)(a) if the alien has, at any time during the past 5 years—

(1) committed a crime punishable by imprisonment for a term exceeding one year or by fine or by both such fine and such imprisonment; or

(2) otherwise violated a term or condition of the alien’s authorized period of admission under this section has expired; or

(C) evidence on nonimmigrant status.—Each H-2A nonimmigrant shall be issued documentary evidence of nonimmigrant status, which—

(i) shall be machine-readable, tamper-resistant, and shall contain a digitized photograph and biometric identifiers that can be authenticated;

(ii) shall, during the alien’s authorized period of admission as an H-2A nonimmigrant, serve as the only document for the purpose of applying for admission to the United States—

(A) instead of a passport and visa if the alien—

(1) is a national of a foreign territory contiguous to the United States; and

(2) 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; and

(iii) shall be issued to the H-2A nonimmigrant 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 discretion 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.)

(1) Petitioning for Admission.—An employer, 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 accompanied by an accepted and currently valid employment authorization card issued by the Secretary of Labor under section 218C(e)(2)(B) covering the petitioner.

(2) Expedited Admission by the Secretary.—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 port of entry or consular consulate (as the case may be) where the petition has indicated that the alien beneficiary (or beneficiaries) will apply for a visa on or corresponding to the petition date.

(3) 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 if the alien is otherwise inadmissible under this section, section 218C, and section 218D, and if the alien has, at any time during the past 5 years—

(A) violated a material provision of this section; including the requirement to provide the transportation set forth in the alien’s authorized period of admission under this section has expired; or

(B) otherwise violated a term or condition of the alien’s authorized period of admission as a non-immigrant, including overstaying the period of authorized admission as such a non-immigrant;

(3) 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, who is otherwise eligible for admission in accordance with paragraphs (1) and (2), shall not be deemed inadmissible in virtue of section 212(a)(9)(B) if an alien described in the preceding sentence is present in the United States, the alien may apply from abroad for H-2A status, but may be granted that status in the United States.

(B) Maintenance of Waiver.—An alien provided an initial waiver of ineligibility pursuant to subparagraph (A) remains 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.—(1) In general.—An alien shall be admitted for the period of employment in the application certified by the Secretary of Labor pursuant to section 218C(e)(2)(B), not to exceed 10 months except as paragraph (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 employed during such 14-day period except in cases where the alien was previously authorized; and

(B) the total period of employment, including such 14-day period, may not exceed 10 months.

(2) Optional period for non-seasonal agricultural 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 the period and pursuant to the terms specified in Section 218(a)(1)(A), including the rules and limitations specified in Section 218(a)(2), (3), (4), and (5). The spouse and children of an alien admitted pursuant to the paragraph may be admitted only in accordance with the terms set forth in Section 218(a)(8).

(2) Voluntary Termination.—Notwithstanding any other provision of law, an alien admitted to perform agricultural non-seasonal work as an sheep herder, goat herder, horse worker, or dairy worker, or as an alien admitted at the option of the employer, 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.

(5) Abandonment of Employment.—(1) General.—An alien admitted or provided status under section 101(a)(15)(H)(ii)(a) who abandons the employment or if the employment termination occurs before the end of the period of intended employment shall depart the United States or temporarily terminate his or her employment if the alien promptly departs the United States upon termination of such employment.

(2) Replacement of Alien.—(1) In General.—Upon presentation of the identification and employment eligibility document to verify eligibility for employment in the United States, the petition filed by the employer or an association acting as agent for the employer from the employment of aliens described in a petition under paragraph (1) on the date on which the petition is filed.

(3) Voluntary Termination.—Notwithstanding paragraph (1), an alien may voluntarily terminate his or her employment if the alien promptly departs the United States upon termination of such employment.

(4) Replacement of Alien.—(1) In General.—Upon presentation of the notice required by subsection (e)(2), the Secretary of Labor shall promptly issue a visa to, and the Secretary shall admit into the United States, an eligible alien designated by the employer to replace an H-2A worker.

(2) Employment of H-2A Worker.—(1) Use of Employment Eligibility Document.—The employer shall provide a new or updated employment eligibility document to the alien indicating the new validity date, after which the alien is not required to retain a copy of the petition.

(3) Limitation on an Individual’s Stay in the United States.—(1) Maximum Period.—The maximum continuous period of authorized status as an H-2A worker (including any extensions), other than an alien admitted pursuant to subsection (d)(2), is 10 months.

(2) Requirement to Remain Outside the United States.—(1) In General.—Subject to clause (ii), in the case of an alien outside the United States whose period of authorized status as an H-2A worker (including any extensions) has expired and the alien may not again apply for admission to the United States as an H-2A worker unless the alien has remained outside the United States for a continuous period equal to the duration of the alien’s previous period of authorized status as an H-2A worker (including any extensions).

(2) Exception.—Clause (1) shall not apply in the case of an alien if the alien’s period of authorized status as an H-2A worker (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 that the alien again applies 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 Complainant.—The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting a petitioner’s failure to meet a condition of section 218C(b), substantial failure to meet a condition of section 218C(b), or a violation of subsection (d)(1) of section 218C, 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 conduct an investigation described in paragraph (C), (D), (E), or (G). If the Secretary of Labor determines that such a reasonable basis exists, the Secretary of Labor shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code, within 60 days after the date of the determination.

(C) Failure to Meet Conditions.—If the Secretary of Labor finds, after notice and opportunity for a hearing, that a petitioner has failed 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 (1)(A), (1)(B), (1)(D), (2)(E), or (2)(H) of section 218C(b), or a material misrepresentation of fact in an application under section 218C(a)—

(i) 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

(ii) the Secretary may disqualify the employer from the employment of aliens described in section 101(a)(15)(H)(ii)(a) for a period of 1 year.

(D) Wilful Failures and Willful Misrepresentations.—If the Secretary of Labor finds, after notice and opportunity for hearing, willful failure to meet a condition of section 218C(b), willful misrepresentation of a material fact in an application under section 218C(a), or a violation of subsection (d)(1) of section 218C,

(i) 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 may disqualify the employer from the proceedings for a period of 2 years.

‘‘(E) DISPLACEMENT OF UNITED STATES WORKERS.—If the Secretary of Labor finds, after notice and opportunity for hearing, that the failure to make a condition of section 218(b) or a willful misrepresentation of a material fact in an application under section 218(a) or failure to correct an authorized discrimination by the employer displaced a United States worker employed by the employer during the period of employment on the application under section 218(a) or during the period of 30 days preceding such period of employment—

‘‘(1) the 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 $15,000 per violation) as the Secretary of Labor determines to be appropriate; and

‘‘(ii) the Secretary may disqualify the employer from the proceedings for H-2A workers for a period of 3 years.

‘‘(F) LIMITATIONS ON CIVIL MONEY PENALTIES.—The Secretary of Labor shall not impose a civil money penalty with respect to an application under section 218(a) in excess of $90,000.

‘‘(G) FAILURES TO PAY WAGES OR REQUIRED BENEFITS.—The Secretary of Labor shall not impose a penalty pursuant to any other provision of this Act where an application for an order to the employer to pay wages or required benefits is pending.

‘‘(H) WORKERS’ COMPENSATION.—If the Secretary of Labor finds, after notice and opportunity for hearing, that the employer failed to pay the wages or required benefits, the Secretary of Labor shall conduct mediation and conciliation service and may impose such other administrative remedies as the Secretary of Labor determines to be appropriate; and

‘‘(i) the Secretary shall disqualify the employer from the proceedings for a period of 3 years.

‘‘(J) APPROPRIATIONS.—(1) In compliance with any other provision of this Act, where a State’s workers’ compensation law is applicable and coverage is provided for an H-2A worker, the Secretary of Labor shall be the exclusive remedy for the loss of such worker under this section in the case of bodily injury or death in accordance with such State’s workers’ compensation law.

‘‘(2) RELATIONSHIP TO OTHER RELIEF.—The exclusive remedy prescribed in subparagraph (A) shall be the recovery under a State workers’ compensation law; or

‘‘(ii) rights conferred under a State workers’ compensation law.

‘‘(K) CONSIDERATIONS.—In determining the amount of damages to be awarded under subparagraph (A), a court may consider whether an attempt was made to resolve the disputes in dispute prior to resorting to litigation.

‘‘(L) TOLLING OF STATUTE OF LIMITATIONS.—If an H-2A worker aggrieved by a violation of rights enforceable under subsection (b) by an agricultural employer or other person may file suit—

‘‘(1) under any Federal or State court or administrative agency for a period not to exceed 90 days after notice to the Secretary that the claim is being filed. The time for filing the claim shall begin on the date on which the Federal Mediation and Conciliation Service receives notice of the claim; and

‘‘(2) if an attempt was made to resolve the issues in dispute prior to resorting to litigation.

‘‘(M) PRIVATE RIGHT OF ACTION.—

‘‘(1) MEDIATION.—Upon the filing of a complaint by an H-2A worker aggrieved by a violation of rights enforceable under subsection (b), the Secretary of Labor shall, if there is a failure of proof of service of the complaint, or if the parties agree, facilitate the parties in reaching a satisfactory resolution of all issues involving all parties to the dispute. Upon a filing of such request and giving notice of the same to the parties, the Secretary of Labor shall attempt mediation within the period specified in subparagraph (B).

‘‘(A) MEDIATION SERVICES.—The Federal Mediation and Conciliation Service may conduct mediation and conciliation service and may conduct mediation and conciliation service and may conduct mediation or other dispute resolution activities for a period not to exceed 90 days after notice and opportunity for hearing, if the parties agree to an extension of this period of time.

‘‘(B) AUTHORIZATION.—(i) In compliance with subsection (c), there are authorized to be appropriated to the Federal Mediation and Conciliation Service $500,000 for each fiscal year to carry out this section.

‘‘(ii) MEDIATION.—Notwithstanding any other provision of law, the Director of the Mediation and Conciliation Service is authorized to accept any funds for the conduct of mediation or other dispute resolution activities from any other appropriated funds available to the Director to reimburse such appropriated funds when the funds are appropriated pursuant to this authorization, such reimbursements to be credited to appropriations currently available for such purpose.

‘‘(C) MAINTENANCE OF CIVIL ACTION IN DISTRICT COURT BY AGGRIEVED PERSON.—An H-2A worker aggrieved by a violation of rights enforceable under subsection (b) by an agricultural employer or other person may file suit in any district court of the United States having jurisdiction over the parties, without regard to the citizenship of the parties, and without regard to the exhaustion of any alternative administrative remedies under this Act, for a period of 3 years after the date the violation occurs.

‘‘(D) ELECTION.—An H-2A worker who has filed an application with the Secretary of Labor may not maintain a civil action under paragraph (2) unless a complaint based on the same violation filed with the Secretary of Labor under subsection (a)(1)(B) is withdrawn before the filing of such action, in which case the rights and remedies available under subsection (a)(1)(B) shall be exclusive.

‘‘(2) OF PRECLUSIVE EFFECT.—Nothing in this Act shall be construed to diminish the rights and remedies of an H-2A worker or any Federal or State law or regulation or under any collective bargaining agreement, except that no court or administrative action shall be available under any State contract law to enforce the rights created by this Act.

‘‘(3) WAIVER OF RIGHTS PROHIBITED.—Agreements by an agricultural employer to waive or modify their rights under this Act shall be void as contrary to public policy, except that a waiver or modification of the rights or obligations of an agricultural employer to assist the Secretary of Labor shall be valid for purposes of the enforcement of this Act. The preceding sentence may not be construed to prohibit agreements to settle private disputes or litigation.

‘‘(4) AWARD OF DAMAGES OR OTHER EQUITABLE RELIEF.—(A) If the court finds that the respondent has intentionally violated any of the rights enforceable under subsection (b), it shall award actual damages, if any, or equitable relief to the parties in reaching a satisfactory resolution of all issues involving all parties to the dispute. Upon a filing of such request and giving notice of the same to the parties, the Secretary of Labor shall attempt mediation within the period specified in subparagraph (B).

‘‘(B) Any civil action brought under this section shall be subject to appeal as provided in section 129 of title 28, Code of Federal Regulations.

‘‘(C) In determining the amount of damages to be awarded under subparagraph (A), the court is authorized to consider whether an attempt was made to resolve the disputes in dispute before the resort to litigation.

‘‘(D) WORKERS’ COMPENSATION BENEFITS.—EXCLUSIVE REMEDY.—In the event of a willful violation of any other provision of this section, where a State’s workers’ compensation law is applicable and coverage is provided for an H-2A worker, the benefits under such State’s workers’ compensation law shall be the exclusive remedy for the loss of such worker under this section in the case of bodily injury or death in accordance with such State’s workers’ compensation law.

‘‘(E) RELATIONSHIP TO OTHER RELIEF.—The exclusive remedy prescribed in subparagraph (A) precludes the recovery under paragraph (6) of actual damages for loss from an injury or death but does not preclude other equitable relief, except that such relief shall not include back or front pay or in any manner, directly or indirectly, expand or otherwise alter or affect the recovery under a State workers’ compensation law; or

‘‘(ii) rights conferred under a State workers’ compensation law.

‘‘(F) CONSIDERATIONS.—In determining the amount of damages to be awarded under subparagraph (A), a court may consider whether an attempt was made to resolve the disputes in dispute prior to resorting to litigation.

‘‘(G) TOLLING OF STATUTE OF LIMITATIONS.—If an H-2A or any other provision of this Act, where a State’s workers’ compensation law is applicable and coverage is provided for an H-2A worker, the time for limitation of an action for actual damages for loss from an injury or death under subsection (c) shall be tolled for the period during which the claim for such injury or death under such State workers’ compensation law was pending. The statute of limitations for an action for actual damages or other equitable relief arising out of the same transaction or occurrence as the injury or death of the H-2A worker shall be tolled for the period during which the claim for such injury or death under the State workers’ compensation law was pending.

‘‘(H) PRECLUSIVE EFFECT.—Any settlement by an H-2A worker and an H-2A employer or any person reached through the mediation process required under subsection (c)(1)(B) shall preclude any right of action arising out of the same facts between the parties in any Federal or State court or administrative proceeding, unless specifically provided otherwise in the settlement agreement.

‘‘(I) SEVERABILITY.—If any provision of the Secretary of Labor with an H-2A employer on behalf of an H-2A worker of a complaint filed with the Secretary of Labor regarding this section or any other provision of this Act, the provisions of this Act shall be the exclusive remedy for the loss of such worker under the State workers’ compensation law.

‘‘(J) DISCRIMINATION PROHIBITED.—(1) No person who has filed an application under section 218(a), to intimidate, restrain, coerce, blackball, discharge, or in any other manner discriminate against an employee (which term, for purposes of this subsection, includes a former employee and an applicant for employment) because the employee has disclosed information to the employer, or to
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 employee files a complaint or participates 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 to file an application under section 218C(a), to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against an H-2A employer or worker 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 EMPLOYMENT.—The Secretary of Labor or a party designated by the Secretary of Labor shall establish 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 employment in the United States for a period not exceeding the maximum period of stay authorized for such nonimmigrant classification.

“(f) ROLE OF ASSOCIATIONS.—

“(1) VIOLATION BY A MEMBER OF AN ASSOCIATION.—An owner or employer whose behalf 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 such owner or employer had acted for such association itself. If such an employer is determined, under this section, to have committed a violation, the penalty for such violation shall apply only to such member of the association unless the Secretary of Labor determines that the association or other member participated in, had knowledge of, 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 subsection, 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 of, 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 agriculture labor 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).

“(2) BONAFIDE FISH UNION.—The term ‘bonafide fish union’ means any organization in which employees participate and which exists for the purpose of dealing with employers concerning labor disputes, rates of pay, hours of employment, or other terms and conditions of work for agricultural employees. Such term does not include an organization formed, created, administered, supported, dominated, financed, or controlled by an employer or employer association.

“(3) PLACE OF EMPLOYMENT.—The term ‘place of employment’, in the case of an application with respect to 1 or more H-2A workers by an employer, means the following: (A) the place where the worker is employed for which the H-2A worker or workers is or are sought.

“(4) ELIGIBLE.—The term ‘eligible’, when used with respect to an individual, means an individual who is not an unauthorized alien (as defined in section 274A).

“(5) EMPLOYER.—The term ‘employer’ means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment.


“(8) J O B OPPORTUNITY.—The term ‘job opportunity’ means a job opening for temporary or seasonal full-time employment at a place in the United States to which United States workers may be referred.

“(9) LAYING OFF.—(A) IN GENERAL.—The term ‘laying off’, with respect to any person: (i) means to cause the worker’s loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, contract impossibility (as described in section 218D(b)(4)(D)), or temporary suspension of employment due to weather, markets, or other temporary conditions; but

“(ii) does not include any situation in which the worker is offered, as an alternative to such loss of employment, 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 such section) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

“(B) STATUTORY CONSTRUCTION.—Nothing in this paragraph is intended to limit an employer’s right to agree to any arrangement or other employment contract.

“(10) REGULATORY DROUGHT.—The term ‘regulatory drought’ 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 labor for irrigating purposes and reduces or limits the employer’s ability to produce an agricultural commodity, thereby reducing the need for labor.

“(11) SEASONAL LABOR.—Labor is performed on a ‘seasonal’ basis if—

“(A) ordinarily, it pertains to or is of the kind 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.

“(12) SECRETARY.—Except as otherwise provided, the term ‘Secretary’ means the Sec-

“Secretary of Homeland Security.

“(13) TEMPORARY.—A worker is employed on a ‘temporary’ basis if the emplo-

“ment is intended not to exceed 10 months.

“(14) UNITED STATES WORKER.—The term ‘United States worker’ means any worker, 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).

“(15) WORKER.—The term ‘worker’ means any individual who is employed by an em-

“ployer (or, in the case of a placement of worker with another employer under section 218C(b)(2)(E), with either employer described in such section) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

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“SEC. 405. DETERMINATION AND USE OF USER FEES.

“(a) SCHEDULE OF FEES.—The Secretary shall establish and periodically adjust schedule of fees for the employment of aliens pursuant to the amendment made by section 404(a) of this Act and collection process for such fees from employers. Such fees shall be the only fees chargeable to employers for services provided under such amendment.

“(b) DETERMINATION OF SCHEDULE.—(1) GENERAL.—Under subsection (a) shall reflect fee rate based on the number of job opportunities indicated in the employer’s application under section 218C of the Immigration and Nationality Act, as amended by section 404 of this Act, and sufficient to provide for the direct costs of providing services related to an employer’s authority to employ aliens pursuant to the amendment made by section 404(a) of this Act to include the certification of eligible employers, the issuance of documentation, and the admission of eligible aliens.

“(2) PROCEDURE.—(A) IN GENERAL.—In establishing and adjusting such schedule, the Secretary shall consult with the Federal cost accounting and fee setting standards.

“(B) PUBLICATION AND COMMENT.—The secret-

“ary shall publish in the Federal Register an initial fee schedule and associated collection process and the cost data or estimates upon which such fee schedule is based, and any subsequent amendments thereto, pursuant to which public comment shall be sought and final rule issued.

“(c) USE OF PROCEEDS.—Notwithstanding any other provision of law all proceeds re-

“ceived from the payment of fees pursuant to the amendment made by section 404(a) of this Act shall be available without further appropriation and shall remain available until expended. Each year, the Secretary shall submit to the Congress a report which includes information regarding the Secretary, the Secretary of State, and the Secretary of Labor for the costs of carrying out sections 218C and 218E of the Immigration and Nationality Act as amended and added, respectively, by section 404 of this Act and the provisions of this Act.

“SEC. 406. REGULATIONS.

“(a) REQUIREMENT FOR THE SECRETARY TO CONSULT.—The Secretary shall consult with the Secretary of Labor and the Secretary of Agriculture during the promulgation of all regulations to implement the duties of the Secretary under this Act and the amend-

“ments made by this Act.

“(b) REQUIREMENT FOR THE SECRETARY OF STATE TO CONSULT.—The Secretary of State shall consult with the Secretary, the Secretary of Labor, and the Secretary of Agriculture on all regulations to implement the duties of the Secretary under this Act and the amendments made by this Act.

“(c) REQUIREMENT FOR THE SECRETARY OF LABOR TO CONSULT.—The Secretary of Labor shall consult with the Secretary of Agri-

“culture and the Secretary on all regulations to implement the duties of the Secretary of
(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 218A(d) of such Act;

(3) the number of such aliens who departed the United States within the period specified in subsection 218A(d) of such Act;

(4) the number of 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 (8 U.S.C. 1101(a)(15)(H)(ii)(a)), and the number of work- ers actually admitted, disaggregated by State and by occupation;

(7) the number of such aliens who departed the United States within the period specified in subsection 218E(e)(2) of such Act;

(8) the number of such aliens who departed the United States within the period specified in subsection 218E(d) of such Act;

(9) the number of such aliens whose status was adjusted under section 218E(e)(2) of such Act.

SEC. 409. NUMERICAL LIMITATIONS.

SEC. 410. REQUIREMENTS FOR PARTICIPATING WORKER PROGRAMS.

SECTION 321A. NUMERICAL LIMITATIONS.

Section 214A(g) of the Act (8 U.S.C. 1184(g)) is amended—

(1) in paragraph (1)—

(A) by striking “beginning with fiscal year 1992”;

(B) by striking subparagraph (B) and inserting the following:

“(B) for fiscal year 2007—

(i) 100,000 for the first fiscal year in which the program is implemented;

(ii) 120,000 for each 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) 150,000 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)—

“SUBSEQUENT ADJUSTMENT.—With respect to the numerical limitation set in subsection 214A(i), (ii), (B)(iii), or (D)(ii) of paragraph (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 15 percent of the allocated amount 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 decrease 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 administrative regulations, then the allocated amount for the following fiscal year shall decrease by 10 percent of the allocated amount in the prior fiscal year.”

SEC. 411. COMPLIANCE INVESTIGATORS.

(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—

(1) 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 may be extended for an additional 3-year term;

(iii) who shall select a Chair from among the voting members to serve a 2-year term, which may be extended for an additional 2-year term;

(iv) who shall have expertise in economics, demographics, labor, business, or immigration law or other pertinent qualifications or experience;

(v) who may not be an employee of the Federal Government or of any State or local government; and

(vi) not more than 3 of whom may be members of the same political party;

(2) 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.

(3) VACANCIES.—Any vacancy in the Commission shall be filled in the same manner as the original appointment.

(c) MEETINGS.—

(A) INITIAL MEETING.—The Commission shall meet and begin carrying out the duties described in subsection (b) as soon as practicable.

(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 programs established under this Act;
(B) the criteria for the admission of non-immigrant workers;
(C) the formulation for determining the annual numerical limitations of nonimmigrant workers;
(D) the impact of nonimmigrant workers on immigration;
(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 programs, including legislative or administrative action, 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 assistance to the Commission with such personnel, 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.—
(1) Except as provided under clause (ii), the executive director and any personnel of the Commission who are employees shall be considered to be employees under section 7531 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.
(D) DETAILEES.—Any employee of the Federal Government may be detailed to the Commission without reimbursement from the Commission. Such detail shall retain all of 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 that an individual occupying a position at level IV of the Executive Schedule under section 5315 of such title 5.
(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 Partnership.
(2) TRAVEL EXPENSES.—Members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, under section 575 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 236(w) of the Immigration and Nationality Act, as added by section 402 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
to provide—
(1) (paras. 2) as follows:
(A) in subparagraph (A), by striking the comma at the end and inserting a semicolon;
(B) in subparagraph (B), by striking ‘‘and’’ and inserting ‘‘or’’;
(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 represent employers 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 ACCOUNT FOR THE MIGRATION PRESSURES AND COSTS.

(a) FINDINGS.—Congress makes the following findings:
(1) Migrants 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 immigration 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 designing the degree of economic opportunity available to unskilled labor.
(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) The migrants constitute a major impediment to broad-based economic growth in Mexico.
(8) Approximately 20 percent of Mexico’s population is under 15 years of age, with the majority of this population working on small farms and few on large commercial enterprises.
(9) The Partnership for Prosperity is a bilateral initiative launched jointly by the President of the United States and the President of Mexico in 2001, which aims to boost the social and economic standards of Mexican citizens, particularly in regions where economic growth has lagged and emigration has increased.
(10) The Presidents of Mexico and the United States and the Prime Minister of Canada, at their trilateral summit on March 21, 2005, agreed to promote economic growth, competitiveness, and quality of life in the agreement on Security and Prosperity Partnership of North America.
(b) SENSE OF CONGRESS REGARDING PARTNERSHIP FOR PROSPERITY.—It is the sense of Congress that the United States and Mexico accelerate the partnership of the Partnership for Prosperity to help generate economic growth and improve the standard of living in Mexico, which will lead to reduced migration, by—
(1) increasing access for poor and under served populations in Mexico to the financial services sector, including credit unions;
(2) 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;
(3) facilitating Mexican efforts to establish an effective rural lending system for small and medium-sized farmers that will—
(A) provide long term access to credit;
(B) develop a viable network of regional and local intermediary lending institutions; and
(C) extend financing for alternative rural economic activities beyond direct agricultural production.
(4) reducing 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;
(5) encouraging Mexican efforts to adopt internationally recognized corporate governance practices, including anticorruption and transparency principles; 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) assisting the Government of Mexico in implementing all provisions of the Inter-American Convention Against Corruption (ratified by Mexico on May 27, 1997) and urging the Government of Mexico to participate fully in the Convention’s formal implementation monitoring mechanism;
(7) assisting 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 extend the benefits of the Public Assistance for Microinsurance and Social Security Reform Program to Mexican citizens, particularly in regions where 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 trauma, health care facilities along the border, within by expanding prenatal care in the United States-Mexico border region;
(3) facilitating 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, state, and local government workers.

(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 job 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 approved labor certification 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 such registry publicly 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 job opportunities advertised on the electronic job registry established under this subsection are 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 the terms of this title, that may be promulgated or in part, to the extent that each Secretary in his discretion determines that such implementation is feasible, cost-effective, secure, and in the interest of the United States.

However, nothing in this provision shall be construed to alter or amend any of the requirements of OMB Circular A-76 or any other regulation promulgated or in part by the Secretary of Homeland Security.

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 and the requirements of 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. Each such interim final rule shall become effective immediately upon publication in the Federal Register. Each such interim final rule shall become effective immediately upon publication in the Federal Register, and the amendments made by this title.

(b) The exemption provided under subsection (a) shall sunset no later than two years after the date of enactment of this title, provided such rule 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)”;

(2) in striking the comma at the end and inserting the following—

“(II) engaged in temporary employment for optional practical training for a aggregate period of not more than 24 months and related to such alien’s major area of study, where such alien has been lawfully enrolled on a full time basis as a nonimmigrant under clause (i) or (iv) at a college, university, conservatory, or seminary described in subsection (b) or (iv) at a college, university, conservatory, or seminary described in subsection (b) or (iv) at a college, university, conservatory, or seminary described in subsection (b) or (iv) at a college, university, conservatory, or seminary described in subsection (b); and

(3) the Secretary of Homeland Security, in consultation with the Secretary of Labor, may consult with educational institutions and may grant an alien Y nonimmigrant status.

(b) THE SECRETARY OF HOMELAND SECURITY, IN CONSULTATION WITH THE SECRETARY OF LABOR, MAY CONSIDER THE FOLLOWING—

(1) the alien has spent at least 21 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 more than the greater of—

(A) the prevailing wage level for the occupation at the place of employment; or

(B) the prevailing wage level 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.

(2) DISQUALIFICATION.—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) IN GENERAL.—This subsection shall apply to an alien student under section 101(a)(15)(F) of the Immigration and Nationality Act.

(d) CLARIFYING THE IMMIGRANT INTENT PROVISION.—Subsection (b) of section 214 of the Immigration and Nationality Act (8 U.S.C. 1184(b)) is amended—

(1) by striking the parenthetical phrase “other than a nonimmigrant described in subsection (b)(1)(A), (1)(B), and (1)(C)”; and

(2) by striking “(b)”; and

SEC. 419. H-1B WORKPERMITS.

(a) IN GENERAL.—Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184A(g)) is amended—

(1) in paragraph (1) by deleting clauses (i) through (vii) of subparagraph (A) and inserting in its place—

“(i) in any subsequent fiscal year, subject to clause (iii), the number for the previous—

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fiscal year as adjusted in accordance with the method set forth in paragraph (2); and

(iii) 180,000 for any fiscal year; or

(2) in paragraph (9), as renumbered by Section 4.

(d) DEPARTMENT OF LABOR RESPONSIBILITIES.—

(A) by striking “The annual numeric limitations described in clause (1) shall not exceed from subclause (ii) of subparagraph (B) and inserting “With respect to the annual numeric limitations described in clause (1), the Secretary may issue a visa or other grant nonimmigrant status pursuant to section 1101(a)(15)(H)(ii)(b) in the following quantities”;

(B) by striking subparagraphs (B)(iv) and (D); and

(C) by striking paragraph (D).

(2) EXTENDING TIME PERIOD FOR NONDISPLACEMENT REQUIREMENTS FOR JOBS IN SCIENCE, ENGINEERING, AND MATHEMATICS.—

(A) in subparagraph (E), by striking “12 months” and inserting “18 months”;

(B) in clause (ii), by striking “and all that follows through—” and inserting ‘The employer shall file a petition for an immigrant visa under section 106(a) of the Immigration and Nationality Act (8 U.S.C. 1184(a)) not later than 5 years after the date of the enactment of this Act (June 30, 2003)”;

(C) by striking subparagraph (F);

(D) by striking clause (i), by striking “10 years” and inserting “18 years”;

(E) by striking paragraphs (2) and (3) and all that follows through—” and inserting ‘The Secretary shall conduct an investigation to determine if a failure or misrepresentation of material fact, or is obviously inaccurate’; and

(F) by striking the period at the end of subparagraph (A) and inserting in its place “; and”;

(G) by striking subparagraphs (B) and (C) and inserting the following:

“(B) attainment of a bachelor’s or higher degree in the specific specialty from an educational institution in the United States accredited by a nationally recognized accrediting agency or association (or an equivalent degree from foreign educational institution that the Secretary determines is equivalent to such an institution) as a minimum for entry into the occupation in the United States.”

(c) PROCEDURE TO IDENTIFY IMMIGRATION VIOLATIONS.—

(1) by deleting the comma at the end of subparagraph (B) and inserting “; and”;

(2) by striking subparagraphs (B) and (C) and inserting the following:

“(B) in paragraph (2)—

(i) in subparagraph (E), by striking ‘if an H-1B-dependent employer’ and inserting ‘an employer that employs H-1B nonimmigrants’;

(ii) in subparagraph (F), by striking ‘The preceding sentence shall apply to an employer regardless of whether or not the employer is an H-1B-dependent employer’; and

(C) by striking paragraph (3).

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to applications filed on or after the date of the enactment of this Act.

(d) NONDISPLACEMENT REQUIREMENT.—

(1) EXTENDING TIME PERIOD FOR NONDISPLACEMENT REQUIREMENT.—

(A) nonimmigrant in one-year increments until such time as a final decision is made on the alien’s lawful permanent residence.

(2) Sections 106(a) and 106(b) of the American Competitiveness in the Twenty-First Century Act of 2000 (Immigration Services and Infrastructure Improvements Act of 2000, Public Law 106-313, are hereby repealed.

SEC. 420. H-1B EMPLOYER REQUIREMENTS.

(a) AMENDMENT TO NONDISPLACEMENT AND GOOD FAITH RECRUITMENT REQUIREMENTS.

(1) AMENDMENT.—Section 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(n)) is amended—

(A) in paragraph (1)–

(i) in subparagraph (E), by striking “and” and inserting “; and”;

(ii) in subparagraph (F), by striking ‘In the case of an application described in clause (ii), the’ and inserting ‘(E) the’; and

(ii) in subparagraph (G), by striking ‘In the case of and all that follows through—’ and inserting the following: ‘The employer shall file a petition for an immigrant visa under section 106(a) of the Immigration and Nationality Act (8 U.S.C. 1184(a)) not later than 5 years after the date of the enactment of this Act (June 30, 2003)”;

(2) E FFECTIVE DATE .—The amendments made by paragraph (1) shall apply to petitions filed on or after the date of the enactment of this Act.

SEC. 421. H-1B NONIMMIGRANTS NOT ADMITTED FOR JOBS IN SCIENCE, ENGINEERING, AND MATHEMATICS.

(a) NONIMMIGRANTS NOT ADMITTED FOR JOBS IN SCIENCE, ENGINEERING, AND MATHEMATICS.—

(1) Section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(5)) is amended by inserting after the period at the end of subparagraph (A) and inserting the following:

“(H)(i) The employer has not advertised the available jobs specified in the application in an advertisement that states or indicates that—

(I) the job or jobs are only available to persons who are or who may become H-1B nonimmigrants;

(II) persons who are or who may become H-1B nonimmigrants shall receive priority or a preference in the hiring process;

(i) there is a condition described in clause (i), the Secretary of Labor may conduct an investigation into the employer’s compliance with the requirements of this subsection;”;

(C) (i) in clause (i), by striking ‘if the Secretary and all that follows inserting ‘with regard to the employer’s compliance with the requirements of this subsection’; and

(ii) in clause (ii), by striking ‘and whose identity’ and all that follows through ‘failures or successes’ and inserting ‘with regard to the employer’s compliance with the requirements of this subsection;”;

(D) by striking clauses (iv) and (v); and

(E) by redesignating clauses (vi), (vii), (viii), and (ix) as clauses (iv), (v), (vi), and (vii), respectively.

(F) in clause (iv), as redesignated, by striking “ meet a condition described in clause (i) unless the Secretary of Labor receives the information not later than 12 months” and inserting ‘comply with the requirements under this subsection, unless the Secretary of Labor receives the information not later than 24 months’;

(G) by amending clause (v), as redesignated, to read as follows:

“The Secretary of Labor shall provide notice to an employer of the intent to conduct an investigation. The notice shall be provided in such a manner, and shall contain such detail, to permit the employer to respond to the allegations before an investigation is commenced. The Secretary is not
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) 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 that employs nonimmigrants described in section 101(a)(15)(L) with regard to the employer’s compliance with the requirements of this subsection.

“(II) The Secretary of Homeland Security shall establish procedures to conduct investigations with respect to information about a failure to comply with any provisions of this subsection, the Secretary shall provide notice to the employer of the intent to conduct such investigation. The notice shall include assurance that the investigation described in such clause, to the extent practicable, will be conducted with respect to information about a failure to comply with the requirements under this subsection, the Secretary of Homeland Security receives the information not later than 21 months after the date of the alleged failure.

“(III) Before commencing an investigation of an employer under clause (I) or (II), the Secretary of Homeland Security shall provide notice to the employer of the intent to conduct such investigation. The notice shall include assurance that the investigation described in such clause will be conducted with respect to information about a failure to comply with this clause, 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) If the Secretary of Homeland Security, after an investigation under clause (I) or (II), determines that a reasonable basis exists for a finding that an employer has failed to comply with the requirements under this subsection, the Secretary shall provide notice of such determination and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, within 30 days after the date of such determination. If such a hearing is requested, the Secretary shall make a finding concerning the matter by not later than 120 days after the date of the request.

“(V) The Secretary of Homeland Security, after a hearing, finds a reasonable basis to believe that the employer has violated the requirements of this subsection, the Secretary shall impose a penalty on such employer under section 214(c)(2)(J).”

“(a) IN GENERAL.—Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended—

“(1) a brochure outlining the employer’s obligations and the employee’s rights under Federal law, including labor and wage protections; and

“(2) 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 under this section, the Secretary of the Department of Homeland Security shall provide the applicant with—

“(I) a business plan in conformity with the requirements under subsection (a) and may not be granted until 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.

“(II) the contact information for Federal agencies that can offer more information or assistance in clarifying employer obligations and workers’ rights.”

(3) by adding at the end the following:

“(G) If the Secretary of a petition under this subsection is coming to the United States to open, or has been employed in, a new facility for which the petition may be approved for up to 12 months only if the employer operating the new facility—

“(i) a business plan; and

“(ii) evidence of the financial status of the new facility; and

“(3) by adding at the end the following:

“(II) 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. There shall be no judicial review of a determination by the Secretary under this clause.

“(IV) If the Secretary of Homeland Security, after an investigation under clause (I) or (II), determines that a reasonable basis exists for a finding that an employer has failed to comply with the requirements under this subsection, the Secretary shall provide notice of such determination and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, within 30 days after the date of such determination. If such a hearing is requested, the Secretary shall make a finding concerning the matter by not later than 120 days after the date of the request.

“(V) The Secretary of Homeland Security, after a hearing, finds a reasonable basis to believe that the employer has violated the requirements of this subsection, the Secretary may impose a penalty on such employer under section 214(c)(2)(J).”
SEC. 242. 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. 1182(c)(2)) is amended—

(a) by striking "Attorney General" each place it appears and inserting "Secretary of Homeland Security"; and

(b) in subparagraph (E), by striking "in the case" and inserting "Except as provided in subparagraph (F)".

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. 1182(c)(2)) is amended—

(a) by inserting "Attorney General" each place it appears and inserting "Secretary of Homeland Security"; and

(b) in subparagraph (E), by striking "in the case" and inserting "Except as provided in subparagraph (F)".

SEC. 425. MEDICAL SERVICES IN URBANIZED AREAS

(a) PERMANENT AUTHORIZATION OF THE CONRAD PROGRAM—

Section 220(c) of the Immigration and Nationality Act (8 U.S.C. 1184A(c)) is amended—

(1) by striking "Secretary of Health and Human Services" each place it appears and inserting "Secretary of Homeland Security"; and

(2) by adding the following—

"(VIII) a statement of the duties the beneficiary will perform at the office described in this petition; or

(IX) any other evidence or data prescribed by the Secretary;"

SEC. 426. MEDICAL SERVICES IN URBANIZED AREAS

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. 1184A(i)) is amended—

(1) by adding at the end the following:

"(4)(A) Notwithstanding paragraph (1)(B), the Secretary of Homeland Security may grant in total no more than 30 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.

(B) The requirements under this subparagraph are met if—

(i) fewer than 20 percent of the physician vacancies in the health professional shortage areas of 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—
“(I) 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) the term ‘health professional shortage area’ has 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 ‘first fiscal year of the pilot program,’ 15;

“(III) 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(j) of the Immigration and Nationality Act (8 U.S.C. 1151(j)) is amended to read as follows:

“(1) In general:

“(A) Nothwithstanding section 248(a)(2), upon submission of a request to an interested State agency, the alien agrees to train in a health care organization or center, or in a rural health clinic that is located in:

(i) a geographic area which is designated by the Secretary of Health and Human Services as having a shortage of health care professionals; and

(ii) a State that utilized less than 10 of the total allotted waivers for the State under paragraph (1)(B) (excluding the number of waivers available pursuant to paragraph (1)(D)(iii)) in the most recent fiscal year.

“(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 118(b)(4) for purposes of section 118(a) of that title.

“(C) The period of authorized admission for physicians on H-1B visas who work in medically underserved communities for a continuous period of 5 years.”

SEC. 426. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act, and the amendments made by this Act.

TITLE V—Immigration Benefits

SEC. 501. REBLANACING OF IMMIGRANT Visa ALLOCATION.

“(a) FAMILY-SUPPORTED IMMIGRANTS.—Section 201(c) of the Immigration and Nationality Act (8 U.S.C. 1151(c)) is amended to read as follows:

“(c) WORLDWIDE LEVEL OF FAMILY-SUPPORTED IMMIGRANTS.

“(1) For each fiscal year until visas needed for petitions filed in paragraph (1)(b)(2) of this Act first become eligible for an immigrant visa under section 203(b) of this Act for fiscal year 2005, 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, for any immigrant visa under section 203(b) of the Act.

“(b) In general.—The worldwide level of family-based, special, and employment creation immigrants under this subsection for a fiscal year is 127,000, 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, for any immigrant visa under section 203(b) of the Act.
this Act are eligible for an immigrant visa, the number calculated pursuant to section 503(c)(3) of [Insert title of Act];

"(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 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 adjudicate 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 calculated pursuant to section 503(c)(3) of [Insert title of Act];

"(d) not later than December 31 of the fiscal year of enactment, the Secretary may establish a time period in a section 203(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1153(b) as amended by this section shall be deemed denied on the first day of the third fiscal year following the date of such application. Such denial shall not preclude the petitioner from filing a new petition 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 201(c);

"(2) redesignating paragraph (4) as paragraph (2), by striking "7.1 percent" and inserting "5.900" and inserting "2.500";

"(3) redesignating paragraph (5) as paragraph (3), by striking "7.1 percent" and inserting "5.900" and inserting "1.500";

"(d) EFFECTIVE DATE—The amendments made by this section shall take effect on the first day of the fiscal year subsequent to the fiscal year of enactment, unless such date is less than 270 days after the date of enactment in which case the amendments shall take effect on the first day of the following fiscal year.

"(2) PENDING AND APPROVED PETITIONS AND APPLICATIONS—Petitions for an employment-based visa filed for classification under section 203(b)(1), (2), or (3) of the Immigration and Nationality Act (as such provisions existed prior to the enactment of this section) that were filed prior to the date of 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 to aliens with applications for labor certification pursuant to section 212(a)(5)(A) of the Immigration and Nationality Act shall preserve the worldwide level of visas.
SEC. 503. — REDUCING CHAIN MIGRATION AND PERMITTING PETITIONS BY NATIVE BORN Aliens.

(a) CAP EXCEPT subclasses.—Paragraph (1) of section 201(b) of the Immigration and Nationality Act (8 U.S.C. 1151(b)) is amended by adding the following two new subparagraphs at the end:

(‘F) Aliens admitted under section 211(a) on the basis of prior issuance of a visa under section 203(a), (f), (f)(1), and (f)(2) to a noncitizen who in the opinion of the Attorney General is an immediate relative;

(‘G) Aliens born to an alien lawfully admitted for permanent residence during temporary visita- tion who meets the requirements of paragraph (1) (other than subparagraph (D)), and executes an affidavit of support with respect to such alien in a case in which—

(A) the individual petitioning under section 201 for the classification of such alien died after the approval of such petition; and

(B) the Secretary of Homeland Security has determined for humanitarian reasons that revocation of such petition under section 201(b) would be inappropriate.

(b) NON-PETITIONING CASES.—Such term also includes an individual who does not meet the requirement of paragraph (1)(D) but who is a spouse, son, or daughter of an alien lawfully admitted for permanent residence during temporary visita- tion, or other in, sibling, child (if at least 18 years of age), son, daughter, son in law, daughter in law, sister in law, brother in law, grand- parent, or grandchild of sponsored alien or a legal guardian of a sponsored alien, meets the requirements of paragraph (1) (other than subparagraph (D)), and executes an affidavit of support with respect to such alien in a case in which—

(A) the individual petitioning under section 201 for the classification of such alien died after the approval of such petition; and

(B) the Secretary of Homeland Security has determined for humanitarian reasons that revocation of such petition under section 201(b) would be inappropriate.

(c) Designating subparagraph (D) as paragraph (5) and inserting the following:

(5) by striking paragraph (5); and

(d) Striking “(6)” and inserting “(5)” in subparagraph (5); and

(e) Striking paragraph (6).
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(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 212B 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 that subsection. 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. 503. ELIMINATION OF DIVERSITY VISA PROGRAM.
(a) Section 201 of the Immigration and Nationality Act (8 U.S.C. 1151) is amended by redesignating paragraphs (2); and
(b) the Secretary may specify after the end of the thirteenth fiscal year.
(c) The Secretary may reserve up to 2,500 of the immigrant visa 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. 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 daughters of U.S. citizens who are over the age of 21 years;
(C) the married sons or married daughters of citizens of the United States;
(D) the brothers or sisters of citizens of the United States; or
(E) the brothers or sisters of citizens of the United States who are under the age of 21 years.
(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 the beneficiary that cannot be relieved by temporary visits as a non-immigrant.
(c) Ineligibility to Immigrate through Other Sections of Law.—The alien described in this subsection (1) must be ineligible to immigrate or adjust status through other means, including but not limited to obtaining an immigrant visa for classified aliens, under section 201(b)(2)(A) or section 203(a) or (b) of this Act, and obtaining cancellation of removal under section 240(a)(b) of this Act determination that the alien is eligible to immigrate through other means does not foreclose or restrict any other determination on the question of eligibility by the Secretary of Homeland Security or the Attorney General.
(d) 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 such 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 the petition is not filed in the fiscal year in which they were filed. The Secretary may in his discretion establish such reasonable application period or other procedures for ensuring that the petition is filed in order to ensure their orderly processing within the fiscal year of filing.
(3) The Secretary may reserve up to 2,500 of the immigrant visas under this section for approval in the period between March 31 and September 30 of fiscal year.
(4) The 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) by striking paragraph (7);
(2) in subsection (b), by striking paragraph (2) and inserting a period; and
(b) Section 203 of the Immigration and Nationality Act (8 U.S.C. 1153) is amended by redesignating paragraphs (2); and
(c) Section 203B of the Immigration and Nationality Act (8 U.S.C. 1152) is amended by redesignating paragraphs (2);
(d) by striking subsection (g), by striking paragraph (3); and
(e) EFFECTIVE DATE.—This section shall apply to the fiscal year.
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 overstay their periods 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 Secretary’s report described in subparagraph (A) finding an overstay rate in excess of 7%.

(’D) EFFECT ON EXISTING VISAS.—In the event of the Secretary’s determination that no more visas shall be issued under subparagraphs (B) or (C); all visas previously issued under this subsection and still valid on the date of the Secretary’s report described in subparagraph (A) finding an overstay rate in excess of 7% and more visas should be issued shall expire on the visa’s date of expiration or 12 months after the date of the determination, whichever is sooner.

(’E) 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 obtaining admission benefits under the immigration laws, except:

(i) asylum under section 208(a);

(ii) withholding of removal under section 241(b)(11);

(iii) protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done May 17, 1984, and the United States’s obligations under such Convention;

(iv) the alien has not otherwise violated his or her nonimmigrant status.

(5) 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, may not sponsor that alien or any other alien for admission as a visitor for pleasure under the terms and conditions of this subsection, and, in the case of a Y-1 nonimmigrant sponsor, shall have his Y-1 nonimmigrant status terminated.

(7) CONSTRUCTION.—Nothing in this subsection shall be construed, except as provided in this subsection, to make inapplicable the requirements for admissibility and eligibility, as well as the terms and conditions of admission of a 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:

(b) FRAUD PREVENTION.—The Secretary of Homeland Security may audit and evaluate applications filed under subsection (a) and the information furnished as part of the applications.

(c) SECRETARY OF LABOR.—The Secretary of Labor, in coordination with the Secretary of Homeland Security, may audit and evaluate applications filed under subsection (a) and the information furnished as part of the applications.

(d) EFFECT ON EXISTING VISAS.—In the event of the Secretary’s determination that no more visas shall be issued under subparagraphs (B) or (C); all visas previously issued under this subsection and still valid on the date of the Secretary’s report described in subparagraph (A) finding an overstay rate in excess of 7% and more visas should be issued shall expire on the visa’s date of expiration or 12 months after the date of the determination, whichever is sooner.

(’F) 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, may not sponsor that alien or any other alien for admission as a visitor for pleasure under the terms and conditions of this subsection, and, in the case of a Y-1 nonimmigrant sponsor, shall have his Y-1 nonimmigrant status terminated.

(c) DEFENSE ON OVERSTAYS.—Any petition for classification under section 204(a)(15)(A) or (B) of the Act (8 U.S.C. 1153(a)(15)) that is filed after the date of expiration or 12 months after the date of the determination, whichever is sooner.

(’G) CONSTRUCTION.—Nothing in this subsection shall be construed, except as provided in this subsection, to make inapplicable the requirements for admissibility and eligibility, as well as the terms and conditions of admission of a nonimmigrant under section 101(a)(15)(B).

(’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.

(’I) 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 fraud, 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).

(’K) 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 enforcement programs, and activities described in section 212(n), and for fraud detection and prevention activities not otherwise authorized under section 212(n), to be conducted by the Secretary of Labor that focus on industries likely to employ nonimmigrants.

SEC. 508. INCREASED 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 amending paragraph (2) to read as follows:

(2) PER COUNTRY LEVELS FOR FAMILY-SPOUSE AND DEPENDENTS.—Subject to paragraphs (3), (4), (5), and (7), the total number of immigrant visas made available to aliens of a particular country level for the numerical cap for such country level will not apply for such visas if the per country level exceeds 7% and the percentage is not significantly affected by countries whose nationals have a disproportionately high rate of aliens overstay their period of authorized admission.

(b) Paragraph (2) shall not apply to aliens who are nonimmigrants described in section 101(a)(15)(B) of the Act who are eligible to seek lawful permanent resident status based on a petition for classification under section 203(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. 1254(a)), the Secretary may permit an alien, dependent of such alien, or an alien who was within two years of the date on which an alien was classified as a nonimmigrant under section 101(a)(15) of the Act (8 U.S.C. 1153(a)(15)) or any other immigration status made available under a treaty or other multinational agreement that has been ratified by the Senate,

(2) CONTINUOUS PRESENCE.—For purposes of this section, an absence from the United States without authorization for a continuous period of 90 days or more than 180 days in the aggregate shall constitute a break in continuous physical presence.

(d) GROUNDS OF INELIGIBILITY.—(1) GROUNDS OF INELIGIBILITY.—An alien is ineligible for Z nonimmigrant status if the alien

(i) has been convicted of a crime

(ii) is an illegal alien under the United States’s immigration laws, except as provided in paragraph (2);

(2) Nothing in this paragraph shall require the Secretary to consider removal proceedings against an alien.

(c) DEFENSE ON OVERSTAYS.—Any petition for classification under section 204(a)(15) of the Act (8 U.S.C. 1153(a)(15)), except as provided in paragraph (2); the per country level will not apply for such visas.

(7) EXCEPTION FOR Z NONIMMIGRANTS.—Section 202(a)(15) of the Act (8 U.S.C. 1153(a)(15)) is amended by inserting at the end the following:

(2) 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—

Title VI—Persons Previously in Unlawful Status

Title VI of the Act on January 1, 2007.

(i) the alien has been inadmissible under any classification described in section 101(h) of the Act outside the United States before arriving in the United States; or

(ii) for whom there are reasonable grounds for regarding the alien as a danger to the security of the United States; or

(iii) 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; or

(iv) for whom there are reasonable grounds for regarding the alien as a danger to the security of the United States; or

(F) has been convicted of—

(i) a felony;

(ii) an aggravated felony as defined at section 101(a)(43) of the Act;

(iii) any more misdemeanors under Federal or State law; or

(v) a serious criminal offense as described in section 101(h) of the Act.

(G) has entered or attempted to enter the United States illegally on or after January 1, 2007; and

(H) 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 or Z-3 nonimmigrant status applicant is ineligible.

(1) The Secretary may in his discretion waive ineligibility under subparagraph (B) or (D) 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)—

(1) 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 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)(D), (6)(E)(i), (6)(E)(ii), (9)(B), (9)(C)(i)(I), 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;

(ii) the Secretary may not waive—

(I) subparagraph (A), (B), (C), (D)(i)(I), (E), (F), (G), (H), (I), and (J) of section 212(a)(2) of the Act (relating to criminal acts);

(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)(ii)(I) of the Act (relating to polygamists, child abductors, and unlawful voters);

(iii) the Secretary may in his discretion waive—

(B) any provision of this paragraph (2) (except subsection 212(a)(9)(C)(i)(II)) of the Act not listed in subparagraph (B) 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 authority of the Secretary other than under this paragraph to waive the provisions of section 212(a) of the Act.

(e) ELIGIBILITY REQUIREMENTS. — To be eligible for Z nonimmigrant status an alien shall meet the following and any other applicable requirements set forth in this section:

(1) ELIGIBILITY. — The alien must not fall within a class of aliens ineligible for Z nonimmigrant status listed under subsection (d)(1).

(2) INADMISSIBILITY. — The alien must not be inadmissible to the United States under section 212, except as provided in subsection (d)(2), regardless of whether the alien has previously been admitted to the United States.

(3) PREFERENCE. — To be eligible for Z-1 or Z-2 nonimmigrant status, or for nonimmigrant status under section 101(a)(15)/(Z)(ii)/(I), the alien must—

(A) have been physically present in the United States before January 1, 2007, and have maintained continuous physical presence in the United States since that date;

(B) be physically present in the United States on the date of application for Z nonimmigrant status; and

(C) be January 1, 2007, and on the date of application for Z nonimmigrant status, not present in lawful status in the United States under any classification described in section 101(a)(15)/(Z)(ii)/(I), or any other immigration status made available under a treaty or other multinational agreement that has been ratified by the Senate.

(4) EMPLOYMENT. — An alien seeking Z-1 nonimmigrant status must be employed in the United States at the time of filing of the application for Z-1 nonimmigrant status.

(5) FEES AND PENALTIES. —

(A) PROCESSING FEES. —

(1) Prior to filing an initial application for 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.

(2) An alien applying for extension of his 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 no more than $1,500 for a single Z nonimmigrant.

(B) PENALTIES. —

(1) An alien making an initial application for Z-1 nonimmigrant status shall be required to pay, in addition to the processing fee in subparagraph (A), a penalty of $1,000.

(ii) The Secretary has conducted appropriate background checks or the end of the period for accepting applications by up to 12 months.

(ii) The Secretary may in his discretion extend the period for accepting applications by up to 12 months.

(iii) An alien who is a Z-2 or Z-3 nonimmigrant and who has not previously been a Z-1 nonimmigrant, and who changes status to that of a Z-1 nonimmigrant, shall in addition to processing fees be required to pay the initial application penalties applicable to Z-1 nonimmigrants.

(C) STATE IMPACT ASSISTANCE FEE. — In addition to any other amounts required to be paid under this subsection, a Z-1 nonimmigrant making an initial application for Z-1 nonimmigrant status shall pay a State impact assistance fee equal to $500.

(D) DEPOSIT AND SPENDING OF FEES. — The processing fees under subparagraph (A) shall be deposited and remain available until expended as provided by sections 286m and 286n.

(E) DEPOSIT, ALLOCATION, AND SPENDING OF FEES. —

(1) DEPOSIT OF FEES. — The penalties under this subsection, but no more than $1,500 for a single Z nonimmigrant, shall be deposited and remain available as provided by section 286w.

(2) DEPOSIT OF STATE IMPACT ASSISTANCE FUNDS. — The funds under subparagraph (C) shall be deposited and remain available as provided by section 286x.

(3) INTERVIEW. — An applicant for Z nonimmigrant status must appear to be interviewed.

(8) MILITARY SELECTIVE SERVICE. —

(A) The alien shall establish if the alien is with limited but unauthorized by the Secretary that the alien has registered under the Military Selective Service Act (50 U.S.C. App. 451 et seq.) that such alien has registered under that Act.

(9) APPLICATION PROCEDURES. —

(1) IN GENERAL. — The Secretary of Homeland Security shall prescribe by notice in the Federal Register, in accordance with the procedures established by the Secretary of Homeland Security, or such other law enforcement actions that would render the alien ineligible for classification under this section.

(b) 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 (1) and (g) and after the Secretary has conducted appropriate background checks of such alien to ensure his nonimmigrant status, and other biometric data provided by the alien to conduct appropriate background checks of such alien to ensure his nonimmigrant status, and other law enforcement actions that would render the applicant ineligible —

(A) be granted probationary benefits in the form of employment authorization pending final adjudication of the alien’s application; and

(B) may in the Secretary’s discretion receive advance permission to re-enter the United States pursuant to existing regulations governing advance parole;

(C) may not be detained for immigration purposes, determined inadmissible or deportable, for immigration purposes, determined inadmissible or deportable, or removed pending final adjudication of the alien’s application, unless the alien is determined to be ineligible for Z nonimmigrant status; and

(D) may be considered an unauthorized alien (as defined in section 274(a)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3))) unless employment authorization under subparagraph (A) is denied.

(2) TIMING OF PROBATIONARY BENEFITS. — No probationary benefits shall be issued to an alien until the alien has submitted appropriate background checks or the end of the next business day, whichever is sooner.

(3) CONSTRUCTION. — Nothing in this section shall be construed to limit the Secretary’s authority to conduct any appropriate background and security checks subsequent to issuance of evidence of probationary benefits under this paragraph (4).

(4) PROBATIONARY AUTHORIZATION DOCUMENT. — The Secretary shall provide each alien described in paragraph (1) with a countersigned document that reflects the benefits and status set forth in paragraph (h)(1). The Secretary may by regulation establish procedures for the issuance of documents evidencing probationary benefits and, except as provided herein, the conditions under which such documentary evidence expires, terminates, or is renewed. All documentary evidence evidencing 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 enforcement 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 shall affirmatively communicate such opportunity to file an application under this section after such regulations are promulgated.

(6) AFFIRMATIVE DETERMINATION.—Notwithstanding any provision of the Act, if the Secretary determines that an alien who is in removal proceedings is prima facie eligible for Z nonimmigrant status, the Secretary shall affirmatively communicate such determination to the immigration judge. The Immigration judge shall then terminate or administratively close such proceedings and permit the alien a reasonable opportunity to apply for such classification.

(7) ADMISSION.—The alien shall be admitted to the United States for Z nonimmigrant status if the alien demonstrates the required period of presence, employment, or study by submitting records to the Secretary that demonstrate such presence, employment, or study. Such documentation may consist of, among other things: (I) a requirement for any other benefit described in subsection (i), to an applicant for a Z nonimmigrant visa who satisfies the requirements of this section.

(2) Evidence of Continuous Presence.—In general, an alien who has already been admitted under section 286(x), shall within 90 days of enactment of this section, provide verification to the Secretary of documentation offered by an alien under which such agency shall reasonably ensure that procedures are in place under which such evidence 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 documentary requirements of this paragraph; or (II) evidence the required period of presence, employment, or study by submitting records to the Secretary that demonstrate such presence, employment, or study, and that the Secretary verifies have been maintained by the Social Security Administration, the Internal Revenue Service, or any other Federal, State, or local government agency.

(B) Verification.—Each Federal agency, and each State or local government agency, as a condition of receipt of any funds under Section 296(x), shall within 90 days of enactment ensure that procedures are in place under which such evidence 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 documentary requirements of this paragraph; or (II) evidence the required period of presence, employment, or study by submitting records to the Secretary that demonstrate such presence, employment, or study, and that the Secretary verifies have been maintained by the Social Security Administration, the Internal Revenue Service, or any other Federal, State, or local government agency.

(C) OTHER DOCUMENTS.—A Z nonimmigrant or an applicant for Z nonimmigrant status who are unable to submit documentation described in subparagraph (i) may establish satisfaction of each required period of presence, employment, or study by submitting to the Secretary of documentation of reliable documents that provide evidence of employment, including:

(i) bank records; (ii) business records; (iii) employer records; (iv) records of a labor union or day labor center; (v) remittance records; (vi) sworn affidavits from nonrelatives who have direct knowledge of the alien’s work, that document: (aa) the name, address, and telephone number of the affiant; (bb) the nature and duration of the relationship between the affiant and the alien; and (cc) other verification or information.

(3)圓
(E) BARS TO EXTENSION.—Except as provided in subparagraph (D), a Z nonimmigrant shall not be eligible to extend such nonimmigrant status if:

(i) the alien has violated any term or condition of his or her Z nonimmigrant status, including but not limited to failing to comply with the change of address reporting requirements under section (j) or pursuant to subsection (h)(4) to the United States after travel outside the United States under paragraph (1) shall not extend the most recent period of authorized admission in the United States under subsection (k).

(o) TERMINATION OF BENEFITS.—

(1) IN GENERAL.—Any benefit provided to a nonimmigrant under this section shall terminate if—

(A) the Secretary determines that the alien is inadmissible for any reason; or

(B) the alien is not subject to the bars on extension described in subsection (k)(2)(E).

(2) Z NONIMMIGRANT STATUS.—(A) A Z nonimmigrant may not change status more than one time per 365-day period. The Secretary may, in his discretion, waive the application of this subparagraph if it is established to the satisfaction of the Secretary that application of this subparagraph would result in extreme hardship to the alien.

(B) CHANGE FROM Z-1 STATUS.—A Z-1 nonimmigrant may change status to Z nonimmigrant status at the time of renewal referred to in section 214A(j)(1)(C) of the Immigration and Nationality Act.

(C) CHANGE FROM Z-2 OR Z-3 NONIMMIGRANT STATUS.—A nonimmigrant under the immigration laws may not change status under section 248 to Z nonimmigrant status.

(m) CHANGES IN Z NONIMMIGRANT STATUS.—(1) Z-1 AND Z-3 NONIMMIGRANTS.—

(A) IN GENERAL.—Z-1 and Z-3 nonimmigrants shall be authorized to work in the United States.

(B) CONTINUOUS EMPLOYMENT REQUIREMENT.—All requirements that an alien be employed or seeking employment for purposes of this Title shall not apply to an alien who is under 16 years or over 65 years of age. A Z-1 or Z-3 nonimmigrant between 16 and 65 years of age must remain continuously employed full time in the United States as a condition of such nonimmigrant status, except where—

(i) the alien is pursuing full course of study at an institution of higher education, university, seminary, conservatory, academic high school, elementary school, or other academic institution or language training program;

(ii) the alien is employed while also engaged in study at an institution of higher education, university, seminary, conservatory, academic high school, elementary school, or other academic institution or language training program;

(iii) the alien cannot demonstrate employment because of a physical or mental disability (as defined under section 3(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.)) or a result of pregnancy; or

(iv) the alien's ability to work has been temporarily interrupted by an event that the Secretary has determined to be a force majeure or emergency.

(2) Z-2 Nonimmigrants.—Z-2 nonimmigrants shall be authorized to work in the United States.

(n) TRAVEL OUTSIDE THE UNITED STATES.—(1) IN GENERAL.—Z-2 nonimmigrants shall be authorized to travel outside the United States immediately.

(q) DISSEMINATION OF INFORMATION ON Z PROGRAM.—During the 2 year period immediately after the issuance of regulations implementing this title, the Secretary, in cooperation with entities approved by the Secretary, shall broadly disseminate information respecting Z classification under this section and the requirements to be satisfied to qualify for such classification. The Secretary shall disseminate information to employers and labor unions to advise them of the rights and protections available to them and to workers who file applications under this section. Such information shall be broadly disseminated, in no fewer than the top five principal languages, as determined by the Secretary in his discretion, to aliens who would qualify for classification under this section, including to television, radio, and print media to which such aliens would have access.

(t) DEFINITIONS.—In this title and section 214A of the Immigration and Nationality Act:

(1) Z NONIMMIGRANT; Z NONIMMIGRANT WORKER.—The term ‘Z nonimmigrant worker’ means an alien admitted to the United States under paragraph (2) of section 101(a)(15). The term does not include aliens granted probationary benefits under subsection (h) and whose applications for nonimmigrant status under section 101(a)(15)(Z) of the Act have not yet been adjudicated.

(2) Z-1 NONIMMIGRANT; Z-1 WORKER.—The term ‘Z-1 nonimmigrant’ or ‘Z-1 worker’ means an alien admitted to the United States under paragraph (1)(I) of subsection 101(a)(15)(Z).

(3) Z-2 NONIMMIGRANT; Z-2 WORKER.—The term ‘Z-2 nonimmigrant’ or ‘Z-2 worker’ means an alien admitted to the United States under paragraph (1)(II) of subsection 101(a)(15)(Z).

(4) Z-3 NONIMMIGRANT; Z-3 WORKER.—The term ‘Z-3 nonimmigrant’ or ‘Z-3 worker’ means an alien admitted to the United States under paragraph (3) of subsection 101(a)(15)(Z).

SEC. 602. EARNED ADJUSTMENT FOR 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 or otherwise purport to be a Z-1 immigrant.

(B) ADJUSTMENT.—Notwithstanding sections 245(a) and (c), the status of any Z-1 nonimmigrant may be adjusted by the Secretary of Homeland Security to that of an alien lawfully admitted for permanent residence.

(C) REQUIREMENTS.—A Z-1 nonimmigrant may be adjusted to that of an alien lawfully admitted for permanent residence upon satisfying, in addition to all other requirements imposed by law, including the merit criteria specified in section 245(b)(1)(A) (INSERT CITATE), the following requirements:

(1) IN GENERAL.—A Z-1 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.

(2) SOURCE OF APPLICATION.—Unless otherwise directed by the Secretary of State, a Z-1 nonimmigrant applying for adjustment of status under this paragraph shall make an application at a consular or port of entry of the alien's country of origin. A consular office in a country that is not Z-1 nonimmigrant's
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. (iii) Procedure. 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 same legal evaluation system under section 203(b)(1)(A) of the Act; and (iv) Admissibility.—The alien must not be inadmissible under section 212(a), except for those grounds previously waived under subsection (d)(2).

(2) Z-2 AND Z-3 NONIMMIGRANTS.—(A) RESTRICTION ON VISUA ISSUANCE OR ADJUSTMENT.—(i) In general.—No Z-2 or Z-3 nonimmigrant may be adjusted to lawful permanent resident status from the employment requirements under section 245(a) and (c), the status of any Z-2 or Z-3 nonimmigrant may be adjusted by the Secretary of Homeland Security and the Secretary of State in connection with the filing of an immigrant petition and application for adjustment of status, a Z-2 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 (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 under this section.

(ii) Requirements.—(A) Z-2 or Z-3 nonimmigrant status.—(i) In general.—The alien must apply for adjustment of status to that of an alien lawfully admitted for permanent residence of a Z-2 nonimmigrant or a Z-3 nonimmigrant of age at the time of filing an application for adjustment of status with the Secretary of Homeland Security and the Secretary of State in connection with the filing of a Z-2 or Z-3 nonimmigrant petition on his behalf, subject to scrutiny, the Secretary shall apply. — (A) the provisions under section 204(a)(1)(C) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(C)); and (B) the protections, prohibitions, and penalties under section 361 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367).

(iii) 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.

(iv) Inadmissibility.—For purposes of section 212(a) of the Immigration and Nationality Act, 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. 1801 et seq.).

(v) Medical Examination.—An alien who is adjusted to employment status under this subsection shall be examined for any Federal只得medical examination (including a determination of immunization status) that conforms to generally accepted professional standards of medical practice.

(vi) Payment of Income Taxes.—(A) In General.—If, on the date which is at least 30 days before the date on which the alien becomes a lawful permanent resident of the United States under this subsection, the applicant has no income tax liability for the period of status by establishing that—(i) no such tax liability exists; (ii) all outstanding liabilities have been paid; or (iii) the alien must be in valid Z-2 or Z-3 nonimmigrant status; and (B) APPROVED PETITION.—(i) Eligible upon satisfying, in addition to all alien lawfully admitted for permanent residence under this title, any other provision of this Act, any other provision of this Act, or an alien who has been denied or whose status has been terminated or revoked by the Secretary under clause (1)(F)(ii) of subsection 601(d) of [this Act] because the alien has been convicted of a felony or gross misdemeanor.

(ii) Without Waivers.—(A) Without Waivers.—Notwithstanding any other provision of this Act, any alien whose application for status under this title has been denied or whose status has been terminated or revoked by the Secretary under sections 242(h)(3)(C) of the INA, or an alien who has been denied or whose status has been terminated or revoked by the Secretary pursuant to subsection 242(h)(3)(C) of the INA, may be placed forthwith in removal proceedings pursuant to section 238(b) of the INA.

(iii) LIMITATION ON MOTIONS TO REOPEN AND RECONSIDER.—During the administrative review process the alien may file no more than one motion to reopen or to reconsider. The Secretary’s decision whether to consider any such motion is committed to the Attorney General’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 whether to consider any such motion is committed to the Attorney General’s discretion.

(ii) INELIGIBILITY FOR PUBLIC BENEFITS.—For purposes of section 1367 of the Immigration and Nationality Act (8 U.S.C. 1367), 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. 1801 et seq.).

(iii) Medical Examination.—An alien who is adjusted to employment status under this subsection shall be examined for any Federal只得medical examination (including a determination of immunization status) that conforms to generally accepted professional standards of medical practice.

(iv) Payment of Income Taxes.—(A) In General.—If, on the date which is at least 30 days before the date on which the alien becomes a lawful permanent resident of the United States under this subsection, the applicant has no income tax liability for 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; and (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; or (ii) the Secretary, upon request, regarding the payment of Federal taxes by an alien applying for benefit under this section.

(v) Deposit of Fees.—(1) Deposit of Fees.—Fees collected under this paragraph shall be deposited into the Immigration and Naturalization Service Account and shall remain available as provided under subsections 1331, 1332, and 1336 of the Immigration and Nationality Act (8 U.S.C. 1331, 1332, and 1336).

(2) 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 245(b)(6) of the Immigration and Nationality Act (8 U.S.C. 1255).

(3) Limitation on Motions to Reopen and Reconsider.—The Secretary’s decision whether to consider any such motion is committed to the Attorney General’s discretion.

(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 1651 of such title, and except as provided in subsection (a) of such section, any action brought in any Federal court challenging the authority of the Secretary to implement a decision 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 bring an application in subsection (a) of title VI of [this Act] beyond the period for receipt of such applications established by subsection 601(a)(1) 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 RESCSSION OF STATUS UNDER TITLE VI OF [THIS ACT].—A denial, termination, or rescission of status under section 601 of [this Act] may not be taken under any provisions in subsection (a) of title VI of such Act 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 apply;

(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 time-ly filing of an administrative appeal pursuant to subsection 603(a) of [this Act];

(D) the court shall be required to decide 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, or any other habeas corpus provision, and sections 1361 and 1651 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 such status; and

(F) MOTIONS ON MOTIONS TO REOPEN AND RECONSIDER.—Any claim that title VI of [this Act] may review any discretionary decision or action of the Secretary regarding any application or rescission of such status; and

(G) 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 an unwritten 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 action for status under section 241(a)(4) of this Act, excepting that an action taken or decision made by the Secretary with respect to his status under that title 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 brought under paragraph (1) must be filed within 90 days of the publication of an order 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 any amendment of the challenged regulation, policy or directive or, in cases challenging the validity of the Act, within one year of enactment; and

(ii) 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 is governed by Federal Rule of Civil Procedure 23.

(2) EXCLUSIVE EFFECT.—The final disposition of any action brought under subparagraph (5)(A) shall be preclusive of any such claim asserted in a subsequent proceeding under this subsection or under section 603 of [this Act].

(3) REVIEW OF A DENIAL, TERMINATION, OR RESCSSION OF STATUS.—No claim brought under this paragraph shall be preclusive of any action or proceeding by or under the authority of the Secretary to exclude administrative remedies under section 603 of [this Act], but nothing shall prevent the court from staying proceedings under this subsection on the ground that the Secretary to evaluate an allegation of an unconstitutional federal law or practice or to take corrective action. In issuing such a stay, the court shall be required to balance the possible injury to the alien may 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 in connection with an application under sections 601 and 602 of [this Act] or the fact that the applicant applied for such Z status for any purpose other than to adjust status or in the application for adjustment of status or in the application for permanent residence under section 602 of such Act, but nothing shall be construed to limit the use, or restriction of any application filed beyond the expiration of the period for filing of an administrative appeal pursuant to subsection 603(a) of [this Act];

(2) an official coroner for purposes of affidavits, expert testimony, or expert evidence of employment provided by an alien who is inadmissible or deportable.

(b) CONSTRUCTION.—Nothing in this section shall be construed to limit the use, or release, for immigration enforcement purposes of information contained in files or records of the Secretary or Attorney General pertaining to an alien’s employment furnished by the alien or on the application for permanent residence under sections 601 or 602, except that information furnished by an alien 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 permanent resident status shall not be used in prosecution or investigation (civil or criminal) of that employer
under section 214(d) (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 re- consideration of such denial. Such alien is not eligible for such alien’s prima facie eligibility determination.

(b) Applicability of Other Law.—Nothing in this section may be used to shield an employee from liability under section 304 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. PRECLUSION OF SOCIAL SECURITY CREDITS FOR YEARS PRIOR TO ENUMERATION.

(a) Insured Status.—Section 214 of the Social Security Act (42 U.S.C. 614) is amended by—

(1) amending subsection (c) by deleting “For” and inserting “Except as provided in subsection (e), for”;

(2) striking at the end the following new subsections:

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(d)(1) Except as provided in paragraph (2) and subsection (e), for purposes of this Act, credit for any year shall be provided for any wages or self-employment income for any year for which no Social Security account number is assigned.

(d)(2) The Secretary shall not provide credit for any year for which no Social Security account number is assigned except as provided in paragraph (2) and subsection (e).
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(b) Effective Date.—The amendments made by this section shall apply to years beginning after the date of enactment of this Act.

SEC. 608. PAYMENT OF PENALTIES AND USE OF PENALTIES COLLECTED.

(a) The Secretary shall by regulation establish a mechanism 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 toward payment of any other provision of law and except as otherwise provided in this subtitle, the Secretary shall presume that the alien has satisfied the requirements of subsection (a) 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 Act, 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, regardless of whether the alien’s application for such benefit is denied.

SEC. 610. RULEMAKING.

(a) The Secretary shall issue an interim final rule within six months of the date of enactment of this subtitle to implement this title and the amendments made by this title. The interim final rule shall be effective immediately upon publication in the Federal Register.

(b) The interim final rule shall remain in effect for two years after issuance unless the Secretary issues a final rule within two years of the issuance of the interim final rule.

(c) The exemption provided under this section shall be effective for two years after the date of enactment of this subtitle to implement this title and the amendments made by this title.

(d) The Secretary shall, by regulation, prescribe such procedures as may be necessary to carry out this title and the amendments made by this title.

(e) Availability of Funds.—Funds appropriated under paragraphs (a) shall remain available until expended.

(f) Sense of Congress.—It is the sense of Congress that funds authorized to be appropriated under this title shall be used to implement the policies and requirements of 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 title shall remain available until expended.

(c) Sense of Congress.—It is the sense of Congress that funds authorized to be appropriated under this title shall be used to implement the policies and requirements of this title.

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:

(a) Institution of Higher Education.—The term “institution of higher education” has the meaning given that term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(b) Uniformed Services.—The term “uniformed services” has the meaning given that term in section 101(a) of title 10, United States Code.

Subtitle B—DREAM Act

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 presume that the alien has satisfied the requirements of subsection (a) 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 Act, 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, regardless of whether the alien’s application for such benefit is denied.

SEC. 610. RULEMAKING.

(a) The Secretary shall issue an interim final rule within six months of the date of enactment of this subtitle to implement this title and the amendments made by this title. The interim final rule shall become effective immediately upon publication in the Federal Register.

(b) The interim final rule shall remain in effect for two years after issuance unless the Secretary issues a final rule within two years of the issuance of the interim final rule.

(c) The exemption provided under this section shall be effective for two years after the date of enactment of this subtitle to implement this title and the amendments made by this title.

(d) The Secretary shall, by regulation, prescribe such procedures as may be necessary to carry out this title and the amendments made by this title.

(e) Availability of Funds.—Funds appropriated under this title shall remain available until expended.

(f) Sense of Congress.—It is the sense of Congress that funds authorized to be appropriated under this title shall be used to implement the policies and requirements of this title.

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(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 presume that the alien has satisfied the requirements of subsection (a) and ending on the date of the enactment of this Act and adjust the status of an alien lawfully admitted for permanent residence an alien who is a United States citizen or who has been issued a probationary Z or Z nonimmigrant visa if the alien demonstrates that—

(a) the alien has resided in the United States for a continuous period since January 1, 2007, is under 30 years of age on the date of enactment, and had not yet reached the age of 18 years at the time of initial entry;

(b) the alien has earned a high school diploma or obtained a general education development certificate in the United States;

(c) the alien has not abandoned the alien’s residence in the United States. The Secretary shall presume that the alien has abandoned such residence if the alien is absent from the United States for more than 365 days, in the aggregate, during the period of continuous residence, and demonstrates that alien 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) the alien has—

(i) acquired a degree from an institution of higher education in the United States or has completed at least 2 years, in good standing, in an academic program leading to a three or higher degree in the United States; or

(ii) the alien has served 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 of 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 section 601(d).

(b) Treatment of Period for Purposes of Naturalization.— Solely for purposes of the Naturalization Act (8 U.S.C. 1427(a) 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 to accumulate a period of residence in the United States on the date that is eight years after the date of enactment of this Act, the Secretary shall publish proposed regulations implementing this section.

(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 oppor- tion 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 ADJUSTMENT OF STATUS;

PROHIBITION ON FEES.

A class action lawsuit was filed in 2007 challenging the constitutionality of certain provisions of the DREAM Act, including those related to the grant of permanent resident status to eligible aliens. The lawsuit alleged that the procedures for granting such status were unduly burdensome and that the requirement for a high school diploma or equivalent was discriminatory. The case was ultimately resolved through a consent decree that set forth the terms under which the United States government would process applications for DREAM Act status.
be charged to an applicant for a Z nonimmigrant visa for applying for benefits under this subtitle.

SEC. 616. HIGHER EDUCATION ASSISTANCE.
(a) For the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1623) shall have no force or effect with respect to an alien who is a probationary nonimmigrant.

(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 F of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), an alien who adjusts status to that of a lawful permanent resident under this title, or who is a probationary nonimmigrant under this subtitle, 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. 617. 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) until the date that is sixty and six months after the date of enactment of this Act or the alien reaches the age of nineteen, whichever is later. If the alien meets all of the demonstrations specified in section 614(a)(1) by such date, the penalties shall be waived. If the alien fails to meet the demonstration specified in section 614(a)(1)(B) by such date, the alien’s Z nonimmigrant status will be terminated unless the alien 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 the demonstrations specified in section 614(a)(1).

SEC. 618. GAOP REPORT.
Seven years after the date of enactment of this Act, the Secretary of Homeland Security, the United States shall submit a report to the Committee on the Judiciary of the Senate 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 aliens who applied for 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. REIMBURSEMENT AND AUTHORIZATION OF APPROPRIATIONS.
(a) REGULATIONS.—The Secretary shall issue regulations to carry out the amendment made by this subtitle not later than the first day of the seventh month that begins after the date of enactment of this Act.

(b) EFFECTIVE DATE.—This subtitle shall take effect on the date that regulations required by subsection (a) are issued, regardless of whether such regulations are issued on an expedited basis or on any other basis.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this subtitle, including any sums needed for costs associated with the initiation of such implementation.
burden of proving by a preponderance of the evidence 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-2A 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.—Except as provided in clause (ii), the Secretary may waive any provision of this 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), subparagraphs (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) ELIGIBILITY FOR DETERMINATION OF PUBLIC CHARGE.—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.

(5) 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 Z-A dependent visa for the spouse or child of the alien.

(2) SUBMISSION.—Applications for a Z-A visa under this section shall be submitted to—

(A) to the Secretary if the applicant is represented by an attorney or a nonprofit religious, charitable, social service, or similar organization recognized by the Board of Immigration Appeals under section 292 of the title 8, Code of Federal Regulations (or similar successor regulations); or

(B) to a qualified designated entity if the applicant consents to the forwarding of the application to the Secretary.

(3) PROOF OF ELIGIBILITY.—

(A) IN GENERAL.—An alien may establish that the alien meets the requirement for a Z-A visa through government employment records, or records compiled by employers or collective bargaining organizations, and other reliable documentation as the alien may provide. The Secretary shall establish special procedures to properly credit work in cases in which an alien was employed under an assumed name.

(B) DOCUMENTATION OF WORK HISTORY.—

(i) BURDEN OF PROOF.—An alien applying for a Z-A visa or applying for adjustment of status described in subsection (j) has the burden of proving by a preponderance of the evidence that the alien has performed the requisite number of hours or days of agricultural employment required for such application for Z-A visa status, as applicable.

(ii) TIMELY PRODUCTION OF RECORDS.—If an employer or farm labor contractor employing such an alien has kept proper and adequate records respecting such employment, the alien’s burden of proof under clause (i) may be met by securing timely production of such records under regulations to be promulgated by the Secretary.

(iii) SUFFICIENT EVIDENCE.—An alien may meet the burden of proof under clause (i) to the extent that the alien has performed the requisite number of hours or days of agricultural employment by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference.

(iv) APPLICATIONS SUBMITTED TO QUALIFIED DESIGNATED ENTITIES.—(A) REQUIREMENTS.—Each qualified designated entity shall agree—

(1) to forward to the Secretary an application described in subparagraph (2)(B) if the alien for whom the application is being submitted has consented to such forwarding;

(2) not to forward to the Secretary any such application if such an alien has not consented to such forwarding; and

(3) to assist an alien in obtaining documentary evidence of agricultural history, if the alien requests such assistance.

(B) NO AUTHORITY TO MAKE DETERMINATIONS.—No qualified designated entity may make a determination under this section to be made by the Secretary.

(v) APPLICATION FEES.—(A) FEE SCHEDULE.—The Secretary shall provide for a fee—

(1) shall be charged for applying for a Z-A visa under this section or for an adjustment of status described in subsection (j); and

(2) may be charged by qualified designated entities to help defray the costs of services provided to such aliens making such an application.

(B) PROHIBITION ON EXCESS FEES BY QUALIFIED DESIGNATED ENTITIES.—A qualified designated entity may not charge any fee in excess of, or in addition to, the fees authorized under subparagraph (A)(ii) for services provided to applicants.

(vi) LIMITATION ON ACCESS TO INFORMATION.—Files and records collected or compiled by a qualified designated entity for the purposes of this section are confidential and the Secretary may not access such a file or record relating to an alien without the consent of the alien, except as allowed by a court order issued pursuant to [ ].

(vii) TREATMENT OF UNAUTHORIZED ALIENS.—(A) IN GENERAL.—An alien who files an application under this section to receive a Z-A visa and any spouse or child of the alien seeking a Z-A dependent visa, on the date described in subparagraph (B)—

(1) shall be granted probationary benefits in the form of employment authorization pending final adjudication of the alien’s application; and

(2) may not be removed; and

(B) DURING APPLICATION PERIOD.—The Secretary may not count any Z-A dependent visa issued against the numerical limitation described in paragraph (1).

(viii) APPLICATIONS SUBMITTED TO ASSUMED NAMES.—A Z-A visa or a Z-A dependent visa may not issue more than 1,500,000 Z-A visas.

(A) Z-A DEPENDENT VISA.—The Secretary may not count any Z-A dependent visa issued against the numerical limitation described in paragraph (1).

(B) EVIDENCE OF NONIMMIGRANT STATUS.—(A) IN GENERAL.—Documentary evidence of nonimmigrant status described in this paragraph shall be submitted to each alien granted a Z-A visa or a Z-A dependent visa.

(B) PEACEFUL BEHAVIOR.—An alien or a Z-A visa or a Z-A dependent visa—

(A) shall be machine-readable, tamper-resistant, and shall contain a photograph and other biometric identifiers that can be authenticated;
the Secretary shall award the employee 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 court of the United States shall have the power or jurisdiction to review any such findings.

(c)(2) **TREATMENT 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 or a Z-A dependent visa, the Secretary shall credit the alien for the number of days of work not performed during such period of termination as a result of the employment termination for which the employer was found by an arbitrator to have committed a violation.

(c)(3) **RECORD OF EMPLOYMENT.—** Each employer of an alien who is granted a Z-A visa shall annually provide a copy of such record to the arbitrator, to the Secretary, and to such arbitration proceedings. The arbitrator shall refer the record to the Secretary pursuant to clause (iv).

(c)(4) **RECORD OF EMPLOYMENT.—** Each employer of an alien who is granted a Z-A visa shall provide a copy of such record to the arbitrator, to the Secretary, and to such arbitration proceedings. The arbitrator shall refer the record to the Secretary pursuant to clause (iv).

(c)(5) **QUALIFYING EMPLOYMENT.—** An alien has performed 4 years of agricultural employment in the United States if the alien has performed at least 4 years of agricultural employment in the United States, divided equally into two or more periods of at least 2 years of agricultural employment in the United States.

(c)(6) **ADJUDICATIVE REVIEW.—** If the Secretary determines that an alien has not met the requirements of clause (i) of this subsection, the Secretary shall order the alien’s permanent resident status to be terminated.

(c)(7) **CONCLUSION.—** The Secretary may terminate an alien’s permanent resident status and provide for deportation of such alien if the Secretary determines that the alien has not met the requirements of any other provision of this section.
‘(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) return to a nonimmigrant status as described in section 101(a)(15)(Z).

‘(d) Fine.—The alien pays to the Secretary a fine of $500;

‘(e) Loss of Status.—May be denied Z status or renewal of Z status if the alien fails to comply therewith;

‘(f) Inadmissibility.—Whoever has committed an offense described in sections 212, except as provided under subsection (c)(4), and any deficiency for such taxes has not expired.

‘(g) Grounds for Removal.—The alien may be deported if—

(A) In General.—(i) is convicted of a felony or a crime involving moral turpitude;

(B) In General.—If an alien

is an alien who

is an alien

is an alien

has been granted any adjustment of status under paragraph (1), including any individual who was a minor child on the date such an alien

is an alien

is an alien

is an alien

is an alien

is an alien

has been living in the United States for periods totaling at least fifteen years.

‘(9) Grounds for Denial of Adjustment of Status.—The Secretary may deny an alien an adjustment of status under this Act and provide for termination of such visa if—

(A) the application contains any false, fictitious, or fraudulent representations, or makes or uses any false, fictitious, or fraudulent statements or documents for use in making such an application for an adjustment of status that is not a Z-A nonimmigrant status as defined in section 214A (as those terms are defined in section 214A) without regard to the numerical limitations of this section.

‘(10) Administrative and Judicial Review.—A nonimmigrant status under section 214A is adjusted as described in section 214A without regard to the numerical limitations of this section.

(a) Eligibility for Legal Services.—There are authorized to be appropriated to the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) such sums as may be necessary to provide representation (as described in section 286 of the Immigration and Nationality Act (8 U.S.C. 1151(b)(1)), as amended by [(1)], is further amended—

(b) USE of FEES.—The fees deposited in the Agricultural Worker Immigration Status Adjustment Account shall be such as is provided under section 901.

(c) Eligibility for Legal Services.—An immigrant visa may be 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 workers.)

SEC. 622. AGRICULTURAL WORKER IMMIGRATION STATUS ADJUSTMENT ACCOUNT.

Section 236 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by adding at the end the following new paragraph:

‘(y) Agricultural Worker Immigration Status Adjustment Account.—There are authorized to be appropriated to the Secretary of Homeland Security for processing applications made by aliens seeking nonimmigrant status under section 101(a)(15)(Z-A) or for processing applications made by such an alien who is seeking an adjustment of status.

SEC. 624. REGULATIONS, EFFECTIVE DATE, AUTHORIZATION OF APPROPRIATIONS.

(a) Regulations.—The Secretary shall issue regulations under section 214A within 60 days of the date of enactment of this Act.

(b) Effective Date.—This subtitle shall take effect on the date that regulations required by subsection (a) are issued, regardless of whether such regulations are issued on an interim basis or otherwise.

(c) Authorization of Appropriations.—There are authorized to be appropriated to
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)(ii), by striking “or “or” at the end;

(2) in subparagraph (C), by inserting “or “or” at the end;

(3) by inserting after subparagraph (C) the following:

“(D) 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) omits 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 is 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) WITHIN THE context of 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 the pilot 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 “instruction 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) The requirements of subsection (a) of this section shall not apply to a person who is over 75 years of age on the date of filing an application for naturalization; Provided, That the person expresses, in English or in the applicant’s native language, at the time of examination for naturalization that the person understands and agrees to the elements of the oath required by section 337 of this Act.”.

SEC. 706. FUNDING FOR THE OFFICE OF CITIZENSHIP AND IMMIGRATION INTEGRATION.

(a) AUTHORIZATION OF Appropriations.—There is authorized to be appropriated to the Office of Citizenship and Immigration Integration such sums as may be necessary for each of the fiscal years 2008 through 2012 to carry out this section.

SEC. 707. CITIZENSHIP AND IMMIGRATION COUNCILS.

“(a) GRANTS AUTHORIZED.—The Office of Citizenship and Immigrant Integration shall provide grants to states and municipalities for effective integration of immigrants into American society through the creation of New Americans Integration Councils.

(b) USE.—“(1) IN GENERAL.—Grants awarded under this section shall be used—

(A) To provide opportunities to new immigrants, lawful permanent residents, and citizens within the state or municipality;

(2) To conduct a needs assessment, including the availability of and demand for English language services and instruction classes, for new immigrants, lawful permanent residents, Z nonimmigrants, and citizens;

(3) 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

(4) To develop a comprehensive plan to integrate new immigrants, lawful permanent residents, Z nonimmigrants, and citizens into states and municipalities.

(2) MEMBERSHIP OF IMMIGRATION COUNCILS.—New Americans Integration Councils established under this section shall consist of—

(A) State and local government;

(B) Business;

(C) Faith-based organizations;

(D) Civic organizations;

(E) Philanthropic leaders; and

(f) WITH Respect to the assisting of the Oath with experience working with immigrant communities.

(c) REPORTING.—The Government Accountability Office, in coordination with the Office of Citizenship and Immigrant Integration, shall conduct an annual evaluation of the grant program conducted under this section. Such evaluation shall be made by the Office of Citizenship and Immigrant 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.

(d) AUTHORIZATION OF Appropriations.—There are authorized to be appropriated to the Office of Citizenship and Immigrant Integration such sums as may be necessary for each of the fiscal years 2008 through 2012 to carry out this section.

SEC. 708. HISTORY AND GOVERNMENT TEST.

(a) HISTORY AND Government Test.—The Secretary shall incorporate a knowledge and understanding of the history and 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 in accordance with this Act, other than the amendment made by this subsection, shall be construed to influence the naturalization test redesign process currently underway under the direction of U.S. Citizenship and Immigration Services.

SEC. 709. ENGLISH LEARNING PROGRAM.

(a) 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 speak English as a Foreign Language, to individuals inside the United States whose primary language is other than English. The 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. The program shall be fully accessible, at a minimum, to speakers of the top five foreign languages spoken inside the United States.

(b) AUTHORIZATION OF Appropriations.—There is authorized to be appropriated to the Secretary of Education such sums as are necessary to carry out the purposes of this section.

SEC. 710. GAO STUDY ON THE APPELLATE PROCEDURE FOR IMMIGRATION CASES.

(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 a technical review court into 1 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 or the Temporary Emergency Court of Appeals; or

(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 including technological 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 mitigate the impact of any consolidation option, such as requiring certificates 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 cases.

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. 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 COYRAN 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, 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, according to the request.

The PRESIDING OFFICER. Without objection, it is so ordered.

The senior Senator from West Virginia is recognized.

The PRESIDING OFFICER. The Senate 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 valley. 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 its 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 and our troops and veterans receive the health care they have earned with their service.

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 on this legislation 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 come before this body and convince the people's elected Representatives—that is us—let the people's elected Representatives vote.

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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 course 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 high-quality care 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 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. Every Senator today has the horror 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 airplanes. We will not—no, we will not—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, will not spend the dollars to rebuild New Orleans, Slidell, Biloxi, and so many other places at home.