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Part 1

BORDER SECURITY AND ENFORCEMENT ACT OF 2023

MAY 5, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. JORDAN, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2640]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2640) to provide for reform of the asylum system and protection of the border, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

The amendment is as follows:

Strike all that follows after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Border Security and Enforcement Act of 2023".

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

TITLE I—ASYLUM REFORM AND BORDER PROTECTION

SEC. 101. SHORT TITLE.

This title may be cited as the "Asylum Reform and Border Protection Act of 2023".

SEC. 102. SAFE THIRD COUNTRY.

Section 208(a)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1158(a)(2)(A)) is amended—

(1) by striking "if the Attorney General determines" and inserting "if the Attorney General or the Secretary of Homeland Security determines—";

(2) by striking "that the alien may be removed" and inserting the following:
"(i) that the alien may be removed";

(3) by striking ", pursuant to a bilateral or multilateral agreement, to" and inserting "to";

(4) by inserting "or the Secretary, on a case by case basis," before "finds that";

(5) by striking the period at the end and inserting "; or"; and

(6) by adding at the end the following:

"(ii) that the alien entered, attempted to enter, or arrived in the United States after transiting through at least one country outside the alien's country of citizenship, nationality, or last lawful habitual residence en route to the United States, unless—

"(I) the alien demonstrates that he or she applied for protection from persecution or torture in at least one country outside the alien's country of citizenship, nationality, or last lawful habitual residence through which the alien transited en route to the United States, and the alien received a final judgment denying the alien protection in each country;

"(II) the alien demonstrates that he or she was a victim of a severe form of trafficking in which a commercial sex act was induced by force, fraud, or coercion, or in which the person induced to perform such act was under the age of 18 years; or in which the trafficking included the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery, and was unable to apply for protection from persecution in each country through which the alien transited en route to the United States as a result of such severe form of trafficking; or

"(III) the only countries through which the alien transited en route to the United States were, at the time of the transit, not parties to the 1951 United Nations Convention relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees, or the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.".

SEC. 103. CREDIBLE FEAR INTERVIEWS.

Section 235(b)(1)(B)(v) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(B)(v)) is amended by striking "there is a significant possibility" and all that follows, and inserting ", taking into account the credibility of the statements made by the alien in support of the alien's claim, as determined pursuant to section 208(b)(1)(B)(iii), and such other facts as are known to the officer, the alien more likely than not could establish eligibility for asylum under section 208, and it is more likely than not that the statements made by, and on behalf of, the alien in support of the alien's claim are true.".

SEC. 104. CLARIFICATION OF ASYLUM ELIGIBILITY.

(a) IN GENERAL.—Section 208(b)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(1)(A)) is amended by inserting after "section 101(a)(42)(A)" the following: "(in accordance with the rules set forth in this section), and is eligible to apply for asylum under subsection (a)".

(b) PLACE OF ARRIVAL.—Section 208(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1158(a)(1)) is amended—

(1) by striking "or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters),"; and

(2) by inserting after "United States" the following: "and has arrived in the United States at a port of entry (including an alien who is brought to the United States after having been interdicted in international or United States waters),".

SEC. 105. EXCEPTIONS.

Paragraph (2) of section 208(b) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(2)) is amended to read as follows:

"(2) EXCEPTIONS.—

"(A) IN GENERAL.—Paragraph (1) shall not apply to an alien if the Secretary of Homeland Security or the Attorney General determines that—

"(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

"(ii) the alien has been convicted of any felony under Federal, State, tribal, or local law;

"(iii) the alien has been convicted of any misdemeanor offense under Federal, State, tribal, or local law involving—

"(I) the unlawful possession or use of an identification document, authentication feature, or false identification document (as those terms and phrases are defined in the jurisdiction where the conviction occurred), unless the alien can establish that the conviction resulted from circumstances showing that—

"(aa) the document or feature was presented before boarding a common carrier;

"(bb) the document or feature related to the alien's eligibility to enter the United States;

"(cc) the alien used the document or feature to depart a country wherein the alien has claimed a fear of persecution; and

"(dd) the alien claimed a fear of persecution without delay upon presenting himself or herself to an immigration officer upon arrival at a United States port of entry;

"(II) the unlawful receipt of a Federal public benefit (as defined in section 401(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1611(c))), from a Federal entity, or the unlawful receipt of similar public benefits from a State, tribal, or local entity; or

"(III) possession or trafficking of a controlled substance or controlled substance paraphernalia, as those phrases are defined under the law of the jurisdiction where the conviction occurred, other than a single offense involving possession for one's own use of 30 grams or less of marijuana (as marijuana is defined under the law of the jurisdiction where the conviction occurred);

"(iv) the alien has been convicted of an offense arising under paragraph (1)(A) or (2) of section 274(a), or under section 276;

"(v) the alien has been convicted of a Federal, State, tribal, or local crime that the Attorney General or Secretary of Homeland Security knows, or has reason to believe, was committed in support, promotion, or furtherance of the activity of a criminal street gang (as defined under the law of the jurisdiction where the conviction occurred or in section 521(a) of title 18, United States Code);

"(vi) the alien has been convicted of an offense for driving while intoxicated or impaired, as those terms are defined under the law of the jurisdiction where the conviction occurred (including a conviction for driving while under the influence of or impaired by alcohol or drugs), without regard to whether the conviction is classified as a misdemeanor or felony under Federal, State, tribal, or local law, in which such intoxicated or impaired driving was a cause of serious bodily injury or death of another person;

"(vii) the alien has been convicted of more than one offense for driving while intoxicated or impaired, as those terms are defined under the law of the jurisdiction where the conviction occurred (including a conviction for driving while under the influence of or impaired by alcohol or drugs), without regard to whether the conviction is classified as a misdemeanor or felony under Federal, State, tribal, or local law;

"(viii) the alien has been convicted of a crime—

"(I) that involves conduct amounting to a crime of stalking;

"(II) of child abuse, child neglect, or child abandonment; or

"(III) that involves conduct amounting to a domestic assault or battery offense, including—

"(aa) a misdemeanor crime of domestic violence, as described in section 921(a)(33) of title 18, United States Code;

"(bb) a crime of domestic violence, as described in section 40002(a)(12) of the Violence Against Women Act of 1994 (34 U.S.C. 12291(a)(12)); or

"(cc) any crime based on conduct in which the alien harassed, coerced, intimidated, voluntarily or recklessly used (or threatened to use) force or violence against, or inflicted physical injury or physical pain, however slight, upon a person—

"(AA) who is a current or former spouse of the alien;

"(BB) with whom the alien shares a child;

"(CC) who is cohabitating with, or who has cohabitated with, the alien as a spouse;

"(DD) who is similarly situated to a spouse of the alien under the domestic or family violence laws of the jurisdiction where the offense occurred; or

"(EE) who is protected from that alien's acts under the domestic or family violence laws of the United States or of any State, tribal government, or unit of local government;

"(ix) the alien has engaged in acts of battery or extreme cruelty upon a person and the person—

"(I) is a current or former spouse of the alien;

"(II) shares a child with the alien;

"(III) cohabitates or has cohabitated with the alien as a spouse;

"(IV) is similarly situated to a spouse of the alien under the domestic or family violence laws of the jurisdiction where the offense occurred; or

"(V) is protected from that alien's acts under the domestic or family violence laws of the United States or of any State, tribal government, or unit of local government;

"(x) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

"(xi) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;

"(xii) there are reasonable grounds for regarding the alien as a danger to the security of the United States;

"(xiii) the alien is described in subclause (I), (II), (III), (IV), or (VI) of section 212(a)(3)(B)(i) or section 237(a)(4)(B) (relating to terrorist activity), unless, in the case only of an alien inadmissible under subclause (IV) of section 212(a)(3)(B)(i), the Secretary of Homeland Security or the Attorney General determines, in the Secretary's or the Attorney General's discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States;

"(xiv) the alien was firmly resettled in another country prior to arriving in the United States; or

"(xv) there are reasonable grounds for concluding the alien could avoid persecution by relocating to another part of the alien's country of nationality or, in the case of an alien having no nationality, another part of the alien's country of last habitual residence.

"(B) SPECIAL RULES.—

"(i) PARTICULARLY SERIOUS CRIME; SERIOUS NONPOLITICAL CRIME OUTSIDE THE UNITED STATES.—

"(I) IN GENERAL.—For purposes of subparagraph (A)(x), the Attorney General or Secretary of Homeland Security, in their discretion, may determine that a conviction constitutes a particularly serious crime based on—

"(aa) the nature of the conviction;

"(bb) the type of sentence imposed; or

"(cc) the circumstances and underlying facts of the conviction.

"(II) DETERMINATION.—In making a determination under subclause (I), the Attorney General or Secretary of Homeland Security may consider all reliable information and is not limited to facts found by the criminal court or provided in the underlying record of conviction.

"(III) TREATMENT OF FELONIES.—In making a determination under subclause (I), an alien who has been convicted of a felony (as defined under this section) or an aggravated felony (as defined under section 101(a)(43)), shall be considered to have been convicted of a particularly serious crime.

"(IV) INTERPOL RED NOTICE.—In making a determination under subparagraph (A)(xi), an Interpol Red Notice may constitute reliable evidence that the alien has committed a serious nonpolitical crime outside the United States.

"(ii) CRIMES AND EXCEPTIONS.—

"(I) DRIVING WHILE INTOXICATED OR IMPAIRED.—A finding under subparagraph (A)(vi) does not require the Attorney General or Secretary of Homeland Security to find the first conviction for driving while intoxicated or impaired (including a conviction for driving while under the influence of or impaired by alcohol or drugs) as a

predicate offense. The Attorney General or Secretary of Homeland Security need only make a factual determination that the alien previously was convicted for driving while intoxicated or impaired as those terms are defined under the jurisdiction where the conviction occurred (including a conviction for driving while under the influence of or impaired by alcohol or drugs).

"(II) STALKING AND OTHER CRIMES.—In making a determination under subparagraph (A)(viii), including determining the existence of a domestic relationship between the alien and the victim, the underlying conduct of the crime may be considered, and the Attorney General or Secretary of Homeland Security is not limited to facts found by the criminal court or provided in the underlying record of conviction.

"(III) BATTERY OR EXTREME CRUELTY.—In making a determination under subparagraph (A)(ix), the phrase 'battery or extreme cruelty' includes—

"(aa) any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury;

"(bb) psychological or sexual abuse or exploitation, including rape, molestation, incest, or forced prostitution, shall be considered acts of violence; and

"(cc) other abusive acts, including acts that, in and of themselves, may not initially appear violent, but that are a part of an overall pattern of violence.

"(IV) EXCEPTION FOR VICTIMS OF DOMESTIC VIOLENCE.—An alien who was convicted of an offense described in clause (viii) or (ix) of subparagraph (A) is not ineligible for asylum on that basis if the alien satisfies the criteria under section 237(a)(7)(A).

"(C) SPECIFIC CIRCUMSTANCES.—Paragraph (1) shall not apply to an alien whose claim is based on—

"(i) personal animus or retribution, including personal animus in which the alleged persecutor has not targeted, or manifested an animus against, other members of an alleged particular social group in addition to the member who has raised the claim at issue;

"(ii) the applicant's generalized disapproval of, disagreement with, or opposition to criminal, terrorist, gang, guerilla, or other non-state organizations absent expressive behavior in furtherance of a discrete cause against such organizations related to control of a State or expressive behavior that is antithetical to the State or a legal unit of the State;

"(iii) the applicant's resistance to recruitment or coercion by guerrilla, criminal, gang, terrorist, or other non-state organizations;

"(iv) the targeting of the applicant for criminal activity for financial gain based on wealth or affluence or perceptions of wealth or affluence;

"(v) the applicant's criminal activity; or

"(vi) the applicant's perceived, past or present, gang affiliation.

"(D) DEFINITIONS AND CLARIFICATIONS.—

"(i) DEFINITIONS.—For purposes of this paragraph:

"(I) FELONY.—The term 'felony' means—

"(aa) any crime defined as a felony by the relevant jurisdiction (Federal, State, tribal, or local) of conviction; or

"(bb) any crime punishable by more than one year of imprisonment.

"(II) MISDEMEANOR.—The term 'misdemeanor' means—

"(aa) any crime defined as a misdemeanor by the relevant jurisdiction (Federal, State, tribal, or local) of conviction; or

"(bb) any crime not punishable by more than one year of imprisonment.

"(ii) CLARIFICATIONS.—

"(I) CONSTRUCTION.—For purposes of this paragraph, whether any activity or conviction also may constitute a basis for removal is immaterial to a determination of asylum eligibility.

"(II) ATTEMPT, CONSPIRACY, OR SOLICITATION.—For purposes of this paragraph, all references to a criminal offense or criminal conviction shall be deemed to include any attempt, conspiracy, or solicitation to commit the offense or any other inchoate form of the offense.

"(III) EFFECT OF CERTAIN ORDERS.—

"(aa) IN GENERAL.—No order vacating a conviction, modifying a sentence, clarifying a sentence, or otherwise altering a conviction or sentence shall have any effect under this paragraph unless the Attorney General or Secretary of Homeland Security determines that—

"(AA) the court issuing the order had jurisdiction and authority to do so; and

"(BB) the order was not entered for rehabilitative purposes or for purposes of ameliorating the immigration consequences of the conviction or sentence.

"(bb) AMELIORATING IMMIGRATION CONSEQUENCES.—For purposes of item (aa)(BB), the order shall be presumed to be for the purpose of ameliorating immigration consequences if—

"(AA) the order was entered after the initiation of any proceeding to remove the alien from the United States; or

"(BB) the alien moved for the order more than one year after the date of the original order of conviction or sentencing, whichever is later.

"(cc) AUTHORITY OF IMMIGRATION JUDGE.—An immigration judge is not limited to consideration only of material included in any order vacating a conviction, modifying a sentence, or clarifying a sentence to determine whether such order should be given any effect under this paragraph, but may consider such additional information as the immigration judge determines appropriate.

"(E) ADDITIONAL LIMITATIONS.—The Secretary of Homeland Security or the Attorney General may by regulation establish additional limitations and conditions, consistent with this section, under which an alien shall be ineligible for asylum under paragraph (1).

"(F) NO JUDICIAL REVIEW.—There shall be no judicial review of a determination of the Secretary of Homeland Security or the Attorney General under subparagraph (A)(xiii).".

SEC. 106. EMPLOYMENT AUTHORIZATION.

Paragraph (2) of section 208(d) of the Immigration and Nationality Act (8 U.S.C. 1158(d)) is amended to read as follows:

"(2) EMPLOYMENT AUTHORIZATION.—

"(A) AUTHORIZATION PERMITTED.—An applicant for asylum is not entitled to employment authorization, but such authorization may be provided under regulation by the Secretary of Homeland Security. An applicant who is not otherwise eligible for employment authorization shall not be granted such authorization prior to the date that is 180 days after the date of filing of the application for asylum.

"(B) TERMINATION.—Each grant of employment authorization under subparagraph (A), and any renewal or extension thereof, shall be valid for a period of 6 months, except that such authorization, renewal, or extension shall terminate prior to the end of such 6 month period as follows:

"(i) Immediately following the denial of an asylum application by an asylum officer, unless the case is referred to an immigration judge.

"(ii) 30 days after the date on which an immigration judge denies an asylum application, unless the alien timely appeals to the Board of Immigration Appeals.

"(iii) Immediately following the denial by the Board of Immigration Appeals of an appeal of a denial of an asylum application.

"(C) RENEWAL.—The Secretary of Homeland Security may not grant, renew, or extend employment authorization to an alien if the alien was previously granted employment authorization under subparagraph (A), and the employment authorization was terminated pursuant to a circumstance described in subparagraph (B)(i), (ii), or (iii), unless a Federal court of appeals remands the alien's case to the Board of Immigration Appeals.

"(D) INELIGIBILITY.—The Secretary of Homeland Security may not grant employment authorization to an alien under this paragraph if the alien—

"(i) is ineligible for asylum under subsection (b)(2)(A); or

"(ii) entered or attempted to enter the United States at a place and time other than lawfully through a United States port of entry.".

SEC. 107. ASYLUM FEES.

Paragraph (3) of section 208(d) of the Immigration and Nationality Act (8 U.S.C. 1158(d)) is amended to read as follows:

"(3) FEES.—

"(A) APPLICATION FEE.—A fee of not less than $50 for each application for asylum shall be imposed. Such fee shall not exceed the cost of adjudicating the application. Such fee shall not apply to an unaccompanied alien child who files an asylum application in proceedings under section 240.

"(B) EMPLOYMENT AUTHORIZATION.—A fee may also be imposed for the consideration of an application for employment authorization under this section and for adjustment of status under section 209(b). Such a fee shall not exceed the cost of adjudicating the application.

"(C) PAYMENT.—Fees under this paragraph may be assessed and paid over a period of time or by installments.

"(D) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to limit the authority of the Attorney General or Secretary of Homeland Security to set adjudication and naturalization fees in accordance with section 286(m).".

SEC. 108. RULES FOR DETERMINING ASYLUM ELIGIBILITY.

Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158) is amended by adding at the end the following:

"(f) RULES FOR DETERMINING ASYLUM ELIGIBILITY.—In making a determination under subsection (b)(1)(A) with respect to whether an alien is a refugee within the meaning of section 101(a)(42)(A), the following shall apply:

"(1) PARTICULAR SOCIAL GROUP.—The Secretary of Homeland Security or the Attorney General shall not determine that an alien is a member of a particular social group unless the alien articulates on the record, or provides a basis on the record for determining, the definition and boundaries of the alleged particular social group, establishes that the particular social group exists independently from the alleged persecution, and establishes that the alien's claim of membership in a particular social group does not involve—

"(A) past or present criminal activity or association (including gang membership);

"(B) presence in a country with generalized violence or a high crime rate;

"(C) being the subject of a recruitment effort by criminal, terrorist, or persecutory groups;

"(D) the targeting of the applicant for criminal activity for financial gain based on perceptions of wealth or affluence;

"(E) interpersonal disputes of which governmental authorities in the relevant society or region were unaware or uninvolved;

"(F) private criminal acts of which governmental authorities in the relevant society or region were unaware or uninvolved;

"(G) past or present terrorist activity or association;

"(H) past or present persecutory activity or association; or

"(I) status as an alien returning from the United States.

"(2) POLITICAL OPINION.—The Secretary of Homeland Security or the Attorney General may not determine that an alien holds a political opinion with respect to which the alien is subject to persecution if the political opinion is constituted solely by generalized disapproval of, disagreement with, or opposition to criminal, terrorist, gang, guerilla, or other non-state organizations and does not include expressive behavior in furtherance of a cause against such organizations related to efforts by the State to control such organizations or behavior that is antithetical to or otherwise opposes the ruling legal entity of the State or a unit thereof.

"(3) PERSECUTION.—The Secretary of Homeland Security or the Attorney General may not determine that an alien has been subject to persecution or has a well-founded fear of persecution based only on—

"(A) the existence of laws or government policies that are unenforced or infrequently enforced, unless there is credible evidence that such a law or policy has been or would be applied to the applicant personally; or

"(B) the conduct of rogue foreign government officials acting outside the scope of their official capacity.

"(4) DISCRETIONARY DETERMINATION.—

"(A) ADVERSE DISCRETIONARY FACTORS.—The Secretary of Homeland Security or the Attorney General may only grant asylum to an alien if the alien establishes that he or she warrants a favorable exercise of discretion. In making such a determination, the Attorney General or Secretary of Homeland Security shall consider, if applicable, an alien's use of fraudulent documents to enter the United States, unless the alien arrived in the United States by air, sea, or land directly from the applicant's home country without transiting through any other country.

"(B) FAVORABLE EXERCISE OF DISCRETION NOT PERMITTED.—Except as provided in subparagraph (C), the Attorney General or Secretary of Homeland Security shall not favorably exercise discretion under this section for any alien who—

"(i) has accrued more than one year of unlawful presence in the United States, as defined in sections 212(a)(9)(B)(ii) and (iii), prior to filing an application for asylum;

"(ii) at the time the asylum application is filed with the immigration court or is referred from the Department of Homeland Security, has—

"(I) failed to timely file (or timely file a request for an extension of time to file) any required Federal, State, or local income tax returns;

"(II) failed to satisfy any outstanding Federal, State, or local tax obligations; or

"(III) income that would result in tax liability under section 1 of the Internal Revenue Code of 1986 and that was not reported to the Internal Revenue Service;

"(iii) has had two or more prior asylum applications denied for any reason;

"(iv) has withdrawn a prior asylum application with prejudice or been found to have abandoned a prior asylum application;

"(v) failed to attend an interview regarding his or her asylum application with the Department of Homeland Security, unless the alien shows by a preponderance of the evidence that—

"(I) exceptional circumstances prevented the alien from attending the interview; or

"(II) the interview notice was not mailed to the last address provided by the alien or the alien's representative and neither the alien nor the alien's representative received notice of the interview; or

"(vi) was subject to a final order of removal, deportation, or exclusion and did not file a motion to reopen to seek asylum based on changed country conditions within one year of the change in country conditions.

"(C) EXCEPTIONS.—If one or more of the adverse discretionary factors set forth in subparagraph (B) are present, the Attorney General or the Secretary, may, notwithstanding such subparagraph (B), favorably exercise discretion under section 208—

"(i) in extraordinary circumstances, such as those involving national security or foreign policy considerations; or

"(ii) if the alien, by clear and convincing evidence, demonstrates that the denial of the application for asylum would result in exceptional and extremely unusual hardship to the alien.

"(5) LIMITATION.—If the Secretary or the Attorney General determines that an alien fails to satisfy the requirement under paragraph (1), the alien may not be granted asylum based on membership in a particular social group, and may not appeal the determination of the Secretary or Attorney General, as applicable. A determination under this paragraph shall not serve as the basis for any motion to reopen or reconsider an application for asylum or withholding of removal for any reason, including a claim of ineffective assistance of counsel, unless the alien complies with the procedural requirements for such a motion and demonstrates that counsel's failure to define, or provide a basis for defining, a formulation of a particular social group was both not a strategic choice and constituted egregious conduct.

"(6) STEREOTYPES.—Evidence offered in support of an application for asylum that promotes cultural stereotypes about a country, its inhabitants, or an alleged persecutor, including stereotypes based on race, religion, nationality, or gender, shall not be admissible in adjudicating that application, except that evidence that an alleged persecutor holds stereotypical views of the applicant shall be admissible.

"(7) DEFINITIONS.—In this section:

"(A) The term 'membership in a particular social group' means membership in a group that is—

"(i) composed of members who share a common immutable characteristic;

"(ii) defined with particularity; and

"(iii) socially distinct within the society in question.

"(B) The term 'political opinion' means an ideal or conviction in support of the furtherance of a discrete cause related to political control of a state or a unit thereof.

"(C) The term 'persecution' means the infliction of a severe level of harm constituting an exigent threat by the government of a country or by persons or an organization that the government was unable or unwilling to control. Such term does not include—

"(i) generalized harm or violence that arises out of civil, criminal, or military strife in a country;

"(ii) all treatment that the United States regards as unfair, offensive, unjust, unlawful, or unconstitutional;

"(iii) intermittent harassment, including brief detentions;

"(iv) threats with no actual effort to carry out the threats, except that particularized threats of severe harm of an immediate and menacing nature made by an identified entity may constitute persecution; or

"(v) non-severe economic harm or property damage.".

SEC. 109. FIRM RESETTLEMENT.

Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), as amended by this Act, is further amended by adding at the end the following:

"(g) FIRM RESETTLEMENT.—In determining whether an alien was firmly resettled in another country prior to arriving in the United States under subsection (b)(2)(A)(xiv), the following shall apply:

"(1) IN GENERAL.—An alien shall be considered to have firmly resettled in another country if, after the events giving rise to the alien's asylum claim—

"(A) the alien resided in a country through which the alien transited prior to arriving in or entering the United States and—

"(i) received or was eligible for any permanent legal immigration status in that country;

"(ii) resided in such a country with any non-permanent but indefinitely renewable legal immigration status (including asylee, refugee, or similar status, but excluding status of a tourist); or

"(iii) resided in such a country and could have applied for and obtained an immigration status described in clause (ii);

"(B) the alien physically resided voluntarily, and without continuing to suffer persecution or torture, in any one country for one year or more after departing his country of nationality or last habitual residence and prior to arrival in or entry into the United States, except for any time spent in Mexico by an alien who is not a native or citizen of Mexico solely as a direct result of being returned to Mexico pursuant to section 235(b)(3) or of being subject to metering; or

"(C) the alien is a citizen of a country other than the country in which the alien alleges a fear of persecution, or was a citizen of such a country in the case of an alien who renounces such citizenship, and the alien was present in that country after departing his country of nationality or last habitual residence and prior to arrival in or entry into the United States;

"(2) BURDEN OF PROOF.—If an immigration judge determines that an alien has firmly resettled in another country under paragraph (1), the alien shall bear the burden of proving the bar does not apply.

"(3) FIRM RESETTLEMENT OF PARENT.—An alien shall be presumed to have been firmly resettled in another country if the alien's parent was firmly resettled in another country, the parent's resettlement occurred before the alien turned 18 years of age, and the alien resided with such parent at the time of the firm resettlement, unless the alien establishes that he or she could not have derived any permanent legal immigration status or any non-permanent but indefinitely renewable legal immigration status (including asylum, refugee, or similar status, but excluding status of a tourist) from the alien's parent.".

SEC. 110. NOTICE CONCERNING FRIVOLOUS ASYLUM APPLICATIONS.

(a) IN GENERAL.—Section 208(d)(4) of the Immigration and Nationality Act (8 U.S.C. 1158(d)(4)) is amended—

(1) in the matter preceding subparagraph (A), by inserting "the Secretary of Homeland Security or" before "the Attorney General";

(2) in subparagraph (A), by striking "and of the consequences, under paragraph (6), of knowingly filing a frivolous application for asylum; and" and inserting a semicolon;

(3) in subparagraph (B), by striking the period and inserting "; and"; and

(4) by adding at the end the following:

"(C) ensure that a written warning appears on the asylum application advising the alien of the consequences of filing a frivolous application and serving as notice to the alien of the consequence of filing a frivolous application.".

(b) CONFORMING AMENDMENT.—Section 208(d)(6) of the Immigration and Nationality Act (8 U.S.C. 1158(d)(6)) is amended by striking "If the" and all that follows and inserting:

"(A) IN GENERAL.—If the Secretary of Homeland Security or the Attorney General determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(C), the alien shall be permanently ineligible for any benefits under this chapter, effective as the date of the final determination of such an application.

"(B) CRITERIA.—An application is frivolous if the Secretary of Homeland Security or the Attorney General determines, consistent with subparagraph (C), that—

"(i) it is so insufficient in substance that it is clear that the applicant knowingly filed the application solely or in part to delay removal from the United States, to seek employment authorization as an applicant for asylum pursuant to regulations issued pursuant to paragraph (2), or to seek issuance of a Notice to Appear in order to pursue Cancellation of Removal under section 240A(b); or

"(ii) any of the material elements are knowingly fabricated.

"(C) SUFFICIENT OPPORTUNITY TO CLARIFY.—In determining that an application is frivolous, the Secretary or the Attorney General, must be satisfied that the applicant, during the course of the proceedings, has had sufficient opportunity to clarify any discrepancies or implausible aspects of the claim.

"(D) WITHHOLDING OF REMOVAL NOT PRECLUDED.—For purposes of this section, a finding that an alien filed a frivolous asylum application shall not preclude the alien from seeking withholding of removal under section 241(b)(3) or protection pursuant to the Convention Against Torture.".

SEC. 111. TECHNICAL AMENDMENTS.

Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158) is amended—

(1) in subsection (a)—

(A) in paragraph (2)(D), by inserting "Secretary of Homeland Security or the" before "Attorney General"; and

(B) in paragraph (3), by inserting "Secretary of Homeland Security or the" before "Attorney General";

(2) in subsection (c)—

(A) in paragraph (1), by striking "Attorney General" each place such term appears and inserting "Secretary of Homeland Security";

(B) in paragraph (2), in the matter preceding subparagraph (A), by inserting "Secretary of Homeland Security or the" before "Attorney General"; and

(C) in paragraph (3), by inserting "Secretary of Homeland Security or the" before "Attorney General"; and

(3) in subsection (d)—

(A) in paragraph (1), by inserting "Secretary of Homeland Security or the" before "Attorney General" each place such term appears; and

(B) in paragraph (5)—

(i) in subparagraph (A), by striking "Attorney General" and inserting "Secretary of Homeland Security"; and

(ii) in subparagraph (B), by inserting "Secretary of Homeland Security or the" before "Attorney General".

SEC. 112. REQUIREMENT FOR PROCEDURES RELATING TO CERTAIN ASYLUM APPLICATIONS.

(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Attorney General shall establish procedures to expedite the adjudication of asylum applications for aliens—

(1) who are subject to removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a); and

(2) who are nationals of a Western Hemisphere country sanctioned by the United States, as described in subsection (b), as of January 1, 2023.

(b) WESTERN HEMISPHERE COUNTRY SANCTIONED BY THE UNITED STATES DESCRIBED.—Subsection (a) shall apply only to an asylum application filed by an alien who is a national of a Western Hemisphere country subject to sanctions pursuant to—

(1) the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6021 note);

(2) the Reinforcing Nicaragua's Adherence to Conditions for Electoral Reform Act of 2021 or the RENACER Act (50 U.S.C. 1701 note); or

(3) Executive Order 13692 (80 Fed. Reg. 12747; declaring a national emergency with respect to the situation in Venezuela).

(c) APPLICABILITY.—This section shall only apply to an alien who files an application for asylum after the date of the enactment of this Act.

TITLE II—BORDER SAFETY AND MIGRANT PROTECTION

SEC. 201. SHORT TITLE.

This title may be cited as the "Border Safety and Migrant Protection Act of 2023".

SEC. 202. INSPECTION OF APPLICANTS FOR ADMISSION.

Section 235 of the Immigration and Nationality Act (8 U.S.C. 1225) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (A)—

(I) in clauses (i) and (ii), by striking "section 212(a)(6)(C)" inserting "subparagraph (A) or (C) of section 212(a)(6)"; and

(II) by adding at the end the following:

"(iv) INELIGIBILITY FOR PAROLE.—An alien described in clause (i) or (ii) shall not be eligible for parole except as expressly authorized pursuant to section 212(d)(5), or for parole or release pursuant to section 236(a).."; and

(ii) in subparagraph (B)—

(I) in clause (ii), by striking "asylum." and inserting "asylum and shall not be released (including pursuant to parole or release pursuant to section 236(a) but excluding as expressly authorized pursuant to section 212(d)(5)) other than to be removed or returned to a country as described in paragraph (3).."; and

(II) in clause (iii)(IV)—

(aa) in the header by striking "DETENTION" and inserting "DETENTION, RETURN, OR REMOVAL"; and

(bb) by adding at the end the following: "The alien shall not be released (including pursuant to parole or release pursuant to section 236(a) but excluding as expressly authorized pursuant to section 212(d)(5)) other than to be removed or returned to a country as described in paragraph (3).";

(B) in paragraph (2)—

(i) in subparagraph (A)—

(I) by striking "Subject to subparagraphs (B) and (C)," and inserting "Subject to subparagraph (B) and paragraph (3),"; and

(II) by adding at the end the following: "The alien shall not be released (including pursuant to parole or release pursuant to section 236(a) but excluding as expressly authorized pursuant to section 212(d)(5)) other than to be removed or returned to a country as described in paragraph (3)."; and

(ii) by striking subparagraph (C);

(C) by redesignating paragraph (3) as paragraph (5); and

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

"(3) RETURN TO FOREIGN TERRITORY CONTIGUOUS TO THE UNITED STATES.—

"(A) IN GENERAL.—The Secretary of Homeland Security may return to a foreign territory contiguous to the United States any alien arriving on land from that territory (whether or not at a designated port of entry) pending a proceeding under section 240 or review of a determination under subsection (b)(1)(B)(iii)(III).

"(B) MANDATORY RETURN.—If at any time the Secretary of Homeland Security cannot—

"(i) comply with its obligations to detain an alien as required under clause (ii) and (iii)(IV) of subsection (b)(1)(B) and subsection (b)(2)(A); or

"(ii) remove an alien to a country described in section 208(a)(2)(A), the Secretary of Homeland Security shall, without exception, including pursuant to parole or release pursuant to section 236(a) but excluding as expressly authorized pursuant to section 212(d)(5), return to a foreign territory contiguous to the United States any alien arriving on land from that territory (whether or not at a designated port of entry) pending a proceeding under section 240 or review of a determination under subsection (b)(1)(B)(iii)(III).

"(4) ENFORCEMENT BY STATE ATTORNEYS GENERAL.—The attorney general of a State, or other authorized State officer, alleging a violation of the detention, return, or removal requirements under paragraph (1), (2), or (3) that affects such State or its residents, may bring an action against the Secretary of Homeland Security on behalf of the residents of the State in an appropriate United States district court to obtain appropriate injunctive relief."; and

(2) by adding at the end the following:

"(e) AUTHORITY TO PROHIBIT INTRODUCTION OF CERTAIN ALIENS.—If the Secretary of Homeland Security determines, in his discretion, that the prohibition of the introduction of aliens who are inadmissible under subparagraph (A) or (C) of section 212(a)(6) or under section 212(a)(7) at an international land or maritime border of the United States is necessary to achieve operational control (as defined in section 2 of the Secure Fence Act of 2006 (8 U.S.C. 1701 note)) of such border, the Secretary may prohibit, in whole or in part, the introduction of such aliens at such border for such period of time as the Secretary determines is necessary for such purpose.".

SEC. 203. OPERATIONAL DETENTION FACILITIES.

(a) IN GENERAL.—Not later than September 30, 2023, the Secretary of Homeland Security shall take all necessary actions to reopen or restore all U.S. Immigration and Customs Enforcement detention facilities that were in operation on January 20, 2021, that subsequently closed or with respect to which the use was altered, reduced, or discontinued after January 20, 2021. In carrying out the requirement under this subsection, the Secretary may use the authority under section 103(a)(11) of the Immigration and Nationality Act (8 U.S.C. 1103(a)(11)).

(b) SPECIFIC FACILITIES.—The requirement under subsection (a) shall include at a minimum, reopening, or restoring, the following facilities:

(1) Irwin County Detention Center in Georgia.

(2) C. Carlos Carreiro Immigration Detention Center in Bristol County, Massachusetts.

(3) Etowah County Detention Center in Gadsden, Alabama.

(4) Glades County Detention Center in Moore Haven, Florida.

(5) South Texas Family Residential Center.

(c) EXCEPTION.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the Secretary of Homeland Security is authorized to obtain equivalent capacity for detention facilities at locations other than those listed in subsection (b).

(2) LIMITATION.—The Secretary may not take action under paragraph (1) unless the capacity obtained would result in a reduction of time and cost relative to the cost and time otherwise required to obtain such capacity.

(3) SOUTH TEXAS FAMILY RESIDENTIAL CENTER.—The exception under paragraph (1) shall not apply to the South Texas Family Residential Center. The Secretary shall take all necessary steps to modify and operate the South Texas Family Residential Center in the same manner and capability it was operating on January 20, 2021.

(d) PERIODIC REPORT.—Not later than 90 days after the date of enactment of this Act, and every 90 days thereafter until September 30, 2027, the Secretary of Homeland Security shall submit to the appropriate congressional committees a detailed plan for and a status report on—

(1) compliance with the deadline under subsection (a);

(2) the increase in detention capabilities required by this section—

(A) for the 90 day period immediately preceding the date such report is submitted; and

(B) for the period beginning on the first day of the fiscal year during which the report is submitted, and ending on the date such report is submitted;

(3) the number of detention beds that were used and the number of available detention beds that were not used during—

(A) the 90 day period immediately preceding the date such report is submitted; and

(B) the period beginning on the first day of the fiscal year during which the report is submitted, and ending on the date such report is submitted;

(4) the number of aliens released due to a lack of available detention beds; and

(5) the resources the Department of Homeland Security needs in order to comply with the requirements under this section.

(e) NOTIFICATION.—The Secretary of Homeland Security shall notify Congress, and include with such notification a detailed description of the resources the Department of Homeland Security needs in order to detain all aliens whose detention is

mandatory or nondiscretionary under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.)—

(1) not later than 5 days after all U.S. Immigration and Customs Enforcement detention facilities reach 90 percent of capacity;

(2) not later than 5 days after all U.S. Immigration and Customs Enforcement detention facilities reach 95 percent of capacity; and

(3) not later than 5 days after all U.S. Immigration and Customs Enforcement detention facilities reach full capacity.

(f) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means—

(1) the Committee on the Judiciary of the House of Representatives;

(2) the Committee on Appropriations of the House of Representatives;

(3) the Committee on the Judiciary of the Senate; and

(4) the Committee on Appropriations of the Senate.

TITLE III—ENSURING UNITED FAMILIES AT THE BORDER

SEC. 301. SHORT TITLE.

This title may be cited as the "Ensuring United Families at the Border Act".

SEC. 302. CLARIFICATION OF STANDARDS FOR FAMILY DETENTION.

(a) IN GENERAL.—Section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1232) is amended by adding at the end the following:

"(j) CONSTRUCTION.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, judicial determination, consent decree, or settlement agreement, the detention of any alien child who is not an unaccompanied alien child shall be governed by sections 217, 235, 236, and 241 of the Immigration and Nationality Act (8 U.S.C. 1187, 1225, 1226, and 1231). There is no presumption that an alien child who is not an unaccompanied alien child should not be detained.

"(2) FAMILY DETENTION.—The Secretary of Homeland Security shall—

"(A) maintain the care and custody of an alien, during the period during which the charges described in clause (i) are pending, who—

"(i) is charged only with a misdemeanor offense under section 275(a) of the Immigration and Nationality Act (8 U.S.C. 1325(a)); and

"(ii) entered the United States with the alien's child who has not attained 18 years of age; and

"(B) detain the alien with the alien's child.".

(b) SENSE OF CONGRESS.—It is the sense of Congress that the amendments in this section to section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1232) are intended to satisfy the requirements of the Settlement Agreement in Flores v. Meese, No. 85–4544 (C.D. Cal), as approved by the court on January 28, 1997, with respect to its interpretation in Flores v. Johnson, 212 F. Supp. 3d 864 (C.D. Cal. 2015), that the agreement applies to accompanied minors.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to all actions that occur before, on, or after the date of the enactment of this Act.

(d) PREEMPTION OF STATE LICENSING REQUIREMENTS.—Notwithstanding any other provision of law, judicial determination, consent decree, or settlement agreement, no State may require that an immigration detention facility used to detain children who have not attained 18 years of age, or families consisting of one or more of such children and the parents or legal guardians of such children, that is located in that State, be licensed by the State or any political subdivision thereof.

TITLE IV—PROTECTION OF CHILDREN

SEC. 401. SHORT TITLE.

This title may be cited as the "Protection of Children Act of 2023".

SEC. 402. FINDINGS.

Congress makes the following findings:

(1) Implementation of the provisions of the Trafficking Victims Protection Reauthorization Act of 2008 that govern unaccompanied alien children has

incentivized multiple surges of unaccompanied alien children arriving at the southwest border in the years since the bill's enactment.

(2) The provisions of the Trafficking Victims Protection Reauthorization Act of 2008 that govern unaccompanied alien children treat unaccompanied alien children from countries that are contiguous to the United States disparately by swiftly returning them to their home country absent indications of trafficking or a credible fear of return, but allowing for the release of unaccompanied alien children from noncontiguous countries into the interior of the United States, often to those individuals who paid to smuggle them into the country in the first place.

(3) The provisions of the Trafficking Victims Protection Reauthorization Act of 2008 governing unaccompanied alien children have enriched the cartels, who profit hundreds of millions of dollars each year by smuggling unaccompanied alien children to the southwest border, exploiting and sexually abusing many such unaccompanied alien children on the perilous journey.

(4) Prior to 2008, the number of unaccompanied alien children encountered at the southwest border never exceeded 1,000 in a single year.

(5) The United States is currently in the midst of the worst crisis of unaccompanied alien children in our nation's history, with over 350,000 such unaccompanied alien children encountered at the southwest border since Joe Biden became President.

(6) In 2022, during the Biden Administration, 152,057 unaccompanied alien children were encountered, the most ever in a single year and an over 400 percent increase compared to the last full fiscal year of the Trump Administration in which 33,239 unaccompanied alien children were encountered.

(7) The Biden Administration has lost contact with at least 85,000 unaccompanied alien children who entered the United States since Joe Biden took office.

(8) The Biden Administration dismantled effective safeguards put in place by the Trump Administration that protected unaccompanied alien children from being abused by criminals or exploited for illegal and dangerous child labor.

(9) A recent New York Times investigation found that unaccompanied alien children are being exploited in the labor market and "are ending up in some of the most punishing jobs in the country."

(10) The Times investigation found unaccompanied alien children, "under intense pressure to earn money" in order to "send cash back to their families while often being in debt to their sponsors for smuggling fees, rent, and living expenses," feared "that they had become trapped in circumstances they never could have imagined."

(11) The Biden Administration's Department of Health and Human Services Secretary Xavier Becerra compared placing unaccompanied alien children with sponsors, to widgets in an assembly line, stating that, "If Henry Ford had seen this in his plant, he would have never become famous and rich. This is not the way you do an assembly line."

(12) Department of Health and Human Services employees working under Secretary Xavier Becerra's leadership penned a July 2021 memorandum expressing serious concern that "labor trafficking was increasing" and that the agency had become "one that rewards individuals for making quick releases, and not one that rewards individuals for preventing unsafe releases."

(13) Despite this, Secretary Xavier Becerra pressured then-Director of the Office of Refugee Resettlement Cindy Huang to prioritize releases of unaccompanied alien children over ensuring their safety, telling her "if she could not increase the number of discharges he would find someone who could" and then-Director Huang resigned one month later.

(14) In June 2014, the Obama-Biden Administration requested legal authority to exercise discretion in returning and removing unaccompanied alien children from non-contiguous countries back to their home countries.

(15) In August 2014, the House of Representatives passed H.R. 5320, which included the Protection of Children Act.

(16) The Protection of Children Act of 2023 ends the disparate policies of the Trafficking Victims Protection Reauthorization Act of 2008 by ensuring the swift return of all unaccompanied alien children to their country of origin if they are not victims of trafficking and do not have a fear of return.

SEC. 403. REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.

(a) IN GENERAL.—Section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1232) is amended—

(1) in subsection (a)—

(A) in paragraph (2)—

(i) by amending the heading to read as follows: "RULES FOR UNACCOMPANIED ALIEN CHILDREN.—";

(ii) in subparagraph (A)—

(I) in the matter preceding clause (i), by striking "who is a national or habitual resident of a country that is contiguous with the United States";

(II) in clause (i), by inserting "and" at the end;

(III) in clause (ii), by striking "; and" and inserting a period; and

(IV) by striking clause (iii); and

(iii) in subparagraph (B)—

(I) in the matter preceding clause (i), by striking "(8 U.S.C. 1101 et seq.) may—" and inserting "(8 U.S.C. 1101 et seq.)—";

(II) in clause (i), by inserting before "permit such child to withdraw" the following: "may"; and

(III) in clause (ii), by inserting before "return such child" the following: "shall"; and

(B) in paragraph (5)(D)—

(i) in the matter preceding clause (i), by striking ", except for an unaccompanied alien child from a contiguous country subject to exceptions under subsection (a)(2)," and inserting "who does not meet the criteria listed in paragraph (2)(A)"; and

(ii) in clause (i), by inserting before the semicolon at the end the following: ", which shall include a hearing before an immigration judge not later than 14 days after being screened under paragraph (4)";

(2) in subsection (b)—

(A) in paragraph (2)—

(i) in subparagraph (A), by inserting before the semicolon the following: "believed not to meet the criteria listed in subsection (a)(2)(A)"; and

(ii) in subparagraph (B), by inserting before the period the following: "and does not meet the criteria listed in subsection (a)(2)(A)"; and

(B) in paragraph (3), by striking "an unaccompanied alien child in custody shall" and all that follows, and inserting the following: "an unaccompanied alien child in custody—

"(A) in the case of a child who does not meet the criteria listed in subsection (a)(2)(A), shall transfer the custody of such child to the Secretary of Health and Human Services not later than 30 days after determining that such child is an unaccompanied alien child who does not meet such criteria; or

"(B) in the case of a child who meets the criteria listed in subsection (a)(2)(A), may transfer the custody of such child to the Secretary of Health and Human Services after determining that such child is an unaccompanied alien child who meets such criteria."; and

(3) in subsection (c)—

(A) in paragraph (3), by inserting at the end the following:

"(D) INFORMATION ABOUT INDIVIDUALS WITH WHOM CHILDREN ARE PLACED.—

"(i) INFORMATION TO BE PROVIDED TO HOMELAND SECURITY.—Before placing a child with an individual, the Secretary of Health and Human Services shall provide to the Secretary of Homeland Security, regarding the individual with whom the child will be placed, information on—

"(I) the name of the individual;

"(II) the social security number of the individual;

"(III) the date of birth of the individual;

"(IV) the location of the individual's residence where the child will be placed;

"(V) the immigration status of the individual, if known; and

"(VI) contact information for the individual.

"(ii) ACTIVITIES OF THE SECRETARY OF HOMELAND SECURITY.—Not later than 30 days after receiving the information listed in clause (i), the Secretary of Homeland Security, upon determining that an individual with whom a child is placed is unlawfully present in the United States and not in removal proceedings pursuant to chapter 4 of title II of the Immigration and Nationality Act (8 U.S.C. 1221 et seq.), shall initiate such removal proceedings."; and

(B) in paragraph (5)—

(i) by inserting after "to the greatest extent practicable" the following: "(at no expense to the Government)"; and

(ii) by striking "have counsel to represent them" and inserting "have access to counsel to represent them".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any unaccompanied alien child apprehended on or after the date that is 30 days after the date of enactment of this Act.

SEC. 404. SPECIAL IMMIGRANT JUVENILE STATUS FOR IMMIGRANTS UNABLE TO REUNITE WITH EITHER PARENT.

Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) is amended—

(1) in clause (i), by striking ", and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law"; and

(2) in clause (iii)—

(A) in subclause (I), by striking "and" at the end;

(B) in subclause (II), by inserting "and" after the semicolon; and

(C) by adding at the end the following:

"(III) an alien may not be granted special immigrant status under this subparagraph if the alien's reunification with any one parent or legal guardian is not precluded by abuse, neglect, abandonment, or any similar cause under State law;".

SEC. 405. RULE OF CONSTRUCTION.

Nothing in this title shall be construed to limit the following procedures or practices relating to an unaccompanied alien child (as defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2))):

(1) Screening of such a child for a credible fear of return to his or her country of origin.

(2) Screening of such a child to determine whether he or she was a victim of trafficking.

(3) Department of Health and Human Services policy in effect on the date of the enactment of this Act requiring a home study for such a child if he or she is under 12 years of age.

TITLE V—VISA OVERSTAYS PENALTIES

SEC. 501. SHORT TITLE.

This title may be cited as the "Visa Overstays Penalties Act".

SEC. 502. EXPANDED PENALTIES FOR ILLEGAL ENTRY OR PRESENCE.

Section 275 of the Immigration and Nationality Act (8 U.S.C. 1325) is amended—

(1) in subsection (a) by inserting after "for a subsequent commission of any such offense" the following: "or if the alien was previously convicted of an offense under subsection (e)(2)(A)";

(2) in subsection (b)—

(A) in paragraph (1), by striking "at least $50 and not more than $250" and inserting "not less than $500 and not more than $1,000"; and

(B) in paragraph (2), by inserting after "in the case of an alien who has been previously subject to a civil penalty under this subsection" the following: "or subsection (e)(2)(B)"; and

(3) by adding at the end the following:

"(e) VISA OVERSTAYS.—

"(1) IN GENERAL.—An alien who was admitted as a nonimmigrant has violated this paragraph if the alien, for an aggregate of 10 days or more, has failed—

"(A) to maintain the nonimmigrant status in which the alien was admitted, or to which it was changed under section 248, including complying with the period of stay authorized by the Secretary of Homeland Security in connection with such status; or

"(B) to comply otherwise with the conditions of such nonimmigrant status.

"(2) PENALTIES.—An alien who has violated paragraph (1)—

"(A) shall—

"(i) for the first commission of such a violation, be fined under title 18, United States Code, or imprisoned not more than 6 months, or both; and

"(ii) for a subsequent commission of such a violation, or if the alien was previously convicted of an offense under subsection (a), be fined under such title 18, or imprisoned not more than 2 years, or both; and

"(B) in addition to, and not in lieu of, any penalty under subparagraph (A) and any other criminal or civil penalties that may be imposed, shall be subject to a civil penalty of—

"(i) not less than $500 and not more than $1,000 for each violation; or

"(ii) twice the amount specified in clause (i), in the case of an alien who has been previously subject to a civil penalty under this subparagraph or subsection (b).".

TITLE VI—IMMIGRATION PAROLE REFORM

SEC. 601. SHORT TITLE.

This title may be cited as the "Immigration Parole Reform Act of 2023".

SEC. 602. IMMIGRATION PAROLE REFORM.

Section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)) is amended to read as follows:

"(5)(A) Except as provided in subparagraphs (B) and (C) and section 214(f), the Secretary of Homeland Security, in the discretion of the Secretary, may temporarily parole into the United States any alien applying for admission to the United States who is not present in the United States, under such conditions as the Secretary may prescribe, on a case-by-case basis, and not according to eligibility criteria describing an entire class of potential parole recipients, for urgent humanitarian reasons or significant public benefit. Parole granted under this subparagraph may not be regarded as an admission of the alien. When the purposes of such parole have been served in the opinion of the Secretary, the alien shall immediately return or be returned to the custody from which the alien was paroled. After such return, the case of the alien shall be dealt with in the same manner as the case of any other applicant for admission to the United States.

"(B) The Secretary of Homeland Security may grant parole to any alien who—

"(i) is present in the United States without lawful immigration status;

"(ii) is the beneficiary of an approved petition under section 203(a);

"(iii) is not otherwise inadmissible or removable; and

"(iv) is the spouse or child of a member of the Armed Forces serving on active duty.

"(C) The Secretary of Homeland Security may grant parole to any alien—

"(i) who is a national of the Republic of Cuba and is living in the Republic of Cuba;

"(ii) who is the beneficiary of an approved petition under section 203(a);

"(iii) for whom an immigrant visa is not immediately available;

"(iv) who meets all eligibility requirements for an immigrant visa;

"(v) who is not otherwise inadmissible; and

"(vi) who is receiving a grant of parole in furtherance of the commitment of the United States to the minimum level of annual legal migration of Cuban nationals to the United States specified in the U.S.–Cuba Joint Communiqué on Migration, done at New York September 9, 1994, and reaffirmed in the Cuba-United States: Joint Statement on Normalization of Migration, Building on the Agreement of September 9, 1994, done at New York May 2, 1995.

"(D) The Secretary of Homeland Security may grant parole to an alien who is returned to a contiguous country under section 235(b)(3) to allow the alien to attend the alien's immigration hearing. The grant of parole shall not exceed the time required for the alien to be escorted to, and attend, the alien's immigration hearing scheduled on the same calendar day as the grant, and to immediately thereafter be escorted back to the contiguous country. A grant of parole under this subparagraph shall not be considered for purposes of determining whether the alien is inadmissible under this Act.

"(E) For purposes of determining an alien's eligibility for parole under subparagraph (A), an urgent humanitarian reason shall be limited to circumstances in which the alien establishes that—

"(i)(I) the alien has a medical emergency; and

"(II)(aa) the alien cannot obtain necessary treatment in the foreign state in which the alien is residing; or

"(bb) the medical emergency is life-threatening and there is insufficient time for the alien to be admitted to the United States through the normal visa process;

"(ii) the alien is the parent or legal guardian of an alien described in clause (i) and the alien described in clause (i) is a minor;

"(iii) the alien is needed in the United States in order to donate an organ or other tissue for transplant and there is insufficient time for the alien to be admitted to the United States through the normal visa process;

"(iv) the alien has a close family member in the United States whose death is imminent and the alien could not arrive in the United States in time to see such family member alive if the alien were to be admitted to the United States through the normal visa process;

"(v) the alien is seeking to attend the funeral of a close family member and the alien could not arrive in the United States in time to attend such funeral if the alien were to be admitted to the United States through the normal visa process;

"(vi) the alien is an adopted child with an urgent medical condition who is in the legal custody of the petitioner for a final adoption-related visa and whose medical treatment is required before the expected award of a final adoption-related visa; or

"(vii) the alien is a lawful applicant for adjustment of status under section 245 and is returning to the United States after temporary travel abroad.

"(F) For purposes of determining an alien's eligibility for parole under subparagraph (A), a significant public benefit may be determined to result from the parole of an alien only if—

"(i) the alien has assisted (or will assist, whether knowingly or not) the United States Government in a law enforcement matter;

"(ii) the alien's presence is required by the Government in furtherance of such law enforcement matter; and

"(iii) the alien is inadmissible, does not satisfy the eligibility requirements for admission as a nonimmigrant, or there is insufficient time for the alien to be admitted to the United States through the normal visa process.

"(G) For purposes of determining an alien's eligibility for parole under subparagraph (A), the term 'case-by-case basis' means that the facts in each individual case are considered and parole is not granted based on membership in a defined class of aliens to be granted parole. The fact that aliens are considered for or granted parole one-by-one and not as a group is not sufficient to establish that the parole decision is made on a 'case-by-case basis'.

"(H) The Secretary of Homeland Security may not use the parole authority under this paragraph to parole an alien into the United States for any reason or purpose other than those described in subparagraphs (B), (C), (D), (E), and (F).

"(I) An alien granted parole may not accept employment, except that an alien granted parole pursuant to subparagraph (B) or (C) is authorized to accept employment for the duration of the parole, as evidenced by an employment authorization document issued by the Secretary of Homeland Security.

"(J) Parole granted after a departure from the United States shall not be regarded as an admission of the alien. An alien granted parole, whether as an initial grant of parole or parole upon reentry into the United States, is not eligible to adjust status to lawful permanent residence or for any other immigration benefit if the immigration status the alien had at the time of departure did not authorize the alien to adjust status or to be eligible for such benefit.

"(K)(i) Except as provided in clauses (ii) and (iii), parole shall be granted to an alien under this paragraph for the shorter of—

"(I) a period of sufficient length to accomplish the activity described in subparagraph (D), (E), or (F) for which the alien was granted parole; or

"(II) 1 year.

"(ii) Grants of parole pursuant to subparagraph (A) may be extended once, in the discretion of the Secretary, for an additional period that is the shorter of—

"(I) the period that is necessary to accomplish the activity described in subparagraph (E) or (F) for which the alien was granted parole; or

"(II) 1 year.

"(iii) Aliens who have a pending application to adjust status to permanent residence under section 245 may request extensions of parole under this paragraph, in 1-year increments, until the application for adjustment has been adjudicated. Such parole shall terminate immediately upon the denial of such adjustment application.

"(L) Not later than 90 days after the last day of each fiscal year, the Secretary of Homeland Security shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives and make available to the public, a report—

"(i) identifying the total number of aliens paroled into the United States under this paragraph during the previous fiscal year; and

"(ii) containing information and data regarding all aliens paroled during such fiscal year, including—

"(I) the duration of parole;

"(II) the type of parole; and
"(III) the current status of the aliens so paroled.".

SEC. 603. IMPLEMENTATION.

(a) IN GENERAL.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date that is 30 days after the date of the enactment of this Act.

(b) EXCEPTIONS.—Notwithstanding subsection (a), each of the following exceptions apply:

(1) Any application for parole or advance parole filed by an alien before the date of the enactment of this Act shall be adjudicated under the law that was in effect on the date on which the application was properly filed and any approved advance parole shall remain valid under the law that was in effect on the date on which the advance parole was approved.

(2) Section 212(d)(5)(J) of the Immigration and Nationality Act, as added by section 2, shall take effect on the date of the enactment of this Act.

(3) Aliens who were paroled into the United States pursuant to section 212(d)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)(A)) before January 1, 2023, shall continue to be subject to the terms of parole that were in effect on the date on which their respective parole was approved.

SEC. 604. CAUSE OF ACTION.

Any person, State, or local government that experiences financial harm in excess of $1,000 due to a failure of the Federal Government to lawfully apply the provisions of this Act or the amendments made by this Act shall have standing to bring a civil action against the Federal Government in an appropriate district court of the United States for appropriate relief.

SEC. 605. SEVERABILITY.

If any provision of this Act or any amendment by this Act, or the application of such provision or amendment to any person or circumstance, is held to be unconstitutional, the remainder of this Act and the application of such provision or amendment to any other person or circumstance shall not be affected.

TITLE VII—LEGAL WORKFORCE

SEC. 701. SHORT TITLE.

This title may be cited as the "Legal Workforce Act".

SEC. 702. EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS.

(a) IN GENERAL.—Section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)) is amended to read as follows:

"(b) EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS.—

"(1) NEW HIRES, RECRUITMENT, AND REFERRAL.—The requirements referred to in paragraphs (1)(B) and (3) of subsection (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the following:

"(A) ATTESTATION AFTER EXAMINATION OF DOCUMENTATION.—

"(i) ATTESTATION.—During the verification period (as defined in subparagraph (E)), the person or entity shall attest, under penalty of perjury and on a form, including electronic format, designated or established by the Secretary by regulation not later than 6 months after the date of the enactment of the Legal Workforce Act, that it has verified that the individual is not an unauthorized alien by—

"(I) obtaining from the individual the individual's social security account number or United States passport number and recording the number on the form (if the individual claims to have been issued such a number), and, if the individual does not attest to United States nationality under subparagraph (B), obtaining such identification or authorization number established by the Department of Homeland Security for the alien as the Secretary of Homeland Security may specify, and recording such number on the form; and

"(II) examining—

"(aa) a document relating to the individual presenting it described in clause (ii); or

"(bb) a document relating to the individual presenting it described in clause (iii) and a document relating to the individual presenting it described in clause (iv).

"(ii) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION AND ESTABLISHING IDENTITY.—A document described in this subparagraph is an individual's—

"(I) unexpired United States passport or passport card;

"(II) unexpired permanent resident card that contains a photograph;

"(III) unexpired employment authorization card that contains a photograph;

"(IV) in the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I–94 or Form I–94A, or other documentation as designated by the Secretary specifying the alien's nonimmigrant status as long as the period of status has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified in the documentation;

"(V) passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I–94 or Form I–94A, or other documentation as designated by the Secretary, indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI; or

"(VI) other document designated by the Secretary of Homeland Security, if the document—

"(aa) contains a photograph of the individual and biometric identification data from the individual and such other personal identifying information relating to the individual as the Secretary of Homeland Security finds, by regulation, sufficient for purposes of this clause;

"(bb) is evidence of authorization of employment in the United States; and

"(cc) contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

"(iii) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION.—A document described in this subparagraph is an individual's social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States).

"(iv) DOCUMENTS ESTABLISHING IDENTITY OF INDIVIDUAL.—A document described in this subparagraph is—

"(I) an individual's unexpired State issued driver's license or identification card if it contains a photograph and information such as name, date of birth, gender, height, eye color, and address;

"(II) an individual's unexpired U.S. military identification card;

"(III) an individual's unexpired Native American tribal identification document issued by a tribal entity recognized by the Bureau of Indian Affairs; or

"(IV) in the case of an individual under 18 years of age, a parent or legal guardian's attestation under penalty of law as to the identity and age of the individual.

"(v) AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS.—If the Secretary of Homeland Security finds, by regulation, that any document described in clause (i), (ii), or (iii) as establishing employment authorization or identity does not reliably establish such authorization or identity or is being used fraudulently to an unacceptable degree, the Secretary may prohibit or place conditions on its use for purposes of this paragraph.

"(vi) SIGNATURE.—Such attestation may be manifested by either a handwritten or electronic signature.

"(B) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—During the verification period (as defined in subparagraph (E)), the individual shall attest, under penalty of perjury on the form designated or established for purposes of subparagraph (A), 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 of Homeland Security to be hired, recruited, or referred for such employment. Such attestation may be manifested by either a handwritten or electronic signature. The individual shall also provide that individual's social security account number or United States passport number (if the individual claims to have been issued such a number), and, if the individual does not attest

to United States nationality under this subparagraph, such identification or authorization number established by the Department of Homeland Security for the alien as the Secretary may specify.

"(C) RETENTION OF VERIFICATION FORM AND VERIFICATION.—

"(i) IN GENERAL.—After completion of such form in accordance with subparagraphs (A) and (B), the person or entity shall—

"(I) retain a paper or electronic version of the form and make it available for inspection by officers of the Department of Homeland Security, the Department of Justice, or the Department of Labor during a period beginning on the date of the recruiting or referral of the individual, or, in the case of the hiring of an individual, the date on which the verification is completed, and ending—

"(aa) in the case of the recruiting or referral of an individual, 3 years after the date of the recruiting or referral; and

"(bb) in the case of the hiring of an individual, the later of 3 years after the date the verification is completed or one year after the date the individual's employment is terminated; and

"(II) during the verification period (as defined in subparagraph (E)), make an inquiry, as provided in subsection (d), using the verification system to seek verification of the identity and employment eligibility of an individual.

"(ii) CONFIRMATION.—

"(I) CONFIRMATION RECEIVED.—If the person or other entity receives an appropriate confirmation of an individual's identity and work eligibility under the verification system within the time period specified, the person or entity shall record on the form an appropriate code that is provided under the system and that indicates a final confirmation of such identity and work eligibility of the individual.

"(II) TENTATIVE NONCONFIRMATION RECEIVED.—If the person or other entity receives a tentative nonconfirmation of an individual's identity or work eligibility under the verification system within the time period specified, the person or entity shall so inform the individual for whom the verification is sought. If the individual does not contest the nonconfirmation within the time period specified, the nonconfirmation shall be considered final. The person or entity shall then record on the form an appropriate code which has been provided under the system to indicate a final nonconfirmation. If the individual does contest the nonconfirmation, the individual shall utilize the process for secondary verification provided under subsection (d). The nonconfirmation will remain tentative until a final confirmation or nonconfirmation is provided by the verification system within the time period specified. In no case shall an employer terminate employment of an individual because of a failure of the individual to have identity and work eligibility confirmed under this section until a nonconfirmation becomes final. Nothing in this clause shall apply to a termination of employment for any reason other than because of such a failure. In no case shall an employer rescind the offer of employment to an individual because of a failure of the individual to have identity and work eligibility confirmed under this subsection until a nonconfirmation becomes final. Nothing in this subclause shall apply to a recission of the offer of employment for any reason other than because of such a failure.

"(III) FINAL CONFIRMATION OR NONCONFIRMATION RECEIVED.—If a final confirmation or nonconfirmation is provided by the verification system regarding an individual, the person or entity shall record on the form an appropriate code that is provided under the system and that indicates a confirmation or nonconfirmation of identity and work eligibility of the individual.

"(IV) EXTENSION OF TIME.—If the person or other entity in good faith attempts to make an inquiry during the time period specified and the verification system has registered that not all inquiries were received during such time, the person or entity may make an inquiry in the first subsequent working day in which the verification system registers that it has received all inquiries. If the verification system cannot receive inquiries at all times during a day, the person or entity merely has to assert that the entity attempted to make the inquiry on that day for the previous sentence

to apply to such an inquiry, and does not have to provide any additional proof concerning such inquiry.

"(V) CONSEQUENCES OF NONCONFIRMATION.—

"(aa) TERMINATION OR NOTIFICATION OF CONTINUED EMPLOYMENT.—If the person or other entity has received a final nonconfirmation regarding an individual, the person or entity may terminate employment of the individual (or decline to recruit or refer the individual). If the person or entity does not terminate employment of the individual or proceeds to recruit or refer the individual, the person or entity shall notify the Secretary of Homeland Security of such fact through the verification system or in such other manner as the Secretary may specify.

"(bb) FAILURE TO NOTIFY.—If the person or entity fails to provide notice with respect to an individual as required under item (aa), the failure is deemed to constitute a violation of subsection (a)(1)(A) with respect to that individual.

"(VI) CONTINUED EMPLOYMENT AFTER FINAL NONCONFIRMATION.—If the person or other entity continues to employ (or to recruit or refer) an individual after receiving final nonconfirmation, a rebuttable presumption is created that the person or entity has violated subsection (a)(1)(A).

"(D) EFFECTIVE DATES OF NEW PROCEDURES.—

"(i) HIRING.—Except as provided in clause (iii), the provisions of this paragraph shall apply to a person or other entity hiring an individual for employment in the United States as follows:

"(I) With respect to employers having 10,000 or more employees in the United States on the date of the enactment of the Legal Workforce Act, on the date that is 6 months after the date of the enactment of such Act.

"(II) With respect to employers having 500 or more employees in the United States, but less than 10,000 employees in the United States, on the date of the enactment of the Legal Workforce Act, on the date that is 12 months after the date of the enactment of such Act.

"(III) With respect to employers having 20 or more employees in the United States, but less than 500 employees in the United States, on the date of the enactment of the Legal Workforce Act, on the date that is 18 months after the date of the enactment of such Act.

"(IV) With respect to employers having one or more employees in the United States, but less than 20 employees in the United States, on the date of the enactment of the Legal Workforce Act, on the date that is 24 months after the date of the enactment of such Act.

"(ii) RECRUITING AND REFERRING.—Except as provided in clause (iii), the provisions of this paragraph shall apply to a person or other entity recruiting or referring an individual for employment in the United States on the date that is 12 months after the date of the enactment of the Legal Workforce Act.

"(iii) AGRICULTURAL LABOR OR SERVICES.—With respect to an employee performing agricultural labor or services, this paragraph shall not apply with respect to the verification of the employee until the date that is 36 months after the date of the enactment of the Legal Workforce Act. For purposes of the preceding sentence, the term 'agricultural labor or services' has the meaning given such term by the Secretary of Agriculture in regulations and includes agricultural labor as defined in section 3121(g) of the Internal Revenue Code of 1986, agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state, all activities required for the preparation, processing or manufacturing of a product of agriculture (as such term is defined in such section 3(f)) for further distribution, and activities similar to all the foregoing as they relate to fish or shellfish facilities. An employee described in this clause shall not be counted for purposes of clause (i).

"(iv) EXTENSIONS.—

"(I) ON REQUEST.—Upon request by an employer having 50 or fewer employees, the Secretary shall allow a one-time 6-month ex-

tension of the effective date set out in this subparagraph applicable to such employer. Such request shall be made to the Secretary and shall be made prior to such effective date.

"(II) FOLLOWING REPORT.—If the study under section 715 of the Legal Workforce Act has been submitted in accordance with such section, the Secretary of Homeland Security may extend the effective date set out in clause (iii) on a one-time basis for 12 months.

"(v) TRANSITION RULE.—Subject to paragraph (4), the following shall apply to a person or other entity hiring, recruiting, or referring an individual for employment in the United States until the effective date or dates applicable under clauses (i) through (iii):

"(I) This subsection, as in effect before the enactment of the Legal Workforce Act.

"(II) Subtitle A of title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), as in effect before the effective date in section 707(c) of the Legal Workforce Act.

"(III) Any other provision of Federal law requiring the person or entity to participate in the E-Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), as in effect before the effective date in section 707(c) of the Legal Workforce Act, including Executive Order 13465 (8 U.S.C. 1324a note; relating to Government procurement).

"(E) VERIFICATION PERIOD DEFINED.—

"(i) IN GENERAL.—For purposes of this paragraph:

"(I) In the case of recruitment or referral, the term 'verification period' means the period ending on the date recruiting or referring commences.

"(II) In the case of hiring, the term 'verification period' means the period beginning on the date on which an offer of employment is extended and ending on the date that is three business days after the date of hire, except as provided in clause (iii). The offer of employment may be conditioned in accordance with clause (ii).

"(ii) JOB OFFER MAY BE CONDITIONAL.—A person or other entity may offer a prospective employee an employment position that is conditioned on final verification of the identity and employment eligibility of the employee using the procedures established under this paragraph.

"(iii) SPECIAL RULE.—Notwithstanding clause (i)(II), in the case of an alien who is authorized for employment and who provides evidence from the Social Security Administration that the alien has applied for a social security account number, the verification period ends three business days after the alien receives the social security account number.

"(2) REVERIFICATION FOR INDIVIDUALS WITH LIMITED WORK AUTHORIZATION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a person or entity shall make an inquiry, as provided in subsection (d), using the verification system to seek reverification of the identity and employment eligibility of all individuals with a limited period of work authorization employed by the person or entity during the three business days after the date on which the employee's work authorization expires as follows:

"(i) With respect to employers having 10,000 or more employees in the United States on the date of the enactment of the Legal Workforce Act, beginning on the date that is 6 months after the date of the enactment of such Act.

"(ii) With respect to employers having 500 or more employees in the United States, but less than 10,000 employees in the United States, on the date of the enactment of the Legal Workforce Act, beginning on the date that is 12 months after the date of the enactment of such Act.

"(iii) With respect to employers having 20 or more employees in the United States, but less than 500 employees in the United States, on the date of the enactment of the Legal Workforce Act, beginning on the date that is 18 months after the date of the enactment of such Act.

"(iv) With respect to employers having one or more employees in the United States, but less than 20 employees in the United States, on the date of the enactment of the Legal Workforce Act, beginning on the date that is 24 months after the date of the enactment of such Act.

"(B) AGRICULTURAL LABOR OR SERVICES.—With respect to an employee performing agricultural labor or services, or an employee recruited or re-

ferred by a farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801)), subparagraph (A) shall not apply with respect to the reverification of the employee until the date that is 36 months after the date of the enactment of the Legal Workforce Act. For purposes of the preceding sentence, the term 'agricultural labor or services' has the meaning given such term by the Secretary of Agriculture in regulations and includes agricultural labor as defined in section 3121(g) of the Internal Revenue Code of 1986, agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state, all activities required for the preparation, processing, or manufacturing of a product of agriculture (as such term is defined in such section 3(f)) for further distribution, and activities similar to all the foregoing as they relate to fish or shellfish facilities. An employee described in this subparagraph shall not be counted for purposes of subparagraph (A).

"(C) REVERIFICATION.—Paragraph (1)(C)(ii) shall apply to reverifications pursuant to this paragraph on the same basis as it applies to verifications pursuant to paragraph (1), except that employers shall—

"(i) use a form designated or established by the Secretary by regulation for purposes of this paragraph; and

"(ii) retain a paper or electronic version of the form and make it available for inspection by officers of the Department of Homeland Security, the Department of Justice, or the Department of Labor during the period beginning on the date the reverification commences and ending on the date that is the later of 3 years after the date of such reverification or 1 year after the date the individual's employment is terminated.

"(3) PREVIOUSLY HIRED INDIVIDUALS.—

"(A) ON A MANDATORY BASIS FOR CERTAIN EMPLOYEES.—

"(i) IN GENERAL.—Not later than the date that is 6 months after the date of the enactment of the Legal Workforce Act, an employer shall make an inquiry, as provided in subsection (d), using the verification system to seek verification of the identity and employment eligibility of any individual described in clause (ii) employed by the employer whose employment eligibility has not been verified under the E-Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note).

"(ii) INDIVIDUALS DESCRIBED.—An individual described in this clause is any of the following:

"(I) An employee of any unit of a Federal, State, or local government.

"(II) An employee who requires a Federal security clearance working in a Federal, State, or local government building, a military base, a nuclear energy site, a weapons site, or an airport or other facility that requires workers to carry a Transportation Worker Identification Credential (TWIC).

"(III) An employee assigned to perform work in the United States under a Federal contract, except that this subclause—

"(aa) is not applicable to individuals who have a clearance under Homeland Security Presidential Directive 12 (HSPD 12 clearance), are administrative or overhead personnel, or are working solely on contracts that provide Commercial Off The Shelf goods or services as set forth by the Federal Acquisition Regulatory Council, unless they are subject to verification under subclause (II); and

"(bb) only applies to contracts over the simple acquisition threshold as defined in section 2.101 of title 48, Code of Federal Regulations.

"(B) ON A MANDATORY BASIS FOR MULTIPLE USERS OF SAME SOCIAL SECURITY ACCOUNT NUMBER.—In the case of an employer who is required by this subsection to use the verification system described in subsection (d), or has elected voluntarily to use such system, the employer shall make inquiries to the system in accordance with the following:

"(i) The Commissioner of Social Security shall notify annually employees (at the employee address listed on the Wage and Tax Statement) who submit a social security account number to which more than one employer reports income and for which there is a pattern of un-

usual multiple use. The notification letter shall identify the number of employers to which income is being reported as well as sufficient information notifying the employee of the process to contact the Social Security Administration Fraud Hotline if the employee believes the employee's identity may have been stolen. The notice shall not share information protected as private, in order to avoid any recipient of the notice from being in the position to further commit or begin committing identity theft.

"(ii) If the person to whom the social security account number was issued by the Social Security Administration has been identified and confirmed by the Commissioner, and indicates that the social security account number was used without their knowledge, the Secretary and the Commissioner shall lock the social security account number for employment eligibility verification purposes and shall notify the employers of the individuals who wrongfully submitted the social security account number that the employee may not be work eligible.

"(iii) Each employer receiving such notification of an incorrect social security account number under clause (ii) shall use the verification system described in subsection (d) to check the work eligibility status of the applicable employee within 10 business days of receipt of the notification.

"(C) ON A VOLUNTARY BASIS.—Subject to paragraph (2), and subparagraphs (A) through (C) of this paragraph, beginning on the date that is 30 days after the date of the enactment of the Legal Workforce Act, an employer may make an inquiry, as provided in subsection (d), using the verification system to seek verification of the identity and employment eligibility of any individual employed by the employer. If an employer chooses voluntarily to seek verification of any individual employed by the employer, the employer shall seek verification of all individuals employed at the same geographic location or, at the option of the employer, all individuals employed within the same job category, as the employee with respect to whom the employer seeks voluntarily to use the verification system. An employer's decision about whether or not voluntarily to seek verification of its current workforce under this subparagraph may not be considered by any government agency in any proceeding, investigation, or review provided for in this Act.

"(D) VERIFICATION.—Paragraph (1)(C)(ii) shall apply to verifications pursuant to this paragraph on the same basis as it applies to verifications pursuant to paragraph (1), except that employers shall—

"(i) use a form designated or established by the Secretary by regulation for purposes of this paragraph; and

"(ii) retain a paper or electronic version of the form and make it available for inspection by officers of the Department of Homeland Security, the Department of Justice, or the Department of Labor during the period beginning on the date the verification commences and ending on the date that is the later of 3 years after the date of such verification or 1 year after the date the individual's employment is terminated.

"(4) EARLY COMPLIANCE.—

"(A) FORMER E-VERIFY REQUIRED USERS, INCLUDING FEDERAL CONTRACTORS.—Notwithstanding the deadlines in paragraphs (1) and (2), beginning on the date of the enactment of the Legal Workforce Act, the Secretary is authorized to commence requiring employers required to participate in the E-Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), including employers required to participate in such program by reason of Federal acquisition laws (and regulations promulgated under those laws, including the Federal Acquisition Regulation), to commence compliance with the requirements of this subsection (and any additional requirements of such Federal acquisition laws and regulation) in lieu of any requirement to participate in the E-Verify Program.

"(B) FORMER E-VERIFY VOLUNTARY USERS AND OTHERS DESIRING EARLY COMPLIANCE.—Notwithstanding the deadlines in paragraphs (1) and (2), beginning on the date of the enactment of the Legal Workforce Act, the Secretary shall provide for the voluntary compliance with the requirements of this subsection by employers voluntarily electing to participate in the E-Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) before

such date, as well as by other employers seeking voluntary early compliance.

"(5) COPYING OF DOCUMENTATION PERMITTED.—Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection.

"(6) LIMITATION ON USE OF FORMS.—A form designated or established by the Secretary of Homeland Security under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this Act and any other provision of Federal criminal law.

"(7) GOOD FAITH COMPLIANCE.—

"(A) IN GENERAL.—Except as otherwise provided in this subsection, a person or entity is considered to have complied with a requirement of this subsection notwithstanding a technical or procedural failure to meet such requirement if there was a good faith attempt to comply with the requirement.

"(B) EXCEPTION IF FAILURE TO CORRECT AFTER NOTICE.—Subparagraph (A) shall not apply if—

"(i) the failure is not de minimus;

"(ii) the Secretary of Homeland Security has explained to the person or entity the basis for the failure and why it is not de minimus;

"(iii) the person or entity has been provided a period of not less than 30 calendar days (beginning after the date of the explanation) within which to correct the failure; and

"(iv) the person or entity has not corrected the failure voluntarily within such period.

"(C) EXCEPTION FOR PATTERN OR PRACTICE VIOLATORS.—Subparagraph (A) shall not apply to a person or entity that has engaged or is engaging in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2).

"(8) SINGLE EXTENSION OF DEADLINES UPON CERTIFICATION.—In a case in which the Secretary of Homeland Security has certified to the Congress that the employment eligibility verification system required under subsection (d) will not be fully operational by the date that is 6 months after the date of the enactment of the Legal Workforce Act, each deadline established under this section for an employer to make an inquiry using such system shall be extended by 6 months. No other extension of such a deadline shall be made except as authorized under paragraph (1)(D)(iv).".

(b) DATE OF HIRE.—Section 274A(h) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)) is amended by adding at the end the following:

"(4) DEFINITION OF DATE OF HIRE.—As used in this section, the term 'date of hire' means the date of actual commencement of employment for wages or other remuneration, unless otherwise specified.".

SEC. 703. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.

Section 274A(d) of the Immigration and Nationality Act (8 U.S.C. 1324a(d)) is amended to read as follows:

"(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.—

"(1) IN GENERAL.—Patterned on the employment eligibility confirmation system established under section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), the Secretary of Homeland Security shall establish and administer a verification system through which the Secretary (or a designee of the Secretary, which may be a nongovernmental entity)—

"(A) responds to inquiries made by persons at any time through a toll-free electronic media concerning an individual's identity and whether the individual is authorized to be employed; and

"(B) maintains records of the inquiries that were made, of verifications provided (or not provided), and of the codes provided to inquirers as evidence of their compliance with their obligations under this section.

"(2) INITIAL RESPONSE.—The verification system shall provide confirmation or a tentative nonconfirmation of an individual's identity and employment eligibility within 3 working days of the initial inquiry. If providing confirmation or tentative nonconfirmation, the verification system shall provide an appropriate code indicating such confirmation or such nonconfirmation.

"(3) SECONDARY CONFIRMATION PROCESS IN CASE OF TENTATIVE NONCONFIRMATION.—In cases of tentative nonconfirmation, the Secretary shall specify, in consultation with the Commissioner of Social Security, an available secondary verification process to confirm the validity of information provided and to pro-

vide a final confirmation or nonconfirmation not later than 10 working days after the date on which the notice of the tentative nonconfirmation is received by the employee. The Secretary, in consultation with the Commissioner, may extend this deadline once on a case-by-case basis for a period of 10 working days, and if the time is extended, shall document such extension within the verification system. The Secretary, in consultation with the Commissioner, shall notify the employee and employer of such extension. The Secretary, in consultation with the Commissioner, shall create a standard process of such extension and notification and shall make a description of such process available to the public. When final confirmation or nonconfirmation is provided, the verification system shall provide an appropriate code indicating such confirmation or nonconfirmation.

"(4) DESIGN AND OPERATION OF SYSTEM.—The verification system shall be designed and operated—

"(A) to maximize its reliability and ease of use by persons and other entities consistent with insulating and protecting the privacy and security of the underlying information;

"(B) to respond to all inquiries made by such persons and entities on whether individuals are authorized to be employed and to register all times when such inquiries are not received;

"(C) with appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information;

"(D) to have reasonable safeguards against the system's resulting in unlawful discriminatory practices based on national origin or citizenship status, including—

"(i) the selective or unauthorized use of the system to verify eligibility; or

"(ii) the exclusion of certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will be required, beyond what is required for most job applicants;

"(E) to maximize the prevention of identity theft use in the system; and

"(F) to limit the subjects of verification to the following individuals:

"(i) Individuals hired, referred, or recruited, in accordance with paragraph (1) or (4) of subsection (b).

"(ii) Employees and prospective employees, in accordance with paragraph (1), (2), (3), or (4) of subsection (b).

"(iii) Individuals seeking to confirm their own employment eligibility on a voluntary basis.

"(5) RESPONSIBILITIES OF COMMISSIONER OF SOCIAL SECURITY.—As part of the verification system, the Commissioner of Social Security, in consultation with the Secretary of Homeland Security (and any designee of the Secretary selected to establish and administer the verification system), shall establish a reliable, secure method, which, within the time periods specified under paragraphs (2) and (3), compares the name and social security account number provided in an inquiry against such information maintained by the Commissioner in order to validate (or not validate) the information provided regarding an individual whose identity and employment eligibility must be confirmed, the correspondence of the name and number, and whether the individual has presented a social security account number that is not valid for employment. The Commissioner shall not disclose or release social security information (other than such confirmation or nonconfirmation) under the verification system except as provided for in this section or section 205(c)(2)(I) of the Social Security Act.

"(6) RESPONSIBILITIES OF SECRETARY OF HOMELAND SECURITY.—As part of the verification system, the Secretary of Homeland Security (in consultation with any designee of the Secretary selected to establish and administer the verification system), shall establish a reliable, secure method, which, within the time periods specified under paragraphs (2) and (3), compares the name and alien identification or authorization number (or any other information as determined relevant by the Secretary) which are provided in an inquiry against such information maintained or accessed by the Secretary in order to validate (or not validate) the information provided, the correspondence of the name and number, 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, whether the records available to the Secretary verify the identity or status of a national of the United States.

"(7) UPDATING INFORMATION.—The Commissioner of Social Security and the Secretary of Homeland Security shall update their information in a manner that promotes the maximum accuracy and shall provide a process for the

prompt correction of erroneous information, including instances in which it is brought to their attention in the secondary verification process described in paragraph (3).

"(8) LIMITATION ON USE OF THE VERIFICATION SYSTEM AND ANY RELATED SYSTEMS.—

"(A) NO NATIONAL IDENTIFICATION CARD.—Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

"(B) CRITICAL INFRASTRUCTURE.—The Secretary may authorize or direct any person or entity responsible for granting access to, protecting, securing, operating, administering, or regulating part of the critical infrastructure (as defined in section 1016(e) of the Critical Infrastructure Protection Act of 2001 (42 U.S.C. 5195c(e))) to use the verification system to the extent the Secretary determines that such use will assist in the protection of the critical infrastructure.

"(9) REMEDIES.—If an individual alleges that the individual would not have been dismissed from a job or would have been hired for a job but for an error of the verification mechanism, the individual may seek compensation only through the mechanism of the Federal Tort Claims Act, and injunctive relief to correct such error. No class action may be brought under this paragraph.".

SEC. 704. RECRUITMENT, REFERRAL, AND CONTINUATION OF EMPLOYMENT.

(a) ADDITIONAL CHANGES TO RULES FOR RECRUITMENT, REFERRAL, AND CONTINUATION OF EMPLOYMENT.—Section 274A(a) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)) is amended—

(1) in paragraph (1)(A), by striking "for a fee";

(2) in paragraph (1), by amending subparagraph (B) to read as follows:

"(B) to hire, continue to employ, or to recruit or refer for employment in the United States an individual without complying with the requirements of subsection (b)."; and

(3) in paragraph (2), by striking "after hiring an alien for employment in accordance with paragraph (1)," and inserting "after complying with paragraph (1),".

(b) DEFINITION.—Section 274A(h) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)), as amended by section 2(b) of this Act, is further amended by adding at the end the following:

"(5) DEFINITION OF RECRUIT OR REFER.—As used in this section, the term 'refer' means the act of sending or directing a person who is in the United States or transmitting documentation or information to another, directly or indirectly, with the intent of obtaining employment in the United States for such person. Only persons or entities referring for remuneration (whether on a retainer or contingency basis) are included in the definition, except that union hiring halls that refer union members or nonunion individuals who pay union membership dues are included in the definition whether or not they receive remuneration, as are labor service entities or labor service agencies, whether public, private, for-profit, or nonprofit, that refer, dispatch, or otherwise facilitate the hiring of laborers for any period of time by a third party. As used in this section, the term 'recruit' means the act of soliciting a person who is in the United States, directly or indirectly, and referring the person to another with the intent of obtaining employment for that person. Only persons or entities referring for remuneration (whether on a retainer or contingency basis) are included in the definition, except that union hiring halls that refer union members or nonunion individuals who pay union membership dues are included in this definition whether or not they receive remuneration, as are labor service entities or labor service agencies, whether public, private, for-profit, or nonprofit that recruit, dispatch, or otherwise facilitate the hiring of laborers for any period of time by a third party.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 1 year after the date of the enactment of this Act, except that the amendments made by subsection (a) shall take effect 6 months after the date of the enactment of this Act insofar as such amendments relate to continuation of employment.

SEC. 705. GOOD FAITH DEFENSE.

Section 274A(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)(3)) is amended to read as follows:

"(3) GOOD FAITH DEFENSE.—

"(A) DEFENSE.—An employer (or person or entity that hires, employs, recruits, or refers (as defined in subsection (h)(5)), or is otherwise obligated

to comply with this section) who establishes that it has complied in good faith with the requirements of subsection (b)—

"(i) shall not be liable to a job applicant, an employee, the Federal Government, or a State or local government, under Federal, State, or local criminal or civil law for any employment-related action taken with respect to a job applicant or employee in good-faith reliance on information provided through the system established under subsection (d); and

"(ii) has established compliance with its obligations under subparagraphs (A) and (B) of paragraph (1) and subsection (b) absent a showing by the Secretary of Homeland Security, by clear and convincing evidence, that the employer had knowledge that an employee is an unauthorized alien.

"(B) MITIGATION ELEMENT.—For purposes of subparagraph (A)(i), if an employer proves by a preponderance of the evidence that the employer uses a reasonable, secure, and established technology to authenticate the identity of the new employee, that fact shall be taken into account for purposes of determining good faith use of the system established under subsection (d).

"(C) FAILURE TO SEEK AND OBTAIN VERIFICATION.—Subject to the effective dates and other deadlines applicable under subsection (b), in the case of a person or entity in the United States that hires, or continues to employ, an individual, or recruits or refers an individual for employment, the following requirements apply:

"(i) FAILURE TO SEEK VERIFICATION.—

"(I) IN GENERAL.—If the person or entity has not made an inquiry, under the mechanism established under subsection (d) and in accordance with the timeframes established under subsection (b), seeking verification of the identity and work eligibility of the individual, the defense under subparagraph (A) shall not be considered to apply with respect to any employment, except as provided in subclause (II).

"(II) SPECIAL RULE FOR FAILURE OF VERIFICATION MECHANISM.—If such a person or entity in good faith attempts to make an inquiry in order to qualify for the defense under subparagraph (A) and the verification mechanism has registered that not all inquiries were responded to during the relevant time, the person or entity can make an inquiry until the end of the first subsequent working day in which the verification mechanism registers no nonresponses and qualify for such defense.

"(ii) FAILURE TO OBTAIN VERIFICATION.—If the person or entity has made the inquiry described in clause (i)(I) but has not received an appropriate verification of such identity and work eligibility under such mechanism within the time period specified under subsection (d)(2) after the time the verification inquiry was received, the defense under subparagraph (A) shall not be considered to apply with respect to any employment after the end of such time period.".

SEC. 706. PREEMPTION AND STATES' RIGHTS.

Section 274A(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(2)) is amended to read as follows:

"(2) PREEMPTION.—

"(A) SINGLE, NATIONAL POLICY.—The provisions of this section preempt any State or local law, ordinance, policy, or rule, including any criminal or civil fine or penalty structure, insofar as they may now or hereafter relate to the hiring, continued employment, or status verification for employment eligibility purposes, of unauthorized aliens.

"(B) STATE ENFORCEMENT OF FEDERAL LAW.—

"(i) BUSINESS LICENSING.—A State, locality, municipality, or political subdivision may exercise its authority over business licensing and similar laws as a penalty for failure to use the verification system described in subsection (d) to verify employment eligibility when and as required under subsection (b).

"(ii) GENERAL RULES.—A State, at its own cost, may enforce the provisions of this section, but only insofar as such State follows the Federal regulations implementing this section, applies the Federal penalty structure set out in this section, and complies with all Federal rules and guidance concerning implementation of this section. Such State may collect any fines assessed under this section. An employer may not be subject to enforcement, including audit and investigation, by both a

Federal agency and a State for the same violation under this section. Whichever entity, the Federal agency or the State, is first to initiate the enforcement action, has the right of first refusal to proceed with the enforcement action. The Secretary must provide copies of all guidance, training, and field instructions provided to Federal officials implementing the provisions of this section to each State.".

SEC. 707. REPEAL.

(a) IN GENERAL.—Subtitle A of title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is repealed.

(b) REFERENCES.—Any reference in any Federal law, Executive order, rule, regulation, or delegation of authority, or any document of, or pertaining to, the Department of Homeland Security, Department of Justice, or the Social Security Administration, to the employment eligibility confirmation system established under section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is deemed to refer to the employment eligibility confirmation system established under section 274A(d) of the Immigration and Nationality Act, as amended by section 3 of this Act.

(c) EFFECTIVE DATE.—This section shall take effect on the date that is 30 months after the date of the enactment of this Act.

(d) CLERICAL AMENDMENT.—The table of sections, in section 1(d) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, is amended by striking the items relating to subtitle A of title IV.

SEC. 708. PENALTIES.

Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended—

(1) in subsection (e)(1)—

(A) by striking "Attorney General" each place such term appears and inserting "Secretary of Homeland Security"; and

(B) in subparagraph (D), by striking "Service" and inserting "Department of Homeland Security";

(2) in subsection (e)(4)—

(A) in subparagraph (A), in the matter before clause (i), by inserting ", subject to paragraph (10)," after "in an amount";

(B) in subparagraph (A)(i), by striking "not less than $250 and not more than $2,000" and inserting "not less than $2,500 and not more than $5,000";

(C) in subparagraph (A)(ii), by striking "not less than $2,000 and not more than $5,000" and inserting "not less than $5,000 and not more than $10,000";

(D) in subparagraph (A)(iii), by striking "not less than $3,000 and not more than $10,000" and inserting "not less than $10,000 and not more than $25,000"; and

(E) by moving the margin of the continuation text following subparagraph (B) two ems to the left and by amending subparagraph (B) to read as follows:

"(B) may require the person or entity to take such other remedial action as is appropriate.";

(3) in subsection (e)(5)—

(A) in the paragraph heading, strike "PAPERWORK";

(B) by inserting ", subject to paragraphs (10) through (12)," after "in an amount";

(C) by striking "$100" and inserting "$1,000";

(D) by striking "$1,000" and inserting "$25,000"; and

(E) by adding at the end the following: "Failure by a person or entity to utilize the employment eligibility verification system as required by law, or providing information to the system that the person or entity knows or reasonably believes to be false, shall be treated as a violation of subsection (a)(1)(A).";

(4) by adding at the end of subsection (e) the following:

"(10) EXEMPTION FROM PENALTY FOR GOOD FAITH VIOLATION.—In the case of imposition of a civil penalty under paragraph (4)(A) with respect to a violation of subsection (a)(1)(A) or (a)(2) for hiring or continuation of employment or recruitment or referral by person or entity and in the case of imposition of a civil penalty under paragraph (5) for a violation of subsection (a)(1)(B) for hiring or recruitment or referral by a person or entity, the penalty otherwise imposed may be waived or reduced if the violator establishes that the violator acted in good faith.

"(11) MITIGATION ELEMENT.—For purposes of paragraph (4), the size of the business shall be taken into account when assessing the level of civil money penalty.

"(12) AUTHORITY TO DEBAR EMPLOYERS FOR CERTAIN VIOLATIONS.—

"(A) IN GENERAL.—If a person or entity is determined by the Secretary of Homeland Security to be a repeat violator of paragraph (1)(A) or (2) of subsection (a), or is convicted of a crime under this section, such person or entity may be considered for debarment from the receipt of Federal contracts, grants, or cooperative agreements in accordance with the debarment standards and pursuant to the debarment procedures set forth in the Federal Acquisition Regulation.

"(B) DOES NOT HAVE CONTRACT, GRANT, AGREEMENT.—If the Secretary of Homeland Security or the Attorney General wishes to have a person or entity considered for debarment in accordance with this paragraph, and such a person or entity does not hold a Federal contract, grant, or cooperative agreement, the Secretary or Attorney General shall refer the matter to the Administrator of General Services to determine whether to list the person or entity on the List of Parties Excluded from Federal Procurement, and if so, for what duration and under what scope.

"(C) HAS CONTRACT, GRANT, AGREEMENT.—If the Secretary of Homeland Security or the Attorney General wishes to have a person or entity considered for debarment in accordance with this paragraph, and such person or entity holds a Federal contract, grant, or cooperative agreement, the Secretary or Attorney General shall advise all agencies or departments holding a contract, grant, or cooperative agreement with the person or entity of the Government's interest in having the person or entity considered for debarment, and after soliciting and considering the views of all such agencies and departments, the Secretary or Attorney General may refer the matter to any appropriate lead agency to determine whether to list the person or entity on the List of Parties Excluded from Federal Procurement, and if so, for what duration and under what scope.

"(D) REVIEW.—Any decision to debar a person or entity in accordance with this paragraph shall be reviewable pursuant to part 9.4 of the Federal Acquisition Regulation.

"(13) OFFICE FOR STATE AND LOCAL GOVERNMENT COMPLAINTS.—The Secretary of Homeland Security shall establish an office—

"(A) to which State and local government agencies may submit information indicating potential violations of subsection (a), (b), or (g)(1) that were generated in the normal course of law enforcement or the normal course of other official activities in the State or locality;

"(B) that is required to indicate to the complaining State or local agency within five business days of the filing of such a complaint by identifying whether the Secretary will further investigate the information provided;

"(C) that is required to investigate those complaints filed by State or local government agencies that, on their face, have a substantial probability of validity;

"(D) that is required to notify the complaining State or local agency of the results of any such investigation conducted; and

"(E) that is required to report to the Congress annually the number of complaints received under this paragraph, the States and localities that filed such complaints, and the resolution of the complaints investigated by the Secretary."; and

(5) by amending paragraph (1) of subsection (f) to read as follows:

"(1) CRIMINAL PENALTY.—Any person or entity which engages in a pattern or practice of violations of subsection (a) (1) or (2) shall be fined not more than $5,000 for each unauthorized alien with respect to which such a violation occurs, imprisoned for not more than 18 months, or both, notwithstanding the provisions of any other Federal law relating to fine levels.".

SEC. 709. FRAUD AND MISUSE OF DOCUMENTS.

Section 1546(b) of title 18, United States Code, is amended—

(1) in paragraph (1), by striking "identification document," and inserting "identification document or document meant to establish work authorization (including the documents described in section 274A(b) of the Immigration and Nationality Act),"; and

(2) in paragraph (2), by striking "identification document" and inserting "identification document or document meant to establish work authorization (including the documents described in section 274A(b) of the Immigration and Nationality Act),".

SEC. 710. PROTECTION OF SOCIAL SECURITY ADMINISTRATION PROGRAMS.

(a) FUNDING UNDER AGREEMENT.—Effective for fiscal years beginning on or after October 1, 2023, the Commissioner of Social Security and the Secretary of Homeland Security shall enter into and maintain an agreement which shall—

(1) provide funds to the Commissioner for the full costs of the responsibilities of the Commissioner under section 274A(d) of the Immigration and Nationality Act (8 U.S.C. 1324a(d)), as amended by section 3 of this Act, including (but not limited to)—

(A) acquiring, installing, and maintaining technological equipment and systems necessary for the fulfillment of the responsibilities of the Commissioner under such section 274A(d), but only that portion of such costs that are attributable exclusively to such responsibilities; and

(B) responding to individuals who contest a tentative nonconfirmation provided by the employment eligibility verification system established under such section;

(2) provide such funds annually in advance of the applicable quarter based on estimating methodology agreed to by the Commissioner and the Secretary (except in such instances where the delayed enactment of an annual appropriation may preclude such quarterly payments); and

(3) require an annual accounting and reconciliation of the actual costs incurred and the funds provided under the agreement, which shall be reviewed by the Inspectors General of the Social Security Administration and the Department of Homeland Security.

(b) CONTINUATION OF EMPLOYMENT VERIFICATION IN ABSENCE OF TIMELY AGREEMENT.—In any case in which the agreement required under subsection (a) for any fiscal year beginning on or after October 1, 2023, has not been reached as of October 1 of such fiscal year, the latest agreement between the Commissioner and the Secretary of Homeland Security providing for funding to cover the costs of the responsibilities of the Commissioner under section 274A(d) of the Immigration and Nationality Act (8 U.S.C. 1324a(d)) shall be deemed in effect on an interim basis for such fiscal year until such time as an agreement required under subsection (a) is subsequently reached, except that the terms of such interim agreement shall be modified by the Director of the Office of Management and Budget to adjust for inflation and any increase or decrease in the volume of requests under the employment eligibility verification system. In any case in which an interim agreement applies for any fiscal year under this subsection, the Commissioner and the Secretary shall, not later than October 1 of such fiscal year, notify the Committee on Ways and Means, the Committee on the Judiciary, and the Committee on Appropriations of the House of Representatives and the Committee on Finance, the Committee on the Judiciary, and the Committee on Appropriations of the Senate of the failure to reach the agreement required under subsection (a) for such fiscal year. Until such time as the agreement required under subsection (a) has been reached for such fiscal year, the Commissioner and the Secretary shall, not later than the end of each 90-day period after October 1 of such fiscal year, notify such Committees of the status of negotiations between the Commissioner and the Secretary in order to reach such an agreement.

SEC. 711. FRAUD PREVENTION.

(a) BLOCKING MISUSED SOCIAL SECURITY ACCOUNT NUMBERS.—The Secretary of Homeland Security, in consultation with the Commissioner of Social Security, shall establish a program in which social security account numbers that have been identified to be subject to unusual multiple use in the employment eligibility verification system established under section 274A(d) of the Immigration and Nationality Act (8 U.S.C. 1324a(d)), as amended by section 3 of this Act, or that are otherwise suspected or determined to have been compromised by identity fraud or other misuse, shall be blocked from use for such system purposes unless the individual using such number is able to establish, through secure and fair additional security procedures, that the individual is the legitimate holder of the number.

(b) ALLOWING SUSPENSION OF USE OF CERTAIN SOCIAL SECURITY ACCOUNT NUMBERS.—The Secretary of Homeland Security, in consultation with the Commissioner of Social Security, shall establish a program which shall provide a reliable, secure method by which victims of identity fraud and other individuals may suspend or limit the use of their social security account number or other identifying information for purposes of the employment eligibility verification system established under section 274A(d) of the Immigration and Nationality Act (8 U.S.C. 1324a(d)), as amended by section 3 of this Act. The Secretary may implement the program on a limited pilot program basis before making it fully available to all individuals.

(c) ALLOWING PARENTS TO PREVENT THEFT OF THEIR CHILD'S IDENTITY.—The Secretary of Homeland Security, in consultation with the Commissioner of Social Secu-

rity, shall establish a program which shall provide a reliable, secure method by which parents or legal guardians may suspend or limit the use of the social security account number or other identifying information of a minor under their care for the purposes of the employment eligibility verification system established under 274A(d) of the Immigration and Nationality Act (8 U.S.C. 1324a(d)), as amended by section 3 of this Act. The Secretary may implement the program on a limited pilot program basis before making it fully available to all individuals.

SEC. 712. USE OF EMPLOYMENT ELIGIBILITY VERIFICATION PHOTO TOOL.

An employer who uses the photo matching tool used as part of the E-Verify System shall match the photo tool photograph to both the photograph on the identity or employment eligibility document provided by the employee and to the face of the employee submitting the document for employment verification purposes.

SEC. 713. IDENTITY AUTHENTICATION EMPLOYMENT ELIGIBILITY VERIFICATION PILOT PROGRAMS.

Not later than 24 months after the date of the enactment of this Act, the Secretary of Homeland Security, after consultation with the Commissioner of Social Security and the Director of the National Institute of Standards and Technology, shall establish by regulation not less than 2 Identity Authentication Employment Eligibility Verification pilot programs, each using a separate and distinct technology (the "Authentication Pilots"). The purpose of the Authentication Pilots shall be to provide for identity authentication and employment eligibility verification with respect to enrolled new employees which shall be available to any employer that elects to participate in either of the Authentication Pilots. Any participating employer may cancel the employer's participation in the Authentication Pilot after one year after electing to participate without prejudice to future participation. The Secretary shall report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate the Secretary's findings on the Authentication Pilots, including the authentication technologies chosen, not later than 12 months after commencement of the Authentication Pilots.

SEC. 714. INSPECTOR GENERAL AUDITS.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Inspector General of the Social Security Administration shall complete audits of the following categories in order to uncover evidence of individuals who are not authorized to work in the United States:

(1) Workers who dispute wages reported on their social security account number when they believe someone else has used such number and name to report wages.

(2) Children's social security account numbers used for work purposes.

(3) Employers whose workers present significant numbers of mismatched social security account numbers or names for wage reporting.

(b) SUBMISSION.—The Inspector General of the Social Security Administration shall submit the audits completed under subsection (a) to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate for review of the evidence of individuals who are not authorized to work in the United States. The Chairmen of those Committees shall then determine information to be shared with the Secretary of Homeland Security so that such Secretary can investigate the unauthorized employment demonstrated by such evidence.

SEC. 715. AGRICULTURE WORKFORCE STUDY.

Not later than 36 months after the date of enactment, the Secretary of the Department of Homeland Security, in consultation with the Secretary of the Department of Agriculture, shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, a report that includes the following:

(1) The number of individuals in the agricultural workforce.

(2) The number of U.S. citizens in the agricultural workforce.

(3) The number of aliens in the agricultural workforce who are authorized to work in the United States.

(4) The number of aliens in the agricultural workforce who are not authorized to work in the United States.

(5) Wage growth in each of the previous ten years, disaggregated by agricultural sector.

(6) The percentage of total agricultural industry costs represented by agricultural labor during each of the last ten years.

(7) The percentage of agricultural costs invested in mechanization during each of the last ten years.

(8) Recommendations, other than a path to legal status for aliens not authorized to work in the United States, for ensuring U.S. agricultural employers have a workforce sufficient to cover industry needs, including recommendations to—

(A) increase investments in mechanization;

(B) increase the domestic workforce; and

(C) reform the H-2A program.

SEC. 716. REPEALING REGULATIONS.

The rules relating to "Temporary Agricultural Employment of H-2A Nonimmigrants in the United States" (87 Fed. Reg. 61660 (Oct. 12, 2022)) and to "Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States" (88 Fed. Reg. 12760 (Feb. 28, 2023)) shall have no force or effect, may not be reissued in substantially the same form, and any new rules that are substantially the same as such rules may not be issued.

Purpose and Summary

H.R. 2640, the Border Security and Enforcement Act of 2023, introduced by Rep. Tom McClintock (R–CA), would close loopholes for claims of asylum and withholding of removal, fortify border security by ending the Biden Administration's "catch-and-release" policy, end the illegal use of parole, expand penalties for visa overstayers, reduce incentives for illegal immigration by mandating nationwide E-Verify, and close longstanding loopholes in the processing of both accompanied and unaccompanied alien children.

Background and Need for the Legislation

A. General Background

Since President Biden took office in January 2021, U.S. Customs and Border Protection (CBP) officials have encountered more than 5 million illegal aliens along the southwest border.[1] During December 2022, CBP encountered 251,487 illegal aliens crossing the southwest border—the highest recorded number of encounters in a single month and an average of 8,100 illegal alien encounters per day.[2] This figure eclipses all of the record-high monthly encounter numbers previously set by the Biden Administration.[3] Meanwhile, the Biden Administration has released nearly 2 million illegal aliens encountered along the southwest border into American communities.[4] Additionally, since President Biden took office, more than 1.5 million known illegal alien "gotaways" have successfully crossed the southwest border undetected.[5]

In addition to record numbers of illegal alien encounters at the border, the Biden Administration has created illegal programs to categorically parole hundreds of thousands of additional aliens into

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[1] U.S. Customs and Border Protection, *Southwest Land Border Encounters*, DEP'T OF HOMELAND SECURITY (last accessed Apr. 25, 2023), https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters [hereinafter CBP Southwest Land Border Encounters].

[2] *Id.*

[3] *Id.*

[4] *Texas v. Biden*, Case No: 2:21–cv–00067–Z (N.D. Texas) (Brief For America First Legal Foundation As Amicus Curiae In Support of Respondents, Defendants' Monthly Report For Mar. 2022, Defendants' Monthly Report For April 2022, Defendants' Monthly Report For May 2022, Defendants' Monthly Report For June 2022); MPP Reimplementation Report, July 2022, MPP Reimplementation Report, Aug. 2022, MPP Reimplementation Report, Sept. 2022, MPP Reimplementation Report Oct. 2022, MPP Reimplementation Report Nov. 2022, MPP Reimplementation Report, Dec. 2022, MPP Reimplementation Report, Jan. 2023, MPP Reimplementation Report, Feb. 2023, provided to Committee Staff by U.S. Dep't of Homeland Security.

[5] Neil Munro, *Border Patrol Chief: 1.5 Million 'Gotaway' Migrants During Biden's Term*, BREITBART (Mar. 15, 2023), https://www.breitbart.com/politics/2023/03/15/border-patrol-chief-1-5-million-gotaway-migrants-during-bidens-term/.

the United States. For example, in response to "almost four times as many Venezuelans" attempting to cross the southwest border than the year before, in October 2022, the Department of Homeland Security (DHS) announced the creation of such a program for Venezuelan nationals, which would allow up to 24,000 Venezuelans into the United States.[6] On January 5, 2023, DHS—purportedly in preparation for the end of Title 42—expanded the illegal categorical parole program to Cubans, Haitians, and Nicaraguans, and increased the allowable number to at least 360,000 qualifying nationals each year.[7] On April 26, 2023, DHS announced additional categorical parole programs for nationals of El Salvador, Guatemala, Honduras, and Colombia.[8] These categorical parole programs are a blatant attempt by the Biden Administration to ensure the mass release of aliens into the United States, without the negative publicity associated with videos of aliens rushing across the southwest border illegally.

Because of the Biden Administration's open-borders policies, the immigration court system backlog has grown over 50 percent, from 1.2 million at the end of fiscal year (FY) 2020, to nearly 1.9 million at the end of the first quarter of FY 2023.[9] Many of those are asylum claims that ultimately will be unsuccessful. H.R. 2640 will help end the abuse of U.S. immigration laws by aliens and the Biden Administration alike.

B. Background on Asylum

i. Overview of Asylum

Asylum is a discretionary benefit that ultimately provides permanent residence and the ability to naturalize to aliens who meet the definition of a "refugee" under the Immigration and Nationality Act (INA). "Refugees" are defined as aliens who are unwilling or unable to return to their country of citizenship because of persecution based on race, religion, nationality, membership in a social group, or political opinion.[10] An alien seeking asylum must demonstrate either past persecution or a well-founded fear of future persecution.[11] Under current law, persecution is "a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive."[12] A "well-founded fear" consists of a "reasonable" fear of persecution, rather than a "clear probability" of persecution.[13] Currently, therefore, an alien may receive a discretionary grant of asylum by establishing past persecution or a well-founded fear of future persecution where one of the

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[6] *DHS Announces New Migration Enforcement Process for Venezuelans*, U.S. Dep't of Homeland Security (Oct. 12, 2022), https://www.dhs.gov/news/2022/10/12/dhs-announces-new-migration-enforcement-process-venezuelans (emphasis added).

[7] *DHS Continues to Prepare for End of Title 42; Announces New Border Enforcement Measures and Additional Safe and Orderly Processes*, U.S. Dep't of Homeland Security (Jan. 5, 2023), https://www.dhs.gov/news/2023/01/05/dhs-continues-prepare-end-title-42-announces-new-border-enforcement-measures-and.

[8] *Fact Sheet: U.S. Government Announces Sweeping New Actions to Manage Regional Migration*, U.S. Dep't of Homeland Security (Apr. 27, 2023), https://www.dhs.gov/news/2023/04/27/fact-sheet-us-government-announces-sweeping-new-actions-manage-regional-migration.

[9] Executive Office for Immigration Review, *Adjudication Statistics: Pending Cases, New Cases, and Total Completions*, U.S. Dep't of Justice (last accessed Apr. 16, 2022), https://www.justice.gov/eoir/page/file/1242166/download.

[10] *See* INA § 101(a)(42).

[11] *See Id.*

[12] *Matter of Acosta*, 19 I. & N. Dec. 211, 222 (BIA 1985).

[13] *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987).

five enumerated grounds is at least one central reason for the persecution.

ii. Credible Fear Process

For millions of aliens, the process to remain indefinitely in the United States under the guise of applying for asylum begins at the southwest border through a credible fear interview. Under the INA, certain aliens encountered at the border are subject to expedited removal, in which they are ordered removed from the United States without further review or hearing.[14] That removal provision, however, does not apply to any alien who indicates an intention to apply for asylum or otherwise expresses a fear of persecution.[15] In those cases, an asylum officer conducts a credible fear interview to determine whether "there is a significant possibility" that the alien could establish eligibility for asylum.[16] The Supreme Court has acknowledged that this standard is even lower than the standard for asylum, as "[t]he applicant need not show that he or she is in fact eligible for asylum—a 'credible fear' equates to only a 'significant possibility' that the alien would be eligible."[17] At least one federal district court has quantified this standard, stating that "to prevail at a credible fear interview, the alien need only show a 'significant possibility' of a one in ten chance of persecution, i.e., a fraction of ten percent."[18] The legislative history of the credible fear standard likewise reflects that the standard was meant to be low.[19]

Under the statute, if an asylum officer finds that an alien has established a credible fear of persecution, the alien is then placed in full removal proceedings before an immigration judge.[20] That process can take years. In FY 2022, the average completion time for immigration cases at the immigration court level was more than four years.[21] To make matters worse, the Biden Administration has ignored the requirement to place such aliens in removal proceedings by issuing aliens a Notice to Appear (NTA).[22] Instead, for a period of time, the Biden Administration issued aliens a Notice to Report, with instructions to report to a local Immigration and Customs Enforcement (ICE) office to be served with an NTA.[23] Those offices, however, are backlogged for years, with New York City's ICE office "fully booked through October 2032."[24] Offices in Jacksonville, Florida, were mostly booked through June 2028; in

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[14] *See* INA § 235(b)(1)(A).
[15] *Id.*
[16] *See* INA § 235(b)(1)(B)(v).
[17] *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1965 (2020).
[18] *Grace v. Whitaker*, 344 F. Supp. 3d 96, 127 (D.D.C. 2018) (quoting *Cardoza-Fonseca*, 480 U.S. at 431–32, *aff'd in part, rev'd in part and remanded sub nom. Grace v. Barr*, 965 F.3d 883 (D.C. Cir. 2020)).
[19] *See, e.g.*, 142 Cong. Rec. S11491–02 (statement of former Sen. Orrin Hatch).
[20] *See* INA § 235(b)(1)(B)(ii).
[21] Circumvention of Lawful Pathways, 88 Fed. Reg. 11704, 11716 (proposed Feb. 23, 2023) (to be codified at 8 C.F.R. 208, 1208).
[22] *See* INA § 235(b)(1)(B)(ii); 8 C.F.R. § 1239.1(a) ("Every removal proceeding conducted under [8 U.S.C. § 1229a] to determine the deportability or inadmissibility of an alien is commenced by the filing of a notice to appear with the immigration court.").
[23] *Fla. v. United States*, No. 3:21–CV–1066–TKW–ZCB, 2023 WL 2399883, at *4 (N.D. Fla. Mar. 8, 2023).
[24] Steven Nelson, *NYC ICE office "fully booked" for migrant appointments through late 2032: document*, N.Y. POST (Mar. 13, 2023), https://nypost.com/2023/03/13/nyc-ice-office-fully-booked-for-migrant-appointments-through-late-2032/.

Miami, through January 2028; and in Atlanta, through January 2027.[25]

Consequently, aliens realize that claiming a fear of persecution at the southwest border is their ticket into the United States, and the number of encounters and credible fear claims reflects that reality. The Government Accountability Office (GAO) found that, between FY 2014 and FY 2018, the caseload of U.S. Citizenship and Immigration Services (USCIS) nearly doubled—"from about 56,000 to almost 109,000 referrals for credible and reasonable fear screenings."[26] Meanwhile, asylum officers found that an alien had established a credible fear in 77 percent of all screenings.[27] This number rose to 87 percent at family residential centers.[28]

When combined with a lack of detention and the Biden Administration's clear defiance of the immigration statutes, a low credible fear standard incentives mass illegal immigration into the United States by aliens whose claims most likely will be denied ultimately. For instance, in FY 2022, for asylum cases originating with a credible fear claim at the border, only 13.69 percent of applications were granted; 10.99 percent were denied; 7.71 percent were administratively closed; and 40.23 percent were abandoned, not adjudicated, withdrawn, or "other."[29] Aliens in 27.37 percent of cases originating with a credible fear claim did not even bother filing an asylum application after being placed into full removal proceedings.[30] Between FY 2008 and FY 2022, aliens in 39.36 percent of such cases did not even file an asylum application.[31]

The Biden Administration itself has admitted this loophole is a problem, acknowledging that while "[a] full 83 percent of the people who were subject to [expedited removal] and claimed fear from 2014 to 2019 were referred to an [immigration judge] for [removal] proceedings," only "15 percent of those cases that were completed were granted asylum or some other form of protection."[32]

iii. Frivolity and Fraud in the Asylum Process

Once in immigration proceedings, most asylum applicants present invalid claims based on several situations that the Board of Immigration Appeals (BIA) and federal courts of appeals have repeatedly rejected. For example, many aliens seek asylum due to gang violence occurring in their home countries. According to current case law, however, "asylum is not offered for those who are unfortunate enough to be victims of ordinary crime or generalized chaos."[33] To sufficiently establish persecution, an alien must dem-

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[25] *Id.*

[26] U.S. GOV'T ACCOUNTABILITY OFFICE, GAO–20–250, *Immigration: Actions Needed to Strengthen USCIS's Oversight and Data Quality of Credible and Reasonable Fear Screenings* (Feb. 2020), https://www.gao.gov/assets/gao-20-250.pdf.

[27] *Id.* (During the same time, by contrast, "officers made positive determinations in about 30 percent of *reasonable fear* screenings.") (Emphasis added).

[28] *Id.*

[29] Executive Office for Immigration Review, *Adjudication Statistics: Asylum Decision and Filing Rates in Cases Originating with a Credible Fear Claim*, U.S. DEP'T OF JUSTICE (last accessed Feb. 10, 2023), https://www.justice.gov/eoir/page/file/1062976/download. (These numbers mirrored the overall numbers from 2008 through 2019, with "only 14 percent of aliens who claimed [a] credible fear of persecution or torture [being] granted asylum" during that time). *See also Biden v. Texas*, 554 F. Supp. 3d 818, 831 (S.D. Tex. 2021).

[30] *Id.*

[31] *Id.*

[32] Circumvention of Lawful Pathways, 88 Fed. Reg. 11704 (proposed Feb. 23, 2023) (to be codified at 8 C.F.R. 208, 1208).

[33] *Escobar v. Holder*, 657 F.3d 537, 543 (7th Cir. 2011).

onstrate those actions against him do "not encompass purely private actions." [34] Current law states that "the persecution must be inflicted by the government, or by private actors whom the government is unable or unwilling to control." [35] If a petitioner can "relocate to another part of his country of nationality and it would be reasonable under the circumstances to expect him to do so," he will not receive asylum.[36] Only when the government is "unable or unwilling to control" forces that persecute an alien is affirmative state action unnecessary to establish eligibility for asylum and withholding of removal.[37] This exception does not include a general fear of gang violence.[38]

Aliens also continue to pursue claims for asylum and withholding of removal based on other frequently-rejected circumstances such as gang recruitment;[39] perceptions of wealth or affluence;[40] and additional reasons that are not tied to any protected ground of race, religion, nationality, political opinion, or membership in a particular social group.[41] Aliens also attempt to fit myriad claims into the protected ground of a "particular social group," a phrase which, in 1993, now-Justice Samuel Alito described as "almost completely open-ended."[42] Without addressing these frequent invalid bases for asylum and withholding of removal, certain courts (such as the U.S. Courts of Appeals for the Fourth Circuit and the Ninth Circuit) continue to chip away at precedent and the standards for asylum and withholding of removal.

The overall asylum rates reflect the high number of invalid claims. In FY 2022, for example, the grant rate for asylum applications filed in immigration court was only 14.17 percent.[43] Nearly 17 percent of asylum applications were denied; 12.76 percent of the cases were administratively closed; and 56.3 percent were abandoned, not adjudicated, withdrawn, or "other." [44] The denial rates were even higher in 2019, 2020, and 2021, with 49.55 percent, 54.59 percent, and 30.64 percent of asylum applications denied in

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[34] *Jonaitiene v. Holder*, 660 F.3d 267, 270 (7th Cir. 2011).

[35] *Id.*

[36] *Oryakhil v. Mukasey*, 528 F.3d 993, 998 (7th Cir. 2008).

[37] *See Tesfamichael v. Gonzales*, 469 F.3d 109, 113 (5th Cir. 2006). *See generally Matter of A–B–*, 27 I. & N. Dec. 316 (A.G. 2018).

[38] *See, e.g., Harmon v. Holder*, 758 F.3d 728, 735 (6th Cir. 2014) ("General conditions of rampant violence alone are insufficient to establish eligibility."); *Constanza v. Holder*, 647 F.3d 749, 753 (8th Cir. 2011) (rejecting as too broad the particular social groups of "a family that experienced gang violence" and "persons resistant to gang violence"); *Sicaju-Diaz v. Holder*, 663 F.3d 1, 4 (1st Cir. 2011) (rejecting PSG of "wealthy individuals returning to Guatemala from a lengthy stay in the United States" and stating that, [i]n a poorly policed country, rich and poor are all prey to criminals who care about nothing more than taking it for themselves.").

[39] *See, e.g., Matter of E–A–G–*, 24 I. & N. Dec. 591, 594 (BIA 2008) (rejecting PSG of those opposed to gang recruitment).

[40] *See, e.g., Matter of A–M–E– & J–G–U–*, 24 I. & N. Dec. 69, 76 (BIA 2007) ("The characteristic of wealth or affluence is simply too subjective, inchoate, and variable to provide the sole basis for membership in a particular social group. We therefore find that the respondents have not demonstrated that 'wealthy Guatemalans' constitute a particular social group.").

[41] *See, e.g., Gjetani v. Barr*, 968 F.3d 393, 397 (5th Cir. 2020) ("Courts have condemned all manner of egregious and even violent behavior while concluding they do not amount to persecution."); *Majd v. Gonzales*, 446 F.3d 590, 595 (5th Cir. 2006) (holding that persecution "does not encompass all treatment that our society regards as unfair, unjust, or even unlawful or unconstitutional. If persecution were defined that expansively, a significant percentage of the world's population would qualify for asylum in this country—and it seems most unlikely that Congress intended such a result. Persecution must be extreme conduct to qualify for asylum protection.").

[42] *Fatin v. I.N.S.,* 12 F.3d 1233, 1238 (3rd Cir. 1993).

[43] Executive Office for Immigration Review, *Adjudication Statistics: Asylum Decision Rates,* U.S. DEP'T OF JUSTICE (last accessed Feb. 10, 2023), https://www.justice.gov/eoir/page/file/1248491/download.

[44] *Id.*

each respective year.[45] FY 2022 was the first year that the asylum denial rate dipped below 20 percent since at least FY 2008, with an average denial rate during that time of 30.36 percent.[46] By contrast, the average grant rate during that time was only 23.39 percent.[47]

In addition to suffering under the weight of frivolous claims, the immigration court system is plagued by decades-long fraud. As a 2015 GAO report emphasized, "granting asylum to an individual with a fraudulent claim jeopardizes the integrity of the asylum system by enabling the individual to remain in the United States, apply for certain federal benefits, and pursue a path to citizenship."[48] In 2011, Judge Denise N. Slavin, a former representative of the National Association of Immigration Judges, described fraud in the immigration system as "a huge issue and a major problem."[49] Recent federal prosecutions underscore that such fraud remains endemic 12 years later. For example, in November 2018, a Queens, New York, immigration attorney, was sentenced to five years in prison for submitting "more than 100 [asylum] applications in which she knowingly made false statements and representations about, among other things, the applicants" personal narratives of alleged persecution, criminal histories, and travel histories."[50]

Similarly, in January 2023, two immigration attorneys and their employee pleaded guilty to participating in an asylum fraud scheme.[51] One attorney "advised clients to seek asylum by falsely claiming that they were members of the lesbian, gay, bisexual, transgender, and queer community who suffered persecution in their native countries," despite the attorney fully understanding that the clients "were not members of that community and suffered no such persecution."[52] An employee, meanwhile, "knowingly concocted and drafted clients' fraudulent asylum affidavits so that they could be submitted as part of clients' asylum applications."[53] In April 2021, a federal judge sentenced a man to 20 years and 9 months in prison for posing as an immigration attorney and filing more than 225 fraudulent asylum applications.[54] Despite fraud and abuse in the asylum system, GAO has noted the inherent difficulties in detecting fraud.[55]

The Trump Administration attempted to address fraud and other abuses in the asylum system through regulations. Those actions in-

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[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] U.S. GOV'T ACCOUNTABILITY OFFICE, GAO–16–50, *Asylum: Additional Actions Needed to Assess and Address Fraud Risks* (Dec. 2015), https://www.gao.gov/assets/gao-16-50.pdf.
[49] Sam Dolnick, *Immigrants May be Fed False Stories to Bolster Asylum Pleas,* N.Y. TIMES (Jul. 11, 2011), http://www.nytimes.com/2011/07/12/nyregion/immigrants-may-be-fed-false-stories-to-bolster-asylum-pleas.html?pagewanted=all.
[50] *Queens Immigration Attorney Sentenced to Five Years in Prison for Operating Asylum Fraud Scheme,* U.S. DEP'T OF JUSTICE (May 8, 2019), https://www.justice.gov/usao-sdny/pr/queens-immigration-attorney-sentenced-five-years-prison-operating-asylum-fraud-scheme.
[51] *Attorneys And Associate Of Immigration Law Firm Plead Guilty To Participating In Asylum Fraud Scheme,* U.S. DEP'T OF JUSTICE (Jan. 25, 2023), https://www.justice.gov/usao-sdny/pr/attorneys-and-associate-immigration-law-firm-plead-guilty-participating-asylum-fraud.
[52] *Id.*
[53] *Id.*
[54] *Phony Immigration Attorney Who Filed Hundreds Of Fraudulent Asylum Applications Sentenced To More Than 20 Years In Federal Prison,* U.S. DEP'T OF JUSTICE (Apr. 12, 2021), https://www.justice.gov/usao-mdfl/pr/phony-immigration-attorney-who-filed-hundreds-fraudulent-asylum-applications-sentenced.
[55] U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 48.

cluded providing specificity regarding particular social groups, political opinion, and persecution;[56] adding bars to asylum eligibility;[57] modifying regulations regarding agreements between the United States and other countries that allow aliens to be removed to a third country in which they would not be persecuted;[58] and restricting work authorization eligibility for asylum applicants.[59] These reforms have since been rolled back by the Biden Administration or enjoined by federal courts.

Title I of H.R. 2640 builds off the successes of these previous attempts to address fraud and abuse in the asylum system. By defining commonly used phrases for asylum and withholding of removal, and by heightening the credible fear standard, the bill closes loopholes that allow frivolous claims, thereby preserving asylum and withholding of removal for those truly fleeing persecution. The bill also prevents additional criminal aliens from receiving asylum by expanding the exceptions to asylum eligibility and by applying them to eligibility for employment authorization. Title I also clarifies when employment authorization ends. By requiring aliens to seek protection in countries through which they transited and by defining "firm resettlement," the bill also codifies the BIA's observation that asylum is not meant to provide aliens "with a broader choice of safe homelands, but rather, to protect refugees with nowhere else to turn."[60]

C. Background of Migrant Protection Protocols and Title 42

i. Migrant Protection Protocols under the Trump Administration

In January 2019, the Trump Administration implemented a new program called the Migrant Protection Protocols (MPP), designed to address the increasing number of aliens illegally crossing the border.[61] The program was designed for "certain aliens attempting to enter the U.S. illegally or without documentation, including those who claim asylum . . . ."[62] The Trump Administration explained that those aliens would "no longer be released into the country . . . . Instead, [the] aliens [would] be given a 'Notice to Appear' for their immigration court hearing and [would] be returned to Mexico until their hearing date."[63]

MPP was crafted to discourage aliens from crossing illegally and pursuing frivolous asylum claims. Most aliens pursued these frivolous claims knowing that their cases would take years to adjudicate, and, in the meantime, they would be released into the interior of the U.S., with employment authorization, until their case

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[56] Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 Fed. Reg. 80274 (Dec. 11, 2020). *See generally Matter of A–B–*, 28 I. & N. Dec. 199 (A.G. 2021); *Matter of A–B–*, 27 I. & N. Dec. 316, 320 (A.G. 2018).

[57] Procedures for Asylum and Bars to Asylum Eligibility, 85 Fed. Reg. 67202 (Oct. 21, 2020).

[58] Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act, 84 Fed. Reg. 63994 (Nov. 19, 2019).

[59] Asylum Application, Interview, and Employment Authorization for Applicants, 85 Fed. Reg. 38532 (June 26, 2020).

[60] *Matter of B–R–*, 26 I. & N. Dec. 119, 122 (BIA 2013) (cleaned up); *see Rosenberg v. Yee Chien Woo*, 402 U.S. 49, 57 (1971) (describing that travel to the United States for protection should be "reasonably proximate to the flight" to avoid persecution).

[61] *Migrant Protection Protocols,* U.S. Dep't of Homeland Security (last published Jan. 24, 2019), https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols [hereinafter DHS Migrant Protection Protocols].

[62] *Id.*

[63] *Id.*

was heard and decided. In fact, "most aliens lacked meritorious claims for asylum . . . [with] only 14 percent of aliens who claimed credible fear of persecution or torture [being] granted asylum between FY 2008 and FY 2019."[64] Between May and September 2019, MPP led to a 64 percent decrease in border apprehensions.[65]

ii. Migrant Protection Protocols under the Biden Administration

Following President Biden's inauguration on January 20, 2021, DHS suspended all new enrollments in MPP and began the process of terminating the program.[66] On February 19, 2021, the Biden Administration began processing into the United States all the aliens waiting in Mexico pursuant to MPP.[67] DHS Secretary Alejandro Mayorkas issued a memorandum on June 1, 2021, formally terminating the MPP program.[68] Secretary Mayorkas claimed that "MPP does not adequately or sustainably enhance border management in such a way as to justify the program's extensive operational burdens and other shortfalls."[69]

After the Biden Administration terminated MPP, a federal court enjoined DHS from implementing the Mayorkas memorandum and ordered DHS to enforce and implement MPP in good faith until it had been lawfully rescinded in compliance with the Administrative Procedure Act.[70] The Supreme Court denied the Biden Administration's request to stay the ruling of the lower court,[71] forcing the Administration to restart MPP in compliance with the court order until it could issue a new memorandum addressing the concerns of the court.[72] In the interim, on October 29, 2021, the Secretary Mayorkas issued another MPP termination memo.[73]

In December 2021, the Biden Administration reimplemented MPP, though not in the same manner as the Trump Administration.[74] For instance, only single adults were enrolled in the pro-

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[64] *Biden v. Texas*, 554 F. Supp. 3d 818, 831 (S.D. Tex. 2021).

[65] *Id.* at 833.

[66] *DHS Statement on the Suspension of New Enrollments in the Migrant Protection Protocols Program,* U.S. DEP'T OF HOMELAND SECURITY (Jan. 20, 2021), https://www.dhs.gov/news/2021/01/20/dhs-statement-suspension-new-enrollments-migrant-protection-protocols-program; *See* Robert Barnes, *Biden asks Supreme Court to cancel arguments on two of Trump's immigration priorities,* WASH. POST (Feb. 1, 2021), https://www.washingtonpost.com/politics/courts_law/biden-supreme-court-trump-border-wall-immigration/2021/02/01/07acf182-64d1-11eb-8c64-9595888caa15_story.html.

[67] *The MPP Program and Border Security Joint Statement by Assistant to the President and National Security Advisor Jake Sullivan and Assistant to the President and Homeland Security Advisor Dr. Elizabeth Sherwood-Randall,* THE WHITE HOUSE (Feb. 16, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/16/the-mpp-program-and-border-security-joint-statement-by-assistant-to-the-president-and-national-security-advisor-jake-sullivan-and-assistant-to-the-president-and-homeland-security-advisor-and-deputy-na/.

[68] Alejandro N. Mayorkas, *Memorandum—Termination of Migrant Protection Protocols Program,* U.S. DEP'T OF HOMELAND SECURITY (June 1, 2021), https://www.dhs.gov/sites/default/files/publications/21_0601_termination_of_mpp_program.pdf.

[69] *Id.*

[70] *Texas v. Biden,* Memorandum Opinion and Order, Case No. 2:21-cv-00067-Z (N.D. Tex., Aug.13, 2021), available at https://storage.courtlistener.com/recap/gov.uscourts.txnd.346680/gov.uscourts.txnd.346680.94.0.pdf.

[71] Caroline Simon, *Supreme Court denies Biden's attempt to end 'Remain in Mexico',* ROLL CALL (Aug. 24, 2021), https://rollcall.com/2021/08/24/supreme-court-denies-bidens-attempt-to-end-remain-in-mexico/.

[72] *DHS Announces Intention to Issue New Memo Terminating MPP,* U.S. DEP'T OF HOMELAND SECURITY (Sept. 29, 2021), https://www.dhs.gov/news/2021/09/29/dhs-announces-intention-issue-new-memo-terminating-mpp.

[73] Alejandro N. Mayorkas, *Termination of the Migrant Protection Protocols,* U.S. DEP'T OF HOMELAND SECURITY (Oct. 29, 2021), https://www.dhs.gov/sites/default/files/2022-01/21_1029_mpp-termination-memo.pdf.

[74] Quinn Owen, *Biden administration reimposes 'Remain in Mexico' policy,* ABC NEWS (Jan. 3, 2022), https://abcnews.go.com/Politics/biden-administration-reimposes-remain-mexico-policy/story?id=82059354.

gram. In addition, the Biden Administration exempted from the program individuals who fell into certain categories, including known mental or physical health concerns, youth, old age, pregnancy, and LGBTQ status.[75]

Meanwhile, smuggling cartels and illegal aliens heard the Biden Administration's open-borders message. Since President Biden took office, CBP officials have encountered more than five million illegal aliens along the southwest border.[76] In just the first five months of FY 2023, CBP has encountered more than 1 million illegal aliens at the southwest border.[77] The Biden Administration has rewarded these encounters—while simultaneously incentivizing additional influxes of aliens—by releasing into the United States nearly 2 million illegal aliens who were encountered at the southwest border instead of either detaining them, as the statute mandates, or placing them in MPP.[78]

In June 2022, the Supreme Court upheld the Biden Administration's termination of MPP, though it did not address whether the Biden Administration was violating the mandatory detention provisions in the INA.[79] In dissent, however, Justice Alito was unequivocal: "'Shall be detained' means 'shall be detained.'"[80] In early March 2023, a federal district court agreed with Justice Alito, observing that the Biden Administration's policies were "akin to posting a flashing 'Come In, We're Open' sign on the southern border."[81] The court further concluded that "the dramatic increases in the number of aliens being released at the [s]outhwest [b]order [were] attributable to changes in detention policy, not increases in border traffic."[82]

In stark contrast to the Biden Administration's self-inflicted border crisis, the Trump Administration created MPP to "decrease the number of those taking advantage of the immigration system . . . ."[83] Aliens pursue frivolous asylum claims knowing that their cases will take years to adjudicate. In the meantime, the aliens will be released into the United States, and given employment authorization, until their case is decided.[84] MPP reversed this incentive by requiring certain aliens to wait in Mexico for the pendency of their immigration case.[85] According to Gloria Chavez, chief patrol agent for the Rio Grande Valley Sector and former chief patrol agent for the El Paso sector, MPP succeeded: "During my time in El Paso, we had the Migrant Protection Protocols, and they were

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[75] Calls with Committee Staff.
[76] CBP Southwest Land Border Encounters, *supra* note 1.
[77] *Id.*
[78] *See Texas v. Biden,* Case No: 2:21-cv-00067-Z (N.D. Texas) (Brief For America First Legal Foundation As Amicus Curiae In Support of Respondents, Defendants' Monthly Report For Mar. 2022, Defendants' Monthly Report For April 2022, Defendants' Monthly Report For May 2022, Defendants' Monthly Report For June 2022); MPP Reimplementation Report, July 2022, MPP Reimplementation Report, Aug. 2022, MPP Reimplementation Report, Sept. 2022, MPP Reimplementation Report Oct. 2022, MPP Reimplementation Report Nov. 2022, MPP Reimplementation Report, Dec. 2022, MPP Reimplementation Report, Jan. 2023, MPP Reimplementation Report, Feb. 2023, provided to Committee Staff by U.S. Dep't of Homeland Security.
[79] *Biden v. Texas,* 142 S. Ct. 2528 (2022).
[80] *Id.* At 2554.
[81] *Fla. v. United States,* No. 3:21-CV-1066-TKW-ZCB, 2023 WL 2399883, at *6, *25 (N.D. Fla. Mar. 8, 2023).
[82] *Id.* At *7.
[83] DHS Migrant Protection Protocols, *supra* note 61.
[84] *See Average Time Pending Cases Have Been Waiting in Immigration Courts,* TRAC IMMIGRATION (last accessed Feb. 13, 2023), https://trac.syr.edu/phptools/immigration/court_backlog/apprep_backlog_avgdays.php.
[85] DHS Migrant Protection Protocols, *supra* note 61.

effective. During the years that I was the chief in El Paso, they helped." [86]

iii. Title 42

Title II of H.R. 2640 is also based on the Trump Administration's use of Title 42, the commonly used name for orders issued pursuant to sections 362 and 365 of the Public Health Services Act. During the first weeks of the COVID–19 pandemic, the Centers for Disease Control and Prevention (CDC) relied on its authority under Title 42 to suspend the entry of most individuals into the United States.[87] Title 42 enabled the Trump Administration to immediately expel aliens illegally crossing the border without having to process them under Title 8 of the INA.[88]

Though Title 42 was not designed as an immigration-related authority, the Trump Administration's use of Title 42 expulsion authority successfully deterred illegal aliens from trying to enter the country.[89] The Biden Administration modified the Title 42 order several times to exempt groups of aliens from expulsion. For instance, on February 17, 2021, the Biden Administration carved out an exception for unaccompanied alien children.[90] On May 12, 2021, the Biden Administration carved out a "humanitarian exception." [91] On September 24, 2021, Secretary Mayorkas laid out three broad humanitarian reasons that an individual would not be subject to Title 42 expulsion: (1) acute vulnerability; (2) operational capacity limitations; and (3) the Convention Against Torture.[92] From March 2021 through February 20, 2023, the Biden Administration applied these broad exceptions to 176,362 aliens, with 102,327 such exceptions in just the first five months of FY 2023.[93]

On April 1, 2022, the Biden Administration announced it would end the Title 42 public health declaration effective May 23, 2022.[94] The CDC stated, "[a]fter considering current public health conditions and an increased availability of tools to fight COVID–19 (such as highly effective vaccines and therapeutics), the CDC Director has determined that an Order suspending the right to introduce migrants into the United States is no longer necessary." [95]

Twenty-one states sued the Administration to stop the termination, and the U.S. District Court for the Western District of Lou-

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[86] *On The Front Lines of the Border Crisis: A Hearing with Chief Patrol Agents Before the H. Comm. on Oversight and Accountability,* 118th Cong. (Feb. 7, 2023) (statement of Gloria Chavez, Chief Border Patrol Agent for the Rio Grande Valley Sector).

[87] Order Suspending the Right to Introduce Certain Persons from Countries where a Quarantinable Communicable Disease Exists, 85 Fed. Reg. 65806 (Oct. 13, 2020), https://www.cdc.gov/coronavirus/2019-ncov/order-suspending-introduction-certain-persons.html.

[88] *Id.*

[89] CBP Southwest Land Border Encounters, *supra* note 1.

[90] Notice of Temporary Exception From Expulsion of Unaccompanied Noncitizen Children Pending Forthcoming Public Health Determination, 86 Fed. Reg. 9942 (Feb. 17, 2021), https://www.federalregister.gov/documents/2021/02/17/2021-03227/notice-of-temporary-exception-from-expulsion-of-unaccompanied-noncitizen-children-pending.

[91] *DHS Improves Process for Humanitarian Exceptions to Title 42,* U.S. DEP'T OF HOMELAND SECURITY (May 12, 2021), https://www.dhs.gov/news/2021/05/12/dhs-improves-process-humanitarian-exceptions-title-42.

[92] *Press Briefing by Press Secretary Jen Psaki and Secretary of Homeland Security Alejandro Mayorkas, September 24, 2021,* THE WHITE HOUSE (Sept. 24, 2021), https://www.whitehouse.gov/briefing-room/press-briefings/2021/09/24/press-briefing-by-press-secretary-jen-psaki-and-secretary-of-homeland-security-alejandro-mayorkas-september-24-2021/.

[93] Title 42 Humanitarian Exceptions (on file with Committee Staff).

[94] Adam Shaw, *Biden Administration to lift Title 42 at end of May, despite fears of looming migrant wave*, FOX NEWS (Apr. 1, 2022), https://www.foxnews.com/politics/biden-admin-lift-title-42-end-may-despite-fears-looming-migrant-wave.

[95] Shaw, *supra* note 94.

isiana granted an injunction.[96] However, in separate litigation by open-borders groups, a federal court enjoined the Biden Administration's use of Title 42 expulsion authority, effective December 20, 2022.[97] Denied an opportunity to intervene in the case with the lower court, a group of Republican-led states filed an emergency application for a stay with the Supreme Court, which the Court granted in late 2022.[98] In February 2023, the Biden Administration argued that the ending of the COVID–19 pandemic public health emergency later this year will terminate the Title 42 orders, mooting the case before the Court.[99] On February 16, 2023, the Supreme Court removed the case from its docket.[100] Title 42 is set to end in May 2023.[101]

In March 2023, Border Patrol Chief Raul Ortiz told the House Committee on Homeland Security that DHS did not have operational control of the entire U.S. border.[102] Record high southwest border encounters reflect that reality. In FY 2022, CBP encountered 2,378,944 illegal aliens, the most in a single year.[103] In FY 2021, CBP reported 1,734,686 encounters, the second-most in a single year.[104] In only the first five months of FY 2023, there have been 1,029,953 southwest border encounters.[105]

iv. Border Security under Title II of H.R. 2640

Under the Biden Administration's no-detention policy and refusal to implement MPP, illegal aliens know they can enter the United States and get lost in the backlogged asylum system. Title II of H.R. 2640 reverses the perverse incentives created by the Biden Administration's policies, which entice millions of illegal aliens to flood across the southwest border. Instead of being released *en masse*, rubber-stamped for employment authorization, and receiving a court hearing scheduled for years later, aliens either will be detained, returned to Mexico to await asylum proceedings, or removed to a country in which they do not have a fear of persecution or torture. Title II also gives the DHS Secretary the authority to suspend the entry of certain aliens to regain operational control of the border and allows state attorneys general to sue the federal government for violating its obligations to detain, return, or remove aliens.

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[96] *Louisiana v. Centers for Disease Control and Prevention*, No. 6:22–cv–00885 (W.D. La. Apr. 27, 2022), https://s3.documentcloud.org/documents/22026721/title-42-preliminary-injunction.pdf.

[97] *Huisha-Huisha et. al. v. Mayorkas*, et. al., D.D.C., No. 1:21–cv–00100 (Nov. 15, 2022), https://perma.cc/2W2J-Y79K.

[98] *Arizona v. Mayorkas*, 143 S. Ct. 478 (Dec. 27, 2022).

[99] Myah Ward, *DOJ says end of health emergency will terminate Title 42 policy and moot Supreme Court case*, POLITICO (Feb. 7, 2023, 7:29 P.M.), https://www.politico.com/news/2023/02/07/justice-department-immigration-supreme-court-00081668.

[100] Ariane de Vogue and Devan Cole, *Supreme Court removes oral arguments over Title 42 immigration policy from its calendar*, CNN (Feb. 16, 2023, 2:29 P.M.), https://www.cnn.com/2023/02/16/politics/supreme-court-title-42/index.html.

[101] *Id.*

[102] Adam Shaw, *Border Patrol chief says DHS doesn't have operational control of US border*, FOX NEWS (Mar. 15, 2023, 1:10 P.M.), https://www.foxnews.com/politics/border-patrol-chief-says-dhs-doesnt-have-operational-control-us-border.

[103] CBP Southwest Land Border Encounters, *supra* note 1.

[104] *Id.*

[105] *Id.*

D. Background of the Flores Settlement Agreement and Its Consequences

i. The 1997 Flores Settlement Agreement

In 1997, after several years of class-action litigation in federal court, the Clinton Administration approved the *Flores* settlement agreement that set national policy regarding the detention, release, and treatment of minors in immigration custody.[106] Many of the agreement's terms have been codified.[107] The settlement agreement defines a juvenile as a person under the age of 18 who is not emancipated by a state court or convicted and incarcerated due to a conviction for a criminal offense as an adult.[108] The agreement requires that juveniles be held in the least restrictive setting appropriate to their age and special needs to ensure their protection, wellbeing, and immigration hearing appearance.[109] It also requires that juveniles be released from custody without unnecessary delay to a parent, legal guardian, adult relative, individual specifically designated by the parent, licensed program, or, alternatively, an adult who seeks custody who DHS deems appropriate.[110] The agreement prioritizes release to a parent without regard to whether the parent is in the country unlawfully or had paid to smuggle the minor into the U.S.[111] The agreement also requires the placement of minors in state-licensed facilities, which, due to the absence of family facilities, generally proves difficult for accompanied alien children who are part of a family unit.[112]

ii. Expansion to Accompanied Minors

In 2014, thousands of unaccompanied alien children and families arrived at the southwest border, prompting the Obama Administration to "adopt[ ] a blanket policy to detain all female-headed families, including children, in secure, unlicensed facilities for the duration of the proceedings that determine whether they [were] entitled to remain in the United States."[113] In 2015, a federal judge held that the *Flores* settlement agreement, including its presumption against detention, also applied to minors who crossed the border accompanied by their parents.[114] The U.S. Court of Appeals for the Ninth Circuit stated that the Flores settlement agreement "creates a presumption in favor of releasing minors and requires placement of those not released in licensed, non-secure facilities that meet certain standards."[115] In certain circumstances, however, family units can be detained together for up to 20 days.[116]

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[106] *Flores* Stipulated Settlement Agreement, *Flores v. Reno*, No. CV 85–4544–RJK(Px) (C.D. Cal. Jan. 17, 1997) [hereinafter *Flores* Stipulated Settlement Agreement].

[107] *See* 8 C.F.R. § 236.3.

[108] *Flores* Stipulated Settlement Agreement, *supra* note 106.

[109] *Id.*

[110] *Id.*

[111] *Id.*

[112] *See, e.g.*, Ben Harrington, Cong. Research Serv., R45297, The "*Flores* Settlement" and Alien Families Apprehended at the U.S. Border: Frequently Asked Questions (Sept. 17, 2018), https://crsreports.congress.gov/product/pdf/R/R45297/9.

[113] *Flores v. Johnson*, 212 F. Supp. 3d 864, 869 (C.D. Cal. July 24, 2015). *See generally* Molly Hennessy-Fiske, *More Central Americans fleeing violence to enter U.S., suggesting another major surge*, L.A. Times (Nov. 14, 2015, 3 A.M.), https://www.latimes.com/nation/immigration/la-na-border-stats-20151114-story.html.

[114] *Id* at 871.

[115] *See Flores v. Lynch*, 828 F.3d 898 (9th Cir. 2016).

[116] *See Flores v. Johnson*, 212 F. Supp. 3d at 914 ("At a given time and under extenuating circumstances, if 20 days is as fast as Defendants, in good faith and in the exercise of due diligence, can possibly go in screening family members for reasonable or credible fear, then the re-

iii. Family Detention during the Biden Administration

The Biden Administration, in line with its other policies that completely disregard the enforcement of immigration laws, generally releases family units into the United States.[117] In fact, by December 2021, "ICE stopped housing families entirely."[118] However, according to media reports, with the end of Title 42 imminent, even the Biden Administration considered resuming family detention.[119]

Knowing that the Biden Administration will give them a free pass into the United States, family units continue to arrive at the southwest border in record numbers. During FY 2019, CBP apprehended 473,682 aliens that were part of a family unit.[120] In FY 2020, during the COVID–19 pandemic, CBP encountered 70,944 aliens that were part of a family unit. In FY 2021, that number soared to 479,728; in FY 2022, 560,646; and in the first five months of FY 2023, CBP has already encountered 271,597 aliens that were part of a family unit.[121]

Cartels also take advantage of the Biden Administration's policies related to the mass release of family units. According to a report by the *New York Post*, cartels split up minors from their parents and then have cartel members pose as the minors' relatives to ensure quick entry into the United States.[122]

Title III of H.R. 2640 reduces the incentives that draw families and cartels to the border by eliminating the presumption that accompanied children should not be detained. The bill also promotes family unity by requiring DHS, and not the Justice Department, to maintain custody of parents charged with illegal entry, which ensures that parents and children remain together. By eliminating the state licensure requirement, the bill similarly ensures that parents and their children can be housed in the same facilities.

E. History of Unaccompanied Alien Children Surges at the Southwest Border

i. Unaccompanied Alien Children under Current Law

Under U.S. law, an unaccompanied alien child (UAC) is a child (1) lacking lawful immigration status; (2) who has not yet attained 18 years of age; and (3) who lacks a parent or guardian in the United States and no parent or guardian in the United States is available to provide the child with care and physical custody.[123] When UACs are apprehended, by law they are placed into the custody of the Office of Refugee Resettlement (ORR) within the De-

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cently-implemented DHS polices may fall within the parameters of Paragraph 12A of the Agreement, especially if the brief extension of time will permit the DHS to keep the family unit together.").

[117] Eileen Sullivan and Zolan Kanno-Youngs, *U.S. Is Said to Consider Reinstating Detention of Migrant Families*, N.Y. Times (Mar. 6, 2023), https://www.nytimes.com/2023/03/06/us/politics/biden-immigration-family-detention.html.

[118] U.S. Immigration and Customs Enforcement, *Detention Management*, U.S. Dep't of Homeland Security (last accessed Mar. 21, 2023), https://www.ice.gov/detain/detention-management.

[119] Sullivan and Kanno-Youngs, *supra* note 117.

[120] U.S. Customs and Border Protection, *Southwest Border Migration Fiscal Year 2019*, U.S. Dep't of Homeland Security (last accessed Mar. 17, 2023), https://www.cbp.gov/newsroom/stats/sw-border-migration/fy-2019.

[121] CBP Southwest Land Border Encounters, *supra* note 1.

[122] Gabrielle Fonrouge, *Mexican drug cartels using kids as decoys in to smuggle its members into US: sheriff*, N.Y. Post (Mar. 22, 2021, 12:01 P.M.), https://nypost.com/2021/03/22/mexican-drug-cartels-use-kids-as-decoys-to-smuggle-members-into-us/.

[123] *See* Homeland Security Act of 2002, Pub. L. 107–296, 116 Stat. 2135 (Nov. 25, 2002).

partment of Health and Human Services (HHS), typically shortly after they enter into the United States.[124] The Trafficking Victims Protection Reauthorization Act (TVPRA) requires all federal agencies to transfer these children to HHS within 72 hours of identification.[125]

Under current law, there are different sets of rules for UACs from contiguous countries and those from non-contiguous countries.[126] Minors from contiguous countries (Mexico and Canada) can be immediately returned to their home country if they consent, have not been trafficked, and do not have a credible fear of persecution.[127] However, minors from non-contiguous countries (meaning any country other than Mexico and Canada) must be placed in ORR custody pending lengthy removal proceedings in immigration court.[128] Thus, the TVPRA treats UACs from Mexico and Canada differently than other UACs. After a short stay with ORR, UACs not from Mexico or Canada are generally released into the United States into the custody of a sponsor.[129]

ii. Consequences of the TVPRA

The number of UACs arriving at the southwest border doubled the year following the passage of the 2008 TVPRA.[130] Rather than preventing the smuggling and trafficking of UACs into the United States, this law encouraged it, causing a surge of UACs apprehended at the border. Then, in 2012, President Obama illegally created the Deferred Action for Childhood Arrivals (DACA) program to defer the deportation of illegal alien children.[131] After DACA was announced, the number of UACs arriving at the southwest border again surged and more than doubled by FY 2014.[132]

In contrast, the Trump Administration implemented policies to deter illegal immigration and discourage adults and children alike from taking the perilous journey to the southwest border.[133] These policies ranged from proposing regulations to replace the *Flores* Settlement Agreement, enforcing a "zero-tolerance policy" to prosecute all adults who illegally crossed irrespective of whether crossing as a family unit (and as a result, reclassifying children crossing with a parent in legal proceedings as a UAC) and, in the late days of his presidency, by implementing Title 42 orders.[134] These poli-

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[124] Administration of Children and Families, Office of Refugee Resettlement, *ORR Fact Sheet on Unaccompanied Children's Services*, U.S. DEP'T OF HEALTH AND HUMAN SERVS. (Mar. 2019), https://www.acf.hhs.gov/archive/orr/fact-sheet/orr-fact-sheet-unaccompanied-childrens-services.

[125] 8 U.S.C. § 1232(b)(3).

[126] Homeland Security Act of 2002, *supra* note 123.

[127] *Id.*

[128] *Id.*

[129] Administration of Children and Families, Office of Refugee Resettlement, *Unaccompanied Children Released to Sponsors by State*, U.S. DEP'T OF HEALTH AND HUMAN SERVS. (Apr. 28, 2023), https://www.acf.hhs.gov/orr/grant-funding/unaccompanied-children-released-sponsors-state.

[130] E-mail from William Kandel, Cong. Research Serv., to Committee Staff (Mar. 16, 2023, 12:54 P.M. EST) (on file with Committee) [hereinafter CRS UAC Data].

[131] President Barack Obama, *Remarks by the President on Immigration*, THE WHITE HOUSE (June 15, 2012), https://obamawhitehouse.archives.gov/the-press-office/2012/06/15/remarks-president-immigration.

[132] CRS UAC Data, *supra* note 130.

[133] *President Donald J. Trump is Acting to Enforce the Law, While Keeping Families Together,* THE WHITE HOUSE (June 20, 2018), https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-acting-enforce-law-keeping-families-together/.

[134] *Id.*

cies brought illegal apprehensions at the southwest border to a near standstill.[135]

In early 2021, the Biden Administration exempted UACs from Title 42 expulsion, causing an unprecedented surge of UACs at the southwest border, largely in the Rio Grande Valley Sector.[136] Since President Biden took office, 356,655 UACs have crossed the southwest border and been placed in HHS custody.[137] During FY 2022, CBP encountered 152,057 UACs, the most in a single year and a more than 400 percent increase over the last full FY of the Trump Administration (FY 2020), when there were only 33,239 UACs encountered by CBP.[138]

For almost a decade, Members of Congress have advocated for amending the 2008 TVPRA to stop incentivizing UACs coming to the U.S. illegally. In fact, the Protection of Children Act, which comprises Title IV of H.R. 2640, passed the House of Representatives in August of 2014 [139] as part of H.R. 5230, the supplemental appropriations bill for FY 2014.[140] The Protection of Children Act has been reintroduced each Congress since then and was marked up and reported favorably out of the House Judiciary Committee in the 114th and 115th Congresses. The bill's provisions were also included in the broader immigration packages debated in the 115th Congress, colloquially known as Goodlatte I[141] and II.[142]

Both President Obama and President Biden, as well as the bipartisan Homeland Security Council, have called on Congress to amend the TVPRA, or otherwise expressed support for doing so, to stop the surge of UACs:

- In June 2014, President Obama asked Congress to "provid[e] the DHS Secretary additional authority to exercise discretion in processing the return and removal of unaccompanied minor children from non-contiguous countries like Guatemala, Honduras, and El Salvador." [143]
- In April 2019, the bipartisan Homeland Security Council advised in an emergency recommendation to Congress to "[a]mend the Trafficking Victims Protection Reauthorization Act (TVPRA) to permit repatriation of any child when the custodial parent residing in the country-of-origin requests reunification and return of the child." [144]

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[135] Ana Gonzalez-Barrera, *After surging in 2019, migrant apprehensions at U.S.-Mexico border fell sharply in fiscal 2020*, PEW RESEARCH CENTER (Nov. 4. 2020), https://www.pewresearch.org/short-reads/2020/11/04/after-surging-in-2019-migrant-apprehensions-at-u-s-mexico-border-fell-sharply-in-fiscal-2020-2/.

[136] Priscilla Alvarez, *Biden administration ends Trump-era border policy for unaccompanied migrant children*, CNN (Mar. 12, 2022), https://www.cnn.com/2022/03/12/politics/biden-title-42-immigration-migrant-children/index.html.

[137] U.S. Customs and Border Protection, *Nationwide Encounters,* U.S. DEP'T OF HOMELAND SECURITY (last accessed Mar. 21, 2023), https://www.cbp.gov/newsroom/stats/nationwide-encounters.

[138] CBP Southwest Land Border Encounters, *supra* note 1.

[139] H.R. 5230, 113th Cong. § 101 (2014). On August 1, 2014, the House of Representatives voted 223–189 on passage of H.R. 5230.

[140] *Id*.

[141] H.R. 4760, 115th Cong. (2018).

[142] H.R. 6136, 115th Cong. (2018).

[143] *Letter from the President—Efforts to Address the Humanitarian Situation in the Rio Grande Valley Areas of Our Nation's Southwest Border,* THE WHITE HOUSE (June 30, 2014), https://obamawhitehouse.archives.gov/the-press-office/2014/06/30/letter-president-efforts-address-humanitarian-situation-rio-grande-valley.

[144] Homeland Security Advisory Council, *Final, Emergency Interim Report, CBP Families and Children Care,* U.S. DEP'T OF HOMELAND SECURITY (Apr. 16, 2019), https://www.dhs.gov/sites/default/files/publications/19_0416_hsac-emergency-interim-report.pdf.

- In May 2021, President Biden was asked if a UAC arriving at the southwest border should be allowed to stay or be deported back home to a parent. President Biden replied, "Well, the judgment has to be made whether or not—and in this young man's case, he has a mom at home; there's an overwhelming reason why he'd be put in a plane and flown back to his mom." [145]

iii. Mismanagement of Unaccompanied Alien Children

On February 28, 2023, the *New York Times* published an exposé of President Biden's HHS concerning broad failures to adequately screen sponsors of UACs and monitor them after placement, with HHS Secretary Xavier Becerra comparing the placement process to an assembly line.[146] These failures cause UACs to be exploited and work in extremely dangerous jobs that children are often legally prohibited from performing.[147]

During Secretary Becerra's tenure, HHS "began paring back protections that had been in place for years including some background checks and reviews of children's files" to move them out of the government's custody more quickly.[148] HHS ORR management in July 2021 drafted a memo documenting concerns within the agency, with staff expressing concern that "labor trafficking was increasing" and complaining that the agency had become "one that rewards individuals for making quick releases, and not one that rewards individuals for preventing unsafe releases." [149] In a staff meeting around that time, Secretary Becerra, apparently undeterred by these concerns, said of the UAC placement process: "If Henry Ford had seen this in his plant, he would have never become famous and rich. This is not the way you do an assembly line and kids aren't widgets, I get it. But we can do far better than this." [150]

Secretary Becerra made his demands clear to senior leadership at ORR.[151] Secretary Becerra reportedly told then-ORR Director Cindy Huang that "if she could not increase the number of discharges, he would find someone who could." [152] Huang resigned a month later.[153] According to reporting, a similar threat was made to Huang's successor.[154] Echoing these demands by Becerra, former HHS contractor Kelsey Keswani told the *Times* that "twenty percent of kids have to be released every week or you get dinged." [155]

According to press reports from September 2021, "[r]oughly one-in-three calls made to released migrant kids or their sponsors between January and May went unanswered" and "the data also indi-

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[145] President Joseph Biden, *Remarks of President Joseph Biden,* THE WHITE HOUSE (Mar. 25, 2021), https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/03/25/remarks-by-president-biden-in-press-conference/.

[146] Hannah Dreier, *Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.*, N.Y. TIMES Feb. 28, 2023), https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html.

[147] *Id.*

[148] *Id.*

[149] *Id.*

[150] Hannah Dreier (@hannahdreier), Twitter (Feb 25, 2023, 6:13PM), https://twitter.com/hannahdreier/status/1629620674984648704.

[151] Dreier, *supra* note 146.

[152] *Id.*

[153] *Id.*

[154] *Id.*

[155] *Id.*

cates calls aren't happening with the frequency they should."[156] From President Biden's inauguration through May 2021, HHS discharged 32,000 children and teens—but the government placed fewer than 15,000 follow-up calls.[157] In the last two years, HHS has lost track of more than 85,000 children.[158]

In late 2022, the Senate Committee on Homeland Security and Governmental Affairs issued an oversight report regarding the mismanagement of UACs, which found the following:

- In 2021, HHS weakened its requirements for background checks on potential sponsors and related adults.
- HHS policy does not prohibit the placement of an unaccompanied alien child with a sponsor or other related adult who refuses to submit to a background check.
- HHS places many unaccompanied alien children with sponsors without seeing their living conditions. Between FY 2018 and FY 2022, ORR released 363,124 children to sponsors. Yet, ORR conducted only 24,693 home studies—a mere 6.8 percent of cases.
- DHS refuses to provide HHS ORR with some of the information necessary for vetting sponsors and ensuring the safe placement of children. HHS ORR regularly requests information on potential sponsors from DHS, including concerning individuals who arrive with a child, but DHS in some cases will simply refuse to provide the requested information.
- HHS ORR cannot track children following placement and the agency has failed to implement a mechanism for tracking children after placement with a sponsor.
- HHS ORR's current mechanism for tracking children post placement is making a minimum of three safety and well-being phone calls to the child 30 days after placement and does not require a home visit."[159]

These failures result in UACs being placed in unsafe circumstances. For instance, in December 2022, a federal judge issued a consent order and judgment against a sanitation company for employing migrant minor children to illegally work jobs in slaughterhouses and meatpacking plants in the Midwest.[160] The Department of Labor investigation found that the sanitation company "employed at least 102 children—from 13 to 17 years of age—in hazardous occupations and had them working overnight shifts at 13 meat processing facilities in eight states."[161] The sanitation company was fined the maximum amount under the law, $15,138 per child discovered to be working illegally.[162]

In addition to harming UACs, the Biden Administration's disastrous border policies have had devastating effects on American communities. In 2022, 20-year-old Kayla Hamilton was raped and

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[156] Stef W. Kight, *Exclusive: Government can't reach one-in-three released migrant kids*, AXIOS (Sept. 1, 2021), https://www.axios.com/2021/09/01/migrant-children-biden-administration.

[157] *Id.*

[158] Dreier, *supra* note 146.

[159] STAFF OF S. COMM. ON HOMELAND SECURITY AND GOV. AFFAIRS, 117TH CONG., REP. ON FEDERAL CARE OF UNACCOMPANIED CHILDREN: MINORS REMAIN VULNERABLE TO TRAFFICKING AND ABUSE (Dec. 19, 2022), https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/Federal%20Care%20of%20Unaccompanied%20Alien%20Children%20Report%20(FINAL).pdf.

[160] *More than 100 children illegally employed in hazardous jobs, federal investigation finds; food sanitation contractor pays $1.5M in penalties,* U.S. DEP'T. OF LABOR (Feb. 17, 2023), https://www.dol.gov/newsroom/releases/whd/whd20230217-1.

[161] *Id.*

[162] *Id.*

murdered by one of the unaccompanied alien children who entered the country during the Biden Administration, and of whom Secretary Becerra lost track.[163] The UAC was reportedly a 17-year-old MS–13 gang member.[164]

iv. Abuse and Fraud in the Special Immigrant Juvenile Classification

Alien minors who have been abused, neglected, or abandoned by a parent and who have been declared a dependent by a state court, can be eligible for Special Immigrant Juvenile (SIJ) green cards.[165] UACs use the SIJ process to gain green cards. The 2008 TVPRA expanded the SIJ definition to allow for a juvenile or other state court to consider whether reunification is possible with "one or both" of the child's parents.[166] This overly broad language created an unintended consequence that allows a minor to receive an SIJ green card even if only one of his or her two parents has abused or abandoned them, and even if the minor can still be safely reunited with their other parent.

Practitioners and advocacy groups argue that the plain language of the statutory revision means that family reunification must only be not viable with one parent, even if reunification with the other parent is possible or even if the minor is living with the other parent.[167] This loophole has been exploited and has burdened state courts and U.S. Citizenship and Immigration Services with adjudicating SIJ matters for alien children who are safely living with a parent or guardian.[168] Those resources should be used to focus on the truly deserving alien children who Congress intended to be recipients of SIJ green cards.

SIJ green cards are issued as part of the employment-based fourth preference (EB4) green card category that is reserved for "certain special immigrants."[169] In 1996, the first year for which SIJ statistics are available, the number of SIJ green cards issued was 390.[170] Until 2000, that number never exceeded 500.[171] In

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[163] Jeff Hager, *Police: Teen gang member charged in strangling death of Aberdeen woman with autism*, WMAR2 ABC NEWS BALTIMORE (Jan. 19, 2023), https://www.wmar2news.com/news/local-news/police-teen-gang-member-charged-in-strangling-death-of-aberdeen-woman-with-autism.

[164] *Id.*

[165] 8 U.S.C. § 1101(a)(27)(J).

[166] William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110–457, 122 Stat. 5044 (Dec. 23, 2008).

[167] Immigrant Legal Resource Center, *Special Immigrant Juvenile Status: A Primer for One-Parent Cases* (Mar. 12, 2015), https://www.ilrc.org/resources/special-immigrant-juvenile-status-primer-one-parent-cases.

[168] Melissa Russo, Evan Stulberger, and Fred Mamoun, *I–Team: Family Court Exploited in Immigration Cases in Queens, Insiders Charge*, NEWS 4 NEW YORK NBC (Mar. 4, 2015), https://www.nbcnewyork.com/news/local/family-court-queens-immigration-cases-human-smuggling-green-card/733817/.

[169] U.S. Citizenship and Immigration Servs., *Employment-Based Immigration: Fourth Preference EB–4*, U.S. DEP'T OF HOMELAND SECURITY (last accessed Apr. 14, 2023), https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fourth-preference-eb-4.

[170] Immigration and Naturalization Serv., *1996 Statistical Yearbook of the Immigration Naturalization Service, Table 5. Immigrants Admitted by Region of Birth and Type and Class of Admission Fiscal Year 1996*, U.S. DEP'T OF JUSTICE (Oct. 1997), https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/1996/ins_yearbook_immigration_statistics_1996.pdf.

[171] Immigration and Naturalization Serv., *1996 Statistical Yearbook of the Immigration Naturalization Service, Table 5. Immigrants Admitted by Region of Birth and Type and Class of Admission Fiscal Year 1996*, U.S. DEP'T OF JUSTICE (Oct. 1997); Immigration and Naturalization Serv., *1997 Statistical Yearbook of the Immigration Naturalization Service, Table 5. Immigrants Admitted by Region of Birth and Type and Class of Admission Fiscal Year 1997*, U.S. DEP'T OF JUSTICE (Oct. 1999), https://www.dhs.gov/sites/default/files/publications/Year-

2008, the year of TVPRA's passage, that number ballooned to 1,009.[172] The number of SIJs issued annually has increased since 2008, to 11,409 in 2021.[173] SIJ green cards issued annually are as follows.

TABLE 1.—SPECIAL IMMIGRANT JUVENILE GREEN CARDS BY FISCAL YEAR[174]

2008	1,009
2009	1,157
2010	1,492
2011	1,626
2012	2,280
2013	2,764
2014	3,359
2015	5,194
2016	5,613
2017	4,726
2018	4,547
2019	5,052
2020	5,545
2021	11,409

book_Immigration_Statistics_1997.pdf; Immigration and Naturalization Serv., *1998 Statistical Yearbook of the Immigration Naturalization Service, Table 5. Immigrants Admitted by Region of Birth and Type and Class of Admission Fiscal Year 1998*, U.S. DEP'T OF JUSTICE (Nov. 2000), https://www.dhs.gov/sites/default/files/publications/Yearbook_Immigration_Statistics_1998.pdf; Immigration and Naturalization Serv., *1999 Statistical Yearbook of the Immigration Naturalization Service, Table 5. Immigrants Admitted by Region of Birth and Type and Class of Admission Fiscal Year 1999*, U.S. DEP'T OF JUSTICE (Mar. 2002), https://www.dhs.gov/sites/default/files/publications/Yearbook_Immigration_Statistics_1999.pdf.

[172] Office of Immigration Statistics, *2008 Yearbook of Immigration Statistics, Table 7. Persons Obtaining Legal Permanent Resident Status by Type and Detailed Class of Admission: Fiscal Year 2008*, U.S. DEP'T OF HOMELAND SECURITY (Aug. 2009), https://www.dhs.gov/sites/default/files/publications/Yearbook_Immigration_Statistics_2008.pdf.

[173] Office of Immigration Statistics, *2021 Yearbook of Immigration Statistics, Table 7. Persons Obtaining Legal Permanent Resident Status by Type and Detailed Class of Admission: Fiscal Year 2021*, U.S. DEP'T OF HOMELAND SECURITY (Nov. 2022), https://www.dhs.gov/sites/default/files/2023-03/2022_1114_plcy_yearbook_immigration_statistics_fy2021_v2_1.pdf.

[174] Office of Immigration Statistics, *2008 Yearbook of Immigration Statistics, Table 7. Persons Obtaining Legal Permanent Resident Status by Type and Detailed Class of Admission: Fiscal Year 2008*, U.S. DEP'T OF HOMELAND SECURITY (Aug. 2009), https://www.dhs.gov/sites/default/files/publications/Yearbook_Immigration_Statistics_2008.pdf; Office of Immigration Statistics, *2009 Yearbook of Immigration Statistics, Table 7. Persons Obtaining Legal Permanent Resident Status by Type and Detailed Class of Admission: Fiscal Year 2009*, U.S. DEP'T OF HOMELAND SECURITY (Aug. 2010), https://www.dhs.gov/sites/default/files/publications/ois_yb_2009.pdf; Office of Immigration Statistics, *2010 Yearbook of Immigration Statistics, Table 7. Persons Obtaining Legal Permanent Resident Status by Type and Detailed Class of Admission: Fiscal Year 2010*, U.S. DEP'T OF HOMELAND SECURITY (Aug. 2011), https://www.dhs.gov/sites/default/files/publications/ois_yb_2010.pdf; Office of Immigration Statistics, *2011 Yearbook of Immigration Statistics, Table 7. Persons Obtaining Legal Permanent Resident Status by Type and Detailed Class of Admission: Fiscal Year 2011*, U.S. DEP'T OF HOMELAND SECURITY (Sep. 2012), https://www.dhs.gov/sites/default/files/publications/ois_yb_2011.pdf; Office of Immigration Statistics, *2012 Yearbook of Immigration Statistics, Table 7. Persons Obtaining Legal Permanent Resident Status by Type and Detailed Class of Admission: Fiscal Year 2012*, U.S. DEP'T OF HOMELAND SECURITY (July 2013), https://www.dhs.gov/sites/default/files/publications/Yearbook_Immigration_Statistics_2012.pdf; Office of Immigration Statistics, *2013 Yearbook of Immigration Statistics, Table 7. Persons Obtaining Legal Permanent Resident Status by Type and Detailed Class of Admission: Fiscal Year 2013*, U.S. DEP'T OF HOMELAND SECURITY (Aug. 2014), https://www.dhs.gov/sites/default/files/publications/Yearbook_Immigration_Statistics_2013_0.pdf; Office of Immigration Statistics, *2014 Yearbook of Immigration Statistics, Table 7. Persons Obtaining Legal Permanent Resident Status by Type and Detailed Class of Admission: Fiscal Year 2014*, U.S. DEP'T OF HOMELAND SECURITY (Aug. 2016), https://www.dhs.gov/sites/default/files/publications/DHS%202014%20Yearbook.pdf; Office of Immigration Statistics, *2015 Yearbook of Immigration Statistics, Table 7. Persons Obtaining Legal Permanent Resident Status by Type and Detailed Class of Admission: Fiscal Year 2015*, U.S. DEP'T OF HOMELAND SECURITY (Dec. 2016), https://www.dhs.gov/sites/default/files/publications/Yearbook_Immigration_Statistics_2015.pdf; Office of Immigration Statistics, *2016 Yearbook of Immigration Statistics, Table 7. Persons Obtaining Legal Permanent Resident Status by Type and Detailed Class of Admission: Fiscal Year 2016*, U.S. DEP'T OF HOMELAND SECURITY (Nov. 2017), https://www.dhs.gov/sites/default/files/publications/

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Instances of fraud in the SIJ program are frequent. For instance, a 2015 investigation by News 4 New York, an NBC affiliate, "revealed that family court insiders allege a pattern in Queens in which a federal law intended to protect child victims of abuse or sex trafficking is exploited as a shortcut to legal immigration status." [175] According to News 4:

> Hundreds of young men from the same part of India have told strikingly similar stories in Queens Family Court, the I–Team learned from months of interviews with judges, clerks, lawyers[,] and translators who work the cases. Judges tell the I–Team they fear these undocumented young men are illegally crossing the U.S. border with the knowledge that they can head to family court for help getting special immigration status.
>
> As part of that process, the young men, appearing in court often with older men from the neighborhood petitioning for guardianship, recount tales of abuse they've suffered to judges. If the young men are under age 21, undocumented and unmarried, abused or abandoned by just one parent and say their lives will be better off in the United States, judges, having little recourse to verify their stories, most often approve the guardianship, paving a fast track to green cards for the men under the federal William Wilberforce Trafficking Victims Protection Act.
>
> The number of guardianship cases in Queens went up 75 percent from 2013 to 2014—from 503 such cases to 882—an increase not seen in other boroughs' family courts.
>
> Some insiders alleged the guardians are paid illegally, in some cases by the families of the young men, to perform the role of hospitable caretakers during those hearings.[176]

In one instance, at least 14 different young men with the same name, Amandeep Singh, and from the same region in Punjab, India, appeared in a Queens, New York City family courthouse to seek a determination of their dependency on the state and to ultimately obtain an SIJ.[177] State-level family courts are effectively being used as rubber stamps for these claims, as once a determina-

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2016%20Yearbook%20of%20Immigration%20Statistics.pdf; Office of Immigration Statistics, *2017 Yearbook of Immigration Statistics, Table 7. Persons Obtaining Legal Permanent Resident Status by Type and Detailed Class of Admission: Fiscal Year 2017*, U.S. DEP'T OF HOMELAND SECURITY (July 2019), https://www.dhs.gov/sites/default/files/publications/yearbook_immigration_statistics_2017_0.pdf; Office of Immigration Statistics, *2018 Yearbook of Immigration Statistics, Table 7. Persons Obtaining Legal Permanent Resident Status by Type and Detailed Class of Admission: Fiscal Year 2018*, U.S. DEP'T OF HOMELAND SECURITY (Oct. 2019), https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2018/yearbook_immigration_statistics_2018.pdf; Office of Immigration Statistics, *2019 Yearbook of Immigration Statistics, Table 7. Persons Obtaining Legal Permanent Resident Status by Type and Detailed Class of Admission: Fiscal Year 2019*, U.S. DEP'T OF HOMELAND SECURITY (Sep. 2020), https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2019/yearbook_immigration_statistics_2019.pdf; Office of Immigration Statistics, *2020 Yearbook of Immigration Statistics, Table 7. Persons Obtaining Legal Permanent Resident Status by Type and Detailed Class of Admission: Fiscal Year 2020*, U.S. DEP'T OF HOMELAND SECURITY (Apr. 2022), https://www.dhs.gov/sites/default/files/2022-07/2022_0308_plcy_yearbook_immigration_statistics_fy2020_v2.pdf; Office of Immigration Statistics, *2021 Yearbook of Immigration Statistics, Table 7. Persons Obtaining Legal Permanent Resident Status by Type and Detailed Class of Admission: Fiscal Year 2021*, U.S. DEP'T OF HOMELAND SECURITY (Nov. 2022), https://www.dhs.gov/sites/default/files/2023-03/2022_1114_plcy_yearbook_immigration_statistics_fy2021_v2_1.pdf.

[175] Russo et al., *supra* note 168.

[176] *Id.*

[177] Russo et al., *supra* note 168.

tion is made that the juvenile is dependent on the state, the alien minors can simply apply to adjust their status to that of a lawful permanent resident.[178]

Additionally, because aliens are only eligible for SIJs until age 21, SIJs are often sought at a hurried pace known as "birthday emergencies." [179] These emergency hearings then necessarily delay the marital and custody disputes family courts otherwise hear.[180]

Former and current Members of Congress have expressed concerns about abuse of the SIJ program. As News 4 noted in 2015, then-Representative Peter King stated, "It's a total abuse of the law and it's a scam," and described that the law's intent was to protect alien minors who were victims of trafficking.[181] Then-Judiciary Committee Chairman Bob Goodlatte wrote in 2015 to then-DHS Secretary Jeh Johnson demanding that the Secretary take steps to prevent fraud in the program.[182] Even Senator Chuck Schumer noted, "They're gonna want to know why did such a large number of people from one particular part of the globe get so many of these visas when the visas are usually quite rare." [183]

In addition to fraudsters, criminal gang members have exploited the SIJ program. For example, in 2018 during "Operation Matador," U.S. Immigration and Customs Enforcement arrested 475 criminals involved with the dangerous MS–13 gang.[184] Ninety-nine of those arrested entered the U.S. as UACs and of those, "64 individuals arrested during [the] operation obtained Special Immigrant Juvenile Status (SIJ) after entering the country, all of which were confirmed as MS–13 gang members." [185]

v. Title IV of H.R. 2640 in Practice

Title IV of H.R. 2640 provides long-awaited reforms to UAC procedures. This title ends the disparate treatment of UACs from Mexico and Canada compared to children from the rest of the world. It creates uniform rules for all UACs apprehended at the border, enabling their safe and expeditious return absent indications of trafficking or a credible fear of persecution. Title IV also provides additional safeguards to UACs by mandating that HHS provide DHS with biographical information regarding the sponsors or family members to whom the minors are released. Title IV also clarifies that special immigrant green cards are available only to juveniles who have been lost or abandoned by both parents, reserving this status for the children truly in need of it.

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[178] *Id.*
[179] *Id.*
[180] *Id.*
[181] *Id.*
[182] Letter from Rep. Bob Goodlatte, Chairman, H. Comm. on the Judiciary, to Jeh Johnson, Sec'y, U.S. Dep't of Homeland Security (Mar. 19, 2015), https://judiciary.house.gov/media/press-releases/goodlatte-to-secretary-johnson-changes-needed-to-reduce-fraud-in-immigration.
[183] Russo et al., *supra* note 168.
[184] U.S. Immigration and Customs Enforcement, *Joint Operation nets 24 transnational gang members, 475 total arrests under Operation Matador*, U.S. DEP'T OF HOMELAND SECURITY (March 29, 2018), https://www.ice.gov/news/releases/joint-operation-nets-24-transnational-gang-members-475-total-arrests-under-operation.
[185] *Id.*

F. BACKGROUND OF VISA OVERSTAYS

i. Overview of Visa Overstays

Foreign visitors to the United States must either obtain a nonimmigrant visa to legally visit the United States temporarily or, if they are a resident of one of the forty Visa Waiver Program countries, be authorized to travel to the U.S. through the Electronic System for Travel Authorization (ESTA) for no more than 90 days.[186] The United States welcomes tens of millions of foreigners with nonimmigrant visas to the United States legally each year.[187] Nearly all these visitors depart the United States on time.[188]

Visa overstays refer to foreign nationals who do not depart the United States when required to do so by the terms of their visa. DHS counts visa overstays for both foreign nationals who leave the country after the authorization for them to visit the United States expires (out-of-country visa overstays) and foreign nationals who do not leave the United States (in-country visa overstays).[189]

In FY 2020, more than 46 million foreigners visited the United States and entered through either sea or air ports of entry.[190] According to CBP, more than 584,000 individuals, or 1.27 percent of the total number of visitors arriving at sea and air ports of entry, were suspected in-country overstays in FY 2020.[191]

ICE is the lead agency for identifying, investigating, and removing in-country visa overstays. Other components of DHS tasked with helping prevent visa overstays are CBP and USCIS.

ii. Efforts To Address Visa Overstays and Current Law

Congress and the Executive Branch have worked over the last 20 years to address weaknesses and challenges with visa overstays, given that overstays represent a significant number of illegal aliens inside the United States and that several of the September 11th hijackers overstayed their visas.[192] For instance, Congress mandated the creation and maintenance of a biometric electronic entry/exit system in multiple laws, including the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and the Enhanced Border Security and Visa Entry Reform Act of 2002.[193]

Under current law, there are immigration-related penalties available for the federal government to levy against visa overstayers, but there are no such criminal penalties. These immigration penalties generally apply to all individuals who are unlawfully present

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[186] U.S. Customs and Border Protection, *Visa Waiver Program*, U.S. DEP'T OF HOMELAND SECURITY (last accessed Mar. 21, 2023), https://www.cbp.gov/travel/international-visitors/visa-waiver-program.

[187] Office of Immigration Statistics, *Yearbook of Immigration Statistics 2021, Table 25. Nonimmigrant Admissions by Class of Admission: Fiscal Years 2012 to 2021*, U.S. DEP'T OF HOMELAND SECURITY (Nov. 2022), https://www.dhs.gov/immigration-statistics/yearbook/2021.

[188] U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEP'T OF HOMELAND SECURITY, FISCAL YEAR 2020 ENTRY/EXIT OVERSTAY REPORT (Sept. 30, 2021), https://www.dhs.gov/sites/default/files/2021-12/CBP%20-%20FY%202020%20Entry%20Exit%20Overstay%20Report_0.pdf [hereinafter CBP Fiscal Year 2020 Entry/Exit Overstay Report].

[189] *Id.*

[190] *Id.*

[191] CBP Fiscal Year 2020 Entry/Exit Overstay Report, *supra* note 188.

[192] National Commission on Terrorist Attacks, *Entry of the 9/11 Hijackers into the United States: Staff Statement No. 1.* (Jan. 26, 2004), https://govinfo.library.unt.edu/911/staff_statements/staff_statement_1.pdf.

[193] Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107–173, 116 Stat. 1757 (May 14, 2002).

in the United States and not just visa overstays.[194] Existing penalties include:

- Individuals overstaying their visa by at least 180 days but less than one year can be barred from re-entry to the United States for three years (also known as the 3-year bar).[195]
- Individuals overstaying their visa by one year (continuous) but leaving before being removed can be barred from re-entry to the United States for ten years (also known as the 10-year bar).[196]
- Individuals removed or unlawfully present in the United States for more than one year are permanently barred from re-entry to the United States.[197]

These penalties do not effectively deter visa overstays. Over half a million individuals have overstayed their visas each year from FY 2015 to FY 2020, which is the most recent data available.[198]

iii. Statements in Support of Visa Overstay Reform

For many years, Democrats have minimized the seriousness of massive influxes of illegal immigrants crossing into the United States at our porous southwest border by pointing out that large numbers of illegal immigrants overstay their visas. President Biden has stated the following on his campaign website for president: "It's estimated that nearly half of the undocumented people living in the U.S. today have overstayed a visa, not crossed a border illegally." [199]

In May 2017, Representative Bennie Thompson, Ranking Member of the House Homeland Security, stated his concerns about not enough attention being given to visa overstays:

> [I]t is worth noting this overstay figure far exceeds the approximately 331,000 individuals apprehended entering the United States along the Southern Border over the same time period. President Trump is so busy trying to build his "big, beautiful wall" in a misguided attempt to curb illegal immigration, I am concerned his administration will lose focus on dealing with those who come into the United States on a visa, through the proverbial front door, and remain in this country.[200]

In 2013, Representative Sheila Jackson Lee talked about the importance of dealing with the problem of visa overstays and its relation to overall border security:

> It is important to note that overstays are one of the reasons for many questions on the immigration control system. A small handful of those who overstay their visas may also pose a threat, as I mentioned earlier, as it relates to the 9/11 hijackers . . . America's borders will only be secure when we address not only those who walk through

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[194] 8 U.S.C. § 1182(a)(9).
[195] 8 U.S.C. § 1182(a)(9)(B)(i)(I).
[196] 8 U.S.C. § 1182(a)(9)(B)(i)(II).
[197] 8 U.S.C. § 1182(a)(9)(C)(i)(I).
[198] CBP Fiscal Year 2020 Entry/Exit Overstay Report, *supra* note 188.
[199] *The Biden Plan for Securing Our Values as a Nation of Immigrants*, BIDEN-HARRIS CAMPAIGN (last accessed Mar. 21, 2023), https://joebiden.com/immigration/#.
[200] *Visa Overstays: A Gap in the Nation's Border Security: Hearing Before the Subcomm. on Border and Maritime Security of the H. Comm. on Homeland Security*, 115th Cong. 5 (2017) (statement of Rep. Bennie Thompson, Ranking Member, H. Comm. on Homeland Security).

> the desert to come here but also those who arrived in this country through our front door.[201]

vi. Title V of H.R. 2640 in Practice

Title V of H.R. 2640 addresses these bipartisan concerns and disincentivizes aliens from overstaying their visas by subjecting visa overstayers to a criminal misdemeanor penalty, a criminal fine, and a civil monetary penalty.

G. Background on Immigration Parole

i. History of Parole under Section 212(d) of the Immigration and Nationality Act

In 1952, Congress created the immigration parole authority to allow aliens without legal means to enter the United States a way to do so for a temporary period.[202] Over time, administrations began to abuse parole authority, using it to admit large classes of aliens not otherwise admissible to the United States, for an indefinite period.[203]

In 1996, in response to increasing abuses by the Executive Branch, Congress placed explicit restrictions on the parole authority.[204] Those restrictions—codified in Section 212(d) of the INA—require that parole be used only on a "case-by-case basis for urgent humanitarian reasons or significant public benefit."[205] In 2011, the U.S. Court of Appeals for the Second Circuit in *Cruz-Miguel v. Holder* noted that the clear intent underlying the 1996 change to the parole statute "was animated by concern that parole under [section 212(d)(5)(A)] was being used by the executive to circumvent congressionally established immigration policy."[206]

Administrations continued to abuse parole authority, for instance, in 2014, the Obama Administration created the Central American Minors Program to provide a path into the United States for certain children and certain family members from the northern triangle countries who were not eligible for refugee status.[207] That same year the Obama Administration created the Haitian Family Reunification Parole Program for Haitians nationals with family members inside the United States.[208]

ii. Abuse of Immigration Parole Authority by the Biden Administration

The Biden Administration has abused its immigration parole authority almost from day one, having paroled in over a million aliens

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[201] *Visa Security and Overstays: How Secure is America?: Hearing Before the Subcomm. on Border and Maritime Security of the H. Comm. on Homeland Security*, 113th Cong. 6 (2013) (statement of Rep. Sheila Jackson Lee, Ranking Member, Subcomm. on Border and Maritime Security, H. Comm. on Homeland Security).

[202] Immigration and Nationality Act, Pub. L. 82–414, 66 Stat 163 (June 27, 1952).

[203] Adam Cox and Cristina Rodriguez, *The President and Immigration Law Redux*, 125 Yale L.J. 104, 116–17 (2015).

[204] INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A).

[205] *Id*.

[206] *Cruz-Miguel v. Holder*, 650 F.3d 189, 199 n.15 (2d Cir. 2011); *see* H.R. Rep. No. 104–169, pt. 1, at 140–41 (1996).

[207] U.S. Citizenship and Immigration Servs., *Central American Minors Program*, U.S. Dep't of Homeland Security (last accessed May 1, 2023), https://www.uscis.gov/CAM.

[208] U.S. Citizenship and Servs., *Haitian Family Reunification Parole Program*, U.S. Dep't of Homeland Security (last accessed May 1, 2023), https://www.uscis.gov/humanitarian/humanitarian-parole/the-haitian-family-reunification-parole-hfrp-program.

since then.[209] Despite current law that requires the detention of aliens who illegal cross the border seeking asylum, the Administration began simply releasing those aliens on "Parole+ATD" or "conditional parole."[210]

The Biden Administration has also created several new categorical parole programs. For instance, in late 2022 and early 2023, the Administration created categorical parole programs that allow up to 30,000 aliens per month from Haiti, Venezuela, Nicaragua, and Cuba to enter the U.S. through ports of entry and remain in the U.S.[211] During the month of January 2023, there were 11,637 aliens paroled into the U.S. through the program.[212] Those numbers were 22,755, and 27,783 respectively for February and March 2023.[213] In addition, on April 27, 2023, the Administration announced the creation of parole programs for nationals of El Salvador, Guatemala, Honduras, and Colombia.[214]

On January 24, 2023, in response to the Biden Administration's illegal use of parole authority, 20 Republican-led states sued the Biden Administration to block the categorical parole programs, arguing these programs equate to an illegal abuse of the "case-by-case basis" requirement in the INA and violate notice-and-comment rulemaking requirements under the Administrative Procedure Act.[215] On March 8, 2023, a federal district court in Florida held that the Biden Administration's use of Parole+ATD to release masses of illegal aliens encountered at the southwest border is illegal.[216]

Secretary Mayorkas bragged that bringing illegal aliens into the United States via other routes such as parole is "working" to help secure the border.[217] However, on March 12, 2023, over 1,000 migrants from Venezuela (one of the categorical parole program countries) rushed and nearly breached the El Paso Port of Entry.[218] CBP officials had to close the port to all traffic to restore security. In addition, in late April 2023, nearly 21,000 Venezuelan nationals crossed illegally into the Rio Grande Valley Border Patrol Sector in just 12 days.[219]

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[209] George Fishman, *Parole with Benefits,* CENTER FOR IMMIGRATION STUDIES (Apr. 13, 2023), https://cis.org/Report/Parole-Benefits.

[210] Andrew R. Arthur, *CBP Document Details Mass Release of Illegal Aliens Under Biden,* CENTER FOR IMMIGRATION STUDIES (Sept. 27, 2023), https://cis.org/Arthur/CBP-Document-Details-Mass-Release-Illegal-Aliens-under-Biden.

[211] U.S. Citizenship and Immigration Servs., *Processes for Cubans, Haitians, Nicaraguans, and Venezuelans,* U.S. DEP'T OF HOMELAND SECURITY (last accessed Feb. 16, 2023), https://www.uscis.gov/CHNV.

[212] Information provided by U.S. Dep't of Homeland Security, on file with Committee.

[213] *Id.*

[214] *Fact Sheet: U.S. Government Announces Sweeping New Actions to Manage Regional Migration,* U.S. DEP'T OF STATE (Apr. 27, 2023), https://www.state.gov/u-s-government-announces-sweeping-new-actions-to-manage-regional-migration/.

[215] Camilo Montoya-Galvez, *20 GOP-led states ask federal judge to halt migrant sponsorship program,* CBS NEWS (Jan. 24, 2023, 8:48 P.M.), https://www.cbsnews.com/news/immigration-migrant-sponsorship-lawsuit-republican-states/.

[216] *Florida v. U.S.,* 3:21–cv–1066–TKW–ZCB (N.D. Fla. Mar. 8, 2023).

[217] *Unlawful Southwest Border Crossings Plummet Under New Border Enforcement Measures,* U.S. DEP'T OF HOMELAND SECURITY (Jan. 25, 2023), https://www.dhs.gov/news/2023/01/25/unlawful-southwest-border-crossings-plummet-under-new-border-enforcement-measures.

[218] Greg Wehner, *Border Crisis: Over 1,000 migrants rush bridge linking Mexico to US in El Paso, Texas*, FOX NEWS, (Mar. 12, 2023) https://www.foxnews.com/politics/border-crisis-migrants-rush-bridge-linking-mexico-u-s-el-paso-texas-video.

[219] Bob Price and Randy Clark, *Exclusive: 21K Venezuelan migrants in 12 days crossed border into one Texas sector,* BREITBART (Apr. 30, 2023), https://www.breitbart.com/border/2023/04/30/exclusive-21k-venezuelan-migrants-in-12-days-crossed-border-into-one-texas-sector/.

iii. Title VI of H.R. 2640 in Practice

Title VI of H.R. 2640 returns the parole authority to its historical purpose, limits the Executive's ability to abuse parole to mass release aliens into the United States, and preserves parole for truly deserving circumstances.

H. EMPLOYMENT ELIGIBILITY VERIFICATION

According to the Bureau of Labor Statistics, there are 5.8 million unemployed people in the United States and another 4.9 million more who are not in the labor force but who want a job.[220] Over 350,000 of them are "discouraged workers" who "believed that no jobs were available for them."[221] Meanwhile, millions of illegal aliens are employed in the U.S.[222]

i. Legislation related to Employment Eligibility Verification

In 1986, Congress passed the Immigration Reform and Control Act of 1986 (IRCA), in part to end the job magnet for illegal immigration. Specifically, the bill made it unlawful for employers to knowingly hire or employ aliens who are not eligible to work in the United States.[223] It also required employers to check the identity and work eligibility documents of all new employees.[224]

Under the IRCA, if the identity and work authorization documents provided by an employee to an employer reasonably appear on their face to be genuine, the employer has met their document review obligation.[225] The employer and employee must then fill out the Form I–9 with the employee's identifying information and the employer must attest under penalty of perjury that (1) the employer has "examined the document(s) presented by the . . . employee; (2) the . . . document(s) appear to be genuine and to relate to the employee named; and (3) to the best of the employer's "knowledge the employee is authorized to work in the United States."[226] Certain documents, such as passports and resident alien cards, establish both identity and work eligibility.[227] Others, such as most Social Security cards, establish work eligibility. And still others, such as driver's licenses, establish identity.[228]

If a new hire produces the required documents, the employer is not required to request that they produce additional documents, and the employee is not required to produce additional documents. In fact, an employer's request for more or different documents than are required, or refusal to honor documents that reasonably appear to be genuine, is treated as an "unfair immigration-related employment practice if made for the purpose or with the intent of dis-

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[220] Bureau of Labor Statistics, *The Employment Situation—March* 2023, U.S. DEP'T OF LABOR (Apr. 7, 2023), https://www.bls.gov/news.release/pdf/empsit.pdf.
[221] *Id.*
[222] Jens Manuel Hrogstad, Jeffrey S. Passel, and D'Vera Cohn, *5 Facts About Illegal Immigration in the U.S.,* PEW RESEARCH CENTER (June 12, 2019), https://www.pewresearch.org/short-reads/2019/06/12/5-facts-about-illegal-immigration-in-the-u-s/.
[223] 8 U.S.C. § 1324a.
[224] *Id.*
[225] *Id.*
[226] U.S. Citizenship and Immigration Servs., *Form I–9* at 2, U.S. DEP'T OF HOMELAND SECURITY (Oct. 21, 2019), https://www.uscis.gov/sites/default/files/document/forms/i-9.pdf.
[227] *Id.* at 3.
[228] *Id.*

criminating against an individual because of such individual's national origin or citizenship status." [229]

The easy availability of counterfeit documents has made a mockery of the IRCA. Fake documents are produced by millions and can be obtained cheaply.[230] Thus, the IRCA system both benefits unscrupulous employers who do not mind hiring unlawful aliens but want to show that they have met the legal requirements and harms employers who do not want to hire illegal aliens but have no choice but to accept documents they know have a likelihood of being counterfeit.

In response to the deficiencies of the IRCA, Title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) instituted three voluntary employment eligibility confirmation pilot programs for employers.[231] Under the "basic pilot program," the proffered Social Security Numbers and alien identification numbers of new hires would be checked against Social Security Administration (SSA) and Immigration and Naturalization Service records to help ensure that new hires are genuinely eligible to work.[232] The pilot was available to employers having locations in California, Florida, Illinois, Nebraska, New York, and Texas.

Congress extended the operation of the program in 2002. In 2003, Congress extended its operation through November 2008 and required that it be made available to employers nationwide no later than December 1, 2004.[233] Known since 2007 as E-Verify, the program has been renewed several times and remains operational today.

ii. E-Verify

Nearly 1.1 million employers, representing over 3.1 million worksites, are currently enrolled in E-Verify.[234] In FY 2022, 49 million cases were run through E-Verify.[235] So far in FY 2023, more than 14.5 million cases have been run, and U.S. Citizenship and Immigration Services projects that number will be 50 million by the end of the fiscal year.[236] Employers required to use E-Verify include the Federal government and Legislative Branch,[237] certain federal contractors,[238] and employers of certain immigrant students who study science, technology, engineering, or mathematics while engaged in Optional Practical Training.[239] In addition, some state governments, such as those in Arizona, Alabama, Idaho, Minnesota, and

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[229] 8 U.S.C. § 1324b.

[230] *See, e.g., Benefit and Employment Eligibility Verification: Hearing Before the Subcomm. on Immigration and Claims of the H. Comm. on the Judiciary,* 104th Cong., 1st Sess. (Mar. 30, 1995).

[231] Pub. L. 104–208, 110 Stat. 3009 at Division C § 401 (Sept. 30, 1996).

[232] *Id.* at Division C, § 403.

[233] Basic Pilot Extension Act of 2001, Pub. L. 107–128, 115 Stat. 2407 (Jan. 16, 2002); Basic Pilot Program Extension and Expansion Act of 2003, Pub. L. 108–156, 117 Stat. 1944 (Dec. 3, 2003).

[234] E-Verify, *E-Verify Usage Statistics*, U.S. DEP'T OF HOMELAND SECURITY (last accessed May 2, 2023), https://www.e-verify.gov/about-e-verify/e-verify-data/e-verify-usage-statistics.

[235] *Id.*

[236] *Id.*

[237] Pub. L. 104–208, 110 Stat. 3009 at Division C § 402(C) (Sept. 30, 1996).

[238] Amending Executive Order 12989, as Amended, 73 Fed. Reg. 33285 (June 6, 2008), https://www.govinfo.gov/content/pkg/FR-2008-06-11/pdf/08-1348.pdf.

[239] 8 C.F.R. § 214.2(f)(10)(C)(3).

Georgia, have required certain employers to use E-Verify.[240] USCIS maintains a searchable database of employers who use E-Verify.[241]

USCIS' 2020 Annual Customer Satisfaction Survey (CSI) found E-Verify user satisfaction was 87 out of 100.[242] According to USCIS, the E-Verify CSI "has remained relatively constant over the last seven years."[243]

E-Verify works as follows for the vast majority of users:[244]

- Before beginning to use E-Verify, an employer must enter into a Memorandum of Understanding with DHS and SSA.[245] Under current law, once an applicant has accepted a job offer, the employee presents certain identification and work authorization documents to the employer.[246] The employer, within three business days after the hire, must examine the documents to determine whether they reasonably appear on their face to be genuine and must complete an I–9 form attesting to this examination.[247]
- For employers who use E-Verify, within the same three days, but after the I–9 is completed, the employer must make an E-Verify query.[248] If the new hire claims to be a citizen, the employer will transmit his or her name and Social Security number. If the new hire claims to be a non-citizen, the employer will transmit his or her name, DHS-issued number, and Social Security number.
- The E-Verify confirmation office will compare the name and Social Security number provided against information contained in SSA records and, if necessary, will compare the name and DHS-issued number provided against information contained in DHS records.
- If, in checking the records, the confirmation office ascertains that the new hire is eligible to work, the system will inform the employer and provide a confirmation number.
- If the confirmation office cannot confirm the work eligibility of the new hire, it will inform the employer of a tentative non-confirmation (TNC). The employer will receive a Further Action Notice (FAN), which relays what steps the employer must take next.[249]

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[240] E-Verify, *About E-Verify, History and Milestones*, U.S. DEP'T OF HOMELAND SECURITY (last accessed Mar. 20, 2023), https://www.e-verify.gov/about-e-verify/history-and-milestones [hereinafter E-Verify History and Milestones].

[241] E-Verify, *About E-Verify, How to Find Participating Employers*, U.S. DEP'T OF HOMELAND SECURITY (last accessed Mar. 20, 2023), https://www.e-verify.gov/about-e-verify/e-verify-data/how-to-find-participating-employers.

[242] U.S. Citizenship and Immigration Servs., *Department of Homeland Security U.S. Citizenship and Immigration Services E-Verify Program, 2020 Annual Customer Satisfaction Survey Briefing* at 9, U.S. DEP'T OF HOMELAND SECURITY (Feb. 2021), https://www.e-verify.gov/sites/default/files/everify/data/EVerifyCustomerSatisfactionSurvey2020.pdf.

[243] *Id.* at 10.

[244] *See generally* 8 U.S.C. §§403(a) and 404.

[245] E-Verify, *The Enrollment Process*, U.S. DEP'T OF HOMELAND SECURITY (last accessed Mar. 20, 2023), https://www.e-verify.gov/employers/enrolling-in-e-verify/the-enrollment-process.

[246] 8 U.S.C. §1324a.

[247] U.S. Citizenship and Immigration *Servs, I–9 Central, Completing Section 2, Employer Review and Attestation*, U.S. DEP'T OF HOMELAND SECURITY (last accessed Apr. 27, 2023), https://www.uscis.gov/i-9-central/complete-correct-form-i-9/completing-section-2-employer-review-and-attestation.

[248] E-Verify, *Verification Process*, U.S. DEP'T OF HOMELAND SECURITY (last accessed Mar. 20, 2023), https://www.e-verify.gov/employers/verification-process.

[249] E-Verify, *Tentative Nonconfirmations (Mismatches) Overview*, U.S. DEP'T OF HOMELAND SECURITY (last accessed Mar. 20, 2023), https://www.e-verify.gov/employees/tentative-nonconfirmation-mismatch-overview [hereinafter E-Verify Tentative Nonconfirmations].

- A TNC can occur for a number of reasons, including that the employee did not report a name change to SSA, the employer entered the employee's information into the system incorrectly, the citizenship or immigration status of the employee changed, or the information entered could not be verified.[250]
- Those steps include notifying the employee of the mismatch within 10 days, providing the FAN to the employee, and confirming with the employee that the information the employee provided is correct.[251]
- If the new hire wants to contest a TNC, they must do so within eight federal government workdays of the date on the further action notice.[252] This process, called secondary verification, is an expedited procedure set up to confirm the validity of information contained in the government records and provided by the new hire. Under this process, the new hire contacts or visits SSA and/or contacts DHS to see why the government records disagree with the information the employee provided. If the new hire requests secondary verification, they cannot be fired on the basis of the TNC.[253]
- If the discrepancy can be reconciled within ten days, then confirmation of work eligibility and a confirmation number will be given to the employer by the end of this period.
- If the discrepancy cannot be reconciled within ten days, a final denial of confirmation and a final non-confirmation (FNC) is provided to the employer.[254] The employer then has two options:

(1) The employer can dismiss the new hire as being ineligible to work in the United States; [255] or

(2) The employer can continue to employ the new hire. The employer must notify DHS of this decision. If action is brought by the government, the employer has the burden of proof showing the new hire is eligible to work. If the employer fails to so prove this, the employer will be deemed to have knowingly hired an illegal immigrant.[256]

- If the employee believes that the FNC has been issued in error, DHS and SSA will continue working with the employee to help resolve the situation. In these cases, "the employer or employee can call E-Verify to appeal or request further review" and "the mismatch issue will determine the length of time it takes to resolve the issue." [257]

SSA and DHS are required to safeguard the information provided to them by employers and to limit access to the information

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[250] E-Verify, *E-Verify User Manual, 3.3 Tentative Nonconfirmation (Mismatch)*, U.S. DEP'T OF HOMELAND SECURITY (last accessed Mar. 20, 2023), https://www.e-verify.gov/e-verify-user-manual-30-case-results/33-tentative-nonconfirmation-mismatch [hereinafter E-Verify User Manual Tentative Nonconfirmation].

[251] E-Verify Tentative Nonconfirmations, *supra* note 249.

[252] E-Verify, *Tentative Nonconfirmations (Mismatches), Related FAQs*, U.S. DEP'T OF HOMELAND SECURITY (last accessed Mar. 20, 2023), https://www.e-verify.gov/employers/verification-process/tentative-nonconfirmations-mismatches.

[253] E-Verify User Manual Tentative Nonconfirmation, *supra* note 250.

[254] E-Verify, *E-Verify User Manual, 3.6 Final Nonconfirmation*, U.S. DEP'T OF HOMELAND SECURITY (last accessed Mar. 20, 2023), https://www.e-verify.gov/e-verify-user-manual-30-case-results/36-final-nonconfirmation.

[255] *Id.*

[256] 8 U.S.C. § 1324a, note.

[257] Information provided to Committee Staff by U.S. Citizenship and Immigration Servs.

as appropriate by law.[258] An employer must agree not to use the pilot for pre-employment screening of job applicants or for support of any unlawful employment practice, not to verify selectively, and to ensure that the information it receives from the government is used only to confirm employment eligibility and is not otherwise disseminated.[259]

USCIS continuously adds new features to E-Verify to improve the program's accuracy, effectiveness, and usability. For instance:[260]

- In September 2007, USCIS introduced the photo-matching tool in which USCIS allowed access to the photos from immigrant visas and employment authorization documents for the E-Verify database.[261] Employers can now match the photo in E-Verify to the photo on the identity document presented by the employee.
- In 2009, USCIS incorporated State Department passport data into E-Verify to help reduce the number of mismatches among foreign-born citizens.[262] E-Verify had been criticized because naturalized U.S. citizens had a higher rate of TNC than native-born U.S. citizens.
- In March 2011, USCIS began the Self-Check program, which allows an individual to run an E-Verify query on him or herself to ensure that if they are run through the system, they are correctly confirmed as work authorized.[263]
- In 2011, to ensure the authenticity of a state-issued driver's license or identification card, USCIS began the Records and Information from DMVs for E-Verify (RIDE) program.[264] The verification through RIDE was then superseded in 2019 by an interconnection to the National Law Enforcement Telecommunications System (NLETS) through which E-Verify validates "employee's driver's license data for 41 states, the District of Columbia, and Puerto Rico" during the check process.[265]
- In November 2013, USCIS began the E-Verify fraud alert process through which if an SSN is used in a manner that causes USCIS to suspect fraud (multiple states, multiple industries, etc. at the same period) USCIS locks the SSN for employment eligibility verification purposes.[266] If that SSN is submitted to E-Verify again, the employer will receive a TNC until the original owner of the SSN corrects the issue.
- In October 2014, USCIS and SSA implemented the My E-Verify program which allows an individual to "lock" their SSN so that if it is submitted for work authorization purposes the employer who submitted it receives a TNC.[267] This mechanism

[258] 8 U.S.C. § 1324a, note.
[259] E-Verify, *E-Verify User Manual, 1.5 User Rules and Responsibilities*, U.S. DEP'T OF HOMELAND SECURITY (last accessed Mar. 20, 2023), https://www.e-verify.gov/e-verify-user-manual-10-introduction/15-user-rules-and-responsibilities.
[260] Information provided to Committee Staff by U.S. Citizenship and Immigration Servs.
[261] E-Verify History and Milestones, *supra* note 240.
[262] ANDORRA BRUNO, CONG. RESEARCH SERV., R40446, ELECTRONIC EMPLOYMENT ELIGIBILITY VERIFICATION (June 6, 2018), https://crsreports.congress.gov/product/pdf/R/R40446/13.
[263] E-Verify History and Milestones, *supra* note 240.
[264] *Id.*
[265] *Id.*
[266] E-Verify History and Milestones, *supra* note 240.
[267] *Id.*

helps prevent the unauthorized use of another individual's SSN.

- In February 2016, USCIS made additional enhancements to the system to make E-Verify easier to use on mobile devices.[268]

iii. Accuracy, Efficiency, and Customer Satisfaction with E-Verify

E-Verify's accuracy rate has improved dramatically over the years. As a USCIS official testified at a February 2013 hearing of the Immigration and Border Security Subcommittee, "the rate of [work] authorized employees who need to follow up [undergo secondary verification] with SSA or DHS has declined from 0.7 percent to 0.3 percent when comparing data from similar time periods in 2005 and 2010." [269] This meant that 99.7 percent of work-eligible individuals received an immediate confirmation.

According to FY 2022 performance data, 98.34 percent of E-Verify queries resulted in a confirmation of work eligibility immediately or within 24 hours.[270] The other 1.66 percent of queries include those that resulted in a TNC or FNC for one of several different reasons, including that the individual was not eligible to work, the employee made a mistake in filling out the I–9 form, the employer entered incorrect information into the E-Verify system, or the employee has not updated information (such as a name change after marriage) with SSA. Thus, it is important to understand that a TNC issued to an individual who is work eligible is not necessarily, or even likely, an "error" committed by the government. In fact, only 0.12 percent of cases are individuals who are initially found not to be work authorized, but eventually found to be work authorized.[271]

According to USCIS, of the 1.66 percent of employees who receive initial system mismatches:

- 0.12 percent of employees are confirmed as work authorized after contesting and resolving the mismatch; and
- 1.54 percent of employees are not found work authorized.[272]

Of the 1.54 percent of employees not found to be work authorized:

- 0.43 percent of employees who receive initial mismatches do not contest the mismatch, either because they choose not to or are unaware they can contest. As a result, they are not found work authorized;
- 0.01 percent of employees receive and contest initial mismatches and are not found work authorized; and
- 1.09 percent of employees receive initial mismatches that remain unresolved because employers closed the case ("self-ter-

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[268] *Id.*

[269] *How E-Verify Works and How it Benefits American Employers and Workers: Hearing Before the Subcomm. On Immigration and Border Security of the H. Comm. on the Judiciary,* 113th Cong. 15 (2013) (statement of Soraya Correa, Associate Director, Enterprises Services Directorate, U.S. Citizenship and Immigration Servs.)

[270] E-Verify, *About E-Verify, E-Verify Data, E-Verify Performance*, U.S. DEP'T OF HOMELAND SECURITY (last accessed Mar. 20, 2023), https://www.e-verify.gov/about-e-verify/e-verify-data/e-verify-performance [hereinafter E-Verify Data and Performance].

[271] *Id.*

[272] E-Verify Data and Performance, *supra* note 270.

minated") or because either the employer or employee closed the case ("requiring further action")."[273]

iv. Title VII of H.R. 2640 in Practice

Title VII of H.R. 2640 gives U.S. employers a quick, easy, and accurate electronic means to verify the employment-eligibility of their new hires. It phases-in, in six-month increments beginning with the largest businesses, the requirement that U.S. employers use E-Verify. Title VII also allows employers to use E-Verify prior to hiring an individual to ensure that businesses do not have to invest in an individual who is ultimately not employment eligible. In addition, Title VII improves the E-Verify system with provisions to address identity theft.

Hearings

For the purposes of clause 3(c)(6)(A) of House rule XIII, the following hearings were used to develop H.R. 2640: "The Biden Border Crisis: Part I," a hearing held on February 1, 2023, before the Judiciary Committee. The Committee heard testimony from the following witnesses:

- Brandon Dunn, co-founder, Forever15Project;
- The Honorable Mark J. Dannels, Sheriff, Cochise County, Arizona;
- The Honorable Dale Lynn Carruthers, County Judge, Terrell County, Texas; and
- The Honorable Ricardo Samaniego, County Judge, El Paso County, Texas.

The hearing addressed how President Biden's open-borders policies affect Americans with rising crime, fentanyl-related deaths, and lawlessness at the southwest border and beyond.

The Judiciary Committee also held a hearing in Yuma, Arizona, titled "The Biden Border Crisis: Part II" on February 23, 2023. The Committee heard testimony from the following witnesses:

- Dr. Robert Trenschel, President and CEO, Yuma Regional Medical Center;
- The Honorable Leon Wilmot, Sheriff, Yuma County, Arizona; and
- Jonathan Lines, Supervisor, District 2, Yuma County, Arizona.

The hearing spotlighted how the Biden Administration's refusal to secure the border devastates one of numerous border communities, including by draining the local hospital of resources, plaguing residents with increased crime, and flooding American communities with fentanyl and other illegal drugs.

Committee Consideration

On April 19, 2023, the Committee met in open session and ordered the bill, H.R. 2640, favorably reported with an amendment in the nature of a substitute, by a roll call vote of 23 to 15, a quorum being present.

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[273] *Id.*

Committee Votes

In compliance with clause 3(b) of House rule XIII, the following roll call votes occurred during the Committee's consideration of H.R. 2640:

1. Vote on Amendment #1 to H.R. 2640 ANS, offered by Mr. Nadler, failed 12–18
2. Vote on Amendment #2 to H.R. 2640 ANS, offered by Ms. Lofgren, failed 11–17
3. Vote on Amendment #3 to H.R. 2640 ANS, offered by Mr. Massie, failed 18–18
4. Vote on Amendment #4 to H.R. 2640 ANS, offered by Ms. Lofgren, failed 8–21
5. Vote on Amendment #7 to H.R. 2640 ANS, offered by Ms. Jayapal, failed 12–22
6. Vote on Amendment #9 to H.R. 2640 ANS, offered by Mr. Correa, failed 10–19
7. Vote on Motion to Table the Appealing of the Ruling of the Chair in respect to the germaneness of Amendment #10 to H.R. 2640 ANS offered by Mr. Schiff, passed 17–12
8. Vote on Amendment #11 to H.R. 2640 ANS, offered by Mr. Johnson (GA), failed 10–20
9. Vote on Amendment #12 to H.R. 2640 ANS, offered by Ms. Jackson Lee, failed 13–21
10. Vote on Amendment #13 to H.R. 2640 ANS, offered by Ms. Scanlon, failed 13–23
11. Vote on Amendment #14 to H.R. 2640 ANS, offered by Ms. Scanlon, failed 13–22
12. Vote on Amendment #15 to H.R. 2640 ANS, offered by Ms. Scanlon, failed 12–21
13. Vote on Amendment #16 to H.R. 2640 ANS, offered by Ms. Jackson Lee, failed 12–21
14. Vote on Amendment #17 to H.R. 2640 ANS, offered by Ms. Jackson Lee, failed 12–22
15. Vote on Amendment #18 to H.R. 2640 ANS, offered by Mr. Schiff, failed 13–22
16. Vote on Amendment #19 to H.R. 2640 ANS, offered by Mr. Ivey, failed 14–22
17. Vote on Amendment #20 to H.R. 2640 ANS, offered by Mr. Cicilline, failed 14–21
18. Vote on Amendment #21 to H.R. 2640 ANS, offered by Mr. Cicilline, failed 14–23
19. Vote on Amendment #22 to H.R. 2640 ANS, offered by Ms. Jayapal, failed 13–23
20. Vote on Amendment #24 to H.R. 2640 ANS, offered by Mr. Ivey, failed 14–23
21. Vote on Favorably Reporting H.R. 2640, as amended, passed 23–15

COMMITTEE ON THE JUDICIARY

Date: 4/19/23

118th CONGRESS

25-19

ROLL CALL

Vote on: #1 Nadler Amndt to HR 2640 ANS

Roll Call #: 1

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) *Chairman*		✓		MR. NADLER (NY) *Ranking Member*	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)	✓		
MR. BUCK (CO)		✓		MS. JACKSON LEE (TX)			
MR. GAETZ (FL)				MR. COHEN (TN)	✓		
MR. JOHNSON (LA)		✓		MR. JOHNSON (GA)	✓		
MR. BIGGS (AZ)		✓		MR. SCHIFF (CA)	✓		
MR. McCLINTOCK (CA)		✓		MR. CICILLINE (RI)			
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)			
MR. MASSIE (KY)	✓			MR. LIEU (CA)	✓		
MR. ROY (TX)				MS. JAYAPAL (WA)	✓		
MR. BISHOP (NC)		✓		MR. CORREA (CA)	✓		
MS. SPARTZ (IN)				MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)		✓		MR. NEGUSE (CO)			
MR. BENTZ (OR)		✓		MS. McBATH (GA)	✓		
MR. CLINE (VA)				MS. DEAN (PA)			
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)	✓		
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)			
MR. NEHLS (TX)		✓		MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)			
MR. KILEY (CA)							
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)							
MR. HUNT (TX)		✓					
MR. FRY (SC)		✓					

Roll Call Totals: Ayes: 12 Nays: 18 Present:

Passed: _____ Failed: X

COMMITTEE ON THE JUDICIARY

Date: 4/19/23

118th CONGRESS

25-19

ROLL CALL

Vote on: #2 Lofgren Amndt to HR 2640 ANS

Roll Call #: 2

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) *Chairman*				MR. NADLER (NY) *Ranking Member*	✓		
MR. ISSA (CA)				MS. LOFGREN (CA)	✓		
MR. BUCK (CO)		✓		MS. JACKSON LEE (TX)			
MR. GAETZ (FL)				MR. COHEN (TN)	✓		
MR. JOHNSON (LA)		✓		MR. JOHNSON (GA)	✓		
MR. BIGGS (AZ)		✓		MR. SCHIFF (CA)	✓		
MR. McCLINTOCK (CA)		✓		MR. CICILLINE (RI)	✓		
MR. TIFFANY (WI)				MR. SWALWELL (CA)			
MR. MASSIE (KY)		✓		MR. LIEU (CA)	✓		
MR. ROY (TX)		✓		MS. JAYAPAL (WA)	✓		
MR. BISHOP (NC)		✓		MR. CORREA (CA)			
MS. SPARTZ (IN)		✓		MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)		✓		MR. NEGUSE (CO)			
MR. BENTZ (OR)		✓		MS. McBATH (GA)	✓		
MR. CLINE (VA)		✓		MS. DEAN (PA)			
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)	✓		
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)			
MR. NEHLS (TX)		✓		MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)			
MR. KILEY (CA)							
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)							
MR. HUNT (TX)							
MR. FRY (SC)							

Roll Call Totals: Ayes: 14 Nays: 17 Present:

Passed: _____ Failed: X

COMMITTEE ON THE JUDICIARY

Date: 4/19/23

118th CONGRESS

25-19

ROLL CALL

Vote on: #3 Massie Amndt to HR 2640 ANS, as amended Roll Call #: 3

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) *Chairman*		✓		MR. NADLER (NY) *Ranking Member*	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)	✓		
MR. BUCK (CO)				MS. JACKSON LEE (TX)	✓		
MR. GAETZ (FL)		✓		MR. COHEN (TN)			
MR. JOHNSON (LA)		✓		MR. JOHNSON (GA)	✓		
MR. BIGGS (AZ)		✓		MR. SCHIFF (CA)	✓		
MR. McCLINTOCK (CA)		✓		MR. CICILLINE (RI)	✓		
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)	✓		
MR. MASSIE (KY)	✓			MR. LIEU (CA)	✓		
MR. ROY (TX)		✓		MS. JAYAPAL (WA)	✓		
MR. BISHOP (NC)		✓		MR. CORREA (CA)	✓		
MS. SPARTZ (IN)	✓			MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)		✓		MR. NEGUSE (CO)			
MR. BENTZ (OR)		✓		MS. McBATH (GA)	✓		
MR. CLINE (VA)		✓		MS. DEAN (PA)	✓		
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)	✓		
MR. VAN DREW (NJ)	✓			MS. ROSS (NC)			
MR. NEHLS (TX)		✓		MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)							
MR. HUNT (TX)							
MR. FRY (SC)							

Roll Call Totals: Ayes: 18 Nays: 18 Present:

Passed: _____ Failed: X

COMMITTEE ON THE JUDICIARY

Date: 4/19/23

118th CONGRESS

25-19

ROLL CALL

Vote on: #4 Lofgren Amndt to HR 2640 ANS

Roll Call #: 4

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) *Chairman*		✓		MR. NADLER (NY) *Ranking Member*			
MR. ISSA (CA)		✓		MS. LOFGREN (CA)	✓		
MR. BUCK (CO)				MS. JACKSON LEE (TX)			
MR. GAETZ (FL)		✓		MR. COHEN (TN)			
MR. JOHNSON (LA)		✓		MR. JOHNSON (GA)			
MR. BIGGS (AZ)		✓		MR. SCHIFF (CA)	✓		
MR. McCLINTOCK (CA)		✓		MR. CICILLINE (RI)			
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)	✓		
MR. MASSIE (KY)		✓		MR. LIEU (CA)	✓		
MR. ROY (TX)		✓		MS. JAYAPAL (WA)	✓		
MR. BISHOP (NC)		✓		MR. CORREA (CA)	✓		
MS. SPARTZ (IN)		✓		MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)		✓		MR. NEGUSE (CO)			
MR. BENTZ (OR)		✓		MS. McBATH (GA)			
MR. CLINE (VA)		✓		MS. DEAN (PA)			
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)	✓		
MR. VAN DREW (NJ)				MS. ROSS (NC)			
MR. NEHLS (TX)		✓		MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)			
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)							
MS. LEE (FL)		✓					
MR. HUNT (TX)							
MR. FRY (SC)		✓					

Roll Call Totals: Ayes: 8 Nays: 21 Present:

Passed: Failed: X

COMMITTEE ON THE JUDICIARY

Date: 4/19/23

118th CONGRESS

25-19

ROLL CALL

Vote on: #7 Jayapal Amndt to HR 2690 ANS

Roll Call #: 5

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) *Chairman*		✓		MR. NADLER (NY) *Ranking Member*	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)	✓		
MR. BUCK (CO)				MS. JACKSON LEE (TX)	✓		
MR. GAETZ (FL)				MR. COHEN (TN)			
MR. JOHNSON (LA)		✓		MR. JOHNSON (GA)	✓		
MR. BIGGS (AZ)		✓		MR. SCHIFF (CA)	✓		
MR. McCLINTOCK (CA)		✓		MR. CICILLINE (RI)			
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)			
MR. MASSIE (KY)		✓		MR. LIEU (CA)	✓		
MR. ROY (TX)		✓		MS. JAYAPAL (WA)	✓		
MR. BISHOP (NC)		✓		MR. CORREA (CA)	✓		
MS. SPARTZ (IN)		✓		MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)		✓		MR. NEGUSE (CO)			
MR. BENTZ (OR)		✓		MS. McBATH (GA)	✓		
MR. CLINE (VA)		✓		MS. DEAN (PA)			
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)	✓		
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)			
MR. NEHLS (TX)		✓		MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)		✓					
MR. HUNT (TX)							
MR. FRY (SC)		✓					

Roll Call Totals: Ayes: 12 Nays: 22 Present:

Passed: _____ Failed: X

COMMITTEE ON THE JUDICIARY

Date: 4/19/23

118th CONGRESS

25-19

ROLL CALL

Vote on: #9 Correa Amndt to HR 2640 ANS

Roll Call #: 6

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) *Chairman*		✓		MR. NADLER (NY) *Ranking Member*	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)	✓		
MR. BUCK (CO)				MS. JACKSON LEE (TX)	✓		
MR. GAETZ (FL)		✓		MR. COHEN (TN)			
MR. JOHNSON (LA)		✓		MR. JOHNSON (GA)	✓		
MR. BIGGS (AZ)		✓		MR. SCHIFF (CA)	✓		
MR. McCLINTOCK (CA)		✓		MR. CICILLINE (RI)	✓		
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)			
MR. MASSIE (KY)		✓		MR. LIEU (CA)	✓		
MR. ROY (TX)		✓		MS. JAYAPAL (WA)			
MR. BISHOP (NC)		✓		MR. CORREA (CA)	✓		
MS. SPARTZ (IN)				MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)		✓		MR. NEGUSE (CO)			
MR. BENTZ (OR)		✓		MS. McBATH (GA)	✓		
MR. CLINE (VA)		✓		MS. DEAN (PA)			
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)			
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)			
MR. NEHLS (TX)				MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)			
MR. KILEY (CA)							
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)		✓					
MR. HUNT (TX)							
MR. FRY (SC)							

Roll Call Totals: Ayes: 10 Nays: 17 Present:

Passed: _____ Failed: X

COMMITTEE ON THE JUDICIARY

Date: 4/19/23

118th CONGRESS

25-19

ROLL CALL

Vote on: Motion to table [appealing the Ruling of the Chair RE: Schiff Amndt #10] Roll Call #: 7

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) *Chairman*	✓			MR. NADLER (NY) *Ranking Member*		✓	
MR. ISSA (CA)	✓			MS. LOFGREN (CA)		✓	
MR. BUCK (CO)				MS. JACKSON LEE (TX)		✓	
MR. GAETZ (FL)				MR. COHEN (TN)			
MR. JOHNSON (LA)	✓			MR. JOHNSON (GA)		✓	
MR. BIGGS (AZ)	✓			MR. SCHIFF (CA)		✓	
MR. McCLINTOCK (CA)	✓			MR. CICILLINE (RI)			
MR. TIFFANY (WI)	✓			MR. SWALWELL (CA)			
MR. MASSIE (KY)	✓			MR. LIEU (CA)		✓	
MR. ROY (TX)				MS. JAYAPAL (WA)			
MR. BISHOP (NC)	✓			MR. CORREA (CA)		✓	
MS. SPARTZ (IN)				MS. SCANLON (PA)		✓	
MR. FITZGERALD (WI)	✓			MR. NEGUSE (CO)			
MR. BENTZ (OR)	✓			MS. McBATH (GA)		✓	
MR. CLINE (VA)	✓			MS. DEAN (PA)		✓	
MR. GOODEN (TX)	✓			MS. ESCOBAR (TX)		✓	
MR. VAN DREW (NJ)	✓			MS. ROSS (NC)			
MR. NEHLS (TX)				MS. BUSH (MO)			
MR. MOORE (AL)	✓			MR. IVEY (MD)		✓	
MR. KILEY (CA)							
MS. HAGEMAN (WY)	✓						
MR. MORAN (TX)	✓						
MS. LEE (FL)	✓						
MR. HUNT (TX)							
MR. FRY (SC)							

Roll Call Totals: Ayes: 17 Nays: 12 Present:

Passed: X Failed:

COMMITTEE ON THE JUDICIARY

Date: 4/19/23

118th CONGRESS

25-19

ROLL CALL

Vote on: # 11 Johnson (GA) Amndt to HR 2640 ANS

Roll Call #: 8

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) *Chairman*		✓		MR. NADLER (NY) *Ranking Member*	✓		
MR. ISSA (CA)				MS. LOFGREN (CA)			
MR. BUCK (CO)				MS. JACKSON LEE (TX)	✓		
MR. GAETZ (FL)		✓		MR. COHEN (TN)			
MR. JOHNSON (LA)		✓		MR. JOHNSON (GA)	✓		
MR. BIGGS (AZ)		✓		MR. SCHIFF (CA)	✓		
MR. McCLINTOCK (CA)		✓		MR. CICILLINE (RI)			
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)			
MR. MASSIE (KY)				MR. LIEU (CA)			
MR. ROY (TX)		✓		MS. JAYAPAL (WA)	✓		
MR. BISHOP (NC)				MR. CORREA (CA)	✓		
MS. SPARTZ (IN)		✓		MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)		✓		MR. NEGUSE (CO)			
MR. BENTZ (OR)		✓		MS. McBATH (GA)	✓		
MR. CLINE (VA)		✓		MS. DEAN (PA)	✓		
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)	✓		
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)			
MR. NEHLS (TX)		✓		MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)			
MR. KILEY (CA)							
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)		✓					
MR. HUNT (TX)		✓					
MR. FRY (SC)		✓					

Roll Call Totals: Ayes: 10 Nays: 20 Present: X

Passed: _____ Failed: _____

COMMITTEE ON THE JUDICIARY

Date: 4/19/23

118th CONGRESS

25-19

ROLL CALL

Vote on: #12 Jackson Lee Amendment to HR 2640 ANS Roll Call #: 9

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) *Chairman*		✓		MR. NADLER (NY) *Ranking Member*	✓		
MR. ISSA (CA)				MS. LOFGREN (CA)	✓		
MR. BUCK (CO)				MS. JACKSON LEE (TX)	✓		
MR. GAETZ (FL)		✓		MR. COHEN (TN)			
MR. JOHNSON (LA)		✓		MR. JOHNSON (GA)	✓		
MR. BIGGS (AZ)		✓		MR. SCHIFF (CA)	✓		
MR. McCLINTOCK (CA)		✓		MR. CICILLINE (RI)	✓		
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)			
MR. MASSIE (KY)		✓		MR. LIEU (CA)			
MR. ROY (TX)		✓		MS. JAYAPAL (WA)	✓		
MR. BISHOP (NC)				MR. CORREA (CA)	✓		
MS. SPARTZ (IN)		✓		MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)		✓		MR. NEGUSE (CO)			
MR. BENTZ (OR)		✓		MS. McBATH (GA)	✓		
MR. CLINE (VA)		✓		MS. DEAN (PA)	✓		
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)	✓		
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)			
MR. NEHLS (TX)		✓		MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)							
MR. MORAN (TX)		✓					
MS. LEE (FL)		✓					
MR. HUNT (TX)		✓					
MR. FRY (SC)		✓					

Roll Call Totals: Ayes: 13 Nays: 21 Present:

Passed: _____ Failed: X

COMMITTEE ON THE JUDICIARY

Date: 9/19/23

118th CONGRESS

25-19

ROLL CALL

Vote on: #13 Scanlon Amndt to HR 2040 ANS

Roll Call #: 10

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) *Chairman*		✓		MR. NADLER (NY) *Ranking Member*	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)	✓		
MR. BUCK (CO)				MS. JACKSON LEE (TX)	✓		
MR. GAETZ (FL)		✓		MR. COHEN (TN)			
MR. JOHNSON (LA)		✓		MR. JOHNSON (GA)	✓		
MR. BIGGS (AZ)		✓		MR. SCHIFF (CA)	✓		
MR. McCLINTOCK (CA)		✓		MR. CICILLINE (RI)	✓		
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)			
MR. MASSIE (KY)		✓		MR. LIEU (CA)			
MR. ROY (TX)		✓		MS. JAYAPAL (WA)	✓		
MR. BISHOP (NC)				MR. CORREA (CA)	✓		
MS. SPARTZ (IN)		✓		MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)		✓		MR. NEGUSE (CO)			
MR. BENTZ (OR)		✓		MS. McBATH (GA)	✓		
MR. CLINE (VA)		✓		MS. DEAN (PA)	✓		
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)	✓		
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)			
MR. NEHLS (TX)		✓		MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)		✓					
MR. HUNT (TX)		✓					
MR. FRY (SC)		✓					

Roll Call Totals: Ayes: 13 Nays: 23 Present:

Passed: _____ Failed: X

COMMITTEE ON THE JUDICIARY

Date: 4/19/23

118th CONGRESS

25-19

ROLL CALL

Vote on: #14 Scanlon Amndt to HR 2640 ANS

Roll Call #: 11

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) *Chairman*		✓		MR. NADLER (NY) *Ranking Member*	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)	✓		
MR. BUCK (CO)				MS. JACKSON LEE (TX)	✓		
MR. GAETZ (FL)		✓		MR. COHEN (TN)			
MR. JOHNSON (LA)		✓		MR. JOHNSON (GA)	✓		
MR. BIGGS (AZ)		✓		MR. SCHIFF (CA)	✓		
MR. McCLINTOCK (CA)		✓		MR. CICILLINE (RI)	✓		
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)			
MR. MASSIE (KY)		✓		MR. LIEU (CA)			
MR. ROY (TX)		✓		MS. JAYAPAL (WA)	✓		
MR. BISHOP (NC)				MR. CORREA (CA)	✓		
MS. SPARTZ (IN)		✓		MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)		✓		MR. NEGUSE (CO)			
MR. BENTZ (OR)		✓		MS. McBATH (GA)	✓		
MR. CLINE (VA)		✓		MS. DEAN (PA)	✓		
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)	✓		
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)			
MR. NEHLS (TX)		✓		MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)		✓					
MR. HUNT (TX)							
MR. FRY (SC)		✓					

Roll Call Totals: Ayes: 13 Nays: 22 Present: X

Passed: _____ Failed: _____

COMMITTEE ON THE JUDICIARY

118th CONGRESS

25-19

ROLL CALL

Date: 4/19/23

Vote on: #15 Scanlon Amndt to HR 2090ANS

Roll Call #: 12

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) *Chairman*		✓		MR. NADLER (NY) *Ranking Member*	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)	✓		
MR. BUCK (CO)				MS. JACKSON LEE (TX)	✓		
MR. GAETZ (FL)				MR. COHEN (TN)			
MR. JOHNSON (LA)		✓		MR. JOHNSON (GA)			
MR. BIGGS (AZ)		✓		MR. SCHIFF (CA)	✓		
MR. McCLINTOCK (CA)		✓		MR. CICILLINE (RI)	✓		
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)			
MR. MASSIE (KY)		✓		MR. LIEU (CA)			
MR. ROY (TX)		✓		MS. JAYAPAL (WA)	✓		
MR. BISHOP (NC)				MR. CORREA (CA)	✓		
MS. SPARTZ (IN)		✓		MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)		✓		MR. NEGUSE (CO)			
MR. BENTZ (OR)		✓		MS. McBATH (GA)	✓		
MR. CLINE (VA)		✓		MS. DEAN (PA)	✓		
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)	✓		
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)			
MR. NEHLS (TX)		✓		MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)		✓					
MR. HUNT (TX)							
MR. FRY (SC)		✓					

Roll Call Totals: Ayes: 12 Nays: 21 Present:

Passed: _____ Failed: X

COMMITTEE ON THE JUDICIARY

Date: 4/19/23

118th CONGRESS

25-19

ROLL CALL

Vote on: #10 Jackson Lee Amndt to HR 2670 ANS

Roll Call #: 13

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) *Chairman*		✓		MR. NADLER (NY) *Ranking Member*	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)	✓		
MR. BUCK (CO)				MS. JACKSON LEE (TX)	✓		
MR. GAETZ (FL)		✓		MR. COHEN (TN)			
MR. JOHNSON (LA)		✓		MR. JOHNSON (GA)			
MR. BIGGS (AZ)		✓		MR. SCHIFF (CA)	✓		
MR. McCLINTOCK (CA)		✓		MR. CICILLINE (RI)	✓		
MR. TIFFANY (WI)				MR. SWALWELL (CA)			
MR. MASSIE (KY)		✓		MR. LIEU (CA)			
MR. ROY (TX)		✓		MS. JAYAPAL (WA)	✓		
MR. BISHOP (NC)				MR. CORREA (CA)	✓		
MS. SPARTZ (IN)		✓		MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)		✓		MR. NEGUSE (CO)			
MR. BENTZ (OR)		✓		MS. McBATH (GA)	✓		
MR. CLINE (VA)		✓		MS. DEAN (PA)	✓		
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)	✓		
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)			
MR. NEHLS (TX)		✓		MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)		✓					
MR. HUNT (TX)							
MR. FRY (SC)		✓					

Roll Call Totals: Ayes: 12 Nays: 21 Present:

Passed: _____ Failed: X

COMMITTEE ON THE JUDICIARY

Date: 4/19/23

118th CONGRESS

25-19

ROLL CALL

Vote on: #17 JacksonLee Amndt to HR 2640 INS

Roll Call #: 14

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) *Chairman*		✓		MR. NADLER (NY) *Ranking Member*	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)	✓		
MR. BUCK (CO)				MS. JACKSON LEE (TX)	✓		
MR. GAETZ (FL)		✓		MR. COHEN (TN)			
MR. JOHNSON (LA)		✓		MR. JOHNSON (GA)			
MR. BIGGS (AZ)		✓		MR. SCHIFF (CA)	✓		
MR. McCLINTOCK (CA)		✓		MR. CICILLINE (RI)	✓		
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)			
MR. MASSIE (KY)		✓		MR. LIEU (CA)			
MR. ROY (TX)		✓		MS. JAYAPAL (WA)	✓		
MR. BISHOP (NC)				MR. CORREA (CA)	✓		
MS. SPARTZ (IN)		✓		MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)		✓		MR. NEGUSE (CO)			
MR. BENTZ (OR)		✓		MS. McBATH (GA)	✓		
MR. CLINE (VA)		✓		MS. DEAN (PA)	✓		
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)	✓		
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)			
MR. NEHLS (TX)		✓		MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)		✓					
MR. HUNT (TX)							
MR. FRY (SC)		✓					

Roll Call Totals: Ayes: 12 Nays: 22 Present: Failed: X

Passed. _____

COMMITTEE ON THE JUDICIARY

Date: 4/19/23

118th CONGRESS

25-19

ROLL CALL

Vote on: #18 Schiff Amndt to HR 2640 ANS

Roll Call #: 15

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) *Chairman*		✓		MR. NADLER (NY) *Ranking Member*	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)	✓		
MR. BUCK (CO)				MS. JACKSON LEE (TX)	✓		
MR. GAETZ (FL)		✓		MR. COHEN (TN)			
MR. JOHNSON (LA)		✓		MR. JOHNSON (GA)	✓		
MR. BIGGS (AZ)		✓		MR. SCHIFF (CA)	✓		
MR. McCLINTOCK (CA)		✓		MR. CICILLINE (RI)	✓		
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)			
MR. MASSIE (KY)		✓		MR. LIEU (CA)	✓		
MR. ROY (TX)		✓		MS. JAYAPAL (WA)	✓		
MR. BISHOP (NC)				MR. CORREA (CA)	✓		
MS. SPARTZ (IN)		✓		MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)		✓		MR. NEGUSE (CO)			
MR. BENTZ (OR)		✓		MS. McBATH (GA)	✓		
MR. CLINE (VA)		✓		MS. DEAN (PA)			
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)	✓		
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)			
MR. NEHLS (TX)		✓		MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)		✓					
MR. HUNT (TX)							
MR. FRY (SC)		✓					

Roll Call Totals: Ayes: 13 Nays: 22 Present:

Passed: _____ Failed: X

COMMITTEE ON THE JUDICIARY

Date: 4/19/23

118th CONGRESS

25-19

ROLL CALL

Vote on: #19 Ivey Amndt to HR 2690 ANS

Roll Call #: 10

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) *Chairman*		X		MR. NADLER (NY) *Ranking Member*	X		
MR. ISSA (CA)		X		MS. LOFGREN (CA)	X		
MR. BUCK (CO)				MS. JACKSON LEE (TX)	X		
MR. GAETZ (FL)		X		MR. COHEN (TN)			
MR. JOHNSON (LA)		X		MR. JOHNSON (GA)	X		
MR. BIGGS (AZ)		X		MR. SCHIFF (CA)	X		
MR. McCLINTOCK (CA)		X		MR. CICILLINE (RI)	X		
MR. TIFFANY (WI)		X		MR. SWALWELL (CA)			
MR. MASSIE (KY)		X		MR. LIEU (CA)	X		
MR. ROY (TX)		X		MS. JAYAPAL (WA)	X		
MR. BISHOP (NC)				MR. CORREA (CA)	X		
MS. SPARTZ (IN)		X		MS. SCANLON (PA)	X		
MR. FITZGERALD (WI)		X		MR. NEGUSE (CO)	X		
MR. BENTZ (OR)		X		MS. McBATH (GA)	X		
MR. CLINE (VA)		X		MS. DEAN (PA)			
MR. GOODEN (TX)		X		MS. ESCOBAR (TX)	X		
MR. VAN DREW (NJ)		X		MS. ROSS (NC)			
MR. NEHLS (TX)		X		MS. BUSH (MO)			
MR. MOORE (AL)		X		MR. IVEY (MD)	X		
MR. KILEY (CA)		X					
MS. HAGEMAN (WY)		X					
MR. MORAN (TX)		X					
MS. LEE (FL)		X					
MR. HUNT (TX)							
MR. FRY (SC)		X					

Roll Call Totals: Ayes: 14 Nays: 22 Present:

Passed: _____ Failed: _____

COMMITTEE ON THE JUDICIARY

Date: 4/19/23

118th CONGRESS

25-19

ROLL CALL

Vote on: #20 Cicilline Amndt to HR 2090 ANS

Roll Call #: 17

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) *Chairman*		✓		MR. NADLER (NY) *Ranking Member*	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)	✓		
MR. BUCK (CO)				MS. JACKSON LEE (TX)	✓		
MR. GAETZ (FL)				MR. COHEN (TN)			
MR. JOHNSON (LA)		✓		MR. JOHNSON (GA)	✓		
MR. BIGGS (AZ)		✓		MR. SCHIFF (CA)	✓		
MR. McCLINTOCK (CA)		✓		MR. CICILLINE (RI)	✓		
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)			
MR. MASSIE (KY)		✓		MR. LIEU (CA)	✓		
MR. ROY (TX)		✓		MS. JAYAPAL (WA)	✓		
MR. BISHOP (NC)				MR. CORREA (CA)	✓		
MS. SPARTZ (IN)		✓		MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)		✓		MR. NEGUSE (CO)	✓		
MR. BENTZ (OR)		✓		MS. McBATH (GA)	✓		
MR. CLINE (VA)				MS. DEAN (PA)			
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)	✓		
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)			
MR. NEHLS (TX)		✓		MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)		✓					
MR. HUNT (TX)		✓					
MR. FRY (SC)		✓					

Roll Call Totals: Ayes: 14 Nays: 21 Present: X

Passed: _____ Failed: _____

COMMITTEE ON THE JUDICIARY

Date: 4/19/23

118th CONGRESS

25-19

ROLL CALL

Vote on: #21 Cicilline Amndt to HR 2640 ANS

Roll Call #: 18

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) *Chairman*		✓		MR. NADLER (NY) *Ranking Member*	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)	✓		
MR. BUCK (CO)				MS. JACKSON LEE (TX)	✓		
MR. GAETZ (FL)		✓		MR. COHEN (TN)			
MR. JOHNSON (LA)		✓		MR. JOHNSON (GA)	✓		
MR. BIGGS (AZ)		✓		MR. SCHIFF (CA)	✓		
MR. McCLINTOCK (CA)		✓		MR. CICILLINE (RI)	✓		
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)			
MR. MASSIE (KY)		✓		MR. LIEU (CA)	✓		
MR. ROY (TX)		✓		MS. JAYAPAL (WA)	✓		
MR. BISHOP (NC)				MR. CORREA (CA)	✓		
MS. SPARTZ (IN)		✓		MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)		✓		MR. NEGUSE (CO)	✓		
MR. BENTZ (OR)		✓		MS. McBATH (GA)	✓		
MR. CLINE (VA)		✓		MS. DEAN (PA)			
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)	✓		
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)			
MR. NEHLS (TX)		✓		MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)		✓					
MR. HUNT (TX)		✓					
MR. FRY (SC)		✓					

Roll Call Totals: Ayes: 14 Nays: 23 Present: Passed: Failed: X

COMMITTEE ON THE JUDICIARY

Date: 4/19/23

118th CONGRESS

25-19

ROLL CALL

Vote on: #22 Jayapal Amndt to HR 2640 ANS

Roll Call #: 19

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) *Chairman*		✓		MR. NADLER (NY) *Ranking Member*	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)	✓		
MR. BUCK (CO)				MS. JACKSON LEE (TX)	✓		
MR. GAETZ (FL)		✓		MR. COHEN (TN)			
MR. JOHNSON (LA)		✓		MR. JOHNSON (GA)			
MR. BIGGS (AZ)		✓		MR. SCHIFF (CA)	✓		
MR. McCLINTOCK (CA)		✓		MR. CICILLINE (RI)	✓		
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)			
MR. MASSIE (KY)		✓		MR. LIEU (CA)	✓		
MR. ROY (TX)		✓		MS. JAYAPAL (WA)	✓		
MR. BISHOP (NC)				MR. CORREA (CA)	✓		
MS. SPARTZ (IN)		✓		MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)		✓		MR. NEGUSE (CO)	✓		
MR. BENTZ (OR)		✓		MS. McBATH (GA)	✓		
MR. CLINE (VA)		✓		MS. DEAN (PA)			
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)	✓		
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)			
MR. NEHLS (TX)		✓		MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)		✓					
MR. HUNT (TX)		✓					
MR. FRY (SC)		✓					

Roll Call Totals. Ayes: 13 Nays: 23 Present: X

Passed. _____ Failed: _____

COMMITTEE ON THE JUDICIARY

Date: 4/19/23

118th CONGRESS

25-19

ROLL CALL

Vote on: # 29 wey Amndt to HR 2090 ANS

Roll Call #: 20

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) *Chairman*		✓		MR. NADLER (NY) *Ranking Member*	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)	✓		
MR. BUCK (CO)				MS. JACKSON LEE (TX)	✓		
MR. GAETZ (FL)		✓		MR. COHEN (TN)			
MR. JOHNSON (LA)		✓		MR. JOHNSON (GA)	✓		
MR. BIGGS (AZ)		✓		MR. SCHIFF (CA)	✓		
MR. McCLINTOCK (CA)		✓		MR. CICILLINE (RI)	✓		
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)			
MR. MASSIE (KY)		✓		MR. LIEU (CA)	✓		
MR. ROY (TX)		✓		MS. JAYAPAL (WA)	✓		
MR. BISHOP (NC)				MR. CORREA (CA)	✓		
MS. SPARTZ (IN)		✓		MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)		✓		MR. NEGUSE (CO)	✓		
MR. BENTZ (OR)		✓		MS. McBATH (GA)	✓		
MR. CLINE (VA)		✓		MS. DEAN (PA)			
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)	✓		
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)			
MR. NEHLS (TX)		✓		MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)		✓					
MR. HUNT (TX)		✓					
MR. FRY (SC)		✓					

Roll Call Totals: Ayes: 14 Nays: 23 Present: Passed: _____ Failed: X

COMMITTEE ON THE JUDICIARY

Date: 4/19/23

118th CONGRESS

25-19

ROLL CALL

Vote on: Favorably reporting HR 2690, as amended Roll Call #: 21

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) *Chairman*	✓			MR. NADLER (NY) *Ranking Member*		✓	
MR. ISSA (CA)	✓			MS. LOFGREN (CA)		✓	
MR. BUCK (CO)				MS. JACKSON LEE (TX)		✓	
MR. GAETZ (FL)	✓			MR. COHEN (TN)			
MR. JOHNSON (LA)	✓			MR. JOHNSON (GA)		✓	
MR. BIGGS (AZ)	✓			MR. SCHIFF (CA)		✓	
MR. McCLINTOCK (CA)	✓			MR. CICILLINE (RI)		✓	
MR. TIFFANY (WI)	✓			MR. SWALWELL (CA)			
MR. MASSIE (KY)		✓		MR. LIEU (CA)		✓	
MR. ROY (TX)	✓			MS. JAYAPAL (WA)		✓	
MR. BISHOP (NC)	✓			MR. CORREA (CA)		✓	
MS. SPARTZ (IN)	✓			MS. SCANLON (PA)		✓	
MR. FITZGERALD (WI)	✓			MR. NEGUSE (CO)		✓	
MR. BENTZ (OR)	✓			MS. McBATH (GA)		✓	
MR. CLINE (VA)	✓			MS. DEAN (PA)			
MR. GOODEN (TX)	✓			MS. ESCOBAR (TX)		✓	
MR. VAN DREW (NJ)	✓			MS. ROSS (NC)			
MR. NEHLS (TX)	✓			MS. BUSH (MO)			
MR. MOORE (AL)	✓			MR. IVEY (MD)		✓	
MR. KILEY (CA)	✓						
MS. HAGEMAN (WY)	✓						
MR. MORAN (TX)	✓						
MS. LEE (FL)	✓						
MR. HUNT (TX)	✓						
MR. FRY (SC)	✓						

Roll Call Totals: Ayes: 23 Nays: 15 Present:

Passed: ✓ Failed _____

Committee Oversight Findings

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974* and with respect to eh requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has requested but not received a cost estimate for this bill from the Director of the Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. The Chairman of the Committee shall cause such estimate and statement to be printed in the *Congressional Record* upon its receipt by the Committee.

Congressional Budget Office Cost Estimate

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the *Congressional Budget Act of 1974* was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

Committee Estimate of Budgetary Effects

With respect to the requirements of clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the *Congressional Budget Act of 1974*.

Duplication of Federal Programs

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 2640 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of House rule XIII, H.R. 2640 would reduce frivolous claims and close loopholes related to applications for asylum and withholding of removal by amending sections 208 and 235 of the INA. H.R. 2640 also would strengthen border safety by reiterating detention requirements for arriving aliens; mandating a return of aliens to the contiguous country from which they arrived if certain detention, re-

turn, or removal requirements are not met; and allowing the DHS Secretary to suspend the entry of certain aliens if there is no operational control of the border. The bill also ensures that family units remain united at the border by eliminating the presumption that accompanied alien children should not be detained and removing the requirement for state licenses for family facilities. H.R. 2640 also would reform processes related to unaccompanied alien children to ensure that children from contiguous and non-contiguous countries are afforded the same protections. In addition, H.R. 2640 would increase penalties for aliens who overstay their visas and would ensure that the immigration parole authority cannot be abused. Finally, H.R. 2640 would ensure a legal workforce and reduce the employment incentives of illegal immigration by amending section 274A of the INA to mandate nationwide E-Verify.

Advisory on Earmarks

In accordance with clause 9 of House rule XXI, H.R. 2640 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e), or 9(f) of House rule XXI.

Federal Mandates Statement

An estimate of federal mandates prepared by the Director of the Congressional Budget office pursuant to section 423 of the *Unfunded Mandates Reform Act* was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

Advisory Committee Statement

No advisory committees within the meaning of section 5(b) of the *Federal Advisory Committee Act* were created by this legislation.

Applicability to Legislative Branch

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the *Congressional Accountability Act* (Pub. L. 104–1).

Correspondence

COMMITTEE ON
EDUCATION AND THE WORKFORCE
U S HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

April 25, 2023

The Honorable Jim Jordan
Chairman, Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Jordan:

This letter is in regard to the jurisdictional interest of the Committee on Education and the Workforce in matters being considered in H.R. 2640, the Border Security and Enforcement Act of 2023.

In recognition of the desire to expedite consideration of H.R. 2640, the Committee on Education and the Workforce agrees to waive formal consideration of the bill as to provisions that fall within the rule X jurisdiction of the Committee on Education and the Workforce. The Committee takes this action with the mutual understanding that we do not waive any jurisdiction over the subject matter contained in this or similar legislation, and that the Committee will be appropriately consulted and involved as this bill or similar legislation moves forward so that we may address any remaining issues within our jurisdiction.

Our Committee also reserves the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this or similar legislation, and requests your support for any such request.

Finally, I respectfully request a response to this letter confirming this understanding with respect to H.R. 2640, as amended, and ask that a copy of our exchange of letters on this matter be included in your committee's report to accompany the legislation and/or in the Congressional Record during floor consideration thereof.

Sincerely,

Virginia Foxx

Virginia Foxx
Chairwoman

JIM JORDAN, Ohio
CHAIRMAN

JERROLD NADLER, New York
RANKING MEMBER

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6216
(202) 225–6906
judiciary.house.gov

April 26, 2023

The Honorable Virginia Foxx
Chairwoman
Committee on Education and the Workforce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairwoman Foxx:

Thank you for consulting with the Committee on the Judiciary and agreeing to be discharged from further consideration of H.R. 2640, the "Border Security and Enforcement Act of 2023," so that the measure may proceed expeditiously to the House floor.

I agree that your forgoing further action on this measure does not in any way diminish or alter the jurisdiction of your committee, or prejudice its jurisdictional prerogatives on this measure or similar legislation in the future. I would support your effort to seek appointment of an appropriate number of conferees from your committee to any House-Senate conference on this legislation.

I will include the exchange of these letters in the Judiciary Committee's report to accompany this legislation. I appreciate your cooperation regarding this legislation and look forward to continuing to work together on matters of shared jurisdiction during this Congress. Thank you for your attention to this matter.

Sincerely,

Jim Jordan
Chairman

cc: The Honorable Jerrold Nadler, Ranking Member, Committee on the Judiciary

The Honorable Bobby Scott, Ranking Member, Committee on Education and the Workforce

The Honorable Jason Smith, Parliamentarian

MARK E. GREEN, MD, TENNESSEE
CHAIRMAN

BENNIE G. THOMPSON, MISSISSIPPI
RANKING MEMBER

One Hundred Eighteenth Congress
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

May 3, 2023

The Honorable Jim Jordan
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Jordan:

I write concerning H.R. 2640, the "Border Security and Enforcement Act of 2023." This bill contains provisions within the jurisdiction of the Committee on Homeland Security. I appreciate you consulting with me concerning the provisions of the bill that fall within our Rule X jurisdiction. I agree to forgo consideration of the bill so that it may proceed expeditiously to the House floor.

The Committee takes this action with our mutual understanding that by foregoing consideration of H.R. 2640, we do not waive any jurisdiction over the subject matter contained in this or similar legislation, and that we will be appropriately consulted and involved as the bill or similar legislation moves forward so we may address any remaining issues within our Rule X jurisdiction. Further, I request your support for the appointment of conferees from the Committee on Homeland Security during any House-Senate conference on this or related legislation.

Finally, I would appreciate a response confirming this understanding and ask that a copy of our exchange letters on this matter be included in the bill report filed by the Committee on the Judiciary as well as in the *Congressional Record* during floor consideration thereof. Thank you for your cooperation on this matter.

Sincerely,

Mark E. Green

Mark E. Green, MD
Chairman

Cc: The Honorable Bennie Thompson, Ranking Member, Committee on Homeland Security
The Honorable Jerrold Nadler, Ranking Member, Committee on the Judiciary
The Honorable Jason Smith, Parliamentarian

JIM JORDAN, Ohio
CHAIRMAN

JERROLD NADLER, New York
RANKING MEMBER

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6216
(202) 225-6906
judiciary.house.gov

May 3, 2023

The Honorable Mark Green
Chairman
Committee on Homeland Security
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Green:

Thank you for consulting with the Committee on the Judiciary and agreeing to be discharged from further consideration of H.R. 2640, the "Border Security and Enforcement Act of 2023," so that the measure may proceed expeditiously to the House floor.

I agree that your forgoing further action on this measure does not in any way diminish or alter the jurisdiction of your committee, or prejudice its jurisdictional prerogatives on this measure or similar legislation in the future. I would support your effort to seek appointment of an appropriate number of conferees from your committee to any House-Senate conference on this legislation.

I will include the exchange of these letters in the Judiciary Committee's report to accompany this legislation. I appreciate your cooperation regarding this legislation and look forward to continuing to work together on matters of shared jurisdiction during this Congress. Thank you for your attention to this matter.

Sincerely,

Jim Jordan
Chairman

cc: The Honorable Jerrold Nadler, Ranking Member, Committee on the Judiciary

The Honorable Bennie Thompson, Ranking Member, Committee on Homeland Security

The Honorable Jason Smith, Parliamentarian

JASON SMITH
MISSOURI,
CHAIRMAN
MARK ROMAN, STAFF DIRECTOR
(202) 225-3625

RICHARD E. NEAL
MASSACHUSETTS,
RANKING MEMBER
BRANDON CASEY, STAFF DIRECTOR
(202) 225-4021

U.S. House of Representatives
COMMITTEE ON WAYS AND MEANS
1139 LONGWORTH HOUSE OFFICE BUILDING
Washington, DC 20515

May 4, 2023

The Honorable Jim Jordan
Chairman
Committee on House Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Jordan,

Thank you for your letter regarding H.R. 2640, the "Border Security and Enforcement Act of 2023." As you noted, the Committee on Ways and Means was granted an additional referral on this bill. I agree to forego action on this bill so that it may proceed expeditiously to the House floor for consideration.

The Committee takes this action with our mutual understanding that by foregoing consideration of H.R. 2640 at this time, we do not waive any jurisdiction over subject matter contained in this or similar legislation, and that our Committee will be appropriately consulted and involved as the bill or similar legislation moves forward so that we may address any remaining issues in our jurisdiction. Our Committee also reserves the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this or similar legislation, and asks that you support any such request.

Finally, I would ask that a copy of our exchange of letters on this matter be included in the *Congressional Record* during floor consideration of H.R. 2640.

Sincerely,

Jason Smith
Chairman
Committee on Ways and Means

cc: The Honorable Kevin McCarthy, Speaker
The Honorable Jerrold Nadler
The Honorable Richard E. Neal
Jason Smith, Parliamentarian

JIM JORDAN, Ohio
CHAIRMAN

JERROLD NADLER, New York
RANKING MEMBER

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6216
(202) 225–6906
judiciary.house.gov

May 4, 2023

The Honorable Jason Smith
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Smith:

Thank you for consulting with the Committee on the Judiciary and agreeing to be discharged from further consideration of H.R. 2640, the "Border Security and Enforcement Act of 2023," so that the measure may proceed expeditiously to the House floor.

I agree that your forgoing further action on this measure does not in any way diminish or alter the jurisdiction of your committee, or prejudice its jurisdictional prerogatives on this measure or similar legislation in the future. I would support your effort to seek appointment of an appropriate number of conferees from your committee to any House-Senate conference on this legislation.

I will include the exchange of these letters in the Judiciary Committee's report to accompany this legislation. I appreciate your cooperation regarding this legislation and look forward to continuing to work together on matters of shared jurisdiction during this Congress. Thank you for your attention to this matter.

Sincerely,

Jim Jordan
Chairman

cc: The Honorable Jerrold Nadler, Ranking Member, Committee on the Judiciary

The Honorable Richard Neal, Ranking Member, Committee on Ways and Means

The Honorable Jason Smith, Parliamentarian

Section-by-Section Analysis

TITLE I: BORDER SECURITY AND ENFORCEMENT ACT OF 2023

Sec. 101. Short Title. This section states the title of Title I as the "Asylum Reform and Border Protection Act of 2023."

Sec. 102. Safe third country. This section amends section 208(a)(2)(A) of the Immigration and Nationality Act to allow the Department of Homeland Security to remove aliens seeking asylum to safe third countries where they would have access to a full and fair procedure for applying for asylum without the current necessity for bilateral agreements with those countries.

This section also makes aliens ineligible for asylum if they have transited through at least one country outside their country of citizenship, nationality, or last habitual residence en route to the United States unless the aliens can show that (1) they applied for protection in at least one of those countries and received a final judgment denying the protection; (2) they were a victim of trafficking; or (3) the countries in which they transited en route to the United States were not parties to the relevant international protection treaties.

Sec. 103. Credible fear interviews. This section changes the current credible fear standard from requiring that an alien merely show a "significant possibility" that he or she could establish eligibility for asylum to requiring that an alien show that it is more likely than not that he or she could establish asylum eligibility and that it is more likely than not that the statements made by the alien in support of the alien's claim are true.

Sec. 104. Clarification of asylum eligibility. This section conditions eligibility for asylum on arriving in the United States at a port of entry.

Sec. 105. Exceptions. This section creates new exceptions to asylum eligibility.

Paragraph (2)(A). In General. This paragraph closes the asylum loophole for criminal aliens by rendering aliens who commit or are convicted of certain crimes ineligible for asylum. Those offenses include the possession of false identification documents, certain controlled substance offenses, gang-related crimes, driving under the influence, child abuse, domestic violence, and extreme cruelty or battery.

Paragraph (2)(B). Special Rules. This paragraph grants broad discretion to the Attorney General to find that other criminal activity constitutes a particularly serious crime that makes an alien ineligible for asylum. For certain crimes, the section allows the Attorney General and Secretary of Homeland Security to consider facts beyond the conviction documents to more fully assess whether an alien has engaged in a disqualifying activity. The paragraph allows adjudicators to consider Interpol Red Notices in determining whether an alien has committed a serious nonpolitical crime.

Paragraph (2)(C). Specific Circumstances. This paragraph specifies that an applicant for asylum and withholding of removal cannot meet the definition of a refugee based on circumstances such as personal animus, generalized disapproval of gang and cartel activity, resistance to gang recruitment, and gang affiliation.

Paragraph (2)(D). Definitions and Clarifications. This paragraph adds definitions for "felony" and "misdemeanor" and streamlines

the analysis to determine whether certain criminal aliens are ineligible for asylum. This paragraph also gives adjudicators a guide to determine when certain orders modifying, vacating, or clarifying an alien's underlying conviction or sentence continue to have immigration consequences.

Sec. 106. Employment Authorization. This section clarifies when employment authorization terminates, including during an appeal to a federal court and after a denial by an asylum officer. The section creates statutory bars to employment authorization for aliens who would be found ineligible for asylum based on grounds such as criminal conduct, manner of entry, and firm resettlement.

Sec. 107. Asylum fees. This section requires a fee of at least $50 for each asylum application and reiterates that the fee cannot exceed the cost of adjudicating the application.

Sec. 108. Rules for determining asylum eligibility: This section provides additional guidance to determine whether an alien is a refugee for purposes of an application for asylum and withholding of removal.

Paragraph 1. Particular Social Group. This paragraph clarifies that a "particular social group" must exist independently of the alleged persecution and cannot be based on one of several grounds that the Board of Immigration Appeals and several federal courts of appeals have repeatedly rejected, such as criminal activity, gang recruitment, and perceived wealth.

Paragraph 2. Political Opinion. This paragraph clarifies that a political opinion requires expressive behavior in furtherance of a specific cause and does not include general disapproval of gang activity.

Paragraph 3. Persecution. This paragraph clarifies that persecution cannot be based on the mere existence of a law or policy unless the evidence reflects that such law or policy would be applied to the asylum applicant personally. Persecution also cannot be based on the conduct of rogue officials acting outside the scope of their official capacity.

Paragraph 4. Discretionary Determination. This paragraph outlines discretionary factors to consider in the grant of asylum, including an alien's use of fraudulent documents. The provision states that a favorable exercise of discretion generally is not permitted in other circumstances, such as when the alien has failed to pay taxes, has accrued more than one year of unlawful presence in the United States, or has had multiple asylum applications denied. The provision creates exceptions if the alien establishes extraordinary circumstances or exceptional and extremely unusual hardship.

Paragraph 5. Limitation. This provision states that an alien cannot use his or her failure to define a particular social group as a basis for a motion to reopen or reconsider an application for asylum or withholding of removal unless certain procedural requirements are met.

Paragraph 6. Stereotypes. This paragraph states that evidence based on stereotypes of an entire country or culture is inappropriate and is not admissible in adjudicating an asylum application unless the evidence shows that the persecutor himself holds such views of the applicant for asylum and withholding of removal.

Paragraph 7. Definitions. This section defines "membership in a particular social group," "political opinion," and "persecution" for purposes of determining whether an applicant for asylum and withholding of removal is a refugee as defined in the Immigration and Nationality Act.

Sec. 109. Firm resettlement. This section states that the firm resettlement bar applies if an alien either (1) resided in a country through which the alien traveled before entering the United States and in which the alien was eligible for or received any permanent or non-permanent but indefinitely renewable legal status; or (2) the alien resided in a country for at least one year after departing the alien's country of nationality and before entering into the United States.

Sec. 110. Notice concerning frivolous asylum applications. This section clarifies that the notice of the consequences of filing a frivolous asylum application, which is contained in the application itself, is sufficient to advise an applicant of those consequences. This section further clarifies what the Secretary of Homeland Security or Attorney General must determine to sustain a frivolity finding and bars an alien who is found to have filed a frivolous application from receiving any future immigration benefits.

Sec. 111. Technical amendments. These amendments add the Secretary of Homeland Security to certain sections in which only the Attorney General is currently included.

Sec. 112. Requirement for Procedures Relating to Certain Asylum Applications. This section requires the Attorney General to create expedited adjudication procedures for asylum applicants from certain Western Hemisphere countries that have been sanctioned by the United States. The expedited procedures apply to nationals from Cuba, Nicaragua, and Venezuela.

TITLE II: BORDER SAFETY AND MIGRANT PROTECTION ACT OF 2023

Sec. 201. Short Title. This section states the title of Title II as the "Border Safety and Migrant Protection Act of 2023."

Sec. 202. Inspection of applicants for admission. This section reiterates that the class of aliens subject to expedited removal includes aliens who are present in the United States without being admitted or paroled and those arriving in the country outside of a port of entry.

This section also reiterates the mandatory detention requirement of certain aliens who are applicants for admission and restricts parole and release of such individuals unless the aliens are either removed to another country in which their life or freedom would not be threatened, or the aliens are returned to the contiguous country from which they arrived for the pendency of their immigration proceedings.

This section mandates that aliens be returned to a contiguous country for the pendency of their immigration proceedings if the Secretary of Homeland Security cannot comply with the obligations to detain aliens or remove them to a safe third country.

This section also allows for the suspension of entry of certain inadmissible aliens if the Secretary deems the suspension necessary to achieve "operational control" of the border. The section also provides states standing to sue if the Secretary violates the detention, return, or removal provisions.

Sec. 203. Operational Detention Facilities. This section requires the Secretary of Homeland Security to take all necessary actions to restore detention facilities that were in operation as of January 20, 2021, but were subsequently closed or that had capacity reduced, altered, or discontinued.

This section specifies the facilities to which the mandate applies, at a minimum, and requires regular status reports to Congress. The section also mandates notification to Congress when detention capacity reaches 90, 95, and 100 percent.

TITLE III: ENSURING UNITED FAMILIES AT THE BORDER ACT OF 2023

Sec. 301. Short Title. This section states the title of Title III as the "Ensuring United Families at the Border Act of 2023."

Sec. 302. Clarification of Standards for Family Detention. In response to certain provisions of the *Flores* Stipulated Settlement Agreement being applied to accompanied minors, this provision states that there is no presumption that an accompanied minor should not be detained.

This section requires that the Secretary of Homeland Security maintain the care and custody of aliens together with their children while any charges for illegally crossing the border are pending with the Department of Justice. The provision also states that it is the sense of Congress that Title III satisfies the requirements of the *Flores* Settlement Agreement as applied to accompanied minors.

This section also preempts state licensing requirements for facilities used to detain families and children.

TITLE IV: PROTECTION OF CHILDREN ACT OF 2023

Sec. 401. Short Title. This section states the title of Title IV as the "Protection of Children Act of 2023."

Sec. 402. Findings. This section makes specific findings related to the crisis of unaccompanied alien children (UACs) at the southwest border.

Sec. 403. Repatriation of Unaccompanied Alien Children. This section requires that all UACs, regardless of whether they are nationals of a contiguous country, be safely and expeditiously returned to their country of origin, provided that they are not victims of trafficking or do not claim a credible fear of persecution.

This section requires that UACs who are victims of severe forms of trafficking or who claim a credible fear of persecution receive a hearing before an immigration judge within 14 days and allows DHS to hold a UAC for up to 30 days to ensure a speedy judicial process.

This section also requires HHS to provide DHS with biographical information regarding the sponsors or family members to whom the minors are released.

This section mandates that DHS follow up with the sponsors of UACs to verify the sponsor's immigration status and issue notices for the sponsor to appear in immigration court when appropriate.

This section reaffirms the privilege of UACs to have access to counsel to represent them in immigration court but emphasizes that such representation is at no expense to the United States taxpayer.

Sec. 404. Special immigrant juvenile status for immigrants unable to reunite with either parent. Due to a mistake in current law, juveniles can obtain green cards as Special Immigrant Juveniles (SIJs) if they can show that they have been abandoned by a single parent even though another parent is present in the U.S. and is able and willing to care for them. Many UACs seek green cards through the SIJ process once in the United States. This section clarifies that special immigrant green cards are available only to juveniles who have lost or been abandoned by both parents.

Sec. 405. Rule of Construction. This section emphasizes that nothing in Title IV shall be construed to limit practices and procedures that involve (1) screening a UAC to determine whether the UAC has a credible fear of persecution, (2) screening a UAC to determine whether the UAC is a victim of trafficking, or (3) the current policy of HHS requiring a home study for UACs under 12 years old.

TITLE V: STOP VISA OVERSTAYS ACT

Sec. 501. Short Title. This section states the title of Title V as the "Stop Visa Overstays Act."

Sec. 502. Expanded Penalties for Illegal Entry or Presence. This section places visa overstay, which is currently solely an immigration violation, on par with illegal entry as a misdemeanor criminal offense punishable by up to six months imprisonment for the first offense. This section specifies that an alien who fails to maintain his or her nonimmigrant status for an aggregate period of 10 days shall be fined or imprisoned or both.

This section also increases the civil penalties for illegal entry from between $50 and $250 to between $500 and $1,000 and mandates the fine for a subsequent offense be double the initial fine. The section subjects visa overstayers to those same civil penalties.

TITLE VI: IMMIGRATION PAROLE REFORM ACT OF 2023

Sec. 601. Short Title. This section states the title of Title VI as the "Immigration Parole Reform Act of 2023."

Sec. 602. Immigration Parole Reform. This section prohibits the Secretary of the Department of Homeland Security from granting parole "according to eligibility criteria describing an entire class of potential parole recipients," otherwise known as categorical parole.

This section requires that, with narrow exceptions, parole may only be granted to aliens who are not present in the United States and clarifies that parole is not an admission for purposes of adjustment of status.

This section codifies two existing categorical parole programs: the Cuban Family Reunification Parole program, and another for the spouse or children of active-duty military service members. It also allows the DHS Secretary to grant parole to an alien who is enrolled in a Remain in Mexico-type program for purposes of the alien being escorted to an immigration hearing, attending the hearing, and being escorted back to the contiguous country in which the alien was awaiting immigration proceedings.

This section narrows the scope of the current humanitarian and significant public benefit authority to align with the intent of Congress that parole be used rarely and in individual circumstances,

and not as a workaround of the law or to admit groups of aliens who would not otherwise be eligible to enter the U.S.

This section clarifies what is meant by "case-by-case" adjudication of parole applications.

This section precludes aliens granted parole from receiving employment authorization documents with the exception of those in the existing Cuban Family Reunification Parole and the military family parole programs.

This section clarifies that parole cannot be used as an avenue for adjustment of status to that of a lawful permanent resident, or to gain any other immigration benefit if the alien's underlying immigration status allows for such adjustment or benefit.

This section limits the initial grant of parole to the shorter of: (1) the time it takes to complete the activity for which parole was granted; or (2) one year. Allows a one-time extension of parole for that period.

This section requires DHS to report annually to the House and Senate Judiciary Committees regarding aliens paroled during the previous year, including the total number of aliens paroled into the United States and the type of parole granted.

Sec. 603. Implementation. This section makes the changes effective 30 days after the date of enactment of the act and allows aliens granted parole prior to January 1, 2023, to continue in their parole status pursuant to the laws in effect on the date parole was granted.

Sec. 604. Cause of Action. This section creates standing so state attorneys general can hold DHS accountable if DHS grants parole in violation of the law.

Sec. 605. Severability. This section states that, if any provision of the legislation is found to be unconstitutional, the other provisions in the legislation remain unaffected.

TITLE VII: LEGAL WORKFORCE ACT

Sec. 701. Short Title. This section states the title of Title VII as the "Legal Workforce Act."

Sec. 702. Employment Eligibility Verification Process.

- *Proof of Employment Eligibility and Identity.* This section requires that the employer attest, in an electronic or paper form, that they have verified the employment eligibility of the individual seeking employment by obtaining the individual's Social Security Number (SSN) or immigrant identification number and examining acceptable documents presented by the individual to establish work eligibility and identity. It requires that the employer use E-Verify to check the work eligibility of the individual. This section reduces the number of acceptable documents for proof of work eligibility and identity.
- *Retention of Attestation Form.* This section requires that the employer retain a paper, microfiche, or electronic copy of the attestation form for the latter of three years or one year after the date of employment termination.
- *Verification.* This section requires the employer to record the E-Verify verification code for employees when they receive confirmation or final non-confirmation of work authorization. It allows an employee who receives a tentative non-confirmation to use the secondary verification process in place under E-

Verify. This section states that an employer may terminate the employment of individuals who receive a final non-confirmation and if they do not terminate employment they must notify DHS of the decision not to do so (which creates a rebuttable presumption of noncompliance if the employer does not terminate employment). It allows an employer to check the employment eligibility of a prospective employee between the date of the offer of a job and three days after the date of hire. It allows the employer to condition a job offer on an E-Verify confirmation.

• *Phase-In.* This section phases in mandatory E-Verify participation for new hires in six-month increments beginning on the date six months after enactment with businesses having more than 10,000 employees. Twelve months after enactment, businesses having 500 to 9,999 employees are required to use E-Verify, as are recruiters and referrers. Eighteen months after enactment, businesses having 20 to 499 employees must use E-Verify. Twenty-four months after enactment, businesses having 1 to 19 employees must use E-Verify. Note that on the date of enactment, those employers who are currently required by federal law to use E-Verify (certain federal contractors, the Executive Branch, and the Legislative Branch) will continue to be required to use E-Verify.

• *Agriculture.* This section requires that employees performing "agricultural labor or services," as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), are subject to an E-Verify check within 36 months of the date of enactment.

• *One-Time Extension for Small Businesses.* This section allows an employer having 50 or fewer employees to request from DHS a one-time extension of the implementation deadline. DHS shall grant the extension upon request.

• *One-Time Extension for Agricultural Employers.* This section allows the DHS Secretary to extend the implementation date for agricultural employers for one year once the report required by Section 715 of the Act has been submitted to Congress.

• *Transition.* This section retains the requirements of the Federal Acquisition Rule (FAR) as set out by Executive Order 13465.

• *Reverification of Individuals with Limited Work Authorization.* This section requires employers to verify the work eligibility of individuals with work visas, etc. at some point within the three business days of the date on which the work authorization expires. It phases in this requirement according to the size of the business, over the same 24-month period as the initial use phase-in.

• *Previously Hired Individuals.* This section requires the employment eligibility of a current employee to be verified if they (1) work for the Federal government, a State or local government, a critical infrastructure site, or on a Federal or State contract (clarifies that if an employee who falls into this category has already been checked by the current employer using E-Verify, then the employee does not have to be checked again); or (2) submit an SSN that DHS determines has a pat-

tern of unusual multiple uses. It allows employers to voluntarily verify the work authorization of their current workforce as long as all of the employees are in the same geographic location or employed within the same job category as the employee for whom verification is sought, the area also verified.

• *Transition.* This section allows an employer using, or who wants to use, the E-Verify pilot program to use the new system in lieu of the pilot program even if not yet required to use the new system.

• *Limited Use of Information.* This section prohibits the information provided under the employment eligibility confirmation process from being used for any reason other than the enforcement of this bill and certain criminal provisions.

• *Safe Harbor.* This section provides that an employer has complied with the requirements set out in this section if there was a good faith attempt to comply with the requirements. The safe harbor does not apply when the employer is engaging in a pattern or practice of violations.

• *Possible Implementation Deadline Extension.* This section allows the DHS Secretary a one-time six-month extension of the implementation deadlines if the Secretary certifies to Congress that the employment eligibility verification system will not be ready within six months of the date of enactment of the Legal Workforce Act.

Sec. 703. Employment Eligibility Verification System.

• *E-Verify Creation.* This section requires the DHS Secretary to create an employment eligibility verification system, (patterned on the current E-Verify pilot program) that is accessible by Internet. The system must provide confirmation or tentative non-confirmation within three working days of the employer's initial inquiry. The system must provide a secondary process in cases of a tentative non-confirmation so that the employer receives a final confirmation or non-confirmation within ten working days of the notice to the employee that there is a tentative non-confirmation. This section allows the Secretary to extend that deadline once on a case-by-case basis for a period of ten working days, but the Secretary must notify the employer and employee of such extension. It requires the Secretary, in consultation with Commissioner, to create a standard process for such extension and notification. The section requires the system to include safeguards for privacy, against unlawful discriminatory practices, and unauthorized disclosure of personal information.

• *No National Identification Card.* This section reiterates that this is not a national ID card.

• *Updating Information.* This section requires that the Social Security Administration (SSA) and DHS promptly update E-Verify database information to promote maximum accuracy.

• *DHS Secretary Authority.* This section allows the DHS Secretary to require certain entities associated with critical infrastructure to use E-Verify if the use will assist in the protection of the critical infrastructure.

• *Remedies*. This section provides that if a work-eligible individual claims that they were wrongly fired from, or were not hired for, a job due to an incorrect E-Verify non-confirmation,

they may seek remedies under the Federal Tort Claims Act. Prohibits class action lawsuits.

Sec. 704. Recruitment and Referral. This section requires union hiring halls, day labor sites, and State workforce agencies to use E-Verify when recruiting or referring an individual for employment.

Sec. 705. Good Faith Defense. This section provides a safe harbor for employers who use E-Verify in good faith. It also provides that if an employer uses a reasonable, secure, and established technology to authenticate the identity of a new employee, that fact shall be taken into consideration for purposes of determining good faith use of the system.

Sec. 706. Preemption and States' Rights.

- *Federal Preemption.* This section creates one federal law requiring E-Verify use by preempting State laws mandating E-Verify use for employment eligibility purposes.
- *States' Rights.* This section gives States a specific role in helping to enforce the E-Verify requirements by allowing the States to investigate violations of this Act and enforce the provisions pursuant to the federal structure. It incentivizes States to help enforce E-Verify requirements by allowing the States to retain the fines assessed under this Act. States that an employer may be subject only to a state investigation and enforcement action *or* a federal investigation and enforcement action for the same violation of E-Verify laws. This section retains the ability of States and localities to condition business licenses on the requirement that the employer uses E-Verify in accordance with the requirements of this Act.

Sec. 707. Repeal. This section repeals Subtitle A of Title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. (This is where E-Verify was created as a pilot. It is in the notes to 8 U.S.C. § 1324A and because this bill places E-Verify in the actual text of 1324A, there is no longer a need for Subtitle A of title IV of IIRIRA.)

Sec. 708. Penalties.

- *Penalties.* This section increases the civil and criminal penalties for employers who violate the laws prohibiting illegal hiring and employment.
- *Debarment.* This section allows DHS to bar a business from receiving federal contracts, grants, or other cooperative agreements, if they repeatedly violate the requirements in this bill or if they are convicted of a crime under this bill. If the business has a contract, grant, or agreement at the time, then DHS and the Attorney General must consider the views of the agency with which the business has a contract, grant, or agreement to determine whether the business should be debarred.
- *State and Local Assistance.* This section creates an office within ICE whose sole purpose is to respond to (within five business days of the complaint) and investigate state and local governmental agency complaints about businesses hiring and/or employing illegal immigrants.

Sec. 709. Fraud and Misuse of Documents. This section amends 18 U.S.C. 1546(b) to ensure that employers or prospective employees who submit for work eligibility purposes a social security number or documents related to identity or work authorization, know-

ing that the social security number or documents do not belong to the person presenting them, are subject to criminal penalties.

Sec. 710. Protection of Social Security Administration Programs.

- *DHS/SSA Reimbursement.* This section requires DHS to enter into an annual agreement with SSA to reimburse, in a timely manner, SSA for the costs that it incurs in operating its part of E-Verify.

Sec. 711. Fraud Prevention.

- *Social Security Number "Lock."* To combat identity theft, this provision requires DHS to "lock" a social security number that is subject to unusual multiple uses so that if the owner attempts to get a job, the owner is alerted that the SSN may have been compromised.
- *Social Security Number "Self Lock."* This section requires DHS to allow individuals to "lock" their own SSN so that it cannot be used to verify work eligibility, to combat identity theft.
- *Social Security Number "Child Lock."* This section requires DHS to allow parents or legal guardians to "lock" the SSN of their minor child so that it cannot be used for employment eligibility purposes, to combat theft of the minor child's identity.

Sec. 712. Use of Employment Eligibility Verification Tool. This section requires that an employer who utilizes the photo matching tool that is part of E-Verify, match the photo tool photograph to the picture on the identity or employment eligibility document provided by the employee or to the face of the employee submitting the document for employment eligibility purposes.

Sec. 713. Identity Authentication Employment Eligibility Verification Pilot Program. This section requires DHS to create two pilot programs that allow employers to use an identity-authentication-based identification program for work eligibility check purposes.

Sec. 714. Inspector General Audits. This section requires, to help identify misuse of SSNs within the current workforce, the Inspector General of the SSA to complete audits of certain categories of SSNs for which there is a likelihood of use by unauthorized workers. The House Committee on Ways and Means and the Senate Finance Committee will then determine the information to be given to DHS to investigate incidents of SSN misuse and unauthorized employment.

Sec. 715. Agriculture Workforce Study. This section requires the Secretary of the Department of Homeland Security in consultation with the Secretary of the Department of Agriculture to submit a report on the agricultural workforce to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate.

Sec. 716. Repealing regulations. This section nullifies two Biden Administration regulations, the "Temporary Agricultural Employment of H–2A Nonimmigrants in the United States" and the "Adverse Effect Wage Rate Methodology for the Temporary Employment of H–2A Nonimmigrants in Non-Range Occupations in the United States."

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

* * * * * * *

TITLE I—GENERAL

DEFINITIONS

SECTION 101. (a) As used in this Act—

(1) The term "administrator" means the official designated by the Secretary of State pursuant to section 104(b) of this Act.

(2) The term "advocates" includes, but is not limited to, advises, recommends, furthers by overt act, and admits belief in.

(3) The term "alien" means any person not a citizen or national of the United States.

(4) The term "application for admission" has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa.

(5) The term "Attorney General" means the Attorney General of the United States.

(6) The term "border crossing identification card" means a document of identity bearing that designation issued to an alien who is lawfully admitted for permanent residence, or to an alien who is a resident in foreign contiguous territory, by a consular officer or an immigration officer for the purpose of crossing over the borders between the United States and foreign contiguous territory in accordance with such conditions for its issuance and use as may be prescribed by regulations. Such regulations shall provide that (A) each such document include a biometric identifier (such as the fingerprint or handprint of the alien) that is machine readable and (B) an alien presenting a border crossing identification card is not permitted to cross over the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien.

(7) The term "clerk of court" means a clerk of a naturalization court.

(8) The terms "Commissioner" and "Deputy Commissioner" mean the Commissioner of Immigration and Naturalization and a Deputy Commissioner of Immigration and Naturalization, respectively.

(9) The term "consular officer" means any consular, diplomatic, or other officer or employee of the United States designated under regulations prescribed under authority contained in this Act, for the purpose of issuing immigrant or nonimmigrant visas or, when used in title III, for the purpose of adjudicating nationality.

(10) The term "crewman" means a person serving in any capacity on board a vessel or aircraft.

(11) The term "diplomatic visa" means a nonimmigrant visa bearing that title and issued to a nonimmigrant in accordance with such regulations as the Secretary of State may prescribe.

(12) The term "doctrine" includes, but is not limited to, policies, practices, purposes, aims, or procedures.

(13)(A) The terms "admission" and "admitted" mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.

(B) An alien who is paroled under section 212(d)(5) or permitted to land temporarily as an alien crewman shall not be considered to have been admitted.

(C) An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the alien—

(i) has abandoned or relinquished that status,

(ii) has been absent from the United States for a continuous period in excess of 180 days,

(iii) has engaged in illegal activity after having departed the United States,

(iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this Act and extradition proceedings,

(v) has committed an offense identified in section 212(a)(2), unless since such offense the alien has been granted relief under section 212(h) or 240A(a), or

(vi) is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

(14) The term "foreign state" includes outlying possessions of a foreign state, but self-governing dominions and territories under mandate or trusteeship shall be regarded as separate foreign states.

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(A)(i) an ambassador, public minister, or career diplomatic or consular officer who has been accredited by a foreign government recognized de jure by the United States and who is accepted by the President or by the Secretary of State, and the members of the alien's immediate family;

(ii) upon a basis of reciprocity, other officials and employees who have been accredited by a foreign government recognized de jure by the United States, who are accepted by the Secretary of State, and the members of their immediate families; and

(iii) upon a basis of reciprocity, attendants, servants, personal employees, and members of their immediate families, of the officials and employees who have a nonimmigrant status under (i) and (ii) above;

(B) an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence

in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure;

(C)(i) an alien in immediate and continuous transit through the United States, for a period not to exceed 29 days;

(ii) an alien who qualifies as a person entitled to pass in transit to and from the United Nations Headquarters District (as defined in section 209A(e) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4309a(e))) and foreign countries, under the provisions of paragraphs (3), (4), and (5) of section 11 of the Agreement regarding the Headquarters of the United Nations, done at Lake Success June 26, 1947 (61 Stat. 758); or

(iii) an alien passing in transit through the United States to board a vessel on which the alien will perform, or to disembark from a vessel on which the alien performed, ship-to-ship liquid cargo transfer operations to or from another vessel engaged in foreign trade, for a period not to exceed 180 days;

(D)(i) an alien crewman serving in good faith as such in a capacity required for normal operation and service on board a vessel, as defined in section 258(a) (other than a fishing vessel having its home port or an operating base in the United States), or aircraft, who intends to land temporarily and solely in pursuit of his calling as a crewman and to depart from the United States with the vessel or aircraft on which he arrived or some other vessel or aircraft;

(ii) an alien crewman serving in good faith as such in any capacity required for normal operations and service aboard a fishing vessel having its home port or an operating base in the United States who intends to land temporarily in Guam or the Commonwealth of the Northern Mariana Islands and solely in pursuit of his calling as a crewman and to depart from Guam or the Commonwealth of the Northern Mariana Islands with the vessel on which he arrived; or

(iii) an alien crewman performing ship-to-ship liquid cargo transfer operations to or from another vessel engaged in foreign trade, who intends to land temporarily solely in pursuit of the alien's responsibilities as a crewman and to depart from the United States on the vessel on which the alien arrived or on another vessel or aircraft, for a period not to exceed 180 days;

(E) an alien entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which the alien is a national (or, in the case of an alien who acquired the relevant nationality through a financial investment and who has not previously been granted status under this subparagraph, the foreign state of which the alien is a national and in which the alien has been domiciled for a continuous period of not less than 3 years at any point before applying for a nonimmigrant visa under this subparagraph), and the spouse and children of any such alien if accompanying or following to join such alien: (i) solely to carry on substantial trade, including trade in services or trade in technology, principally between the United States and the foreign state of

which the alien is a national; (ii) solely to develop and direct the operations of an enterprise in which the alien has invested, or of an enterprise in which the alien is actively in the process of investing, a substantial amount of capital; or (iii) solely to perform services in a specialty occupation in the United States if the alien is a national of the Commonwealth of Australia and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 212(t)(1);

(F)(i) an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 214(l) at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in an accredited language training program in the United States, particularly designated by him and approved by the Attorney General after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, (ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's qualifications for and actual course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;

(G)(i) a designated principal resident representative of a foreign government recognized de jure by the United States, which foreign government is a member of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669), accredited resident members of the staff of such representatives, and members of his or their immediate family;

(ii) other accredited representatives of such a foreign government to such international organizations, and the members of their immediate families;

(iii) an alien able to qualify under (i) or (ii) above except for the fact that the government of which such alien is an accredited representative is not recognized de jure by the United States, or that the government of which he is an accredited representative is not a member of such international organization, and the members of his immediate family;

(iv) officers, or employees of such international organizations, and the members of their immediate families;

(v) attendants, servants, and personal employees of any such representative, officer, or employee, and the members of the

immediate families of such attendants, servants, and personal employees;

(H) an alien (i) (b) subject to section 212(j)(2), who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in section 214(i)(1) or as a fashion model, who meets the requirements for the occupation specified in section 214(i)(2) or, in the case of a fashion model, is of distinguished merit and ability, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1), or (b1) who is entitled to enter the United States under and in pursuance of the provisions of an agreement listed in section 214(g)(8)(A), who is engaged in a specialty occupation described in section 214(i)(3), and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 212(t)(1), or (c) who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 212(m)(1), and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 212(m)(2) for the facility (as defined in section 212(m)(6)) for which the alien will perform the services; or (ii)(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1986, agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), and the pressing of apples for cider on a farm, of a temporary or seasonal nature, or (b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him;

(I) upon a basis of reciprocity, an alien who is a bona fide representative of foreign press, radio, film, or other foreign information media, who seeks to enter the United States solely

to engage in such vocation, and the spouse and children of such a representative if accompanying or following to join him;

(J) an alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 212(j), and the alien spouse and minor children of any such alien if accompanying him or following to join him;

(K) subject to subsections (d) and (p) of section 214, an alien who—

(i) is the fiancée or fiancé of a citizen of the United States (other than a citizen described in section 204(a)(1)(A)(viii)(I)) and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission;

(ii) has concluded a valid marriage with a citizen of the United States (other than a citizen described in section 204(a)(1)(A)(viii)(I)) who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or

(iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;

(L) subject to section 214(c)(2), an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him;

(M)(i) an alien having a residence in a foreign country which he has no intention of abandoning who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than in a language training program) in the United States particularly designated by him and approved by the Attorney General, after consultation with the Secretary of Education, which institution shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant nonacademic student and if any such institution fails to make reports promptly

the approval shall be withdrawn, (ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;

(N)(i) the parent of an alien accorded the status of special immigrant under paragraph (27)(I)(i) (or under analogous authority under paragraph (27)(L)), but only if and while the alien is a child, or (ii) a child of such parent or of an alien accorded the status of a special immigrant under clause (ii), (iii), or (iv) of paragraph (27)(I) (or under analogous authority under paragraph (27)(L));

(O) an alien who—

(i) has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability; or

(ii)(I) seeks to enter the United States temporarily and solely for the purpose of accompanying and assisting in the artistic or athletic performance by an alien who is admitted under clause (i) for a specific event or events,

(II) is an integral part of such actual performance,

(III)(a) has critical skills and experience with such alien which are not of a general nature and which cannot be performed by other individuals, or (b) in the case of a motion picture or television production, has skills and experience with such alien which are not of a general nature and which are critical either based on a pre-existing longstanding working relationship or, with respect to the specific production, because significant production (including pre- and post-production work) will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production, and

(IV) has a foreign residence which the alien has no intention of abandoning; or

(iii) is the alien spouse or child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;

(P) an alien having a foreign residence which the alien has no intention of abandoning who—

(i)(a) is described in section 214(c)(4)(A) (relating to athletes), or (b) is described in section 214(c)(4)(B) (relating to entertainment groups);

(ii)(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

(II) seeks to enter the United States temporarily and solely for the purpose of performing as such an artist or entertainer or with such a group under a reciprocal exchange program which is between an organization or organizations in the United States and an organization or organizations in one or more foreign states and which provides for the temporary exchange of artists and entertainers;

(iii)(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

(II) seeks to enter the United States temporarily and solely to perform, teach, or coach as such an artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique; or

(iv) is the spouse or child of an alien described in clause (i), (ii), or (iii) and is accompanying, or following to join, the alien;

(Q)(i) an alien having a residence in a foreign country which he has no intention of abandoning who is coming temporarily (for a period not to exceed 15 months) to the United States as a participant in an international cultural exchange program approved by the Secretary of Homeland Security for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality and who will be employed under the same wages and working conditions as domestic workers; or (ii)(I) an alien citizen of the United Kingdom or the Republic of Ireland, 21 to 35 years of age, unemployed for not less than 12 months, and having a residence for not less than 18 months in Northern Ireland, or the counties of Louth, Monaghan, Cavan, Leitrim, Sligo, and Donegal within the Republic of Ireland, which the alien has no intention of abandoning who is coming temporarily (for a period not to exceed 24 months) to the United States as a participant in a cultural and training program approved by the Secretary of State and the Secretary of Homeland Security under section 2(a) of the Irish Peace Process Cultural and Training Program Act of 1998 for the purpose of providing practical training, employment, and the experience of coexistence and conflict resolution in a diverse society, and (II) the alien spouse and minor children of any such alien if accompanying the alien or following to join the alien;

(R) an alien, and the spouse and children of the alien if accompanying or following to join the alien, who—

(i) for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States; and

(ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii);

(S) subject to section 214(k), an alien—

(i) who the Attorney General determines—

(I) is in possession of critical reliable information concerning a criminal organization or enterprise;

(II) is willing to supply or has supplied such information to Federal or State law enforcement authorities or a Federal or State court; and

(III) whose presence in the United States the Attorney General determines is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise; or

(ii) who the Secretary of State and the Attorney General jointly determine—

(I) is in possession of critical reliable information concerning a terrorist organization, enterprise, or operation;

(II) is willing to supply or has supplied such information to Federal law enforcement authorities or a Federal court;

(III) will be or has been placed in danger as a result of providing such information; and

(IV) is eligible to receive a reward under section 36(a) of the State Department Basic Authorities Act of 1956,

and, if the Attorney General (or with respect to clause (ii), the Secretary of State and the Attorney General jointly) considers it to be appropriate, the spouse, married and unmarried sons and daughters, and parents of an alien described in clause (i) or (ii) if accompanying, or following to join, the alien;

(T)(i) subject to section 214(o), an alien who the Secretary of Homeland Security, or in the case of subclause (III)(aa) the Secretary of Homeland Security, in consultation with the Attorney General, determines—

(I) is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000;

(II) is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking;

(III)(aa) has complied with any reasonable request for assistance in the Federal, State or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime;

(bb) in consultation with the Attorney General, as appropriate, is unable to cooperate with a request described in item (aa) due to physical or psychological trauma; or

(cc) has not attained 18 years of age; and

(IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal; and

(ii) if accompanying, or following to join, the alien described in clause (i)—

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien;

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; or

(III) any parent or unmarried sibling under 18 years of age of an alien described in subclause (I) or (II) who the Secretary of Homeland Security, in consultation with the law enforcement officer investigating a severe form of trafficking, determines faces a present danger of retaliation as a result of the alien's escape from the severe form of trafficking or cooperation with law enforcement.

(U)(i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that—

(I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);

(II) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning criminal activity described in clause (iii);

(III) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and

(IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

(ii) if accompanying, or following to join, the alien described in clause (i)—

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; or

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; and

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hos-

tage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in section 1351 of title 18, United States Code); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes; or

(V) subject to section 214(q), an alien who is the beneficiary (including a child of the principal alien, if eligible to receive a visa under section 203(d)) of a petition to accord a status under section 203(a)(2)(A) that was filed with the Attorney General under section 204 on or before the date of the enactment of the Legal Immigration Family Equity Act, if—

(i) such petition has been pending for 3 years or more; or

(ii) such petition has been approved, 3 years or more have elapsed since such filing date, and—

(I) an immigrant visa is not immediately available to the alien because of a waiting list of applicants for visas under section 203(a)(2)(A); or

(II) the alien's application for an immigrant visa, or the alien's application for adjustment of status under section 245, pursuant to the approval of such petition, remains pending.

(16) The term "immigrant visa" means an immigrant visa required by this Act and properly issued by a consular officer at his office outside of the United States to an eligible immigrant under the provisions of this Act.

(17) The term "immigration laws" includes this Act and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, expulsion or removal of aliens.

(18) The term "immigration officer" means any employee or class of employees of the Service or of the United States designated by the Attorney General, individually or by regulation, to perform the functions of an immigration officer specified by this Act or any section thereof.

(19) The term "ineligible to citizenship," when used in reference to any individual, means, notwithstanding the provisions of any treaty relating to military service, an individual who is, or was at any time, permanently debarred from becoming a citizen of the United States under section 3(a) of the Selective Training and Service Act of 1940, as amended (54 Stat. 885; 55 Stat. 844), or under section 4(a) of the Selective Service Act of 1948, as amended (62 Stat. 605; 65 Stat. 76), or under any section of this Act, or any other Act, or under any law amendatory of, supplementary to, or in substitution for, any of such sections or Acts.

(20) The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

(21) The term "national" means a person owing permanent allegiance to a state.

(22) The term "national of the United States" means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

(23) The term "naturalization" means the conferring of nationality of a state upon a person after birth, by any means whatsoever.

(25) The term "noncombatant service" shall not include service in which the individual is not subject to military discipline, court martial, or does not wear the uniform of any branch of the armed forces.

(26) The term "nonimmigrant visa" means a visa properly issued to an alien as an eligible nonimmigrant by a competent officer as provided in this Act.

(27) The term "special immigrant" means—

(A) an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad;

(B) an immigrant who was a citizen of the United States and may, under section 324(a) or 327 of title III, apply for reacquisition of citizenship;

(C) an immigrant, and the immigrant's spouse and children if accompanying or following to join the immigrant, who—

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States—

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before September 30, 2015, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before September 30, 2015, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i);

(D) an immigrant who—

(i) is an employee, or an honorably retired former employee, of the United States Government abroad, or of the American Institute in Taiwan, and who has performed faithful service for a total of fifteen years, or more, and his accompanying spouse and children: *Provided,* That the principal officer of a Foreign Service establishment (or, in the case of the American Institute in Taiwan, the Director thereof), in his discretion, shall have recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status; or

(ii) is the surviving spouse or child of an employee of the United States Government abroad: *Provided*, That the employee performed faithful service for a total of not less than 15 years or was killed in the line of duty;

(E) an immigrant, and his accompanying spouse and children, who is or has been an employee of the Panama Canal Company or Canal Zone Government before the date on which the Panama Canal Treaty of 1977 (as described in section 3 (a)(1) of the Panama Canal Act of 1979) enters into force, who was resident in the Canal Zone on the effective date of the exchange of instruments of ratification of such Treaty, and who has performed faithful service as such an employee for one year or more;

(F) an immigrant, and his accompanying spouse and children, who is a Panamanian national and (i) who, before the date on which such Panama Canal Treaty of 1977 enters into force, has been honorably retired from United States Government employment in the Canal Zone with a total of 15 years or more of faithful service, or (ii) who on the date on which such Treaty enters into force, has been employed by the United States Government in the Canal Zone with a total of 15 years or more of faithful service and who subsequently is honorably retired from such employment or continues to be employed by the United States Government in an area of the former Canal Zone or continues to be employed by the United States Government in an area of the former Canal Zone;

(G) an immigrant, and his accompanying spouse and children, who was an employee of the Panama Canal Company or Canal Zone government on the effective date of the exchange of instruments of ratification of such Panama Canal Treaty of 1977, who has performed faithful service for five years or more as such an employee, and whose personal safety, or the personal safety of whose spouse or children, as a direct result of such Treaty, is reasonably placed in danger because of the special nature of any of that employment;

(H) an immigrant, and his accompanying spouse and children, who—

(i) has graduated from a medical school or has qualified to practice medicine in a foreign state,

(ii) was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date,

(iii) entered the United States as a nonimmigrant under subsection (a)(15)(H) or (a)(15)(J) before January 10, 1978, and

(iv) has been continuously present in the United States in the practice or study of medicine since the date of such entry;

(I)(i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of ap-

plication for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 21 years, and (II) applies for a visa or adjustment of status under this subparagraph no later than his twenty-fifth birthday or six months after the date of the enactment of the Immigration Technical Corrections Act of 1988, whichever is later;

(ii) an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the death of such officer or employee, and (II) files a petition for status under this subparagraph no later than six months after the date of such death or six months after the date of such death or six months after the date of the enactment of the Immigration Technical Corrections Act of 1988, whichever is later;

(iii) an immigrant who is a retired officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the officer or employee's retirement from any such international organization, and (II) files a petition for status under this subparagraph no later than six months after the date of such retirement or six months after the date of enactment of the Immigration and Nationality Technical Corrections Act of 1994, whichever is later; or

(iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family;

(J) an immigrant who is present in the United States—

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States**[**, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law**]**;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; [and]

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; *and*

(III) an alien may not be granted special immigrant status under this subparagraph if the alien's reunification with any one parent or legal guardian is not precluded by abuse, neglect, abandonment, or any similar cause under State law;

(K) an immigrant who has served honorably on active duty in the Armed Forces of the United States after October 15, 1978, and after original lawful enlistment outside the United States (under a treaty or agreement in effect on the date of the enactment of this subparagraph) for a period or periods aggregating—

(i) 12 years and who, if separated from such service, was never separated except under honorable conditions, or

(ii) 6 years, in the case of an immigrant who is on active duty at the time of seeking special immigrant status under this subparagraph and who has reenlisted to incur a total active duty service obligation of at least 12 years,

and the spouse or child of any such immigrant if accompanying or following to join the immigrant, but only if the executive department under which the immigrant serves or served recommends the granting of special immigrant status to the immigrant;

(L) an immigrant who would be described in clause (i), (ii), (iii), or (iv) of subparagraph (I) if any reference in such a clause—

(i) to an international organization described in paragraph (15)(G)(i) were treated as a reference to the North Atlantic Treaty Organization (NATO);

(ii) to a nonimmigrant under paragraph (15)(G)(iv) were treated as a reference to a nonimmigrant classifiable under NATO–6 (as a member of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement, a member of a civilian component attached to or employed by an Allied Headquarters under the "Protocol on the Status of International Military Headquarters" set up pursuant to the North Atlantic Treaty, or as a dependent); and

(iii) to the Immigration Technical Corrections Act of 1988 or to the Immigration and Nationality Technical Corrections Act of 1994 were a reference to the American Competitiveness and Workforce Improvement Act of 1998

(M) subject to the numerical limitations of section 203(b)(4), an immigrant who seeks to enter the United States to work as a broadcaster in the United States for the International Broadcasting Bureau of the Broadcasting Board of Governors, or for a grantee of the Broadcasting Board of Governors, and the immigrant's accompanying spouse and children.

(28) The term "organization" means, but is not limited to, an organization, corporation, company, partnership, association, trust, foundation or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together with joint action on any subject or subjects.

(29) The term "outlying possessions of the United States" means American Samoa and Swains Island.

(30) The term "passport" means any travel document issued by competent authority showing the bearer's origin, identity, and nationality if any, which is valid for the admission of the bearer into a foreign country.

(31) The term "permanent" means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law.

(32) The term "profession" shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.

(33) The term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.

(34) The term "Service" means the Immigration and Naturalization Service of the Department of Justice.

(35) The term "spouse", "wife", or "husband" does not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, unless the marriage shall have been consummated.

(36) The term "State" includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

(37) The term "totalitarian party" means an organization which advocates the establishment in the United States of a totalitarian dictatorship or totalitarianism. The terms "totalitarian dictatorship" and "totalitarianism" mean and refer to systems of government not representative in fact, characterized by (A) the existence of a single political party, organized on a dictatorial basis, with so close an identity between such party and its policies and the governmental policies of the country in which it exists, that the party and the government constitute an indistinguishable unit, and (B) the forcible suppression of opposition to such party.

(38) The term "United States", except as otherwise specifically herein provided, when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

(39) The term "unmarried", when used in reference to any individual as of any time, means an individual who at such time is not married, whether or not previously married.

(40) The term "world communism" means a revolutionary movement, the purpose of which is to establish eventually a Communist totalitarian dictatorship in any or all the countries of the world through the medium of an internationally coordinated Communist political movement.

(41) The term "graduates of a medical school" means aliens who have graduated from a medical school or who have qualified to practice medicine in a foreign state, other than such aliens who are of national or international renown in the field of medicine.

(42) The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this Act, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

(43) The term "aggravated felony" means—

(A) murder, rape, or sexual abuse of a minor;

(B) illicit trafficking in a controlled substance (as defined in section 102 of the Controlled Substances Act), including a drug trafficking crime (as defined in section 924(c) of title 18, United States Code);

(C) illicit trafficking in firearms or destructive devices (as defined in section 921 of title 18, United States Code) or in explosive materials (as defined in section 841(c) of that title);

(D) an offense described in section 1956 of title 18, United States Code (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded $10,000;

(E) an offense described in—

(i) section 842 (h) or (i) of title 18, United States Code, or section 844 (d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);

(ii) section 922(g) (1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924 (b) or (h) of title 18, United States Code (relating to firearms offenses); or

(iii) section 5861 of the Internal Revenue Code of 1986 (relating to firearms offenses);

(F) a crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) for which the term of imprisonment at least one year;

(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) at least one year;

(H) an offense described in section 875, 876, 877, or 1202 of title 18, United States Code (relating to the demand for or receipt of ransom);

(I) an offense described in section 2251, 2251A, or 2252 of title 18, United States Code (relating to child pornography);

(J) an offense described in section 1962 of title 18, United States Code (relating to racketeer influenced corrupt organizations), or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed;

(K) an offense that—

(i) relates to the owning, controlling, managing, or supervising of a prostitution business;

(ii) is described in section 2421, 2422, or 2423 of title 18, United States Code (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or

(iii) is described in any of sections 1581–1585 or 1588–1591 of title 18, United States Code (relating to peonage, slavery, involuntary servitude, and trafficking in persons);

(L) an offense described in—

(i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of title 18, United States Code;

(ii) section 601 of the National Security Act of 1947 (50 U.S.C. 421) (relating to protecting the identity of undercover intelligence agents); or

(iii) section 601 of the National Security Act of 1947 (relating to protecting the identity of undercover agents);

(M) an offense that—

(i) involves fraud or deceit in which the loss to the victim or victims exceeds $10,000; or

(ii) is described in section 7201 of the Internal Revenue Code of 1986 (relating to tax evasion) in which the revenue loss to the Government exceeds $10,000;

(N) an offense described in paragraph (1)(A) or (2) of section 274(a) (relating to alien smuggling), except in the case of a first

offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act

(O) an offense described in section 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;

(P) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18, United States Code, or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act;

(Q) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;

(R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;

(S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;

(T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and

(U) an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after the date of enactment of this paragraph.

(44)(A) The term "managerial capacity" means an assignment within an organization in which the employee primarily—

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly su-

pervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

(B) The term "executive capacity" means an assignment within an organization in which the employee primarily—

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision-making; and

(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

(C) If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Attorney General shall take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual shall not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.

(45) The term "substantial" means, for purposes of paragraph (15)(E) with reference to trade or capital, such an amount of trade or capital as is established by the Secretary of State, after consultation with appropriate agencies of Government.

(46) The term "extraordinary ability" means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction.

(47)(A) The term "order of deportation" means the order of the special inquiry officer, or other such administrative officer to whom the Attorney General has delegated the responsibility for determining whether an alien is deportable, concluding that the alien is deportable or ordering deportation.

(B) The order described under subparagraph (A) shall become final upon the earlier of—

(i) a determination by the Board of Immigration Appeals affirming such order; or

(ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals.

(48)(A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

(B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarcer-

ation or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

(49) The term "stowaway" means any alien who obtains transportation without the consent of the owner, charterer, master or person in command of any vessel or aircraft through concealment aboard such vessel or aircraft. A passenger who boards with a valid ticket is not to be considered a stowaway.

(50) The term "intended spouse" means any alien who meets the criteria set forth in section 204(a)(1)(A)(iii)(II)(aa)(BB), 204(a)(1)(B)(ii)(II)(aa)(BB), or 240A(b)(2)(A)(i)(III).

(51) The term "VAWA self-petitioner" means an alien, or a child of the alien, who qualifies for relief under—

(A) clause (iii), (iv), or (vii) of section 204(a)(1)(A);

(B) clause (ii) or (iii) of section 204(a)(1)(B);

(C) section 216(c)(4)(C);

(D) the first section of Public Law 89–732 (8 U.S.C. 1255 note) (commonly known as the Cuban Adjustment Act) as a child or spouse who has been battered or subjected to extreme cruelty;

(E) section 902(d)(1)(B) of the Haitian Refugee Immigration Fairness Act of 1998 (8 U.S.C. 1255 note);

(F) section 202(d)(1) of the Nicaraguan Adjustment and Central American Relief Act; or

(G) section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208).

(52) The term "accredited language training program" means a language training program that is accredited by an accrediting agency recognized by the Secretary of Education.

(b) As used in titles I and II—

(1) The term "child" means an unmarried person under twenty-one years of age who is—

(A) a child born in wedlock;

(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred;

(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;

(D) a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person;

(E)(i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years or if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household: *Provided,* That no natural parent of any such adopted child shall thereafter, by vir-

tue of such parentage, be accorded any right, privilege, or status under this Act; or

(ii) subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (F)(i); (II) was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years; or

(F)(i) a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen who is at least 25 years of age, at least 1 of whom personally saw and observed the child before or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence: *Provided,* That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States: *Provided further,* That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or

(ii) subject to the same provisos as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (E)(i); (II) has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 201(b).

(G)(i) a child, younger than 16 years of age at the time a petition is filed on the child's behalf to accord a classification as an immediate relative under section 201(b), who has been adopted in a foreign state that is a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at The Hague on May 29, 1993, or who is emigrating from such a foreign state to be adopted in the United States by a United States citizen and spouse jointly or by an unmarried United States citizen who is at least 25 years of age, Provided, That—

(I) the Secretary of Homeland Security is satisfied that proper care will be furnished the child if admitted to the United States;

(II) the child's natural parents (or parent, in the case of a child who has one sole or surviving parent because of the death or disappearance of, abandonment or desertion by, the other parent), or other per-

sons or institutions that retain legal custody of the child, have freely given their written irrevocable consent to the termination of their legal relationship with the child, and to the child's emigration and adoption;

(III) in the case of a child having two living natural parents, the natural parents are incapable of providing proper care for the child;

(IV) the Secretary of Homeland Security is satisfied that the purpose of the adoption is to form a bona fide parent-child relationship, and the parent-child relationship of the child and the natural parents has been terminated (and in carrying out both obligations under this subclause the Secretary of Homeland Security may consider whether there is a petition pending to confer immigrant status on one or both of such natural parents); and

(V) in the case of a child who has not been adopted—

(aa) the competent authority of the foreign state has approved the child's emigration to the United States for the purpose of adoption by the prospective adoptive parent or parents; and

(bb) the prospective adoptive parent or parents has or have complied with any pre-adoption requirements of the child's proposed residence; and

(ii) except that no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or

(iii) subject to the same provisos as in clauses (i) and (ii), a child who—

(I) is a natural sibling of a child described in clause (i), subparagraph (E)(i), or subparagraph (F)(i);

(II) was adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in clause (i), subparagraph (E)(i), or subparagraph (F)(i); and

(III) is otherwise described in clause (i), except that the child is younger than 18 years of age at the time a petition is filed on his or her behalf for classification as an immediate relative under section 201(b).

(2) The term "parent", "father", or "mother" means a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in (1) above, except that, for purposes of paragraph (1)(F) (other than the second proviso therein) in the case of a child born out of wedlock described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term "parent" does not include the natural father or the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.

(3) The term "person" means an individual or an organization.

(4) The term "immigration judge" means an attorney whom the Attorney General appoints as an administrative judge within the

Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 240. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service.

(5) The term "adjacent islands" includes Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.

(c) As used in title III—

(1) The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided in sections 320 and 321 of title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

(2) The terms "parent", "father", and "mother" include in the case of a posthumous child a deceased parent, father, and mother.

(e) For the purpose of this Act—

(1) The giving, loaning, or promising of support or of money or any other thing of value to be used for advocating any doctrine shall constitute the advocating of such doctrine; but nothing in this paragraph shall be construed as an exclusive definition of advocating.

(2) The giving, loaning, or promising of support or of money or any other thing of value for any purpose to any organization shall be presumed to constitute affiliation therewith; but nothing in this paragraph shall be construed as an exclusive definition of affiliation.

(3) Advocating the economic, international, and governmental doctrines of world communism means advocating the establishment of a totalitarian Communist dictatorship in any or all of the countries of the world through the medium of an internationally coordinated Communist movement.

(f) For the purposes of this Act—

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was—

(1) a habitual drunkard;

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D), (6)(E), and (10)(A) of section 212(a) of this Act; or subparagraphs (A) and (B) of section 212(a)(2) and subparagraph (C) thereof of such section (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana); if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

(4) one whose income is derived principally from illegal gambling activities;

(5) one who has been convicted of two or more gambling offenses committed during such period;

(6) one who has given false testimony for the purpose of obtaining any benefits under this Act;

(7) one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period;

(8) one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43)); or

(9) one who at any time has engaged in conduct described in section 212(a)(3)(E) (relating to assistance in Nazi persecution, participation in genocide, or commission of acts of torture or extrajudicial killings) or 212(a)(2)(G) (relating to severe violations of religious freedom).

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character. In the case of an alien who makes a false statement or claim of citizenship, or who registers to vote or votes in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of such registration or voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such statement, claim, or violation that he or she was a citizen, no finding that the alien is, or was, not of good moral character may be made based on it.

(g) For the purposes of this Act any alien ordered deported or removed (whether before or after the enactment of this Act) who has left the United States, shall be considered to have been deported or removed in pursuance of law, irrespective of the source from which the expenses of his transportation were defrayed or of the place to which he departed.

(h) For purposes of section 212(a)(2)(E), the term "serious criminal offense" means—

(1) any felony;

(2) any crime of violence, as defined in section 16 of title 18 of the United States Code; or

(3) any crime of reckless driving or of driving while intoxicated or under the influence of alcohol or of prohibited substances if such crime involves personal injury to another.

(i) With respect to each nonimmigrant alien described in subsection (a)(15)(T)(i)—

(1) the Secretary of Homeland Security, the Attorney General, and other Government officials, where appropriate, shall provide the alien with a referral to a nongovernmental organization that would advise the alien regarding the alien's options while in the United States and the resources available to the alien; and

(2) the Secretary of Homeland Security shall, during the period the alien is in lawful temporary resident status under that subsection, grant the alien authorization to engage in employment in the United States and provide the alien with an "employment authorized" endorsement or other appropriate work permit.

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TITLE II—IMMIGRATION

CHAPTER 1—SELECTION SYSTEM

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ASYLUM

SEC. 208. (a) AUTHORITY TO APPLY FOR ASYLUM.—

(1) IN GENERAL.—Any alien who is physically present in the United States *and has arrived in the United States at a port of entry (including an alien who is brought to the United States after having been interdicted in international or United States waters),* **[**or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters),**]** irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 235(b).

(2) EXCEPTIONS.—

(A) SAFE THIRD COUNTRY.—Paragraph (1) shall not apply to an alien **[**if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to**]** *if the Attorney General or the Secretary of Homeland Security determines—*

(i) that the alien may be removed to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General *or the Secretary, on a case by case basis,* finds that it is in the public interest for the alien to receive asylum in the United States**[**.**]***; or*

(ii) that the alien entered, attempted to enter, or arrived in the United States after transiting through at least one country outside the alien's country of citizenship, nationality, or last lawful habitual residence en route to the United States, unless—

(I) the alien demonstrates that he or she applied for protection from persecution or torture in at least one country outside the alien's country of citizenship, nationality, or last lawful habitual residence through which the alien transited en route to

the United States, and the alien received a final judgment denying the alien protection in each country;

(II) the alien demonstrates that he or she was a victim of a severe form of trafficking in which a commercial sex act was induced by force, fraud, or coercion, or in which the person induced to perform such act was under the age of 18 years; or in which the trafficking included the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery, and was unable to apply for protection from persecution in each country through which the alien transited en route to the United States as a result of such severe form of trafficking; or

(III) the only countries through which the alien transited en route to the United States were, at the time of the transit, not parties to the 1951 United Nations Convention relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees, or the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(B) TIME LIMIT.—Subject to subparagraph (D), paragraph (1) shall not apply to an alien unless the alien demonstrates by clear and convincing evidence that the application has been filed within 1 year after the date of the alien's arrival in the United States.

(C) PREVIOUS ASYLUM APPLICATIONS.—Subject to subparagraph (D), paragraph (1) shall not apply to an alien if the alien has previously applied for asylum and had such application denied.

(D) CHANGED CIRCUMSTANCES.—An application for asylum of an alien may be considered, notwithstanding subparagraphs (B) and (C), if the alien demonstrates to the satisfaction of the *Secretary of Homeland Security or the* Attorney General either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing an application within the period specified in subparagraph (B).

(E) APPLICABILITY.—Subparagraphs (A) and (B) shall not apply to an unaccompanied alien child (as defined in section 462(g) of the Homeland Security Act of 2002 (6 U.S.C. 279(g))).

(3) LIMITATION ON JUDICIAL REVIEW.—No court shall have jurisdiction to review any determination of the *Secretary of Homeland Security or the* Attorney General under paragraph (2).

(b) CONDITIONS FOR GRANTING ASYLUM.—

(1) IN GENERAL.—

(A) ELIGIBILITY.—The Secretary of Homeland Security or the Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Secretary of Homeland Security or the Attorney General under this section if the Secretary of Homeland Security or the Attorney General determines that such alien is a refugee within the meaning of section 101(a)(42)(A) *(in accordance with the rules set forth in this section), and is eligible to apply for asylum under subsection (a)*.

(B) BURDEN OF PROOF.—

(i) IN GENERAL.—The burden of proof is on the applicant to establish that the applicant is a refugee, within the meaning of section 101(a)(42)(A). To establish that the applicant is a refugee within the meaning of such section, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant.

(ii) SUSTAINING BURDEN.—The testimony of the applicant may be sufficient to sustain the applicant's burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. In determining whether the applicant has met the applicant's burden, the trier of fact may weigh the credible testimony along with other evidence of record. Where the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.

(iii) CREDIBILITY DETERMINATION.—Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor. There is no presumption of credibility, however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.

[(2) EXCEPTIONS.—

[(A) IN GENERAL.—Paragraph (1) shall not apply to an alien if the Attorney General determines that—

[(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

[(ii) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

[(iii) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;

[(iv) there are reasonable grounds for regarding the alien as a danger to the security of the United States;

[(v) the alien is described in subclause (I), (II), (III), (IV), or (VI) of section 212(a)(3)(B)(i) or section 237(a)(4)(B) (relating to terrorist activity), unless, in the case only of an alien inadmissible under subclause (IV) of section 212(a)(3)(B)(i), the Attorney General determines, in the Attorney General's discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States; or

[(vi) the alien was firmly resettled in another country prior to arriving in the United States.

[(B) SPECIAL RULES.—

[(i) CONVICTION OF AGGRAVATED FELONY.—For purposes of clause (ii) of subparagraph (A), an alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.

[(ii) OFFENSES.—The Attorney General may designate by regulation offenses that will be considered to be a crime described in clause (ii) or (iii) of subparagraph (A).

[(C) ADDITIONAL LIMITATIONS.—The Attorney General may by regulation establish additional limitations and conditions, consistent with this section, under which an alien shall be ineligible for asylum under paragraph (1).

[(D) NO JUDICIAL REVIEW.—There shall be no judicial review of a determination of the Attorney General under subparagraph (A)(v).]

(2) EXCEPTIONS.—

(A) IN GENERAL.—Paragraph (1) shall not apply to an alien if the Secretary of Homeland Security or the Attorney General determines that—

(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

(ii) the alien has been convicted of any felony under Federal, State, tribal, or local law;

(iii) the alien has been convicted of any misdemeanor offense under Federal, State, tribal, or local law involving—

(I) the unlawful possession or use of an identification document, authentication feature, or false identification document (as those terms and phrases are defined in the jurisdiction where the conviction occurred), unless the alien can establish that the conviction resulted from circumstances showing that—

(aa) the document or feature was presented before boarding a common carrier;

(bb) the document or feature related to the alien's eligibility to enter the United States;

(cc) the alien used the document or feature to depart a country wherein the alien has claimed a fear of persecution; and

(dd) the alien claimed a fear of persecution without delay upon presenting himself or herself to an immigration officer upon arrival at a United States port of entry;

(II) the unlawful receipt of a Federal public benefit (as defined in section 401(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1611(c))), from a Federal entity, or the unlawful receipt of similar public benefits from a State, tribal, or local entity; or

(III) possession or trafficking of a controlled substance or controlled substance paraphernalia, as those phrases are defined under the law of the jurisdiction where the conviction occurred, other than a single offense involving possession for one's own use of 30 grams or less of marijuana (as marijuana is defined under the law of the jurisdiction where the conviction occurred);

(iv) the alien has been convicted of an offense arising under paragraph (1)(A) or (2) of section 274(a), or under section 276;

(v) the alien has been convicted of a Federal, State, tribal, or local crime that the Attorney General or Secretary of Homeland Security knows, or has reason to believe, was committed in support, promotion, or furtherance of the activity of a criminal street gang (as defined under the law of the jurisdiction where the conviction occurred or in section 521(a) of title 18, United States Code);

(vi) the alien has been convicted of an offense for driving while intoxicated or impaired, as those terms are defined under the law of the jurisdiction where the conviction occurred (including a conviction for driving while under the influence of or impaired by alcohol or drugs), without regard to whether the conviction is classified as a misdemeanor or felony under Federal, State, tribal, or local law, in which such intoxicated or

impaired driving was a cause of serious bodily injury or death of another person;

(vii) the alien has been convicted of more than one offense for driving while intoxicated or impaired, as those terms are defined under the law of the jurisdiction where the conviction occurred (including a conviction for driving while under the influence of or impaired by alcohol or drugs), without regard to whether the conviction is classified as a misdemeanor or felony under Federal, State, tribal, or local law;

(viii) the alien has been convicted of a crime—

(I) that involves conduct amounting to a crime of stalking;

(II) of child abuse, child neglect, or child abandonment; or

(III) that involves conduct amounting to a domestic assault or battery offense, including—

(aa) a misdemeanor crime of domestic violence, as described in section 921(a)(33) of title 18, United States Code;

(bb) a crime of domestic violence, as described in section 40002(a)(12) of the Violence Against Women Act of 1994 (34 U.S.C. 12291(a)(12)); or

(cc) any crime based on conduct in which the alien harassed, coerced, intimidated, voluntarily or recklessly used (or threatened to use) force or violence against, or inflicted physical injury or physical pain, however slight, upon a person—

(AA) who is a current or former spouse of the alien;

(BB) with whom the alien shares a child;

(CC) who is cohabitating with, or who has cohabitated with, the alien as a spouse;

(DD) who is similarly situated to a spouse of the alien under the domestic or family violence laws of the jurisdiction where the offense occurred; or

(EE) who is protected from that alien's acts under the domestic or family violence laws of the United States or of any State, tribal government, or unit of local government;

(ix) the alien has engaged in acts of battery or extreme cruelty upon a person and the person—

(I) is a current or former spouse of the alien;

(II) shares a child with the alien;

(III) cohabitates or has cohabitated with the alien as a spouse;

(IV) is similarly situated to a spouse of the alien under the domestic or family violence laws of the jurisdiction where the offense occurred; or

(V) is protected from that alien's acts under the domestic or family violence laws of the United States or of any State, tribal government, or unit of local government;

(x) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

(xi) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;

(xii) there are reasonable grounds for regarding the alien as a danger to the security of the United States;

(xiii) the alien is described in subclause (I), (II), (III), (IV), or (VI) of section 212(a)(3)(B)(i) or section 237(a)(4)(B) (relating to terrorist activity), unless, in the case only of an alien inadmissible under subclause (IV) of section 212(a)(3)(B)(i), the Secretary of Homeland Security or the Attorney General determines, in the Secretary's or the Attorney General's discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States;

(xiv) the alien was firmly resettled in another country prior to arriving in the United States; or

(xv) there are reasonable grounds for concluding the alien could avoid persecution by relocating to another part of the alien's country of nationality or, in the case of an alien having no nationality, another part of the alien's country of last habitual residence.

(B) SPECIAL RULES.—

(i) PARTICULARLY SERIOUS CRIME; SERIOUS NONPOLITICAL CRIME OUTSIDE THE UNITED STATES.—

(I) IN GENERAL.—For purposes of subparagraph (A)(x), the Attorney General or Secretary of Homeland Security, in their discretion, may determine that a conviction constitutes a particularly serious crime based on—

(aa) the nature of the conviction;

(bb) the type of sentence imposed; or

(cc) the circumstances and underlying facts of the conviction.

(II) DETERMINATION.—In making a determination under subclause (I), the Attorney General or Secretary of Homeland Security may consider all reliable information and is not limited to facts found by the criminal court or provided in the underlying record of conviction.

(III) TREATMENT OF FELONIES.—In making a determination under subclause (I), an alien who has been convicted of a felony (as defined under this section) or an aggravated felony (as defined under section 101(a)(43)), shall be considered to have been convicted of a particularly serious crime.

(IV) INTERPOL RED NOTICE.—In making a determination under subparagraph (A)(xi), an Interpol

Red Notice may constitute reliable evidence that the alien has committed a serious nonpolitical crime outside the United States.

(ii) CRIMES AND EXCEPTIONS.—

(I) DRIVING WHILE INTOXICATED OR IMPAIRED.—A finding under subparagraph (A)(vi) does not require the Attorney General or Secretary of Homeland Security to find the first conviction for driving while intoxicated or impaired (including a conviction for driving while under the influence of or impaired by alcohol or drugs) as a predicate offense. The Attorney General or Secretary of Homeland Security need only make a factual determination that the alien previously was convicted for driving while intoxicated or impaired as those terms are defined under the jurisdiction where the conviction occurred (including a conviction for driving while under the influence of or impaired by alcohol or drugs).

(II) STALKING AND OTHER CRIMES.—In making a determination under subparagraph (A)(viii), including determining the existence of a domestic relationship between the alien and the victim, the underlying conduct of the crime may be considered, and the Attorney General or Secretary of Homeland Security is not limited to facts found by the criminal court or provided in the underlying record of conviction.

(III) BATTERY OR EXTREME CRUELTY.—In making a determination under subparagraph (A)(ix), the phrase "battery or extreme cruelty" includes—

(aa) any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury;

(bb) psychological or sexual abuse or exploitation, including rape, molestation, incest, or forced prostitution, shall be considered acts of violence; and

(cc) other abusive acts, including acts that, in and of themselves, may not initially appear violent, but that are a part of an overall pattern of violence.

(IV) EXCEPTION FOR VICTIMS OF DOMESTIC VIOLENCE.—An alien who was convicted of an offense described in clause (viii) or (ix) of subparagraph (A) is not ineligible for asylum on that basis if the alien satisfies the criteria under section 237(a)(7)(A).

(C) SPECIFIC CIRCUMSTANCES.—Paragraph (1) shall not apply to an alien whose claim is based on—

(i) personal animus or retribution, including personal animus in which the alleged persecutor has not targeted, or manifested an animus against, other mem-

bers of an alleged particular social group in addition to the member who has raised the claim at issue;

(ii) the applicant's generalized disapproval of, disagreement with, or opposition to criminal, terrorist, gang, guerilla, or other non-state organizations absent expressive behavior in furtherance of a discrete cause against such organizations related to control of a State or expressive behavior that is antithetical to the State or a legal unit of the State;

(iii) the applicant's resistance to recruitment or coercion by guerrilla, criminal, gang, terrorist, or other non-state organizations;

(iv) the targeting of the applicant for criminal activity for financial gain based on wealth or affluence or perceptions of wealth or affluence;

(v) the applicant's criminal activity; or

(vi) the applicant's perceived, past or present, gang affiliation.

(D) DEFINITIONS AND CLARIFICATIONS.—

(i) DEFINITIONS.—For purposes of this paragraph:

(I) FELONY.—The term "felony" means—

(aa) any crime defined as a felony by the relevant jurisdiction (Federal, State, tribal, or local) of conviction; or

(bb) any crime punishable by more than one year of imprisonment.

(II) MISDEMEANOR.—The term "misdemeanor" means—

(aa) any crime defined as a misdemeanor by the relevant jurisdiction (Federal, State, tribal, or local) of conviction; or

(bb) any crime not punishable by more than one year of imprisonment.

(ii) CLARIFICATIONS.—

(I) CONSTRUCTION.—For purposes of this paragraph, whether any activity or conviction also may constitute a basis for removal is immaterial to a determination of asylum eligibility.

(II) ATTEMPT, CONSPIRACY, OR SOLICITATION.—For purposes of this paragraph, all references to a criminal offense or criminal conviction shall be deemed to include any attempt, conspiracy, or solicitation to commit the offense or any other inchoate form of the offense.

(III) EFFECT OF CERTAIN ORDERS.—

(aa) IN GENERAL.—No order vacating a conviction, modifying a sentence, clarifying a sentence, or otherwise altering a conviction or sentence shall have any effect under this paragraph unless the Attorney General or Secretary of Homeland Security determines that—

(AA) the court issuing the order had jurisdiction and authority to do so; and

(BB) the order was not entered for rehabilitative purposes or for purposes of ame-

liorating the immigration consequences of the conviction or sentence.

(bb) AMELIORATING IMMIGRATION CONSEQUENCES.—For purposes of item (aa)(BB), the order shall be presumed to be for the purpose of ameliorating immigration consequences if—

(AA) the order was entered after the initiation of any proceeding to remove the alien from the United States; or

(BB) the alien moved for the order more than one year after the date of the original order of conviction or sentencing, whichever is later.

(cc) AUTHORITY OF IMMIGRATION JUDGE.—An immigration judge is not limited to consideration only of material included in any order vacating a conviction, modifying a sentence, or clarifying a sentence to determine whether such order should be given any effect under this paragraph, but may consider such additional information as the immigration judge determines appropriate.

(E) ADDITIONAL LIMITATIONS.—The Secretary of Homeland Security or the Attorney General may by regulation establish additional limitations and conditions, consistent with this section, under which an alien shall be ineligible for asylum under paragraph (1).

(F) NO JUDICIAL REVIEW.—There shall be no judicial review of a determination of the Secretary of Homeland Security or the Attorney General under subparagraph (A)(xiii).

(3) TREATMENT OF SPOUSE AND CHILDREN.—

(A) IN GENERAL.—A spouse or child (as defined in section 101(b)(1) (A), (B), (C), (D), or (E)) of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section, be granted the same status as the alien if accompanying, or following to join, such alien.

(B) CONTINUED CLASSIFICATION OF CERTAIN ALIENS AS CHILDREN.—An unmarried alien who seeks to accompany, or follow to join, a parent granted asylum under this subsection, and who was under 21 years of age on the date on which such parent applied for asylum under this section, shall continue to be classified as a child for purposes of this paragraph and section 209(b)(3), if the alien attained 21 years of age after such application was filed but while it was pending.

(C) INITIAL JURISDICTION.—An asylum officer (as defined in section 235(b)(1)(E)) shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child (as defined in section 462(g) of the Homeland Security Act of 2002 (6 U.S.C. 279(g))), regardless of whether filed in accordance with this section or section 235(b).

(c) ASYLUM STATUS.—

(1) IN GENERAL.—In the case of an alien granted asylum under subsection (b), the [Attorney General] *Secretary of Homeland Security*—

(A) shall not remove or return the alien to the alien's country of nationality or, in the case of a person having no nationality, the country of the alien's last habitual residence;

(B) shall authorize the alien to engage in employment in the United States and provide the alien with appropriate endorsement of that authorization; and

(C) may allow the alien to travel abroad with the prior consent of the [Attorney General] *Secretary of Homeland Security*.

(2) TERMINATION OF ASYLUM.—Asylum granted under subsection (b) does not convey a right to remain permanently in the United States, and may be terminated if the *Secretary of Homeland Security or the* Attorney General determines that—

(A) the alien no longer meets the conditions described in subsection (b)(1) owing to a fundamental change in circumstances;

(B) the alien meets a condition described in subsection (b)(2);

(C) the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien is eligible to receive asylum or equivalent temporary protection;

(D) the alien has voluntarily availed himself or herself of the protection of the alien's country of nationality or, in the case of an alien having no nationality, the alien's country of last habitual residence, by returning to such country with permanent resident status or the reasonable possibility of obtaining such status with the same rights and obligations pertaining to other permanent residents of that country; or

(E) the alien has acquired a new nationality and enjoys the protection of the country of his or her new nationality.

(3) REMOVAL WHEN ASYLUM IS TERMINATED.—An alien described in paragraph (2) is subject to any applicable grounds of inadmissibility or deportability under section 212(a) and 237(a), and the alien's removal or return shall be directed by the *Secretary of Homeland Security or the* Attorney General in accordance with sections 240 and 241.

(d) ASYLUM PROCEDURE.—

(1) APPLICATIONS.—The *Secretary of Homeland Security or the* Attorney General shall establish a procedure for the consideration of asylum applications filed under subsection (a). The *Secretary of Homeland Security or the* Attorney General may require applicants to submit fingerprints and a photograph at such time and in such manner to be determined by regulation by the *Secretary of Homeland Security or the* Attorney General.

[(2) EMPLOYMENT.—An applicant for asylum is not entitled to employment authorization, but such authorization may be provided under regulation by the Attorney General. An applicant who is not otherwise eligible for employment authorization shall not be granted such authorization prior to 180 days after the date of filing of the application for asylum.

[(3) FEES.—The Attorney General may impose fees for the consideration of an application for asylum, for employment authorization under this section, and for adjustment of status under section 209(b). Such fees shall not exceed the Attorney General's costs in adjudicating the applications. The Attorney General may provide for the assessment and payment of such fees over a period of time or by installments. Nothing in this paragraph shall be construed to require the Attorney General to charge fees for adjudication services provided to asylum applicants, or to limit the authority of the Attorney General to set adjudication and naturalization fees in accorance with section 286(m).]

(2) EMPLOYMENT AUTHORIZATION.—

(A) AUTHORIZATION PERMITTED.—An applicant for asylum is not entitled to employment authorization, but such authorization may be provided under regulation by the Secretary of Homeland Security. An applicant who is not otherwise eligible for employment authorization shall not be granted such authorization prior to the date that is 180 days after the date of filing of the application for asylum.

(B) TERMINATION.—Each grant of employment authorization under subparagraph (A), and any renewal or extension thereof, shall be valid for a period of 6 months, except that such authorization, renewal, or extension shall terminate prior to the end of such 6 month period as follows:

(i) Immediately following the denial of an asylum application by an asylum officer, unless the case is referred to an immigration judge.

(ii) 30 days after the date on which an immigration judge denies an asylum application, unless the alien timely appeals to the Board of Immigration Appeals.

(iii) Immediately following the denial by the Board of Immigration Appeals of an appeal of a denial of an asylum application.

(C) RENEWAL.—The Secretary of Homeland Security may not grant, renew, or extend employment authorization to an alien if the alien was previously granted employment authorization under subparagraph (A), and the employment authorization was terminated pursuant to a circumstance described in subparagraph (B)(i), (ii), or (iii), unless a Federal court of appeals remands the alien's case to the Board of Immigration Appeals.

(D) INELIGIBILITY.—The Secretary of Homeland Security may not grant employment authorization to an alien under this paragraph if the alien—

(i) is ineligible for asylum under subsection (b)(2)(A); or

(ii) entered or attempted to enter the United States at a place and time other than lawfully through a United States port of entry.

(3) FEES.—

(A) APPLICATION FEE.—A fee of not less than $50 for each application for asylum shall be imposed. Such fee shall not exceed the cost of adjudicating the application. Such fee shall not apply to an unaccompanied alien child who files an asylum application in proceedings under section 240.

(B) EMPLOYMENT AUTHORIZATION.—A fee may also be imposed for the consideration of an application for employment authorization under this section and for adjustment of status under section 209(b). Such a fee shall not exceed the cost of adjudicating the application.

(C) PAYMENT.—Fees under this paragraph may be assessed and paid over a period of time or by installments.

(D) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to limit the authority of the Attorney General or Secretary of Homeland Security to set adjudication and naturalization fees in accordance with section 286(m).

(4) NOTICE OF PRIVILEGE OF COUNSEL AND CONSEQUENCES OF FRIVOLOUS APPLICATION.—At the time of filing an application for asylum, *the Secretary of Homeland Security or* the Attorney General shall—

(A) advise the alien of the privilege of being represented by counsel **[**and of the consequences, under paragraph (6), of knowingly filing a frivolous application for asylum; and**]***;*

(B) provide the alien a list of persons (updated not less often than quarterly) who have indicated their availability to represent aliens in asylum proceedings on a pro bono basis**[**.**]***; and*

(C) ensure that a written warning appears on the asylum application advising the alien of the consequences of filing a frivolous application and serving as notice to the alien of the consequence of filing a frivolous application.

(5) CONSIDERATION OF ASYLUM APPLICATIONS.—

(A) PROCEDURES.—The procedure established under paragraph (1) shall provide that—

(i) asylum cannot be granted until the identity of the applicant has been checked against all appropriate records or databases maintained by the **[**Attorney General**]** *Secretary of Homeland Security* and by the Secretary of State, including the Automated Visa Lookout System, to determine any grounds on which the alien may be inadmissible to or deportable from the United States, or ineligible to apply for or be granted asylum;

(ii) in the absence of exceptional circumstances, the initial interview or hearing on the asylum application shall commence not later than 45 days after the date an application is filed;

(iii) in the absence of exceptional circumstances, final administrative adjudication of the asylum appli-

cation, not including administrative appeal, shall be completed within 180 days after the date an application is filed;

(iv) any administrative appeal shall be filed within 30 days of a decision granting or denying asylum, or within 30 days of the completion of removal proceedings before an immigration judge under section 240, whichever is later; and

(v) in the case of an applicant for asylum who fails without prior authorization or in the absence of exceptional circumstances to appear for an interview or hearing, including a hearing under section 240, the application may be dismissed or the applicant may be otherwise sanctioned for such failure.

(B) ADDITIONAL REGULATORY CONDITIONS.—The *Secretary of Homeland Security or the* Attorney General may provide by regulation for any other conditions or limitations on the consideration of an application for asylum not inconsistent with this Act.

(6) FRIVOLOUS APPLICATIONS.—**[**If the Attorney General determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(A), the alien shall be permanently ineligible for any benefits under this Act, effective as of the date of a final determination on such application.**]**

(A) IN GENERAL.—If the Secretary of Homeland Security or the Attorney General determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(C), the alien shall be permanently ineligible for any benefits under this chapter, effective as the date of the final determination of such an application.

(B) CRITERIA.—An application is frivolous if the Secretary of Homeland Security or the Attorney General determines, consistent with subparagraph (C), that—

(i) it is so insufficient in substance that it is clear that the applicant knowingly filed the application solely or in part to delay removal from the United States, to seek employment authorization as an applicant for asylum pursuant to regulations issued pursuant to paragraph (2), or to seek issuance of a Notice to Appear in order to pursue Cancellation of Removal under section 240A(b); or

(ii) any of the material elements are knowingly fabricated.

(C) SUFFICIENT OPPORTUNITY TO CLARIFY.—In determining that an application is frivolous, the Secretary or the Attorney General, must be satisfied that the applicant, during the course of the proceedings, has had sufficient opportunity to clarify any discrepancies or implausible aspects of the claim.

(D) WITHHOLDING OF REMOVAL NOT PRECLUDED.—For purposes of this section, a finding that an alien filed a frivolous asylum application shall not preclude the alien from

seeking withholding of removal under section 241(b)(3) or protection pursuant to the Convention Against Torture.

(7) NO PRIVATE RIGHT OF ACTION.—Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

(e) COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.—The provisions of this section and section 209(b) shall apply to persons physically present in the Commonwealth of the Northern Mariana Islands or arriving in the Commonwealth (whether or not at a designated port of arrival and including persons who are brought to the Commonwealth after having been interdicted in international or United States waters) only on or after January 1, 2014.

(f) RULES FOR DETERMINING ASYLUM ELIGIBILITY.—In making a determination under subsection (b)(1)(A) with respect to whether an alien is a refugee within the meaning of section 101(a)(42)(A), the following shall apply:

(1) PARTICULAR SOCIAL GROUP.—The Secretary of Homeland Security or the Attorney General shall not determine that an alien is a member of a particular social group unless the alien articulates on the record, or provides a basis on the record for determining, the definition and boundaries of the alleged particular social group, establishes that the particular social group exists independently from the alleged persecution, and establishes that the alien's claim of membership in a particular social group does not involve—

(A) past or present criminal activity or association (including gang membership);

(B) presence in a country with generalized violence or a high crime rate;

(C) being the subject of a recruitment effort by criminal, terrorist, or persecutory groups;

(D) the targeting of the applicant for criminal activity for financial gain based on perceptions of wealth or affluence;

(E) interpersonal disputes of which governmental authorities in the relevant society or region were unaware or uninvolved;

(F) private criminal acts of which governmental authorities in the relevant society or region were unaware or uninvolved;

(G) past or present terrorist activity or association;

(H) past or present persecutory activity or association; or

(I) status as an alien returning from the United States.

(2) POLITICAL OPINION.—The Secretary of Homeland Security or the Attorney General may not determine that an alien holds a political opinion with respect to which the alien is subject to persecution if the political opinion is constituted solely by generalized disapproval of, disagreement with, or opposition to criminal, terrorist, gang, guerilla, or other non-state organizations and does not include expressive behavior in furtherance of a cause against such organizations related to efforts by the State to control such organizations or behavior that is antithetical to or otherwise opposes the ruling legal entity of the State or a unit thereof.

(3) PERSECUTION.—The Secretary of Homeland Security or the Attorney General may not determine that an alien has been subject to persecution or has a well-founded fear of persecution based only on—

(A) the existence of laws or government policies that are unenforced or infrequently enforced, unless there is credible evidence that such a law or policy has been or would be applied to the applicant personally; or

(B) the conduct of rogue foreign government officials acting outside the scope of their official capacity.

(4) DISCRETIONARY DETERMINATION.—

(A) ADVERSE DISCRETIONARY FACTORS.—The Secretary of Homeland Security or the Attorney General may only grant asylum to an alien if the alien establishes that he or she warrants a favorable exercise of discretion. In making such a determination, the Attorney General or Secretary of Homeland Security shall consider, if applicable, an alien's use of fraudulent documents to enter the United States, unless the alien arrived in the United States by air, sea, or land directly from the applicant's home country without transiting through any other country.

(B) FAVORABLE EXERCISE OF DISCRETION NOT PERMITTED.—Except as provided in subparagraph (C), the Attorney General or Secretary of Homeland Security shall not favorably exercise discretion under this section for any alien who—

(i) has accrued more than one year of unlawful presence in the United States, as defined in sections 212(a)(9)(B)(ii) and (iii), prior to filing an application for asylum;

(ii) at the time the asylum application is filed with the immigration court or is referred from the Department of Homeland Security, has—

(I) failed to timely file (or timely file a request for an extension of time to file) any required Federal, State, or local income tax returns;

(II) failed to satisfy any outstanding Federal, State, or local tax obligations; or

(III) income that would result in tax liability under section 1 of the Internal Revenue Code of 1986 and that was not reported to the Internal Revenue Service;

(iii) has had two or more prior asylum applications denied for any reason;

(iv) has withdrawn a prior asylum application with prejudice or been found to have abandoned a prior asylum application;

(v) failed to attend an interview regarding his or her asylum application with the Department of Homeland Security, unless the alien shows by a preponderance of the evidence that—

(I) exceptional circumstances prevented the alien from attending the interview; or

(II) the interview notice was not mailed to the last address provided by the alien or the alien's

representative and neither the alien nor the alien's representative received notice of the interview; or

(vi) was subject to a final order of removal, deportation, or exclusion and did not file a motion to reopen to seek asylum based on changed country conditions within one year of the change in country conditions.

(C) EXCEPTIONS.—If one or more of the adverse discretionary factors set forth in subparagraph (B) are present, the Attorney General or the Secretary, may, notwithstanding such subparagraph (B), favorably exercise discretion under section 208—

(i) in extraordinary circumstances, such as those involving national security or foreign policy considerations; or

(ii) if the alien, by clear and convincing evidence, demonstrates that the denial of the application for asylum would result in exceptional and extremely unusual hardship to the alien.

(5) LIMITATION.—If the Secretary or the Attorney General determines that an alien fails to satisfy the requirement under paragraph (1), the alien may not be granted asylum based on membership in a particular social group, and may not appeal the determination of the Secretary or Attorney General, as applicable. A determination under this paragraph shall not serve as the basis for any motion to reopen or reconsider an application for asylum or withholding of removal for any reason, including a claim of ineffective assistance of counsel, unless the alien complies with the procedural requirements for such a motion and demonstrates that counsel's failure to define, or provide a basis for defining, a formulation of a particular social group was both not a strategic choice and constituted egregious conduct.

(6) STEREOTYPES.—Evidence offered in support of an application for asylum that promotes cultural stereotypes about a country, its inhabitants, or an alleged persecutor, including stereotypes based on race, religion, nationality, or gender, shall not be admissible in adjudicating that application, except that evidence that an alleged persecutor holds stereotypical views of the applicant shall be admissible.

(7) DEFINITIONS.—In this section:

(A) The term "membership in a particular social group" means membership in a group that is—

(i) composed of members who share a common immutable characteristic;

(ii) defined with particularity; and

(iii) socially distinct within the society in question.

(B) The term "political opinion" means an ideal or conviction in support of the furtherance of a discrete cause related to political control of a state or a unit thereof.

(C) The term "persecution" means the infliction of a severe level of harm constituting an exigent threat by the government of a country or by persons or an organization that the government was unable or unwilling to control. Such term does not include—

(i) generalized harm or violence that arises out of civil, criminal, or military strife in a country;

(ii) all treatment that the United States regards as unfair, offensive, unjust, unlawful, or unconstitutional;

(iii) intermittent harassment, including brief detentions;

(iv) threats with no actual effort to carry out the threats, except that particularized threats of severe harm of an immediate and menacing nature made by an identified entity may constitute persecution; or

(v) non-severe economic harm or property damage.

(g) FIRM RESETTLEMENT.—In determining whether an alien was firmly resettled in another country prior to arriving in the United States under subsection (b)(2)(A)(xiv), the following shall apply:

(1) IN GENERAL.—An alien shall be considered to have firmly resettled in another country if, after the events giving rise to the alien's asylum claim—

(A) the alien resided in a country through which the alien transited prior to arriving in or entering the United States and—

(i) received or was eligible for any permanent legal immigration status in that country;

(ii) resided in such a country with any non-permanent but indefinitely renewable legal immigration status (including asylee, refugee, or similar status, but excluding status of a tourist); or

(iii) resided in such a country and could have applied for and obtained an immigration status described in clause (ii);

(B) the alien physically resided voluntarily, and without continuing to suffer persecution or torture, in any one country for one year or more after departing his country of nationality or last habitual residence and prior to arrival in or entry into the United States, except for any time spent in Mexico by an alien who is not a native or citizen of Mexico solely as a direct result of being returned to Mexico pursuant to section 235(b)(3) or of being subject to metering; or

(C) the alien is a citizen of a country other than the country in which the alien alleges a fear of persecution, or was a citizen of such a country in the case of an alien who renounces such citizenship, and the alien was present in that country after departing his country of nationality or last habitual residence and prior to arrival in or entry into the United States;

(2) BURDEN OF PROOF.—If an immigration judge determines that an alien has firmly resettled in another country under paragraph (1), the alien shall bear the burden of proving the bar does not apply.

(3) FIRM RESETTLEMENT OF PARENT.—An alien shall be presumed to have been firmly resettled in another country if the alien's parent was firmly resettled in another country, the parent's resettlement occurred before the alien turned 18 years of age, and the alien resided with such parent at the time of the firm resettlement, unless the alien establishes that he or she could not have derived any permanent legal immigration status

or any non-permanent but indefinitely renewable legal immigration status (including asylum, refugee, or similar status, but excluding status of a tourist) from the alien's parent.

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CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

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GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND INELIGIBLE FOR ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.—Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) HEALTH-RELATED GROUNDS.—

(A) IN GENERAL.—Any alien—

(i) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance;

(ii) except as provided in subparagraph (C), who seeks admission as an immigrant, or who seeks adjustment of status to the status of an alien lawfully admitted for permanent residence, and who has failed to present documentation of having received vaccination against vaccine-preventable diseases, which shall include at least the following diseases: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, influenza type B and hepatitis B, and any other vaccinations against vaccine-preventable diseases recommended by the Advisory Committee for Immunization Practices,

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General)—

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior, or

(iv) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict,

is inadmissibility.

(B) WAIVER AUTHORIZED.—For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g).

(C) EXCEPTION FROM IMMUNIZATION REQUIREMENT FOR ADOPTED CHILDREN 10 YEARS OF AGE OR YOUNGER.—Clause (ii) of subparagraph (A) shall not apply to a child who—

(i) is 10 years of age or younger,

(ii) is described in subparagraph (F) or (G) of section 101(b)(1); and

(iii) is seeking an immigrant visa as an immediate relative under section 201(b),

if, prior to the admission of the child, an adoptive parent or prospective adoptive parent of the child, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the provisions of subparagraph (A)(ii) and will ensure that, within 30 days of the child's admission, or at the earliest time that is medically appropriate, the child will receive the vaccinations identified in such subparagraph.

(2) CRIMINAL AND RELATED GROUNDS.—

(A) CONVICTION OF CERTAIN CRIMES.—

(i) IN GENERAL.—Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)),

is inadmissible.

(ii) EXCEPTION.—Clause (i)(I) shall not apply to an alien who committed only one crime if—

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

(B) MULTIPLE CRIMINAL CONVICTIONS.—Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single

scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

(C) CONTROLLED SUBSTANCE TRAFFICKERS.—Any alien who the consular officer or the Attorney General knows or has reason to believe—

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or

(ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity,

is inadmissible.

(D) PROSTITUTION AND COMMERCIALIZED VICE.—Any alien who—

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, entry, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or

(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution,

is inadmissible.

(E) CERTAIN ALIENS INVOLVED IN SERIOUS CRIMINAL ACTIVITY WHO HAVE ASSERTED IMMUNITY FROM PROSECUTION.—Any alien—

(i) who has committed in the United States at any time a serious criminal offense (as defined in section 101(h)),

(ii) for whom immunity from criminal jurisdiction was exercised with respect to that offense,

(iii) who as a consequence of the offense and exercise of immunity has departed from the United States, and

(iv) who has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense,

is inadmissible.

(F) WAIVER AUTHORIZED.—For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h).

(G) FOREIGN GOVERNMENT OFFICIALS WHO HAVE COMMITTED PARTICULARLY SEVERE VIOLATIONS OF RELIGIOUS FREEDOM.—Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998 (22 U.S.C. 6402), is inadmissible.

(H) SIGNIFICANT TRAFFICKERS IN PERSONS.—

(i) IN GENERAL.—Any alien who commits or conspires to commit human trafficking offenses in the United States or outside the United States, or who the consular officer, the Secretary of Homeland Security, the Secretary of State, or the Attorney General knows or has reason to believe is or has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons, as defined in the section 103 of such Act, is inadmissible.

(ii) BENEFICIARIES OF TRAFFICKING.—Except as provided in clause (iii), any alien who the consular officer or the Attorney General knows or has reason to believe is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.

(iii) EXCEPTION FOR CERTAIN SONS AND DAUGHTERS.—Clause (ii) shall not apply to a son or daughter who was a child at the time he or she received the benefit described in such clause.

(I) MONEY LAUNDERING.—Any alien—

(i) who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the United States to engage, in an offense which is described in section 1956 or 1957 of title 18, United States Code (relating to laundering of monetary instruments); or

(ii) who a consular officer or the Attorney General knows is, or has been, a knowing aider, abettor, assister, conspirator, or colluder with others in an offense which is described in such section;

is inadmissible.

(3) SECURITY AND RELATED GROUNDS.—

(A) IN GENERAL.—Any alien who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in—

(i) any activity (I) to violate any law of the United States relating to espionage or sabotage or (II) to violate or evade any law prohibiting the export from the

United States of goods, technology, or sensitive information,

(ii) any other unlawful activity, or

(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means,

is inadmissible.

(B) TERRORIST ACTIVITIES.—

(i) IN GENERAL.—Any alien who—

(I) has engaged in a terrorist activity;

(II) a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iv));

(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity;

(IV) is a representative (as defined in clause (v)) of—

(aa) a terrorist organization (as defined in clause (vi)); or

(bb) a political, social, or other group that endorses or espouses terrorist activity;

(V) is a member of a terrorist organization described in subclause (I) or (II) of clause (vi);

(VI) is a member of a terrorist organization described in clause (vi)(III), unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;

(VII) endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization;

(VIII) has received military-type training (as defined in section 2339D(c)(1) of title 18, United States Code) from or on behalf of any organization that, at the time the training was received, was a terrorist organization (as defined in clause (vi)); or

(IX) is the spouse or child of an alien who is inadmissible under this subparagraph, if the activity causing the alien to be found inadmissible occurred within the last 5 years, is inadmissible.

An alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization is considered, for purposes of this Act, to be engaged in a terrorist activity.

(ii) EXCEPTION.—Subclause (IX) of clause (i) does not apply to a spouse or child—

(I) who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or

(II) whom the consular officer or Attorney General has reasonable grounds to believe has renounced the activity causing the alien to be found inadmissible under this section.

(iii) TERRORIST ACTIVITY DEFINED.—As used in this Act, the term "terrorist activity" means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:

(I) The highjacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).

(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.

(III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title 18, United States Code) or upon the liberty of such a person.

(IV) An assassination.

(V) The use of any—

(a) biological agent, chemical agent, or nuclear weapon or device, or

(b) explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain),

with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

(VI) A threat, attempt, or conspiracy to do any of the foregoing.

(iv) ENGAGE IN TERRORIST ACTIVITY DEFINED.—As used in this Act, the term "engage in terrorist activity" means, in an individual capacity or as a member of an organization—

(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;

(II) to prepare or plan a terrorist activity;

(III) to gather information on potential targets for terrorist activity;

(IV) to solicit funds or other things of value for—

(aa) a terrorist activity;

(bb) a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably

have known, that the organization was a terrorist organization;

(V) to solicit any individual—

(aa) to engage in conduct otherwise described in this subsection;

(bb) for membership in a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) for membership in a terrorist organization described in clause (vi)(III) unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization; or

(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training—

(aa) for the commission of a terrorist activity;

(bb) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;

(cc) to a terrorist organization described in subclause (I) or (II) of clause (vi) or to any member of such an organization; or

(dd) to a terrorist organization described in clause (vi)(III), or to any member of such an organization, unless the actor can demonstrate by clear and convincing evidence that the actor did not know, and should not reasonably have known, that the organization was a terrorist organization.

(v) REPRESENTATIVE DEFINED.—As used in this paragraph, the term "representative" includes an officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity.

(vi) TERRORIST ORGANIZATION DEFINED.—As used in this section, the term "terrorist organization" means an organization—

(I) designated under section 219;

(II) otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security, as a terrorist organization, after finding that the organization engages in the activities described in subclauses (I) through (VI) of clause (iv); or

(III) that is a group of two or more individuals, whether organized or not, which engages in, or

has a subgroup which engages in, the activities described in subclauses (I) through (VI) of clause (iv).

(C) FOREIGN POLICY.—

(i) IN GENERAL.—An alien whose entry or proposed activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is inadmissible.

(ii) EXCEPTION FOR OFFICIALS.—An alien who is an official of a foreign government or a purported government, or who is a candidate for election to a foreign government office during the period immediately preceding the election for that office, shall not be excludable or subject to restrictions or conditions on entry into the United States under clause (i) solely because of the alien's past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States.

(iii) EXCEPTION FOR OTHER ALIENS.—An alien, not described in clause (ii), shall not be excludable or subject to restrictions or conditions on entry into the United States under clause (i) because of the alien's past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States, unless the Secretary of State personally determines that the alien's admission would compromise a compelling United States foreign policy interest.

(iv) NOTIFICATION OF DETERMINATIONS.—If a determination is made under clause (iii) with respect to an alien, the Secretary of State must notify on a timely basis the chairmen of the Committees on the Judiciary and Foreign Affairs of the House of Representatives and of the Committees on the Judiciary and Foreign Relations of the Senate of the identity of the alien and the reasons for the determination.

(D) IMMIGRANT MEMBERSHIP IN TOTALITARIAN PARTY.—

(i) IN GENERAL.—Any immigrant who is or has been a member of or affiliated with the Communist or any other totalitarian party (or subdivision or affiliate thereof), domestic or foreign, is inadmissible.

(ii) EXCEPTION FOR INVOLUNTARY MEMBERSHIP.—Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that the membership or affiliation is or was involuntary, or is or was solely when under 16 years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and whether necessary for such purposes.

(iii) EXCEPTION FOR PAST MEMBERSHIP.—Clause (i) shall not apply to an alien because of membership or

affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that—

(I) the membership or affiliation terminated at least—

(a) 2 years before the date of such application, or

(b) 5 years before the date of such application, in the case of an alien whose membership or affiliation was with the party controlling the government of a foreign state that is a totalitarian dictatorship as of such date, and

(II) the alien is not a threat to the security of the United States.

(iv) EXCEPTION FOR CLOSE FAMILY MEMBERS.—The Attorney General may, in the Attorney General's discretion, waive the application of clause (i) in the case of an immigrant who is the parent, spouse, son, daughter, brother, or sister of a citizen of the United States or a spouse, son, or daughter of an alien lawfully admitted for permanent residence for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest if the immigrant is not a threat to the security of the United States.

(E) PARTICIPANTS IN NAZI PERSECUTION, GENOCIDE, OR THE COMMISSION OF ANY ACT OF TORTURE OR EXTRAJUDICIAL KILLING.—

(i) PARTICIPATION IN NAZI PERSECUTIONS.—Any alien who, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with—

(I) the Nazi government of Germany,

(II) any government in any area occupied by the military forces of the Nazi government of Germany,

(III) any government established with the assistance or cooperation of the Nazi government of Germany, or

(IV) any government which was an ally of the Nazi government of Germany,

ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion is inadmissible.

(ii) PARTICIPATION IN GENOCIDE.—Any alien who ordered, incited, assisted, or otherwise participated in genocide, as defined in section 1091(a) of title 18, United States Code, is inadmissible

(iii) COMMISSION OF ACTS OF TORTURE OR EXTRAJUDICIAL KILLINGS.—Any alien who, outside the United States, has committed, ordered, incited, assisted, or otherwise participated in the commission of—

(I) any act of torture, as defined in section 2340 of title 18, United States Code; or

(II) under color of law of any foreign nation, any extrajudicial killing, as defined in section 3(a) of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note),

is inadmissible.

(F) ASSOCIATION WITH TERRORIST ORGANIZATIONS.—Any alien who the Secretary of State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State, determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States is inadmissible.

(G) RECRUITMENT OR USE OF CHILD SOLDIERS.—Any alien who has engaged in the recruitment or use of child soldiers in violation of section 2442 of title 18, United States Code, is inadmissible.

(4) PUBLIC CHARGE.—

(A) IN GENERAL.—Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.

(B) FACTORS TO BE TAKEN INTO ACCOUNT.—(i) In determining whether an alien is inadmissible under this paragraph, the consular officer or the Attorney General shall at a minimum consider the alien's—

(I) age;

(II) health;

(III) family status;

(IV) assets, resources, and financial status; and

(V) education and skills.

(ii) In addition to the factors under clause (i), the consular officer or the Attorney General may also consider any affidavit of support under section 213A for purposes of exclusion under this paragraph.

(C) FAMILY-SPONSORED IMMIGRANTS.—Any alien who seeks admission or adjustment of status under a visa number issued under section 201(b)(2) or 203(a) is inadmissible under this paragraph unless—

(i) the alien has obtained—

(I) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204(a)(1)(A), or

(II) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B); or

(III) classification or status as a VAWA self-petitioner; or

(ii) the person petitioning for the alien's admission (and any additional sponsor required under section 213A(f) or any alternative sponsor permitted under paragraph (5)(B) of such section) has executed an affidavit of support described in section 213A with respect to such alien.

(D) CERTAIN EMPLOYMENT-BASED IMMIGRANTS.—Any alien who seeks admission or adjustment of status under a visa number issued under section 203(b) by virtue of a classification petition filed by a relative of the alien (or by an entity in which such relative has a significant ownership interest) is inadmissible under this paragraph unless such relative has executed an affidavit of support described in section 213A with respect to such alien.

(E) SPECIAL RULE FOR QUALIFIED ALIEN VICTIMS.—Subparagraphs (A), (B), and (C) shall not apply to an alien who—

(i) is a VAWA self-petitioner;

(ii) is an applicant for, or is granted, nonimmigrant status under section 101(a)(15)(U); or

(iii) is a qualified alien described in section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(c)).

(5) LABOR CERTIFICATION AND QUALIFICATIONS FOR CERTAIN IMMIGRANTS.—

(A) LABOR CERTIFICATION.—

(i) IN GENERAL.—Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that—

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(ii) CERTAIN ALIENS SUBJECT TO SPECIAL RULE.—For purposes of clause (i)(I), an alien described in this clause is an alien who—

(I) is a member of the teaching profession, or

(II) has exceptional ability in the sciences or the arts.

(iii) PROFESSIONAL ATHLETES.—

(I) IN GENERAL.—A certification made under clause (i) with respect to a professional athlete shall remain valid with respect to the athlete after the athlete changes employer, if the new employer is a team in the same sport as the team which employed the athlete when the athlete first applied for the certification.

(II) DEFINITION.—For purposes of subclause (I), the term "professional athlete" means an individual who is employed as an athlete by—

(aa) a team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed

$10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage; or

(bb) any minor league team that is affiliated with such an association.

(iv) LONG DELAYED ADJUSTMENT APPLICANTS.—A certification made under clause (i) with respect to an individual whose petition is covered by section 204(j) shall remain valid with respect to a new job accepted by the individual after the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the certification was issued.

(B) UNQUALIFIED PHYSICIANS.—An alien who is a graduate of a medical school not accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States) and who is coming to the United States principally to perform services as a member of the medical profession is inadmissible, unless the alien (i) has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services) and (ii) is competent in oral and written English. For purposes of the previous sentence, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.

(C) UNCERTIFIED FOREIGN HEALTH-CARE WORKERS.—Subject to subsection (r), any alien who seeks to enter the United States for the purpose of performing labor as a health-care worker, other than a physician, is inadmissible unless the alien presents to the consular officer, or, in the case of an adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools, or a certificate from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services, verifying that—

(i) the alien's education, training, license, and experience—

(I) meet all applicable statutory and regulatory requirements for entry into the United States under the classification specified in the application;

(II) are comparable with that required for an American health-care worker of the same type; and

(III) are authentic and, in the case of a license, unencumbered;

(ii) the alien has the level of competence in oral and written English considered by the Secretary of Health

and Human Services, in consultation with the Secretary of Education, to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write; and

(iii) if a majority of States licensing the profession in which the alien intends to work recognize a test predicting the success on the profession's licensing or certification examination, the alien has passed such a test or has passed such an examination.

For purposes of clause (ii), determination of the standardized tests required and of the minimum scores that are appropriate are within the sole discretion of the Secretary of Health and Human Services and are not subject to further administrative or judicial review.

(D) APPLICATION OF GROUNDS.—The grounds for inadmissibility of aliens under subparagraphs (A) and (B) shall apply to immigrants seeking admission or adjustment of status under paragraph (2) or (3) of section 203(b).

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.—

(A) ALIENS PRESENT WITHOUT ADMISSION OR PAROLE.—

(i) IN GENERAL.—An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

(ii) EXCEPTION FOR CERTAIN BATTERED WOMEN AND CHILDREN.—Clause (i) shall not apply to an alien who demonstrates that—

(I) the alien is a VAWA self-petitioner;

(II)(a) the alien has been battered or subjected to extreme cruelty by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, or (b) the alien's child has been battered or subjected to extreme cruelty by a spouse or parent of the alien (without the active participation of the alien in the battery or cruelty) or by a member of the spouse's or parent's family residing in the same household as the alien when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty, and

(III) there was a substantial connection between the battery or cruelty described in subclause (I) or (II) and the alien's unlawful entry into the United States.

(B) FAILURE TO ATTEND REMOVAL PROCEEDING.—Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks

admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

(C) MISREPRESENTATION.—

(i) IN GENERAL.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

(ii) FALSELY CLAIMING CITIZENSHIP.—

(I) IN GENERAL.—Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

(II) EXCEPTION.—In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

(iii) WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (i).

(D) STOWAWAYS.—Any alien who is a stowaway is inadmissible.

(E) SMUGGLERS.—

(i) IN GENERAL.—Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

(ii) SPECIAL RULE IN THE CASE OF FAMILY REUNIFICATION.—Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 203(a)(2) (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(iii) WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (d)(11).

(F) SUBJECT OF CIVIL PENALTY.—

(i) IN GENERAL.—An alien who is the subject of a final order for violation of section 274C is inadmissible.

(ii) WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (d)(12).

(G) STUDENT VISA ABUSERS.—An alien who obtains the status of a nonimmigrant under section 101(a)(15)(F)(i) and who violates a term or condition of such status under section 214(l) is inadmissible until the alien has been outside the United States for a continuous period of 5 years after the date of the violation.

(7) DOCUMENTATION REQUIREMENTS.—

(A) IMMIGRANTS.—

(i) IN GENERAL.—Except as otherwise specifically provided in this Act, any immigrant at the time of application for admission—

(I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 211(a), or

(II) whose visa has been issued without compliance with the provisions of section 203,

is inadmissible.

(ii) WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (k).

(B) NONIMMIGRANTS.—

(i) IN GENERAL.—Any nonimmigrant who—

(I) is not in possession of a passport valid for a minimum of six months from the date of the expiration of the initial period of the alien's admission or contemplated initial period of stay authorizing the alien to return to the country from which the alien came or to proceed to and enter some other country during such period, or

(II) is not in possession of a valid nonimmigrant visa or border crossing identification card at the time of application for admission,

is inadmissible.

(ii) GENERAL WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (d)(4).

(iii) GUAM AND NORTHERN MARIANA ISLANDS VISA WAIVER.—For provision authorizing waiver of clause (i) in the case of visitors to Guam or the Commonwealth of the Northern Mariana Islands, see subsection (l).

(iv) VISA WAIVER PROGRAM.—For authority to waive the requirement of clause (i) under a program, see section 217.

(8) INELIGIBLE FOR CITIZENSHIP.—

(A) IN GENERAL.—Any immigrant who is permanently ineligible to citizenship is inadmissible.

(B) DRAFT EVADERS.—Any person who has departed from or who has remained outside the United States to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national

emergency is inadmissible, except that this subparagraph shall not apply to an alien who at the time of such departure was a nonimmigrant and who is seeking to reenter the United States as a nonimmigrant.

(9) ALIENS PREVIOUSLY REMOVED.—

(A) CERTAIN ALIENS PREVIOUSLY REMOVED.—

(i) ARRIVING ALIENS.—Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) OTHER ALIENS.—Any alien not described in clause (i) who—

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) EXCEPTION.—Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

(B) ALIENS UNLAWFULLY PRESENT.—

(i) IN GENERAL.—Any alien (other than an alien lawfully admitted for permanent residence) who—

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States,

is inadmissible.

(ii) CONSTRUCTION OF UNLAWFUL PRESENCE.—For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or

is present in the United States without being admitted or paroled.

(iii) EXCEPTIONS.—

(I) MINORS.—No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

(II) ASYLEES.—No period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

(III) FAMILY UNITY.—No period of time in which the alien is a beneficiary of family unity protection pursuant to section 301 of the Immigration Act of 1990 shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

(IV) BATTERED WOMEN AND CHILDREN.—Clause (i) shall not apply to an alien who would be described in paragraph (6)(A)(ii) if "violation of the terms of the alien's nonimmigrant visa" were substituted for "unlawful entry into the United States" in subclause (III) of that paragraph.

(V) VICTIMS OF A SEVERE FORM OF TRAFFICKING IN PERSONS.—Clause (i) shall not apply to an alien who demonstrates that the severe form of trafficking (as that term is defined in section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102)) was at least one central reason for the alien's unlawful presence in the United States.

(iv) TOLLING FOR GOOD CAUSE.—In the case of an alien who—

(I) has been lawfully admitted or paroled into the United States,

(II) has filed a nonfrivolous application for a change or extension of status before the date of expiration of the period of stay authorized by the Attorney General, and

(III) has not been employed without authorization in the United States before or during the pendency of such application,

the calculation of the period of time specified in clause (i)(I) shall be tolled during the pendency of such application, but not to exceed 120 days.

(v) WAIVER.—The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or

parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

(C) ALIENS UNLAWFULLY PRESENT AFTER PREVIOUS IMMIGRATION VIOLATIONS.—

(i) IN GENERAL.—Any alien who—

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) EXCEPTION.—Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.

(iii) WAIVER.—The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between—

(I) the alien's battering or subjection to extreme cruelty; and

(II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

(10) MISCELLANEOUS.—

(A) PRACTICING POLYGAMISTS.—Any immigrant who is coming to the United States to practice polygamy is inadmissible.

(B) GUARDIAN REQUIRED TO ACCOMPANY HELPLESS ALIEN.—Any alien—

(i) who is accompanying another alien who is inadmissible and who is certified to be helpless from sickness, mental or physical disability, or infancy pursuant to section 232(c), and

(ii) whose protection or guardianship is determined to be required by the alien described in clause (i),

is inadmissible.

(C) INTERNATIONAL CHILD ABDUCTION.—

(i) IN GENERAL.—Except as provided in clause (ii), any alien who, after entry of an order by a court in the United States granting custody to a person of a United States citizen child who detains or retains the child, or withholds custody of the child, outside the United States from the person granted custody by that order, is inadmissible until the child is surrendered to the person granted custody by that order.

(ii) ALIENS SUPPORTING ABDUCTORS AND RELATIVES OF ABDUCTORS.—Any alien who—

(I) is known by the Secretary of State to have intentionally assisted an alien in the conduct described in clause (i),

(II) is known by the Secretary of State to be intentionally providing material support or safe haven to an alien described in clause (i), or

(III) is a spouse (other than the spouse who is the parent of the abducted child), child (other than the abducted child), parent, sibling, or agent of an alien described in clause (i), if such person has been designated by the Secretary of State at the Secretary's sole and unreviewable discretion, is inadmissible until the child described in clause (i) is surrendered to the person granted custody by the order described in that clause, and such person and child are permitted to return to the United States or such person's place of residence.

(iii) EXCEPTIONS.—Clauses (i) and (ii) shall not apply—

(I) to a government official of the United States who is acting within the scope of his or her official duties;

(II) to a government official of any foreign government if the official has been designated by the Secretary of State at the Secretary's sole and unreviewable discretion; or

(III) so long as the child is located in a foreign state that is a party to the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980.

(D) UNLAWFUL VOTERS.—

(i) IN GENERAL.—Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is inadmissible.

(ii) EXCEPTION.—In the case of an alien who voted in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such violation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such violation.

(E) FORMER CITIZENS WHO RENOUNCED CITIZENSHIP TO AVOID TAXATION.—Any alien who is a former citizen of the United States who officially renounces United States citizenship and who is determined by the Attorney General to have renounced United States citizenship for the purpose of avoiding taxation by the United States is inadmissible.

(b) NOTICES OF DENIALS.—

(1) Subject to paragraphs (2) and (3), if an alien's application for a visa, for admission to the United States, or for adjustment of status is denied by an immigration or consular officer because the officer determines the alien to be inadmissible under subsection (a), the officer shall provide the alien with a timely written notice that—

(A) states the determination, and

(B) lists the specific provision or provisions of law under which the alien is excludable or ineligible for entry or adjustment of status.

(2) The Secretary of State may waive the requirements of paragraph (1) with respect to a particular alien or any class or classes of inadmissible aliens.

(3) Paragraph (1) does not apply to any alien inadmissible under paragraph (2) or (3) of subsection (a).

[(c) Repealed by sec. 304(b) of Public Law 104–208 (110 Stat. 3009–597).]

(d)(1) The Attorney General shall determine whether a ground for inadmissible exists with respect to a nonimmigrant described in section 101(a)(15)(S). The Attorney General, in the Attorney General's discretion, may waive the application of subsection (a) (other than paragraph (3)(E)) in the case of a nonimmigrant described in section 101(a)(15)(S), if the Attorney General considers it to be in the national interest to do so. Nothing in this section shall be regarded as prohibiting the Immigration and Naturalization Service from instituting removal proceedings against an alien admitted as a nonimmigrant under section 101(a)(15)(S) for conduct committed after the alien's admission into the United States, or for conduct or a condition that was not disclosed to the Attorney General prior to the alien's admission as a nonimmigrant under section 101(a)(15)(S).

(3)(A) Except as provided in this subsection, an alien (i) who is applying for a nonimmigrant visa and is known or believed by the consular officer to be ineligible for such visa under subsection (a) (other than paragraphs (3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), and clauses (i) and (ii) of paragraph (3)(E) of such subsection), may, after approval by the Attorney General of a recommendation by the Secretary of State or by the consular officer that the alien be admitted temporarily despite his inadmissibility, be granted such a visa and may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General, or (ii) who is inadmissible under subsection (a) (other than paragraphs (3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), and clauses (i) and (ii) of paragraph (3)(E) of such subsection), but who is in possession of appropriate documents or is granted a waiver thereof and is seeking admission, may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General. The Attorney General shall prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of inadmissible aliens applying for temporary admission under this paragraph.

(B)(i) The Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, or the Secretary of Homeland Security, after consultation with the Secretary of

State and the Attorney General, may determine in such Secretary's sole unreviewable discretion that subsection (a)(3)(B) shall not apply with respect to an alien within the scope of that subsection or that subsection (a)(3)(B)(vi)(III) shall not apply to a group within the scope of that subsection, except that no such waiver may be extended to an alien who is within the scope of subsection (a)(3)(B)(i)(II), no such waiver may be extended to an alien who is a member or representative of, has voluntarily and knowingly engaged in or endorsed or espoused or persuaded others to endorse or espouse or support terrorist activity on behalf of, or has voluntarily and knowingly received military-type training from a terrorist organization that is described in subclause (I) or (II) of subsection (a)(3)(B)(vi), and no such waiver may be extended to a group that has engaged terrorist activity against the United States or another democratic country or that has purposefully engaged in a pattern or practice of terrorist activity that is directed at civilians. Such a determination shall neither prejudice the ability of the United States Government to commence criminal or civil proceedings involving a beneficiary of such a determination or any other person, nor create any substantive or procedural right or benefit for a beneficiary of such a determination or any other person. Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review such a determination or revocation except in a proceeding for review of a final order of removal pursuant to section 1252 of this title, and review shall be limited to the extent provided in section 1252(a)(2)(D). The Secretary of State may not exercise the discretion provided in this clause with respect to an alien at any time during which the alien is the subject of pending removal proceedings under section 1229a of this title.

(ii) Not later than 90 days after the end of each fiscal year, the Secretary of State and the Secretary of Homeland Security shall each provide to the Committees on the Judiciary of the House of Representatives and of the Senate, the Committee on International Relations of the House of Representatives, the Committee on Foreign Relations of the Senate, and the Committee on Homeland Security of the House of Representatives a report on the aliens to whom such Secretary has applied clause (i). Within one week of applying clause (i) to a group, the Secretary of State or the Secretary of Homeland Security shall provide a report to such Committees.

(4) Either or both of the requirements of paragraph (7)(B)(i) of subsection (a) may be waived by the Attorney General and the Secretary of State acting jointly (A) on the basis of unforeseen emergency in individual cases, or (B) on the basis of reciprocity with respect to nationals of foreign contiguous territory or of adjacent islands and residents thereof having a common nationality with such nationals, or (C) in the case of aliens proceeding in immediate and continuous transit through the United States under contracts authorized in section 238(c).

[(5)(A) The Attorney General may, except as provided in subparagraph (B) or in section 214(f), in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the

United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

[(B) The Attorney General may not parole into the United States an alien who is a refugee unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 207.]

(5)(A) Except as provided in subparagraphs (B) and (C) and section 214(f), the Secretary of Homeland Security, in the discretion of the Secretary, may temporarily parole into the United States any alien applying for admission to the United States who is not present in the United States, under such conditions as the Secretary may prescribe, on a case-by-case basis, and not according to eligibility criteria describing an entire class of potential parole recipients, for urgent humanitarian reasons or significant public benefit. Parole granted under this subparagraph may not be regarded as an admission of the alien. When the purposes of such parole have been served in the opinion of the Secretary, the alien shall immediately return or be returned to the custody from which the alien was paroled. After such return, the case of the alien shall be dealt with in the same manner as the case of any other applicant for admission to the United States.

(B) The Secretary of Homeland Security may grant parole to any alien who—

(i) is present in the United States without lawful immigration status;

(ii) is the beneficiary of an approved petition under section 203(a);

(iii) is not otherwise inadmissible or removable; and

(iv) is the spouse or child of a member of the Armed Forces serving on active duty.

(C) The Secretary of Homeland Security may grant parole to any alien—

(i) who is a national of the Republic of Cuba and is living in the Republic of Cuba;

(ii) who is the beneficiary of an approved petition under section 203(a);

(iii) for whom an immigrant visa is not immediately available;

(iv) who meets all eligibility requirements for an immigrant visa;

(v) who is not otherwise inadmissible; and

(vi) who is receiving a grant of parole in furtherance of the commitment of the United States to the minimum level of annual legal migration of Cuban nationals to the United States specified in the U.S.–Cuba Joint Communiqué on Migration, done at New York September 9, 1994, and reaffirmed in the Cuba-United States: Joint Statement on Normalization of Migration, Building on the Agreement of September 9, 1994, done at New York May 2, 1995.

(D) The Secretary of Homeland Security may grant parole to an alien who is returned to a contiguous country under section 235(b)(3) to allow the alien to attend the alien's immigration hearing. The grant of parole shall not exceed the time required for the alien to be escorted to, and attend, the alien's immigration hearing scheduled on the same calendar day as the grant, and to immediately thereafter be escorted back to the contiguous country. A grant of parole under this subparagraph shall not be considered for purposes of determining whether the alien is inadmissible under this Act.

(E) For purposes of determining an alien's eligibility for parole under subparagraph (A), an urgent humanitarian reason shall be limited to circumstances in which the alien establishes that—

(i)(I) the alien has a medical emergency; and

(II)(aa) the alien cannot obtain necessary treatment in the foreign state in which the alien is residing; or

(bb) the medical emergency is life-threatening and there is insufficient time for the alien to be admitted to the United States through the normal visa process;

(ii) the alien is the parent or legal guardian of an alien described in clause (i) and the alien described in clause (i) is a minor;

(iii) the alien is needed in the United States in order to donate an organ or other tissue for transplant and there is insufficient time for the alien to be admitted to the United States through the normal visa process;

(iv) the alien has a close family member in the United States whose death is imminent and the alien could not arrive in the United States in time to see such family member alive if the alien were to be admitted to the United States through the normal visa process;

(v) the alien is seeking to attend the funeral of a close family member and the alien could not arrive in the United States in time to attend such funeral if the alien were to be admitted to the United States through the normal visa process;

(vi) the alien is an adopted child with an urgent medical condition who is in the legal custody of the petitioner for a final adoption-related visa and whose medical treatment is required before the expected award of a final adoption-related visa; or

(vii) the alien is a lawful applicant for adjustment of status under section 245 and is returning to the United States after temporary travel abroad.

(F) For purposes of determining an alien's eligibility for parole under subparagraph (A), a significant public benefit may be determined to result from the parole of an alien only if—

(i) the alien has assisted (or will assist, whether knowingly or not) the United States Government in a law enforcement matter;

(ii) the alien's presence is required by the Government in furtherance of such law enforcement matter; and

(iii) the alien is inadmissible, does not satisfy the eligibility requirements for admission as a nonimmigrant, or there is insufficient time for the alien to be admitted to the United States through the normal visa process.

(G) For purposes of determining an alien's eligibility for parole under subparagraph (A), the term "case-by-case basis" means that the facts in each individual case are considered and parole is not granted based on membership in a defined class of aliens to be granted parole. The fact that aliens are considered for or granted parole one-by-one and not as a group is not sufficient to establish that the parole decision is made on a "case-by-case basis".

(H) The Secretary of Homeland Security may not use the parole authority under this paragraph to parole an alien into the United States for any reason or purpose other than those described in subparagraphs (B), (C), (D), (E), and (F).

(I) An alien granted parole may not accept employment, except that an alien granted parole pursuant to subparagraph (B) or (C) is authorized to accept employment for the duration of the parole, as evidenced by an employment authorization document issued by the Secretary of Homeland Security.

(J) Parole granted after a departure from the United States shall not be regarded as an admission of the alien. An alien granted parole, whether as an initial grant of parole or parole upon reentry into the United States, is not eligible to adjust status to lawful permanent residence or for any other immigration benefit if the immigration status the alien had at the time of departure did not authorize the alien to adjust status or to be eligible for such benefit.

(K)(i) Except as provided in clauses (ii) and (iii), parole shall be granted to an alien under this paragraph for the shorter of—

(I) a period of sufficient length to accomplish the activity described in subparagraph (D), (E), or (F) for which the alien was granted parole; or

(II) 1 year.

(ii) Grants of parole pursuant to subparagraph (A) may be extended once, in the discretion of the Secretary, for an additional period that is the shorter of—

(I) the period that is necessary to accomplish the activity described in subparagraph (E) or (F) for which the alien was granted parole; or

(II) 1 year.

(iii) Aliens who have a pending application to adjust status to permanent residence under section 245 may request extensions of parole under this paragraph, in 1-year increments, until the application for adjustment has been adjudicated. Such parole shall terminate immediately upon the denial of such adjustment application.

(L) Not later than 90 days after the last day of each fiscal year, the Secretary of Homeland Security shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives and make available to the public, a report—

(i) identifying the total number of aliens paroled into the United States under this paragraph during the previous fiscal year; and

(ii) containing information and data regarding all aliens paroled during such fiscal year, including—

(I) the duration of parole;

(II) the type of parole; and

(III) the current status of the aliens so paroled.

[(6) repealed; see footnote at the beginning of subsection (d).**]**

(7) The provisions of subsection (a) (other than paragraph (7)) shall be applicable to any alien who shall leave Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, or the Virgin Islands of the United States, and who seeks to enter the continental United States or any other place under the jurisdiction of the United States. Any alien described in this paragraph, who is denied admission to the United States, shall be immediately removed in the manner provided by section 241(c) of this Act.

(8) Upon a basis of reciprocity accredited officials of foreign governments, their immediate families, attendants, servants, and personal employees may be admitted in immediate and continuous transit through the United States without regard to the provisions of this section except paragraphs (3)(A), (3)(B), (3)(C), and (7)(B) of subsection (a) of this section.

[(9) and (10) repealed; see footnote at the beginning of subsection (d).**]**

(11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 211(b) and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(12) The Attorney General may, in the discretion of the Attorney General for humanitarian purposes or to assure family unity, waive application of clause (i) of subsection (a)(6)(F)—

(A) in the case of an alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation or removal and who is otherwise admissible to the United States as a returning resident under section 211(b), and

(B) in the case of an alien seeking admission or adjustment of status under section 201(b)(2)(A) or under section 203(a),

if no previous civil money penalty was imposed against the alien under section 274C and the offense was committed solely to assist, aid, or support the alien's spouse or child (and not another individual). No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this paragraph.

(13)(A) The Secretary of Homeland Security shall determine whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 101(a)(15)(T), except that the ground for inadmissibility described in subsection (a)(4) shall not apply with respect to such a nonimmigrant.

(B) In addition to any other waiver that may be available under this section, in the case of a nonimmigrant described in section 101(a)(15)(T), if the Secretary of Homeland Security considers it to be in the national interest to do so, the Secretary of Homeland Security, in the Attorney General's discretion, may waive the application of—

(i) subsection (a)(1); and

(ii) any other provision of subsection (a) (excluding paragraphs (3), (4), (10)(C), and (10(E)) if the activities rendering the alien inadmissible under the provision were caused by, or were incident to, the victimization described in section 101(a)(15)(T)(i)(I).

(14) The Secretary of Homeland Security shall determine whether a ground of inadmissibility exists with respect to a nonimmigrant described in section 101(a)(15)(U). The Secretary of Homeland Security, in the Attorney General's discretion, may waive the application of subsection (a) (other than paragraph (3)(E)) in the case of a nonimmigrant described in section 101(a)(15)(U), if the Secretary of Homeland Security considers it to be in the public or national interest to do so.

(e) No person admitted under section 101(a)(15)(J) or acquiring such status after admission (i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence, (ii) who at the time of admission or acquisition of status under section 101(a)(15)(J) was a national or resident of a country which the Director of the United States Information Agency pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or (iii) who came to the United States or acquired such status in order to receive graduate medical education or training, shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of a least two years following departure from the United States: *Provided,* That upon the favorable recommendation of the Director, pursuant to the request of an interested United States Government agency (or, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent), or of the Commissioner of Immigration and Naturalization after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest except that in the case of a waiver requested by a State Department of Public Health, or its equivalent, or in the case of a waiver requested by an interested United States Government agency on behalf of an alien described in clause (iii), the waiver shall be subject to the requirements of section 214(l): *And provided further,* That, except in the case of an alien described in clause (iii), the Attorney General may, upon the favorable recommendation of the Director, waive such two-year foreign residence requirement in any case in which the

foreign country of the alien's nationality or last residence has furnished the Director a statement in writing that it has no objection to such waiver in the case of such alien.

(f) Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate. Whenever the Attorney General finds that a commercial airline has failed to comply with regulations of the Attorney General relating to requirements of airlines for the detection of fraudulent documents used by passengers traveling to the United States (including the training of personnel in such detection), the Attorney General may suspend the entry of some or all aliens transported to the United States by such airline.

(g) The Attorney General may waive the application of—

(1) subsection (a)(1)(A)(i) in the case of any alien who—

(A) is the spouse or the unmarried son or daughter, or the minor unmarried lawfully adopted child, of a United States citizen, or of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa,

(B) has a son or daughter who is a United States citizen, or an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa; or

(C) is a VAWA self-petitioner,

in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe;

(2) subsection (a)(1)(A)(ii) in the case of any alien—

(A) who receives vaccination against the vaccine-preventable disease or diseases for which the alien has failed to present documentation of previous vaccination,

(B) for whom a civil surgeon, medical officer, or panel physician (as those terms are defined by section 34.2 of title 42 of the Code of Federal Regulations) certifies, according to such regulations as the Secretary of Health and Human Services may prescribe, that such vaccination would not be medically appropriate, or

(C) under such circumstances as the Attorney General provides by regulation, with respect to whom the requirement of such a vaccination would be contrary to the alien's religious beliefs or moral convictions; or

(3) subsection (a)(1)(A)(iii) in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe.

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it

relates to a single offense of simple possession of 30 grams or less of marijuana if—

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that—

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien; or

(C) the alien is a VAWA self-petitioner; and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

(i)(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

(j)(1) The additional requirements referred to in section 101(a)(15)(J) for an alien who is coming to the United States under

a program under which he will receive graduate medical education or training are as follows:

(A) A school of medicine or of one of the other health professions, which is accredited by a body or bodies approved for the purpose by the Secretary of Education, has agreed in writing to provide the graduate medical education or training under the program for which the alien is coming to the United States or to assume responsibility for arranging for the provision thereof by an appropriate public or nonprofit private institution or agency, except that, in the case of such an agreement by a school of medicine, any one or more of its affiliated hospitals which are to participate in the provision of the graduate medical education or training must join in the agreement.

(B) Before making such agreement, the accredited school has been satisfied that the alien (i) is a graduate of a school of medicine which is accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States); or (ii)(I) has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services), (II) has competency in oral and written English, (III) will be able to adapt to the educational and cultural environment in which he will be receiving his education or training, and (IV) has adequate prior education and training to participate satisfactorily in the program for which he is coming to the United States. For the purposes of this subparagraph, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners examination if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.

(C) The alien has made a commitment to return to the country of his nationality or last residence upon completion of the education or training for which he is coming to the United States, and the government of the country of his nationality or last residence has provided a written assurance, satisfactory to the Secretary of Health and Human Services, that there is a need in that country for persons with the skills the alien will acquire in such education or training.

(D) The duration of the alien's participation in the program of graduate medical education or training for which the alien is coming to the United States is limited to the time typically required to complete such program, as determined by the Director of the United States Information Agency at the time of the alien's admission into the United States, based on criteria which are established in coordination with the Secretary of Health and Human Services and which take into consideration the published requirements of the medical specialty board which administers such education or training program; except that—

(i) such duration is further limited to seven years unless the alien has demonstrated to the satisfaction of the Director that the country to which the alien will return at the

end of such specialty education or training has an exceptional need for an individual trained in such specialty, and

(ii) the alien may, once and not later than two years after the date the alien is admitted to the United States as an exchange visitor or acquires exchange visitor status, change the alien's designated program of graduate medical education or training if the Director approves the change and if a commitment and written assurance with respect to the alien's new program have been provided in accordance with subparagraph (C).

(E) The alien furnishes the Attorney General each year with an affidavit (in such form as the Attorney General shall prescribe) that attests that the alien (i) is in good standing in the program of graduate medical education or training in which the alien is participating, and (ii) will return to the country of his nationality or last residence upon completion of the education or training for which he came to the United States.

(2) An alien who is a graduate of a medical school and who is coming to the United States to perform services as a member of the medical profession may not be admitted as a nonimmigrant under section 101(a)(15)(H)(i)(b) unless—

(A) the alien is coming pursuant to an invitation from a public or nonprofit private educational or research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency, or

(B)(i) the alien has passed the Federation licensing examination (administered by the Federation of State Medical Boards of the United States) or an equivalent examination as determined by the Secretary of Health and Human Services, and

(ii)(I) has competency in oral and written English or (II) is a graduate of a school of medicine which is accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States).

(3) The Director of the United States Information Agency annually shall transmit to the Congress a report on aliens who have submitted affidavits described in paragraph (1)(E), and shall include in such report the name and address of each such alien, the medical education or training program in which such alien is participating, and the status of such alien in that program.

(k) Any alien, inadmissible from the United States under paragraph (5)(A) or (7)(A)(i) of subsection (a), who is in possession of an immigrant visa may, if otherwise admissible, be admitted in the discretion of the Attorney General if the Attorney General is satisfied that inadmissibility was not known to, and could not have been ascertained by the exercise of reasonable diligence by, the immigrant before the time of departure of the vessel or aircraft from the last port outside the United States and outside foreign contiguous territory or, in the case of an immigrant coming from foreign contiguous territory, before the time of the immigrant's application for admission.

(l) GUAM AND NORTHERN MARIANA ISLANDS VISA WAIVER PROGRAM.—

(1) IN GENERAL.—The requirement of subsection (a)(7)(B)(i) may be waived by the Secretary of Homeland Security, in the

case of an alien applying for admission as a nonimmigrant visitor for business or pleasure and solely for entry into and stay in Guam or the Commonwealth of the Northern Mariana Islands for a period not to exceed 45 days, if the Secretary of Homeland Security, after consultation with the Secretary of the Interior, the Secretary of State, the Governor of Guam and the Governor of the Commonwealth of the Northern Mariana Islands, determines that—

(A) an adequate arrival and departure control system has been developed in Guam and the Commonwealth of the Northern Mariana Islands; and

(B) such a waiver does not represent a threat to the welfare, safety, or security of the United States or its territories and commonwealths.

(2) ALIEN WAIVER OF RIGHTS.—An alien may not be provided a waiver under this subsection unless the alien has waived any right—

(A) to review or appeal under this Act an immigration officer's determination as to the admissibility of the alien at the port of entry into Guam or the Commonwealth of the Northern Mariana Islands; or

(B) to contest, other than on the basis of an application for withholding of removal under section 241(b)(3) of this Act or under the Convention Against Torture, or an application for asylum if permitted under section 208, any action for removal of the alien.

(3) REGULATIONS.—All necessary regulations to implement this subsection shall be promulgated by the Secretary of Homeland Security, in consultation with the Secretary of the Interior and the Secretary of State, on or before the 180th day after the date of enactment of the Consolidated Natural Resources Act of 2008. The promulgation of such regulations shall be considered a foreign affairs function for purposes of section 553(a) of title 5, United States Code. At a minimum, such regulations should include, but not necessarily be limited to—

(A) a listing of all countries whose nationals may obtain the waiver also provided by this subsection, except that such regulations shall provide for a listing of any country from which the Commonwealth has received a significant economic benefit from the number of visitors for pleasure within the one-year period preceding the date of enactment of the Consolidated Natural Resources Act of 2008, unless the Secretary of Homeland Security determines that such country's inclusion on such list would represent a threat to the welfare, safety, or security of the United States or its territories; and

(B) any bonding requirements for nationals of some or all of those countries who may present an increased risk of overstays or other potential problems, if different from such requirements otherwise provided by law for nonimmigrant visitors.

(4) FACTORS.—In determining whether to grant or continue providing the waiver under this subsection to nationals of any country, the Secretary of Homeland Security, in consultation with the Secretary of the Interior and the Secretary of State,

shall consider all factors that the Secretary deems relevant, including electronic travel authorizations, procedures for reporting lost and stolen passports, repatriation of aliens, rates of refusal for nonimmigrant visitor visas, overstays, exit systems, and information exchange.

(5) SUSPENSION.—The Secretary of Homeland Security shall monitor the admission of nonimmigrant visitors to Guam and the Commonwealth of the Northern Mariana Islands under this subsection. If the Secretary determines that such admissions have resulted in an unacceptable number of visitors from a country remaining unlawfully in Guam or the Commonwealth of the Northern Mariana Islands, unlawfully obtaining entry to other parts of the United States, or seeking withholding of removal or asylum, or that visitors from a country pose a risk to law enforcement or security interests of Guam or the Commonwealth of the Northern Mariana Islands or of the United States (including the interest in the enforcement of the immigration laws of the United States), the Secretary shall suspend the admission of nationals of such country under this subsection. The Secretary of Homeland Security may in the Secretary's discretion suspend the Guam and Northern Mariana Islands visa waiver program at any time, on a country-by-country basis, for other good cause.

(6) ADDITION OF COUNTRIES.—The Governor of Guam and the Governor of the Commonwealth of the Northern Mariana Islands may request the Secretary of the Interior and the Secretary of Homeland Security to add a particular country to the list of countries whose nationals may obtain the waiver provided by this subsection, and the Secretary of Homeland Security may grant such request after consultation with the Secretary of the Interior and the Secretary of State, and may promulgate regulations with respect to the inclusion of that country and any special requirements the Secretary of Homeland Security, in the Secretary's sole discretion, may impose prior to allowing nationals of that country to obtain the waiver provided by this subsection.

(m)(1) The qualifications referred to in section 101(a)(15)(H)(i)(c), with respect to an alien who is coming to the United States to perform nursing services for a facility, are that the alien—

(A) has obtained a full and unrestricted license to practice professional nursing in the country where the alien obtained nursing education or has received nursing education in the United States;

(B) has passed an appropriate examination (recognized in regulations promulgated in consultation with the Secretary of Health and Human Services) or has a full and unrestricted license under State law to practice professional nursing in the State of intended employment; and

(C) is fully qualified and eligible under the laws (including such temporary or interim licensing requirements which authorize the nurse to be employed) governing the place of intended employment to engage in the practice of professional nursing as a registered nurse immediately upon admission to the United States and is authorized under such laws to be employed by the facility.

(2)(A) The attestation referred to in section 101(a)(15)(H)(i)(c), with respect to a facility for which an alien will perform services, is an attestation as to the following:

(i) The facility meets all the requirements of paragraph (6).

(ii) The employment of the alien will not adversely affect the wages and working conditions of registered nurses similarly employed.

(iii) The alien employed by the facility will be paid the wage rate for registered nurses similarly employed by the facility.

(iv) The facility has taken and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses.

(v) There is not a strike or lockout in the course of a labor dispute, the facility did not lay off and will not lay off a registered nurse employed by the facility within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition, and the employment of such an alien is not intended or designed to influence an election for a bargaining representative for registered nurses of the facility.

(vi) At the time of the filing of the petition for registered nurses under section 101(a)(15)(H)(i)(c), notice of the filing has been provided by the facility to the bargaining representative of the registered nurses at the facility or, where there is no such bargaining representative, notice of the filing has been provided to the registered nurses employed at the facility through posting in conspicuous locations.

(vii) The facility will not, at any time, employ a number of aliens issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(c) that exceeds 33 percent of the total number of registered nurses employed by the facility.

(viii) The facility will not, with respect to any alien issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(c)—

(I) authorize the alien to perform nursing services at any worksite other than a worksite controlled by the facility; or

(II) transfer the place of employment of the alien from one worksite to another.

Nothing in clause (iv) shall be construed as requiring a facility to have taken significant steps described in such clause before the date of the enactment of the Nursing Relief for Disadvantaged Areas Act of 1999. A copy of the attestation shall be provided, within 30 days of the date of filing, to registered nurses employed at the facility on the date of filing.

(B) For purposes of subparagraph (A)(iv), each of the following shall be considered a significant step reasonably designed to recruit and retain registered nurses:

(i) Operating a training program for registered nurses at the facility or financing (or providing participation in) a training program for registered nurses elsewhere.

(ii) Providing career development programs and other methods of facilitating health care workers to become registered nurses.

(iii) Paying registered nurses wages at a rate higher than currently being paid to registered nurses similarly employed in the geographic area.

(iv) Providing reasonable opportunities for meaningful salary advancement by registered nurses.

The steps described in this subparagraph shall not be considered to be an exclusive list of the significant steps that may be taken to meet the conditions of subparagraph (A)(iv). Nothing in this subparagraph shall require a facility to take more than one step if the facility can demonstrate that taking a second step is not reasonable.

(C) Subject to subparagraph (E), an attestation under subparagraph (A)—

(i) shall expire on the date that is the later of—

(I) the end of the one-year period beginning on the date of its filing with the Secretary of Labor; or

(II) the end of the period of admission under section 101(a)(15)(H)(i)(c) of the last alien with respect to whose admission it was applied (in accordance with clause (ii)); and

(ii) shall apply to petitions filed during the one-year period beginning on the date of its filing with the Secretary of Labor if the facility states in each such petition that it continues to comply with the conditions in the attestation.

(D) A facility may meet the requirements under this paragraph with respect to more than one registered nurse in a single petition.

(E)(i) The Secretary of Labor shall compile and make available for public examination in a timely manner in Washington, D.C., a list identifying facilities which have filed petitions for nonimmigrants under section 101(a)(15)(H)(i)(c) and, for each such facility, a copy of the facility's attestation under subparagraph (A) (and accompanying documentation) and each such petition filed by the facility.

(ii) The Secretary of Labor shall establish a process, including reasonable time limits, for the receipt, investigation, and disposition of complaints respecting a facility's failure to meet conditions attested to or a facility's misrepresentation of a material fact in an attestation. Complaints may be filed by any aggrieved person or organization (including bargaining representatives, associations deemed appropriate by the Secretary, and other aggrieved parties as determined under regulations of the Secretary). The Secretary shall conduct an investigation under this clause if there is reasonable cause to believe that a facility fails to meet conditions attested to. Subject to the time limits established under this clause, this subparagraph shall apply regardless of whether an attestation is expired or unexpired at the time a complaint is filed.

(iii) Under such process, the Secretary shall provide, within 180 days after the date such a complaint is filed, for a determination as to whether or not a basis exists to make a finding described in clause (iv). If the Secretary determines that such a basis exists, the Secretary shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint within 60 days of the date of the determination.

(iv) If the Secretary of Labor finds, after notice and opportunity for a hearing, that a facility (for which an attestation is made) has

failed to meet a condition attested to or that there was a misrepresentation of material fact in the attestation, the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $1,000 per nurse per violation, with the total penalty not to exceed $10,000 per violation) as the Secretary determines to be appropriate. Upon receipt of such notice, the Attorney General shall not approve petitions filed with respect to a facility during a period of at least one year for nurses to be employed by the facility.

(v) In addition to the sanctions provided for under clause (iv), if the Secretary of Labor finds, after notice and an opportunity for a hearing, that a facility has violated the condition attested to under subparagraph (A)(iii) (relating to payment of registered nurses at the prevailing wage rate), the Secretary shall order the facility to provide for payment of such amounts of back pay as may be required to comply with such condition.

(F)(i) The Secretary of Labor shall impose on a facility filing an attestation under subparagraph (A) a filing fee, in an amount prescribed by the Secretary based on the costs of carrying out the Secretary's duties under this subsection, but not exceeding $250.

(ii) Fees collected under this subparagraph shall be deposited in a fund established for this purpose in the Treasury of the United States.

(iii) The collected fees in the fund shall be available to the Secretary of Labor, to the extent and in such amounts as may be provided in appropriations Acts, to cover the costs described in clause (i), in addition to any other funds that are available to the Secretary to cover such costs.

(3) The period of admission of an alien under section 101(a)(15)(H)(i)(c) shall be 3 years.

(4) The total number of nonimmigrant visas issued pursuant to petitions granted under section 101(a)(15)(H)(i)(c) in each fiscal year shall not exceed 500. The number of such visas issued for employment in each State in each fiscal year shall not exceed the following:

(A) For States with populations of less than 9,000,000, based upon the 1990 decennial census of population, 25 visas.

(B) For States with populations of 9,000,000 or more, based upon the 1990 decennial census of population, 50 visas.

(C) If the total number of visas available under this paragraph for a fiscal year quarter exceeds the number of qualified nonimmigrants who may be issued such visas during those quarters, the visas made available under this paragraph shall be issued without regard to the numerical limitation under subparagraph (A) or (B) of this paragraph during the last fiscal year quarter.

(5) A facility that has filed a petition under section 101(a)(15)(H)(i)(c) to employ a nonimmigrant to perform nursing services for the facility—

(A) shall provide the nonimmigrant a wage rate and working conditions commensurate with those of nurses similarly employed by the facility;

(B) shall require the nonimmigrant to work hours commensurate with those of nurses similarly employed by the facility; and

(C) shall not interfere with the right of the nonimmigrant to join or organize a union.

(6) For purposes of this subsection and section 101(a)(15)(H)(i)(c), the term "facility" means a subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B))) that meets the following requirements:

(A) As of March 31, 1997, the hospital was located in a health professional shortage area (as defined in section 332 of the Public Health Service Act (42 U.S.C. 254e)).

(B) Based on its settled cost report filed under title XVIII of the Social Security Act for its cost reporting period beginning during fiscal year 1994—

(i) the hospital has not less than 190 licensed acute care beds;

(ii) the number of the hospital's inpatient days for such period which were made up of patients who (for such days) were entitled to benefits under part A of such title is not less than 35 percent of the total number of such hospital's acute care inpatient days for such period; and

(iii) the number of the hospital's inpatient days for such period which were made up of patients who (for such days) were eligible for medical assistance under a State plan approved under title XIX of the Social Security Act, is not less than 28 percent of the total number of such hospital's acute care inpatient days for such period.

(7) For purposes of paragraph (2)(A)(v), the term "lay off", with respect to a worker—

(A) 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, or the expiration of a grant or contract; but

(B) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer 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.

Nothing in this paragraph is intended to limit an employee's or an employer's rights under a collective bargaining agreement or other employment contract.

(n)(1) No alien may be admitted or provided status as an H–1B nonimmigrant in an occupational classification unless the employer has filed with the Secretary of Labor an application stating the following:

(A) The employer—

(i) is offering and will offer during the period of authorized employment to aliens admitted or provided status as an H–1B nonimmigrant wages that are at least—

(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or

(II) the prevailing wage level for the occupational classification in the area of employment,

whichever is greater, based on the best information available as of the time of filing the application, and

(ii) will provide working conditions for such a nonimmigrant that will not adversely affect the working conditions of workers similarly employed.

(B) There is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment.

(C) The employer, at the time of filing the application—

(i) has provided notice of the filing under this paragraph to the bargaining representative (if any) of the employer's employees in the occupational classification and area for which aliens are sought, or

(ii) if there is no such bargaining representative, has provided notice of filing in the occupational classification through such methods as physical posting in conspicuous locations at the place of employment or electronic notification to employees in the occupational classification for which H–1B nonimmigrants are sought.

(D) The application shall contain a specification of the number of workers sought, the occupational classification in which the workers will be employed, and wage rate and conditions under which they will be employed.

(E)(i) In the case of an application described in clause (ii), the employer did not displace and will not displace a United States worker (as defined in paragraph (4)) employed by the employer within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition supported by the application.

(ii) An application described in this clause is an application filed on or after the date final regulations are first promulgated to carry out this subparagraph, and before by an H–1B-dependent employer (as defined in paragraph (3)) or by an employer that has been found, on or after the date of the enactment of the American Competitiveness and Workforce Improvement Act of 1998, under paragraph (2)(C) or (5) to have committed a willful failure or misrepresentation during the 5-year period preceding the filing of the application. An application is not described in this clause if the only H–1B nonimmigrants sought in the application are exempt H–1B nonimmigrants.

(F) In the case of an application described in subparagraph (E)(ii), the employer will not place the nonimmigrant with another employer (regardless of whether or not such other employer is an H–1B-dependent employer) where—

(i) the nonimmigrant performs duties in whole or in part at one or more worksites owned, operated, or controlled by such other employer; and

(ii) there are indicia of an employment relationship between the nonimmigrant and such other employer;

unless the employer has inquired of the other employer as to whether, and has no knowledge that, within the period beginning 90 days before and ending 90 days after the date of the

placement of the nonimmigrant with the other employer, the other employer has displaced or intends to displace a United States worker employed by the other employer.

(G)(i) In the case of an application described in subparagraph (E)(ii), subject to clause (ii), the employer, prior to filing the application—

(I) has taken good faith steps to recruit, in the United States using procedures that meet industry-wide standards and offering compensation that is at least as great as that required to be offered to H–1B nonimmigrants under subparagraph (A), United States workers for the job for which the nonimmigrant or nonimmigrants is or are sought; and

(II) has offered the job to any United States worker who applies and is equally or better qualified for the job for which the nonimmigrant or nonimmigrants is or are sought.

(ii) The conditions described in clause (i) shall not apply to an application filed with respect to the employment of an H–1B nonimmigrant who is described in subparagraph (A), (B), or (C) of section 203(b)(1).

The employer shall make available for public examination, within one working day after the date on which an application under this paragraph is filed, at the employer's principal place of business or worksite, a copy of each such application (and such accompanying documents as are necessary). The Secretary shall compile, on a current basis, a list (by employer and by occupational classification) of the applications filed under this subsection. Such list shall include the wage rate, number of aliens sought, period of intended employment, and date of need. The Secretary shall make such list available for public examination in Washington, D.C. The Secretary of Labor shall review such an application only for completeness and obvious inaccuracies. Unless the Secretary finds that the application is incomplete or obviously inaccurate, the Secretary shall provide the certification described in section 101(a)(15)(H)(i)(b) within 7 days of the date of the filing of the application. The application form shall include a clear statement explaining the liability under subparagraph (F) of a placing employer if the other employer described in such subparagraph displaces a United States worker as described in such subparagraph. Nothing in subparagraph (G) shall be construed to prohibit an employer from using legitimate selection criteria relevant to the job that are normal or customary to the type of job involved, so long as such criteria are not applied in a discriminatory manner.

(2)(A) Subject to paragraph (5)(A), the Secretary shall establish a process for the receipt, investigation, and disposition of complaints respecting a petitioner's failure to meet a condition specified in an application submitted under paragraph (1) or a petitioner's misrepresentation of material facts in such an application. Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively. The Secretary shall conduct an investigation under this

paragraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

(B) Under such process, the Secretary 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 make a finding described in subparagraph (C). If the Secretary determines that such a reasonable basis exists, the Secretary 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. If such a hearing is requested, the Secretary shall make a finding concerning the matter by not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary may consolidate the hearings under this subparagraph on such complaints.

(C)(i) If the Secretary finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B), (1)(E), or (1)(F), a substantial failure to meet a condition of paragraph (1)(C), (1)(D), or (1)(G)(i)(I), or a misrepresentation of material fact in an application—

(I) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $1,000 per violation) as the Secretary determines to be appropriate; and

(II) the Attorney General shall not approve petitions filed with respect to that employer under section 204 or 214(c) during a period of at least 1 year for aliens to be employed by the employer.

(ii) If the Secretary finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1), a willful misrepresentation of material fact in an application, or a violation of clause (iv)—

(I) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $5,000 per violation) as the Secretary determines to be appropriate; and

(II) the Attorney General shall not approve petitions filed with respect to that employer under section 204 or 214(c) during a period of at least 2 years for aliens to be employed by the employer.

(iii) If the Secretary finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1) or a willful misrepresentation of material fact in an application, in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition supported by the application—

(I) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $35,000 per violation) as the Secretary determines to be appropriate; and

(II) the Attorney General shall not approve petitions filed with respect to that employer under section 204 or 214(c) during a period of at least 3 years for aliens to be employed by the employer.

(iv) It is a violation of this clause for an employer who has filed an application under this subsection to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against an employee (which term, for purposes of this clause, 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 this subsection, or any rule or regulation pertaining to this subsection, or because the employee cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer's compliance with the requirements of this subsection or any rule or regulation pertaining to this subsection.

(v) The Secretary of Labor and the Attorney General shall devise a process under which an H–1B nonimmigrant who files a complaint regarding a violation of clause (iv) and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.

(vi)(I) It is a violation of this clause for an employer who has filed an application under this subsection to require an H–1B nonimmigrant to pay a penalty for ceasing employment with the employer prior to a date agreed to by the nonimmigrant and the employer. The Secretary shall determine whether a required payment is a penalty (and not liquidated damages) pursuant to relevant State law.

(II) It is a violation of this clause for an employer who has filed an application under this subsection to require an alien who is the subject of a petition filed under section 214(c)(1), for which a fee is imposed under section 214(c)(9), to reimburse, or otherwise compensate, the employer for part or all of the cost of such fee. It is a violation of this clause for such an employer otherwise to accept such reimbursement or compensation from such an alien.

(III) If the Secretary finds, after notice and opportunity for a hearing, that an employer has committed a violation of this clause, the Secretary may impose a civil monetary penalty of $1,000 for each such violation and issue an administrative order requiring the return to the nonimmigrant of any amount paid in violation of this clause, or, if the nonimmigrant cannot be located, requiring payment of any such amount to the general fund of the Treasury.

(vii)(I) It is a failure to meet a condition of paragraph (1)(A) for an employer, who has filed an application under this subsection and who places an H–1B nonimmigrant designated as a full-time employee on the petition filed under section 214(c)(1) by the employer with respect to the nonimmigrant, after the nonimmigrant has entered into employment with the employer, in nonproductive status due to a decision by the employer (based on factors such as lack of work), or due to the nonimmigrant's lack of a permit or license, to fail to pay the nonimmigrant full-time wages in accordance with paragraph (1)(A) for all such nonproductive time.

(II) It is a failure to meet a condition of paragraph (1)(A) for an employer, who has filed an application under this subsection and who places an H–1B nonimmigrant designated as a part-time employee on the petition filed under section 214(c)(1) by the employer with respect to the nonimmigrant, after the nonimmigrant has entered into employment with the employer, in nonproductive status under circumstances described in subclause (I), to fail to pay such a nonimmigrant for such hours as are designated on such petition consistent with the rate of pay identified on such petition.

(III) In the case of an H–1B nonimmigrant who has not yet entered into employment with an employer who has had approved an application under this subsection, and a petition under section 214(c)(1), with respect to the nonimmigrant, the provisions of subclauses (I) and (II) shall apply to the employer beginning 30 days after the date the nonimmigrant first is admitted into the United States pursuant to the petition, or 60 days after the date the nonimmigrant becomes eligible to work for the employer (in the case of a nonimmigrant who is present in the United States on the date of the approval of the petition).

(IV) This clause does not apply to a failure to pay wages to an H–1B nonimmigrant for nonproductive time due to non-work-related factors, such as the voluntary request of the nonimmigrant for an absence or circumstances rendering the nonimmigrant unable to work.

(V) This clause shall not be construed as prohibiting an employer that is a school or other educational institution from applying to an H–1B nonimmigrant an established salary practice of the employer, under which the employer pays to H–1B nonimmigrants and United States workers in the same occupational classification an annual salary in disbursements over fewer than 12 months, if—

(aa) the nonimmigrant agrees to the compressed annual salary payments prior to the commencement of the employment; and

(bb) the application of the salary practice to the nonimmigrant does not otherwise cause the nonimmigrant to violate any condition of the nonimmigrant's authorization under this Act to remain in the United States.

(VI) This clause shall not be construed as superseding clause (viii).

(viii) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an application under this subsection to fail to offer to an H–1B nonimmigrant, during the nonimmigrant's period of authorized employment, benefits and eligibility for benefits (including the opportunity to participate in health, life, disability, and other insurance plans; the opportunity to participate in retirement and savings plans; and cash bonuses and noncash compensation, such as stock options (whether or not based on performance)) on the same basis, and in accordance with the same criteria, as the employer offers to United States workers.

(D) If the Secretary finds, after notice and opportunity for a hearing, that an employer has not paid wages at the wage level specified under the application and required under paragraph (1), the Secretary shall order the employer to provide for payment of such amounts of back pay as may be required to comply with the re-

quirements of paragraph (1), whether or not a penalty under subparagraph (C) has been imposed.

(E) If an H–1B-dependent employer places a nonexempt H–1B nonimmigrant with another employer as provided under paragraph (1)(F) and the other employer has displaced or displaces a United States worker employed by such other employer during the period described in such paragraph, such displacement shall be considered for purposes of this paragraph a failure, by the placing employer, to meet a condition specified in an application submitted under paragraph (1); except that the Attorney General may impose a sanction described in subclause (II) of subparagraph (C)(i), (C)(ii), or (C)(iii) only if the Secretary of Labor found that such placing employer—

(i) knew or had reason to know of such displacement at the time of the placement of the nonimmigrant with the other employer; or

(ii) has been subject to a sanction under this subparagraph based upon a previous placement of an H–1B nonimmigrant with the same other employer.

(F) The Secretary may, on a case-by-case basis, subject an employer to random investigations for a period of up to 5 years, beginning on the date (on or after the date of the enactment of the American Competitiveness and Workforce Improvement Act of 1998) on which the employer is found by the Secretary to have committed a willful failure to meet a condition of paragraph (1) (or has been found under paragraph (5) to have committed a willful failure to meet the condition of paragraph (1)(G)(i)(II)) or to have made a willful misrepresentation of material fact in an application. The preceding sentence shall apply to an employer regardless of whether or not the employer is an H–1B-dependent employer. The authority of the Secretary under this subparagraph shall not be construed to be subject to, or limited by, the requirements of subparagraph (A).

(G)(i) The Secretary of Labor may initiate an investigation of any employer that employs nonimmigrants described in section 101(a)(15)(H)(i)(b) if the Secretary of Labor has reasonable cause to believe that the employer is not in compliance with this subsection. In the case of an investigation under this clause, the Secretary of Labor (or the acting Secretary in the case of the absence of disability of the Secretary of Labor) shall personally certify that reasonable cause exists and shall approve commencement of the investigation. The investigation may be initiated for reasons other than completeness and obvious inaccuracies by the employer in complying with this subsection.

(ii) If the Secretary of Labor receives specific credible information from a source who is likely to have knowledge of an employer's practices or employment conditions, or an employer's compliance with the employer's labor condition application under paragraph (1), and whose identity is known to the Secretary of Labor, and such information provides reasonable cause to believe that the employer has committed a willful failure to meet a condition of paragraph (1)(A), (1)(B), (1)(C), (1)(E), (1)(F), or (1)(G)(i)(I), has engaged in a pattern or practice of failures to meet such a condition, or has committed a substantial failure to meet such a condition that affects multiple employees, the Secretary of Labor may conduct an

investigation into the alleged failure or failures. The Secretary of Labor may withhold the identity of the source from the employer, and the source's identity shall not be subject to disclosure under section 552 of title 5, United States Code.

(iii) The Secretary of Labor shall establish a procedure for any person desiring to provide to the Secretary of Labor information described in clause (ii) that may be used, in whole or in part, as the basis for the commencement of an investigation described in such clause, to provide the information in writing on a form developed and provided by the Secretary of Labor and completed by or on behalf of the person. The person may not be an officer or employee of the Department of Labor, unless the information satisfies the requirement of clause (iv)(II) (although an officer or employee of the Department of Labor may complete the form on behalf of the person).

(iv) Any investigation initiated or approved by the Secretary of Labor under clause (ii) shall be based on information that satisfies the requirements of such clause and that—

(I) originates from a source other than an officer or employee of the Department of Labor; or

(II) was lawfully obtained by the Secretary of Labor in the course of lawfully conducting another Department of Labor investigation under this Act of any other Act.

(v) The receipt by the Secretary of Labor of information submitted by an employer to the Attorney General or the Secretary of Labor for purposes of securing the employment of a nonimmigrant described in section 101(a)(15)(H)(i)(b) shall not be considered a receipt of information for purposes of clause (ii).

(vi) No investigation described in clause (ii) (or hearing described in clause (viii) based on such investigation) may be conducted with respect to information about a failure to meet a condition described in clause (ii), unless the Secretary of Labor receives the information not later than 12 months after the date of the alleged failure.

(vii) The Secretary of Labor shall provide notice to an employer with respect to whom there is reasonable cause to initiate an investigation described in clauses (i) or (ii), prior to the commencement of an investigation under such clauses, of the intent to conduct an investigation. The notice shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced. The Secretary of Labor is not required to comply with this clause if the Secretary of Labor determines that to do so would interfere with an effort by the Secretary of Labor to secure compliance by the employer with the requirements of this subsection. There shall be no judicial review of a determination by the Secretary of Labor under this clause.

(viii) An investigation under clauses (i) or (ii) may be conducted for a period of up to 60 days. If the Secretary of Labor determines after such an investigation that a reasonable basis exists to make a finding that the employer has committed a willful failure to meet a condition of paragraph (1)(A), (1)(B), (1)(C), (1)(E), (1)(F), or (1)(G)(i)(I), has engaged in a pattern or practice of failures to meet such a condition, or has committed a substantial failure to meet such a condition that affects multiple employees, the Secretary of Labor shall provide for notice of such determination to the inter-

ested parties and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, within 120 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter by not later than 120 days after the date of the hearing.

(H)(i) Except as provided in clauses (ii) and (iii), a person or entity is considered to have complied with the requirements of this subsection, notwithstanding a technical or procedural failure to meet such requirements, if there was a good faith attempt to comply with the requirements.

(ii) Clause (i) shall not apply if—

(I) the Department of Labor (or another enforcement agency) has explained to the person or entity the basis for the failure;

(II) the person or entity has been provided a period of not less than 10 business days (beginning after the date of the explanation) within which to correct the failure; and

(III) the person or entity has not corrected the failure voluntarily within such period.

(iii) A person or entity that, in the course of an investigation, is found to have violated the prevailing wage requirements set forth in paragraph (1)(A), shall not be assessed fines or other penalties for such violation if the person or entity can establish that the manner in which the prevailing wage was calculated was consistent with recognized industry standards and practices.

(iv) Clauses (i) and (iii) shall not apply to a person or entity that has engaged in or is engaging in a pattern or practice of willful violations of this subsection.

(I) Nothing in this subsection shall be construed as superseding or preempting any other enforcement-related authority under this Act (such as the authorities under section 274B), or any other Act.

(3)(A) For purposes of this subsection, the term "H–1B-dependent employer" means an employer that—

(i)(I) has 25 or fewer full-time equivalent employees who are employed in the United States; and (II) employs more than 7 H–1B nonimmigrants;

(ii)(I) has at least 26 but not more than 50 full-time equivalent employees who are employed in the United States; and (II) employs more than 12 H–1B nonimmigrants; or

(iii)(I) has at least 51 full-time equivalent employees who are employed in the United States; and (II) employs H–1B nonimmigrants in a number that is equal to at least 15 percent of the number of such full-time equivalent employees.

(B) For purposes of this subsection—

(i) the term "exempt H–1B nonimmigrant" means an H–1B nonimmigrant who—

(I) receives wages (including cash bonuses and similar compensation) at an annual rate equal to at least $60,000; or

(II) has attained a master's or higher degree (or its equivalent) in a specialty related to the intended employment; and

(ii) the term nonexempt H–1B nonimmigrant means an H–1B nonimmigrant who is not an exempt H–1B nonimmigrant.

(C) For purposes of subparagraph (A)—

(i) in computing the number of full-time equivalent employees and the number of H–1B nonimmigrants, exempt H–1B nonimmigrants shall not be taken into account during the longer of—

(I) the 6-month period beginning on the date of the enactment of the American Competitiveness and Workforce Improvement Act of 1998; or

(II) the period beginning on the date of the enactment of the American Competitiveness and Workforce Improvement Act of 1998 and ending on the date final regulations are issued to carry out this paragraph; and

(ii) any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as a single employer.

(4) For purposes of this subsection:

(A) The term "area of employment" means the area within normal commuting distance of the worksite or physical location where the work of the H–1B nonimmigrant is or will be performed. If such worksite or location is within a Metropolitan Statistical Area, any place within such area is deemed to be within the area of employment.

(B) In the case of an application with respect to one or more H–1B nonimmigrants by an employer, the employer is considered to "displace" a United States worker from a job if the employer lays off the worker from a job that is essentially the equivalent of the job for which the nonimmigrant or nonimmigrants is or are sought. A job shall not be considered to be essentially equivalent of another job unless it involves essentially the same responsibilities, was held by a United States worker with substantially equivalent qualifications and experience, and is located in the same area of employment as the other job.

(C) The term "H–1B nonimmigrant" means an alien admitted or provided status as a nonimmigrant described in section 101(a)(15)(H)(i)(b).

(D)(i) The term "lays off", with respect to a worker—

(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, or the expiration of a grant or contract (other than a temporary employment contract entered into in order to evade a condition described in subparagraph (E) or (F) of paragraph (1)); but

(II) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer (or, in the case of a placement of a worker with another employer under paragraph (1)(F), with either employer described in such paragraph) 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.

(ii) Nothing in this subparagraph is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

(E) The term "United States worker" means an employee who—

(i) is a citizen or national of the United States; or

(ii) is an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 207, is granted asylum under section 208, or is an immigrant otherwise authorized, by this Act or by the Attorney General, to be employed.

(5)(A) This paragraph shall apply instead of subparagraphs (A) through (E) of paragraph (2) in the case of a violation described in subparagraph (B), but shall not be construed to limit or affect the authority of the Secretary or the Attorney General with respect to any other violation.

(B) The Attorney General shall establish a process for the receipt, initial review, and disposition in accordance with this paragraph of complaints respecting an employer's failure to meet the condition of paragraph (1)(G)(i)(II) or a petitioner's misrepresentation of material facts with respect to such condition. Complaints may be filed by an aggrieved individual who has submitted a résumé or otherwise applied in a reasonable manner for the job that is the subject of the condition. No proceeding shall be conducted under this paragraph on a complaint concerning such a failure or misrepresentation unless the Attorney General determines that the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively.

(C) If the Attorney General finds that a complaint has been filed in accordance with subparagraph (B) and there is reasonable cause to believe that such a failure or misrepresentation described in such complaint has occurred, the Attorney General shall initiate binding arbitration proceedings by requesting the Federal Mediation and Conciliation Service to appoint an arbitrator from the roster of arbitrators maintained by such Service. The procedure and rules of such Service shall be applicable to the selection of such arbitrator and to such arbitration proceedings. The Attorney General shall pay the fee and expenses of the arbitrator.

(D)(i) The arbitrator shall make findings respecting whether a failure or misrepresentation described in subparagraph (B) occurred. If the arbitrator concludes that failure or misrepresentation was willful, the arbitrator shall make a finding to that effect. The arbitrator may not find such a failure or misrepresentation (or that such a failure or misrepresentation was willful) unless the complainant demonstrates such a failure or misrepresentation (or its willful character) by clear and convincing evidence. The arbitrator shall transmit the findings in the form of a written opinion to the parties to the arbitration and the Attorney General. Such findings shall be final and conclusive, and, except as provided in this subparagraph, no official or court of the United States shall have power or jurisdiction to review any such findings.

(ii) The Attorney General may review and reverse or modify the findings of an arbitrator only on the same bases as an award of an arbitrator may be vacated or modified under section 10 or 11 of title 9, United States Code.

(iii) With respect to the findings of an arbitrator, a court may review only the actions of the Attorney General under clause (ii) and may set aside such actions only on the grounds described in sub-

paragraph (A), (B), or (C) of section 706(a)(2) of title 5, United States Code. Notwithstanding any other provision of law, such judicial review may only be brought in an appropriate United States court of appeals.

(E) If the Attorney General receives a finding of an arbitrator under this paragraph that an employer has failed to meet the condition of paragraph (1)(G)(i)(II) or has misrepresented a material fact with respect to such condition, unless the Attorney General reverses or modifies the finding under subparagraph (D)(ii)—

(i) the Attorney General may impose administrative remedies (including civil monetary penalties in an amount not to exceed $1,000 per violation or $5,000 per violation in the case of a willful failure or misrepresentation) as the Attorney General determines to be appropriate; and

(ii) the Attorney General is authorized to not approve petitions filed, with respect to that employer and for aliens to be employed by the employer, under section 204 or 214(c)—

(I) during a period of not more than 1 year; or

(II) in the case of a willful failure or willful misrepresentation, during a period of not more than 2 years.

(F) The Attorney General shall not delegate, to any other employee or official of the Department of Justice, any function of the Attorney General under this paragraph, until 60 days after the Attorney General has submitted a plan for such delegation to the Committees on the Judiciary of the United States House of Representatives and the Senate.

(o) An alien who has been physically present in the United States shall not be eligible to receive an immigrant visa within ninety days following departure therefrom unless—

(1) the alien was maintaining a lawful nonimmigrant status at the time of such departure, or

(2) the alien is the spouse or unmarried child of an individual who obtained temporary or permanent resident status under section 210 or 245A of the Immigration and Nationality Act or section 202 of the Immigration Reform and Control Act of 1986 at any date, who—

(A) as of May 5, 1988, was the unmarried child or spouse of the individual who obtained temporary or permanent resident status under section 210 or 245A of the Immigration and Nationality Act or section 202 of the Immigration Reform and Control Act of 1986;

(B) entered the United States before May 5, 1988, resided in the United States on May 5, 1988, and is not a lawful permanent resident; and

(C) applied for benefits under section 301(a) of the Immigration Act of 1990.

(p)(1) In computing the prevailing wage level for an occupational classification in an area of employment for purposes of subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) in the case of an employee of—

(A) an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965), or a related or affiliated nonprofit entity; or

(B) a nonprofit research organization or a Governmental research organization,

the prevailing wage level shall only take into account employees at such institutions and organizations in the area of employment.

(2) With respect to a professional athlete (as defined in subsection (a)(5)(A)(iii)(II)) when the job opportunity is covered by professional sports league rules or regulations, the wage set forth in those rules or regulations shall be considered as not adversely affecting the wages of United States workers similarly employed and be considered the prevailing wage.

(3) The prevailing wage required to be paid pursuant to subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) shall be 100 percent of the wage determined pursuant to those sections.

(4) Where the Secretary of Labor uses, or makes available to employers, a governmental survey to determine the prevailing wage, such survey shall provide at least 4 levels of wages commensurate with experience, education, and the level of supervision. Where an existing government survey has only 2 levels, 2 intermediate levels may be created by dividing by 3, the difference between the 2 levels offered, adding the quotient thus obtained to the first level and subtracting that quotient from the second level.

(q) Any alien admitted under section 101(a)(15)(B) may accept an honorarium payment and associated incidental expenses for a usual academic activity or activities (lasting not longer than 9 days at any single institution), as defined by the Attorney General in consultation with the Secretary of Education, if such payment is offered by an institution or organization described in subsection (p)(1) and is made for services conducted for the benefit of that institution or entity and if the alien has not accepted such payment or expenses from more than 5 institutions or organizations in the previous 6-month period.

(r) Subsection (a)(5)(C) shall not apply to an alien who seeks to enter the United States for the purpose of performing labor as a nurse who presents to the consular officer (or in the case of an adjustment of status, the Attorney General) a certified statement from the Commission on Graduates of Foreign Nursing Schools (or an equivalent independent credentialing organization approved for the certification of nurses under subsection (a)(5)(C) by the Attorney General in consultation with the Secretary of Health and Human Services) that—

(1) the alien has a valid and unrestricted license as a nurse in a State where the alien intends to be employed and such State verifies that the foreign licenses of alien nurses are authentic and unencumbered;

(2) the alien has passed the National Council Licensure Examination (NCLEX);

(3) the alien is a graduate of a nursing program—

(A) in which the language of instruction was English;

(B) located in a country—

(i) designated by such commission not later than 30 days after the date of the enactment of the Nursing Relief for Disadvantaged Areas Act of 1999, based on such commission's assessment that the quality of nursing education in that country, and the English language proficiency of those who complete such programs in that country, justify the country's designation; or

(ii) designated on the basis of such an assessment by unanimous agreement of such commission and any equivalent credentialing organizations which have been approved under subsection (a)(5)(C) for the certification of nurses under this subsection; and

(C)(i) which was in operation on or before the date of the enactment of the Nursing Relief for Disadvantaged Areas Act of 1999; or

(ii) has been approved by unanimous agreement of such commission and any equivalent credentialing organizations which have been approved under subsection (a)(5)(C) for the certification of nurses under this subsection.

(s) In determining whether an alien described in subsection (a)(4)(C)(i) is inadmissible under subsection (a)(4) or ineligible to receive an immigrant visa or otherwise to adjust to the status of permanent resident by reason of subsection (a)(4), the consular officer or the Attorney General shall not consider any benefits the alien may have received that were authorized under section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1641(c)).

(t)(1) No alien may be admitted or provided status as a nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) in an occupational classification unless the employer has filed with the Secretary of Labor an attestation stating the following:

(A) The employer—

(i) is offering and will offer during the period of authorized employment to aliens admitted or provided status under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) wages that are at least—

(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

(II) the prevailing wage level for the occupational classification in the area of employment,

whichever is greater, based on the best information available as of the time of filing the attestation; and

(ii) will provide working conditions for such a nonimmigrant that will not adversely affect the working conditions of workers similarly employed.

(B) There is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment.

(C) The employer, at the time of filing the attestation—

(i) has provided notice of the filing under this paragraph to the bargaining representative (if any) of the employer's employees in the occupational classification and area for which aliens are sought; or

(ii) if there is no such bargaining representative, has provided notice of filing in the occupational classification through such methods as physical posting in conspicuous locations at the place of employment or electronic notification to employees in the occupational classification for which nonimmigrants under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) are sought.

(D) A specification of the number of workers sought, the occupational classification in which the workers will be employed, and wage rate and conditions under which they will be employed.

(2)(A) The employer shall make available for public examination, within one working day after the date on which an attestation under this subsection is filed, at the employer's principal place of business or worksite, a copy of each such attestation (and such accompanying documents as are necessary).

(B)(i) The Secretary of Labor shall compile, on a current basis, a list (by employer and by occupational classification) of the attestations filed under this subsection. Such list shall include, with respect to each attestation, the wage rate, number of aliens sought, period of intended employment, and date of need.

(ii) The Secretary of Labor shall make such list available for public examination in Washington, D.C.

(C) The Secretary of Labor shall review an attestation filed under this subsection only for completeness and obvious inaccuracies. Unless the Secretary of Labor finds that an attestation is incomplete or obviously inaccurate, the Secretary of Labor shall provide the certification described in section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) within 7 days of the date of the filing of the attestation.

(3)(A) The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting the failure of an employer to meet a condition specified in an attestation submitted under this subsection or misrepresentation by the employer of material facts in such an attestation. Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively. The Secretary of Labor shall conduct an investigation under this paragraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

(B) Under the process described in subparagraph (A), the Secretary of Labor shall provide, within 30 days after the date a complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding described in subparagraph (C). 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. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter by not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary of Labor may consolidate the hearings under this subparagraph on such complaints.

(C)(i) If the Secretary of Labor finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B), a substantial failure to meet a condition of paragraph (1)(C) or (1)(D), or a misrepresentation of material fact in an attestation—

(I) the Secretary of Labor shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $1,000 per violation) as the Secretary of Labor determines to be appropriate; and

(II) the Secretary of State or the Secretary of Homeland Security, as appropriate, shall not approve petitions or applications filed with respect to that employer under section 204, 214(c), 101(a)(15)(H)(i)(b1), or 101(a)(15)(E)(iii) or section 101(a)(15)(E)(iii) during a period of at least 1 year for aliens to be employed by the employer.

(ii) If the Secretary of Labor finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1), a willful misrepresentation of material fact in an attestation, or a violation of clause (iv)—

(I) the Secretary of Labor shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $5,000 per violation as the Secretary of Labor determines to be appropriate; and

(II) the Secretary of State or the Secretary of Homeland Security, as appropriate, shall not approve petitions or applications filed with respect to that employer under section 204, 214(c), 101(a)(15)(H)(i)(b1), or 101(a)(15)(E)(iii) or section 101(a)(15)(E)(iii) during a period of at least 2 years for aliens to be employed by the employer.

(iii) If the Secretary of Labor finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1) or a willful misrepresentation of material fact in an attestation, in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition or application supported by the attestation—

(I) the Secretary of Labor shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $35,000 per violation) as the Secretary of Labor determines to be appropriate; and

(II) the Secretary of State or the Secretary of Homeland Security, as appropriate, shall not approve petitions or applications filed with respect to that employer under section 204, 214(c), 101(a)(15)(H)(i)(b1), or 101(a)(15)(E)(iii) or section 101(a)(15)(E)(iii) during a period of at least 3 years for aliens to be employed by the employer.

(iv) It is a violation of this clause for an employer who has filed an attestation under this subsection to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against an employee (which term, for purposes of this clause, 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 evi-

dences a violation of this subsection, or any rule or regulation pertaining to this subsection, or because the employee cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer's compliance with the requirements of this subsection or any rule or regulation pertaining to this subsection.

(v) The Secretary of Labor and the Secretary of Homeland Security shall devise a process under which a nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) who files a complaint regarding a violation of clause (iv) and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.

(vi)(I) It is a violation of this clause for an employer who has filed an attestation under this subsection to require a nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) to pay a penalty for ceasing employment with the employer prior to a date agreed to by the nonimmigrant and the employer. The Secretary of Labor shall determine whether a required payment is a penalty (and not liquidated damages) pursuant to relevant State law.

(II) If the Secretary of Labor finds, after notice and opportunity for a hearing, that an employer has committed a violation of this clause, the Secretary of Labor may impose a civil monetary penalty of $1,000 for each such violation and issue an administrative order requiring the return to the nonimmigrant of any amount paid in violation of this clause, or, if the nonimmigrant cannot be located, requiring payment of any such amount to the general fund of the Treasury.

(vii)(I) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an attestation under this subsection and who places a nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) designated as a full-time employee in the attestation, after the nonimmigrant has entered into employment with the employer, in nonproductive status due to a decision by the employer (based on factors such as lack of work), or due to the nonimmigrant's lack of a permit or license, to fail to pay the nonimmigrant full-time wages in accordance with paragraph (1)(A) for all such nonproductive time.

(II) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an attestation under this subsection and who places a nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) designated as a part-time employee in the attestation, after the nonimmigrant has entered into employment with the employer, in nonproductive status under circumstances described in subclause (I), to fail to pay such a nonimmigrant for such hours as are designated on the attestation consistent with the rate of pay identified on the attestation.

(III) In the case of a nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) who has not yet entered into employment with an employer who has had approved an attestation under this subsection with respect to the nonimmigrant, the provisions of subclauses (I) and (II) shall apply to the employer beginning 30 days after the date the nonimmigrant first is admitted into the United States, or 60 days after the date the nonimmigrant becomes eligible to work for the employer in the

case of a nonimmigrant who is present in the United States on the date of the approval of the attestation filed with the Secretary of Labor.

(IV) This clause does not apply to a failure to pay wages to a nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) for nonproductive time due to non-work-related factors, such as the voluntary request of the nonimmigrant for an absence or circumstances rendering the nonimmigrant unable to work.

(V) This clause shall not be construed as prohibiting an employer that is a school or other educational institution from applying to a nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) an established salary practice of the employer, under which the employer pays to nonimmigrants under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) and United States workers in the same occupational classification an annual salary in disbursements over fewer than 12 months, if—

(aa) the nonimmigrant agrees to the compressed annual salary payments prior to the commencement of the employment; and

(bb) the application of the salary practice to the nonimmigrant does not otherwise cause the nonimmigrant to violate any condition of the nonimmigrant's authorization under this Act to remain in the United States.

(VI) This clause shall not be construed as superseding clause (viii).

(viii) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an attestation under this subsection to fail to offer to a nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii), during the nonimmigrant's period of authorized employment, benefits and eligibility for benefits (including the opportunity to participate in health, life, disability, and other insurance plans; the opportunity to participate in retirement and savings plans; and cash bonuses and non-cash compensation, such as stock options (whether or not based on performance)) on the same basis, and in accordance with the same criteria, as the employer offers to United States workers.

(D) If the Secretary of Labor finds, after notice and opportunity for a hearing, that an employer has not paid wages at the wage level specified in the attestation and required under paragraph (1), the Secretary of Labor shall order the employer to provide for payment of such amounts of back pay as may be required to comply with the requirements of paragraph (1), whether or not a penalty under subparagraph (C) has been imposed.

(E) The Secretary of Labor may, on a case-by-case basis, subject an employer to random investigations for a period of up to 5 years, beginning on the date on which the employer is found by the Secretary of Labor to have committed a willful failure to meet a condition of paragraph (1) or to have made a willful misrepresentation of material fact in an attestation. The authority of the Secretary of Labor under this subparagraph shall not be construed to be subject to, or limited by, the requirements of subparagraph (A).

(F) Nothing in this subsection shall be construed as superseding or preempting any other enforcement-related authority under this Act (such as the authorities under section 274B), or any other Act.

(4) For purposes of this subsection:

(A) The term "area of employment" means the area within normal commuting distance of the worksite or physical location where the work of the nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) is or will be performed. If such worksite or location is within a Metropolitan Statistical Area, any place within such area is deemed to be within the area of employment.

(B) In the case of an attestation with respect to one or more nonimmigrants under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) by an employer, the employer is considered to "displace" a United States worker from a job if the employer lays off the worker from a job that is essentially the equivalent of the job for which the nonimmigrant or nonimmigrants is or are sought. A job shall not be considered to be essentially equivalent of another job unless it involves essentially the same responsibilities, was held by a United States worker with substantially equivalent qualifications and experience, and is located in the same area of employment as the other job.

(C)(i) The term "lays off", with respect to a worker—

(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, or the expiration of a grant or contract; but

(II) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer 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.

(ii) Nothing in this subparagraph is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

(D) The term "United States worker" means an employee who—

(i) is a citizen or national of the United States; or

(ii) is an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 207 of this title, is granted asylum under section 208, or is an immigrant otherwise authorized, by this Act or by the Secretary of Homeland Security, to be employed.

(t)(1) Except as provided in paragraph (2), no person admitted under section 101(a)(15)(Q)(ii)(I), or acquiring such status after admission, shall be eligible to apply for nonimmigrant status, an immigrant visa, or permanent residence under this Act until it is established that such person has resided and been physically present in the person's country of nationality or last residence for an aggregate of at least 2 years following departure from the United States.

(2) The Secretary of Homeland Security may waive the requirement of such 2-year foreign residence abroad if the Secretary determines that—

(A) departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse

or child is a citizen of the United States or an alien lawfully admitted for permanent residence); or

(B) the admission of the alien is in the public interest or the national interest of the United States.

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CHAPTER 4—INSPECTION, APPREHENSION, EXAMINATION, EXCLUSION, AND REMOVAL

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INSPECTION BY IMMIGRATION OFFICERS; EXPEDITED REMOVAL OF INADMISSIBLE ARRIVING ALIENS; REFERRAL FOR HEARING

SEC. 235. (a) INSPECTION.—

(1) ALIENS TREATED AS APPLICANTS FOR ADMISSION.—An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this Act an applicant for admission.

(2) STOWAWAYS.—An arriving alien who is a stowaway is not eligible to apply for admission or to be admitted and shall be ordered removed upon inspection by an immigration officer. Upon such inspection if the alien indicates an intention to apply for asylum under section 208 or a fear of persecution, the officer shall refer the alien for an interview under subsection (b)(1)(B). A stowaway may apply for asylum only if the stowaway is found to have a credible fear of persecution under subsection (b)(1)(B). In no case may a stowaway be considered an applicant for admission or eligible for a hearing under section 240.

(3) INSPECTION.—All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.

(4) WITHDRAWAL OF APPLICATION FOR ADMISSION.—An alien applying for admission may, in the discretion of the Attorney General and at any time, be permitted to withdraw the application for admission and depart immediately from the United States.

(5) STATEMENTS.—An applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the applicant in seeking admission to the United States, including the applicant's intended length of stay and whether the applicant intends to remain permanently or become a United States citizen, and whether the applicant is inadmissible.

(b) INSPECTION OF APPLICANTS FOR ADMISSION.—

(1) INSPECTION OF ALIENS ARRIVING IN THE UNITED STATES AND CERTAIN OTHER ALIENS WHO HAVE NOT BEEN ADMITTED OR PAROLED.—

(A) SCREENING.—

(i) IN GENERAL.—If an immigration officer determines that an alien (other than an alien described in

subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under [section 212(a)(6)(C)] *subparagraph (A) or (C) of section 212(a)(6)* or 212(a)(7), the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 208 or a fear of persecution.

(ii) CLAIMS FOR ASYLUM.—If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under [section 212(a)(6)(C)] *subparagraph (A) or (C) of section 212(a)(6)* or 212(a)(7) and the alien indicates either an intention to apply for asylum under section 208 or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B).

(iii) APPLICATION TO CERTAIN OTHER ALIENS.—

(I) IN GENERAL.—The Attorney General may apply clauses (i) and (ii) of this subparagraph to any or all aliens described in subclause (II) as designated by the Attorney General. Such designation shall be in the sole and unreviewable discretion of the Attorney General and may be modified at any time.

(II) ALIENS DESCRIBED.—An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.

(iv) INELIGIBILITY FOR PAROLE.—An alien described in clause (i) or (ii) shall not be eligible for parole except as expressly authorized pursuant to section 212(d)(5), or for parole or release pursuant to section 236(a).

(B) ASYLUM INTERVIEWS.—

(i) CONDUCT BY ASYLUM OFFICERS.—An asylum officer shall conduct interviews of aliens referred under subparagraph (A)(ii), either at a port of entry or at such other place designated by the Attorney General.

(ii) REFERRAL OF CERTAIN ALIENS.—If the officer determines at the time of the interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for [asylum.] *asylum and shall not be released (including pursuant to parole or release pursuant to section 236(a) but excluding as expressly authorized pursuant to section 212(d)(5)) other than to be removed or returned to a country as described in paragraph (3).*

(iii) REMOVAL WITHOUT FURTHER REVIEW IF NO CREDIBLE FEAR OF PERSECUTION.—

(I) IN GENERAL.—Subject to subclause (III), if the officer determines that an alien does not have a credible fear of persecution, the officer shall order the alien removed from the United States without further hearing or review.

(II) RECORD OF DETERMINATION.—The officer shall prepare a written record of a determination under subclause (I). Such record shall include a summary of the material facts as stated by the applicant, such additional facts (if any) relied upon by the officer, and the officer's analysis of why, in the light of such facts, the alien has not established a credible fear of persecution. A copy of the officer's interview notes shall be attached to the written summary.

(III) REVIEW OF DETERMINATION.—The Attorney General shall provide by regulation and upon the alien's request for prompt review by an immigration judge of a determination under subclause (I) that the alien does not have a credible fear of persecution. Such review shall include an opportunity for the alien to be heard and questioned by the immigration judge, either in person or by telephonic or video connection. Review shall be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date of the determination under subclause (I).

(IV) MANDATORY [DETENTION] *DETENTION, RETURN, OR REMOVAL*.—Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed. *The alien shall not be released (including pursuant to parole or release pursuant to section 236(a) but excluding as expressly authorized pursuant to section 212(d)(5)) other than to be removed or returned to a country as described in paragraph (3).*

(iv) INFORMATION ABOUT INTERVIEWS.—The Attorney General shall provide information concerning the asylum interview described in this subparagraph to aliens who may be eligible. An alien who is eligible for such interview may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, according to regulations prescribed by the Attorney General. Such consultation shall be at no expense to the Government and shall not unreasonably delay the process.

(v) CREDIBLE FEAR OF PERSECUTION DEFINED.—For purposes of this subparagraph, the term "credible fear of persecution" means that [there is a significant possibility, taking into account the credibility of the state-

ments made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 208.**]**, *taking into account the credibility of the statements made by the alien in support of the alien's claim, as determined pursuant to section 208(b)(1)(B)(iii), and such other facts as are known to the officer, the alien more likely than not could establish eligibility for asylum under section 208, and it is more likely than not that the statements made by, and on behalf of, the alien in support of the alien's claim are true.*

(C) LIMITATION ON ADMINISTRATIVE REVIEW.—Except as provided in subparagraph (B)(iii)(III), a removal order entered in accordance with subparagraph (A)(i) or (B)(iii)(I) is not subject to administrative appeal, except that the Attorney General shall provide by regulation for prompt review of such an order under subparagraph (A)(i) against an alien who claims under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, after having been warned of the penalties for falsely making such claim under such conditions, to have been lawfully admitted for permanent residence, to have been admitted as a refugee under section 207, or to have been granted asylum under section 208.

(D) LIMIT ON COLLATERAL ATTACKS.—In any action brought against an alien under section 275(a) or section 276, the court shall not have jurisdiction to hear any claim attacking the validity of an order of removal entered under subparagraph (A)(i) or (B)(iii).

(E) ASYLUM OFFICER DEFINED.—As used in this paragraph, the term "asylum officer" means an immigration officer who—

(i) has had professional training in country conditions, asylum law, and interview techniques comparable to that provided to full-time adjudicators of applications under section 208, and

(ii) is supervised by an officer who meets the condition described in clause (i) and has had substantial experience adjudicating asylum applications.

(F) EXCEPTION.—Subparagraph (A) shall not apply to an alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry.

(G) COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.—Nothing in this subsection shall be construed to authorize or require any person described in section 208(e) to be permitted to apply for asylum under section 208 at any time before January 1, 2014.

(2) INSPECTION OF OTHER ALIENS.—

(A) IN GENERAL.—**[**Subject to subparagraphs (B) and (C),**]** *Subject to subparagraph (B) and paragraph (3),* in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an

alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 240. *The alien shall not be released (including pursuant to parole or release pursuant to section 236(a) but excluding as expressly authorized pursuant to section 212(d)(5)) other than to be removed or returned to a country as described in paragraph (3).*

(B) EXCEPTION.—Subparagraph (A) shall not apply to an alien—

(i) who is a crewman,

(ii) to whom paragraph (1) applies, or

(iii) who is a stowaway.

[(C) TREATMENT OF ALIENS ARRIVING FROM CONTIGUOUS TERRITORY.—In the case of an alien described in subparagraph (A) who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding under section 240.**]**

(3) RETURN TO FOREIGN TERRITORY CONTIGUOUS TO THE UNITED STATES.—

(A) IN GENERAL.—The Secretary of Homeland Security may return to a foreign territory contiguous to the United States any alien arriving on land from that territory (whether or not at a designated port of entry) pending a proceeding under section 240 or review of a determination under subsection (b)(1)(B)(iii)(III).

(B) MANDATORY RETURN.—If at any time the Secretary of Homeland Security cannot—

(i) comply with its obligations to detain an alien as required under clause (ii) and (iii)(IV) of subsection (b)(1)(B) and subsection (b)(2)(A); or

(ii) remove an alien to a country described in section 208(a)(2)(A),

the Secretary of Homeland Security shall, without exception, including pursuant to parole or release pursuant to section 236(a) but excluding as expressly authorized pursuant to section 212(d)(5), return to a foreign territory contiguous to the United States any alien arriving on land from that territory (whether or not at a designated port of entry) pending a proceeding under section 240 or review of a determination under subsection (b)(1)(B)(iii)(III).

(4) ENFORCEMENT BY STATE ATTORNEYS GENERAL.—The attorney general of a State, or other authorized State officer, alleging a violation of the detention, return, or removal requirements under paragraph (1), (2), or (3) that affects such State or its residents, may bring an action against the Secretary of Homeland Security on behalf of the residents of the State in an appropriate United States district court to obtain appropriate injunctive relief.

[(3)**]** *(5)* CHALLENGE OF DECISION.—The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien

whose privilege to be admitted is so challenged, before an immigration judge for a proceeding under section 240.

(c) REMOVAL OF ALIENS INADMISSIBLE ON SECURITY AND RELATED GROUNDS.—

(1) REMOVAL WITHOUT FURTHER HEARING.—If an immigration officer or an immigration judge suspects that an arriving alien may be inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 212(a)(3), the officer or judge shall—

(A) order the alien removed, subject to review under paragraph (2);

(B) report the order of removal to the Attorney General; and

(C) not conduct any further inquiry or hearing until ordered by the Attorney General.

(2) REVIEW OF ORDER.—(A) The Attorney General shall review orders issued under paragraph (1).

(B) If the Attorney General—

(i) is satisfied on the basis of confidential information that the alien is inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 212(a)(3), and

(ii) after consulting with appropriate security agencies of the United States Government, concludes that disclosure of the information would be prejudicial to the public interest, safety, or security,

the Attorney General may order the alien removed without further inquiry or hearing by an immigration judge.

(C) If the Attorney General does not order the removal of the alien under subparagraph (B), the Attorney General shall specify the further inquiry or hearing that shall be conducted in the case.

(3) SUBMISSION OF STATEMENT AND INFORMATION.—The alien or the alien's representative may submit a written statement and additional information for consideration by the Attorney General.

(d) AUTHORITY RELATING TO INSPECTIONS.—

(1) AUTHORITY TO SEARCH CONVEYANCES.—Immigration officers are authorized to board and search any vessel, aircraft, railway car, or other conveyance or vehicle in which they believe aliens are being brought into the United States.

(2) AUTHORITY TO ORDER DETENTION AND DELIVERY OF ARRIVING ALIENS.—Immigration officers are authorized to order an owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft bringing an alien (except an alien crewmember) to the United States—

(A) to detain the alien on the vessel or at the airport of arrival, and

(B) to deliver the alien to an immigration officer for inspection or to a medical officer for examination.

(3) ADMINISTRATION OF OATH AND CONSIDERATION OF EVIDENCE.—The Attorney General and any immigration officer shall have power to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, transit through, or reside in the United States or con-

cerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service.

(4) SUBPOENA AUTHORITY.—(A) The Attorney General and any immigration officer shall have power to require by subpoena the attendance and testimony of witnesses before immigration officers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service, and to that end may invoke the aid of any court of the United States.

(B) Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer may, in the event of neglect or refusal to respond to a subpoena issued under this paragraph or refusal to testify before an immigration officer, issue an order requiring such persons to appear before an immigration officer, produce books, papers, and documents if demanded, and testify, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

(e) AUTHORITY TO PROHIBIT INTRODUCTION OF CERTAIN ALIENS.—If the Secretary of Homeland Security determines, in his discretion, that the prohibition of the introduction of aliens who are inadmissible under subparagraph (A) or (C) of section 212(a)(6) or under section 212(a)(7) at an international land or maritime border of the United States is necessary to achieve operational control (as defined in section 2 of the Secure Fence Act of 2006 (8 U.S.C. 1701 note)) of such border, the Secretary may prohibit, in whole or in part, the introduction of such aliens at such border for such period of time as the Secretary determines is necessary for such purpose.

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CHAPTER 8—GENERAL PENALTY PROVISIONS

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UNLAWFUL EMPLOYMENT OF ALIENS

SEC. 274A. (a) MAKING EMPLOYMENT OF UNAUTHORIZED ALIENS UNLAWFUL.—

(1) IN GENERAL.—It is unlawful for a person or other entity—

(A) to hire, or to recruit or refer **[**for a fee**]**, for employment in the United States an alien knowing the alien is an unauthorized alien (as defined in subsection (h)(3)) with respect to such employment, or

[(B)(i) to hire for employment in the United States an individual without complying with the requirements of subsection (b) or (ii) if the person or entity is an agricultural association, agricultural employer, or farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act), to hire, or to recruit or refer for a fee, for employment in the United States an individual without complying with the requirements of subsection (b).**]**

(B) to hire, continue to employ, or to recruit or refer for employment in the United States an individual without complying with the requirements of subsection (b).

(2) CONTINUING EMPLOYMENT.—It is unlawful for a person or other entity, [after hiring an alien for employment in accordance with paragraph (1),] *after complying with paragraph (1),* to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

[(3) DEFENSE.—A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) with respect to the hiring, recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.]

(3) GOOD FAITH DEFENSE.—

(A) DEFENSE.—An employer (or person or entity that hires, employs, recruits, or refers (as defined in subsection (h)(5)), or is otherwise obligated to comply with this section) who establishes that it has complied in good faith with the requirements of subsection (b)—

(i) shall not be liable to a job applicant, an employee, the Federal Government, or a State or local government, under Federal, State, or local criminal or civil law for any employment-related action taken with respect to a job applicant or employee in good-faith reliance on information provided through the system established under subsection (d); and

(ii) has established compliance with its obligations under subparagraphs (A) and (B) of paragraph (1) and subsection (b) absent a showing by the Secretary of Homeland Security, by clear and convincing evidence, that the employer had knowledge that an employee is an unauthorized alien.

(B) MITIGATION ELEMENT.—For purposes of subparagraph (A)(i), if an employer proves by a preponderance of the evidence that the employer uses a reasonable, secure, and established technology to authenticate the identity of the new employee, that fact shall be taken into account for purposes of determining good faith use of the system established under subsection (d).

(C) FAILURE TO SEEK AND OBTAIN VERIFICATION.—Subject to the effective dates and other deadlines applicable under subsection (b), in the case of a person or entity in the United States that hires, or continues to employ, an individual, or recruits or refers an individual for employment, the following requirements apply:

(i) FAILURE TO SEEK VERIFICATION.—

(I) IN GENERAL.—If the person or entity has not made an inquiry, under the mechanism established under subsection (d) and in accordance with the timeframes established under subsection (b), seeking verification of the identity and work eligibility of the individual, the defense under subpara-

graph (A) shall not be considered to apply with respect to any employment, except as provided in subclause (II).

(II) SPECIAL RULE FOR FAILURE OF VERIFICATION MECHANISM.—If such a person or entity in good faith attempts to make an inquiry in order to qualify for the defense under subparagraph (A) and the verification mechanism has registered that not all inquiries were responded to during the relevant time, the person or entity can make an inquiry until the end of the first subsequent working day in which the verification mechanism registers no nonresponses and qualify for such defense.

(ii) FAILURE TO OBTAIN VERIFICATION.—If the person or entity has made the inquiry described in clause (i)(I) but has not received an appropriate verification of such identity and work eligibility under such mechanism within the time period specified under subsection (d)(2) after the time the verification inquiry was received, the defense under subparagraph (A) shall not be considered to apply with respect to any employment after the end of such time period.

(4) USE OF LABOR THROUGH CONTRACT.—For purposes of this section, a person or other entity who uses a contract, subcontract, or exchange, entered into, renegotiated, or extended after the date of the enactment of this section, to obtain the labor of an alien in the United States knowing that the alien is an unauthorized alien (as defined in subsection (h)(3)) with respect to performing such labor, shall be considered to have hired the alien for employment in the United States in violation of paragraph (1)(A).

(5) USE OF STATE EMPLOYMENT AGENCY DOCUMENTATION.—For purposes of paragraphs (1)(B) and (3), a person or entity shall be deemed to have complied with the requirements of subsection (b) with respect to the hiring of an individual who was referred for such employment by a State employment agency (as defined by the Attorney General), if the person or entity has and retains (for the period and in the manner described in subsection (b)(3)) appropriate documentation of such referral by that agency, which documentation certifies that the agency has complied with the procedures specified in subsection (b) with respect to the individual's referral.

(6) TREATMENT OF DOCUMENTATION FOR CERTAIN EMPLOYEES.—

(A) IN GENERAL.—For purposes of this section, if—

(i) an individual is a member of a collective-bargaining unit and is employed, under a collective bargaining agreement entered into between one or more employee organizations and an association of two or more employers, by an employer that is a member of such association, and

(ii) within the period specified in subparagraph (B), another employer that is a member of the association (or an agent of such association on behalf of the employer) has complied with the requirements of sub-

section (b) with respect to the employment of the individual,

the subsequent employer shall be deemed to have complied with the requirements of subsection (b) with respect to the hiring of the employee and shall not be liable for civil penalties described in subsection (e)(5).

(B) PERIOD.—The period described in this subparagraph is 3 years, or, if less, the period of time that the individual is authorized to be employed in the United States.

(C) LIABILITY.—

(i) IN GENERAL.—If any employer that is a member of an association hires for employment in the United States an individual and relies upon the provisions of subparagraph (A) to comply with the requirements of subsection (b) and the individual is an alien not authorized to work in the United States, then for the purposes of paragraph (1)(A), subject to clause (ii), the employer shall be presumed to have known at the time of hiring or afterward that the individual was an alien not authorized to work in the United States.

(ii) REBUTTAL OF PRESUMPTION.—The presumption established by clause (i) may be rebutted by the employer only through the presentation of clear and convincing evidence that the employer did not know (and could not reasonably have known) that the individual at the time of hiring or afterward was an alien not authorized to work in the United States.

(iii) EXCEPTION.—Clause (i) shall not apply in any prosecution under subsection (f)(1).

(7) APPLICATION TO FEDERAL GOVERNMENT.—For purposes of this section, the term "entity" includes an entity in any branch of the Federal Government.

[(b) EMPLOYMENT VERIFICATION SYSTEM.—The requirements referred to in paragraphs (1)(B) and (3) of subsection (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the requirements specified in the following three paragraphs:

[(1) ATTESTATION AFTER EXAMINATION OF DOCUMENTATION.—

[(A) IN GENERAL.—The person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is not an unauthorized alien by examining—

[(i) a document described in subparagraph (B), or

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

A person or entity has complied with the requirement of this paragraph with respect to examination of a document if the document reasonably appears on its face to be genuine. If an individual provides a document or combination of documents that reasonably appears on its face to be genuine and that is sufficient to meet the requirements of the first sentence of this paragraph, nothing in this paragraph shall be construed as requiring the person or entity to so-

licit the production of any other document or as requiring the individual to produce such another document.

[(B) DOCUMENTS ESTABLISHING BOTH EMPLOYMENT AUTHORIZATION AND IDENTITY.—A document described in this subparagraph is an individual's—

[(i) United States passport;

[(ii) resident alien card, alien registration card, or other document designated by the Attorney General, if the document—

[(I) contains a photograph of the individual and such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this subsection,

[(II) is evidence of authorization of employment in the United States, and

[(III) contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

[(C) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION.—A document described in this subparagraph is an individual's—

[(i) social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States); or

[(ii) other documentation evidencing authorization of employment in the United States which the Attorney General finds, by regulation, to be acceptable for purposes of this section.

[(D) DOCUMENTS ESTABLISHING IDENTITY OF INDIVIDUAL.—A document described in this subparagraph is an individual's—

[(i) driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section; or

[(ii) in the case of individuals under 16 years of age or in a State which does not provide for issuance of an identification document (other than a driver's license) referred to in clause (i), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification.

[(E) AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS.—If the Attorney General finds, by regulation, that any document 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 to an unacceptable degree, the Attorney General may prohibit or place conditions on its use for purposes of this subsection.

[(2) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—The individual must attest, under penalty of perjury on the form designated or established for purposes of paragraph (1), 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 Attorney General to be hired, recruited, or referred for such employment.

[(3) RETENTION OF VERIFICATION FORM.—After completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain the form and make it available for inspection by officers of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending—

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

[(B) in the case of the hiring of an individual—

[(i) three years after the date of such hiring, or

[(ii) one year after the date the individual's employment is terminated,

whichever is later.

[(4) COPYING OF DOCUMENTATION PERMITTED.—Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection.

[(5) LIMITATION ON USE OF ATTESTATION FORM.—A form designated or established by the Attorney General under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this Act and sections 1001, 1028, 1546, and 1621 of title 18, United States Code.

[(6) GOOD FAITH COMPLIANCE.—

[(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), a person or entity is considered to have complied with a requirement of this subsection notwithstanding a technical or procedural failure to meet such requirement if there was a good faith attempt to comply with the requirement.

[(B) EXCEPTION IF FAILURE TO CORRECT AFTER NOTICE.—Subparagraph (A) shall not apply if—

[(i) the Service (or another enforcement agency) has explained to the person or entity the basis for the failure,

[(ii) the person or entity has been provided a period of not less than 10 business days (beginning after the date of the explanation) within which to correct the failure, and

[(iii) the person or entity has not corrected the failure voluntarily within such period.

[(C) EXCEPTION FOR PATTERN OR PRACTICE VIOLATORS.—Subparagraph (A) shall not apply to a person or entity

that has or is engaging in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2).]

(b) EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS.—

(1) NEW HIRES, RECRUITMENT, AND REFERRAL.—The requirements referred to in paragraphs (1)(B) and (3) of subsection (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the following:

(A) ATTESTATION AFTER EXAMINATION OF DOCUMENTATION.—

(i) ATTESTATION.—During the verification period (as defined in subparagraph (E)), the person or entity shall attest, under penalty of perjury and on a form, including electronic format, designated or established by the Secretary by regulation not later than 6 months after the date of the enactment of the Legal Workforce Act, that it has verified that the individual is not an unauthorized alien by—

(I) obtaining from the individual the individual's social security account number or United States passport number and recording the number on the form (if the individual claims to have been issued such a number), and, if the individual does not attest to United States nationality under subparagraph (B), obtaining such identification or authorization number established by the Department of Homeland Security for the alien as the Secretary of Homeland Security may specify, and recording such number on the form; and

(II) examining—

(aa) a document relating to the individual presenting it described in clause (ii); or

(bb) a document relating to the individual presenting it described in clause (iii) and a document relating to the individual presenting it described in clause (iv).

(ii) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION AND ESTABLISHING IDENTITY.—A document described in this subparagraph is an individual's—

(I) unexpired United States passport or passport card;

(II) unexpired permanent resident card that contains a photograph;

(III) unexpired employment authorization card that contains a photograph;

(IV) in the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I–94 or Form I–94A, or other documentation as designated by the Secretary specifying the alien's nonimmigrant status as long as the period of status has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified in the documentation;

(V) passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I–94 or Form I–94A, or other documentation as designated by the Secretary, indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI; or

(VI) other document designated by the Secretary of Homeland Security, if the document—

(aa) contains a photograph of the individual and biometric identification data from the individual and such other personal identifying information relating to the individual as the Secretary of Homeland Security finds, by regulation, sufficient for purposes of this clause;

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

(cc) contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

(iii) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION.—A document described in this subparagraph is an individual's social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States).

(iv) DOCUMENTS ESTABLISHING IDENTITY OF INDIVIDUAL.—A document described in this subparagraph is—

(I) an individual's unexpired State issued driver's license or identification card if it contains a photograph and information such as name, date of birth, gender, height, eye color, and address;

(II) an individual's unexpired U.S. military identification card;

(III) an individual's unexpired Native American tribal identification document issued by a tribal entity recognized by the Bureau of Indian Affairs; or

(IV) in the case of an individual under 18 years of age, a parent or legal guardian's attestation under penalty of law as to the identity and age of the individual.

(v) AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS.—If the Secretary of Homeland Security finds, by regulation, that any document described in clause (i), (ii), or (iii) as establishing employment authorization or identity does not reliably establish such authorization or identity or is being used fraudulently to an unacceptable degree, the Secretary may prohibit or place conditions on its use for purposes of this paragraph.

(vi) SIGNATURE.—Such attestation may be manifested by either a handwritten or electronic signature.

(B) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—During the ver–i–fi–ca–tion period (as defined in subparagraph (E)), the individual shall attest, under penalty of perjury on the form designated or established for purposes of subparagraph (A), 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 of Homeland Security to be hired, recruited, or referred for such employment. Such attestation may be manifested by either a handwritten or electronic signature. The individual shall also provide that individual's social security account number or United States passport number (if the individual claims to have been issued such a number), and, if the individual does not attest to United States nationality under this subparagraph, such identification or authorization number established by the Department of Homeland Security for the alien as the Secretary may specify.

(C) RETENTION OF VERIFICATION FORM AND VERIFICATION.—

(i) IN GENERAL.—After completion of such form in accordance with subparagraphs (A) and (B), the person or entity shall—

(I) retain a paper or electronic version of the form and make it available for inspection by officers of the Department of Homeland Security, the Department of Justice, or the Department of Labor during a period beginning on the date of the recruiting or referral of the individual, or, in the case of the hiring of an individual, the date on which the verification is completed, and ending—

(aa) in the case of the recruiting or referral of an individual, 3 years after the date of the recruiting or referral; and

(bb) in the case of the hiring of an individual, the later of 3 years after the date the ver–i–fi–ca–tion is completed or one year after the date the individual's employment is terminated; and

(II) during the verification period (as defined in subparagraph (E)), make an inquiry, as provided in subsection (d), using the verification system to seek verification of the identity and employment eligibility of an individual.

(ii) CONFIRMATION.—

(I) CONFIRMATION RECEIVED.—If the person or other entity receives an appropriate confirmation of an individual's identity and work eligibility under the verification system within the time period specified, the person or entity shall record on the form an appropriate code that is provided under the system and that indicates a final confirmation of such identity and work eligibility of the individual.

(II) TENTATIVE NONCONFIRMATION RECEIVED.—If the person or other entity receives a tentative non-

confirmation of an individual's identity or work eligibility under the verification system within the time period specified, the person or entity shall so inform the individual for whom the verification is sought. If the individual does not contest the nonconfirmation within the time period specified, the nonconfirmation shall be considered final. The person or entity shall then record on the form an appropriate code which has been provided under the system to indicate a final nonconfirmation. If the individual does contest the nonconfirmation, the individual shall utilize the process for secondary verification provided under subsection (d). The nonconfirmation will remain tentative until a final confirmation or nonconfirmation is provided by the ver–i–fi–ca–tion system within the time period specified. In no case shall an employer terminate employment of an individual because of a failure of the individual to have identity and work eligibility confirmed under this section until a nonconfirmation becomes final. Nothing in this clause shall apply to a termination of employment for any reason other than because of such a failure. In no case shall an employer rescind the offer of employment to an individual because of a failure of the individual to have identity and work eligibility confirmed under this subsection until a nonconfirmation becomes final. Nothing in this subclause shall apply to a recission of the offer of employment for any reason other than because of such a failure.

(III) FINAL CONFIRMATION OR NONCONFIRMATION RECEIVED.—If a final confirmation or nonconfirmation is provided by the verification system regarding an individual, the person or entity shall record on the form an appropriate code that is provided under the system and that indicates a confirmation or nonconfirmation of identity and work eligibility of the individual.

(IV) EXTENSION OF TIME.—If the person or other entity in good faith attempts to make an inquiry during the time period specified and the verification system has registered that not all inquiries were received during such time, the person or entity may make an inquiry in the first subsequent working day in which the verification system registers that it has received all inquiries. If the verification system cannot receive inquiries at all times during a day, the person or entity merely has to assert that the entity attempted to make the inquiry on that day for the previous sentence to apply to such an inquiry, and does not have to provide any additional proof concerning such inquiry.

(V) CONSEQUENCES OF NONCONFIRMATION.—

(aa) TERMINATION OR NOTIFICATION OF CONTINUED EMPLOYMENT.—If the person or other entity has received a final nonconfirmation regarding an individual, the person or entity may terminate employment of the individual (or decline to recruit or refer the individual). If the person or entity does not terminate employment of the individual or proceeds to recruit or refer the individual, the person or entity shall notify the Secretary of Homeland Security of such fact through the verification system or in such other manner as the Secretary may specify.

(bb) FAILURE TO NOTIFY.—If the person or entity fails to provide notice with respect to an individual as required under item (aa), the failure is deemed to constitute a violation of subsection (a)(1)(A) with respect to that individual.

(VI) CONTINUED EMPLOYMENT AFTER FINAL NONCONFIRMATION.—If the person or other entity continues to employ (or to recruit or refer) an individual after receiving final nonconfirmation, a rebuttable presumption is created that the person or entity has violated subsection (a)(1)(A).

(D) EFFECTIVE DATES OF NEW PROCEDURES.—

(i) HIRING.—Except as provided in clause (iii), the provisions of this paragraph shall apply to a person or other entity hiring an individual for employment in the United States as follows:

(I) With respect to employers having 10,000 or more employees in the United States on the date of the enactment of the Legal Workforce Act, on the date that is 6 months after the date of the enactment of such Act.

(II) With respect to employers having 500 or more employees in the United States, but less than 10,000 employees in the United States, on the date of the enactment of the Legal Workforce Act, on the date that is 12 months after the date of the enactment of such Act.

(III) With respect to employers having 20 or more employees in the United States, but less than 500 employees in the United States, on the date of the enactment of the Legal Workforce Act, on the date that is 18 months after the date of the enactment of such Act.

(IV) With respect to employers having one or more employees in the United States, but less than 20 employees in the United States, on the date of the enactment of the Legal Workforce Act, on the date that is 24 months after the date of the enactment of such Act.

(ii) RECRUITING AND REFERRING.—Except as provided in clause (iii), the provisions of this paragraph

shall apply to a person or other entity recruiting or referring an individual for employment in the United States on the date that is 12 months after the date of the enactment of the Legal Workforce Act.

(iii) AGRICULTURAL LABOR OR SERVICES.—With respect to an employee performing agricultural labor or services, this paragraph shall not apply with respect to the verification of the employee until the date that is 36 months after the date of the enactment of the Legal Workforce Act. For purposes of the preceding sentence, the term "agricultural labor or services" has the meaning given such term by the Secretary of Agriculture in regulations and includes agricultural labor as defined in section 3121(g) of the Internal Revenue Code of 1986, agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state, all activities required for the preparation, processing or manufacturing of a product of agriculture (as such term is defined in such section 3(f)) for further distribution, and activities similar to all the foregoing as they relate to fish or shellfish facilities. An employee described in this clause shall not be counted for purposes of clause (i).

(iv) EXTENSIONS.—

(I) ON REQUEST.—Upon request by an employer having 50 or fewer employees, the Secretary shall allow a one-time 6-month extension of the effective date set out in this subparagraph applicable to such employer. Such request shall be made to the Secretary and shall be made prior to such effective date.

(II) FOLLOWING REPORT.—If the study under section 715 of the Legal Workforce Act has been submitted in accordance with such section, the Secretary of Homeland Security may extend the effective date set out in clause (iii) on a one-time basis for 12 months.

(v) TRANSITION RULE.—Subject to paragraph (4), the following shall apply to a person or other entity hiring, recruiting, or referring an individual for employment in the United States until the effective date or dates applicable under clauses (i) through (iii):

(I) This subsection, as in effect before the enactment of the Legal Workforce Act.

(II) Subtitle A of title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), as in effect before the effective date in section 707(c) of the Legal Workforce Act.

(III) Any other provision of Federal law requiring the person or entity to participate in the E-Verify Program described in section 403(a) of the

Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), as in effect before the effective date in section 707(c) of the Legal Workforce Act, including Executive Order 13465 (8 U.S.C. 1324a note; relating to Government procurement).

(E) VERIFICATION PERIOD DEFINED.—

(i) IN GENERAL.—For purposes of this paragraph:

(I) In the case of recruitment or referral, the term "verification period" means the period ending on the date recruiting or referring commences.

(II) In the case of hiring, the term "verification period" means the period beginning on the date on which an offer of employment is extended and ending on the date that is three business days after the date of hire, except as provided in clause (iii). The offer of employment may be conditioned in accordance with clause (ii).

(ii) JOB OFFER MAY BE CONDITIONAL.—A person or other entity may offer a prospective employee an employment position that is conditioned on final verification of the identity and employment eligibility of the employee using the procedures established under this paragraph.

(iii) SPECIAL RULE.—Not–with–stand–ing clause (i)(II), in the case of an alien who is authorized for employment and who provides evidence from the Social Security Administration that the alien has applied for a social security account number, the verification period ends three business days after the alien receives the social security account number.

(2) REVERIFICATION FOR INDIVIDUALS WITH LIMITED WORK AUTHORIZATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a person or entity shall make an inquiry, as provided in subsection (d), using the verification system to seek re–ver–i–fi–ca–tion of the identity and employment eligibility of all individuals with a limited period of work authorization employed by the person or entity during the three business days after the date on which the employee's work authorization expires as follows:

(i) With respect to employers having 10,000 or more employees in the United States on the date of the enactment of the Legal Workforce Act, beginning on the date that is 6 months after the date of the enactment of such Act.

(ii) With respect to employers having 500 or more employees in the United States, but less than 10,000 employees in the United States, on the date of the enactment of the Legal Workforce Act, beginning on the date that is 12 months after the date of the enactment of such Act.

(iii) With respect to employers having 20 or more employees in the United States, but less than 500 employees in the United States, on the date of the enactment

of the Legal Workforce Act, beginning on the date that is 18 months after the date of the enactment of such Act.

(iv) With respect to employers having one or more employees in the United States, but less than 20 employees in the United States, on the date of the enactment of the Legal Workforce Act, beginning on the date that is 24 months after the date of the enactment of such Act.

(B) AGRICULTURAL LABOR OR SERVICES.—With respect to an employee performing agricultural labor or services, or an employee recruited or referred by a farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801)), subparagraph (A) shall not apply with respect to the reverification of the employee until the date that is 36 months after the date of the enactment of the Legal Workforce Act. For purposes of the preceding sentence, the term "agricultural labor or services" has the meaning given such term by the Secretary of Agriculture in regulations and includes agricultural labor as defined in section 3121(g) of the Internal Revenue Code of 1986, agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state, all activities required for the preparation, processing, or manufacturing of a product of agriculture (as such term is defined in such section 3(f)) for further distribution, and activities similar to all the foregoing as they relate to fish or shellfish facilities. An employee described in this subparagraph shall not be counted for purposes of subparagraph (A).

(C) REVERIFICATION.—Paragraph (1)(C)(ii) shall apply to reverifications pursuant to this paragraph on the same basis as it applies to verifications pursuant to paragraph (1), except that employers shall—

(i) use a form designated or established by the Secretary by regulation for purposes of this paragraph; and

(ii) retain a paper or electronic version of the form and make it available for inspection by officers of the Department of Homeland Security, the Department of Justice, or the Department of Labor during the period beginning on the date the reverification commences and ending on the date that is the later of 3 years after the date of such reverification or 1 year after the date the individual's employment is terminated.

(3) PREVIOUSLY HIRED INDIVIDUALS.—

(A) ON A MANDATORY BASIS FOR CERTAIN EMPLOYEES.—

(i) IN GENERAL.—Not later than the date that is 6 months after the date of the enactment of the Legal Workforce Act, an employer shall make an inquiry, as provided in subsection (d), using the verification system to seek verification of the identity and employment

eligibility of any individual described in clause (ii) employed by the employer whose employment eligibility has not been verified under the E-Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note).

(ii) INDIVIDUALS DESCRIBED.—An individual described in this clause is any of the following:

(I) An employee of any unit of a Federal, State, or local government.

(II) An employee who requires a Federal security clearance working in a Federal, State, or local government building, a military base, a nuclear energy site, a weapons site, or an airport or other facility that requires workers to carry a Transportation Worker Identification Credential (TWIC).

(III) An employee assigned to perform work in the United States under a Federal contract, except that this subclause—

(aa) is not applicable to individuals who have a clearance under Homeland Security Presidential Directive 12 (HSPD 12 clearance), are administrative or overhead personnel, or are working solely on contracts that provide Commercial Off The Shelf goods or services as set forth by the Federal Acquisition Regulatory Council, unless they are subject to verification under subclause (II); and

(bb) only applies to contracts over the simple acquisition threshold as defined in section 2.101 of title 48, Code of Federal Regulations.

(B) ON A MANDATORY BASIS FOR MULTIPLE USERS OF SAME SOCIAL SECURITY ACCOUNT NUMBER.—In the case of an employer who is required by this subsection to use the verification system described in subsection (d), or has elected voluntarily to use such system, the employer shall make inquiries to the system in accordance with the following:

(i) The Commissioner of Social Security shall notify annually employees (at the employee address listed on the Wage and Tax Statement) who submit a social security account number to which more than one employer reports income and for which there is a pattern of unusual multiple use. The notification letter shall identify the number of employers to which income is being reported as well as sufficient information notifying the employee of the process to contact the Social Security Administration Fraud Hotline if the employee believes the employee's identity may have been stolen. The notice shall not share information protected as private, in order to avoid any recipient of the notice from being in the position to further commit or begin committing identity theft.

(ii) If the person to whom the social security account number was issued by the Social Security Administration has been identified and confirmed by the Commis-

sioner, and indicates that the social security account number was used without their knowledge, the Secretary and the Commissioner shall lock the social security account number for employment eligibility verification purposes and shall notify the employers of the individuals who wrongfully submitted the social security account number that the employee may not be work eligible.

(iii) Each employer receiving such notification of an incorrect social security account number under clause (ii) shall use the verification system described in subsection (d) to check the work eligibility status of the applicable employee within 10 business days of receipt of the notification.

(C) ON A VOLUNTARY BASIS.—Subject to paragraph (2), and subparagraphs (A) through (C) of this paragraph, beginning on the date that is 30 days after the date of the enactment of the Legal Workforce Act, an employer may make an inquiry, as provided in subsection (d), using the verification system to seek verification of the identity and employment eligibility of any individual employed by the employer. If an employer chooses voluntarily to seek verification of any individual employed by the employer, the employer shall seek verification of all individuals employed at the same geographic location or, at the option of the employer, all individuals employed within the same job category, as the employee with respect to whom the employer seeks voluntarily to use the verification system. An employer's decision about whether or not voluntarily to seek verification of its current workforce under this subparagraph may not be considered by any government agency in any proceeding, investigation, or review provided for in this Act.

(D) VERIFICATION.—Paragraph (1)(C)(ii) shall apply to verifications pursuant to this paragraph on the same basis as it applies to verifications pursuant to paragraph (1), except that employers shall—

(i) use a form designated or established by the Secretary by regulation for purposes of this paragraph; and

(ii) retain a paper or electronic version of the form and make it available for inspection by officers of the Department of Homeland Security, the Department of Justice, or the Department of Labor during the period beginning on the date the verification commences and ending on the date that is the later of 3 years after the date of such verification or 1 year after the date the individual's employment is terminated.

(4) EARLY COMPLIANCE.—

(A) FORMER E-VERIFY REQUIRED USERS, INCLUDING FEDERAL CONTRACTORS.—Notwithstanding the deadlines in paragraphs (1) and (2), beginning on the date of the enactment of the Legal Workforce Act, the Secretary is authorized to commence requiring employers required to participate in the E-Verify Program described in section 403(a) of

the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), including employers required to participate in such program by reason of Federal acquisition laws (and regulations promulgated under those laws, including the Federal Acquisition Regulation), to commence compliance with the requirements of this subsection (and any additional requirements of such Federal acquisition laws and regulation) in lieu of any requirement to participate in the E-Verify Program.

(B) FORMER E-VERIFY VOLUNTARY USERS AND OTHERS DESIRING EARLY COMPLIANCE.—Notwithstanding the deadlines in paragraphs (1) and (2), beginning on the date of the enactment of the Legal Workforce Act, the Secretary shall provide for the voluntary compliance with the requirements of this subsection by employers voluntarily electing to participate in the E-Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) before such date, as well as by other employers seeking voluntary early compliance.

(5) COPYING OF DOCUMENTATION PERMITTED.—Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection.

(6) LIMITATION ON USE OF FORMS.—A form designated or established by the Secretary of Homeland Security under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this Act and any other provision of Federal criminal law.

(7) GOOD FAITH COMPLIANCE.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, a person or entity is considered to have complied with a requirement of this subsection notwithstanding a technical or procedural failure to meet such requirement if there was a good faith attempt to comply with the requirement.

(B) EXCEPTION IF FAILURE TO CORRECT AFTER NOTICE.—Subparagraph (A) shall not apply if—

(i) the failure is not de minimus;

(ii) the Secretary of Homeland Security has explained to the person or entity the basis for the failure and why it is not de minimus;

(iii) the person or entity has been provided a period of not less than 30 calendar days (beginning after the date of the explanation) within which to correct the failure; and

(iv) the person or entity has not corrected the failure voluntarily within such period.

(C) EXCEPTION FOR PATTERN OR PRACTICE VIOLATORS.—Subparagraph (A) shall not apply to a person or entity that has engaged or is engaging in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2).

(8) SINGLE EXTENSION OF DEADLINES UPON CERTIFICATION.—In a case in which the Secretary of Homeland Security has certified to the Congress that the employment eligibility verification system required under subsection (d) will not be fully operational by the date that is 6 months after the date of the enactment of the Legal Workforce Act, each deadline established under this section for an employer to make an inquiry using such system shall be extended by 6 months. No other extension of such a deadline shall be made except as authorized under paragraph (1)(D)(iv).

(c) NO AUTHORIZATION OF NATIONAL IDENTIFICATION CARDS.—Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

[(d) EVALUATION AND CHANGES IN EMPLOYMENT VERIFICATION SYSTEM.—

[(1) PRESIDENTIAL MONITORING AND IMPROVEMENTS IN SYSTEM.—

[(A) MONITORING.—The President shall provide for the monitoring and evaluation of the degree to which the employment verification system established under subsection (b) provides a secure system to determine employment eligibility in the United States and shall examine the suitability of existing Federal and State identification systems for use for this purpose.

[(B) IMPROVEMENTS TO ESTABLISH SECURE SYSTEM.—To the extent that the system established under subsection (b) is found not to be a secure system to determine employment eligibility in the United States, the President shall, subject to paragraph (3) and taking into account the results of any demonstration projects conducted under paragraph (4), implement such changes in (including additions to) the requirements of subsection (b) as may be necessary to establish a secure system to determine employment eligibility in the United States. Such changes in the system may be implemented only if the changes conform to the requirements of paragraph (2).

[(2) RESTRICTIONS ON CHANGES IN SYSTEM.—Any change the President proposes to implement under paragraph (1) in the verification system must be designed in a manner so the verification system, as so changed, meets the following requirements:

[(A) RELIABLE DETERMINATION OF IDENTITY.—The system must be capable of reliably determining whether—

[(i) a person with the identity claimed by an employee or prospective employee is eligible to work, and

[(ii) the employee or prospective employee is claiming the identity of another individual.

[(B) USING OF COUNTERFEIT-RESISTANT DOCUMENTS.—If the system requires that a document be presented to or examined by an employer, the document must be in a form which is resistant to counterfeiting and tampering.

[(C) LIMITED USE OF SYSTEM.—Any personal information utilized by the system may not be made available to Government agencies, employers, and other persons except to

the extent necessary to verify that an individual is not an unauthorized alien.

[(D) PRIVACY OF INFORMATION.—The system must protect the privacy and security of personal information and identifiers utilized in the system.

[(E) LIMITED DENIAL OF VERIFICATION.—A verification that an employee or prospective employee is eligible to be employed in the United States may not be withheld or revoked under the system for any reason other than that the employee or prospective employee is an unauthorized alien.

[(F) LIMITED USE FOR LAW ENFORCEMENT PURPOSES.—The system may not be used for law enforcement purposes, other than for enforcement of this Act or sections 1001, 1028, 1546, and 1621 of title 18, United States Code.

[(G) RESTRICTION ON USE OF NEW DOCUMENTS.—If the system requires individuals to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, then such document may not be required to be presented for any purpose other than under this Act (or enforcement of sections 1001, 1028, 1546, and 1621 of title 18, United States Code) nor to be carried on one's person.

[(3) NOTICE TO CONGRESS BEFORE IMPLEMENTING CHANGES.—

[(A) IN GENERAL.—The President may not implement any change under paragraph (1) unless at least—

[(i) 60 days,

[(ii) one year, in the case of a major change described in subparagraph (D)(iii), or

[(iii) two years, in the case of a major change described in clause (i) or (ii) of subparagraph (D),

before the date of implementation of the change, the President has prepared and transmitted to the Committee on the Judiciary of the House of Representatives and to the Committee on the Judiciary of the Senate a written report setting forth the proposed change. If the President proposes to make any change regarding social security account number cards, the President shall transmit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a written report setting forth the proposed change. The President promptly shall cause to have printed in the Federal Register the substance of any major change (described in subparagraph (D)) proposed and reported to Congress.

[(B) CONTENTS OF REPORT.—In any report under subparagraph (A) the President shall include recommendations for the establishment of civil and criminal sanctions for unauthorized use or disclosure of the information or identifiers contained in such system.

[(C) CONGRESSIONAL REVIEW OF MAJOR CHANGES.—

[(i) HEARINGS AND REVIEW.—The Committees on the Judiciary of the House of Representatives and of the Senate shall cause to have printed in the Congressional Record the substance of any major change described in subparagraph (D), shall hold hearings re-

specting the feasibility and desirability of implementing such a change, and, within the two year period before implementation, shall report to their respective Houses findings on whether or not such a change should be implemented.

[(ii) CONGRESSIONAL ACTION.—No major change may be implemented unless the Congress specifically provides, in an appropriations or other Act, for funds for implementation of the change.

[(D) MAJOR CHANGES DEFINED.—As used in this paragraph, the term "major change" means a change which would—

[(i) require an individual to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral,

[(ii) provide for a telephone verification system under which an employer, recruiter, or referrer must transmit to a Federal official information concerning the immigration status of prospective employees and the official transmits to the person, and the person must record, a verification code, or

[(iii) require any change in any card used for accounting purposes under the Social Security Act, including any change requiring that the only social security account number cards which may be presented in order to comply with subsection (b)(1)(C)(i) are such cards as are in a counterfeit-resistant form consistent with the second sentence of section 205(c)(2)(D) of the Social Security Act.

[(E) GENERAL REVENUE FUNDING OF SOCIAL SECURITY CARD CHANGES.—Any costs incurred in developing and implementing any change described in subparagraph (D)(iii) for purposes of this subsection shall not be paid for out of any trust fund established under the Social Security Act.

[(4) DEMONSTRATION PROJECTS.—

[(A) AUTHORITY.—The President may undertake demonstration projects (consistent with paragraph (2)) of different changes in the requirements of subsection (b). No such project may extend over a period of longer than five years.

[(B) REPORTS ON PROJECTS.—The President shall report to the Congress on the results of demonstration projects conducted under this paragraph.]

(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.—

(1) IN GENERAL.—Patterned on the employment eligibility confirmation system established under section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), the Secretary of Homeland Security shall establish and administer a verification system through which the Secretary (or a designee of the Secretary, which may be a nongovernmental entity)—

(A) responds to inquiries made by persons at any time through a toll-free electronic media concerning an individual's identity and whether the individual is authorized to be employed; and

(B) maintains records of the inquiries that were made, of verifications provided (or not provided), and of the codes provided to inquirers as evidence of their compliance with their obligations under this section.

(2) INITIAL RESPONSE.—The verification system shall provide confirmation or a tentative nonconfirmation of an individual's identity and employment eligibility within 3 working days of the initial inquiry. If providing confirmation or tentative nonconfirmation, the verification system shall provide an appropriate code indicating such confirmation or such nonconfirmation.

(3) SECONDARY CONFIRMATION PROCESS IN CASE OF TENTATIVE NONCONFIRMATION.—In cases of tentative nonconfirmation, the Secretary shall specify, in consultation with the Commissioner of Social Security, an available secondary verification process to confirm the validity of information provided and to provide a final confirmation or nonconfirmation not later than 10 working days after the date on which the notice of the tentative nonconfirmation is received by the employee. The Secretary, in consultation with the Commissioner, may extend this deadline once on a case-by-case basis for a period of 10 working days, and if the time is extended, shall document such extension within the verification system. The Secretary, in consultation with the Commissioner, shall notify the employee and employer of such extension. The Secretary, in consultation with the Commissioner, shall create a standard process of such extension and notification and shall make a description of such process available to the public. When final confirmation or nonconfirmation is provided, the verification system shall provide an appropriate code indicating such confirmation or nonconfirmation.

(4) DESIGN AND OPERATION OF SYSTEM.—The verification system shall be designed and operated—

(A) to maximize its reliability and ease of use by persons and other entities consistent with insulating and protecting the privacy and security of the underlying information;

(B) to respond to all inquiries made by such persons and entities on whether individuals are authorized to be employed and to register all times when such inquiries are not received;

(C) with appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information;

(D) to have reasonable safeguards against the system's resulting in unlawful discriminatory practices based on national origin or citizenship status, including—

(i) the selective or unauthorized use of the system to verify eligibility; or

(ii) the exclusion of certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will be required, beyond what is required for most job applicants;

(E) to maximize the prevention of identity theft use in the system; and

(F) to limit the subjects of verification to the following individuals:

(i) Individuals hired, referred, or recruited, in accordance with paragraph (1) or (4) of subsection (b).

(ii) Employees and prospective employees, in accordance with paragraph (1), (2), (3), or (4) of subsection (b).

(iii) Individuals seeking to confirm their own employment eligibility on a voluntary basis.

(5) RESPONSIBILITIES OF COMMISSIONER OF SOCIAL SECURITY.—As part of the verification system, the Commissioner of Social Security, in consultation with the Secretary of Homeland Security (and any designee of the Secretary selected to establish and administer the verification system), shall establish a reliable, secure method, which, within the time periods specified under paragraphs (2) and (3), compares the name and social security account number provided in an inquiry against such information maintained by the Commissioner in order to validate (or not validate) the information provided regarding an individual whose identity and employment eligibility must be confirmed, the correspondence of the name and number, and whether the individual has presented a social security account number that is not valid for employment. The Commissioner shall not disclose or release social security information (other than such confirmation or nonconfirmation) under the verification system except as provided for in this section or section 205(c)(2)(I) of the Social Security Act.

(6) RESPONSIBILITIES OF SECRETARY OF HOMELAND SECURITY.—As part of the verification system, the Secretary of Homeland Security (in consultation with any designee of the Secretary selected to establish and administer the verification system), shall establish a reliable, secure method, which, within the time periods specified under paragraphs (2) and (3), compares the name and alien identification or authorization number (or any other information as determined relevant by the Secretary) which are provided in an inquiry against such information maintained or accessed by the Secretary in order to validate (or not validate) the information provided, the correspondence of the name and number, 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, whether the records available to the Secretary verify the identity or status of a national of the United States.

(7) UPDATING INFORMATION.—The Commissioner of Social Security and the Secretary of Homeland Security shall update their information in a manner that promotes the maximum accuracy and shall provide a process for the prompt correction of erroneous information, including instances in which it is brought to their attention in the secondary verification process described in paragraph (3).

(8) LIMITATION ON USE OF THE VERIFICATION SYSTEM AND ANY RELATED SYSTEMS.—

(A) NO NATIONAL IDENTIFICATION CARD.—Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

(B) CRITICAL INFRASTRUCTURE.—The Secretary may authorize or direct any person or entity responsible for granting access to, protecting, securing, operating, administering, or regulating part of the critical infrastructure (as defined in section 1016(e) of the Critical Infrastructure Protection Act of 2001 (42 U.S.C. 5195c(e))) to use the verification system to the extent the Secretary determines that such use will assist in the protection of the critical infrastructure.

(9) REMEDIES.—If an individual alleges that the individual would not have been dismissed from a job or would have been hired for a job but for an error of the verification mechanism, the individual may seek compensation only through the mechanism of the Federal Tort Claims Act, and injunctive relief to correct such error. No class action may be brought under this paragraph.

(e) COMPLIANCE.—

(1) COMPLAINTS AND INVESTIGATIONS.—The **[**Attorney General**]** *Secretary of Homeland Security* shall establish procedures—

(A) for individuals and entities to file written, signed complaints respecting potential violations of subsection (a) or (g)(1),

(B) for the investigation of those complaints which, on their face, have a substantial probability of validity,

(C) for the investigation of such other violations of subsection (a) or (g)(1) as the **[**Attorney General**]** *Secretary of Homeland Security* determines to be appropriate, and

(D) for the designation in the **[**Service**]** *Department of Homeland Security* of a unit which has, as its primary duty, the prosecution of cases of violations of subsection (a) or (g)(1) under this subsection.

(2) AUTHORITY IN INVESTIGATIONS.—In conducting investigations and hearings under this subsection—

(A) immigration officers and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated,

(B) administrative law judges, may, if necessary, compel by subpoena the attendance of witnesses and the production of evidence at any designated place or hearing, and

(C) immigration officers designated by the Commissioner may compel by subpoena the attendance of witnesses and the production of evidence at any designated place prior to the filing of a complaint in a case under paragraph (2).

In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the Attorney General, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

(3) HEARING.—

(A) IN GENERAL.—Before imposing an order described in paragraph (4), (5), or (6) against a person or entity under this subsection for a violation of subsection (a) or (g)(1), the Attorney General shall provide the person or entity

with notice and, upon request made within a reasonable time (of not less than 30 days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation.

(B) CONDUCT OF HEARING.—Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5, United States Code. The hearing shall be held at the nearest practicable place to the place where the person or entity resides or of the place where the alleged violation occurred. If no hearing is so requested, the Attorney General's imposition of the order shall constitute a final and unappealable order.

(C) ISSUANCE OF ORDERS.—If the administrative law judge determines, upon the preponderance of the evidence received, that a person or entity named in the complaint has violated subsection (a) or (g)(1), the administrative law judge shall state his findings of fact and issue and cause to be served on such person or entity an order described in paragraph (4), (5), or (6).

(4) CEASE AND DESIST ORDER WITH CIVIL MONEY PENALTY FOR HIRING, RECRUITING, AND REFERRAL VIOLATIONS.—With respect to a violation of subsection (a)(1)(A) or (a)(2), the order under this subsection—

(A) shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount*, subject to paragraph (10),* of—

(i) ⟦not less than $250 and not more than $2,000⟧ *not less than $2,500 and not more than $5,000* for each unauthorized alien with respect to whom a violation of either such subsection occurred,

(ii) ⟦not less than $2,000 and not more than $5,000⟧ *not less than $5,000 and not more than $10,000* for each such alien in the case of a person or entity previously subject to one order under this paragraph, or

(iii) ⟦not less than $3,000 and not more than $10,000⟧ *not less than $10,000 and not more than $25,000* for each such alien in the case of a person or entity previously subject to more than one order under this paragraph; and

⟦(B) may require the person or entity—

⟦(i) to comply with the requirements of subsection (b) (or subsection (d) if applicable) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years, and

⟦(ii) to take such other remedial action as is appropriate.⟧

(B)may require the person or entity to take such other remedial action as is appropriate. In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision,

each such subdivision shall be considered a separate person or entity.

(5) ORDER FOR CIVIL MONEY PENALTY FOR [PAPERWORK] VIOLATIONS.—With respect to a violation of subsection (a)(1)(B), the order under this subsection shall require the person or entity to pay a civil penalty in an amount*, subject to paragraphs (10) through (12),* of not less than [$100] *$1,000* and not more than [$1,000] *$25,000* for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations. *Failure by a person or entity to utilize the employment eligibility verification system as required by law, or providing information to the system that the person or entity knows or reasonably believes to be false, shall be treated as a violation of subsection (a)(1)(A).*

(6) ORDER FOR PROHIBITED INDEMNITY BONDS.—With respect to a violation of subsection (g)(1), the order under this subsection may provide for the remedy described in subsection (g)(2).

(7) ADMINISTRATIVE APPELLATE REVIEW.—The decision and order of an administrative law judge shall become the final agency decision and order of the Attorney General unless either (A) within 30 days, an official delegated by regulation to exercise review authority over the decision and order modifies or vacates the decision and order, or (B) within 30 days of the date of such a modification or vacation (or within 60 days of the date of decision and order of an administrative law judge if not so modified or vacated) the decision and order is referred to the Attorney General pursuant to regulations, in which case the decision and order of the Attorney General shall become the final agency decision and order under this subsection. The Attorney General may not delegate the Attorney General's authority under this paragraph to any entity which has review authority over immigration-related matters.

(8) JUDICIAL REVIEW.—A person or entity adversely affected by a final order respecting an assessment may, within 45 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

(9) ENFORCEMENT OF ORDERS.—If a person or entity fails to comply with a final order issued under this subsection against the person or entity, the Attorney General shall file a suit to seek compliance with the order in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final order shall not be subject to review.

(10) EXEMPTION FROM PENALTY FOR GOOD FAITH VIOLATION.—In the case of imposition of a civil penalty under paragraph (4)(A) with respect to a violation of subsection (a)(1)(A) or (a)(2) for hiring or continuation of employment or recruitment or referral by person or entity and in the case of imposition of a civil penalty under paragraph (5) for a violation of subsection

(a)(1)(B) for hiring or recruitment or referral by a person or entity, the penalty otherwise imposed may be waived or reduced if the violator establishes that the violator acted in good faith.

(11) MITIGATION ELEMENT.—For purposes of paragraph (4), the size of the business shall be taken into account when assessing the level of civil money penalty.

(12) AUTHORITY TO DEBAR EMPLOYERS FOR CERTAIN VIOLATIONS.—

(A) IN GENERAL.—If a person or entity is determined by the Secretary of Homeland Security to be a repeat violator of paragraph (1)(A) or (2) of subsection (a), or is convicted of a crime under this section, such person or entity may be considered for debarment from the receipt of Federal contracts, grants, or cooperative agreements in accordance with the debarment standards and pursuant to the debarment procedures set forth in the Federal Acquisition Regulation.

(B) DOES NOT HAVE CONTRACT, GRANT, AGREEMENT.—If the Secretary of Homeland Security or the Attorney General wishes to have a person or entity considered for debarment in accordance with this paragraph, and such a person or entity does not hold a Federal contract, grant, or cooperative agreement, the Secretary or Attorney General shall refer the matter to the Administrator of General Services to determine whether to list the person or entity on the List of Parties Excluded from Federal Procurement, and if so, for what duration and under what scope.

(C) HAS CONTRACT, GRANT, AGREEMENT.—If the Secretary of Homeland Security or the Attorney General wishes to have a person or entity considered for debarment in accordance with this paragraph, and such person or entity holds a Federal contract, grant, or cooperative agreement, the Secretary or Attorney General shall advise all agencies or departments holding a contract, grant, or cooperative agreement with the person or entity of the Government's interest in having the person or entity considered for debarment, and after soliciting and considering the views of all such agencies and departments, the Secretary or Attorney General may refer the matter to any appropriate lead agency to determine whether to list the person or entity on the List of Parties Excluded from Federal Procurement, and if so, for what duration and under what scope.

(D) REVIEW.—Any decision to debar a person or entity in accordance with this paragraph shall be reviewable pursuant to part 9.4 of the Federal Acquisition Regulation.

(13) OFFICE FOR STATE AND LOCAL GOVERNMENT COMPLAINTS.—The Secretary of Homeland Security shall establish an office—

(A) to which State and local government agencies may submit information indicating potential violations of subsection (a), (b), or (g)(1) that were generated in the normal course of law enforcement or the normal course of other official activities in the State or locality;

(B) that is required to indicate to the complaining State or local agency within five business days of the filing of

such a complaint by identifying whether the Secretary will further investigate the information provided;

(C) that is required to investigate those complaints filed by State or local government agencies that, on their face, have a substantial probability of validity;

(D) that is required to notify the complaining State or local agency of the results of any such investigation conducted; and

(E) that is required to report to the Congress annually the number of complaints received under this paragraph, the States and localities that filed such complaints, and the resolution of the complaints investigated by the Secretary.

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

[(1) CRIMINAL PENALTY.—Any person or entity which engages in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2) shall be fined not more than $3,000 for each unauthorized alien with respect to whom such a violation occurs, imprisoned for not more than six months for the entire pattern or practice, or both, notwithstanding the provisions of any other Federal law relating to fine levels.]

(1) CRIMINAL PENALTY.—Any person or entity which engages in a pattern or practice of violations of subsection (a) (1) or (2) shall be fined not more than $5,000 for each unauthorized alien with respect to which such a violation occurs, imprisoned for not more than 18 months, or both, notwithstanding the provisions of any other Federal law relating to fine levels.

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

(g) PROHIBITION OF INDEMNITY BONDS.—

(1) PROHIBITION.—It is unlawful for a person or other entity, in the hiring, recruiting, or referring for employment of any individual, 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 person or entity which is determined, after notice and opportunity for an administrative hearing under subsection (e), to have violated paragraph (1) shall be subject to a civil penalty of $1,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such paragraph to the employee or, if the employee cannot be located, to the general fund of the Treasury.

(h) MISCELLANEOUS PROVISIONS.—

(1) DOCUMENTATION.—In providing documentation or endorsement of authorization of aliens (other than aliens lawfully

admitted for permanent residence) authorized to be employed in the United States, the Attorney General shall provide that any limitations with respect to the period or 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 imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.]

(2) PREEMPTION.—

(A) SINGLE, NATIONAL POLICY.—The provisions of this section preempt any State or local law, ordinance, policy, or rule, including any criminal or civil fine or penalty structure, insofar as they may now or hereafter relate to the hiring, continued employment, or status verification for employment eligibility purposes, of unauthorized aliens.

(B) STATE ENFORCEMENT OF FEDERAL LAW.—

(i) BUSINESS LICENSING.—A State, locality, municipality, or political subdivision may exercise its authority over business licensing and similar laws as a penalty for failure to use the verification system described in subsection (d) to verify employment eligibility when and as required under subsection (b).

(ii) GENERAL RULES.—A State, at its own cost, may enforce the provisions of this section, but only insofar as such State follows the Federal regulations implementing this section, applies the Federal penalty structure set out in this section, and complies with all Federal rules and guidance concerning implementation of this section. Such State may collect any fines assessed under this section. An employer may not be subject to enforcement, including audit and investigation, by both a Federal agency and a State for the same violation under this section. Whichever entity, the Federal agency or the State, is first to initiate the enforcement action, has the right of first refusal to proceed with the enforcement action. The Secretary must provide copies of all guidance, training, and field instructions provided to Federal officials implementing the provisions of this section to each State.

(3) 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 Attorney General.

(4) DEFINITION OF DATE OF HIRE.—As used in this section, the term "date of hire" means the date of actual commencement of employment for wages or other remuneration, unless otherwise specified.

(5) DEFINITION OF RECRUIT OR REFER.—As used in this section, the term "refer" means the act of sending or directing a person who is in the United States or transmitting documentation or information to another, directly or indirectly, with the

intent of obtaining employment in the United States for such person. Only persons or entities referring for remuneration (whether on a retainer or contingency basis) are included in the definition, except that union hiring halls that refer union members or nonunion individuals who pay union membership dues are included in the definition whether or not they receive remuneration, as are labor service entities or labor service agencies, whether public, private, for-profit, or nonprofit, that refer, dispatch, or otherwise facilitate the hiring of laborers for any period of time by a third party. As used in this section, the term "recruit" means the act of soliciting a person who is in the United States, directly or indirectly, and referring the person to another with the intent of obtaining employment for that person. Only persons or entities referring for remuneration (whether on a retainer or contingency basis) are included in the definition, except that union hiring halls that refer union members or nonunion individuals who pay union membership dues are included in this definition whether or not they receive remuneration, as are labor service entities or labor service agencies, whether public, private, for-profit, or nonprofit that recruit, dispatch, or otherwise facilitate the hiring of laborers for any period of time by a third party.

* * * * * * *

ENTRY OF ALIEN AT IMPROPER TIME OR PLACE; MISREPRESENTATION AND CONCEALMENT OF FACTS

SEC. 275. (a) Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under title 18, United States Code, or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense *or if the alien was previously convicted of an offense under subsection (e)(2)(A)*, be fined under title 18, United States Code, or imprisoned not more than 2 years, or both.

(b) Any alien who is apprehended while entering (or attempting to enter) the United States at a time or place other than as designated by immigration officers shall be subject to a civil penalty of—

(1) **[**at least $50 and not more than $250**]** *not less than $500 and not more than $1,000* for each such entry (or attempted entry); or

(2) twice the amount specified in paragraph (1) in the case of an alien who has been previously subject to a civil penalty under this subsection *or subsection (e)(2)(B)*.

Civil penalties under this subsection are in addition to, and not in lieu of, any criminal or other civil penalties that may be imposed.

(c) An individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than $250,000, or both.

(d) Any individual who knowingly establishes a commercial enterprise for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, fined in accordance with title 18, United States Code, or both.

(e) VISA OVERSTAYS.—

(1) IN GENERAL.—An alien who was admitted as a nonimmigrant has violated this paragraph if the alien, for an aggregate of 10 days or more, has failed—

(A) to maintain the nonimmigrant status in which the alien was admitted, or to which it was changed under section 248, including complying with the period of stay authorized by the Secretary of Homeland Security in connection with such status; or

(B) to comply otherwise with the conditions of such nonimmigrant status.

(2) PENALTIES.—An alien who has violated paragraph (1)—

(A) shall—

(i) for the first commission of such a violation, be fined under title 18, United States Code, or imprisoned not more than 6 months, or both; and

(ii) for a subsequent commission of such a violation, or if the alien was previously convicted of an offense under subsection (a), be fined under such title 18, or imprisoned not more than 2 years, or both; and

(B) in addition to, and not in lieu of, any penalty under subparagraph (A) and any other criminal or civil penalties that may be imposed, shall be subject to a civil penalty of—

(i) not less than $500 and not more than $1,000 for each violation; or

(ii) twice the amount specified in clause (i), in the case of an alien who has been previously subject to a civil penalty under this subparagraph or subsection (b).

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WILLIAM WILBERFORCE TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT OF 2008

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TITLE II—COMBATING TRAFFICKING IN PERSONS IN THE UNITED STATES

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Subtitle D—Activities of the United States Government

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SEC. 235. ENHANCING EFFORTS TO COMBAT THE TRAFFICKING OF CHILDREN.

(a) COMBATING CHILD TRAFFICKING AT THE BORDER AND PORTS OF ENTRY OF THE UNITED STATES.—

(1) POLICIES AND PROCEDURES.—In order to enhance the efforts of the United States to prevent trafficking in persons, the Secretary of Homeland Security, in conjunction with the Secretary of State, the Attorney General, and the Secretary of Health and Human Services, shall develop policies and procedures to ensure that unaccompanied alien children in the United States are safely repatriated to their country of nationality or of last habitual residence.

(2) [SPECIAL RULES FOR CHILDREN FROM CONTIGUOUS COUNTRIES.—] *RULES FOR UNACCOMPANIED ALIEN CHILDREN.*—

(A) DETERMINATIONS.—Any unaccompanied alien child [who is a national or habitual resident of a country that is contiguous with the United States] shall be treated in accordance with subparagraph (B), if the Secretary of Homeland Security determines, on a case-by-case basis, that—

(i) such child has not been a victim of a severe form of trafficking in persons, and there is no credible evidence that such child is at risk of being trafficked upon return to the child's country of nationality or of last habitual residence; *and*

(ii) such child does not have a fear of returning to the child's country of nationality or of last habitual residence owing to a credible fear of persecution[; and].

[(iii) the child is able to make an independent decision to withdraw the child's application for admission to the United States.]

(B) RETURN.—An immigration officer who finds an unaccompanied alien child described in subparagraph (A) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act [(8 U.S.C. 1101 et seq.) may—] *(8 U.S.C. 1101 et seq.)—*

(i) *may* permit such child to withdraw the child's application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1225(a)(4)); and

(ii) *shall* return such child to the child's country of nationality or country of last habitual residence.

(C) CONTIGUOUS COUNTRY AGREEMENTS.—The Secretary of State shall negotiate agreements between the United States and countries contiguous to the United States with respect to the repatriation of children. Such agreements shall be designed to protect children from severe forms of trafficking in persons, and shall, at a minimum, provide that—

(i) no child shall be returned to the child's country of nationality or of last habitual residence unless returned to appropriate employees or officials, including

child welfare officials where available, of the accepting country's government;

(ii) no child shall be returned to the child's country of nationality or of last habitual residence outside of reasonable business hours; and

(iii) border personnel of the countries that are parties to such agreements are trained in the terms of such agreements.

(3) RULE FOR OTHER CHILDREN.—The custody of unaccompanied alien children not described in paragraph (2)(A) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with subsection (b).

(4) SCREENING.—Within 48 hours of the apprehension of a child who is believed to be described in paragraph (2)(A), but in any event prior to returning such child to the child's country of nationality or of last habitual residence, the child shall be screened to determine whether the child meets the criteria listed in paragraph (2)(A). If the child does not meet such criteria, or if no determination can be made within 48 hours of apprehension, the child shall immediately be transferred to the Secretary of Health and Human Services and treated in accordance with subsection (b). Nothing in this paragraph may be construed to preclude an earlier transfer of the child.

(5) ENSURING THE SAFE REPATRIATION OF CHILDREN.—

(A) REPATRIATION PILOT PROGRAM.—To protect children from trafficking and exploitation, the Secretary of State shall create a pilot program, in conjunction with the Secretary of Health and Human Services and the Secretary of Homeland Security, nongovernmental organizations, and other national and international agencies and experts, to develop and implement best practices to ensure the safe and sustainable repatriation and reintegration of unaccompanied alien children into their country of nationality or of last habitual residence, including placement with their families, legal guardians, or other sponsoring agencies.

(B) ASSESSMENT OF COUNTRY CONDITIONS.—The Secretary of Homeland Security shall consult the Department of State's Country Reports on Human Rights Practices and the Trafficking in Persons Report in assessing whether to repatriate an unaccompanied alien child to a particular country.

(C) REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.—Not later than 18 months after the date of the enactment of this Act, and annually thereafter, the Secretary of State and the Secretary of Health and Human Services, with assistance from the Secretary of Homeland Security, shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on efforts to improve repatriation programs for unaccompanied alien children. Such report shall include—

(i) the number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States;

(ii) a statement of the nationalities, ages, and gender of such children;

(iii) a description of the policies and procedures used to effect the removal of such children from the United States and the steps taken to ensure that such children were safely and humanely repatriated to their country of nationality or of last habitual residence, including a description of the repatriation pilot program created pursuant to subparagraph (A);

(iv) a description of the type of immigration relief sought and denied to such children;

(v) any information gathered in assessments of country and local conditions pursuant to paragraph (2); and

(vi) statistical information and other data on unaccompanied alien children as provided for in section 462(b)(1)(J) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(1)(J)).

(D) PLACEMENT IN REMOVAL PROCEEDINGS.—Any unaccompanied alien child sought to be removed by the Department of Homeland Security[, except for an unaccompanied alien child from a contiguous country subject to exceptions under subsection (a)(2),] *who does not meet the criteria listed in paragraph (2)(A)* shall be—

(i) placed in removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a)*, which shall include a hearing before an immigration judge not later than 14 days after being screened under paragraph (4)*;

(ii) eligible for relief under section 240B of such Act (8 U.S.C. 1229c) at no cost to the child; and

(iii) provided access to counsel in accordance with subsection (c)(5).

(b) COMBATING CHILD TRAFFICKING AND EXPLOITATION IN THE UNITED STATES.—

(1) CARE AND CUSTODY OF UNACCOMPANIED ALIEN CHILDREN.—Consistent with section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279), and except as otherwise provided under subsection (a), the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be the responsibility of the Secretary of Health and Human Services.

(2) NOTIFICATION.—Each department or agency of the Federal Government shall notify the Department of Health and Human services within 48 hours upon—

(A) the apprehension or discovery of an unaccompanied alien child *believed not to meet the criteria listed in subsection (a)(2)(A)*; or

(B) any claim or suspicion that an alien in the custody of such department or agency is under 18 years of age *and does not meet the criteria listed in subsection (a)(2)(A)*.

(3) TRANSFERS OF UNACCOMPANIED ALIEN CHILDREN.—Except in the case of exceptional circumstances, any department or agency of the Federal Government that has [an unaccompanied alien child in custody shall transfer the custody of such

child to the Secretary of Health and Human Services not later than 72 hours after determining that such child is an unaccompanied alien child.] *an unaccompanied alien child in custody—*

(A) in the case of a child who does not meet the criteria listed in subsection (a)(2)(A), shall transfer the custody of such child to the Secretary of Health and Human Services not later than 30 days after determining that such child is an unaccompanied alien child who does not meet such criteria; or

(B) in the case of a child who meets the criteria listed in subsection (a)(2)(A), may transfer the custody of such child to the Secretary of Health and Human Services after determining that such child is an unaccompanied alien child who meets such criteria.

(4) AGE DETERMINATIONS.—The Secretary of Health and Human Services, in consultation with the Secretary of Homeland Security, shall develop procedures to make a prompt determination of the age of an alien, which shall be used by the Secretary of Homeland Security and the Secretary of Health and Human Services for children in their respective custody. At a minimum, these procedures shall take into account multiple forms of evidence, including the non-exclusive use of radiographs, to determine the age of the unaccompanied alien.

(c) PROVIDING SAFE AND SECURE PLACEMENTS FOR CHILDREN.—

(1) POLICIES AND PROGRAMS.—The Secretary of Health and Human Services, Secretary of Homeland Security, Attorney General, and Secretary of State shall establish policies and programs to ensure that unaccompanied alien children in the United States are protected from traffickers and other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity, including policies and programs reflecting best practices in witness security programs.

(2) SAFE AND SECURE PLACEMENTS.—

(A) MINORS IN DEPARTMENT OF HEALTH AND HUMAN SERVICES CUSTODY.—Subject to section 462(b)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(2)), an unaccompanied alien child in the custody of the Secretary of Health and Human Services shall be promptly placed in the least restrictive setting that is in the best interest of the child. In making such placements, the Secretary may consider danger to self, danger to the community, and risk of flight. Placement of child trafficking victims may include placement in an Unaccompanied Refugee Minor program, pursuant to section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)), if a suitable family member is not available to provide care. A child shall not be placed in a secure facility absent a determination that the child poses a danger to self or others or has been charged with having committed a criminal offense. The placement of a child in a secure facility shall be reviewed, at a minimum, on a monthly basis, in accordance with procedures prescribed by the Secretary, to determine if such placement remains warranted.

(B) ALIENS TRANSFERRED FROM DEPARTMENT OF HEALTH AND HUMAN SERVICES TO DEPARTMENT OF HOMELAND SECURITY CUSTODY.—If a minor described in subparagraph (A) reaches 18 years of age and is transferred to the custody of the Secretary of Homeland Security, the Secretary shall consider placement in the least restrictive setting available after taking into account the alien's danger to self, danger to the community, and risk of flight. Such aliens shall be eligible to participate in alternative to detention programs, utilizing a continuum of alternatives based on the alien's need for supervision, which may include placement of the alien with an individual or an organizational sponsor, or in a supervised group home.

(3) SAFETY AND SUITABILITY ASSESSMENTS.—

(A) IN GENERAL.—Subject to the requirements of subparagraph (B), an unaccompanied alien child may not be placed with a person or entity unless the Secretary of Health and Human Services makes a determination that the proposed custodian is capable of providing for the child's physical and mental well-being. Such determination shall, at a minimum, include verification of the custodian's identity and relationship to the child, if any, as well as an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the child.

(B) HOME STUDIES.—Before placing the child with an individual, the Secretary of Health and Human Services shall determine whether a home study is first necessary. A home study shall be conducted for a child who is a victim of a severe form of trafficking in persons, a special needs child with a disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2))), a child who has been a victim of physical or sexual abuse under circumstances that indicate that the child's health or welfare has been significantly harmed or threatened, or a child whose proposed sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking to the child based on all available objective evidence. The Secretary of Health and Human Services shall conduct follow-up services, during the pendency of removal proceedings, on children for whom a home study was conducted and is authorized to conduct follow-up services in cases involving children with mental health or other needs who could benefit from ongoing assistance from a social welfare agency.

(C) ACCESS TO INFORMATION.—Not later than 2 weeks after receiving a request from the Secretary of Health and Human Services, the Secretary of Homeland Security shall provide information necessary to conduct suitability assessments from appropriate Federal, State, and local law enforcement and immigration databases.

(D) INFORMATION ABOUT INDIVIDUALS WITH WHOM CHILDREN ARE PLACED.—

(i) INFORMATION TO BE PROVIDED TO HOMELAND SECURITY.—Before placing a child with an individual,

the Secretary of Health and Human Services shall provide to the Secretary of Homeland Security, regarding the individual with whom the child will be placed, information on—

(I) the name of the individual;

(II) the social security number of the individual;

(III) the date of birth of the individual;

(IV) the location of the individual's residence where the child will be placed;

(V) the immigration status of the individual, if known; and

(VI) contact information for the individual.

(ii) ACTIVITIES OF THE SECRETARY OF HOMELAND SECURITY.—Not later than 30 days after receiving the information listed in clause (i), the Secretary of Homeland Security, upon determining that an individual with whom a child is placed is unlawfully present in the United States and not in removal proceedings pursuant to chapter 4 of title II of the Immigration and Nationality Act (8 U.S.C. 1221 et seq.), shall initiate such removal proceedings.

(4) LEGAL ORIENTATION PRESENTATIONS.—The Secretary of Health and Human Services shall cooperate with the Executive Office for Immigration Review to ensure that custodians receive legal orientation presentations provided through the Legal Orientation Program administered by the Executive Office for Immigration Review. At a minimum, such presentations shall address the custodian's responsibility to attempt to ensure the child's appearance at all immigration proceedings and to protect the child from mistreatment, exploitation, and trafficking.

(5) ACCESS TO COUNSEL.—The Secretary of Health and Human Services shall ensure, to the greatest extent practicable *(at no expense to the Government)* and consistent with section 292 of the Immigration and Nationality Act (8 U.S.C. 1362), that all unaccompanied alien children who are or have been in the custody of the Secretary or the Secretary of Homeland Security, and who are not described in subsection (a)(2)(A), **[**have counsel to represent them**]** *have access to counsel to represent them* in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking. To the greatest extent practicable, the Secretary of Health and Human Services shall make every effort to utilize the services of pro bono counsel who agree to provide representation to such children without charge.

(6) CHILD ADVOCATES.—

(A) IN GENERAL.—The Secretary of Health and Human Services is authorized to appoint independent child advocates for child trafficking victims and other vulnerable unaccompanied alien children. A child advocate shall be provided access to materials necessary to effectively advocate for the best interest of the child. The child advocate shall not be compelled to testify or provide evidence in any proceeding concerning any information or opinion received from the child in the course of serving as a child advocate.

The child advocate shall be presumed to be acting in good faith and be immune from civil liability for lawful conduct of duties as described in this provision.

(B) APPOINTMENT OF CHILD ADVOCATES.—

(i) INITIAL SITES.—Not later than 2 years after the date of the enactment of the Violence Against Women Reauthorization Act of 2013, the Secretary of Health and Human Services shall appoint child advocates at 3 new immigration detention sites to provide independent child advocates for trafficking victims and vulnerable unaccompanied alien children.

(ii) ADDITIONAL SITES.—Not later than 3 years after the date of the enactment of the Violence Against Women Reauthorization Act of 2013, the Secretary shall appoint child advocates at not more than 3 additional immigration detention sites.

(iii) SELECTION OF SITES.—Sites at which child advocate programs will be established under this subparagraph shall be located at immigration detention sites at which more than 50 children are held in immigration custody, and shall be selected sequentially, with priority given to locations with—

(I) the largest number of unaccompanied alien children; and

(II) the most vulnerable populations of unaccompanied children.

(C) RESTRICTIONS.—

(i) ADMINISTRATIVE EXPENSES.—A child advocate program may not use more that 10 percent of the Federal funds received under this section for administrative expenses.

(ii) NONEXCLUSIVITY.—Nothing in this section may be construed to restrict the ability of a child advocate program under this section to apply for or obtain funding from any other source to carry out the programs described in this section.

(iii) CONTRIBUTION OF FUNDS.—A child advocate program selected under this section shall contribute non-Federal funds, either directly or through in-kind contributions, to the costs of the child advocate program in an amount that is not less than 25 percent of the total amount of Federal funds received by the child advocate program under this section. In-kind contributions may not exceed 40 percent of the matching requirement under this clause.

(D) ANNUAL REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of the Violence Against Women Reauthorization Act of 2013, and annually thereafter, the Secretary of Health and Human Services shall submit a report describing the activities undertaken by the Secretary to authorize the appointment of independent Child Advocates for trafficking victims and vulnerable unaccompanied alien children to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

(E) ASSESSMENT OF CHILD ADVOCATE PROGRAM.—

(i) IN GENERAL.—As soon as practicable after the date of the enactment of the Violence Against Women Reauthorization Act of 2013, the Comptroller General of the United States shall conduct a study regarding the effectiveness of the Child Advocate Program operated by the Secretary of Health and Human Services.

(ii) MATTERS TO BE STUDIED.—In the study required under clause (i), the Comptroller General shall— collect information and analyze the following:

(I) analyze the effectiveness of existing child advocate programs in improving outcomes for trafficking victims and other vulnerable unaccompanied alien children;

(II) evaluate the implementation of child advocate programs in new sites pursuant to subparagraph (B);

(III) evaluate the extent to which eligible trafficking victims and other vulnerable unaccompanied children are receiving child advocate services and assess the possible budgetary implications of increased participation in the program;

(IV) evaluate the barriers to improving outcomes for trafficking victims and other vulnerable unaccompanied children; and

(V) make recommendations on statutory changes to improve the Child Advocate Program in relation to the matters analyzed under subclauses (I) through (IV).

(iii) GAO REPORT.—Not later than 3 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit the results of the study required under this subparagraph to—

(I) the Committee on the Judiciary of the Senate;

(II) the Committee on Health, Education, Labor, and Pensions of the Senate;

(III) the Committee on the Judiciary of the House of Representatives; and

(IV) the Committee on Education and the Workforce of the House of Representatives.

(F) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Health and Human Services to carry out this subsection—

(i) $1,000,000 for each of the fiscal years 2014 and 2015; and

(ii) $2,000,000 for each of fiscal years 2018 through 2021.

(d) PERMANENT PROTECTION FOR CERTAIN AT-RISK CHILDREN.—

(1) IN GENERAL.—Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) is amended—

(A) in clause (i), by striking "State and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment;" and inserting "State, or an individual or entity appointed by a State or juvenile

court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;"; and

(B) in clause (iii)—

(i) in the matter preceding subclause (I), by striking "the Attorney General expressly consents to the dependency order serving as a precondition to the grant of special immigrant juvenile status;" and inserting "the Secretary of Homeland Security consents to the grant of special immigrant juvenile status,"; and

(ii) in subclause (I), by striking "in the actual or constructive custody of the Attorney General unless the Attorney General specifically consents to such jurisdiction;" and inserting "in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction;".

(2) EXPEDITIOUS ADJUDICATION.—All applications for special immigrant status under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) shall be adjudicated by the Secretary of Homeland Security not later than 180 days after the date on which the application is filed.

(3) ADJUSTMENT OF STATUS.—Section 245(h)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1255(h)(2)(A)) is amended to read as follows:

"(A) paragraphs (4), (5)(A), (6)(A), (6)(C), (6)(D), (7)(A), and (9)(B) of section 212(a) shall not apply; and".

(4) ELIGIBILITY FOR ASSISTANCE.—

(A) IN GENERAL.—A child who has been granted special immigrant status under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) and who was in the custody of the Secretary of Health and Human Services at the time a dependency order was granted for such child, was receiving services pursuant to section 501(a) of the Refugee Education Assistance Act of 1980 (8 U.S.C. 1522 note) at the time such dependency order was granted, or has been granted status under section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)),, shall be eligible for placement and services under section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)) until the earlier of—

(i) the date on which the child reaches the age designated in section 412(d)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1522(d)(2)(B)); or

(ii) the date on which the child is placed in a permanent adoptive home.

(B) STATE REIMBURSEMENT.—Subject to the availability of appropriations, if State foster care funds are expended on behalf of a child who is not described in subparagraph (A) and has been granted special immigrant status under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), or status under section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)),, the Federal Government shall re-

imburse the State in which the child resides for such expenditures by the State.

(5) STATE COURTS ACTING IN LOCO PARENTIS.—A department or agency of a State, or an individual or entity appointed by a State court or juvenile court located in the United States, acting in loco parentis, shall not be considered a legal guardian for purposes of this section or section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279).

(6) TRANSITION RULE.—Notwithstanding any other provision of law, an alien described in section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), as amended by paragraph (1), may not be denied special immigrant status under such section after the date of the enactment of this Act based on age if the alien was a child on the date on which the alien applied for such status.

(7) ACCESS TO ASYLUM PROTECTIONS.—Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158) is amended—

(A) in subsection (a)(2), by adding at the end the following:

"(E) APPLICABILITY.—Subparagraphs (A) and (B) shall not apply to an unaccompanied alien child (as defined in section 462(g) of the Homeland Security Act of 2002 (6 U.S.C. 279(g))).''; and

(B) in subsection (b)(3), by adding at the end the following:

"(C) INITIAL JURISDICTION.—An asylum officer (as defined in section 235(b)(1)(E)) shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child (as defined in section 462(g) of the Homeland Security Act of 2002 (6 U.S.C. 279(g))), regardless of whether filed in accordance with this section or section 235(b).''.

(8) SPECIALIZED NEEDS OF UNACCOMPANIED ALIEN CHILDREN.—Applications for asylum and other forms of relief from removal in which an unaccompanied alien child is the principal applicant shall be governed by regulations which take into account the specialized needs of unaccompanied alien children and which address both procedural and substantive aspects of handling unaccompanied alien children's cases.

(e) TRAINING.—The Secretary of State, the Secretary of Homeland Security, the Secretary of Health and Human Services, and the Attorney General shall provide specialized training to all Federal personnel, and upon request, state and local personnel, who have substantive contact with unaccompanied alien children. Such personnel shall be trained to work with unaccompanied alien children, including identifying children who are victims of severe forms of trafficking in persons, and children for whom asylum or special immigrant relief may be appropriate, including children described in subsection (a)(2).

(f) AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002.—

(1) ADDITIONAL RESPONSIBILITIES.—Section 462(b)(1)(L) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(1)(L)) is amended by striking the period at the end and inserting ", including regular follow-up visits to such facilities, placements,

and other entities, to assess the continued suitability of such placements.".

(2) TECHNICAL CORRECTIONS.—Section 462(b) of such Act (6 U.S.C. 279(b)) is further amended—

(A) in paragraph (3), by striking "paragraph (1)(G)," and inserting "paragraph (1),"; and

(B) by adding at the end the following:

"(4) RULE OF CONSTRUCTION.—Nothing in paragraph (2)(B) may be construed to require that a bond be posted for an unaccompanied alien child who is released to a qualified sponsor.".

(g) DEFINITION OF UNACCOMPANIED ALIEN CHILD.—For purposes of this section, the term "unaccompanied alien child" has the meaning given such term in section 462(g) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)).

(h) EFFECTIVE DATE.—This section—

(1) shall take effect on the date that is 90 days after the date of the enactment of this Act; and

(2) shall also apply to all aliens in the United States in pending proceedings before the Department of Homeland Security or the Executive Office for Immigration Review, or related administrative or Federal appeals, on the date of the enactment of this Act.

(i) GRANTS AND CONTRACTS.—The Secretary of Health and Human Services may award grants to, and enter into contracts with, voluntary agencies to carry out this section and section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279).

(j) CONSTRUCTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, judicial determination, consent decree, or settlement agreement, the detention of any alien child who is not an unaccompanied alien child shall be governed by sections 217, 235, 236, and 241 of the Immigration and Nationality Act (8 U.S.C. 1187, 1225, 1226, and 1231). There is no presumption that an alien child who is not an unaccompanied alien child should not be detained.

(2) FAMILY DETENTION.—The Secretary of Homeland Security shall—

(A) maintain the care and custody of an alien, during the period during which the charges described in clause (i) are pending, who—

(i) is charged only with a misdemeanor offense under section 275(a) of the Immigration and Nationality Act (8 U.S.C. 1325(a)); and

(ii) entered the United States with the alien's child who has not attained 18 years of age; and

(B) detain the alien with the alien's child.

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ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996

DIVISION C—ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996

SEC. 1. SHORT TITLE OF DIVISION; AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT; APPLICATION OF DEFINITIONS OF SUCH ACT; TABLE OF CONTENTS OF DIVISION; SEVERABILITY.

(a) SHORT TITLE.—This division may be cited as the "Illegal Immigration Reform and Immigrant Responsibility Act of 1996".

(b) AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.—Except as otherwise specifically provided—

(1) * * *

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(c) APPLICATION OF CERTAIN DEFINITIONS.—Except as otherwise provided in this division, for purposes of titles I andVI of this division, the terms "alien", "Attorney General", "border crossing identification card", "entry", "immigrant", "immigrant visa", "lawfully admitted for permanent residence", "national","naturalization", "refugee", "State", and "United States" shall havethe meaning given such terms in section 101(a) of the Immigration and Nationality Act.

(d) TABLE OF CONTENTS OF DIVISION.—The table of contents of this division is as follows:

* * * * * * *

(e) SEVERABILITY.—If any provision of this division or the application of such provision to any person or circumstances isheld to be unconstitutional, the remainder of this division and the application of the provisions of this division to any person or circumstance shall not be affected thereby.

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TITLE IV—ENFORCEMENT OF RESTRICTIONS AGAINST EMPLOYMENT

[Subtitle A—Pilot Programs for Employment Eligibility Confirmation

[SEC. 401. ESTABLISHMENT OF PROGRAMS.

[(a) IN GENERAL.—The Secretary of Homeland Security shall conduct 3 pilot programs of employment eligibility confirmation under this subtitle.

[(b) IMPLEMENTATION DEADLINE; TERMINATION.—The Secretary of Homeland Security shall implement the pilot programs in a manner that permits persons and other entities to have elections under section 402 of this division made and in effect no later than 1 year after the date of the enactment of this Act. Unless the Congress otherwise provides, the Secretary of Homeland Security shall terminate a pilot program on September 30, 2015.

[(c) SCOPE OF OPERATION OF PILOT PROGRAMS.—The Secretary of Homeland Security shall provide for the operation—

[(1) of the E-Verify Program (described in section 403(a) of this division) in, at a minimum, 5 of the 7 States with the highest estimated population of aliens who are not lawfully present in the United States, and the Secretary of Homeland Security shall expand the operation of the program to all 50 States not later than December 1, 2004;

[(2) of the citizen attestation pilot program (described in section 403(b) of this division) in at least 5 States (or, if fewer, all of the States) that meet the condition described in section 403(b)(2)(A) of this division; and

[(3) of the machine-readable-document pilot program (described in section 403(c) of this division) in at least 5 States (or, if fewer, all of the States) that meet the condition described in section 403(c)(2) of this division.

[(d) REFERENCES IN SUBTITLE.—In this subtitle—

[(1) PILOT PROGRAM REFERENCES.—The terms "program" or "pilot program" refer to any of the 3 pilot programs provided for under this subtitle.

[(2) CONFIRMATION SYSTEM.—The term "confirmation system" means the confirmation system established under section 404 of this division.

[(3) REFERENCES TO SECTION 274A.—Any reference in this subtitle to section 274A (or a subdivision of such section) is deemed a reference to such section (or subdivision thereof) of the Immigration and Nationality Act.

[(4) I–9 OR SIMILAR FORM.—The term "I–9 or similar form" means the form used for purposes of section 274A(b)(1)(A) or such other form as the Secretary of Homeland Security determines to be appropriate.

[(5) LIMITED APPLICATION TO RECRUITERS AND REFERRERS.—Any reference to recruitment or referral (or a recruiter or referrer) in relation to employment is deemed a reference only to such recruitment or referral (or recruiter or referrer) that is subject to section 274A(a)(1)(B)(ii).

[(6) UNITED STATES CITIZENSHIP.—The term "United States citizenship" includes United States nationality.

[(7) STATE.—The term "State" has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act.

[SEC. 402. VOLUNTARY ELECTION TO PARTICIPATE IN A PILOT PROGRAM.

[(a) VOLUNTARY ELECTION.—Subject to subsection (c)(3)(B), any person or other entity that conducts any hiring (or recruitment or referral) in a State in which a pilot program is operating may elect to participate in that pilot program. Except as specifically provided in subsection (e), the Secretary of Homeland Security may not require any person or other entity to participate in a pilot program.

[(b) BENEFIT OF REBUTTABLE PRESUMPTION.—

[(1) IN GENERAL.—If a person or other entity is participating in a pilot program and obtains confirmation of identity and employment eligibility in compliance with the terms and conditions of the program with respect to the hiring (or recruitment or referral) of an individual for employment in the United States, the person or entity has established a rebuttable presumption that the person or entity has not violated section 274A(a)(1)(A) with respect to such hiring (or such recruitment or referral).

[(2) CONSTRUCTION.—Paragraph (1) shall not be construed as preventing a person or other entity that has an election in effect under subsection (a) from establishing an affirmative defense under section 274A(a)(3) if the person or entity complies with the requirements of section 274A(a)(1)(B) but fails to obtain confirmation under paragraph (1).

[(c) GENERAL TERMS OF ELECTIONS.—

[(1) IN GENERAL.—An election under subsection (a) shall be in such form and manner, under such terms and conditions, and shall take effect, as the Secretary of Homeland Security shall specify. The Secretary of Homeland Security may not impose any fee as a condition of making an election or participating in a pilot program.

[(2) SCOPE OF ELECTION.—

[(A) IN GENERAL.—Subject to paragraph (3), any electing person or other entity may provide that the election under subsection (a) shall apply (during the period in which the election is in effect)—

[(i) to all its hiring (and all recruitment or referral) in the State (or States) in which the pilot program is operating, or

[(ii) to its hiring (or recruitment or referral) in one or more pilot program States or one or more places of hiring (or recruitment or referral, as the case may be) in the pilot program States.

[(B) APPLICATION OF PROGRAMS IN NON-PILOT PROGRAM STATES.—In addition, the Secretary of Homeland Security may permit a person or entity electing the citizen attestation pilot program (described in 403(b) of this division) or the machine-readable-document pilot program (described in section 403(c) of this division) to provide that the election applies to its hiring (or recruitment or referral) in one

or more States or places of hiring (or recruitment or referral) in which the pilot program is not otherwise operating but only if such States meet the requirements of 403(b)(2)(A) and 403(c)(2) of this division, respectively.

[(3) TERMINATION OF ELECTIONS.—The Secretary of Homeland Security may terminate an election by a person or other entity under this section because the person or entity has substantially failed to comply with its obligations under the pilot program. A person or other entity may terminate an election in such form and manner as the Secretary of Homeland Security shall specify.

[(d) CONSULTATION, EDUCATION, AND PUBLICITY.—

[(1) CONSULTATION.—The Secretary of Homeland Security shall closely consult with representatives of employers (and recruiters and referrers) in the development and implementation of the pilot programs, including the education of employers (and recruiters and referrers) about such programs.

[(2) PUBLICITY.—The Secretary of Homeland Security shall widely publicize the election process and pilot programs, including the voluntary nature of the pilot programs and the advantages to employers (and recruiters and referrers) of making an election under this section.

[(3) ASSISTANCE THROUGH DISTRICT OFFICES.—The Secretary of Homeland Security shall designate one or more individuals in each District office of the Immigration and Naturalization Service for a Service District in which a pilot program is being implemented—

[(A) to inform persons and other entities that seek information about pilot programs of the voluntary nature of such programs, and

[(B) to assist persons and other entities in electing and participating in any pilot programs in effect in the District, in complying with the requirements of section 274A, and in facilitating confirmation of the identity and employment eligibility of individuals consistent with such section.

[(e) SELECT ENTITIES REQUIRED TO PARTICIPATE IN A PILOT PROGRAM.—

[(1) FEDERAL GOVERNMENT.—

[(A) EXECUTIVE DEPARTMENTS.—

[(i) IN GENERAL.—Each Department of the Federal Government shall elect to participate in a pilot program and shall comply with the terms and conditions of such an election.

[(ii) ELECTION.—Subject to clause (iii), the Secretary of each such Department—

[(I) shall elect the pilot program (or programs) in which the Department shall participate, and

[(II) may limit the election to hiring occurring in certain States (or geographic areas) covered by the program (or programs) and in specified divisions within the Department, so long as all hiring by such divisions and in such locations is covered.

[(iii) ROLE OF ATTORNEY GENERAL.—The Secretary of Homeland Security shall assist and coordinate elec-

tions under this subparagraph in such manner as assures that—

[(I) a significant portion of the total hiring within each Department within States covered by a pilot program is covered under such a program, and

[(II) there is significant participation by the Federal Executive branch in each of the pilot programs.

[(B) LEGISLATIVE BRANCH.—Each Member of Congress, each officer of Congress, and the head of each agency of the legislative branch, that conducts hiring in a State in which a pilot program is operating shall elect to participate in a pilot program, may specify which pilot program or programs (if there is more than one) in which the Member, officer, or agency will participate, and shall comply with the terms and conditions of such an election.

[(2) APPLICATION TO CERTAIN VIOLATORS.—An order under section 274A(e)(4) or section 274B(g) of the Immigration and Nationality Act may require the subject of the order to participate in, and comply with the terms of, a pilot program with respect to the subject's hiring (or recruitment or referral) of individuals in a State covered by such a program.

[(3) CONSEQUENCE OF FAILURE TO PARTICIPATE.—If a person or other entity is required under this subsection to participate in a pilot program and fails to comply with the requirements of such program with respect to an individual—

[(A) such failure shall be treated as a violation of section 274A(a)(1)(B) with respect to that individual, and

[(B) a rebuttable presumption is created that the person or entity has violated section 274A(a)(1)(A).

Subparagraph (B) shall not apply in any prosecution under section 274A(f)(1).

[(f) CONSTRUCTION.—This subtitle shall not affect the authority of the Secretary of Homeland Security under any other law (including section 274A(d)(4)) to conduct demonstration projects in relation to section 274A.

[SEC. 403. PROCEDURES FOR PARTICIPANTS IN PILOT PROGRAMS.

[(a) E-VERIFY PROGRAM.—A person or other entity that elects to participate in the E-Verify Program described in this subsection agrees to conform to the following procedures in the case of the hiring (or recruitment or referral) for employment in the United States of each individual covered by the election:

[(1) PROVISION OF ADDITIONAL INFORMATION.—The person or entity shall obtain from the individual (and the individual shall provide) and shall record on the I–9 or similar form—

[(A) the individual's social security account number, if the individual has been issued such a number, and

[(B) if the individual does not attest to United States citizenship under section 274A(b)(2), such identification or authorization number established by the Immigration and Naturalization Service for the alien as the Secretary of Homeland Security shall specify,

and shall retain the original form and make it available for inspection for the period and in the manner required of I–9 forms under section 274A(b)(3).

[(2) PRESENTATION OF DOCUMENTATION.—

[(A) IN GENERAL.—The person or other entity, and the individual whose identity and employment eligibility are being confirmed, shall, subject to subparagraph (B), fulfill the requirements of section 274A(b) with the following modifications:

[(i) A document referred to in section 274A(b)(1)(B)(ii) (as redesignated by section 412(a) of this division) must be designated by the Secretary of Homeland Security as suitable for the purpose of identification in a pilot program.

[(ii) A document referred to in section 274A(b)(1)(D) must contain a photograph of the individual.

[(iii) The person or other entity has complied with the requirements of section 274A(b)(1) with respect to examination of a document if the document reasonably appears on its face to be genuine and it reasonably appears to pertain to the individual whose identity and work eligibility is being confirmed.

[(B) LIMITATION OF REQUIREMENT TO EXAMINE DOCUMENTATION.—If the Secretary of Homeland Security finds that a pilot program would reliably determine with respect to an individual whether—

[(i) the person with the identity claimed by the individual is authorized to work in the United States, and

[(ii) the individual is claiming the identity of another person,

if a person or entity could fulfill the requirement to examine documentation contained in subparagraph (A) of section 274A(b)(1) by examining a document specified in either subparagraph (B) or (D) of such section, the Secretary of Homeland Security may provide that, for purposes of such requirement, only such a document need be examined. In such case, any reference in section 274A(b)(1)(A) to a verification that an individual is not an unauthorized alien shall be deemed to be a verification of the individual's identity.

[(3) SEEKING CONFIRMATION.—

[(A) IN GENERAL.—The person or other entity shall make an inquiry, as provided in section 404(a)(1) of this division, using the confirmation system to seek confirmation of the identity and employment eligibility of an individual, by not later than the end of 3 working days (as specified by the Secretary of Homeland Security) after the date of the hiring (or recruitment or referral, as the case may be).

[(B) EXTENSION OF TIME PERIOD.—If the person or other entity in good faith attempts to make an inquiry during such 3 working days and the confirmation system has registered that not all inquiries were received during such time, the person or entity can make an inquiry in the first subsequent working day in which the confirmation system registers that it has received all inquiries. If the confirma-

tion system cannot receive inquiries at all times during a day, the person or entity merely has to assert that the entity attempted to make the inquiry on that day for the previous sentence to apply to such an inquiry, and does not have to provide any additional proof concerning such inquiry.

[(4) CONFIRMATION OR NONCONFIRMATION.—

[(A) CONFIRMATION UPON INITIAL INQUIRY.—If the person or other entity receives an appropriate confirmation of an individual's identity and work eligibility under the confirmation system within the time period specified under section 404(b) of this division, the person or entity shall record on the I–9 or similar form an appropriate code that is provided under the system and that indicates a final confirmation of such identity and work eligibility of the individual.

[(B) NONCONFIRMATION UPON INITIAL INQUIRY AND SECONDARY VERIFICATION.—

[(i) NONCONFIRMATION.—If the person or other entity receives a tentative nonconfirmation of an individual's identity or work eligibility under the confirmation system within the time period specified under 404(b) of this division, the person or entity shall so inform the individual for whom the confirmation is sought.

[(ii) NO CONTEST.—If the individual does not contest the nonconfirmation within the time period specified in section 404(c) of this division, the nonconfirmation shall be considered final. The person or entity shall then record on the I–9 or similar form an appropriate code which has been provided under the system to indicate a tentative nonconfirmation.

[(iii) CONTEST.—If the individual does contest the nonconfirmation, the individual shall utilize the process for secondary verification provided under section 404(c) of this division. The nonconfirmation will remain tentative until a final confirmation or nonconfirmation is provided by the confirmation system within the time period specified in such section. In no case shall an employer terminate employment of an individual because of a failure of the individual to have identity and work eligibility confirmed under this section until a nonconfirmation becomes final. Nothing in this clause shall apply to a termination of employment for any reason other than because of such a failure.

[(iv) RECORDING OF CONCLUSION ON FORM.—If a final confirmation or nonconfirmation is provided by the confirmation system under section 404(c) of this division regarding an individual, the person or entity shall record on the I–9 or similar form an appropriate code that is provided under the system and that indicates a confirmation or nonconfirmation of identity and work eligibility of the individual.

[(C) CONSEQUENCES OF NONCONFIRMATION.—

[(i) TERMINATION OR NOTIFICATION OF CONTINUED EMPLOYMENT.—If the person or other entity has received a final nonconfirmation regarding an individual under subparagraph (B), the person or entity may terminate employment (or recruitment or referral) of the individual. If the person or entity does not terminate employment (or recruitment or referral) of the individual, the person or entity shall notify the Secretary of Homeland Security of such fact through the confirmation system or in such other manner as the Secretary of Homeland Security may specify.

[(ii) FAILURE TO NOTIFY.—If the person or entity fails to provide notice with respect to an individual as required under clause (i), the failure is deemed to constitute a violation of section 274A(a)(1)(B) with respect to that individual and the applicable civil monetary penalty under section 274A(e)(5) shall be (notwithstanding the amounts specified in such section) no less than $500 and no more than $1,000 for each individual with respect to whom such violation occurred.

[(iii) CONTINUED EMPLOYMENT AFTER FINAL NONCONFIRMATION.—If the person or other entity continues to employ (or to recruit or refer) an individual after receiving final nonconfirmation, a rebuttable presumption is created that the person or entity has violated section 274A(a)(1)(A). The previous sentence shall not apply in any prosecution under section 274A(f)(1).

[(b) CITIZEN ATTESTATION PILOT PROGRAM.—

[(1) IN GENERAL.—Except as provided in paragraphs (3) through (5), the procedures applicable under the citizen attestation pilot program under this subsection shall be the same procedures as those under the E-Verify Program under subsection (a).

[(2) RESTRICTIONS.—

[(A) STATE DOCUMENT REQUIREMENT TO PARTICIPATE IN PILOT PROGRAM.—The Secretary of Homeland Security may not provide for the operation of the citizen attestation pilot program in a State unless each driver's license or similar identification document described in section 274A(b)(1)(D)(i) issued by the State—

[(i) contains a photograph of the individual involved, and

[(ii) has been determined by the Secretary of Homeland Security to have security features, and to have been issued through application and issuance procedures, which make such document sufficiently resistant to counterfeiting, tampering, and fraudulent use that it is a reliable means of identification for purposes of this section.

[(B) AUTHORIZATION TO LIMIT EMPLOYER PARTICIPATION.—The Secretary of Homeland Security may restrict the number of persons or other entities that may elect to participate in the citizen attestation pilot program under this subsection as the Secretary of Homeland Security de-

termines to be necessary to produce a representative sample of employers and to reduce the potential impact of fraud.

[(3) NO CONFIRMATION REQUIRED FOR CERTAIN INDIVIDUALS ATTESTING TO U.S. CITIZENSHIP.—In the case of a person or other entity hiring (or recruiting or referring) an individual under the citizen attestation pilot program, if the individual attests to United States citizenship (under penalty of perjury on an I–9 or similar form which form states on its face the criminal and other penalties provided under law for a false representation of United States citizenship)—

[(A) the person or entity may fulfill the requirement to examine documentation contained in subparagraph (A) of section 274A(b)(1) by examining a document specified in either subparagraph (B)(i) or (D) of such section; and

[(B) the person or other entity is not required to comply with respect to such individual with the procedures described in paragraphs (3) and (4) of subsection (a), but only if the person or entity retains the form and makes it available for inspection in the same manner as in the case of an I–9 form under section 274A(b)(3).

[(4) WAIVER OF DOCUMENT PRESENTATION REQUIREMENT IN CERTAIN CASES.—

[(A) IN GENERAL.—In the case of a person or entity that elects, in a manner specified by the Secretary of Homeland Security consistent with subparagraph (B), to participate in the pilot program under this paragraph, if an individual being hired (or recruited or referred) attests (in the manner described in paragraph (3)) to United States citizenship and the person or entity retains the form on which the attestation is made and makes it available for inspection in the same manner as in the case of an I–9 form under section 274A(b)(3), the person or entity is not required to comply with the procedures described in section 274A(b).

[(B) RESTRICTION.—The Secretary of Homeland Security shall restrict the election under this paragraph to no more than 1,000 employers and, to the extent practicable, shall select among employers seeking to make such election in a manner that provides for such an election by a representative sample of employers.

[(5) NONREVIEWABLE DETERMINATIONS.—The determinations of the Secretary of Homeland Security under paragraphs (2) and (4) are within the discretion of the Secretary of Homeland Security and are not subject to judicial or administrative review.

[(c) MACHINE-READABLE-DOCUMENT PILOT PROGRAM.—

[(1) IN GENERAL.—Except as provided in paragraph (3), the procedures applicable under the machine-readable-document pilot program under this subsection shall be the same procedures as those under the E-Verify Program under subsection (a).

[(2) STATE DOCUMENT REQUIREMENT TO PARTICIPATE IN PILOT PROGRAM.—The Secretary of Homeland Security may not provide for the operation of the machine-readable-document pilot

program in a State unless driver's licenses and similar identification documents described in section 274A(b)(1)(D)(i) issued by the State include a machine-readable social security account number.

[(3) USE OF MACHINE-READABLE DOCUMENTS.—If the individual whose identity and employment eligibility must be confirmed presents to the person or entity hiring (or recruiting or referring) the individual a license or other document described in paragraph (2) that includes a machine-readable social security account number, the person or entity must make an inquiry through the confirmation system by using a machine-readable feature of such document. If the individual does not attest to United States citizenship under section 274A(b)(2), the individual's identification or authorization number described in subsection (a)(1)(B) shall be provided as part of the inquiry.

[(d) PROTECTION FROM LIABILITY FOR ACTIONS TAKEN ON THE BASIS OF INFORMATION PROVIDED BY THE CONFIRMATION SYSTEM.—No person or entity participating in a pilot program shall be civilly or criminally liable under any law for any action taken in good faith reliance on information provided through the confirmation system.

[SEC. 404. EMPLOYMENT ELIGIBILITY CONFIRMATION SYSTEM.

[(a) IN GENERAL.—The Secretary of Homeland Security shall establish a pilot program confirmation system through which the Secretary of Homeland Security (or a designee of the Secretary of Homeland Security, which may be a nongovernmental entity)—

[(1) responds to inquiries made by electing persons and other entities (including those made by the transmittal of data from machine-readable documents under the machine-readable pilot program) at any time through a toll-free telephone line or other toll-free electronic media concerning an individual's identity and whether the individual is authorized to be employed, and

[(2) maintains records of the inquiries that were made, of confirmations provided (or not provided), and of the codes provided to inquirers as evidence of their compliance with their obligations under the pilot programs.

To the extent practicable, the Secretary of Homeland Security shall seek to establish such a system using one or more nongovernmental entities.

[(b) INITIAL RESPONSE.—The confirmation system shall provide confirmation or a tentative nonconfirmation of an individual's identity and employment eligibility within 3 working days of the initial inquiry. If providing confirmation or tentative nonconfirmation, the confirmation system shall provide an appropriate code indicating such confirmation or such nonconfirmation.

[(c) SECONDARY VERIFICATION PROCESS IN CASE OF TENTATIVE NONCONFIRMATION.—In cases of tentative nonconfirmation, the Secretary of Homeland Security shall specify, in consultation with the Commissioner of Social Security and the Commissioner of the Immigration and Naturalization Service, an available secondary verification process to confirm the validity of information provided and to provide a final confirmation or nonconfirmation within 10 working days after the date of the tentative nonconfirmation. When

final confirmation or nonconfirmation is provided, the confirmation system shall provide an appropriate code indicating such confirmation or nonconfirmation.

[(d) DESIGN AND OPERATION OF SYSTEM.—The confirmation system shall be designed and operated—

[(1) to maximize its reliability and ease of use by persons and other entities making elections under section 402(a) of this division consistent with insulating and protecting the privacy and security of the underlying information;

[(2) to respond to all inquiries made by such persons and entities on whether individuals are authorized to be employed and to register all times when such inquiries are not received;

[(3) with appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information; and

[(4) to have reasonable safeguards against the system's resulting in unlawful discriminatory practices based on national origin or citizenship status, including—

[(A) the selective or unauthorized use of the system to verify eligibility;

[(B) the use of the system prior to an offer of employment; or

[(C) the exclusion of certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will be required, beyond what is required for most job applicants.

[(e) RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL SECURITY.—As part of the confirmation system, the Commissioner of Social Security, in consultation with the entity responsible for administration of the system, shall establish a reliable, secure method, which, within the time periods specified under subsections (b) and (c), compares the name and social security account number provided in an inquiry against such information maintained by the Commissioner in order to confirm (or not confirm) the validity of the information provided regarding an individual whose identity and employment eligibility must be confirmed, the correspondence of the name and number, and whether the individual has presented a social security account number that is not valid for employment. The Commissioner shall not disclose or release social security information (other than such confirmation or nonconfirmation).

[(f) RESPONSIBILITIES OF THE COMMISSIONER OF THE IMMIGRATION AND NATURALIZATION SERVICE.—As part of the confirmation system, the Commissioner of the Immigration and Naturalization Service, in consultation with the entity responsible for administration of the system, shall establish a reliable, secure method, which, within the time periods specified under subsections (b) and (c), compares the name and alien identification or authorization number described in section 403(a)(1)(B) of this division which are provided in an inquiry against such information maintained by the Commissioner in order to confirm (or not confirm) the validity of the information provided, the correspondence of the name and number, and whether the alien is authorized to be employed in the United States.

[(g) UPDATING INFORMATION.—The Commissioners of Social Security and the Immigration and Naturalization Service shall up-

date their information in a manner that promotes the maximum accuracy and shall provide a process for the prompt correction of erroneous information, including instances in which it is brought to their attention in the secondary verification process described in subsection (c).

[(h) LIMITATION ON USE OF THE CONFIRMATION SYSTEM AND ANY RELATED SYSTEMS.—

[(1) IN GENERAL.—Notwithstanding any other provision of law, nothing in this subtitle shall be construed to permit or allow any department, bureau, or other agency of the United States Government to utilize any information, data base, or other records assembled under this subtitle for any other purpose other than as provided for under this subtitle.

[(2) NO NATIONAL IDENTIFICATION CARD.—Nothing in this subtitle shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

[SEC. 405. REPORTS.

[(a) IN GENERAL.—The Secretary of Homeland Security shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate reports on the pilot programs within 3 months after the end of the third and fourth years in which the programs are in effect. Such reports shall—

[(1) assess the degree of fraudulent attesting of United States citizenship,

[(2) include recommendations on whether or not the pilot programs should be continued or modified, and

[(3) assess the benefits of the pilot programs to employers and the degree to which they assist in the enforcement of section 274A.

[(b) REPORT ON EXPANSION.—Not later than June 1, 2004, the Secretary of Homeland Security shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report—

[(1) evaluating whether the problems identified by the report submitted under subsection (a) have been substantially resolved; and

[(2) describing what actions the Secretary of Homeland Security shall take before undertaking the expansion of the E-Verify Program to all 50 States in accordance with section 401(c)(1), in order to resolve any outstanding problems raised in the report filed under subsection (a).]

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TITLE 18, UNITED STATES CODE

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PART I—CRIMES

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CHAPTER 75—PASSPORTS AND VISAS

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§ 1546. Fraud and misuse of visas, permits, and other documents

(a) Whoever knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained; or

Whoever, except under direction of the Attorney General or the Commissioner of the Immigration and Naturalization Service, or other proper officer, knowingly possesses any blank permit, or engraves, sells, brings into the United States, or has in his control or possession any plate in the likeness of a plate designed for the printing of permits, or makes any print, photograph, or impression in the likeness of any immigrant or nonimmigrant visa, permit or other document required for entry into the United States, or has in his possession a distinctive paper which has been adopted by the Attorney General or the Commissioner of the Immigration and Naturalization Service for the printing of such visas, permits, or documents; or

Whoever, when applying for an immigrant or nonimmigrant visa, permit, or other document required for entry into the United States, or for admission to the United States personates another, or falsely appears in the name of a deceased individual, or evades or attempts to evade the immigration laws by appearing under an assumed or fictitious name without disclosing his true identity, or sells or otherwise disposes of, or offers to sell or otherwise dispose of, or utters, such visa, permit, or other document, to any person not authorized by law to receive such document; or

Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document which contains any such false statement or which fails to contain any reasonable basis in law or fact—

Shall be fined under this title or imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug

trafficking crime), or 15 years (in the case of any other offense), or both.

(b) Whoever uses—

(1) an [identification document,] *identification document or document meant to establish work authorization (including the documents described in section 274A(b) of the Immigration and Nationality Act),* knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor,

(2) an [identification document] *identification document or document meant to establish work authorization (including the documents described in section 274A(b) of the Immigration and Nationality Act),* knowing (or having reason to know) that the document is false, or

(3) a false attestation,

for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act, shall be fined under this title, imprisoned not more than 5 years, or both.

(c) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481). For purposes of this section, the term "State" means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

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Minority Views

I. INTRODUCTION

H.R. 2640 is cruel, extreme, and unworkable legislation that continues the Republicans' anti-immigrant, enforcement-only approach to immigration. It would wreck our economy, destroy the asylum system, criminalize visa overstays, send unaccompanied children back to dangerous situations, and jail children indefinitely. We should all be working together to fix the broken immigration system. Democrats are ready to work with serious Republicans to pass meaningful changes, just as we did with the Farm Workforce Modernization Act and the American Dream and Promise Act in prior congresses.

Unfortunately, this bill is not a serious attempt to reform our broken immigration system. It does nothing to address the root causes of migration, improve border security, or create additional legal pathways for people to enter the United States lawfully. If we can create a more humane immigration system that recognizes both the horrific conditions that cause migrants to flee and the contributions of immigrants to America, we can decrease unauthorized crossings, strengthen our economy, and protect migrants and citizens from harm.

Republicans want to take us back to the failed, illegal, and immoral policies of the Trump administration. President Trump's radical, inhumane, and racist immigration actions weakened the U.S. economy, undermined our moral standing in the world, led to in-

creased numbers of migrants at the southern border and did not make us any safer. In the absence of a credible plan to fix our broken immigration system, Republicans have resorted to political stunts instead of real solutions. If Republicans were truly concerned with securing the border, they would work with Democrats to secure our ports of entry, expand legal pathways for migrants, and address the root causes of migration. Immigration reform is a complex problem that requires comprehensive solutions, and an enforcement-only strategy simply doesn't work.

H.R. 2640 consists of seven titles, each of which would unleash untold suffering on migrants fleeing unspeakable conditions, and it would be particularly devastating to children.

- Title I would completely upend the asylum system (making it nearly impossible for anyone to come to our borders and seek asylum) as well as the process in place for unaccompanied children.
- Title II would require that all migrants seeking admission without a visa be detained, removed, or subjected to a "Return to Mexico"-style program.
- Title III would mandate indefinite detention for all asylum-seeking families and other immigrants attempting to enter the United States without a visa.
- Title IV would subject all unaccompanied children to an even more draconian version of the expedited removal process, allow children to be detained in Customs and Border Protection (CBP) facilities for an entire month, and summarily send children back into the hands of smugglers and those seeking to exploit them.
- Title V would criminalize overstaying visas and status violations, subjecting first-time violators to up to 6 months in prison and civil penalties of up to $1,000.
- Title VI would severely restrict the administration's ability to parole individuals into the United States, including ending the current parole initiatives for Ukrainians fleeing Russia and certain military families, and would strip most parolees of their ability to obtain work authorization.
- Title VII would require all U.S. employers to use the E-Verify system without the necessary due process protections for workers or reforms to the immigration system to make mandatory E-Verify workable.

This legislation is not a serious solution for our broken immigration system.

II. H.R. 2640 WOULD COMPLETELY UPEND THE ASYLUM SYSTEM

Title I, the "Asylum Reform and Border Protection Act of 2023," would slash protections for asylum seekers and other vulnerable populations. Indeed, the bill does not reform our asylum system as much as dismantle it. Doubling down on Donald Trump's anti-humanitarian policies, Title I would return asylum seekers of all ages and circumstances to further persecution, and too often, death.

Republicans predicate this bill on their belief that our asylum system is rife with fraud and abuse. However, there is no reliable evidence to support this position. Nearly every group that works with asylees offers compelling evidence of legitimate claims and

rampant human rights abuses in sending countries that drive many of these individuals to seek sanctuary.

Most problematically, this title: (1) authorizes DHS to deport virtually every asylum seeker that reached the United States through a third country, such as Mexico; (2) makes sweeping changes to the definitions of various grounds of asylum, including particular social group and political opinion; (3) impracticably elevates the evidentiary standard in credible fear screenings; and (4) introduces wide-reaching new bars to asylum, including (a) barring anyone (including unaccompanied children) who entered between ports of entry from obtaining asylum; (b) barring from asylum any individual who has or could have had even temporary status in a third country; and (c) massively expanding the criminal bars to asylum and allowing adjudicators to use unreliable evidence, such as Interpol Red Notices and facts not found by a criminal court, as proof that the applicant committed a crime.

While the Majority claims that these provisions close loopholes in our humanitarian system, in reality, when taken together, they serve as a wholesale ban on asylum. Only the lucky few who can come directly to the United States and meet the significantly narrowed asylum grounds would be able to obtain protection.

Due to the numerous concerns about how this title would decimate our asylum system, Democrats offered amendments that would strike Title I in its entirety, exempt individuals fleeing from communist and totalitarian countries from the asylum bars for individuals who cross between ports of entry, and exempt all unaccompanied children, then unaccompanied children under the age of 5, or unaccompanied children under the age of one from the asylum bar. These amendments were all defeated on party line roll call votes.

III. ATTEMPTS TO FIX H.R. 2640 FAIL TO MITIGATE CONCERNS THAT THE BILL WOULD BE UNWORKABLE AND INHUMANE

Title II, the "Border Safety and Migrant Protection Act of 2023," seems to be the Majority's attempt at creating a more palatable version of H.R. 29, the "Border Safety and Security Act of 2023," legislation so extreme that even Republicans called it un-American and un-Christian and blocked it from consideration on the House Floor.[1] Despite the fig leaf of modest improvement, H.R. 2640 utterly fails in creating a workable and humane asylum system.

The title shares much of the prior attempt's problems—it would overturn our current asylum system and require the Secretary of Homeland Security to detain, deport, or return to Mexico all asylum seekers who attempt to enter the United States at the border without a visa. During the markup, Representative Roy (R–TX) offered an amendment that was adopted by the Committee that stripped out the provision of the bill that requires the Secretary of Homeland Security to suspend the entry of all asylum seekers if he cannot detain, deport, or return them all to Mexico. However, this title still constitutes an unprecedented attack on our asylum system and an attempt to unilaterally force Mexico to accept our asylum seekers.

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[1] Emily Brooks and Rafael Bernal, *Tensions High as House GOP Tackles Take Two at Border Bill*, THE HILL (Mar. 28, 2023) https://thehill.com/latino/3920921-tensions-high-as-house-gop-tackles-take-two-at-border-bill/.

No Congress—under Republican or Democratic leadership—has ever appropriated sufficient resources to detain all migrants. The cost of detaining all migrants would be astronomical—in 2015, the conservative American Action Forum estimated that detaining every undocumented migrant in the country would cost approximately $35.7 billion.[2] In contrast, former President Trump requested $3.1 billion for detention space in FY 2021.[3] The research further estimates that deporting all undocumented migrants and continuing to enforce a strict deportation scheme into the future would cost anywhere between $419.6 billion and $619.4 billion.[4] Former President Trump's 2021 budget requested $49.7 billion for all of DHS, including for its non-immigration-related components.[5]

Likewise, the use of Remain in Mexico and Title 42 exposed migrants to extreme danger and served as a boon to the cartels. As of February 2021, there were over 1,500 publicly reported cases of murder, rape, torture, kidnapping and other violent assaults against migrants returned under Remain in Mexico.[6] Our restrictive policies have also caused Mexico to harden its own policies—deporting thousands and detaining others in crowded detention facilities in extremely poor conditions.[7] Continuing to push migrants back into Mexico will only serve to further put vulnerable migrants at risk, as we saw all too well when migrants in an immigration center in Ciudad Juarez were left to be burned alive in March.[8]

Finally, as part of Representative Roy's amendment, the Majority added a new provision to the bill which would reopen numerous closed Immigration and Customs Enforcement (ICE) detention facilities that were shut down due to egregious human rights abuses. This includes the Irwin County Detention Center, the site of numerous horrifying allegations of detainees forced to undergo unnecessary invasive gynecological procedures.[9] These facilities were closed for good reasons, and the fact that Republicans wish to reopen them is deeply disturbing.

Many of Democrats' concerns with this section centered on Representative Roy's wrongheaded idea to close the border to all asylum seekers if the Secretary of Homeland Security cannot detain, deport, or return to Mexico all asylum seekers. We submitted an amendment to exempt individuals fleeing from communist and totalitarian countries from that provision before Representative Roy filed his amendment removing it. The amendment was opposed on a party line vote.

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[2] Ben Gitis & Laura Collins, *The Budgetary and Economic Costs of Addressing Unauthorized Immigration: Alternative Strategies*, AM. ACTION FORUM (Mar. 6, 2015) https://www.americanactionforum.org/research/the-budgetary-and-economic-costs-of-addressing-unauthorized-immigration-alt/.

[3] *A Budget for America's Future*, OFFICE OF MANAGEMENT AND BUDGET (Feb. 10, 2020), https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/02/budget_fy21.pdf.

[4] Gitis & Collins, *supra* note 1.

[5] OFFICE OF MANAGEMENT AND BUDGET, *supra* note 3.

[6] *Id*.

[7] Raquel Aldana, *Migrant deaths in Mexico put spotlight on US policy that shifted immigration enforcement south*, THE CONVERSATION (Apr. 1, 2023), https://theconversation.com/migrant-deaths-in-mexico-put-spotlight-on-us-policy-that-shifted-immigration-enforcement-south-202896.

[8] *Id*.

[9] Morgan Lee, *Senate panel finds 'extraordinary disturbing' medical procedures at closed Georgia immigration jail*, FOX 5 ATLANTA (Nov. 16, 2022), https://www.fox5atlanta.com/news/irwin-county-detention-center-surgeries-senate-investigation.

IV. H.R. 2640 WOULD HAVE A DEVASTATING IMPACT ON CHILDREN AND FAMILIES

Title III, the "Ensuring United Families at the Border Act," would require indefinite family detention for any families attempting to enter the United States to seek asylum, as well as any families who previously entered the United States without visas. It would also require family detention throughout the pendency of a parent's immigration case which could take years. The bill argues that it satisfies the provisions of the *Flores* Settlement Agreement for children detained with their families, which is intended to ensure that migrant children are released from detention as expeditiously as possible, and that any children who cannot be released be transferred to facilities licensed by the States as appropriate for housing dependent children. The *Flores* Agreement is only in place until "publication of final regulations implementing th[e] Agreement" are put in place.[10] It is unclear, however, how this bill, which directly contravenes the purpose of *Flores*, could be considered to be "implementing" the Agreement.

The harm of detaining children is clear: According to the American Academy of Pediatrics, "there is no evidence that any amount of time in detention is 'safe' for children. In fact, even short periods of detention can cause psychological trauma and long-term mental health risks for children."[11] According to a physician and psychiatrist who investigated family detention facilities for the Department of Homeland Security's Office of Civil Rights and Civil Liberties, "shorter lengths of detention did not sufficiently mitigate the harmful conditions that we observed and their deleterious consequences; most of the harms we documented were in families detained less than 20 days."[12]

The bill applies retroactively, which means a family who has been waiting for their asylum hearing for three years, during which time they have been living and working in the United States would be required to be remanded into immigration detention. Finally, the bill has a specific provision to keep family units together if the parent is prosecuted under 8 U.S.C. § 1325(a) for improper entry. This is the crime the Trump administration used as a pretext to separate families in 2018. Because this provision requires family units to stay in DHS custody while this prosecution is pending, it also seems to contemplate an unworkable scenario where DHS detention facilities would be required to have camera access to federal criminal courts. Further, there is no mention of what occurs if the parent is sentenced to jail time as a result of prosecution. The answer is family separation.

The dangers posed by this title are clear. This would lead to harmful family detention and family separation. As such, Democrats proposed an amendment that would delay the implementation of this title until all the families separated under the Trump

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[10] Stipulated Settlement Agreement, *Jenny Lissette Flores v. Reno*, Case No. 85–4544–RJK (C.D. CA 1997), ¶ 40.

[11] Devin Miller, *Pediatricians speak out: Detention is not the answer to family separation*, American Academy of Pediatrics (Jul. 24, 2018) https://publications.aap.org/aapnews/news/12792.

[12] Letter to Joseph R. Biden, President of the United States, and Alejandro Mayorkas, Secretary, Dep't of Homeland Security from Dr. Scott A. Allen & Dr. Pamela McPherson re: Renewed Concerns of DHS Medical Experts Regarding Harms to Children Caused by Family Detention (Mar. 8, 2023) https://assets.law360news.com/1584000/1584237/letter.pdf.

administration are reunited. This amendment was defeated on a party-line vote.

V. H.R. 2640 WOULD STRIP VITAL PROTECTIONS FROM UNACCOMPANIED CHILDREN

Title IV, the so-called "Protection of Children Act of 2023," would subject all unaccompanied children to a summary removal process that is even worse than the one currently applicable to unaccompanied children from Mexico. It removes the current requirement that CBP ensure that a child is capable of making an independent decision to voluntarily withdraw his or her application for admission to the country. According to CBP policy, young children under the age of 14 (also known as "tender age") are presumed to be lacking capacity to make an independent decision to withdraw and therefore CBP transfers them to ORR custody for further screening and the opportunity to appear in immigration court.[13] This rule also currently applies to children with intellectual disabilities or other issues which would prevent them from having the capacity to make an independent decision. Removing this vital protection will result in the rapid deportation of tender age children and those with disabilities.

Furthermore, this title would result in the lengthy detention of many children because it eliminates the current requirement that DHS transfer children within 72 hours to HHS custody. This title would also limit the provision of attorneys to unaccompanied children through federal programs because it contains a strict prohibition on the use of government funds for legal counsel. Additionally, it limits crucial protections like Special Immigrant Juvenile Status visas from certain children, limiting the legal pathways previously available to them and increasing the likelihood that they are deported to abusive situations in their home counties.

This title does nothing to protect children and instead, every provision would harm children, particularly those in danger of trafficking. If implemented, this title would result in the rapid return of a child to his or her country of origin without an adequate assessment of whether the child has a fear of persecution or trafficking. For these reasons, Democrats offered amendments to ensure that children in custody are transferred within 72 hours to be in the care of child welfare experts and to allow for government appointed counsel for unaccompanied children. These amendments were struck down on party line votes.

VI. H.R. 2640 WOULD SUBJECT INDIVIDUALS WHO OVERSTAY A VISA BY MISTAKE OR FOR REASONS BEYOND THEIR CONTROL TO CRUEL CRIMINAL PENALTIES

Title V, the "Visa Overstays Penalties Act," would criminalize overstaying a visa or violating a nonimmigrant status for an aggregate of 10 or more days. First-time violators could receive up to 6 months in prison and/or up to $1,000 fines. Subsequent violations would subject them to 2 years in prison and/or up to $2,000 in fines. The title's text does not contain a waiver for mistaken viola-

[13] *Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody*, U.S. GOVN'T ACCOUNTABILITY OFFICE (Jul. 14, 2015), https://www.gao.gov/products/gao-15-521.

tions or violations that occur due to circumstances that are beyond the individual's control. The immense breadth of the bill would lead to cruel consequences—where people who run afoul of the title's provisions through no fault of their own, including children, would be subject to imprisonment and fines. To temper the draconian nature of this title, Democrats offered amendments to create an exception for those who did not intend to overstay or violate their status, for those who experienced a medical emergency which caused them to overstay or violate their status, and for those in Temporary Protected Status. All of these amendments were rejected in a party line vote.

VII. H.R. 2640 WOULD DECIMATE THE PAROLE POWER USED BY PRESIDENTS OF BOTH PARTIES FOR DECADES FOR HUMANITARIAN PURPOSES

Title VI, the "Immigration Parole Act of 2023," would decimate the parole power used by every president since Eisenhower. Where presidents historically were able to parole in individuals in response to humanitarian emergencies or in furtherance of foreign policy or public interest objectives, under this bill, such discretion would be severely curtailed. The changes proposed in the bill would prevent a future administration from utilizing parole in response to widespread emergencies, as the Biden Administration did in response to the fall of Afghanistan and Russia's unprovoked and unwarranted attack on Ukraine. The Majority picks and chooses winners and losers between currently existing parole programs, keeping the Cuban family reunification program, but axing a similar program for Haitians. It likewise precludes the President's recent parole programs for Ukrainians, Cubans, Haitians, Nicaraguans, and Venezuelans.

This provision also pretends to include a provision to cover the current military parole in place program, however the version contained in the legislation is far narrower than what exists in current policy. Title VI also limits the benefits available to parolees, allowing only paroled spouses and minor children of active duty servicemembers and Cuban family reunification parolees to obtain work authorization. All other parolees, including applicants for adjustment of status, would no longer be eligible for work authorization under this bill.

Title VI's far-reaching restrictions on the use of parole also impose extreme statutory limitations on ICE's discretion to release certain recent entrants, including vulnerable asylum seekers, from detention. The lengthy detention periods resulting from ICE's near-universal failure to exercise this discretion under the previous administration [14] illustrate the consequences of eliminating such discretion altogether. The Homeland Security Advisory Committee, for example, after examining the practice of detaining asylum-seeking family units, concluded that, "the cumulative effect over the course of longer stays can be and has been devastating for many families." [15]

[14] Meredith Hoffman, *Trump Era Ushers in New Unofficial Policy on Asylum-Seekers* (Apr. 4, 2017) Rolling Stone, available at: http://www.rollingstone.com/politics/features/trump-era-ushers-in-new-unofficial-policy-on-asylum-seekers-w473930.

[15] DHS Advisory Committee on Family Residential Centers, *ACFRC Consolidated Draft Subcommittees' Recommendation Report, "Report of the DHS Advisory Committee on Family Resi-*

The limitations on parole contained within this title would serve only to handicap an administration's ability to use all the tools it traditionally has to respond to humanitarian emergencies. As such, Democrats proffered numerous amendments to this title to continue the implementation of the current Haitian Family Reunification Program, the Uniting for Ukraine Program, and the Military Parole in Place Program, as well as to allow adjustment of status applicants to continue to obtain work authorization. Each amendment was rejected on a party line basis, but the Majority did indicate its willingness to further discuss the issue of adjustment of status applicants.

VIII. H.R. 2640 WOULD WRECK THE U.S. ECONOMY, HARM WORKERS, AND COST THE U.S. GOVERNMENT BILLIONS OF DOLLARS

Title VII, the "Legal Workforce Act," would make the use of E-Verify mandatory for all employers in the United States. E-Verify is an electronic employment eligibility verification system that began as a voluntary pilot program and is currently used by a small percentage of the nation's employers.

Without providing other reforms, including any meaningful opportunity for undocumented workers to regularize their status, this title would damage the U.S. economy, harm American workers, and result in billions of dollars in lost government revenue. For example, the Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT), in scoring the Legal Workforce Act in the 113th Congress, concluded that the bill would have resulted in a net revenue loss to the unified budget of $39 billion over ten years and increased budget deficits over that period by about $30 billion.[16] Contrast that with CBO and JCT's finding that the comprehensive reform bill which passed the Senate in 2013 would have reduced budget deficits by $158 billion over the first ten years and by about $685 billion over the next ten years.[17]

Moreover, as with prior versions of the Legal Workforce Act, this title has few due process protections for American workers who are wrongfully denied job opportunities or terminated as a result of E-Verify errors. The bill would also likely increase employment discrimination and worker abuse because of the manner in which it permits E Verify to be used and the lack of meaningful penalties for employers who abuse the system.

Our nation's immigration system is in desperate need of reform, as demonstrated by the 11 million undocumented immigrants currently living in the United States. Many are here because the U.S. economy needed their labor, but U.S. immigration laws did not provide viable pathways for their legal immigration. Nowhere is this truer than in agriculture, where 50 percent or more of the labor force is comprised of undocumented workers.

Mandating the nationwide use of E-Verify, without otherwise reforming the immigration system, would eliminate an important labor pool and destabilize agriculture and other industries that are

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dential Centers" (Sep. 30, 2016); https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf.

[16] Congressional Budget Office, Cost Estimate, H.R. 1772 (Dec. 17, 2013), http://www.cbo.gov/sites/default/files/cbofiles/attachments/hr1772.pdf.

[17] Letter from Douglas W. Elmendorf, Director, Congressional Budget Office, to Hon. Patrick J. Leahy, Chairman, S. Comm. on the Judiciary (July 3, 2013), http://www.cbo.gov/sites/default/files/cbofiles/attachments/s744aspassed.pdf.

at least partially dependent on foreign labor. Mandatory E-Verify would put U.S. farms out of business, ship millions of American jobs overseas, and increase U.S. reliance on imported food. Mandatory E-Verify would result in hundreds of thousands of unfilled farm jobs and would leave unpicked crops rotting in the fields, as we saw in Georgia in 2011 when a mandatory E-Verify law in the state resulted in over 11,000 farm jobs going unfilled during peak harvest season.[18] Workers—both documented and undocumented—were too scared to go to work, crops were left rotting in the field, and growers struggled to keep their businesses afloat. It would also eliminate millions of jobs supported by agriculture. Farmworkers support about 3.1 million upstream and downstream jobs for U.S. citizens in the food processing, packaging, transportation, marketing, and retail sectors, according to the Department of Agriculture.[19] The elimination of on-the-farm jobs through mandatory E-Verify would eliminate three times as many jobs for U.S. citizens in other sectors.

Members on both sides of the aisle agree that mandating the nationwide use of E Verify without any additional reforms or protections is a dangerous and wrongheaded idea. Representative Massie (R–KY) joined with Democrats in opposing this title, supporting a Democratic amendment to strike the title, and he offered several amendments of his own to address his concerns, but none of them garnered support from his fellow Republicans. He voted against final passage of the bill.

Democrats also offered an amendment to delay the implementation of the expanded E Verify requirements until the Secretaries of Homeland Security and Agriculture can certify that it would not cause a significant shortage of agricultural labor.

IX. CONCLUSION

H.R. 2640 is dangerously flawed legislation that would wreck our economy, destroy the asylum system, criminalize visa overstays, send unaccompanied children back to dangerous situations, and jail children indefinitely. Instead of working with Democrats on legislation that would fix our broken immigration system, Republicans are advancing a cruel, extreme, and unworkable proposal that takes us back to the failed, illegal, and immoral policies of the Trump administration. Immigration reform is a complex problem that requires comprehensive solutions, and an enforcement-only strategy simply doesn't work. If Republicans were actually concerned with securing the border, they would work with Democrats to secure our ports of entry, expand legal pathways for migrants, and address the root causes of migration. H.R. 2640 is not a serious solution for our broken immigration system.

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[18] Steven Gray, *Convicts or Illegals: Georgia Hunts for Farmworkers As Tough Immigration Law Takes Hold*, TIME, June 26, 2011, available at http://www.time.com/time/nation/article/0,8599,2079542,00.html.

[19] *Hearing to Review the Labor Needs of American Agriculture: Hearing Before the H. Comm. on Agriculture*, 110th Cong. 16 (2007) (testimony of James Holt, Agricultural Labor Economist), available at http://agriculture.house.gov/sites/republicans.agriculture.house.gov/files/testimony/110/110 30.pdf.

For all of these reasons, I dissent, and I urge all of my colleagues to oppose this legislation.

JERROLD NADLER,
Ranking Member.

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