

116TH CONGRESS
2D SESSION

H. R. 8954

To reform the process by which temporary nonagricultural workers' visas are allocated, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 14, 2020

Mr. CASTRO of Texas (for himself, Ms. JUDY CHU of California, Ms. BASS, Ms. SÁNCHEZ, Ms. JAYAPAL, Mr. LEVIN of Michigan, Ms. DELAURO, and Mr. POCAN) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To reform the process by which temporary nonagricultural workers' visas are allocated, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Seasonal Worker Soli-
5 darity Act of 2020”.

6 **SEC. 2. H-2B WORKERS.**

7 (a) IN GENERAL.—The Immigration and Nationality
8 Act (8 U.S.C. 1151 et seq.) is amended by inserting after
9 section 218 the following:

1 **“SEC. 218A. ADMISSION OF H-2B WORKERS.**

2 “(a) NATIONWIDE RECRUITMENT.—

3 “(1) IN GENERAL.—The Secretary of Labor
4 shall require employers to conduct recruitment ac-
5 tivities nationwide and consider, without prejudice,
6 applications from workers and labor organizations in
7 any region, including all of the States and territories
8 of the United States, consistent with the require-
9 ments in section 101(a)(15)(H)(ii)(b) of the Immi-
10 gration and Nationality Act. The Secretary shall co-
11 ordinate with State Workforce Agencies to conduct
12 concerted recruitment in any State or metropolitan
13 statistical areas designated by the Secretary of
14 Labor as a Labor Surplus Area.

15 “(2) DISASTER RESPONSE WORKERS.—

16 “(A) DISASTER RESPONSE PRIORITY FOR
17 DISPLACED WORKERS.—Any worker authorized
18 to work in the United States who is displaced
19 as a result of a local, State, or nationally de-
20 clared disaster shall be given priority for em-
21 ployment as a temporary nonagricultural work-
22 er.

23 “(B) SUPPLEMENTAL INFORMATION.—

24 Employers seeking to hire temporary non-
25 agricultural workers for disaster response shall
26 submit to the Secretary of Labor a supple-

1 mental worksheet detailing the health and safe-
2 ty training plan and equipment to be provided
3 to temporary nonagricultural workers to ensure
4 health and safety of such workers in impacted
5 geographical areas.

6 “(C) PLAN APPROVAL.—The Secretary of
7 Labor may not issue a labor certification unless
8 the Secretary approves the plan to adequately
9 protect workers in declared disaster areas sub-
10 mitted under this paragraph.

11 “(b) ADVISORY COMMITTEE.—In accordance with the
12 provisions of the Federal Advisory Committee Act, the
13 Secretary of Labor shall establish an advisory committee
14 not later than 5 months after the date of enactment of
15 the Seasonal Worker Solidarity Act of 2020, whose mem-
16 bership shall consist of representatives from the Depart-
17 ment of Labor, State Workforce Agencies, and labor orga-
18 nizations, and organizations advocating for workers in rel-
19 evant industries. The advisory committee shall meet on a
20 periodic basis and shall advise the Secretary of Labor on
21 issues related to improving recruitment of United States
22 workers and the development, testing, and implementation
23 of the recruitment platform described in subsection (c)
24 and the prevention of discrimination in the recruitment,
25 hiring, and treatment of temporary nonagricultural work-

1 ers. Not later than 18 months after the date on which
2 the advisory committee hold its initial meeting, the com-
3 mittee shall submit to the Secretary of Labor and Con-
4 gress a report on issues related to improving recruitment
5 of United States workers and the development, testing,
6 and implementation of the recruitment platform and the
7 prevention of discrimination in the recruitment, hiring,
8 and treatment of temporary nonagricultural workers.

9 “(c) RECRUITMENT PLATFORM.—

10 “(1) CREATION.—Not later than 90 days after
11 the date of enactment of the Seasonal Worker Soli-
12 darity Act of 2020, the Secretary of Labor shall cre-
13 ate and make available on the Department of Labor
14 website a centralized, national electronic seasonal
15 and temporary job search and worker recruitment
16 platform (in this section referred to as the ‘recruit-
17 ment platform’) for employment opportunities for
18 which employers are seeking authorization to hire
19 H–2B workers.

20 “(2) PURPOSE.—The recruitment platform
21 shall allow applicants to submit applications for
22 available positions electronically to—

23 “(A) facilitate the nationwide recruitment
24 of United States workers; and

1 “(B) provide transparency about United
2 States employment opportunities for job seekers
3 outside of the United States.

4 “(3) NOTIFICATION.—The Secretary of Labor
5 shall create a mechanism by which the public, job
6 seekers, State Workforce Agencies, labor unions, and
7 other organizations are able to receive electronic no-
8 tification within 24 hours when job orders in rel-
9 evant industries and regions are posted to the
10 website.

11 “(4) REGISTRATION.—An employer seeking to
12 recruit temporary nonagricultural workers shall reg-
13 ister on the recruitment platform and job orders on
14 the recruitment platform may only be posted by such
15 registered employers.

16 “(5) ARCHIVES.—Job orders shall remain pub-
17 licly accessible for a period of at least 5 years after
18 the original posting date.

19 “(d) PUBLIC RESPONSE.—The Secretary of Labor,
20 in consultation with the Secretary of Homeland Security,
21 shall develop a streamlined process for labor organiza-
22 tions, and organizations advocating for workers in relevant
23 industries, to publicly challenge an employer’s claim of
24 temporary need, wage rates, job requirements posted to

1 the recruitment platform, or any other employment issue
2 related to temporary nonagricultural workers.

3 “(e) EMPLOYER CERTIFICATION.—When registering
4 on the recruitment platform, an employer shall certify
5 compliance with each of the following:

6 “(1) SAFE AND FAIR WORKPLACE.—

7 “(A) IN GENERAL.—The employer shall, in
8 addition to all other certifications required by
9 the Secretary of Labor meet the following re-
10 quirements:

11 “(i) LEGAL COMPLIANCE.—The em-
12 ployer shall comply with Federal law and
13 any applicable State law, or local law or
14 ordinance, and recognize any labor organi-
15 zation that provides evidence of support
16 from a majority of the workforce.

17 “(ii) WORKERS’ COMPENSATION.—
18 The employer shall provide workers’ com-
19 pensation insurance coverage in compliance
20 with State law covering injury and disease
21 arising out of and in the course of the
22 worker’s employment. If the type of em-
23 ployment for which the certification is
24 sought is not covered by or is exempt from
25 the State’s workers’ compensation law, the

1 employer shall provide, at no cost to the
2 worker, insurance covering injury and dis-
3 ease arising out of and in the course of the
4 worker's employment that shall provide
5 benefits at least equal to those provided
6 under the State workers' compensation law
7 for other comparable employment.

8 “(iii) CONDITIONS OF EMPLOY-
9 MENT.—The employer shall offer the same
10 terms and conditions of employment
11 whether the workers hired to fill posted po-
12 sitions are recruited domestically or from
13 abroad.

14 “(B) PENALTY.—The National Labor Re-
15 lations Board shall, within 2 weeks of employer
16 registration, review relevant records to verify
17 employer compliance with this paragraph over
18 the previous 5-year period. An employer who
19 has failed to comply shall be subject to a 2-year
20 suspension from the H-2B program and the
21 use of the recruitment platform.

22 “(2) POSTING.—

23 “(A) IN GENERAL.—The employer shall
24 post job orders on the recruitment platform for
25 60 days before applying for an H-2B labor cer-

1 tification. Any United States applicant who ap-
2 plies for a job on the recruitment platform may
3 only be rejected for job-related reasons and
4 those found by the Secretary of Labor to have
5 been rejected on any other basis shall be hired.
6 Each employer shall retain records of all hired
7 workers and rejected applicants for 5 years.

8 “(B) LANGUAGE.—The following are re-
9 quirements with respect to job order postings
10 on the recruitment platform:

11 “(i) In the case of any employer
12 whose workforce is comprised of a signifi-
13 cant portion of workers who are not lit-
14 erate in English, such employer shall pro-
15 vide the job order posting in a language in
16 which the employees are literate.

17 “(ii) The Secretary of Labor shall
18 post all job orders prepared by employers
19 in English, Spanish, and such other lan-
20 guage as the Secretary may determine nec-
21 essary on their website.

22 “(C) FORMAT.—Each job order shall be
23 posted in a standard format, developed by the
24 Secretary of Labor, which shall include such

1 terms and conditions of employment as the Sec-
2 retary may require, including—

3 “(i) the States and locations in which
4 workers will be employed and information
5 that is searchable and shareable in an elec-
6 tronic format;

7 “(ii) wages, hours, working conditions,
8 worksite, and other benefits of employment
9 that the Secretary of Labor, in consulta-
10 tion with State Workforce Agencies, deter-
11 mines are in compliance with requirements
12 of Federal, State, and local law; and

13 “(iii) official forms submitted by pro-
14 spective H-2B employers to secure labor
15 certification and prevailing wage deter-
16 minations, including any approvals thereof
17 by the Secretary of Labor.

18 “(3) UNION APPLICANTS.—The employer shall
19 consider applicants or groups of applicants put for-
20 ward by United States labor organizations and orga-
21 nizations advocating for workers in relevant indus-
22 tries that have qualified members available for post-
23 ed job orders. The employer shall recognize the
24 union training credentials of members of United
25 States labor unions who come from abroad and such

1 members shall be eligible for H-2B visas that are
2 exempt from annual numerical limitations.

3 “(4) WORKER QUALIFICATIONS.—

4 “(A) IN GENERAL.—The employer shall
5 hire workers who meet the minimum qualifica-
6 tions for a position, and shall not impose un-
7 necessary experience or educational require-
8 ments of applicants, and shall not require
9 criminal background checks, unless otherwise
10 required by law for the specific position.

11 “(B) POSITIONS REQUIRING LITTLE OR NO
12 EXPERIENCE.—In the case that the Secretary
13 of Labor determines that a position is in an Oc-
14 cupational Information Network Job Zone One
15 occupation requiring little or no prior training
16 or experience, the Secretary shall not permit an
17 employer to require prior training or experience
18 for the position.

19 “(5) WAGE RATES.—The salaries paid to H-2B
20 workers shall be set at rates that do not adversely
21 affect the local or national average wages in the oc-
22 cupations of employment or otherwise negatively im-
23 pact the working conditions and benefits of workers
24 in the United States who are similarly employed.

1 “(6) MINIMUM WORK HOURS.—The employer
2 shall guarantee that temporary nonagricultural
3 workers are paid for at least the number of hours
4 stipulated on the job order, and not less than 40
5 hours per week.

6 “(7) TRANSPORTATION AND HOUSING.—The
7 employer shall provide transportation and offer
8 housing for any temporary nonagricultural workers
9 hired to fill posted job orders as follows:

10 “(A) TRANSPORTATION.—

11 “(i) TRANSPORTATION TO AND FROM
12 PLACE OF EMPLOYMENT.—The employer
13 shall provide transportation and subsist-
14 ence for each temporary nonagricultural
15 worker to travel from the worker’s place of
16 permanent residence to the place of em-
17 ployment and back at no cost to the work-
18 er.

19 “(ii) TRANSPORTATION BETWEEN LIV-
20 ING QUARTERS AND WORKSITE.—The em-
21 ployer shall provide daily round-trip trans-
22 portation between living quarters and
23 worksite at no cost to workers, whether or
24 not the housing is employer provided.

1 “(iii) EMPLOYER-PROVIDED TRANS-
2 PORTATION.—All employer-provided trans-
3 portation shall comply with all applicable
4 Federal, State, or local laws and regula-
5 tions, and shall meet all relevant transpor-
6 tation safety standards, driver licensure,
7 and vehicle insurance requirements.

8 “(iv) EMPLOYER-REIMBURSED TRANS-
9 PORTATION.—Notwithstanding clauses (i),
10 (ii), and (iii), in lieu of providing transpor-
11 tation to a temporary nonagricultural
12 worker, an employer may reimburse a such
13 worker for transportation if such reim-
14 bursement is made not later than 5 busi-
15 ness days after receipt of written docu-
16 mentation of the worker’s transportation
17 costs.

18 “(B) HOUSING.—

19 “(i) OBLIGATION TO PROVIDE HOUS-
20 ING.—The employer shall provide housing
21 at no cost to temporary nonagricultural
22 workers who seek such housing and H-2B
23 workers. Housing shall meet the following
24 criteria:

1 “(I) HOUSING STANDARDS.—
2 Employer-provided housing may be
3 owned or rented by the employer and
4 shall meet Federal temporary housing
5 regulations and comply with all other
6 applicable Federal, State, or local
7 laws and regulations and meet all rel-
8 evant Occupational Safety and Health
9 Administration standards. The em-
10 ployer shall retain for at least 5 years
11 any records documenting that the em-
12 ployer-provided housing is compliant
13 with such laws, regulations, and
14 standards.

15 “(II) HOUSING COSTS AND
16 FEES.—In a case in which the em-
17 ployer provides rented housing, hous-
18 ing fees shall be paid according to the
19 following criteria:

20 “(aa) RENTAL COSTS AND
21 FEES.—Any costs, including
22 charges and fees for rental hous-
23 ing, shall be paid by the employer
24 to the owner or operator of the
25 housing.

1 “(bb) DEPOSIT CHARGES.—

2 Neither employers nor landlords
3 may charge workers for bedding,
4 furnishings, or other similar
5 incidentals related to housing. An
6 employer may require workers to
7 reimburse the employer for dam-
8 age for which they are respon-
9 sible and which is not the result
10 of normal wear and tear related
11 to habitation.

12 “(cc) CHARGES FOR PUBLIC
13 HOUSING.—If the employer se-
14 cures public housing for tem-
15 porary nonagricultural workers
16 under the auspices of a local or
17 State government, the employer
18 shall pay any charges normally
19 required for use of the public
20 housing units directly to the
21 housing’s management.

22 “(ii) FAMILY HOUSING.—Family
23 housing shall be made available to spouses
24 and dependents of temporary non-
25 agricultural workers who request it, and

1 employers should inform temporary non-
2 agricultural workers at the time of hire of
3 the right to make such a request.

4 “(8) RECORDS.—The employer shall maintain
5 certified payroll records, which shall be made avail-
6 able to the Department of Labor, workers and the
7 designees of such workers upon request. Such
8 records shall not be subject to the Freedom of Infor-
9 mation Act and shall be maintained by an employer
10 for five calendar years after the last date of employ-
11 ment. The employer shall issue pay statements in
12 both a paper and electronic format to workers that
13 clearly enumerate wage rates, hours, and all deduc-
14 tions and identify the legal name, business address,
15 and Federal employer identification number of the
16 employer. H-2B wages shall be paid by the employer
17 who submits the labor certification application.

18 “(9) DIRECT EMPLOYMENT.—A registered em-
19 ployer shall employ temporary nonagricultural work-
20 ers directly and not place H-2B workers under the
21 direct or indirect supervision of a third party em-
22 ployer, agency, or contractor. Subcontracting of H-
23 2B workers is prohibited.

24 “(10) HIRING H-2B WORKERS.—Before hiring
25 H-2B workers and after at least 60 days of domes-

1 tic recruitment on the national recruitment platform,
2 the employer shall—

3 “(A) attest to a shortage of workers in the
4 local surrounding areas and across the United
5 States; and

6 “(B) at the time of recruitment and upon
7 hire, provide H-2B workers with a written no-
8 tice, in a language that the worker understands,
9 that identifies the job classification, describes
10 duties, compensation, hours, all relevant terms
11 of employment, housing, and transportation and
12 information on applicable labor and employment
13 rights, including the right to form or join a
14 labor organization under the National Labor
15 Relations Act.

16 “(11) SUPPLY CHAIN DISCLOSURE AND RE-
17 QUIREMENTS.—

18 “(A) IN GENERAL.—The employer shall
19 disclose the entire recruitment supply chain, in-
20 cluding any recruiters or foreign or domestic
21 labor contractors and subagent local recruiters
22 involved in securing workers for job postings
23 and any funding sources for the work to be pro-
24 vided, including both public and private con-
25 tracts.

1 “(B) JOINT AND SEVERAL LIABILITY.—

2 The employer shall be jointly and severally lia-
3 ble for the actions of any recruiters or foreign
4 or domestic labor contractors involved in or act-
5 ing on behalf of the employer in securing work-
6 ers for job postings.

7 “(C) WRITTEN VERIFICATIONS.—The em-
8 ployer shall obtain and submit to the Secretary
9 of Labor written certifications that any and all
10 recruiters or foreign or domestic labor contrac-
11 tors in the supply chain shall—

12 “(i) engage in non-discriminatory hir-
13 ing practices;

14 “(ii) at the time of recruitment and in
15 a language the workers understand, pro-
16 vide workers with posted job orders and
17 terms and conditions of employment;

18 “(iii) not charge fees of any kind to
19 any applicant or job seeker, including in
20 the form of loans, deductions, or kick-
21 backs; and

22 “(iv) not engage in forms of retalia-
23 tion, including blacklisting.

24 “(f) PUBLISHED ATTESTATIONS.—Employer attesta-
25 tions and data disclosures made pursuant to this section

1 shall be made publicly available on the national job search
2 and worker recruitment platform immediately upon being
3 entered into the system.

4 “(g) NON-DISCRIMINATION AND WAGE EQUITY.—

5 “(1) APPLICATION REVIEW.—

6 “(A) IN GENERAL.—In order to prevent
7 adverse effects on the wages of United States
8 workers, employers shall offer and pay United
9 States workers and H-2B workers the highest
10 of—

11 “(i) the mean of the wages of workers
12 similarly employed in the area of intended
13 employment using the wage component of
14 the Bureau of Labor Statistics Occupa-
15 tional Employment Statistics Survey;

16 “(ii) 200 percent of the Federal min-
17 imum wage;

18 “(iii) any collectively bargained wage
19 and fringe rates for the broad occupational
20 category within each State of employment;

21 “(iv) wage and fringe benefit rates ap-
22 plicable to similar construction, alteration,
23 or repair work in the locality as deter-
24 mined by the Secretary of Labor in accord-
25 ance with subchapter IV of chapter 31 of

1 title 40, United States Code (known as the
2 Davis-Bacon Act); and

3 “(v) any wage and fringe benefit rates
4 for the occupation established by chapter
5 67 of title 41 (known as the McNamara-
6 O’Hara Service Contract of 1965).

7 “(B) OCCUPATION DESIGNATION.—For
8 purposes of this paragraph, the term ‘occupa-
9 tion’ does not include an occupation that is a
10 subset of a Standard Occupational Classifica-
11 tion or a Department of Labor approved Occu-
12 pational Information Network subclassification
13 if such subset or subclassification would result
14 in an average wage that is lower than the aver-
15 age wage in the Standard Occupational Classi-
16 fication from which the subset or subclassifica-
17 tion is derived.

18 “(2) WAGE SURVEYS.—The Secretary of Labor
19 may only consider Federal data sources and may not
20 permit the use of private wage surveys or wage sur-
21 veys conducted by State or local public agencies or
22 private entities to establish the mean wage for an oc-
23 cupation under paragraph (1)(A)(i).

1 “(3) LABOR CERTIFICATIONS.—Prior to ap-
2 proving a labor certification, the Secretary of Labor
3 shall—

4 “(A) cross reference each employer appli-
5 cant with relevant Department of Labor data-
6 bases, including the Equal Employment Oppor-
7 tunity Commission database, and National
8 Labor Relations Board databases to determine
9 whether a labor dispute or investigation is on-
10 going; and

11 “(B) in the event of an ongoing labor dis-
12 pute or investigation, implement supplemental
13 measures to prevent abuses of temporary non-
14 agricultural workers, including onsite visits,
15 interviewing workers, requiring additional safe-
16 ty measures, and denying certifications when
17 appropriate.

18 “(4) AUDIT.—Every fiscal year, the Secretary
19 of Labor shall conduct random audits of not less
20 than 5 percent of all H-2B employers and not less
21 than 50 percent of all employers employing more
22 than 50 H-2B workers. The Secretary of Labor
23 shall give priority to the audit of employers with a
24 workforce in which at least 15 percent of workers
25 have H-2B status. The audits shall assess—

1 “(A) whether the employer is engaging in
2 criminal background checks that are not other-
3 wise required by a Federal, State, or local law;

4 “(B) whether experience requirements are
5 reasonable for the indicated Occupational Infor-
6 mation Network level and commensurate with
7 the advertised position, and whether such re-
8 quirements are used to screen out applicants
9 based on their race, age, national origin, dis-
10 ability, genetic information, religious belief, or
11 sex, including sexual orientation or gender iden-
12 tity;

13 “(C) whether an employer’s hiring prac-
14 tices are having a disparate impact on employ-
15 ees;

16 “(D) whether an employer is adhering to
17 the terms of the job order, employment con-
18 tract, or collective bargaining agreement and
19 has paid the promised wage rates listed on the
20 labor certification and petition for an H-2B
21 worker, as well as any other applicable overtime
22 hours, fringe benefits, or bonuses;

23 “(E) whether the employer has engaged in
24 retaliation;

1 “(F) whether the employer has committed
2 or is being investigated for any other violations
3 of labor and employment law;

4 “(G) whether housing and transportation
5 provided to temporary nonagricultural workers
6 meets all relevant standards; and

7 “(H) whether recruiters designated by the
8 H-2B employers are in compliance with labor
9 and employment laws.

10 “(5) OVERSIGHT.—The Secretary of Labor
11 shall conduct active and ongoing oversight of the re-
12 cruitment platform, registered employers, and the
13 H-2B program to ensure that—

14 “(A) there is no adverse effect on wages
15 and working conditions;

16 “(B) United States workers and H-2B
17 workers receive equal treatment;

18 “(C) any application for labor certification
19 that does not meet the requirements of this sec-
20 tion is denied;

21 “(D) action is taken based on the audits
22 conducted pursuant to paragraph (4), includ-
23 ing—

24 “(i) the initiation of civil or criminal
25 proceedings where appropriate;

1 “(ii) the identification of and public
2 reporting of recurring challenges for
3 women and other protected classes and
4 underrepresented groups seeking tem-
5 porary nonagricultural employment; and

6 “(iii) the initiation process for suspen-
7 sion or permanent debarment of employers
8 where appropriate.

9 “(6) EQUAL OPPORTUNITY ADVOCATE.—The
10 Secretary of Labor shall create an H-2B Equal Op-
11 portunity Advocate position to investigate, report on,
12 and address any challenges identified under para-
13 graph (4)(B). The Equal Opportunity Advocate shall
14 report to and consult with the Advisory Committee.

15 “(h) VISA ALLOCATION.—

16 “(1) DURATION.—In order to be eligible for the
17 H-2B program, a job order may not exceed a term
18 of 7 months.

19 “(2) QUARTERLY ALLOCATION.—Every quarter
20 of the fiscal year, the Secretary of Homeland Secu-
21 rity shall make available one-fourth of all H-2B pe-
22 titions subject to the annual numerical limit. Any
23 unused H-2B petition numbers shall roll over to the
24 following quarter in the same fiscal year, but shall
25 not roll over to the following fiscal year.

1 “(3) CAP PER EMPLOYER.—An employer may
2 not employ more than 100 H–2B workers, including
3 any workers hired by a subcontractor of the em-
4 ployer, at any time.

5 “(4) LIMITATIONS ON H–2B SHARE OF A WORK-
6 FORCE.—If an employer employs 50 or more work-
7 ers in the United States, the sum of the number of
8 such workers who are H–2B workers may not exceed
9 50 percent of the total number of workers employed.

10 “(5) PRIORITY.—In a case in which demand for
11 visas exceeds supply in any given quarter, the Sec-
12 retary of Homeland Security shall give priority in
13 visa issuance to employers that—

14 “(A) pay wages at the 75th percentile or
15 above based on Department of Labor survey
16 data or collectively bargained wages or Davis
17 Bacon wages;

18 “(B) are seeking to employ H–2B workers
19 on worksites located in States with exception-
20 ally low unemployment rates;

21 “(C) are hiring returning workers pre-
22 viously employed in H–2B nonimmigrant status
23 or workers from underrepresented groups
24 (based on gender, country of origin, or occupa-
25 tion); or

1 “(D) have less than 15 percent of their
2 workforce in the United States comprised of H–
3 2B workers.

4 “(i) ASSESSMENT.—The Secretary of Labor shall as-
5 sess a fee on each employer to fund the labor certification
6 process at such amount as may be necessary to support
7 effective processing by the Department of Labor, and
8 meaningful investigation and enforcement of worker pro-
9 tections, and may update the fee as necessary to meet the
10 requirement. The Secretary of Homeland Security shall
11 have the authority to assess and periodically update fees
12 on each employer for the processing and adjudication of
13 petitions in order to support effective processing and adju-
14 dication, if and when the Secretary determines that the
15 fees are insufficient for doing so.

16 “(j) LIMITATION ON ASSIGNMENT.—Employers shall
17 not assign H–2B workers to a worksite other than the
18 worksite stipulated on an employer’s original job order
19 without obtaining the workers’ consent and a new labor
20 certification.

21 “(k) EMPLOYMENT AUTHORIZATIONS.—An H–4
22 nonimmigrant spouse of an H–2B nonimmigrant shall be
23 eligible to apply for employment authorization with the
24 Secretary of Homeland Security but shall be prohibited

1 from accepting employment with the same employer as the
2 principal H–2B nonimmigrant.

3 “(l) EMPLOYER ACCOUNTABILITY.—

4 “(1) USE OF OTHER VISA PROGRAMS.—Within
5 any 2-year period, an employer of H–2B workers
6 may not employ directly or through subcontractors,
7 any workers in the same broad occupational category
8 or industry through any other nonimmigrant visa
9 program except those workers who are employed—
10 authorized through a nonimmigrant visa issued for
11 humanitarian or family purposes. Any employer
12 found to have violated this paragraph shall be sub-
13 ject to a 2-year suspension from employing non-
14 immigrants or using the recruitment platform.

15 “(2) FAIR PAY AND SAFE WORKPLACE.—

16 “(A) IN GENERAL.—In the case that a reg-
17 istered employer is found to have violated the
18 terms of this section, including the fair pay and
19 safe workplaces commitment, the established
20 prevailing wage under subsection (j)(2), or the
21 provision on working conditions such registered
22 employer and the principals, subsidiary, owner,
23 or affiliated company of such registered em-
24 ployer shall be subject to a 2-year suspension
25 from employing nonimmigrants or using the re-

1 cruitment platform for the first violation and
2 permanent debarment for subsequent violations.

3 “(B) RELIANCE.—In making a determina-
4 tion under subparagraph (A), the Secretary of
5 Labor or the Secretary of Homeland Security
6 may rely on findings of a Federal, State, or
7 local agency or court that an employer has vio-
8 lated Federal, State, or local employment laws.

9 “(3) OTHER VIOLATIONS.—

10 “(A) IN GENERAL.—Any employer of an
11 H-2B worker, or the successor in interest of
12 that employer, who is determined by the Sec-
13 retary of Labor or the Secretary of Homeland
14 Security to have committed a violation of this
15 section at any time, including a misdemeanor or
16 felony violation, shall be subject to immediate
17 suspension.

18 “(B) RELIANCE.—In making a determina-
19 tion under subparagraph (A), the Secretary of
20 Labor or the Secretary of Homeland Security
21 may rely on findings of a Federal, State, or
22 local agency or court that an employer has vio-
23 lated Federal, State, or local employment laws.

24 “(4) JOINT AND SEVERAL LIABILITY.—Employ-
25 ers shall be jointly and severally liable for the ac-

1 tions of any recruiter and foreign labor contractor of
2 the employer in violation of any H-2B regulation,
3 requirement, or other labor or employment law.

4 “(5) STATUTE OF LIMITATIONS.—The com-
5 mencement of a civil action shall be barred unless
6 such action is commenced before the date that is 10
7 years after the right of action accrues.

8 “(m) REDRESS FOR WORKERS.—

9 “(1) PRIVATE RIGHT OF ACTION AND FEE
10 SHIFTING.—A temporary nonagricultural worker
11 may bring a civil action before any district court of
12 the United States, or other court having jurisdiction
13 over the parties, against an employer or recruiter
14 who violates any H-2B regulation, requirement, or
15 other labor or employment law, or who retaliates
16 against a worker who exercises the worker’s rights
17 under this section, without respect to the amount in
18 controversy and without regard to the citizenship of
19 the parties and without regard to exhaustion of any
20 alternative administrative remedies. Any such em-
21 ployer shall be liable for back pay, unpaid wages,
22 and other damages, including general, compensatory,
23 and punitive damages, and reasonable attorneys’
24 fees. An employer may not require, as a condition of
25 employment, mandatory arbitration of private

1 claims. A waiver of any right created under this law
2 shall be void and unenforceable.

3 “(2) LEGAL SERVICES.—H-2B workers shall be
4 eligible to be represented by the Legal Services Cor-
5 poration and service providers that are recipients of
6 Legal Services Corporation funds.

7 “(3) APPOINTMENT OF ATTORNEY AND COM-
8 MENCEMENT OF ACTION.—Upon application by a
9 complainant and in such circumstances as the court
10 may determine just, the court may appoint an attor-
11 ney for such complainant and may authorize the
12 commencement of the action.

13 “(n) INJUNCTION AUTHORITY.—The Attorney Gen-
14 eral may, on his or her own or at the request of the Sec-
15 retary of Labor or the Secretary of Homeland Security,
16 bring a civil action before any district court of the United
17 States to seeking an order of injunction against any em-
18 ployer or recruiter who violates any H-2B regulation, re-
19 quirement, or other labor or employment law, or who re-
20 taliates against a worker who exercises the worker’s rights
21 under this section.

22 “(o) REBUTTABLE PRESUMPTION.—There shall be a
23 rebuttable presumption that a worker is the subject of re-
24 taliation if a worker exercises a protected right, assists
25 in a labor agency investigation, or complains about work-

1 ing conditions and is not hired for another posted job for
2 which the worker is qualified within 1 year after the end
3 of the contract in which the worker was engaged when
4 he or she exercised such right or complained about such
5 condition.

6 “(p) NATIONAL ORIGIN.—

7 “(1) IN GENERAL.—The Secretary of Homeland
8 Security, in consultation with the Secretary of State,
9 shall—

10 “(A) on the date of enactment of this sec-
11 tion, designate all countries as eligible for H-
12 2B recruitment;

13 “(B) formulate and publish clear criteria
14 for temporarily designating countries as ineli-
15 gible after the date of enactment of this section;
16 and

17 “(C) disclose reasons and evidence for tem-
18 porarily designating a country as ineligible after
19 the date of enactment of this section.

20 “(2) JUDICIAL REVIEW.—The temporary des-
21 ignation of a country as ineligible for H-2B recruit-
22 ment shall be subject to judicial review.

23 “(q) VISA FOR ACCEPTED POSITION.—

1 “(1) IN GENERAL.—The Secretary of State
2 shall issue a 7-month visa to a worker for each H-
3 2B position the worker accepts.

4 “(2) CONTROL.—An H-2B worker may self-pe-
5 tition to request a change of status to a new H-2B
6 employer. An H-2B worker who notifies the Depart-
7 ment of Labor of intent to change employers shall
8 receive a 60-day grace period in which to secure a
9 new position.

10 “(3) RECRUITMENT FEES.—Employers shall be
11 responsible for all fees associated with H-2B labor
12 certifications, petitions, and visa applications. Em-
13 ployers may not collect a job placement fee or other
14 compensation (either direct or indirect) at any time,
15 including before or after a labor certification or peti-
16 tion have been approved, as a condition of employ-
17 ment of a temporary nonagricultural worker.

18 “(4) UNEMPLOYMENT PERIOD.—An alien with
19 H-2B worker status may not be unemployed for
20 more than a 60-day period, during which time the
21 worker may apply for open positions on the H-2B
22 jobs portal, and shall have priority for hiring before
23 new H-2B applicants.

24 “(r) COUNTRY OF ORIGIN VIOLATIONS.—An H-2B
25 worker who experiences or reports, in the worker’s country

1 of origin, retaliation or other violations of this section by
2 a United States employer, or a recruiter or foreign labor
3 contractor working on behalf of such employer, shall be
4 eligible for parole for a period of not less than 2 years
5 in order to return to the United States to seek legal re-
6 dress.

7 “(s) STATE WORKFORCE AGENCIES.—The Secretary
8 of Labor shall allocate such funds as may be necessary
9 to train State Workforce Agencies on the H-2B program
10 and the recruitment platform so such agencies can assist
11 with efforts to recruit available United States workers, in-
12 cluding through engagement with any and all relevant
13 labor organizations and organizations advocating for
14 workers in relevant industries. In any State with more
15 than 200 approved H-2B labor certifications, the State
16 Workforce Agency shall prepare, in consultation with labor
17 organizations and organizations advocating for workers in
18 relevant industries, an annual plan to identify and address
19 the barriers to employment, such as housing or transpor-
20 tation, that discourage unemployed or underemployed
21 U.S. workers from applying for such jobs.

22 “(t) DEFINITIONS.—In this section:

23 “(1) DISCLOSE.—The term ‘disclose’ means to
24 make a formal or informal communication or trans-
25 mission.

1 “(2) EMPLOY.—The term ‘employ’ has the
2 meaning given such term under section 3(g) of the
3 Fair Labor Standards Act of 1938 (29 U.S.C.
4 203(g)).

5 “(3) H-2B WORKER.—The term ‘H-2B work-
6 er’ means a nonimmigrant authorized or previously
7 authorized to work in the United States pursuant to
8 section 101(a)(15)(H)(ii)(B).

9 “(4) LABOR CONTRACTOR.—The term ‘labor
10 contractor’ means any person, other than an em-
11 ployer, who is contracted to perform any recruitment
12 activity on behalf of an employer, whether domesti-
13 cally or abroad.

14 “(5) LABOR SURPLUS AREA.—The term ‘Labor
15 Surplus Area’ is any area in which the unemploy-
16 ment rate is more than 6 percent or is at least 20
17 percent above the national unemployment rate.

18 “(6) PLACE OF EMPLOYMENT.—The term
19 ‘place of employment’ means the geographic location
20 in which work occurs, and where the living quarters
21 are located.

22 “(7) RECRUITER.—The term ‘recruiter’ means
23 any person, other than an employer, who performs
24 any recruitment activity on behalf of an employer,
25 whether domestically or abroad.

1 “(8) RECRUITMENT.—The term ‘recruitment’
2 means advertising, disseminating information, selec-
3 tion, placement into employment, housing and trans-
4 port to and from place of permanent residence for
5 temporary nonagricultural workers. The term applies
6 to both jobseekers and those who are or were em-
7 ployed.

8 “(9) TEMPORARY NONAGRICULTURAL WORK-
9 ER.—The term ‘temporary nonagricultural worker’
10 means an individual who is, has been, or is seeking
11 to be employed in a position posted on the Depart-
12 ment of Labor’s seasonal job search and recruitment
13 platform, regardless of immigration status.

14 “(10) STATE.—The term ‘State’ means any of
15 the States of the United States, the District of Co-
16 lumbia, the United States Virgin Islands, the Com-
17 monwealth of Puerto Rico, and Guam.

18 “(11) WORKER.—The term ‘worker’ means an
19 individual who is, has been, or is seeking to be em-
20 ployed or otherwise perform work for pay, regardless
21 of immigration status.

22 “(12) WORKSITE.—The term ‘worksite’ means
23 the physical location of the job for which the worker
24 is hired.”.

1 (b) NUMERICAL LIMITATION CONFORMING AMEND-
 2 MENTS.—Section 214(g)(10) of the Immigration and Na-
 3 tionality Act is amended—

4 (1) by striking “first 6 months” and inserting
 5 “every 3 months”; and

6 (2) by striking “33,000” and inserting
 7 “16,500”.

8 **SEC. 3. VICTIMS OF SERIOUS LABOR AND EMPLOYMENT**
 9 **VIOLATIONS OR CRIME.**

10 (a) PROTECTION FOR VICTIMS OF LABOR AND EM-
 11 PLOYMENT VIOLATIONS.—Section 101(a)(15)(U) of the
 12 Immigration and Nationality Act (8 U.S.C.
 13 1101(a)(15)(U)) is amended—

14 (1) in clause (i)—

15 (A) by amending subclause (I) to read as
 16 follows:

17 “(I) the alien—

18 “(aa) has suffered substan-
 19 tial abuse or harm as a result of
 20 having been a victim of criminal
 21 activity described in clause (iii);

22 “(bb) has suffered substan-
 23 tial abuse or harm related to a
 24 violation described in clause (iv);

1 “(cc) is a victim of criminal
2 activity described in clause (iii)
3 and would suffer extreme hard-
4 ship upon removal; or

5 “(dd) has suffered a viola-
6 tion described in clause (iv) and
7 would suffer extreme hardship
8 upon removal;”;

9 (B) in subclause (II), by inserting “, or a
10 labor or employment violation resulting in a
11 workplace claim described in clause (iv)” before
12 the semicolon at the end;

13 (C) in subclause (III)—

14 (i) by striking “or State judge, to the
15 Service” and inserting “, State, or local
16 judge, to the Department of Homeland Se-
17 curity, to the Equal Employment Oppor-
18 tunity Commission, to the Department of
19 Labor, to the National Labor Relations
20 Board”; and

21 (ii) by inserting “, or investigating,
22 prosecuting, or seeking civil remedies for a
23 labor or employment violation related to a
24 workplace claim described in clause (iv)”
25 before the semicolon at the end; and

1 (D) in subclause (IV)—

2 (i) by inserting “(aa)” after “(IV)”;

3 and

4 (ii) by adding at the end the fol-
5 lowing: “or

6 “(bb) a workplace claim described in clause (iv) re-
7 sulting from a labor or employment violation;”;

8 (2) in clause (ii)(II), by striking “and” at the
9 end;

10 (3) in clause (iii), by striking “or” at the end
11 and inserting “and”; and

12 (4) by adding at the end the following:

13 “(iv) in the labor or employment vio-
14 lation related to a workplace claim, the
15 alien—

16 “(I) has filed, is a material wit-
17 ness in, or is likely to be helpful in the
18 investigation of, a bona fide workplace
19 claim or other qualifying crime (as de-
20 fined in section
21 274A(e)(10)(C)(iii)(II)); and

22 “(II) reasonably fears, has been
23 threatened with, or has been the vic-
24 tim of, an action involving force, phys-
25 ical restraint, retaliation, or abuse of

1 the immigration or other legal process
2 against the alien or another person by
3 the employer in relation to acts under-
4 lying the workplace claim or related to
5 the filing of the workplace claim; or”.

6 (b) TEMPORARY PROTECTION FOR INJURED WORK-
7 ERS AND VICTIMS OF CRIME, LABOR, AND EMPLOYMENT
8 VIOLATIONS.—Notwithstanding any other provision of
9 law, the Secretary of Homeland Security may permit an
10 alien to temporarily remain in the United States, and
11 grant the alien employment authorization, if the Secretary
12 determines that the alien—

13 (1) has filed for relief under section
14 101(a)(15)(U) of the Immigration and Nationality
15 Act (8 U.S.C. 1101(a)(15)(U));

16 (2)(A) has filed, or is a material witness to, a
17 bona fide workplace claim (as defined in section
18 274A(e)(10)(B)(iii)(II) of such Act, as added by sec-
19 tion 3(b) of this Act); and

20 (B) has been helpful, is being helpful, or is like-
21 ly to be helpful to—

22 (i) a Federal, State, or local law enforce-
23 ment official;

24 (ii) a Federal, State, or local prosecutor;

25 (iii) a Federal, State, or local judge;

1 (iv) the Department of Homeland Security;

2 (v) the Equal Employment Opportunity
3 Commission;

4 (vi) the Department of Labor, including
5 the Occupational Safety and Health Adminis-
6 tration;

7 (vii) the National Labor Relations Board;

8 (viii) the head official of a State or local
9 government department of labor, workforce
10 commission, or human relations commission or
11 council; or

12 (ix) other Federal, State, or local authori-
13 ties investigating, prosecuting, or seeking civil
14 remedies related to the workplace claim; or

15 (3) has filed a workers' compensation claim or
16 is undergoing treatment for a workplace injury or
17 illness.

18 (c) REQUIREMENTS APPLICABLE TO U VISAS.—Sec-
19 tion 214(p) of the Immigration and Nationality Act (8
20 U.S.C. 1184(p)) is amended—

21 (1) in paragraph (1)—

22 (A) by inserting “or investigating, pros-
23 ecuting, or seeking civil remedies for workplace
24 claims described in section 101(a)(15)(U)(iv)”

1 after “section 101(a)(15)(U)(iii)” each place
2 such term appears;

3 (B) by striking “The petition” and insert-
4 ing the following:

5 “(A) IN GENERAL.—The petition”; and

6 (C) by adding at the end the following:

7 “(B) FEES.—An alien petitioning for, or
8 having status under, section 101(a)(15)(U)
9 shall not be required to submit any fee (or re-
10 quest any fee waiver) in connection with such
11 petition or status, including fees associated with
12 biometric services, or an application for advance
13 permission to enter as a nonimmigrant.

14 “(C) CONFIDENTIALITY OF INFORMA-
15 TION.—Neither the Secretary of Homeland Se-
16 curity, nor the Attorney General, may use the
17 information furnished pursuant to a petition for
18 status under section 101(a)(15)(U) for pur-
19 poses of initiating or carrying out a removal
20 proceeding.”;

21 (2) by striking paragraph (2); and

22 (3) in paragraph (6)—

23 (A) by inserting “or workplace claims de-
24 scribed in section 101(a)(15)(U)(iv)” after “de-
25 scribed in section 101(a)(15)(U)(iii)”;

1 (B) by inserting “or workplace claim”
 2 after “prosecution of such criminal activity”.

3 (d) ADJUSTMENT OF STATUS FOR VICTIMS OF
 4 CRIMES.—Section 245(m)(1) of the Immigration and Na-
 5 tionality Act (8 U.S.C. 1255(m)(1)) is amended by insert-
 6 ing “or an investigation or prosecution regarding a work-
 7 place claim” after “prosecution”.

8 (e) CHANGE OF NONIMMIGRANT CLASSIFICATION.—
 9 Section 384(a)(1) of the Illegal Immigration Reform and
 10 Immigrant Responsibility Act of 1996 (8 U.S.C.
 11 1367(a)(1)) is amended—

12 (1) in subparagraph (E), by striking “physical
 13 or mental abuse and the criminal activity” and in-
 14 serting “abuse and the criminal activity or work-
 15 place claim”;

16 (2) in subparagraph (F), by adding “or” at the
 17 end; and

18 (3) by inserting after subparagraph (F) the fol-
 19 lowing:

20 “(G) the alien’s employer,”.

21 **SEC. 4. WHISTLEBLOWER PROTECTIONS.**

22 (a) IN GENERAL.—Section 214(c) of the Immigration
 23 and Nationality Act (8 U.S.C. 1184(c)) is amended by
 24 adding at the end the following:

25 “(15) WHISTLEBLOWER PROTECTIONS.—

1 “(A) PROHIBITIONS.—A person may not
2 discharge, demote, suspend, threaten, harass,
3 decline to hire, or in any other manner discrimi-
4 nate against a worker in the terms and condi-
5 tions of employment because such worker—

6 “(i) has filed or has information about
7 a potential complaint, instituted or caused
8 to be instituted any proceeding, testified,
9 assisted, or will testify, or cooperated or
10 seeks to cooperate, in an investigation or
11 other proceeding concerning compliance
12 with the requirements under this title or
13 any rule or regulation pertaining to this
14 title or any workplace claim;

15 “(ii) has disclosed information to any
16 other person or entity, that the worker rea-
17 sonably believes evidences a violation of
18 this title or any rule or regulation per-
19 taining to this title, or grounds for any
20 workplace claim;

21 “(iii) has assisted or participated, or
22 has information that may assist, in any
23 manner in a proceeding or in any other ac-
24 tion to carry out the purposes of this title
25 or any workplace claim;

1 “(iv) has furnished information to the
2 Department of Labor, the Department of
3 Homeland Security, the Department of
4 Justice, the Equal Employment Oppor-
5 tunity Commission, the National Labor
6 Relations Board, or any Federal, State, or
7 local regulatory or law enforcement agency
8 relating to a violation of this title or any
9 workplace claim, or has such information
10 to furnish to the relevant agency; or

11 “(v) has objected to, or refused to
12 participate in, any activity, policy, practice,
13 or assigned task that the worker (or other
14 such individual) reasonably believed to be
15 in violation of any provision of this Act or
16 any other Act, or any order, rule, regula-
17 tion, standard, or ban under any Act.

18 “(B) ENFORCEMENT.—

19 “(i) IN GENERAL.—A worker who be-
20 lieves that he or she has suffered a viola-
21 tion of subparagraph (A) may seek relief
22 in accordance with the procedures, notifi-
23 cations, burdens of proof, remedies, and
24 statutes of limitation set forth in section
25 1514A of title 18, United States Code.

1 “(ii) APPEALS.—

2 “(I) JURISDICTION.—Any person
3 adversely affected or aggrieved by an
4 order issued under clause (i) may ob-
5 tain review of the order in the United
6 States Court of Appeals for—

7 “(aa) the circuit in which
8 the violation, with respect to
9 which the order was issued, alleg-
10 edly occurred; or

11 “(bb) the circuit in which
12 the complainant resided on the
13 date of such violation.

14 “(II) REVIEW OF PETITION.—A
15 petition for review under this subpara-
16 graph shall be filed not later than 60
17 days after the date on which the final
18 order was issued by the Secretary of
19 Labor.

20 “(III) APPLICABLE LAW.—A re-
21 view under this subparagraph shall
22 conform to the provisions set forth in
23 chapter 7 of title 5, United States
24 Code.

1 “(IV) STAY OF ORDER.—Unless
2 ordered by the court, the commence-
3 ment of proceedings under this sub-
4 paragraph shall not operate as a stay
5 of the order by the Secretary of
6 Labor.

7 “(C) EDUCATION.—Each person, entity,
8 and institution covered by this Act shall—

9 “(i) prominently communicate to all
10 sectors and ranks of its labor force the
11 rights and responsibilities under this Act;
12 and

13 “(ii) provide associated education and
14 training to all sectors and ranks of its
15 labor force through notifications, postings,
16 mailings, and training classes, supple-
17 mented with publicly accessible online ma-
18 terials on the requirements of, and devel-
19 opments that would affect the implementa-
20 tion of this Act.

21 “(D) NO LIMITATION ON RIGHTS.—Noth-
22 ing in this paragraph may be construed to di-
23 minish the rights, privileges, or remedies of any
24 worker under any Federal or State law, equity,
25 or under any collective bargaining agreement.

1 The rights and remedies set forth in this para-
2 graph may not be waived by any agreement,
3 policy, form, or condition of employment.

4 “(E) DEFINITIONS.—In this paragraph:

5 “(i) DISCLOSE.—The term ‘disclose’
6 means to make a formal or informal com-
7 munication or transmission.

8 “(ii) H-2B WORKER.—The term ‘H-
9 2B worker’ means a nonimmigrant author-
10 ized or previously authorized to work in
11 the United States pursuant to section
12 101(a)(15)(H)(ii)(B).

13 “(iii) MATERIAL WITNESS.—The term
14 ‘material witness’ means an individual who
15 presents a declaration from an attorney in-
16 vestigating, prosecuting, or defending the
17 workplace claim or from the presiding offi-
18 cer overseeing the workplace claim attest-
19 ing that, to the best of the declarant’s
20 knowledge and belief, reasonable cause ex-
21 ists to believe that the testimony of the in-
22 dividual will be relevant to the outcome of
23 the workplace claim.

24 “(iv) PERSON.—The term ‘person’
25 means any individual, partnership, associa-

1 tion, joint stock company, trust, coopera-
2 tive, or corporation.

3 “(v) STATE.—The term ‘State’ means
4 any of the States of the United States, the
5 District of Columbia, the United States
6 Virgin Islands, the Commonwealth of
7 Puerto Rico, and Guam.

8 “(vi) WORKER.—The term ‘worker’
9 means an individual who is, has been, or is
10 seeking to be employed or otherwise per-
11 form work for pay, regardless of immigra-
12 tion status.

13 “(vii) WORKPLACE CLAIM.—The term
14 ‘workplace claim’ means any written or
15 oral claim, charge, complaint, or grievance
16 filed with, communicated to, or submitted
17 to the employer, a Federal, State, or local
18 agency or court, or an employee represent-
19 ative related to workplace injury or illness
20 or to the violation of applicable Federal,
21 State, and local labor laws or labor agree-
22 ments, including laws concerning wages
23 and hours, labor relations, family and med-
24 ical leave, occupational health and safety,

1 civil rights, nondiscrimination, or other
 2 terms and conditions of employment.”.

3 (b) RULEMAKING.—Not later than 180 days after the
 4 date of the enactment of this Act, the Secretary of Labor
 5 shall make rules to carry out the amendments made under
 6 subsection (a).

7 **SEC. 5. INVESTIGATION AUTHORITY OF THE SECRETARY**
 8 **OF LABOR.**

9 Section 503.7 of title 29, Code of Federal Regula-
 10 tions (as in effect on the date of enactment of this Act),
 11 shall have the full force and effect of law, except that any
 12 authority delegated to the Administrator of the Wage and
 13 Hour Division of the Department of Labor shall be
 14 deemed to be delegated to the Secretary of Labor.

15 **SEC. 6. LABOR ENFORCEMENT ACTIONS.**

16 (a) REMOVAL PROCEEDINGS.—Section 239(e) of the
 17 Immigration and Nationality Act (8 U.S.C. 1229(e)) is
 18 amended—

19 (1) in paragraph (1)—

20 (A) by striking “In cases where” and in-
 21 serting “If”; and

22 (B) by inserting “or as a result of informa-
 23 tion provided to the Department of Homeland
 24 Security in retaliation against individuals for
 25 exercising or attempting to exercise their em-

1 ployment rights or other legal rights” after
2 “paragraph (2)”; and
3 (2) in paragraph (2), by adding at the end the
4 following:

5 “(C) At a facility about which a workplace
6 claim has been filed or is contemporaneously
7 filed.”.

8 (b) UNLAWFUL EMPLOYMENT OF ALIENS.—Section
9 274A(e) of the Immigration and Nationality Act (8 U.S.C.
10 1324a(e)) is amended by adding at the end the following:

11 “(10) CONDUCT IN ENFORCEMENT ACTIONS.—

12 “(A) ENFORCEMENT ACTION.—If the Sec-
13 retary of Homeland Security undertakes an en-
14 forcement action at a facility about which a
15 workplace claim has been filed or is contem-
16 poraneously filed, or as a result of information
17 provided to the Department of Homeland Secu-
18 rity in retaliation against workers for exercising
19 their rights related to a workplace claim, the
20 Secretary shall ensure that—

21 “(i) any aliens arrested or detained
22 who are necessary for the investigation or
23 prosecution of workplace claim violations
24 or criminal activity (as described in sub-
25 paragraph (T) or (U) of section

1 101(a)(15)) are not removed from the
2 United States until after the Secretary—

3 “(I) notifies the appropriate law
4 enforcement agency with jurisdiction
5 over such violations or criminal activ-
6 ity; and

7 “(II) provides such agency with
8 the opportunity to interview such
9 aliens; and

10 “(ii) no aliens entitled to a stay of re-
11 moval or abeyance of removal proceedings
12 under this section are removed.

13 “(B) PROTECTIONS FOR VICTIMS OF
14 CRIME, LABOR, AND EMPLOYMENT VIOLA-
15 TIONS.—

16 “(i) STAY OF REMOVAL OR ABEYANCE
17 OF REMOVAL PROCEEDINGS.—An alien
18 against whom removal proceedings have
19 been initiated under chapter 4 of title II,
20 who has filed a workplace claim, who is a
21 material witness in any pending or antici-
22 pated proceeding involving a bona fide
23 workplace claim, or who has filed for relief
24 under section 101(a)(15)(U), shall be enti-
25 tled to a stay of removal or an abeyance of

1 removal proceedings and to employment
2 authorization until the resolution of the
3 workplace claim or the denial of relief
4 under section 101(a)(15)(U) after exhaus-
5 tion of administrative appeals, whichever is
6 later, unless the Secretary of Homeland
7 Security establishes, by a preponderance of
8 the evidence in proceedings before the im-
9 migration judge presiding over that alien’s
10 removal hearing, that the workplace claim
11 was filed in bad faith with the intent to
12 delay or avoid the alien’s removal.

13 “(ii) DURATION.—Any stay of re-
14 moval or abeyance of removal proceedings
15 and employment authorization issued pur-
16 suant to clause (i) shall remain valid until
17 the resolution of the workplace claim or
18 the denial of relief under section
19 101(a)(15)(U) after the exhaustion of ad-
20 ministrative appeals, and shall be extended
21 by the Secretary of Homeland Security for
22 a period of not longer than 10 additional
23 years upon determining that—

1 “(I) such relief would enable the
2 alien asserting a workplace claim to
3 pursue the claim to resolution;

4 “(II) the deterrent goals of any
5 statute underlying a workplace claim
6 would be served; or

7 “(III) such extension would oth-
8 erwise further the interests of justice.

9 “(iii) DEFINITIONS.—In this para-
10 graph:

11 “(I) MATERIAL WITNESS.—Not-
12 withstanding any other provision of
13 law, the term ‘material witness’ means
14 an individual who presents a declara-
15 tion from an attorney investigating,
16 prosecuting, or defending the work-
17 place claim or from the presiding offi-
18 cer overseeing the workplace claim at-
19 testing that, to the best of the declar-
20 ant’s knowledge and belief, reasonable
21 cause exists to believe that the testi-
22 mony of the individual will be relevant
23 to the outcome of the workplace claim.

24 “(II) WORKPLACE CLAIM.—The
25 term ‘workplace claim’ means any

1 written or oral claim, charge, com-
2 plaint, or grievance filed with, commu-
3 nicated to, or submitted to the em-
4 ployer, a Federal, State, or local agen-
5 cy or court, or a worker representative
6 related workplace injury or illness or
7 to the violation of applicable Federal,
8 State, and local labor laws or labor
9 agreements, including laws concerning
10 wages and hours, labor relations, fam-
11 ily and medical leave, occupational
12 health and safety, civil rights, or non-
13 discrimination.”.

14 **SEC. 7. H-2B WORKER GRANTS.**

15 (a) TECHNICAL TRAINING GRANTS.—

16 (1) IN GENERAL.—Not later than 3 months
17 after the date of enactment of this Act, and annually
18 thereafter, the Secretary of Homeland Security shall
19 award funds to qualified nonprofit, nongovernmental
20 organizations and labor organizations to assist H-
21 2B workers with applications for adjustment of sta-
22 tus.

23 (2) APPLICATION.—To be eligible to receive a
24 grant under this subsection, a labor organization or
25 qualified nonprofit, nongovernmental organization

1 shall submit to the Secretary of Homeland Security
2 an application at such time, in such manner, and
3 containing such information as the Secretary may
4 require.

5 (3) USE OF FUNDS.—Funds received pursuant
6 to this subsection shall only be used to assist H–2B
7 workers with applications for adjustment of status.

8 (b) KNOW YOUR RIGHTS GRANTS.—

9 (1) IN GENERAL.—Not later than a year after
10 the date of enactment of this Act, and each year
11 thereafter, the Secretary of Labor shall award 3-
12 year grants to qualified nonprofit, nongovernmental
13 organizations and labor organizations to—

14 (A) train H–2B workers on their rights be-
15 fore such workers begin employment; and

16 (B) conduct surveys after such employ-
17 ment ends to document treatment and condi-
18 tions of such workers.

19 (2) APPLICATION.—To be eligible to receive a
20 grant under this subsection, a labor organization or
21 qualified nonprofit, nongovernmental organization
22 shall submit to the Secretary of Labor an applica-
23 tion at such time, in such manner, and containing
24 such information as the Secretary may require.

1 (3) USE OF FUNDS.—Funds received pursuant
2 to this subsection shall only be used to provide infor-
3 mation to H–2B workers with respect to the rights
4 of such workers.

5 **SEC. 8. ADJUSTMENT OF STATUS FOR LONG-TERM H-2B**
6 **WORKERS.**

7 (a) REQUIREMENTS FOR ADJUSTMENT OF STA-
8 TUS.—The Secretary of Homeland Security shall adjust
9 the status of an alien from that of an alien admitted pur-
10 suant to section 101(a)(15)(H)(ii)(B) to that of a lawful
11 permanent resident if the alien submits a completed appli-
12 cation, including such processing fees as the Secretary of
13 Homeland Security may require, and the Secretary of
14 Homeland Security determines that—

15 (1) the applicant has completed not less than
16 18 months of employment as an H–2B worker with-
17 in a 10-year period;

18 (2) the applicant has not become ineligible for
19 H–2B worker status under section 218A of the Im-
20 migration and Nationality Act, as added by this Act;
21 and

22 (3) the applicant meets the requirements set
23 forth by the Secretary of Labor and the Secretary
24 of Homeland Security, except that the applicant may
25 not be required to acquire a permanent labor certifi-

1 cation from the Secretary of Labor under section
2 212(a)(5)(A) of the Immigration and Nationality
3 Act (8 U.S.C. 1182(a)(5)(A)).

4 (b) DEPENDENT ALIENS.—The spouse and each
5 child of an alien described in paragraph (1) whose status
6 has been adjusted to that of a lawful permanent resident
7 may be granted lawful permanent residence and shall be
8 exempt from the numerical limitations.

9 (c) NUMERICAL LIMITATION.—Not later than 6
10 months after the date of enactment of this Act, the world-
11 wide level of immigrants admitted under this section shall
12 not exceed 40,040 for each fiscal year, and may not equal
13 less than one-third of the H-2B visas issued each fiscal
14 year, unless an insufficient number of applications for ad-
15 justment to lawful permanent status have been filed under
16 this section.

17 (d) EFFECT OF PENDING APPLICATION.—During the
18 period beginning on the date on which an alien applies
19 for adjustment of status under this subtitle, and ending
20 on the date on which the Secretary of Homeland Security
21 makes a final administrative decision regarding such ap-
22 plication, the alien and any dependents included on the
23 application—

24 (1) may apply for advance parole, which shall
25 be granted upon demonstrating a legitimate need to

1 travel outside the United States for a temporary
2 purpose;

3 (2) may not be detained by the Secretary of
4 Homeland Security or removed from the United
5 States unless the USCIS makes a prima facie deter-
6 mination that such alien is, or has become, ineligible
7 for adjustment of status under subsection (a);

8 (3) may not be considered unlawfully present
9 under section 212(a)(9)(B) of the Immigration and
10 Nationality Act (8 U.S.C. 1182(a)(9)(B)); and

11 (4) may not be considered an unauthorized
12 alien (as defined in section 274A(h)(3) of the Immi-
13 gration and Nationality Act (8 U.S.C.
14 1324a(h)(3))).

15 (e) RETROACTIVE ELIGIBILITY AND NUMERICAL EX-
16 EMPTION.—Any nonimmigrant who has accrued 36
17 months of H–2B employment over the 10 years prior to
18 the date of enactment of this Act shall be eligible to sub-
19 mit within 2 years after such date an application for ad-
20 justment of status to that of a lawful permanent resident,
21 and such adjustment shall be exempt from all employment
22 based numerical and per-country limits.

23 (f) CONFORMING AMENDMENTS.—

24 (1) IN GENERAL.—Section 101(a)(15)(H)(ii)(b)
25 of the Immigration and Nationality Act (8 U.S.C.

1 1101(a)(15)(H)(ii)(b)) is amended by striking
2 “which he has no intention of abandoning”.

3 (2) NO EVIDENCE.—Section 214(h) of the Im-
4 migration and Nationality Act (22 U.S.C. 1254(h))
5 is amended by inserting “or (H)(ii)(b)” after
6 “(H)(i)(b)”.

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