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BORDER SECURITY, ECONOMIC OPPORTUNITY, AND IMMIGRATION MODERNIZATION ACT

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

R E P O R T

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 744]

The Committee on the Judiciary, to which was referred the bill (S. 744), to provide for comprehensive immigration reform, and for other purposes, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

CONTENTS

I. BACKGROUND AND PURPOSE OF THE BORDER SECURITY, ECONOMIC OPPORTUNITY, AND IMMIGRATION MODERNIZATION ACT OF

A. PURPOSE OF THE BILL

Few policy issues are as central to the history and character of America as immigration. The foundation of the Nation, and its fu-

ture promise, was laid by men and women who came to America's shores from around the world. Immigration is the history of all Americans who are not indigenous to the territory of the United States. It is an issue of enormous importance to all Americans. Notwithstanding diverse viewpoints on the best path forward, there is broad recognition that America's current system of immigration is broken and in need of significant reform.

There are many aspects of Federal immigration law that are in need of improvement. But there may be no issue more central to the legislative proposal upon which the Committee has acted than the estimated 11 million individuals living in the United States in undocumented status.[1] The Senate Judiciary Committee has approved legislation that addresses this situation in a fair, tough, practical, and humane way. With the approval of this legislation, the Senate Judiciary Committee has begun the process of effecting these reforms and creating an immigration system for the 21st Century.

1. Creating an Earned Path to Citizenship

One of the key components of the Border Security, Economic Opportunity and Immigration Modernization Act (S. 744) is the path to earned citizenship for the estimated 11 million undocumented immigrants living and working in the shadows of American society. This legislation will give this population a tough but fair opportunity to come forward and earn their citizenship by meeting several requirements, including paying fees and fines, passing national security and criminal background checks, paying their taxes, and learning English.

During the Committee's consideration of S. 744, and its extensive study and consideration of comprehensive immigration reform in previous Congresses, the Committee has heard from law enforcement officials, community leaders, faith groups, civil rights groups, and individual members of the public about the urgent need to address the millions of undocumented immigrants living in the United States. Undocumented immigrants have a tenuous place in our communities. They live in constant fear of deportation. If they are victims of crime, they often do not report those crimes to State and local law enforcement.[2] They work for low wages, unable to defend themselves from employer harassment and exploitation.[3] Many have been in the country for 10 years or more, have made valuable contributions to their communities, and have immediate relatives who are American citizens.[4] The prospect of deporting

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[1] DEP'T OF HOMELAND SECURITY, OFFICE OF IMMIGRATION STAT., ESTIMATES OF THE UNAUTHORIZED IMMIGRANT POPULATION RESIDING IN THE UNITED STATES: JANUARY 2011 (March 2012) available at *http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2011.pdf.*

[2] SOUTHERN POVERTY LAW CENTER, UNDER SIEGE: LIFE FOR LOW-INCOME LATINOS IN THE SOUTH 25 (2009) (noting the vulnerability for undocumented immigrants in the South and across the United States due to fears of deportation and low confidence in law enforcement) *available at http://www.splcenter.org/get-informed/publications/under-siege-life-for-low-income-latinos-in-the-south#.UazxQ5yGcd0.*

[3] REBECCA SMIGH & EUNICE HYUNHYE CHO, NAT'L EMPLOYMENT LAW PROJECT, WORKER'S RIGHTS ON ICE: HOW IMMIGRATION REFORM CAN STOP RETALIATION AND ADVANCE LABOR RIGHTS (2013) *available at http://www.nelp.org/page/-/Justice/2013/Workers-Rights-on-ICE-Retaliation-Report.pdf?nocdn=1.*

[4] According to the latest publicly available estimates, approximately 86 percent of undocumented immigrants arrived in the United States before 2005. *See* DEP'T OF HOMELAND SECURITY, OFFICE OF IMMIGRATION STAT., ESTIMATES OF THE UNAUTHORIZED IMMIGRANT POPULATION

these individuals would not only be prohibitively expensive,[5] but would also have untold damaging effects on our economy, which relies on the work, taxes, and purchasing power of undocumented immigrants even as our legal system fails to fully recognize or protect them. It would separate families and run counter to our ideals as a Nation. Instead, S. 744 outlines a tough but fair path that will bring individuals out of the shadows and into the lawful immigration system, by allowing eligible applicants to adjust to the legal status of Registered Provisional Immigrant (RPI).

The most recent legislative attempt to create a path to citizenship was the Immigration Reform and Control Act of 1986 (IRCA), a law that legalized three million undocumented immigrants and created employer sanctions against hiring undocumented workers.[6] The hope was that IRCA would offer a long-term solution to the problem of illegal immigration.[7] Legalization was meant to decrease the undocumented population and prevent its expansion. Employer sanctions were expected to deter future illegal immigration by drying up the job magnet that drew unauthorized workers to the United States.

Under IRCA, undocumented individuals who had been continuously present in the United States since January 1, 1982 (almost five years before the date of enactment) and who met certain other requirements could apply for temporary permanent resident status.[8] Upon learning English, meeting other requirements, and applying within a prescribed time period, they could then become lawful permanent residents.[9]

Even though three million undocumented immigrants obtained legalization under IRCA, gaps in the law kept large numbers of the undocumented population underground and in long-term limbo. The early cutoff date included in that legislation left almost five years' worth of arrivals without the ability to legalize. Vague statutory language, combined with restrictive interpretations by the former Immigration and Naturalization Service (INS), led to extensive litigation that prolonged the legalization program for more than 20 years.[10] Moreover, the IRCA legalization program did not account for the spouses and children of legalized immigrants,[11] which created a strong incentive for many to enter or remain in the country illegally to keep their families together.

Establishing a tough but fair path to bring undocumented individuals out of the shadows and into the lawful immigration system will benefit American workers and our society as a whole. Studies of the 1986 immigration reform law found that legalizing previously undocumented workers increased wages by close to 10 per-

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RESIDING IN THE UNITED STATES: JANUARY 2011 (March 2012) *available at http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2011.pdf.*

[5] MARSHALL FITZ ET AL., CENTER FOR AM. PROGRESS, THE COSTS OF MASS DEPORTATION: IMPRACTICAL, EXPENSIVE, AND INEFFECTIVE (2010), *available at http://www.americanprogress.org/wp-content/uploads/issues/2010/03/pdf/cost_of_deportation.pdf.*

[6] Pub. L. No. 99–603, 100 Stat.3359.

[7] Immigration Reform and Control Act of 1986, H.R. Rep No. 99–682(I), 99th Cong., 2d Sess. 46 (1986); *See also McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479, n. 4 (1991).

[8] 8 U.S.C. § 1255A(a) (2008).

[9] *Id.* at § 1255A(b).

[10] *See* LUCAS GUTTENTAG, A BRIEF INTRODUCTION TO JUDICIAL REVIEW IN RELATION TO IRCA LEGISLATION (Yale Law School Workshop Series Readings, Fall 2009), *available at http://www.law.yale.edu/documents/pdf/Clinics/Immigration_Reading5.pdf.*

[11] The former INS established a "Family Fairness" program and in 1990 Congress added statutory relief for the spouses and children of legalized aliens, but that relief was extremely limited. SEE Immigration and Nationality Act of 1990, Pub. L. 101–649, § 301, 104 Stat. 4978.

cent or more, reflecting increases in worker productivity that benefit the broader economy.[12] Bringing undocumented workers into the legal workforce will ensure that they are not forced to accept below-market or below-minimum-wage compensation or other violations of U.S. labor laws, reducing harmful employment practices that undercut wages and worsen conditions for American workers. A 2010 study by the Center for American Progress found that "wages of native-born workers also increase under . . . comprehensive immigration reform . . . because the "wage floor" rises for all workers—particularly in industries where large numbers of easily exploited, low-wage unauthorized immigrants currently work." [13]

A path to citizenship for the undocumented population will also balance out an aging population and protect the future of Social Security, by empowering a new class of lawful workers who can pay into the system. The independent Chief Actuary of the Social Security Administration recently estimated that S. 744 will add more than $200 billion to the Social Security Trust Fund over the next decade.[14] His analysis found that undocumented workers in particular will pay $170 billion more in Social Security and Medicare payroll taxes if they are allowed to come out of the shadows and work legally. The Chief Actuary wrote, "[o]verall, we anticipate that the net effect of this bill on the long-range OASDI [Social Security] actuarial balance will be positive." [15] That is, the Border Security, Economic Opportunity, and Immigration Modernization Act will strengthen Social Security not just in the immediate future, but over the full 75-year projection period. Because most immigrants are young, additional immigration helps balance out the increase in retirees-per-worker that will occur as the Baby Boom generation retires.[16]

Overall, a path to citizenship for our Nation's undocumented immigrants is crucial to modernizing our immigration system.

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[12] *See* e.g., Sherrie A. Kossoudji & Deborah Cobb-Clark, *Coming Out of the Shadows: Learning about Legal Status and Wages from the Legalized Population*, 20 J. LABOR ECON. 3 (2002); Shirley J. Smith, Roger G. Kramer, et al., *Characteristics and Labor Market Behavior of the Legalized Population Five Years Following Legalization*, 102 (U.S. Department of Labor, 1996).

[13] DR. RAUL HINOJOSA-OJEDA, CENTER FOR AM. PROGRESS, RAISING THE FLOOR FOR AMERICAN WORKERS: THE ECONOMIC BENEFITS OF COMPREHENSIVE IMMIGRATION REFORM 13 (2010) ("The real wages of newly legalized workers increase by roughly $4,400 per year among those in less-skilled jobs during the first three years of implementation, and $6,185 per year for those in higher-skilled jobs. The higher earning power of newly legalized workers translates into an increase in net personal income of $30 billion to $36 billion, which would generate $4.5 to $5.4 billion in additional net tax revenue nationally, enough to support 750,000 to 900,000 new jobs."); *See also* Dr. Raul Hinojosa-Ojeda, *The Economic Benefits of Comprehensive Immigration Reform*, 32 Cato J. 1, 189 (Winter 2012); Giovanni Peri, *The Effect of Immigration on Productivity: Evidence from U.S. States*, 94 REV. ECON. & STATISTICS 348–358 (MIT PRESS, 2012).

[14] Letter from Social Security Office of the Chief Actuary to Senator Marco Rubio (May 8, 2013), *available at http://www.socialsecurity.gov/oact/solvency/*.

[15] *Id.*

[16] A recent study by the journal HealthAffairs supports the Chief Actuary's conclusions about the contributions of immigrants to public programs. It found that in 2009, immigrants made 14.7 percent of contributions to the Medicare Trust Fund, but accounted for only 7.9 percent of its expenditures, contributing a net surplus of $13.8 billion. The report noted, "many immigrants in the United States are working-age taxpayers; few are elderly beneficiaries of Medicare. This demographic profile suggests that immigrants may be disproportionately subsidizing the Medicare Trust Fund, which supports payments to hospitals and institutions under Medicare Part A." Leah Zallman, Steffie Woohnalder et al., *Immigrants Contributed An Estimated $115.2 Billion More to the Medicare Trust Fund Than They Took Out in 2002–09*, HEALTH AFFAIRS (May 2013), *available at http://content.healthaffairs.org/content/early/2013/05/20/hlthaff.2012.1223*.

2. Ending the Lengthy Backlogs in the Immigrant Visa System

Two central failures of our modern immigration system are its inability to meet the demands of U.S. businesses that wish to attract and retain highly qualified immigrants, and its failure to reunite many Americans with their loved ones living abroad.

The current annual limits and per-country caps on employment-based and family-sponsored immigrant visas have generated protracted waiting periods for both family reunification and employment needs. The backlog of family visas for the spouses and children of U.S. citizens and lawful permanent residents and siblings of U.S. citizens now stands at 4.3 million, meaning that 4.3 million family members whose visa applications have been approved are nevertheless prevented from entering the country because of the annual visa caps.[17] Moreover, strict per-country limitations, which prevent countries from receiving more than 7 percent of the visas awarded in a given year, have created excessive backlogs, especially in countries with high demand. The State Department is currently processing visas for Filipino siblings of U.S. citizens who submitted their visa applications 24 years ago, in 1989.[18] Siblings of U.S. citizens from China and India who are currently being processed have been waiting for their family-sponsored visas for 12 years.[19] Even in the general pool of non-high demand countries, the wait times for unmarried sons and daughters of U.S. citizens (the "F1" family preference category) currently stand at seven years.[20] Because they are "intending immigrants," these applicants are typically unable to obtain even tourist visas to visit their U.S. citizen and permanent resident relatives in the United States.[21] In addition to the personal hardship inherent in prolonged family separation, these long wait times and forced separations provide incentives for illegal immigration, as spouses seek to reunite and parents seek to join their children. Senate bill 744 addresses this problem by prioritizing the reunification of the nuclear family in ways described below.

Although employment-based immigrant visas have historically not faced the same backlogs as family-sponsored visas, the EB–3 visa category for professional and other skilled workers faces considerable delays. Since 2005, the wait time for EB–3 visas has ranged from just under four years to 7½ years.[22] High-demand countries including China, India, Mexico, and the Philippines currently have EB–3 visa backlogs ranging from 5½ to 10 years.[23] For an employer seeking to fill a job vacancy, a delay of that magnitude

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[17] U.S. Department of State, ANNUAL REPORT OF IMMIGRANT VISA APPLICANTS IN THE FAMILY-SPONSORED AND EMPLOYMENT-BASED PREFERENCES REGISTERED AT THE NATIONAL VISA CENTER AS OF NOVEMBER 1, 2012, *available at http://www.travel.state.gov/pdf/WaitingListItem.pdf*; see also RUTH ELLEN WASEM, CONG. RESEARCH SERV., R42866, PERMANENT LEGAL IMMIGRATION TO THE UNITED STATES: POLICY OVERVIEW (2012).

[18] U.S. DEP'T OF STATE, VISA BULLETIN NUMBER 56 Vol. IX, May 2013, *available at http://www.travel.state.gov/pdf/visabulletin/visabulletin_may2013.pdf.*

[19] *Id.*

[20] *Id.*

[21] *See* INA § 214(b), 8 U.S.C. § 1184. For more information, see RUTH ELLEN WASEM, CONG. RESEARCH SERV., RL31381, *U.S. IMMIGRATION POLICY ON TEMPORARY ADMISSIONS* at 10 (2011).

[22] *See* U.S. DEP'T OF STATE, VISA BULLETIN ARCHIVE, HTTP://TRAVEL.STATE.GOV/VISA/BULLETIN/BULLETIN *1770.html*.

[23] U.S. DEP'T OF STATE, VISA BULLETIN NUMBER 56 VOL. IX, May 2013, *available at http://www.travel.state.gov/pdf/visabulletin/visabulletin_may2013.pdf.*

simply is not practical. Businesses around the country have called for this problem to be addressed.

3. Border Security and Enforcement

Over the last two decades, the Executive branch and Congress have sought to bolster Federal investments in personnel, technology, infrastructure, and other resources to strengthen immigration enforcement at our borders. These investments have included increases in annual appropriations and additional authorizations across multiples agencies. As Secretary of Homeland Security Janet Napolitano recently stated, the historic levels of expenditure "have contributed to a border that is far stronger today than at any point in our nation's history, and border communities that are safe and prosperous."[24]

According to a recent Migration Policy Institute report, the Federal Government spends nearly $18 billion on immigration enforcement every year, approximately 24 percent more than its collective spending on all other principal Federal criminal law enforcement agencies combined.[25]

While border enforcement involves a variety of activities and agencies, U.S. Customs and Border Protection (CBP) is the primary agency tasked with securing our borders and facilitating safe, lawful trade.[26] Since 2004, the number of Border Patrol agents has doubled from approximately 10,000 to more than 21,000 agents.[27] Approximately 18,500 of these agents are deployed along the Southwest border, and more than 2,200 work along the Northern Border.[28] In contrast, there were fewer than 2,500 Border Patrol agents in 1980.[29] The number of CBP officers has also increased from 17,279 customs and immigration inspectors in 2003, to more than 21,000 officers and 2,400 agriculture specialists today.[30] Additionally, U.S. Immigration and Customs Enforcement (ICE) has deployed fully one quarter of its operational personnel to the Southwest border.[31] These personnel are working to analyze intelligence, identify, disrupt and dismantle criminal organizations, and facilitate cooperation between U.S. and Mexican law enforcement authorities on investigations and operations.

Beyond personnel, the Department of Homeland Security (DHS) has deployed technology assets, including mobile surveillance units, thermal imaging systems, and large- and small-scale non-intrusive inspection equipment. It currently has 124 aircraft and six Un-

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[24] *The Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744: Hearing Before the S. Comm. of the Judiciary*, 113th Cong. (2013) (testimony of Secretary of Homeland Security Janet Napolitano).

[25] DORIS MEISSNER, ET AL., MIGRATION POLICY INST., IMMIGRATION ENFORCEMENT IN THE UNITED STATES 9 (Jan. 2013), *available at http://www.migrationpolicy.org/pubs/enforcementpillars.pdf*.

[26] *See id.*

[27] *The Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744: Hearing Before the S. Comm. of the Judiciary,* 113th Cong. (2013) (testimony of Secretary of Homeland Security Janet Napolitano).

[28] *Id.*

[29] MARC R. ROSENBLUM, CONG. RESEARCH SERV., R42138, BORDER SECURITY: IMMIGRATION ENFORCEMENT BETWEEN PORTS OF ENTRY (2013).

[30] *The Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744: Hearing Before the S. Comm. of the Judiciary*, 113th Cong. (2013) (testimony of Secretary of Homeland Security Janet Napolitano).

[31] Press Release, White House, *White House Drug Policy Director, Secretary Napolitano Highlight Progress in Disrupting Drug Trafficking along Southwest Border* (Apr. 5, 2013), *available at http://www.whitehouse.gov/ondcp/news-releases-remarks/kerlikowske-napolitano-southwest-border-trip.*

manned Aircraft Systems operating along the Southwest border.[32] The Department also has completed 651 miles of fencing out of nearly 652 miles mandated by Congress, including 299 miles of vehicle barriers and 352 miles of pedestrian fence.[33] The precise location and type of fencing used was developed by examining unique characteristics of the terrain and gathering feedback and intelligence from Border Patrol chiefs with responsibility over the nine Southern border sectors.

Reports from law enforcement confirm that the number of border apprehensions has declined in recent years, while seizures of illegal currency, drugs and weapons have increased. According to the latest DHS statistics, nationwide Border Patrol apprehensions of illegal entrants decreased from nearly 724,000 in fiscal year 2008 to approximately 357,000 in fiscal year 2012, a 50 percent reduction, indicating that fewer people are attempting to cross the border illegally.[34] During Fiscal Years 2009–2012, DHS seized 71 percent more currency, 39 percent more drugs, and 189 percent more weapons along the Southwest border as compared to the prior four years.[35] In Fiscal Years 2009–2011, ICE made more than 30,936 criminal arrests along the Southwest border, including 19,563 arrests of drug smugglers and 4,151 arrests of human smugglers.[36]

Mayors in border communities and law enforcement officials have reported that their communities are safer than in prior years. FBI crime reports show that violent crimes in Southwest border States have dropped by an average of 40 percent in the last two decades.[37] For the past three years, El Paso, Texas, has been named the city with a population of over 500,000 with the lowest crime rate.[38] In 2012, San Diego had the second-lowest crime rate.[39] Crime rates in border cities like Nogales, Tucson, and San Diego have also decreased since 2008.[40] In that same time period, crime has decreased in each of the four Southwest border States.[41]

The Department of Homeland Security also has put in place several security-related measures that have resulted in more effective screening of those seeking to enter the country and reduced the number of individuals who overstay their visas. Most notably, the U.S. Visitor and Immigration Status Indicator Technology (US-VISIT) program, established in 2003, collects biometric information (fingerprints and photographs) for noncitizens admitted to the

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[32] DEP'T OF HOMELAND SECURITY, INFORMATION PAGE: SECURE AND MANAGE OUR BORDERS, *http://ipv6.dhs.gov/xabout/gc_1240606351110.shtm* (last visited June 7, 2013).

[33] U.S. CUSTOMS AND BORDER PROTECTION, SOUTHWEST BORDER FENCE CONSTRUCTION PROGRESS, *available at http://www.cbp.gov/xp/cgov/border_security/ti/ti_news/sbi_fence/* (last visited June 7, 2013).

[34] U.S. DEP'T OF HOMELAND SECURITY, BUDGET-IN-BRIEF: FISCAL YEAR 2014 (2013) at 71.

[35] *The Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744: Hearing Before the S. Comm. of the Judiciary*, 113th Cong. (2013) (testimony of Secretary of Homeland Security Janet Napolitano).

[36] *Oversight of the Department of Homeland Security: Hearing Before the S. Comm. of the Judiciary*, 112th Cong. (2012) (testimony of Secretary of Homeland Security Janet Napolitano).

[37] *Border Security Threats to the Homeland: DHS's Response to Innovative Tactics and Techniques: Hearing Before the H. Comm. on Homeland Security*, 113th Cong. (2013) (testimony of U.S. Customs and Border Protection Office Asst. Commissioner Donna Buccella).

[38] CONGRESSIONAL QUARTERLY, CITY CRIME RANKINGS 2013: RANKINGS BY POPULATION CATEGORIES (2012).

[39] *Id.*

[40] *See e.g.*, GOVERNMENT ACCOUNTABILITY OFFICE, GAO–13–175, SOUTHWEST BORDER SECURITY (2013) at 14; Alan Gomez et al, *U.S. border cities prove havens from Mexico's drug violence*, USA TODAY, July 18, 2011; Tim Padgett, *The 'Dangerous' Border: Actually One of America's Safest Places*, TIME, July 30, 2010.

[41] GAO–13–175, Southwest Border Security at 14.

country.[42] Since 2009, the program has been in place in almost all land, sea, and air ports of entry. The collected biometric information is checked against Federal criminal databases before individuals are allowed into the United States. This information is also checked against visa records to determine whether individuals may have overstayed their visas.

Due to the technological, infrastructure, and cost challenges relating to a biometric exit system, DHS has instead established a biographic exit system, which it has worked to improve in various ways.[43] For example, DHS has partnered with the government of Canada to complete a land entry/exit pilot program by using entry data from one country as exit data from the other.[44] This system will become operational in June 2013, with continued developments in 2014.[45] Although visa overstays remain a challenge, a recent study found that in the decade following the terrorist attacks of September 11, 2001, visa overstays dropped by 78 percent in the 15 States that had the most overstays in 2000.[46]

The Border Modernization, Economic Opportunity and Immigration Modernization Act builds on these successes in a number of ways, by providing additional personnel and resources to continue the deployment of proven, effective border security technology and other measures that are tailored to meet the distinct terrain in the highest trafficked areas of the Southwest border; enhancing biographic exit requirements; and creating mechanisms that reduce the incentives for illegal migration.

4. Employment Verification

E-Verify is an Internet-based program that allows employers to electronically verify newly hired workers' employment eligibility by accessing databases maintained by DHS and Social Security Administration. Until 2007, E-Verify was known as the Basic Pilot Program. This program was authorized as a pilot in five States as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).[47] The program began operating in California, Florida, Illinois, New York, and Texas in November 1997, and was expanded to Nebraska in 1999.[48] The authorizing statute specifically limited the program to new hires and limited the use of information in the agency databases to employment verification.[49] The program was established as a voluntary program. In September 2009, however, a final rule requiring certain Federal contractors and subcontractors to use E-Verify went into effect.[50] A handful of States have also passed laws requiring em-

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[42] LISA M. SEGHETTI & STEPHEN R. VINA, CONG. RESEARCH SERV., RL32234, *U.S. Visitor and Immigrant Status Indicator Technology Program (US–VISIT)* (2004) at 8.

[43] *See* U.S. GENERAL ACCOUNTING OFFICE, GAO–10–860, HOMELAND SECURITY: US-VISIT PILOT EVALUATIONS OFFER LIMITED UNDERSTANDING OF AIR EXIT OPTIONS (2010).

[44] *See* Press Release, Dep't of Homeland Security, U.S. Customs and Border Protection, *The U.S. and Canada Announce Pilot to Enhance Border Security at Land Ports of Entry* (Sept. 28, 2012), *available at http://www.cbp.gov/xp/cgov/newsroom/news_*releases/national/09282012.xml.

[45] *Id.*

[46] Robert Warren & John Robert Warren, *Unauthorized Immigration to the United States: Annual Estimates and Components of Change, by State*, 1990 to 2010, INT'L MIGRATION REV. 1–34 (spring 2013).

[47] Pub. L. No. 104–208, 110 Stat. 3009 (codified as 8 U.S.C. § 1324a).

[48] *See* Expansion of the Basic Pilot Program to the State of Nebraska, 64 Fed. Reg. 13606–02 (Mar. 19, 1999).

[49] 8 U.S.C. § 1324a(d)(2)(C).

[50] 73 Fed. Reg. 67651 (Nov. 14, 2008) (to be codified at 48 C.F.R. pt. 2, 22, 5).

ployers to use the program for new hires, but these rules are not consistent across States.[51]

The Department of Homeland Security has made a number of improvements since the E-Verify program was first implemented, including photo matching of certain immigration documents and passports, allowing individuals to check their employment eligibility and correct any errors, and establishing an employee hotline.[52] As of May 18, 2013, 452,252 employers were registered for E-Verify, representing more than 1.3 million hiring sites.[53] Thus far in 2013, over 14.5 million queries have been run through the system.[54] Senate bill 744 mandates the nationwide use of this program by all employers, to significantly curtail the number of unauthorized workers working in the United States.

5. The Economic Benefits of Immigration Reform

Comprehensive immigration reform will help the economy and U.S. workers through a number of channels. Because immigrants are disproportionately likely to start small businesses and to patent new innovations, S. 744 will increase entrepreneurship, job creation, innovation, and investment. In 2011, immigrants started 28 percent of all new businesses in this country, despite making up just 13 percent of the population.[55] Likewise, 40 percent of Fortune 500 companies were started by first or second generation immigrants.[56] Immigrants are also disproportionately likely to start a business that employs at least 10 workers. According to a study by the Fiscal Policy Institute, small businesses owned by immigrants employed 4.7 million people in 2007.[57]

Immigrants' contributions in the high-tech sector are especially striking, with one study finding that immigrants started 25 percent of all engineering and technology companies founded in the United States between 1995 and 2005.[58] At higher skill levels, more than 40 percent of Ph.D.s in science and 55 percent of Ph.D.s in engineering in the United States are awarded to foreign-born students.[59] Research shows that immigrants obtain patents at two to three times the rate of U.S.-born citizens, and that increases in high skilled immigration have spillover effects, increasing the number of patent applications filed by non-immigrant workers.[60]

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[51] *See* NAT'L CONFERENCE OF STATE LEGISLATURES, IMMIGRATION POLICY PROJECT, STATE ACTIONS REGARDING E-VERIFY (2012) *available at http://www.ncsl.org/documents/immig/StateActions_Everify.pdf*.

[52] 73 Fed. Reg. 67651 (Nov. 14, 2008).

[53] *See* Press Release, U.S. Citizenship and Immigration Services, *E-Verify Receives High Ratings in Customer Survey* (Feb. 21, 2013), *available at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=1671ed7ebecfc310VgnVCM100000082ca60aRCRD&vgnextchannel=a2dd6d26d17df110VgnVCM1000004718190aRCRD*.

[54] *Id.*

[55] P'SHIP FOR A NEW AM. ECON., OPEN FOR BUSINESS: HOW IMMIGRANTS ARE DRIVING SMALL BUSINESS CREATION IN THE UNITED STATES (August 2012), *available at http://www.renewoureconomy.org/sites/all/themes/pnae/openforbusiness.pdf*.

[56] *Id.*

[57] DAVID DYSSEGAARD KALLICK, FISCAL POLICY INSTITUTE, IMMIGRANT SMALL BUSINESS OWNERS: A SIGNIFICANT AND GROWING PART OF THE ECONOMY (June 2012), *available at http://www.fiscalpolicy.org/immigrant-small-business-owners-FPI–20120614.pdf*.

[58] VIVEK WADHWA, ET AL., AMERICA'S NEW IMMIGRANT ENTREPRENEURS: PART I, DUKE SCIENCE, TECH. & INNOVATION PAPER NO. 23 (2007), *available at http://people.ischool.berkeley.edu/Eanno/Papers/Americas_new_immigrant_entrepreneurs_I.pdf*.

[59] LORI THURGOOD ET AL., NATIONAL SCIENCE FOUNDATION, U.S. DOCTORATES IN THE 20TH CENTURY (2006) at 18, *available at http://www.nsf.gov/statistics/nsf06319/pdf/nsf06319.pdf*.

[60] Marjolaine Gauthier-Louiselle & Jennifer Hunt, *How Much Does Immigration Boost Innovation?*, 2 AM. ECON. J.: MACROECON. 2 (2010).

Senate bill 744 will allow immigrants to fill critical job needs and contribute to increased productivity that will benefit the U.S. workforce as a whole. Moreover, recent research finds that immigrants generally complement rather than substitute for U.S. workers.[61] In particular, rather than reducing U.S. workers' wages, increases in the number of new immigrants lead U.S. workers to specialize in tasks requiring stronger English language and other skills, raising their productivity and earnings. One recent study found that over the period from 1990 to 2006, immigration increased average wages for native workers by 0.6 percent and had essentially no effect or a positive effect on the wages of even the least-educated U.S.-born workers.[62]

Finally, S. 744 will further strengthen the U.S. economy by facilitating tourism and promoting more efficient trade with both Mexico and Canada. Canada and Mexico are our first and third trading partners in the world, respectively, together accounting for nearly one-third of U.S. exports in 2012 and more than $3 billion in two-way trade per day in 2012.[63] Travel and tourism represent the largest service-export industry in the United States, setting a record $168.1 billion in exports in 2012 and supporting nearly eight million jobs in 2012.[64] The economic impact and importance of travel and tourism will continue to grow in the coming years as emerging economies around the world experience an increase in their vacationing middle classes. China, Brazil, and India alone represent approximately 40 percent of the world's population,[65] and by 2017 the number of travelers from those countries is expected to increase by 259 percent, 83 percent, and 47 percent respectively.[66] Provisions in S. 744 help improve and streamline the tourist visa process to boost this key sector of our economy.

B. BACKGROUND AND HISTORY OF IMMIGRATION REFORM

1. History of Immigration Reform

The Immigration and Nationality Act (INA) was first codified in 1952, and initiated the modern era of immigration law.[67] Previously, a number of different statutes governed immigration law and included racial exclusions,[68] national origin quotas,[69] and literacy requirements.[70] The 1952 Act abolished racial restrictions that dated back to the 1790s, which limited naturalization to immi-

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[61] Giovanni Peri & Chad Sparber, *Task Specialization, Immigration, and Wages*, 1 AM. ECON. J. APPLIED ECON. 3 (2009).

[62] Gianmarko I.P. Ottaviano & Giovanni Peri, *Rethinking the Effects of Immigration on Wages*,1 J. OF THE EUR. ECON. ASS'N (2012); Giovanni Peri, *The Effect of Immigration on Productivity: Evidence from U.S. States*, 94 REV. OF ECON. & STAT. 1 (2012).

[63] U.S. CENSUS BUREAU, TOP TRADING PARTNERS—TOTAL TRADE, EXPORTS, IMPORTS: YEAR-TO-DATE DECEMBER 2012, *http://www.census.gov/foreign-trade/statistics/highlights/top/top1212yr.html*.

[64] U.S. DEP'T COMMERCE, OFFICE OF TRAVEL & TOURISM INDUSTRIES, U.S. TRAVEL AND TOURISM EXPORTS, IMPORTS, AND THE BALANCE OF TRADE 2012 (May 23, 2013) at 4, *available at http://tinet.ita.doc.gov/outreachpages/download_data_table/2012_International_Visitor_Spending.pdf*.

[65] Article, *BRICS in Search of a Foundation*, THE ECONOMIST, Apr. 16, 2011.

[66] Press Release, U.S. Dep't Commerce, Office of Travel & Tourism Industries, *U.S. Commerce Dep't Forecasts Continued Strong Growth for International Travel to the United States 2012–2017*, Dec. 7, 2012, *available at http://tinet.ita.doc.gov/tinews/archive/tinews2012/20121206_USDOC_Forecasts_Strong_Growth_International_Travel_US.html*.

[67] McCarran-Walter Act of 1952, Pub. L. 82–414, 66 Stat. 163.

[68] Chinese Exclusion Act of 1882, Pub. L. No. 71, 22 Stat. 58 (repealed).

[69] 67. Cong. Ch. 8, 42 Stat. 5 (1921); 68 Cong. Ch. 185, 43 Stat. 153 (1924).

[70] 64 Cong. Ch. 29, 39 Stat. 874 (1917).

grants who were "free white persons" of "good moral character."[71] Since 1952, Congress has amended the INA several times, including by the Immigration Amendments of 1965, the Refugee Act of 1980, the Immigration Reform and Control Act of 1986 (IRCA), the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).

Immigration Reform and Control Act of 1986 (IRCA)

Although IRCA is often associated with President Ronald Reagan's support for the legalization of an estimated three million undocumented individuals, it had two main pillars: legalization, and employer sanctions for hiring immigrants without work authorization.[72] It was the first time U.S. law expressly prohibited the knowing employment of undocumented immigrants. The law mandated specific procedures for employers to verify work eligibility, including inspection of specified documents evidencing identity and work authorization, employer attestations, and retention of those attestations for prescribed periods of time.[73] Violations were made punishable by civil fines, and criminal sentences for a pattern or practice of knowingly hiring unauthorized workers.[74]

As discussed above, IRCA provided that individuals who had been continuously unlawfully present in the United States since January 1, 1982, and who met other requirements could apply for temporary permanent resident status.[75] These immigrants could become lawful permanent residents if they learned English, or satisfactorily pursued a course of English study, applied within a prescribed time period, and met certain other requirements.[76] The bill also established smaller legalization programs for certain agricultural workers[77] and certain Haitian and Cuban nationals.[78] In total, almost three million undocumented immigrants obtained legalization under IRCA.[79]

Unfortunately, both pillars of IRCA had significant gaps. The January 1, 1982, cutoff date for legalization left almost five years' worth of arrivals ineligible for legalization. As a result of vague statutory language and restrictive interpretations by the former Immigration and Naturalization Service, extensive litigation arose that prolonged the legalization program for more than 20 years. These gaps inevitably kept large portions of the undocumented population underground. The IRCA legalization program also made no provision for the immediate families of legalized immigrants,[80] creating a strong incentive for them to enter or remain in the country illegally.

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[71] The Naturalization Act, ch. 3, 1 Stat. 103 (1790).
[72] Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99–603, 100 Stat. 3359.
[73] *See* 8 U.S.C. § 1324(b).
[74] *Id.* at §§ 1324a(e)(f), 1324b(g).
[75] *Id.* at § 1255(a).
[76] *Id.* at § 1255(b).
[77] *Id.* at § 1160.
[78] *Id.* at § 1255(a).
[79] U.S. DEP'T OF JUSTICE, 1994 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE 32 (1994) *available at http://ia600306.us.archive.org/21/items/statisticalyearb1994unit/statisticalyearb1994unit.pdf*.
[80] As noted above, the former INS established a "Family Fairness" program to which Congress added statutory relief for spouses and children of legalized aliens under the Immigration Act of 1990, but that relief was extremely limited. *See* Pub. L. No. 101–649, § 301, 104 Stat. 4978 (1990) (codified under 8 U.S.C. § 1255a).

Additionally, the employer sanctions resulted in significant discrimination. Despite prohibitions on national origin employment discrimination, a congressionally-mandated study concluded that employer sanctions had caused "a serious pattern of discrimination," finding that some 891,000 employers—19 per cent of those surveyed nationwide—had engaged in one or more discriminatory practices, including not hiring individuals whose foreign appearance or accent led the employer to suspect might be an undocumented worker.[81] Meaningful penalties for employer violators, adequate resources for enforcing the employer sanctions laws, and the political will to prioritize such enforcement were also lacking in 1986.

The 1986 legislation also failed to ensure that immigration enforcement would not undermine applicable labor laws. The result was that employers of workers who complained about illegal working conditions often either retaliated or threatened to retaliate against their workers based on the workers' immigration status. This created a condition where unscrupulous employers could seek out undocumented workers for financial gain with very little risk. All of these factors contributed to the ineffectiveness of employer sanctions. Lastly, IRCA made no significant provision for modernizing the criteria for future legal immigration for either family reunification or labor needs, thereby failing to address two root causes of illegal immigration. Informed by these lessons from history, S. 744 seeks to address these and other core issues that undermined IRCA's effectiveness.[82]

The Immigration Act of 1990

The Immigration Act of 1990[83] was more limited in scope than IRCA. It made changes to the structure of legal immigration—for example, by slightly increasing the worldwide caps on family immigration[84] and substantially increasing the caps for skilled and professional employment-based immigration[85]—but it did not address the increasing number of undocumented immigrants. The Act also created new immigration programs, including "diversity visas" for immigrants from countries and regions that have sent relatively few immigrants to the United States in recent years,[86] and "temporary protected status" for persons who cannot safely return home because of armed conflict, natural disaster, or certain other dangers.[87] Importantly, the 1990 Act imposed the first-ever numerical limits on the admission of nonimmigrants: 65,000 per year (since

[81] U.S. GENERAL ACCOUNTING OFFICE, GAO–90–62, IMMIGRATION REFORM: EMPLOYER SANCTIONS AND THE QUESTION OF DISCRIMINATION 3–8 (1990).

[82] As discussed below, S.744 addresses many of the deficiencies that undermined IRCA's effectiveness. The bill permits individuals to apply for Registered Provisional Immigrant status if they were present in the country as of December 31, 2011, much closer to the expected date of enactment than was the case with IRCA. The bill makes express, if limited, provision for spouses and children of RPI applicants to apply for legal status. The bill significantly toughens the penalties for hiring unauthorized aliens, implements nation-wide E-Verify, and creates new penalties for employers who violate both immigration and labor laws.

[83] Pub. L. No. 101–649, 104 Stat. 4978.

[84] Under the formula introduced in 1990, the worldwide cap on family preference immigration went from 216,000 to a minimum of 226,000. Immediate relatives (the spouses and children of U.S. citizens, and the parents of U.S. citizens over the age of 21) were exempt from numerical limits, but the number of such immediate relatives is subtracted from the following year's worldwide ceiling on family-sponsored immigrants.

[85] 8 U.S.C. §§ 1255(d), 1259.

[86] *Id.* at § 1259.

[87] *Id.* at § 1254(a)

increased to 85,000) for H–1B nonimmigrants, and 66,000 per year for H–2B nonimmigrants, exclusive of their spouses and children accompanying or following to join.[88]

Although these changes were important, they proved insufficient to address the many gaps in IRCA. The 1990 Act added very few visas to the family preference visa categories, with the result that many immigrant families continued to be separated from their loved ones for prolonged periods of time. Additionally, the flat numerical caps attached to temporary worker programs proved to have limitations. During the economic boom of the late 1990s, employer demand, particularly in the information technology sector, often could not be accommodated by the numeric caps established by the 1990 Act.[89] Corrective legislation to alter the H–1B program limits was enacted in 1998 and again in 2000,[90] but subsequent fluctuations in the supply and demand of qualified U.S. workers made it difficult to strike a consistent balance between furnishing U.S. industry with a high-skilled labor force to meet identified labor shortages, and protecting the jobs and wages of American workers. Although the H–2B nonimmigrant visa program was designed to meet low-skilled seasonal needs for temporary labor,[91] there have been ongoing difficulties ensuring that employers use the program instead of resorting to undocumented workers, and that this workforce—both H–2B nonimmigrant workers and U.S. co-workers—have adequate labor protections.

Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)

In 1996, 10 years after IRCA was enacted, Congress enacted three major statutes that had a significant impact on immigration. The first, the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA),[92] focused largely on counter-terrorism efforts, but also added a wide range of immigration restrictions and enforcement measures. The second, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA),[93] dramatically restricted access to welfare benefits for non-U.S. citizens, including lawful permanent residents. The third, and most sweeping, was the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).[94]

The IIRIRA legislation focused almost exclusively on border security and strengthening interior enforcement against undocumented immigrants. Resources were increased dramatically for personnel, physical barriers, and technology at the border.[95] Additional funding was authorized for more Federal prosecutors, detention facilities, and the physical removal of undocumented immigrants ordered removed.[96] As noted above, the law also established a pilot

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[88] *Id.* at 1101(a)(15)(H), 1184(g).
[89] Susan Martin & B. Lindsay Lowell, *Competing for Skills: U.S. Immigration Policy since 1990*, 11 L. & BUS. REV. AM. 387, 398–400 (2005).
[90] Pub. L. No. 105–277, 112 Stat. 2681 (1998); American Competitiveness in the Twenty-First Century Act of 2000, 8 U.S.C. § 1184(g).
[91] 18 U.S.C. § 1101(a)(15)(H).
[92] Pub. L. No. 104–132, 110 Stat. 1214 (1996).
[93] Pub. L. No. 104–193, 110 Stat. 2105 (1996).
[94] Pub. L. No. 104–208, Div. C, 110 Stat. 3009 (1996).
[95] Illegal Immigration Reform and Immigrant Responsibility Act [IIRIRA], Pub. L. No. 104–208, Div. C, 110 Stat. 3009 (1996) at §§ 101–12.
[96] *Id.* at §§ 204, 131–34, 385, 386.

program for employer electronic verification of workers' identities and work authorizations, the precursor of E-Verify.[97] There were substantially increased civil and criminal penalties for alien-smuggling, document and other fraud, and other miscellaneous immigration-related offenses.[98] The law created the 3-year and 10-year bars to reentry for immigrants who were previously unlawfully present in the United States. It expanded the crime-related and terrorism-related removal grounds, restricted the availability of discretionary remedies, and narrowed the procedural rights previously applicable in removal proceedings.[99] The Act broadened, and in some circumstances mandated, the use of preventive detention in connection with removal proceedings.[100] With limited exceptions, IIRIRA also barred applications for asylum filed more than one year after arrival.[101]

By focusing narrowly on enforcement and border security, IIRIRA continued to leave the significant gaps in IRCA unaddressed. It did not respond to the growing undocumented population, and failed to address future flows of either permanent or temporary legal immigration.

Precursors to Comprehensive Immigration Reform

In 1997, Congress began to take initial steps to address the limitations of IRCA and IIRIRA and the growing population of undocumented immigrants in the United States. Rather than drafting a broad-based response to cover nationals from all countries, however, the efforts were focused on a series of small bills that targeted specific countries.

The first bill was the Nicaraguan and Central American Relief Act (NACARA),[102] which provided adjustment to lawful permanent residence status for certain Nicaraguans and Cubans who arrived in the United States by December 1, 1995. The legislation also offered a more difficult route to permanent residence, through cancellation of removal, to certain persons from El Salvador, Guatemala, and the former Soviet bloc countries who arrived in the United States before 1991.[103] A year later, following public outcry that Haitians had been omitted from NACARA, Congress enacted the Haitian Refugee Immigration Fairness Act (HRIFA),[104] which provided permanent residence status to certain Haitian nationals who had arrived in the United States before December 31, 1995. While meaningful for those they affected, these bills addressed only a tiny fraction of the millions of people living in the shadows in the United States.

In September 2001, efforts at a more comprehensive approach were underway as part of bilateral discussions between President George W. Bush and President Vicente Fox of Mexico.[105] Those

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[97] *Id.* at §§ 401–05.
[98] *Id.* at §§ 202, 203, 211–20, 321–34.
[99] *Id.* at §§ 301–58.
[100] *Id.* at § 305.
[101] *Id.* at § 604.
[102] Nicaraguan Adjustment and Central American Relief Act (NACARA), Pub. L. No. 105–100, tit. II, 111 Stat. 2160, 2193–201 (1997), *amended* by Pub. L. 105–139, 111 Stat. 2644 (1997).
[103] *Id.* at § 202.
[104] Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA), Pub L. No. 105–277, 112 Stat. 2681 (1998).
[105] Press Release, White House, Remarks by President George W. Bush and President Vicente Fox of Mexico in Joint Press Conference (Feb. 16, 2011), *available at http://georgewbush-whitehouse.archives.gov/news/releases/2001/02/20010216-3.html.*

talks focused on a new temporary worker program, stronger border enforcement measures, and a solution for the undocumented population. On September 7, 2001, the Senate Judiciary Committee held a hearing discussing the need for comprehensive immigration legislation.[106] As the subtitle of the hearing—"a historic opportunity"—suggested, there was a chance to enact long-awaited reforms.

The terrorist attacks of September 11, 2001, put efforts at comprehensive immigration reform on hold. Instead, Congress again turned to further strengthening border security and interior enforcement.

Post-9/11 Legislation

The USA PATRIOT Act of 2001[107] built on previous restrictions and introduced a series of new measures that broadened terrorism-related grounds for removal, narrowed the possibilities for discretionary relief, reinforced border security, expanded detention, and streamlined the procedures for removing alien terrorists. Five years later, the REAL ID Act of 2005[108] again expanded grounds of inadmissibility, further restricted judicial review in immigration proceedings, prohibited the issuance of driver's licenses to undocumented individuals, and mandated various security procedures relating to applications for drivers' licenses. The Secure Fence Act of 2006[109] bolstered existing border security measures by mandating 700 miles of fencing along the Southern border. Other measures were adopted to provide additional resources for immigration enforcement.[110] Overall, in the years following the attacks of September 11, 2001, Federal laws enacted in the immigration realm have focused almost entirely on interior enforcement and border security.

Recent Efforts at Comprehensive Immigration Reform

Recent efforts to pass comprehensive immigration reform failed in 2006 and 2007. Following many years and repeated legislative work on border security and interior enforcement, the central issue in these efforts was the proposed legalization of the millions of undocumented immigrants currently living in the United States. In 2006, the Senate passed S. 2611, the bipartisan Comprehensive Immigration Reform Act, by a vote of 62–36. The House of Representatives failed to pass a reconcilable companion bill, and the measure did not become law. In 2007, the Senate considered S. 1348, the Secure Borders, Economic Opportunity, and Immigration Reform Act, without Committee consideration. Several weeks of floor debates ensued, with 30 amendments considered. Cloture, however, failed by a vote of 34–61. The amended bill was re-introduced as S. 1639 and a compromise was reached to bring the bill back to the floor. Cloture on the motion to proceed was invoked for the legislation,

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[106] *See U.S.-Mexico Migration Discussions: A Historic Opportunity, Hearing Before the S. Comm. on the Judiciary*, 107th Cong. (Sep. 7, 2001).

[107] Pub. L. No. 107–56, 115 Stat. 272 (2001).

[108] Pub. L. No. 109–13, Div. B, 119 Stat 231 (2005).

[109] Pub. L. No. 109–367, 120 Stat. 2638 (2006).

[110] *See, e.g.*, Intelligence Reform and Terrorism Prevention Act Secs. 5101–5204, Pub. L. No. 108–458, 118 Stat. 3638 (2004) (containing several border security and immigration enforcement provisions, including authorization of an increase of 10,000 Border Patrol agents and 4,000 ICE agents); Security and Accountability For Every Port Act of 2006 (SAFE Port Act), P.L. 109–347 (2006); Jamie Zapata Border Enforcement Security Task Force Act, Pub. L No. 112–205, 126 Stat. 1487 (2012).

after which the Senate debated the bill for three days. Following debate, the Senate did not invoke cloture on the bill by a vote of 46–53.

Recent Border Security Legislation

In the absence of comprehensive immigration reform, Congress continued to take other substantial steps to bolster immigration enforcement and address national security concerns relating to immigration. In 2010, Congress passed an emergency supplemental appropriations bill for border security.[111] The legislation was introduced in the Senate by Senator Schumer as S. 3721, and in the House by Representative David Price as H.R. 6080, and was signed into law on August 13, 2010. It allocated more than $600 million in supplemental appropriations for Southwest border security resources and operations, allowing U.S. Customs and Border Protection to hire more than 1,000 new agents and otherwise supplement its enforcement efforts. The legislation also provided for a strike force to be deployed in areas of the Southwest border, as well as for unmanned aerial vehicles to provide technological support to patrol officers. The legislation provided resources for the construction of operating bases closer to the border and the improvement of interagency communications, and it increased the capacity of U.S. Immigration and Customs Enforcement and other agencies to conduct investigations of drug runners, money launderers, and human traffickers along the border. These provisions have contributed to the strengthening of border enforcement efforts in recent years.

2. State and Local Immigration Measures

Over the last two decades, State and local governments have increasingly proposed and enacted legislation to address immigration-related issues, with varying degrees of acceptance by the courts that have evaluated such legislation in light of the Constitution's Supremacy Clause.[112] The proliferation of legislation reflects dissatisfaction with the Federal Government's implementation of immigration policy. Moreover, it has created a patchwork of laws and protracted litigation that creates uncertainty for immigrants, employers, workers, and law enforcement alike. In 2007, 50 State legislatures enacted 167 immigration bills into law; in 2011, the number of proposed State or local bills introduced on immigration matters reached 1,607, with 197 enacted into law.[113] The largest categories were laws punishing employers for hiring unauthorized immigrants and laws that enlisted State and local law enforcement agencies to help police illegal immigration.[114] These State and local efforts in recent years to enact laws that affect immigration policy

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[111] Pub. L. No. 111–230 (2010).

[112] *See* NAT'L CONFERENCE OF STATE LEGISLATURES, IMMIGRATION POLICY REPORT, 2011 IMMIGRATION LAWS AND RESOLUTIONS IN THE STATES (2011) *available at http://www.ncsl.org/documents/immig/2011ImmFinalReportDec.pdf.*

[113] LAUREEN LAGLAGARON ET AL., MIGRATION POLICY INSTITUTE, REGULATING IMMIGRATION AT THE STATE LEVEL (2008), *available at http://www.migrationpolicy.org/pubs/2007methodology.pdf.*

[114] *Id.*; see also NAT'L CONFERENCE OF STATE LEGISLATURES, IMMIGRATION POLICY PROJECT, STATE ACTIONS REGARDING E-VERIFY (2012) *available at http://www.ncsl.org/documents/immig/StateActions_Everify.pdf.*

provide further evidence of the need for comprehensive reform at the Federal level.

In 1994, California voters, amidst claims that millions of undocumented immigrants were contributing to rising crime rates and public welfare costs, passed Proposition 187, a broad measure denying undocumented immigrants many State-funded services.[115] The measure also required law enforcement, social services, health care workers, and public education personnel to verify the immigration status of those with whom they come in contact and report those with unlawful status to State and Federal officials.[116] Despite its passage, several city officials and institutions vowed not to enforce the law, citing undesirable consequences such as denying shelter to abandoned children and healthcare to children in need.[117] Civil rights groups immediately sued to enjoin the law's enforcement, and a Federal district judge held its provisions unconstitutional to the extent they infringed upon the Federal Government's exclusive power to regulate immigration.[118]

Since then, several other jurisdictions have also attempted to discourage undocumented immigrants from living or working within their boundaries. In 2006, the city of Hazleton, Pennsylvania enacted ordinances that required employers to verify employee work eligibility and sanctioned landlords who rented accommodations to undocumented immigrants.[119] Civil rights and Hispanic business organizations challenged the law, and the U.S. Court of Appeals for the Third Circuit held that its provisions were preempted by Federal law.[120]

The city of Farmers Branch, Texas, is another municipality whose restrictive immigration ordinances have sparked major litigation. Starting in 2006, the city passed a series of ordinances that required immigration status checks for renters, including a law that would have prohibited occupants—on pain of criminal penalties—from renting housing without a declaration of citizenship or other lawful status.[121] A local landlord, joined by the United States as amicus curiae, challenged the rental ordinance, arguing that Federal policy preempts housing regulations that serve only to restrict immigration.[122] The Fifth Circuit Court of Appeals agreed, finding that these regulations intruded on the Federal domain of immigration and foreign policy.[123] The Fifth Circuit recently reheard the case en banc.[124]

Although most of these State and local efforts to regulate immigration have been rejected by the courts, they reflect the frustration that many feel about our broken immigration system. More needs to be done to combat illegal immigration, but the responsi-

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[115] *See League of United Latin Am. Citizens* v. *Wilson*, 908 F.Supp. 755,763(C.D.Cal. 1995) ("LULAC I").

[116] *Id.*

[117] *See* Op-Ed., *Why Proposition 187 Won't Work*, N.Y. Times, Nov. 20, 1994.

[118] *See LULAC I*, 908 F.Supp. at 769–71.

[119] Tenant Registration Ordinance, HAZLETON, PA., ORDINANCE 2006–13 (Aug. 15, 2006); Illegal Immigration Relief Act Ordinance, HAZLETON, PA., ORDINANCE 2006–18 (Sept. 21, 2006).

[120] *See Lozano* v. *City of Hazleton*, 620 F.3d 170 (3d Cir. 2010), *vacated for further consideration by Lozano* v. *City of Hazleton*, 131 S.Ct. 2958 (June 6, 2011)).

[121] *See Villas at Parkside Partners* v. *City of Farmers Branch, Tex.*, 675 F.3d 802, 805 *reh'g en banc granted*, 688 F.3d 801 (5th Cir. 2012).

[122] *See Villas at Parkside Partners*, 675 F.3d at 805.

[123] *Id.*

[124] *Villas at Parkside Partners* v. *City of Farmers Branch, Tex.*, 688 F.3d 801 (5th Cir. 2012).

bility for solving this national problem cannot rest with individual States and localities.

That conclusion has been underscored by recent Supreme Court cases addressing this issue. Over the last several years Arizona, Alabama, South Carolina, and Utah (among other jurisdictions) have attempted to enact their own immigration laws. Arizona's S.B. 1070, the Support Our Law Enforcement and Safe Neighborhoods Act, included a comprehensive set of immigration provisions and criminal sanctions for immigration violations.[125] It reflected the most expansive effort by a single State to discourage undocumented immigrants from moving to or living in that State. Among its key provisions were Section 3, making failure to meet Federal immigrant-registration requirements a State misdemeanor; Section 5, making it a misdemeanor for undocumented immigrants to work in Arizona; Section 6, allowing State and local law enforcement to arrest persons suspected of being in the United States unlawfully; and Section 2(B), requiring an immigration status check after all arrests.[126]

Alabama's H.B. 56 largely mirrored Arizona's S.B. 1070, but added provisions to prevent undocumented immigrants from obtaining housing and to identify those enrolled in its public school system. After the bill's passage, education officials in Alabama reported that immigrant families kept children at home or withdrew them from school altogether,[127] and foreign travelers reported being detained while on business in the State.[128]

The United States Department of Justice and civil rights groups challenged Arizona's law and other similar measures, arguing that Federal immigration policy preempted State efforts to regulate immigration.[129] Many immigrant, Latino, and civil liberties advocates also opposed the laws, arguing that the provisions allowing arrest on suspicion of immigration violations would lead to racial profiling.[130] In 2012, the Supreme Court ruled that Sections 3, 5, and 6 of S.B. 1070 were preempted by Federal immigration policy, while noting that it was premature to enjoin the Section 2(B) provisions requiring immigration status checks for all arrests.[131] The Court held that under the Supremacy Clause, Congress had occupied the field of immigration regulation, and State statutes conflicting with the Federal framework for immigration enforcement were preempted.[132] In April 2013, the Supreme Court declined to hear an appeal from a Federal circuit court decision striking down similar provisions in Alabama's H.B. 56.[133]

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[125] Randal C. Archibold, *Arizona Enacts Stringent Law on Immigration*, N.Y. Times (April 23, 2010) at A1.

[126] *See Arizona* v. *United States*, 132 S. Ct. 2492, 2501–08 (2012).

[127] *See* Associated Press, *Alabama: May Immigrants Pull Children From Schools, N.Y. Times*, Sept. 30,2011.

[128] Gustavo Valdes & Catherine E. Shoichet, *Auto Exec's Arrest a New Flashpoint in Alabama's Immigration Debate*, CNN, Nov. 22, 2011 (reporting that local police detained a German Mercedes Benz executive because he was driving a rental car and did not have his driver's license in hand); Arian Campo-Flores & Miriam Jordan, *Alabama Immigration Law Ensnares Auto Workers*, WALL ST. J., Dec. 1, 2011 (reporting that local police issued a citation to a Japanese Honda employee even though he had a valid passport and international driver's license).

[129] Randal C. Archibold & Mark Landler, *Justice Dept. Will Fight Arizona on Immigration,* N.Y. Times, June 18, 2010, at A8.

[130] Randal C. Archibold & Ana Facio Contreras, *First Legal Challenges to New Arizona Law,* N.Y. Times, Apr. 29, 2010, at A15.

[131] *Arizona* 132 S. Ct. at 2493 (2012).

[132] *Id.* at 2498.

[133] *United States v. Alabama,* 691 F.3d 1269 (11th Cir. 2012), *cert. denied* April 29, 2013 (No. 12–884).

In analyzing S.B. 1070, the Supreme Court discussed the dangers inherent in a State-by-State approach to immigration enforcement, noting that immigration policy can affect trade, investment, tourism, and diplomatic relations for the entire country.[134] The perceived mistreatment of immigrants in the United States, even as a result of the actions of a single State or locality, can lead to reciprocal harmful treatment of American citizens abroad.[135] A critical tenet of our foreign policy is that countries concerned about the status, safety, and security of their citizens must be able to confer and communicate with the United States, not 50 separate States.

3. Broad Public Support for Comprehensive Immigration Reform

There is widespread agreement that our current immigration system is in disrepair and that a comprehensive solution is needed to address the full scope of the problem. At the outset of the Senate Judiciary Committee's consideration of S. 744, Republican and Democratic Senators alike acknowledged the need for congressional action. Senator Lee stated, "We all agree that our immigration system is broken and it needs to be fixed." Senator Coons noted, "As many have already recognized, where we are today is totally unacceptable." Senator Cruz stated, "I appreciate that we are now having this process to address a broken immigration system. Virtually everyone agrees the immigration system we now have it broken." Senator Blumenthal observed, "The world is watching, because we are the greatest nation in the history of the world . . . Our system of immigration is broken and unworthy of the greatest nation in the history of the world."

Public sentiment in recent years has echoed the call for action on comprehensive immigration reform. In an April 2013 poll conducted by Gallup, 69 percent of Americans indicated that they would support a law "that would allow illegal immigrants living in the United States the chance to become permanent legal residents if they meet certain requirements."[136] Similarly, 65 percent of Americans indicated that they would support a law "that would allow illegal immigrants living in the United States the chance to become U.S. citizens if they meet certain conditions."[137]

Findings of support for immigration reform generally, and specifically for the comprehensive immigration bill currently under consideration, have been widely reported. According to a national survey conducted by the Winston Group in April 2013, 74 percent of voters surveyed believe the current immigration system is working "poorly," with 41 percent saying it works "very poorly."[138] Some 68 percent of those surveyed stated that our immigration system needs "a lot of changes" or "a complete overhaul." Moreover, 75 percent of those surveyed stated that they "strongly support" or "somewhat support" the requirement that "illegal immigrants in the [United States] register for legal status, pay fines, learn English, pay taxes, and wait in the back of the line to apply for

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[134] *Arizona,* 132 S.Ct. at 2498.
[135] *Id.* at 2498–99.
[136] Elizabeth Mendes, *Americans Favor Giving Illegal Immigrants a Chance to Stay,* GALLUP: POLITICS, Apr. 12, 2013.
[137] *Id.*
[138] THE WINSTON GROUP, *Attitudes on Immigration Reform: an analysis of survey research* (Apr. 25, 2013).

citizenship, until everyone who is currently in line to legally enter the U.S. gets in." Similar recent surveys have shown broad majorities supporting a path to citizenship when coupled with paying back taxes and passing background checks.[139]

These findings are consistent with what this Nation's leaders have been urging. Businesses, community and faith leaders, and individuals from across the political spectrum have called for Congress to fix the broken immigration system. The Chamber of Commerce and companies from a variety of sectors have described the flaws in the existing immigration system that prevent American businesses from recruiting world-class talent, and urged those issues to be addressed through comprehensive immigration reform.[140] The call for reform has been joined by think tanks such as Americans for Tax Reform,[141] the CATO Institute,[142] the Brookings Institution,[143] the American Immigration Council,[144] and a group of 111 prominent conservative economists.[145] Support for immigration reform has been voiced by leaders from both political parties, including President Bill Clinton, President George W. Bush, former New Mexico Governor Bill Richardson, and former Secretaries of State Colin Powell, Condoleezza Rice, and Hillary Clinton.

The call for comprehensive immigration reform has also been echoed by law enforcement. Secretary of Homeland Security Janet Napolitano testified before the Judiciary Committee: "Our immigration system is out of date and badly in need of reform. Our law enforcement, our economy, our workforce, and our communities are suffering and frustrated by the current patchwork of laws and requirements that make up this system."[146] The former president of the National District Attorneys Association, Robert Johnson, described how the fear of "being funneled into a harsh and unreasonable immigration system deters [undocumented workers] from engaging with law enforcement because of the constant threat of deportation." He concludes: "This reality makes the criminal justice system less effective and hinders our ability to solve crimes and

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[139] *See, e.g., Post-ABC Poll: Immigration Reform and Gun Control,* WASH. POST, May 23, 2013; *N.Y. Times-CBS Poll,* N.Y. Times, Apr. 29, 2013; *Fox News Poll: Majority Says Legal Immigration Should Be Reduced,* Fox News, Apr. 23, 2013.

[140] Press Release, *U.S. Chamber of Commerce, U.S. Chamber Expresses Support for Introduction of Comprehensive Immigration Reform* (Apr. 17, 2013), *available at http://www.uschamber.com/press/releases/2013/april/us-chamber-expresses-support-introduction-comprehensive-immigration-reform.*

[141] Press Release, Americans For Tax Reform, *Americans for Tax Reform Supports Comprehensive Immigration Reform,* Apr. 6, 2013, *available at: http://www.prnewswire.com/news-releases/americans-for-tax-reform-supports-comprehensive-immigration-reform-55996837.html.*

[142] *See* STUART ANDERSON, CATO INSTIT., TRADE BRIEFING PAPER NO. 32, ANSWERING THE CRITICS OF COMPREHENSIVE IMMIGRATION REFORM 1–10 (2011), *available at http://www.cato.org/publications/trade-briefing-paper/answering-critics-comprehensive-immigration-reform.*

[143] *See* Darrell M. West, *The Path to a New Immigration Reform,* Brookings Instit., July 21, 2009, *available at http://www.brookings.edu/research/opinions/2009/07/21-immigration-reform-west.*

[144] Press Release, Am. Immigration Council, *Senate Judiciary Committee Votes to Pass Immigration Bill on to Full Senate,* May 21, 2013, *available at http://www.americanimmigrationcouncil.org/news-media/press-releases.*

[145] Lisa Mascaro, *Conservative economists endorse immigration reform bill,* L.A. Times, May 23, 2013, *available at http://articles.latimes.com/2013/may/23/nation/la-na-pn-immigration-letter-20130522.*

[146] *The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744: Hearing Before the Senate Committee on the Judiciary,* 113th Cong. (2013) (testimony from Secretary of the U.S. Department of Homeland Security Janet Napolitano).

hold perpetrators accountable."[147] Former Utah Attorney General Mark Shurtleff has said that comprehensive immigration reform "will discourage illegal immigration [and] will encourage those people to come out of the darkness," concluding that reform "would be a boon to public safety."[148] Additional support for comprehensive immigration reform has been expressed in letters from 36 current and 76 former State Attorneys General, who believe that reform will bolster border security while also addressing the 11 million undocumented individuals present in the country.[149]

Education leaders have joined in the call for comprehensive reform. An open letter by Cornell University President David J. Skorton, Arizona State University President Michael M. Crow, and Miami Dade College President Eduardo J. Pardron noted that comprehensive immigration reform "impact[s] our ability to attract, retain, and educate the world's leading minds."[150] They wrote: "Too often . . . our ability to educate and our ability to innovate are frustrated by U.S. immigration laws. Particularly in the innovation-rich fields of Science, Technology, Engineering, and Math (STEM), we train many of the brightest minds of the world, only to have those students sent abroad to compete against us because our immigration laws do not provide a viable path for them to stay."

Leaders in religious communities have also called for immigration reform as a core priority. Evangelical leaders have said that immigration is a "Christian issue . . . not a political issue."[151] The PICO National Network, a broad coalition of diverse faiths, has held prayer vigils across the country to demonstrate support for immigration reform.[152] For many of these leaders, immigration reform became a priority after they witnessed the experience of immigrants in their congregations whose families have been separated or who spend their lives in fear of deportation because of our current immigration system.[153] Civil rights groups and community advocates have also joined in the call for comprehensive immigration reform. The National Council of La Raza, the National Immigration Law Center, the American Civil Liberties Union, Human Rights Campaign, United We Dream, and other groups across the Nation have submitted letters and statements to the Committee calling for Congress to act.

In sum, the Committee has heard from business leaders, faith groups, family groups, community advocates, civil rights organizations, law enforcement, and individual members of the public about the urgent need to fix our immigration system and to address the

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[147] Robert Johnson, Commentary, *Justice System Should Determine Which Immigrants Are Public Safety Risk,* CQ NEWS (May 16, 2013).

[148] *The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744: Hearing Before the Senate Committee on the Judiciary,* 113th Cong. (April 22, 2013) (testimony from former Utah Attorney General Mark Shurtleff).

[149] Letter from 76 Former State Attorney Generals to Members of the Judiciary Committee (Apr. 21, 2013) (copy on file with the Senate Judiciary Committee); Letter from 36 Current State Attorney Generals to Senate and House Leadership (Apr. 15, 2013) (copy on file with the Senate Judiciary Committee).

[150] Ronald Roach, *Higher Education Leaders Join Immigration Reform Coalition,* DIVERSE: ISSUES IN HIGHER EDUC., Mar. 13, 2013.

[151] Adelle M. Banks, *Immigration Reform gets personal for Evangelicals,* RELIGION NEWS SERVICE, Apr. 11, 2013.

[152] Julia Preston, *Showing Grass-Roots Support for Immigration Overhaul,* N.Y. TIMES, May 1, 2013.

[153] Banks, *Immigration Reform gets Personal for Evangelicals,* RELIGION NEWS SERVICE, Apr. 11, 2013.

plight of the millions of undocumented immigrants who are living their lives in the shadows of our country. These voices across the Nation and the political spectrum agree that the time has come for common-sense, comprehensive immigration reform.

II. History of the Bill and Committee Consideration

A. INTRODUCTION OF THE BILL

The Senate Committee on the Judiciary has debated the issue of immigration reform extensively since 2005, convening some 52 hearings on immigration-related matters during that time period. In the 109th Congress (2005–2006), the Committee held 15 hearings on immigration matters and convened six Executive Business Meetings to consider, amend, and report legislation that was then introduced in the Senate as S. 2611, the Comprehensive Immigration Reform Act of 2006. The bipartisan bill was sponsored by Senators Specter, Brownback, Graham, Hagel, Kennedy, Martinez and McCain. After several weeks of debate, S. 2611 passed the Senate in 2006 by a vote of 62–36, but the House of Representatives did not pass a reconcilable companion bill and the legislation was not enacted into law. There have been several attempts to revive comprehensive immigration reform over the past few years, most notably in 2007 and 2010, but those attempts also ended with no legislation enacted.

On January 16, 2013, Senate Judiciary Committee Chairman Patrick Leahy announced in a speech at Georgetown University that he would make immigration reform the Committee's top legislative priority for the year. He pledged to dedicate much of the Committee's time in the spring to comprehensive immigration reform, noting the promising work of a bipartisan group of eight Senators who had begun discussing potential legislation. Those eight Senators, Senators Schumer, McCain, Durbin, Graham, Menendez, Rubio, Bennet, and Flake, announced their principles of agreement in a press conference on January 28, 2013. The President called for comprehensive immigration reform in a policy speech on January 29, 2013, and again in his State of the Union address on February 12, 2013.

The framework discussed by the bipartisan group of eight Senators and developed over several months led to their development of S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act. The bill was introduced on April 17, 2013, and was referred to the Senate Committee on the Judiciary.

B. HEARINGS

The Judiciary Committee has held extensive hearings on the subject of immigration reform over the course of the past decade, including in connection with previous efforts to enact comprehensive immigration reform in 2006, 2007, and 2010. In the 109th Congress (2005–2006), the Committee held 15 hearings on immigration related matters, addressing both the need for reform and specific comprehensive immigration reform proposals. This close examination of immigration policy continued in the 110th Congress (2007–2008) with eight hearings on immigration-related matters. During those Congresses, hearing topics included challenges and strategies

for border security, reform of the Visa Waiver Program, and privacy concerns surrounding the REAL ID Act.

During the 111th and 112th Congresses, the Committee continued to analyze the need to update U.S. immigration laws and consider potential areas of reform. A total of 17 hearings were held on topics including enforcement of current law, the Uniting American Families Act, and legislation to update the EB–5 visa program for immigrant investors coming to the United States to invest in specific job-creating development projects. The Committee also maintained its oversight of the Department of Homeland Security and U.S. Citizenship and Immigration Services.

During the 111th Congress, the Subcommittee on Immigration, Refugees and Border Security, under the chairmanship of Senator Schumer, held four hearings on comprehensive immigration reform, including hearings on border security, employment verification, and faith-based attitudes toward immigration reform. Over the course of the 111th Congress, the subcommittee heard from a total of 25 witnesses on reform. In the 112th Congress, the Subcommittee on Immigration, Refugees and Border Security continued its examination of comprehensive immigration reform, with seven hearings examining diverse topics including the Northern border, the DREAM Act, the economics behind immigration reform, the Nation's agricultural labor crisis, the impact of reform on international travel, the constitutionality of State preemption of Federal immigration law, and oversight of the student visa program. During these hearings, a total of 33 witnesses testified before the subcommittee.

Early this Congress, the Committee renewed its focus on our Nation's immigration system in anticipation of comprehensive reform legislation being introduced. Between February and April 2013, the Committee held a total of six hearings on immigration reform, with 42 witnesses testifying before the Committee. Three of the hearings focused specifically on S. 744, including an extensive, all-day hearing with multiple panels on April 22, 2013.

The Secretary of Homeland Security appeared twice before the Committee during the 2013 hearings. Other witnesses included a broad range of representatives from law enforcement and State and local government; business, labor, and agricultural interests; economists, faith leaders, and community advocates; immigration attorneys, law professors, and a former immigration judge. A detailed description of the Judiciary Committee's 2013 hearings follows.

On February 13, 2013, the Committee held a hearing entitled, "Comprehensive Immigration Reform." The witnesses at the hearing were the Honorable Janet Napolitano, Secretary of the U.S. Department of Homeland Security; Jose Antonio Vargas, Founder of Define American; Jessica Vaughan, Director of Policy Studies at the Center for Immigration Studies; Steve Case, Chairman and CEO of Revolution LLC; Chris Crane, President of the National Immigration and Customs Enforcement Council 118 of the American Federation of Government Employees; and Janet Murguía, President and CEO of the National Council of La Raza. Their testimony is available on the Committee's website.

On March 18, 2013, the Committee held a hearing entitled, "How Comprehensive Immigration Reform Should Address the Needs of Women and Families." The witnesses at the hearing were Ai-jen Poo, Director of the National Domestic Workers Alliance; Dr. Karen

Panetta, Professor of Electrical and Computer Engineering at Tufts University; Mee Moua, President and CEO at the Asian American Justice Center; Susan Martin, Donald G. Hertzberg Professor of International Migration at Georgetown University; and Jennifer Ng'andu, Director of the Health and Civil Rights Policy Project at the National Council of La Raza. Their testimony is available on the Committee's website.

On March 20, 2013, the Committee held a hearing entitled, "Building an Immigration System Worthy of American Values." The witnesses at the hearing were Ahilan Arulanantham, Deputy Legal Director of the ACLU of Southern California; Michael Cutler, Retired Senior Special Agent at the Immigration and Naturalization Service; Professor Paul Grussendorf, Retired Immigration Judge; Jan C. Ting, Professor of Law at Temple University Beasley School of Law; and Pamela Stampp, Esq., Attorney at Castro Law Firm. Their testimony is available on the Committee's website.

On April 19, 2013, the Committee held a hearing entitled, "Hearing on Comprehensive Immigration Reform Legislation." The witnesses at the hearing were Peter Kirsanow, Partner at Benesch, Friedlander, Coplan & Arnoff and Commissioner on the United States Commission on Civil Rights; and Dr. Douglas Holtz-Eakin, President of the American Action Forum. Their testimony is available on the Committee's website.

On April 22, 2013, the Committee held a hearing entitled, "The Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744." The witnesses at the hearing were Arturo Rodriguez, President of United Farm Workers; Charles Conner, President and CEO of the National Council of Farmer Cooperatives; Alyson Eastman, President of Book-Ends Associates; Megan Smith, Commissioner of the Vermont Department of Tourism & Marketing; the Honorable Jim Kolbe, Former United States Representative (R–AZ–5); Tamar Jacoby, President and CEO of Immigration Works USA; Rick Judson, Chairman of the Board of the National Association of Home Builders; Brad Smith, General Counsel and Executive Vice President of Microsoft, Legal and Corporate Affairs; Professor Ron Hira, Associate Professor of Public Policy at the Rochester Institute of Technology; Neeraj Gupta, CEO of Systems in Motion; Fred Benjamin, CPO of Medicalodges, Inc.; Gaby Pacheco, Immigrant Rights Leader and Director of the Bridge Project; Janet Murguía, President and CEO of the National Council of La Raza; Dr. David Fleming, Senior Pastor at Champion Forest Baptist Church; Mark Krikorian, Executive Director at the Center for Immigration Studies; Laura L. Lichter, Esq., President of the American Immigration Lawyers Association; the Honorable Kris Kobach, Kansas Secretary of State; Mark Shurtleff, Partner at Troutman Sanders LLP and Former Utah Attorney General; the Honorable Bill Vidal, Former Mayor of Denver and President and CEO of the Hispanic Chamber of Commerce of Metro Denver; Janice L. Kephart, Former Counsel on the September 11 Commission and Principal of 911 Security Solutions; Chris Crane, President of the National Immigration and Customs Enforcement Council 118 of the American Federation of Government Employees; Dr. Steven Camarota, Director of Research at the Center for Immigration Studies; and Grover Norquist, President of Americans for Tax Reform. Their testimony is available on the Committee's website.

On April 23, 2013, the Committee held a hearing entitled, "The Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744." The witness at the hearing was the Honorable Janet Napolitano, Secretary of the United States Department of Homeland Security. Secretary Napolitano's testimony is available on the Committee's website.

Three other Senate Committees also held hearings related to comprehensive immigration reform in 2013. The Senate Committee on Commerce, Science & Transportation held a hearing on May 8, 2013 entitled, "The Role of Immigrants in America's Innovation Economy." The Senate Committee on Homeland Security and Government Affairs held three hearings related to border security. The first hearing, on March 14, 2013, was entitled, "Border Security: Measuring the Progress and Addressing the Challenges." The second hearing was held on April 10, 2013 and was entitled, "Border Security: Frontline Perspectives on Progress and Remaining Challenges." The third hearing, on May 7, 2013, was specific to S. 744 and was entitled, "Border Security: Examining Provisions in the Border Security, Economic Opportunity, and Immigration Modernization Act S. 744." The Senate Committee on Small Business and Entrepreneurship held a hearing on May 16, 2013, relating to the E-Verify provisions in S. 744, entitled, "The Impact of Mandatory E-Verify on America's Small Businesses."

C. LEGISLATIVE HISTORY

The Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, was introduced on April 17, 2013, by Senators Schumer, McCain, Durbin, Graham, Menendez, Rubio, Bennet and Flake. Its introduction followed several months of discussions by the bill's sponsors, who first outlined their agreed principles for reform during a press conference on January 28, 2013. During the press conference, the group identified four basic legislative pillars for reform: creating a tough but fair path to citizenship for unauthorized immigrants that is contingent upon achieving increased border security and tracking visa overstays; reforming the legal immigration system; creating an effective employment verification system; and establishing an improved process for admitting future workers.[154] The Senators committed to draft legislation that would provide resources to secure the border and to modernize and streamline our current legal immigration system, while creating a tough but fair legalization program for individuals who are already present in the United States.

The group developed the text of S. 744 over several months of negotiations, during which the Senators met approximately 24 times. The Agricultural Worker Program included in S. 744 as Title II, Subtitle B, was developed by Senators Feinstein, Hatch, Bennet, and Rubio, after several months of negotiations and discussions with the Agriculture Workforce Coalition, representing a broad cross-section of agricultural employers, and representatives of farmworkers, including the United Farm Workers of America. The bill was introduced on April 17, 2013.

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[154] Memoranda from Senator Charles Schumer et al. on the Bipartisan Framework for Comprehensive Immigration Reform (Jan. 28, 2013), *available at http://www.nytimes.com/interactive/2013/01/23/us/politics/28immigration-principles-document.html.*

The Border Security, Economic Opportunity, and Immigration Modernization Act was listed on the Judiciary Committee's Executive Business Meeting Calendar for April 25, 2013, and was held over in accordance with Committee rules. Amendments were first considered during the Committee's Executive Business Meeting on Thursday, May 9, 2013.

In total, Committee members filed 301 first degree amendments to the bill, 106 by Democrats and 194 by Republicans. In addition, Senator Schumer introduced a sponsors' amendment on behalf of the eight sponsors of the bill, making technical changes to S. 744. The amendments filed included 17 amendments to the Pre-Title section of the bill (trigger), 26 amendments to Title I (Border Security), 99 amendments to Title II (Immigrant Visas), 87 amendments to Title III (Interior Enforcement), and 72 amendments to Title IV (Non-immigrant Visas).

During the course of its markup of S. 744, the Committee considered a total of 212 amendments, including first degree, second degree, and substitute amendments. Of the amendments considered, 100 were offered by Democrats (including the sponsors' amendment) and 112 by Republicans. The Committee adopted 136 amendments, all but three on a bipartisan basis. A detailed description of the amendments considered appears below.

Following 37 hours of debate during five Executive Business Meetings conducted over the course of three weeks, the Committee voted to report S. 744 as amended on the evening of Tuesday, May 21, 2013, by a bipartisan vote of 13–5.

D. EXECUTIVE BUSINESS MEETINGS

Upon introduction of S. 744 and its referral to the Senate Committee on the Judiciary, Chairman Leahy announced several measures to ensure that the Committee's markup would be as transparent and comprehensive as possible. As detailed above, the Committee held three public hearings specifically on the text of S. 744, during which the Committee received in-person testimony from 26 witnesses and written submissions from numerous additional groups and interested members of the public.

Chairman Leahy initiated several new procedures to assist the thorough and transparent review of the bill by the public. The Chairman established, with the agreement and cooperation of the Committee's Ranking Member Senator Grassley, a 5 p.m. filing deadline for all amendments two days before the first Executive Business Meeting at which amendments would be considered. For the first time in the Committee's history, the Chairman directed that all of the amendments filed would be posted on the Committee's website to facilitate public review. Of the 301 amendments filed, 296 were filed by the 5 p.m. deadline on Tuesday, May 7, 2013. The final five amendments were filed at approximately 7:15 p.m. All amendments were posted on the Committee's website that evening.

As amendments were considered during the Committee's Executive Business Meetings, the Committee's website was updated in real time to reflect the disposition of amendments and their modification by substitute or second-degree amendments. The text of modified amendments was scanned and posted to the Committee website as soon as possible after any modification was made, to fur-

ther promote public review. This process was positively received by the public and the media, many of whom circulated links to the Committee's website and used the Committee's website as a basis to provide real-time feedback to Senators' offices during the debate. In accordance with longstanding Committee practice, the markup was open to the public and webcast live on the Committee's website, further promoting public engagement in the Committee's deliberations.

In total, the Committee engaged in more than 37 hours of debate during five Executive Business Meetings that took place over three weeks. The first markup where amendments were considered took place on Thursday, May 9, 2013, beginning at 9:30 a.m. and concluding at 5:05 p.m. The Committee considered amendments relating to the Pre-Title and Title I, adopting 24 of the 35 amendments considered.

The second markup took place on Tuesday, May 14, from 10:05 a.m. to 5:15 p.m., covering Title I and Title IV. Of the 38 amendments considered, 23 were adopted.

The third markup took place on Thursday, May 16, from 9:40 a.m. to 12:55 p.m., focusing on Title IV and Subtitle A of Title III. Of the 26 amendments considered, 16 were adopted.

The fourth markup took place on Monday, May 20, from 10:10 a.m. to 8:20 p.m., focusing on Title III and Title II of the bill. Of the 70 amendments considered, 49 were adopted.

The fifth and final markup took place on Tuesday, May 21, from 10:45 a.m. until 7:55 p.m., focusing on Title II and a remaining amendment to Title IV from Senator Hatch that had been held over. Of the 40 amendments considered, 24 were adopted.

For the second and third day of markup, the Committee met in the Dirksen Senate Office Building Room G–50. For the other days, it met in the Senate Judiciary Committee's large hearing room, Hart Senate Office Building Room 216. Hundreds of members of the public, including faith groups, community advocates, immigration experts, families, and other interested individuals attended the markup sessions each day for the duration of the Committee's consideration of the bill.

E. AMENDMENTS CONSIDERED

1. PRE-TITLE and TITLE I

a. Overview of Amendments

The material preceding Title I (the "Pre-Title") and Title I of the bill contain a variety of provisions that strengthen border security and establish staggered "triggers" that must be satisfied before any undocumented individuals can apply for the new "Registered Provisional Immigrant" (RPI) status created by the bill, or for lawful permanent residence. The bill allocates up to $6.5 billion for border security and interior enforcement measures; authorizes thousands of additional Customs and Border Protection officers; significantly expands border security infrastructure and the use of technology at the border; and provides additional resources for criminal prosecutions of those unlawfully crossing the border and to State, local and tribal governments for their costs related to illegal immigration. The bill sets forth specific border security metrics and establishes a bipartisan Southern Border Security Commission if those metrics

are not attained within five years, with members appointed by the President, both Houses of Congress, and Governors of the Border States to further improve border security.

The bill prohibits the Department of Homeland Security ("DHS") from processing any applications from undocumented individuals to adjust to RPI status until the Secretary has submitted to Congress a Comprehensive Southern Border Security Strategy and a Southern Border Fencing Strategy within six months of enactment. The Department of Homeland Security may not issue green cards to any RPIs for at least 10 years, and not until the Secretary of Homeland Security certifies that the Comprehensive Southern Border Security Strategy is substantially deployed and substantially operational, that the Southern Border Fencing Strategy is implemented and substantially completed, that DHS has implemented a mandatory employment verification system to be used by all employers, and that DHS is using an electronic exit system at air and seaports to track departures. These triggers do not apply to those seeking to adjust status under the DREAM Act portion of the bill or agricultural workers with blue card status.

Strengthening Border Security

A number of the amendments adopted in the Pre-Title and Title I strengthen the border security provisions already in the bill. Senator Grassley offered an amendment, Grassley1, that expands the bill's border security goals and metrics to cover the entire Southern border, not just high-risk sectors. Amendments offered by Senator Feinstein provide U.S. Customs and Border Protection with equipment to engage in maritime border security activities (Feinstein8), and create the Safe and Secure Border Infrastructure Program to provide funding to State and local governments to improve facilities at land ports of entry (Feinstein10). As discussed below, the Committee also adopted an amendment filed by Senator Hatch, Hatch6, that creates biometric exit processing at certain airports and provides for further study and expansion of that program in future years. Taken together, these amendments strengthen the border security provisions in S. 744 and build upon the significant resources that the Government currently invests in border security measures.

Oversight and Efficient Use of Resources

Other amendments adopted by the Committee will help ensure the efficient use of the significant border security and enforcement resources allocated by the bill and by existing law. Senator Leahy and Senator Cornyn offered an amendment, Leahy4, that gives the Department of Homeland Security flexibility to spend the $1.5 billion fencing fund created by S. 744 on the most effective infrastructure and technology, including at ports of entry, while also specifying that $1 billion of the fencing fund is available for deploying and repairing fencing along the Southern border. The amendment also requires consultation with relevant stake holders and respect for State and local laws in the implementation of fencing projects. Senator Feinstein offered a bipartisan amendment that was adopted, Feinstein2, that adds new Federal judgeships in Southern border districts so that the growing number of immigration cases can be resolved more quickly. The Judicial Conference of the United

States wrote to the Judiciary Committee in support of Feinstein2, explaining that the new enforcement resources provided in the bill will significantly increase the Federal caseload in those districts.[155]

The Committee also adopted several amendments that will improve oversight mechanisms relating to enforcement and border security. Senator Grassley offered two amendments, Grassley24 and Grassley5, that require audits both of the Comprehensive Immigration Reform Trust Fund established by S. 744 and of entities that receive grants under the bill. Senator Flake offered an amendment, Flake2, to require the Government Accountability Office to assess annually the status of the Department of Homeland Security's implementation of the Comprehensive Southern Border Security Strategy. Amendments offered by Senator Hirono (Hirono24), and Senator Sessions (Sessions36), expand the role of the DHS Ombudsman. Amendments adopted by the Committee also help protect children in immigration detention facilities (Feinstein6), and families and others affected by DHS border apprehension and repatriation programs (Hirono23 and Coons2). The bill as amended by the Committee also helps border communities by prohibiting border crossing fees (Leahy1); requiring that private landowners participate on the new DHS Border Oversight Task Force (Flake2); and ensuring that Border Patrol does not deploy unmanned aerial vehicles in California beyond three miles from the border, given the heavily populated areas in that region (Feinstein11).

Additional Trigger Amendments

The Committee debated, but did not adopt, several other amendments that would have significantly delayed or altered the earned path to citizenship that the underlying bill provides for undocumented immigrants already living in this country. These amendments, including Grassley4, Cornyn1 and Sessions11, among others, would have imposed further "triggers" before the application process for RPI status or for the earned path to citizenship could commence. In rejecting these amendments, Senators voiced concern that they either were unattainable or would further postpone the challenging path to citizenship, which already will take a minimum of 13 years for most applicants under the provisions in the bill. Senators discussed the importance of the triggers already contained in the base bill, including, in particular, the requirement that a mandatory employment verification system be implemented before anyone in RPI status may obtain lawful permanent residence (i.e., a green card).

During deliberations, the Committee also rejected an amendment offered by Senator Lee, Lee4, that would have required Congress to ratify the certifications that must be made by the Department of Homeland Security before any undocumented individuals could apply for RPI status or ultimately a green card. Senators noted that the amendment would make the legalization program inappropriately subject to partisan disputes, and would likely result in long delays. Senators also noted that the steps required by the amendment would be unnecessary, because the bill already provides that if certain border security metrics are not met within five

[155] Letter from Judicial Conference of the United States to Chairman Leahy (May 9, 2013) (copy on file with the Senate Judiciary Committee). The additional judgeships are off-set by a $10 increase in civil filing fees, from $350 to $360.

years, a bipartisan Commission will be created, with members selected by the President, leaders of both parties in the Senate and House of Representatives, and representatives of the Southern border States, to make recommendations to further enhance border security, and $2 billion of additional funding will be made available for additional border security measures at that time.

Further Expenditures

The Committee rejected other amendments that would have required significant increases in border security personnel or infrastructure, noting that the border security provisions of S. 744 already provide for billions of dollars in expenditures, in addition to the considerable expenditures authorized by existing law. Senator Sessions offered an amendment, Sessions9, that would have required the construction of hundreds of miles of additional "double-layered" border fencing before anyone in RPI status could apply for a green card. In opposing the amendment, Senators warned of its high cost and noted that fencing is not an effective or recommended border security measure in many parts of the Southern border. The Committee also debated and rejected Cruz1, an amendment offered by Senator Cruz that would have tripled the number of border patrol agents, quadrupled the equipment and other assets stationed along the border, and prevented any undocumented individual from applying for RPI status or for an agricultural blue card until those and other strict border security requirements were met. In rejecting the Cruz1 amendment, Senators again expressed concern about the high cost of the measure, and noted that the underlying bill already provides billions of dollars in border security resources. Senators also noted that the amendment would significantly delay the start of the application process for RPI status, a core purpose of the bill and an essential step in Congress's effort to bring out of the shadows, and into the lawful immigration system, the millions of undocumented persons currently living in the United States.

Biometric Exit System

During deliberation, the Committee engaged in extensive debate over amendments offered by Senators Sessions, Cruz, and others to establish a comprehensive biometric exit system that would obtain the fingerprints of all non-citizens who depart the United States (Sessions4, Sessions6, Cruz1). Senators opposing these amendments noted that implementing such a biometric exit system at all ports of entry, including the hundreds of land ports of entry around the country, would be prohibitively expensive and create extensive technological and infrastructure challenges. The United States did not build its border, aviation, and immigration infrastructure with exit processing in mind. Unlike the entry system, U.S. airports do not have designated exit areas for outgoing passengers to wait prior to departure, nor do they have specific checkpoints through which an outgoing passenger's departure is recorded by an immigration officer.[156] At the land border, the infrastructure problems

[156] In 2009, DHS created a pilot program in 15 airports using biometric technology to study ways to collect biometric information from departing passengers. *See* Dep't of Homeland Security, Notice to Aliens Included in the United States Visitor and Immigrant Status Indicator Technology (US–VISIT) Program; Collection of Alien Biometric Data upon Exit From the United States at Air Ports of Departure,74 Fed. Reg. 105 (June 3, 2009), available at *http://*

are even more acute, with far fewer lanes serving departure from the United States than for admission. In discussing the biometric exit amendments, Senators further noted that S. 744 already contains significant improvements to the current biographic exit system, by requiring the collection of exit data from machine-readable visas, passports, and other travel documents for those exiting from air and seaports, and by requiring that Federal immigration databases be interoperable.

Despite these concerns, following several debates over multiple Executive Business Sessions, the Committee accepted a more limited biometric exit amendment that was filed by Senator Hatch and offered by Senator Flake, Hatch6. The adopted amendment requires a biometric exit system to be in place at the 10 largest international airports in the United States within two years, and provides for the program to be expanded to 20 additional airports within six years. The amendment also requires the Department of Homeland Security to report to Congress on the effectiveness and cost of expanding biometric exit to major sea and land ports. The vote tally for the amendment is reflected below in the discussion of Title III, because the amendment was ultimately adopted in that Title.

b. List of Amendments Adopted, Not Adopted, and Withdrawn Relating to Pre-Title and Title I

In all, 42 amendments relating to the Pre-Title and Title I were considered during the Committee markup, 25 offered by Democratic Senators and 17 offered by Republican Senators. Of the 42 amendments considered, 29 were adopted, all but one with bipartisan support.

Amendments Adopted

The Committee began consideration of amendments to S. 744 on May 9, 2013. Senator Schumer offered a Sponsors' amendment (Sponsors1–MDM13313), a complete substitute amendment to make a number of technical fixes to the bill. The amendment was adopted by a roll call vote as follows (votes by proxy indicated with *):

Tally: 14 Yeas, 4 Nays

Yeas (14): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN)*, Coons (D–DE)*, Blumenthal (D–CT), Hirono (D–HI), Hatch (R–UT), Graham (R–SC)*, Cornyn (R–TX), Flake (R–AZ).*

Nays (4): Grassley (R–IA), Sessions (R–AL), Lee (R–UT), Cruz (R–TX).

Chairman Leahy offered an amendment (Leahy1–EAS13369) that forbids the Secretary of Homeland Security from establishing a border crossing fee at land ports of entry along the Southern and Northern borders. The amendment was adopted by a voice vote.

Chairman Leahy offered an amendment (Leahy4–EAS13416) that provides the Department of Homeland Security with additional flexibility in how it may use the $1.5 billion that the bill makes available for fencing along the Southern border. It also re-

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www.gpo.gov/fdsys/pkg/FR–2009–06–03/pdf/E9_12939.pdf; *see also* David Heyman, DHS: *We can identify those who overstay on visas*, USA Today, Feb. 25, 2013 (describing costs of program).

quires DHS to consult with relevant stakeholders along the Southern border as it implements the Southern Border Fencing Strategy, and ensures that if DHS invokes the provision in the bill that allows it to waive legal requirements in order to construct improvements at the border, DHS must specify which laws it is waiving, and any such waivers will expire once the relevant triggers have been satisfied. The amendment also includes a rule of construction to ensure that the bill is not construed to authorize fencing along the Northern border. Chairman Leahy offered a substitute amendment (Leahy4–EAS13457) to reduce funding available only for fencing by $500 million and leave the remaining $1 billion of fence funding available to be spent on deploying or repairing fencing. The substitute amendment was adopted by a voice vote.

Senator Feinstein offered an amendment (Feinstein1–EAS13279) that reauthorizes the State Criminal Alien Assistance Program (SCAAP) through 2015 so that State and local governments may obtain reimbursement from the Attorney General for the incarceration of undocumented immigrants charged with or convicted of an offense. Reimbursement is authorized even when the immigration status of the detained individual is unknown. The amendment was adopted by a roll call vote as follows (votes by proxy indicated with *):

Tally: 10 Yeas, 8 Nays

Yeas (10): Feinstein (D–CA), Schumer (D–NY), Hirono (D–HI), Hatch (R–UT), Sessions (R–AL), Graham (R–SC), Cornyn (R–TX), Lee (R–UT)*, Cruz (R–TX), Flake (R–AZ).*

Nays (8): Leahy (D–VT), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT), Grassley (R–IA).

Senator Feinstein offered an amendment (Feinstein2–HEN13550) that creates additional permanent district court judgeships in the Southwest Border States of Arizona, California and Texas. The amendment was modified by a second degree amendment (HEN13558) offered by Ranking Member Grassley and adopted by a voice vote.

Senator Feinstein offered an amendment (Feinstein6–MDM13537) that requires the Secretary of Homeland Security to establish standards to ensure humane conditions for children in the custody of U.S. Customs and Border Protection. The amendment was adopted *en bloc* by voice vote.

Senator Feinstein offered an amendment (Feinstein7–MDM13459) that requires the Federal Emergency Management Agency to allocate Operation Stonegarden grants and reimbursement through a competitive process. The amendment was adopted *en bloc* by voice vote.

Senator Feinstein offered an amendment (Feinstein8–MDM13520) that provides U.S. Customs and Border Protection with funding to acquire and deploy watercraft to support border-related, maritime anti-crime activities. The amendment was adopted *en bloc* by voice vote.

Senator Feinstein offered an amendment (Feinstein9–MDM13538) that ensures the U.S. Department of Justice provides reimbursement for all State and county immigration-related prosecutions under the Southwest Border Region Prosecution Initiative, including prosecution, pre-trial services and detention, clerical sup-

port, and public defender services. The amendment was adopted *en bloc* by voice vote.

Senator Feinstein offered an amendment (Feinstein10–MDM13491) authorizing the Secretary of Homeland Security and the Secretary of Transportation to create the Safe and Secure Border Infrastructure Program to offer grants to State and local government to improve land port facilities. The program will be administered by the U.S. Department of Transportation and the General Services Administration, and its funding will come from the Comprehensive Immigration Reform Trust Fund. The amendment was adopted by voice vote.

Senator Feinstein offered an amendment (Feinstein11–ARM13559) that would have redefined the Southwest Border region from within 100 miles of the Southern Border to within 25 miles of the Southern Border. Senator Feinstein then offered a substitute amendment (MDM13596) that replaced the original text of her amendment with a new limitation that prohibits U.S. Border Patrol from operating unarmed, unmanned aerial vehicles in California except within three miles of the Southern Border. Senator Feinstein then offered a further substitute amendment (MDM13599) that specifies that this limitation on the use of unmanned aerial vehicles in California shall not restrict maritime operations of U.S. Customs and Border Protection. The amendment as modified was adopted by voice vote.

Senator Schumer offered an amendment (Schumer2–EAS13444) that provides additional up-front funding for implementation of the bill, refines how the Comprehensive Immigration Reform Trust Fund account is funded, and requires an expenditure plan. The amendment was adopted by a roll call vote as follows (votes by proxy indicated with *):

Tally: 14 Yeas, 4 Nays

Yeas (14): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE)*, Blumenthal (D–CT), Hirono (D–HI), Hatch (R–UT)*, Graham (R–SC)*, Cruz (R–TX), Flake (R–AZ).*

Nays (4): Grassley (R–IA), Sessions (R–AL), Cornyn (R–TX), Lee (R–UT).

Senator Coons offered an amendment (Coons2–ARM13605) that would have prohibited the deportation of a migrant at a specific point along the Southern border if it would threaten the person's safety or if the deportation was to a different sector than where the migrant was originally detained. Senator Coons offered a substitute amendment (Coons2–MDM13590) that prohibits nighttime deportations, allowing exceptions for compelling governmental interest, with agreement of the migrant, or in accordance with a local agreement with the appropriate Mexican consulate. The substitute amendment was adopted by a voice vote.

Senator Blumenthal offered an amendment (Blumenthal10–DAV13376) that would have prohibited the Federal reimbursement of State and local governments for the prosecution or pre-trial detention of an individual if the Attorney General concludes that the individual's apprehension arose from unlawful conduct by a law enforcement official. Senator Blumenthal offered a substitute amendment (Blumenthal10–EAS13525) that gives the Attorney General discretion to limit Federal reimbursement when the jurisdiction

seeking reimbursement has engaged in unlawful conduct in connection with immigration-related apprehensions. The substitute amendment was adopted by voice vote.

Senator Hirono offered an amendment (Hirono23–EAS13376) that authorizes the Department of Homeland Security to consider humanitarian concerns, safety risks, or family unit disruption in certain cases when determining whether to repatriate or prosecute an individual. After it was amended to strike a requirement that the Department of Homeland Security ascertain such humanitarian concerns within two hours of an individual's apprehension, the amendment was adopted by a roll call vote as follows (votes by proxy indicated with *):

Tally: 10 Yeas, 8 Nays

Yeas (10): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI).

Nays (8): Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Graham (R–SC), Cornyn (R–TX), Lee (R–UT), Cruz (R–TX), Flake (R–AZ).

Senator Hirono offered an amendment (Hirono24–ARM13613) that expands the role of the Immigration Ombudsman, created in Section 1114 of S. 744, to ensure an independent and impartial perspective on agency policy. The amendment was adopted *en bloc* by voice vote.

Ranking Member Grassley offered an amendment (Grassley1–HEY13237) that expands the Comprehensive Southern Border Security Strategy to include all border sectors, not just high-risk sectors. The amendment was adopted by a voice vote.

Ranking Member Grassley offered an amendment (Grassley2–HEY13238) that requires several Congressional reports mandated by the bill to be provided to the Senate and House Judiciary Committees, in addition to the committees already listed in the bill. The amendment was adopted *en bloc* by a voice vote.

Ranking Member Grassley offered an amendment (Grassley5–ARM13617) that requires the Department of Homeland Security Inspector General and Chief Financial Officer to conduct annual audits of the Comprehensive Immigration Reform Trust Fund created in the bill. The amendment was adopted *en bloc* by a voice vote.

Ranking Member Grassley offered an amendment (Grassley24–DAV13369) that requires audits of grant recipients under the bill, and places restrictions on the eligibility of nonprofit organizations for grant funding. The amendment was adopted by a voice vote.

Senator Sessions offered an amendment (Sessions36–MDM13430) that expands the role of the Immigration Ombudsman to include providing assistance for individuals and families who have been victims of crimes committed by aliens, or violence near the border. The amendment was adopted *en bloc* by voice vote.

Senator Cornyn offered an amendment (Cornyn6–ALB13436) that adds prevention of human trafficking under the Omnibus Crime Control and Safe Streets Act of 1968 to the purposes of the Edward Byrne Memorial Justice Assistance Grant Program. This ensures that States receive funding to prevent human trafficking and report human trafficking statistics to the Federal Bureau of In-

vestigation for inclusion in the Uniform Crime Reporting Program. The amendment was adopted *en bloc* by voice vote.

Senator Flake offered an amendment (Flake1–MDM13451) that adds three private land owner representatives from the Northern and Southern Border Regions to join the Department of Homeland Security Border Oversight Task Force created in the bill. The amendment was adopted *en bloc* by voice vote.

Senator Flake offered an amendment (Flake2–MDM13456) that requires the Secretary of Homeland Security to provide semiannual reports to Congress on the status of DHS's implementation of the Comprehensive Southern Border Security Strategy, and requires the Comptroller General to conduct an annual review of the Secretary's semiannual reports. The amendment was adopted *en bloc* by a voice vote.

Amendments Not Adopted

Ranking Member Grassley offered an amendment (Grassley4–EAS13439) that would have prohibited granting Registered Provisional Immigrant status until the Secretary of Homeland Security certifies to Congress that the Department of Homeland Security has maintained "effective control" over the entire Southern border for six months. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 6 Yeas, 12 Nays

Yeas (6): Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Cornyn (R–TX), Lee (R–UT), Cruz (R–TX).*

Nays (12): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE)*, Blumenthal (D–CT), Hirono (D–HI), Graham (R–SC), Flake (R–AZ).*

Senator Sessions offered an amendment (Sessions4–MDM13410) that would have required the Department of Homeland Security to establish a biometric entry and exit system, instead of a biographic system, at all land and sea ports before any registered provisional immigrants can adjust to lawful permanent residence. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 6 Yeas, 12 Nays

Yeas (6): Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Cornyn (R–TX), Lee (R–UT), Cruz (R–TX).*

Nays (12): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI), Graham (R–SC), Flake (R–AZ).

Senator Sessions offered an amendment (Sessions9–MDM13544) that would have required the completion of 700 miles of reinforced double-layered fencing on the Southern border as a trigger before those in RPI status could apply for lawful permanent residence. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 6 Yeas, 12 Nays

Yeas (6): Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Cornyn (R–TX), Lee (R–UT), Cruz (R–TX).*

Nays (12): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken

(D–MN), Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI), Graham (R–SC)*, Flake (R–AZ).*

Senator Sessions offered an amendment (Sessions11–MDM13441) that would have altered the stated objectives of several border security provisions in the bill, including the objectives of the Comprehensive Border Security Strategy (substantial deployment of which is a trigger that must be met before RPIs can apply for lawful permanent residence), to require achieving and maintaining "operational control," or the prevention of all unlawful entries across the entire border. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 6 Yeas, 12 Nays

Yeas (6): Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Cornyn (R–TX), Lee (R–UT)*, Cruz (R–TX).**

Nays (12): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE)*, Blumenthal (D–CT), Hirono (D–HI), Graham (R–SC)*, Flake (R–AZ).*

Senator Sessions offered an amendment (Sessions37–MDM13365) that would have struck the section of the bill that requires the Secretary of Homeland Security to issue policies, in consultation with the Civil Rights Division of the U.S. Department of Justice, regarding the use of force by Department of Homeland Security personnel. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 7 Yeas, 11 Nays

Yeas (7): Whitehouse (D–RI), Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Cornyn (R–TX), Lee (R–UT), Cruz (R–TX).**

Nays (11): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT)*, Hirono (D–HI), Graham (R–SC)*, Flake (R–AZ).*

Senator Cornyn offered an amendment (Cornyn1–ARM13593) that would have replaced the entirety of Title I and required the Department of Homeland Security to achieve "full situational awareness" and "operational control" of the Southern border for one year before processing applications for Registered Provisional Immigrant status or agricultural blue card status. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 6 Yeas, 12 Nays

Yeas (6): Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Cornyn (R–TX), Lee (R–UT)*, Cruz (R–TX).*

Nays (12): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT)*, Hirono (D–HI), Graham (R–SC), Flake (R–AZ).*

Senator Lee offered an amendment (Lee4–MDM13493) that would have required Congressional ratification of the Secretary of Homeland Security's certification that the triggers had been satisfied, before those in Registered Provisional Immigrant status could apply for green cards. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 6 Yeas, 12 Nays

Yeas (6): Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Cornyn (R–TX)*, Lee (R–UT), Cruz (R–TX).*

Nays (12): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI)*, Klobuchar (D–MN), Franken (D–MN)*, Coons (D–DE)*, Blumenthal (D–CT), Hirono (D–HI), Graham (R–SC), Flake (R–AZ).*

Senator Cruz offered an amendment (Cruz1–MDM13528) that would have replaced Title I with specific border security requirements that would be required before the Secretary of Homeland Security could process any applications for Registered Provisional Immigrant status or agricultural blue cards, failing which the Department of Homeland Security would face budget reductions. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 5 Yeas, 13 Nays

Yeas (5): Grassley (R–IA), Sessions (R–AL), Cornyn (R–TX), Lee (R–UT), Cruz (R–TX).*

Nays (13): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE)*, Blumenthal (D–CT)*, Hirono (D–HI), Hatch (R–UT), Graham (R–SC), Flake (R–AZ).*

Amendments Withdrawn

Senator Sessions offered an amendment (Sessions38–MDM13366) that would have struck provisions of the bill that specify the training requirements to be issued by the Secretary of Homeland Security, in consultation with the Civil Rights Division of the Department of Justice, for border patrol agents, U.S. Immigration and Customs Enforcement agents, and other U.S. Department of Homeland Security personnel. The amendment was withdrawn.

Senator Cornyn offered an amendment (Cornyn2–MDM13521) that would have required the Comprehensive Southern Border Security Strategy to include a plan for reducing wait times at land ports of entry, increased land port of entry personnel by 5,000 officers, and taken other steps to expand the infrastructure at land ports of entry. It would have paid for these expansions with a general rescission of unobligated funds. The amendment was withdrawn.

2. TITLE II

a. Overview of Amendments

Title II of S. 744 establishes the legalization framework for eligible undocumented persons to apply for Registered Provisional Immigrant (RPI) status and, ultimately, seek a path to legal permanent residence and earned citizenship if they meet the criteria set forth in the bill. The Title permits an accelerated track for "DREAM" applicants (persons brought to the United States under the age of 16 who meet certain higher education or military service criteria), and creates an earned pathway to legal status and citizenship for experienced agricultural workers who have previously worked for a minimum number of years in the United States and who fulfill prospective employment requirements.

The legalization framework created in S. 744 is tough, rigorous, and informed by the lessons learned from the Immigration Reform and Control Act of 1986. Applicants must pass criminal background and national security checks, satisfy employment requirements, pay fines, fees, and back taxes, learn civics and English, and wait for the backlogs for family-sponsored and employment-based visa applicants to be cleared before their applications for lawful permanent residence may be processed. If an applicant obtains RPI status, he or she must petition to renew that status after six years (including passing renewed background checks). RPIs may only apply for lawful permanent residence after 10 years have passed and the triggers in the bill have been met. The work requirements in the bill require all adult applicants to demonstrate that they have been consistently employed throughout their time in RPI status with breaks no longer than 60 days (subject to certain limited exceptions) and that the applicant is not likely to become a "public charge," or that their income or resources are equal to the Federal poverty level (at the RPI renewal stage) or 125 percent of the Federal poverty level (at the LPR stage). As discussed below, criminal ineligibility grounds apply and build upon the tough criminal provisions for immigrants already in existing law. Persons in RPI status may not qualify for means-tested Federal benefits or subsidies under the Patient Protection and Affordable Care Act (ACA).

National Security Concerns and Fraud Detection in the Legalization Program

In addition to the rigorous screening processes already set forth in S. 744, several amendments adopted by the Committee added further national security screening and fraud detection efforts in the application process for previously undocumented persons. An amendment offered by Ranking Member Grassley, Grassley19, requires new benefit fraud assessment and compliance review programs within the Department of Homeland Security that will conduct audits, publish annual reports, and develop counter-measures for fraud detection in connection with certain immigration programs. Senator Flake added an amendment, Flake4, that requires the Secretary of Health and Human Services to conduct regular audits to ensure that individuals in Registered Provisional Immigration status do not fraudulently receive Federal means-tested benefits, which they are ineligible for under the base bill.

The Committee adopted two amendments to strengthen the already stringent background check requirements in the bill. An amendment by Senator Flake, Flake3, requires those in Registered Provisional Immigrant status to undergo additional law enforcement and national security screenings when they apply to renew their RPI status after six years. An amendment offered by Senator Graham, Graham3, requires additional national security screening for applicants who are from countries or regions that pose a national security threat to the United States, or that harbor groups that pose a national security threat.

A further amendment by Senator Cornyn, Cornyn4, requires the Department of Homeland Security to identify certain applicants for RPI status who are seeking a waiver for a criminal offense, to work with relevant prosecutors to make reasonable efforts to notify any victims of that offense that the individual has applied for RPI sta-

tus, and to offer the victim an opportunity to request consultation regarding the individual's waiver application.

The Committee did not adopt an amendment by Senator Lee, Lee12, that would have prohibited the use of sworn affidavits by Registered Provisional Immigrants to verify their employment and educational history when applying for adjustment of status. The amendment was opposed by immigration experts and advocacy groups, who noted that many undocumented workers do not possess formal employment records, and requiring paper documentation would make the application process impossible for potentially hundreds of thousands of individuals, undermining a central purpose of the bill. Senators noted that the bill already requires the submission of additional documentation such as bank records, business records, and available employment records to supplement a sworn affidavit, which will help reduce fraud concerns. The Committee similarly rejected an amendment by Senator Lee, Lee10, that would have changed S. 744's current requirement that RPIs pay all back-taxes assessed by the Internal Revenue Service (IRS), and instead placed the burden on RPI applicants to demonstrate that they have paid all applicable taxes owed to the Federal government. In opposing this amendment, Senators noted that the tax payment requirement in S. 744 establishes a clearer threshold for review and a more workable system, because it relies on the IRS to make an assessment of tax payments owed. Notably, the 2006 Senate-passed immigration bill did not require immigrants to satisfy any tax requirement until they sought lawful permanent residence status.

Ensuring Participation in the Path

Several other amendments adopted by the Committee in Title II improve upon the legalization framework in the bill, to ensure that the process, while tough, is accessible enough that unauthorized workers will come forward to apply for RPI status instead of remaining in the shadows. Senator Hirono offered an amendment, Hirono12, that will ease the financial strain for RPI applicants by allowing them to pay the first of several penalties owed in installments, instead of two $500 payments. An amendment offered by Senator Blumenthal, Blumenthal12, will allow DREAMers serving in the United States military to apply for citizenship on the same terms as those who apply under current law. Without this amendment, S. 744 would have prevented DREAMers from naturalizing while in provisional status, even if they were serving in the military.

Future Immigration

In addition to its legalization provisions, Title II also creates a future immigration framework that is premised on a merit-based points system, which will be available to all immigrants who have had legal presence in the United States as well as intending immigrants from abroad. Title II also contains a variety of other modifications to the immigration system, establishes a new non-immigrant agricultural worker visa, and sets forth provisions relating to the integration of new immigrants. The agricultural provisions were developed by Senators Feinstein, Hatch, Bennet, and Rubio to address the present and future workforce needs of the American

agriculture industry, including dairy, to create a streamlined process that will help employers secure a sufficient legal workforce while protecting U.S.-based workers from being displaced or otherwise adversely affected by foreign workers.

Two amendments adopted by the Committee in Title II encourage further immigration of high-skilled individuals. Senator Whitehouse offered Whitehouse4, which creates a special immigrant visa with expedited naturalization for immigrants who come to the United States to work in Federal laboratories dedicated to Federal national security, science and technology research. An amendment offered by Senator Klobuchar, Klobuchar5, improves the Conrad 30 Physician program, by allowing physician applicants who are denied a J–1 waiver because the State in which they applied has reached its annual cap of 30 waivers to extend their legal status for six months so they may apply to work in a medically underserved area in another State.

An amendment adopted by the Committee that was proposed by Senator Coons, Coons3, provides special immigrant status for the surviving spouses and children of employees of the U.S. government overseas who are killed in the line of duty.

Ineligibility Provisions

The Committee considered, but did not adopt, a number of amendments that would have created additional bars to the legalization programs for certain individuals. An amendment by Ranking Member Grassley, Grassley11, would have removed the provision of the bill that allows undocumented persons facing removal to stay removal proceedings and apply for RPI status if they appear prima facie eligible for such status. The amendment would have also eliminated the limited RPI eligibility waiver that will allow some undocumented persons who departed the country prior to December 31, 3011, to apply for RPI status and reunite with their families in the United States. During Committee debate, the view prevailed that fairness requires that someone who appears eligible for RPI status and who is in removal proceedings should have an opportunity to apply for status if they are eligible.

During deliberation, the Committee rejected an amendment offered by Senator Cornyn, Cornyn3, that would have changed the criminal bars for RPI and lawful permanent residence status to preclude anyone who: 1) had one conviction, at any time, for a misdemeanor involving domestic violence, violation of a protection order, child abuse, assault, or drunk driving, unless the applicant could demonstrate by clear and convincing evidence that he or she was innocent of the offense or that no offense occurred; 2) had convictions for three misdemeanors of any kind, at any time (other than minor traffic offenses and offenses relating to immigration status) even if the misdemeanors had arisen out of a single incident; or 3) had committed any offense under foreign law that would render them inadmissible for entry to the United States. Although intended to protect victims, the amendment was opposed by a large coalition of groups that serve victims of domestic violence, sexual abuse, child and elder abuse, dating violence, and stalking.[157] They

[157] Letter from 156 Advocacy Groups to Members of the U.S. Senate Judiciary Committee (May 15, 2013) (copy on file with Senate Judiciary Committee).

expressed concern that the amendment could have the unintended consequence of sweeping in someone who is herself a victim of domestic violence, because it is not uncommon for an alien who is a victim of domestic violence to be arrested due to language and cultural barriers that prevent her from explaining that she acted in self-defense or that an abuser's allegations are false. Senators on the Committee made clear that while domestic violence and child abuse are serious crimes, the concerns voiced were persuasive. They noted that there are already significant criminal penalties and immigration consequences for abuse in existing law, and that S. 744 already contains stringent criminal bars to legalization. Many of the offenses listed in Cornyn3 are already non-waivable bars to admissibility and eligibility.

Disclosure of Social Security Numbers

The Committee also considered and rejected an amendment offered by Ranking Member Grassley, Grassley18, that would have rendered all applicants ineligible for legalization unless they disclosed any Social Security Number or name they previously used to gain employment in the United States during the time they were undocumented. Numerous advocacy groups and immigration attorneys warned that such a provision would discourage undocumented immigrants from coming out of the shadows to seek RPI status, undermining a core purpose of the bill. Others expressed concern that the amendment could be used to attack employers who may have previously employed illegal workers, and that gathering such information raises privacy and security concerns.

Judicial Review

The Committee did not adopt an amendment offered by Ranking Member Grassley, Grassley17, that would have significantly limited provisions in the bill establishing judicial review and eliminated any Federal court review of the adjudication of legalization applications. This amendment was strongly opposed by the Leadership Conference on Civil and Human Rights and other groups, who warned that the amendment would eliminate the important backstop of the Federal court system to determine whether the executive branch properly implemented the bill.[158] The amendment was also opposed in a letter to the Committee by the group Justice at Stake, which, like the Leadership Conference, underscored the danger of narrowing the scope of judicial review.[159] During debate, Senators voiced concern that the amendment would undermine the Constitutional system of checks and balances by eliminating independent oversight of a significant administrative program that will affect millions of people. They also emphasized the risk of error in the program, and the resulting need for judicial review.

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[158] Letter from the Leadership Conference on Civil and Human Rights to Chairman Patrick Leahy and Ranking Member Charles Grassley, U.S. Senate Judiciary Committee (May 9, 2013) (copy on file with the Senate Judiciary Committee).

[159] Letter from Justice At Stake to Chairman Leahy and Ranking Member Charles Grassley, U.S. Senate Judiciary Committee (May 9, 2013) (copy on file with the Senate Judiciary Committee).

AMENDMENTS RELATING TO PUBLIC BENEFITS

During deliberations of Title II and Title III, the Committee discussed extensively the provisions of S. 744 that require applicants for RPI status and lawful permanent residence to demonstrate their financial security, as well as provisions in the bill that prohibit those in RPI status from receiving any Federal means-tested benefits. Under current law, lawful permanent residents who entered the country after 1996 typically only become eligible for Federal means-tested public benefit programs (such as Medicaid or Temporary Assistance for Needy Families) five years after they obtain a "qualified" immigrant status, such as lawful permanent residence.[160] S. 744 expressly provides that RPIs are not eligible for Federal means-tested benefits while they are in RPI status (a minimum 10-year period), and once they earn LPR status it further requires them to wait an additional five years, or until they obtain citizenship, before they may become eligible for those programs. As a result, RPIs effectively face a minimum 13-year bar before they could potentially qualify for means-tested Federal benefits. Even then, such benefits would only be available to individuals who had met the strict eligibility criteria of the legalization program and had successfully earned lawful permanent residence or citizenship over the prior thirteen or more years.

Other provisions in the bill further limit access to benefits programs. As discussed above, the bill requires those in RPI status to apply to renew their RPI status after six years, at which juncture applicants must (among other criteria) show that they are not "likely to become a public charge" and demonstrate their financial security by showing that they have not been unemployed for any period longer than 60 days in the past six years, or that they have maintained an income or resources that are at or above the Federal poverty level. Applicants seeking Lawful Permanent Resident status after 10 years must again meet the "public charge" test, and demonstrate financial security by showing that they have not been unemployed for any period longer than 60 days, or that they have maintained an income or resources that equal to at least 125 percent of the Federal poverty level. Applicants must also pay all assessed Federal tax liability, and as much as $2,000 in fines. During Committee deliberations, the Committee rejected an amendment by Senator Sessions, Sessions10, that would have made these strict criteria even harder for workers by expanding the criteria for "public charge," such that applicants would have to show they were not likely to qualify even for non-cash employment supports such as Medicaid, the SNAP program, or the Children's Health Insurance Program (CHIP). Senators opposing the amendment cited the strict benefit restrictions and requirements already included in both S. 744 and existing law, and the amendment was rejected by voice vote.

Affordable Care Act

Under current law, immigrants who are lawfully present in the United States are eligible for premium assistance tax credits and cost-sharing reductions under the Patient Protection and Afford-

[160] The Department of Health and Human Services has limited waiver authority for certain programs, such as for TANF benefits with regard to pregnant women and children.

able Care Act (Pub. L. No 111–148). The subsidies available to purchase private health insurance are not Federal public benefits and are available without a five-year waiting period.[161] In contrast, Section 2101 of S. 744 plainly states that RPIs may not receive premium assistance tax credits or cost-sharing reductions under the Affordable Care Act until they successfully obtain lawful permanent resident status, a process that will take a minimum of 10 years. Section 2211 imposes similar restrictions on agricultural workers with blue card status. These subsidies are denied even though RPIs and blue card holders are considered "lawfully present" in the United States.

During deliberations, some Republican Senators called for S. 744's tight restrictions on affordable healthcare for immigrants to be restricted even further, including by preventing immigrants from benefiting from the Affordable Care Act not only during the 10 or more years in which they are in RPIs status, but also for a further five years after they have achieved lawful permanent residence. Under this approach, immigrants on the path to citizenship would have been blocked from accessing the subsidies under the Affordable Care Act for a minimum of 15 years after they first begin the path. Advocacy groups have strongly opposed these reforms, noting that such restrictions would deny access to affordable health insurance for large categories of individuals and undermine the important cost-saving and public health objectives of the ACA.

Social Security Credits; Child Tax Credit; Earned Income Tax Credit

During Committee deliberations, the Committee also discussed provisions in the bill concerning tax payments by undocumented workers under current law, and future payments by those who will qualify for RPI status. Senator Hatch filed but did not offer an amendment, Hatch24, that would have prevented previously undocumented workers from claiming credit for contributions they paid into the Social Security system through payroll taxes during the years they were in undocumented status. Advocates and others strongly opposed this amendment, noting that many workers have paid into Social Security for years, and denying them the benefit of those payments in the future will severely harm families and retirees when immigrants who earn citizenship reach retirement age. The Social Security Administration estimates than in 2010 undocumented workers paid $13 billion in payroll taxes. Advocates also warned that an amendment such as Hatch24 could not be fairly or accurately administered, because many workers (such as visa overstays) have gone in and out of work authorized status over the years, and the Social Security Administration and DHS do not have accurate records to fairly credit their lawful work. As a result, the amendment would cause many lawful workers to lose the benefit of taxes they have paid. Moreover, Hatch24 would have risked the

[161] When Congress considered the Affordable Care Act, Pub. L. No (Pub. L. 111–148, 124 Stat. 119) and the Health Care and Education Reconciliation Act of 2010, Pub. L. No 111–152, 124 Stat. 1029 (2010), it specifically chose to grant lawfully present immigrants access to premium tax credits and cost-sharing subsidies available under the Act, and chose not to impose a five-year bar to qualify for such benefits on public health policy grounds. An amendment to impose a five-year bar was defeated by a vote of 10–13 in the Senate Committee on Finance (Oct. 1, 2009). *See Continuation of the Open Executive Session to consider an Original Bill Providing for Health Care Reform, Hearing Before the S. Comm. on Finance,* 110th Cong. (2009).

quarters of many legal immigrants who were never in undocumented status, because it required the Social Security Administration to affirmatively determine that each quarter they worked was a quarter in which they had legal status—information that DHS may not be able to verify affirmatively even for those who never were in an undocumented status.

During markup, Senator Sessions offered an amendment, Sessions30, that would deny the Child Tax Credit to families who paid taxes with an Individual Taxpayer Identification Number (ITIN) instead of a Social Security Number (SSN). Opponents of the amendment noted that while many undocumented workers use ITINs to file their tax returns, not all ITIN filers are undocumented. Moreover, the Child Tax Credit is not a welfare payment; it is a refundable credit for low-income working families who pay taxes. Approximately 20 million working families with children benefit from the refundable credit each year. Without access to the Child Tax Credit, low- and moderate-income immigrant taxpayers without Social Security Numbers would face Federal tax bills that are significantly higher than what other families in similar circumstances pay. The amendment was defeated on an 8–10 vote.

Senator Sessions offered an amendment, Sessions31, to deny the Earned Income Tax Credit to workers in RPI status and some other categories of legal immigrants who are lawfully working in this country. Under current law, undocumented immigrants are not eligible to claim the Earned Income Tax Credit, but immigrants who are working here legally may do so. Advocates and others strongly opposed this amendment because it would create an unprecedented two-tier tax system for workers that would result in one group of legal workers owing significantly higher Federal taxes than other legal workers with the same earnings. Like the Child Tax Credit, the Earned Income Tax Credit is not a welfare benefit; it is a credit only available to working families and is an integral part of the tax code. The Earned Income Tax Credit benefits about six million people with low incomes each year, almost all of whom (97 percent in 2010) are part of families with children. The amendment was defeated on an 8–10 vote.

Withdrawn Amendments

A number of amendments that would have significantly improved Title II were withdrawn out of concern that they would have upset the bill's bipartisan support. Senator Leahy offered and withdrew Leahy7, an amendment that would have amended the Immigration and Nationality Act to recognize for immigration purposes any marriage entered into in full compliance with the laws of the State or foreign country within which such marriage was performed, including same-sex marriages. After significant debate, the Republican cosponsors of the bill made clear that they would abandon their support of the comprehensive immigration bill if the amendment were adopted. The Chairman withdrew the amendment from consideration.

Additionally, Senator Blumenthal filed but did not offer Blumenthal1, which would have allowed children under the age of 18 to qualify for the DREAM Act's expedited path to citizenship if they meet all the eligibility criteria except the higher education and military service requirements, which they are too young to

meet. Senator Hirono also filed but did not offer two amendments, Hirono6 and Hirono7, that would have restored the family immigration categories eliminated by the bill for the siblings and unmarried children over age 31 of citizens and legal permanent residents. These amendments were personally important to the members who offered them, but were objected to by Republican members and were subsequently withdrawn in an effort to promote strong bipartisan support for S. 744.

b. List of Amendments Adopted, Not Adopted, and Withdrawn Relating to Title II

In all, 49 amendments relating to Title II were considered during the Committee markup, 21 offered by Democratic Senators and 28 offered by Republican Senators. Of those 49 amendments, 28 were adopted, all with bipartisan support.

Amendments Adopted

Senator Feinstein offered an amendment (Feinstein13–MDM13498) that ensures that grant programs authorized under Section 2106 include agricultural workers seeking blue card status. A second degree amendment (MDM13689) offered by Senator Feinstein also precludes the denial or revocation of certain non-immigrant visas solely because the applicant has expressed a "dual intent" to be the beneficiary of an immigrant application, or has filed such an application. The amendment as modified was adopted by a voice vote.

Senator Whitehouse offered an amendment (Whitehouse4–ARM13611) that provides a new conditional immigrant visa and expedited naturalization for certain high-skilled and specialized immigrants who come to the United States to work in Federal laboratories dedicated to Federal national security, science and technology research. The amendment was adopted by a voice vote.

Senator Klobuchar offered an amendment (Klobuchar5–MDM13503) that allows physicians whose J–1 waiver is denied because their State's allotted number of waivers has been filled to remain in legal status for 6 months so they may apply for the Conrad 30 Program in a medically underserved area of another State. It also authorizes their employment with the new employer who has applied for the waiver until their new waiver is approved. The amendment was modified by a second degree amendment (MDM13702) offered by Senator Klobuchar, which allows dual intent for J–1 visa holders entering the country for graduate medical education or training. The amendment as modified was adopted by a voice vote.

Senator Franken offered an amendment (Franken9–GRA13162) that confirms that immigrant victims of domestic violence who have received U visas are eligible for public or assisted housing. The amendment was adopted by a voice vote.

Senator Coons offered an amendment (Coons3–EAS13380) that confers special immigrant status on the surviving spouse or child of a U.S. government employee overseas who is killed in the line of duty. The amendment was adopted by a voice vote.

Senator Blumenthal offered an amendment (Blumenthal12–MDM13543) that permits DREAM Act eligible individuals serving in the Armed Forces to naturalize on the same terms as those who

apply under current law. The amendment was adopted by a voice vote.

Senator Hirono offered an amendment (Hirono1–EAS13437) that exempts from the numerical limitations on immigrant visas the sons and daughters of Filipino veterans of World War II who were naturalized under the Immigration Act of 1990 or other specified Federal law. The amendment was adopted by a voice vote.

Senator Hirono offered an amendment (Hirono11–MDM13540) that requires the Comptroller General to conduct a study of the impact on families and workers of the new merit-based immigration system created by Title II. The amendment was adopted by a voice vote.

Senator Hirono offered an amendment (Hirono12–ARM13554) that permits individuals applying for Registered Provisional Immigrant status to pay the first $1000 penalty in installment payments. The amendment was adopted by a voice vote.

Senator Hirono offered an amendment (Hirono20–MDM13523) that requires the Secretary of Homeland Security to collect certain information, which shall be kept confidential, from applicants for Registered Provisional Immigrant status for the purpose of understanding immigration trends. The amendment was modified by a second degree amendment (MDM13671) offered by Senator Hirono and was adopted by a voice vote.

Senator Hirono offered an amendment (Hirono21–BOM13213) that ensures that youth who are brought to the United States before the age 16 would not be prohibited from accessing financial aid for higher education. The amendment was modified by a second degree amendment (MDM13659) offered by Senator Hirono and was adopted by a voice vote.

Ranking Member Grassley offered an amendment (Grassley19–ARM13529) that requires the Department of Homeland Security to establish a fraud assessment program through the Fraud Detection and National Security Directorate with respect to Registered Provisional Immigrants, DREAM applicants, blue card applicants, U visas, and Iraq/Afghanistan visas. The program will include audits to identify and analyze types of fraud, and submission of annual reports on fraud trends. Any instances of fraud discovered through the program can be used to deny or revoke immigration benefits. The program will be paid for through the Comprehensive Immigration Reform Trust Fund. The amendment was modified and adopted by a voice vote.

Senator Graham offered an amendment (Graham3–DAV13381), modified by a second degree amendment also offered by Senator Graham (MDM13668), that requires additional national security screening of applicants for Regional Provisional Immigrant status and their derivatives who are citizens or long-time residents of a country or region that poses a threat to national security or harbors organizations that pose a threat to national security. The amendment as modified by the second degree amendment was adopted by a voice vote.

Senator Cornyn offered an amendment (Cornyn4–ALB13424) that changes the legalization waiver for individuals who departed the United States prior to December 31, 2011. As amended by a second degree amendment (ALB13471), it requires the Department of Homeland Security in certain cases in which an RPI applicant

has been convicted of a crime, to work with willing state and local prosecutors to identify and locate the victim, provide written notice of the RPI application, and allow the victim 60 days to consult DHS regarding the application. The second degree amendment was adopted by a voice vote.

Senator Cornyn offered an amendment (Cornyn8–MDM13316) relating to the EB–5 visa program for investors, that permits areas to be designated as Targeted Employment Areas for purposes of that program if they are negatively affected by the Base Realignment and Closure Program. The amendment was modified by a second degree amendment (EAS13622) offered by Senator Cornyn and the amendment as modified was adopted by a voice vote.

Senator Flake offered an amendment (Flake3–MDM13454) that requires Registered Provisional Immigrants to undergo national security and law enforcement background checks before their status can be renewed at the six-year renewal period. The amendment, as modified by a second degree by Senator Schumer (EAS13631), also makes several clarifications regarding eligibility of dependent spouses and children for the legalization programs. The amendment was modified by second degree amendments offered by Senator Schumer (EAS13631) and Senator Flake (MDM13649) and agreed to by a voice vote.

Senator Flake offered an amendment (Flake4–MDM13529) that adds a requirement that the Secretary of Health and Human Services conduct regular audits to ensure that individuals in Registered Provisional Immigrant status are not fraudulently receiving Federal means-tested public benefits. The amendment also adds a conviction for fraudulently claiming or receiving Federal means-tested public benefits after receiving Registered Provisional Immigrant status to the list of reasons that Department of Homeland Security can revoke Registered Provisional Immigrant status. The amendment was adopted by a voice vote.

Amendments Not Adopted

Senator Hirono offered an amendment (Hirono10–ARM13626) that would have allocated six percent of worldwide visas for family-sponsored immigrants to address separations that result in extreme hardship. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 7 Yeas, 11 Nays

Yeas (7): Leahy (D–VT), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI).

Nays (11): Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Graham (R–SC), Cornyn (R–TX), Lee (R–UT), Cruz (R–TX)*, Flake (R–AZ).*

Ranking Member Grassley offered an amendment (Grassley11–ARM13536) that would have struck provisions allowing apprehended individuals a reasonable opportunity to apply for Registered Provisional Immigrant status if they are *prima facie* eligible. The amendment would have also eliminated the limited RPI eligibility waiver that will allow some undocumented persons who departed the country prior to December 31, 2011 to apply for RPI status and reunite with their families. The amendment was not

agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 6 Yeas, 12 Nays

Yeas (6): Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Cornyn (R–TX), Lee (R–UT), Cruz (R–TX).**

Nays (12): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY)*, Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN)*, Franken (D–MN), Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI), Graham (R–SC), Flake (R–AZ).*

Ranking Member Grassley offered an amendment (Grassley16–ARM13504) that would have required all fees and penalties for immigrant visas to be adjusted at least yearly for inflation. This amendment was not agreed to by voice vote.

Ranking Member Grassley offered an amendment (Grassley17–EAS13399) that would have restricted judicial review of any Department of Homeland Security decision on an immigrant's adjustment of status or legalization. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 6 Yeas, 12 Nays

Yeas (6): Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Cornyn (R–TX), Lee (R–UT), Cruz (R–TX).*

Nays (12): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE)*, Blumenthal (D–CT), Hirono (D–HI), Graham (R–SC), Flake (R–AZ).*

Ranking Member Grassley offered an amendment (Grassley18–ARM13537) that would have prohibited the Secretary of Homeland Security from granting Registered Provisional Immigrant status to any person unless such person fully discloses all the names and Social Security Number ever used to obtain employment. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 8 Yeas, 10 Nays

Yeas (8): Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Graham (R–SC)*, Cornyn (R–TX)*, Lee (R–UT), Cruz (R–TX)*, Flake (R–AZ).*

Nays (10): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL)*, Whitehouse (D–RI), Klobuchar (D–MN)*, Franken (D–MN), Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI).*

Senator Sessions offered an amendment (Sessions15–EAS13333) that would have granted the Department of Homeland Security sole authority to revoke or deny visas for security purposes, without judicial review. The amendment was not agreed to by voice vote.

Senator Sessions offered an amendment (Sessions16–MRW13311) that would have required a fully electronic filing system for legalization petitions and mandated specific law enforcement procedures for the Department of Homeland Security. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 6 Yeas, 12 Nays

*Yeas (6): Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Cornyn (R–TX), Lee (R–UT), Cruz (R–TX).**

Nays (12): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN)*, Franken*

(D–MN), Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI), Graham (R–SC), Flake (R–AZ).*

Senator Sessions offered an amendment (Sessions30–MDM13331) that would have required taxpayers and their qualifying children to have a valid tax identification number to be eligible for the Child Tax Credit under section 24 of the Internal Revenue Code of 1986. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 8 Yeas, 10 Nays

Yeas (8): Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Graham (R–SC)*, Cornyn (R–TX)*, Lee (R–UT), Cruz (R–TX), Flake (R–AZ).*

Nays (10): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN)*, Coons (D–DE)*, Blumenthal (D–CT), Hirono (D–HI).*

Senator Cornyn offered an amendment (Cornyn3–MDM13315) that would have changed the criminal bars for RPI and lawful permanent residence status to preclude anyone who: (1) had one conviction, at any time, for a misdemeanor involving domestic violence, violation of a protection order, child abuse, assault, or drunk driving, unless the applicant could demonstrate by clear and convincing evidence that he or she was innocent of the offense or that no offense occurred; (2) had convictions for three misdemeanors of any kind, at any time (other than minor traffic offenses and offenses relating to immigration status), including if the misdemeanors arose out of a single incident; or (3) committed an offense under foreign law that would render the person inadmissible for entry to the United States. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 8 Yeas, 10 Nays

Yeas (8): Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Graham (R–SC)*, Cornyn (R–TX), Lee (R–UT)*, Cruz (R–TX)*, Flake (R–AZ).*

Nays (10): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN)*, Franken (D–MN), Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI).*

Senator Cornyn offered an amendment (Cornyn5–MDM13500) that would have required the Secretary of Homeland Security to disclose immigrant application information to law enforcement and would have authorized the Secretary of State to share limited information with a foreign government. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 9 Yeas, 9 Nays

Yeas (9): Feinstein (D–CA), Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Graham (R–SC), Cornyn (R–TX), Lee (R–UT), Cruz (R–TX), Flake (R–AZ).*

Nays (9): Leahy (D–VT), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI).*

Senator Lee offered an amendment (Lee8–MDM13342) that would have prohibited any individual who absconded or attempted to reenter the United States after receiving a deportation order from qualifying for Registered Provisional Immigrant status. The amendment was not agreed to by voice vote.

Senator Lee offered an amendment (Lee10–ARM13485) that would have required a Registered Provisional Immigrant applicant to demonstrate that he or she had paid all Federal taxes owed, rather than those assessed by the Internal Revenue Service, as required in the base bill. The amendment was not agreed to by voice vote.

Senator Lee offered an amendment (Lee12–MDM13378) that would have prohibited the use of sworn affidavits to verify the employment or education of Registered Provisional Immigrants applying for permanent residence. The amendment was not agreed to by voice vote.

Senator Cruz offered an amendment (Cruz2–DAV13378) that would have denied eligibility for Federal, State, and local government means-tested benefits to any individual who previously entered or remained in the United States unlawfully, regardless of the person's immigration status at the time of applying for the benefits. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 6 Yeas, 12 Nays

Yeas (6): Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Cornyn (R–TX), Lee (R–UT), Cruz (R–TX).*

Nays (12): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI), Graham (R–SC), Flake (R–AZ).*

Senator Cruz offered an amendment (Cruz3–DAV13373) that would have made any person ineligible for citizenship if they had ever been willfully present in the United States while not of lawful status. The amendment was modified by a second-degree amendment offered by Senator Cruz (MDM13677) that would have created a limited exception to the amendment for certain asylees. The amendment as modified was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 5 Yeas, 13 Nays

Yeas (5): Grassley (R–IA), Sessions (R–AL), Cornyn (R–TX), Lee (R–UT), Cruz (R–TX).*

Nays (13): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI)*, Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI), Hatch (R–UT)*, Graham (R–SC)*, Flake (R–AZ).*

Senator Cruz offered an amendment (Cruz4–MDM13526) that would have established an annual cap of 1,012,500 for employment-based immigrant visas and an annual cap of 337,500 for family-sponsored immigrant visas, and made other changes to the family visa category. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 6 Yeas, 12 Nays

Yeas (6): Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Cornyn (R–TX), Lee (R–UT), Cruz (R–TX).*

Nays (12): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE)*, Blumenthal (D–CT), Hirono (D–HI), Graham (R–SC), Flake (R–AZ).*

Amendments Withdrawn

Chairman Leahy offered an amendment (Leahy7–MDM13374) to recognize, for purposes of the Immigration and Nationality Act, any marriage entered into in full compliance with the laws of the State or foreign country within which such marriage was performed. After an extensive debate and hearing that Republican supporters would abandon their support for the legislation, Chairman Leahy withdrew this amendment.

Senator Blumenthal offered an amendment (Blumenthal15–MDM13448) to change the date at which undocumented immigrants had to have entered the United States to qualify for Registered Provisional Immigrant status from December 31, 2011, to April 17, 2013. Senator Blumenthal withdrew the amendment.

Senator Hirono offered an amendment (Hirono16–ERN13170) to eliminate the five-year bar for lawful permanent residents to obtain benefits, and provide full-scope Medicaid to lawfully present immigrant adults who are otherwise eligible and to children and pregnant women regardless of status. Senator Hirono withdrew this amendment.

Senator Hirono offered an amendment (Hirono17–ERN13174) to provide that an applicant's time in Registered Provisional Immigrant status or blue card status would apply toward the five-year waiting period for Federal means-tested public benefit programs. The amendment included a "do no harm" provision that would have ensured that individuals who have an immigration status that makes them eligible for affordable health insurance prior to obtaining Registered Provisional Immigrant or blue card status should not lose access to affordable health coverage if they enter Registered Provisional Immigrant status. The amendment would also have given States the option to eliminate the five-year bar for public benefits and to provide full-scope Medicaid to lawfully present individuals, DREAMers, or blue card holders who are otherwise eligible. Senator Hirono withdrew this amendment.

Senator Sessions offered an amendment (Sessions2–MRW13343) to reduce the number of immigrants granted permanent resident status and limited admission of nonimmigrant workers under S. 744 to 30 million during the 10 years after enactment. The amendment was withdrawn.

3. TITLE III

a. Overview of Amendments

Title III of S. 744 focuses on interior enforcement of immigration policy. Specifically, it establishes a mandatory E-Verify system and mandatory entry-exit system to help law enforcement identify visa overstays. It also modifies existing law relating to asylum-seekers and refugees, strengthens efforts to reduce human trafficking, and improves the functioning and efficiency of our Nation's immigration courts. It includes new measures to strengthen the penalties imposed on immigrants who commit crimes, by expanding the already significant grounds for deportation and inadmissibility in the immigration code, increasing civil and criminal penalties for illegal entry and re-entry, and creating new prohibitions against manufacturing fraudulent immigration documents.

Contrary to views expressed by some opponents of the bill, S. 744 contains strong measures to promote interior enforcement. The E-Verify system created by the bill will apply to all businesses across the Nation within five years of implementing regulations, making it significantly harder for unauthorized persons to obtain work without detection. Provisions imposing a mandatory entry/exit system will crack down on visa overstays, and changes to the student visa system made in Title IV will address potential abuses in that program.

As discussed below, the bill also contains many provisions to ensure that undocumented immigrants with significant criminal histories are barred from staying in the United States. The bill precludes from RPI status anyone with a single felony conviction that is not based on immigration status. There is no exception and there is no time limit. As a result, the bar applies even to non-violent felony offenses (such as receiving stolen property) that occurred years before.

The bill also bars anyone who has been convicted of an "aggravated felony" as defined in the Immigration and Naturalization Act, which encompasses more than 40 offenses including misdemeanors, crimes of violence, and theft crimes. For example, one single decades-old shoplifting offense could bar someone from RPI status. The bill also prohibits anyone with more than two misdemeanor convictions from RPI status. This prohibition can include misdemeanors as minor as trespassing, littering, speeding, or loitering. The bill further toughens the already significant grounds for deportation and inadmissibility, to include involvement in criminal street gangs, habitual drunk driving, immigration document fraud, child abuse and domestic violence.

At the same time, the bill restores reasonable powers to immigration judges to allow them to take into account the individual circumstances in a case. In aggregate, the provisions of Title III as amended by the Committee promote a tough but fair interior enforcement system that will improve our immigration system and make the Nation more secure.

National Security and Fraud Detection Efforts

A number of the amendments adopted in Title III strengthen the existing national security and fraud enforcement provisions included in S. 744. Senator Graham offered two amendments, Graham1 and Graham2, in response to the bombing that took place during the Boston Marathon on April 15, 2013. Graham1 requires the Department of Homeland Security to terminate status of any refugee or asylee who travels back to his or her home country without good cause.[162] Graham2 requires the Department of Homeland Security to share with Federal law enforcement, intelligence, and national security agencies information concerning individuals who have overstayed their visas, and requires DHS to employ reason-

[162] Refugee Council USA wrote a letter to the Committee opposing this amendment, which was also opposed by other advocacy groups. They noted that "any provision requiring automatic termination of refugee or asylee status for any return to the country of nationality or last habitual residence is contrary to the international obligations of the [United States] and is unnecessary under existing U.S. law. Refugees and asylees have many legitimate reasons for returning to their countries of origin, particularly years later once they have attained permanent resident status in the United States and the conditions that caused them to flee have changed." See Letter from Refugee Council USA to Members of the Senate Judiciary Committee (May 9, 2013) (copy on file with the Senate Judiciary Committee).

ably available enforcement resources to locate visa overstays and commence removal proceedings.

Senator Feinstein offered an amendment that was adopted, Feinstein4, which requires full biographic and biometric security screening for all applicants for refugee and asylum status by the Department of Homeland Security, the Department of State, the Federal Bureau of Investigation, and the Department of Defense. Senator Lee offered two amendments that were adopted, Lee16 and Lee17, which strengthen enforcement efforts to stop the use of fraudulent identification documents.

Drunk Driving Convictions

Senator Grassley offered an amendment, Grassley44, to make a third drunk driving conviction an "aggravated felony" under immigration law. An aggravated felony is an offense for which a noncitizen, regardless of immigration status, may be immediately deported and permanently barred from being readmitted to the United States with no opportunity for judicial review to take into consideration the specific circumstances of an individual case. It is the harshest immigration consequence available. The amendment was adopted and significantly expanded the strong deportation and inadmissibility penalties for repeat drunk drivers already in the bill.

E-Verify

The Committee adopted several amendments to improve the accuracy and transparency of the E-Verify System, which is intended to ensure that only those authorized to work in the United States are able to obtain employment. Senator Franken offered an amendment, Franken2, that requires annual accuracy audits of the E-Verify system by the DHS Inspector General, and reduces the maximum penalty for first-time non-compliance with E-Verify requirements if the error rate exceeds a certain rate. He also offered an amendment, Franken4, that creates an Office of the Small Business and Employee Advocate within U.S. Citizenship and Immigration Services to serve as a resource for small businesses and individuals using the E-Verify system.

The Committee adopted an amendment by Senator Coons, Coons1, that requires the Secretary of Homeland Security to create a system to notify individuals when their name receives a non-confirmation determination or "further action notice" in the E-Verify system. The Committee also adopted two amendments offered by Senator Grassley. The first, Grassley31, requires a parent or guardian, rather than an adult, to attest to the identity of a potential worker under the age of 18 who does not possess other forms of identification. The second, Grassley 36, requires U.S. Citizenship and Immigration Services to provide a weekly report to U.S. Immigration and Customs Enforcement providing the names of persons who received a final non-confirmation in the E-Verify system.

Victim Protections

Other amendments adopted in Title III improve protections for immigrant victims of domestic violence, elder abuse, and other vulnerable populations, including unaccompanied children arriving at the border. Senator Leahy offered an amendment, Leahy3, to en-

sure that immigrant victims of domestic violence, human trafficking, and other crimes do not wait longer than 180 days to receive work authorization while their immigration applications are being adjudicated. An amendment offered by Senator Klobuchar, Klobuchar2, adds "elder abuse" as one of the crimes for which a U visa is available. Senators Feinstein, Franken, and Hirono each offered amendments that were adopted to improve the screening and other procedures available for unaccompanied immigrant children to ensure that they are appropriately cared for. Senator Blumenthal offered several amendments that were adopted to strengthen the anti-human trafficking provisions in the underlying bill.

Asylees and Refugees

The Committee extensively debated, but ultimately rejected, other amendments that would have removed important improvements to the asylum process made by the underlying bill. Senator Grassley introduced two amendments, Grassley27A and B, that would have struck key provisions of the bill text. Grassley 27A would have eliminated Section 3401, which ends the current one-year filing deadline on asylum claims, and replaced it with a two and a half year filing deadline, and Section 3404, which enhances efficiency in the asylum determination process by giving expert asylum officers initial jurisdiction over certain asylum cases.[163] Both provisions eliminate unnecessary and costly barriers to protection that have proven to have no bearing on immigration fraud, but have resulted in the denial of legitimate claims and costly and time-consuming litigation. In discussing these amendments, Senators noted that the Department of Homeland Security has significant mechanisms in place for determining whether claims have merit and for identifying fraud. There are also strict requirements related to establishing credibility, complying with reasonable requests for corroborating evidence, and undergoing background and security checks. These mechanisms and requirements function well, regardless of when they are applied.

Grassley27B would have eliminated a provision in the underlying bill that would allow RPI applicants the ability to legalize despite having filed an asylum claim that has been deemed "frivolous," or failing to voluntarily depart the United States. During debate, Senators noted that it is not uncommon for asylum applicants, who often speak little English and have limited resources, to receive poor legal representation or no legal representation, which can result in poorly drafted filings and findings of "frivolous" claims. The flexibility in the underlying bill was designed to ensure that an otherwise eligible immigrant is not barred from seeking RPI status for the mistakes of his or her lawyer. The amendment was not agreed to on a roll call vote.

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[163] The Committee received a letter from the Leadership Conference strongly opposing this amendment, which noted that the amendment "would reinstate the one year filing deadline for asylum applications, which has prevented thousands of bona fide refugees from receiving asylum based on this arbitrary and technical requirement. The deadline is inefficient and wastes government resources by overburdening the immigration courts to determine arrival times of asylum applications rather than their actual merits." *See* Letter from Judicial Conference of the United States to Chairman Leahy (May 9, 2013) (copy on file with the Senate Judiciary Committee).

Criminal Street Gangs

Senator Grassley also introduced an amendment, Grassley43, that would have significantly broadened the definition of a criminal "street gang" and imposed immigration consequences for gang membership beyond the significant penalties in existing law, which are already strengthened by S. 744. The bill makes individuals inadmissible, deportable, and ineligible for RPI status for grounds related to gang activity. The bill makes inadmissible and deportable those who have been convicted of an offense for which an element was active participation in a criminal street gang (as defined in Title 18). The bill also permits the Department of Homeland Security to determine by clear and convincing evidence that certain immigrants have knowingly and willfully participated in a criminal street gang since the age of 18 (even without any criminal conviction).[164] The amendment to further modify these provisions was defeated on a roll call vote.

Access to Counsel and Legal Information

Some opponents of the legislation have criticized provisions in the bill that provide access to counsel and legal orientation programs for immigrants. These provisions, however, will increase court efficiency and save taxpayer dollars. They have been strongly supported by the National Association of Immigration Judges, who wrote to the Committee stating: "It is our experience that when noncitizens are represented by attorneys, Immigration Judges are able to conduct proceedings more expeditiously and resolve cases more quickly."[165] They note that represented individuals are less likely to pursue claims that do not have a legal basis, and that programs to promote appointed counsel will help reduce exploitation of immigrants by notarios and promote better functioning in the courts. Similarly, the Department of Justice's Legal Orientation Program (LOP) demonstrates the efficiency and cost benefits of providing legal assistance. The program, which currently provides basic legal information in a limited number of immigration detention facilities, results in legal proceedings that are 13 days shorter on average. Given the average detention bed cost of $97 a day, this reduction in detention time has led to considerable cost-savings.[166] These provisions are designed to save tax payer money and promote a fair and efficient immigration court system.

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[164] In their Minority Views, Senators Grassley, Sessions, Lee, and Cruz misstate the bill's provisions related to street gangs. They claim that S.744 is weak on foreign national criminal street gang members. In fact, the bill prevents street gang members from obtaining RPI status, and amends current immigration law to make them inadmissible and deportable for the first time. There is no requirement that individuals have felony convictions for drug trafficking or violent crimes, for example, to be considered members of criminal street gangs, as the minority asserts. Indeed, certain individuals can be considered street gang members under Section 3701 without any conviction at all. Section 3701(a)(J)(i)(II) gives the Secretary the authority to designate certain individuals as street gang members even if they have no criminal convictions at all, based on information from law enforcement sources that the Secretary deems credible.

[165] Letter from Dana Leigh Marks, President, National Association of Immigration Judges, to the U.S. Senate Judiciary Committee (March 22, 2103) (copy on file with the Senate Judiciary Committee).

[166] VERA INSTITUTE OF JUSTICE, LEGAL ORIENTATION PROGRAM EVALUATION AND PERFORMANCE AND OUTCOME REPORT, PHASE II (May 2008) *available at: http://www.justice.gov/eoir/reports/LOPEvaluation-final.pdf*.

b. List of Amendments Adopted, Not Adopted, and Withdrawn Relating to Title III

In all, 73 amendments relating to Title III were considered by the Committee, 38 offered by Democratic Senators and 35 offered by Republican Senators. Of those 73 amendments, 53 were adopted, all with bipartisan support.

AMENDMENTS ADOPTED

Chairman Leahy offered an amendment (Leahy3–MRW13332) that ensures that immigrant victims of domestic violence, human trafficking, and other crimes do not wait longer than 180 days to receive work authorization while their immigration applications are being adjudicated. The amendment was adopted by a voice vote.

Senator Feinstein offered an amendment (Feinstein3–MDM13397) that provides for a total of 5,000 immigrant visas for displaced Tibetans and their children and spouses. The visas will be issued over a three-year period beginning October 2013. To be eligible for the visas, Tibetans must be living in India or Nepal. Priority will be given to those Tibetans who are not resettled in India or Nepal, and who will be most likely to successfully resettle in the United States. The amendment was adopted by a voice vote.

Senator Feinstein offered an amendment (Feinstein4–MDM13398) that codifies national security and fraud screening practices that are currently used by the Department of Homeland Security in refugee and asylum cases. This screening requires biographic and biometric screening on a number of databases maintained by several Federal agencies including the Department of Homeland Security, the Federal Bureau of Investigation, the Department of State, and the Department of Defense. The amendment was adopted by a voice vote.

Senator Feinstein offered an amendment (Feinstein5–MDM13339) that creates a pilot program using the services of child welfare professionals to aid U.S. Customs and Border Protection in screening unaccompanied children attempting to enter the United States illegally for signs of human trafficking or other abuse. The program will operate at six or more points of entry with high numbers of unaccompanied children, with a report to the Senate and House Judiciary Committees due not later than 15 months after implementation regarding the effectiveness of the program and recommendations for expansion. The amendment was modified by a second degree amendment offered by Senator Feinstein (MDM13664) that requires the live training of all U.S. Customs and Border Protection personnel who are likely to come into contact with unaccompanied immigrant children. The amendment as modified was adopted by a voice vote.

Senator Klobuchar offered an amendment (Klobuchar2–JEN13517) that adds "elder abuse" as one of the crimes for which a U visa is available. The amendment was adopted by a voice vote.

Senator Franken offered an amendment (Franken2–ARM13598) that requires annual accuracy audits of the E-Verify System by the Department of Homeland Security Inspector General, and reduces the maximum penalty for first-time non-compliance with E-Verify requirements if the error rate exceeds a certain rate. The amendment was modified by a second degree amendment offered by Senator Franken (EAS13579) increasing the "error rate" that will trig-

ger reduced fines from 0.26 percent to 0.3 percent, and was subsequently adopted by a voice vote.

Senator Franken offered an amendment (Franken4–ARM13606) to create an Office of the Small Business and Employee Advocate within U.S. Citizenship and Immigration Services that would be a resource for small businesses and individuals using the E-Verify system. The Office would also have authority to issue an "Assistance Order" on behalf of small businesses and employees that face "significant hardship" as a result of an E-Verify or employment verification-related action by the Department of Homeland Security. The amendment was modified by a second degree amendment offered by Senator Franken (MDM13609) and was adopted by a voice vote.

Senator Franken offered an amendment (Franken7–ARM13584) that requires the Department of Homeland Security, following an enforcement action, to inquire whether individuals apprehended are the parent or primary care giver of a child in the United States, and to allow the detained person to make calls to arrange for child care or notify the appropriate child welfare agency that the parent or primary care giver cannot make care arrangements. It precludes the Department of Homeland Security from transferring parents away from the point of detention until care arrangements are made and requires that detained parents will be given access to their children, as well as access to State courts, welfare agencies, and consulates to ensure the care of the children. The amendment was agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 18 Yeas, 0 Nays

Yeas (18): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI), Grassley (R–IA), Hatch (R–UT)*, Sessions (R–AL), Graham (R–SC), Cornyn (R–TX)*, Lee (R–UT), Cruz (R–TX), Flake (R–AZ).**

Nays (0):

Senator Franken offered an amendment (Franken8–ARM13600) that transfers the administration of the unaccompanied alien children legal services program from the Department of Health and Human Services Refugee Resettlement Program to the Department of Justice's Executive Office of Immigration Review. The amendment was modified by a second degree amendment offered by Senator Franken (MDM13607) and was adopted by a voice vote.

Senator Coons offered an amendment (Coons1–EAS13421) that requires the Secretary of Homeland Security to create a system for individuals to receive notification whenever the individual is looked up in E-Verify. The amendment was adopted by a voice vote and further modified by Coons9 (EAS13423), to require notification when an individual's name receives a non-confirmation determination in E-Verify or a "further action notice."

Senator Coons offered an amendment (Coons5–DAV13374) to require the Department of Homeland Security to provide an individual in a removal proceeding with a complete copy of his or her Department of Homeland Security file, typically referred to as the "A-File." The Department of Homeland Security is not required to produce privileged documents, law enforcement sensitive docu-

ments, or national security sensitive documents. The amendment was adopted by a voice vote.

Senator Coons offered an amendment (Coons6–MRW13307) that requires Immigration and Customs Enforcement, Customs and Border Protection, and U.S. Citizenship and Immigration Services to keep detailed records and submit reports to Congress about the number of persons apprehended, detained, and supervised. It further requires these agencies to have interoperable databases to consolidate the information. The amendment was modified by a second degree amendment offered by Coons (MDM13663) and was adopted by a voice vote.

Senator Coons offered an amendment (Coons8–DAV13356) that clarifies that applicants for asylum shall be granted a work authorization180 days after their application is filed, if their application is still pending. Currently, issuance of a work authorization is discretionary, and immigration judges can toll the 180 day clock based on docketing delays. The amendment was adopted by a voice vote.

Senator Coons offered an amendment (Coons10–DAV13371) that provides that individuals authorized to work in the United States will not be denied professional, commercial, or business licenses because of their immigration status. The amendment was modified slightly by a second degree amendment (EAS13594) offered by Senator Coons and was adopted by a voice vote.

Senator Coons offered an amendment (Coons12–ARM13532) to deter foreign human rights violators from seeking safe haven in the United States. Specifically, it amends the Torture Victims Protection Act of 1991, P.L. 102–256, S. Rep. No. 102–249 (1991), to include claims for war crimes, genocide, or widespread or systemic attacks on civilians. The amendment was adopted by a voice vote.

Senator Blumenthal offered an amendment (Blumenthal2–MDM13517) that states that solitary confinement for immigration detainees should be imposed only in limited circumstances, such as for a detainee who presents a serious security risk or has committed a serious infraction. It limits such confinement to the briefest period practicable, and would not permit solitary confinement for individuals under 18 years of age. The amendment was adopted by a voice vote.

Senator Blumenthal offered an amendment (Blumenthal3–ARM13595) that strengthens the anti-human trafficking provisions in the underlying bill by allowing workers who have been the victims of foreign labor recruiter violations to seek redress from their employer, if the employer has chosen to contract with an unregistered, unregulated foreign labor recruiter. The amendment was modified by a substitute amendment offered by Blumenthal (EAS13618) and was adopted by a voice vote.

Senator Blumenthal offered an amendment (Blumenthal4–ARM13597) that requires the Department of Homeland Security to consult with the Department of Labor when developing regulations to implement the anti-human trafficking and foreign labor recruiter provisions of the underlying bill. The amendment was adopted by a voice vote.

Senator Blumenthal offered an amendment (Blumenthal5–ARM13608) that strengthens the disclosure and transparency requirements of the anti-human trafficking and foreign labor re-

cruiter provisions of the underlying bill. The amendment was slightly modified by a second degree amendment offered by Blumenthal (EAS13613) and was adopted by a voice vote.

Senator Blumenthal offered an amendment (Blumenthal8–ARM13753) that codifies existing limitations on Immigration and Customs Enforcement's enforcement actions in sensitive locations (i.e. schools, hospitals, and places of worship), while leaving exceptions for exigent circumstances and approved operations. The amendment was modified by a second degree amendment offered by Blumenthal (MDM13655) and was adopted by a voice vote.

Senator Blumenthal offered an amendment (Blumenthal18–EAS13448) that prohibits employers from withholding employment records by treating the failure to do so as an unfair immigration-related employment practice. The amendment was adopted by a voice vote.

Senator Hirono offered an amendment (Hirono22–MDM13422) that establishes a program to develop best practices for safe repatriation of unaccompanied immigrant children to their country of residence. This program will be established by the U.S. Agency for International Development (USAID) Administrator in consultation with the Department of Homeland Security, the Department of Health and Human Services, and the Department of Justice. The amendment was modified by a second degree amendment offered by Senator Hirono (MDM13667), which made some technical changes. The amendment as modified was adopted by a voice vote.

Ranking Member Grassley offered an amendment (Grassley31–MDM13354) that requires U.S. Citizenship and Immigration Services to provide a weekly report to Immigration and Customs Enforcement providing the names of all individuals who received a final non-confirmation in the mandatory E-Verify System, and the names of individuals who received a tentative non-confirmation in the System and were unable to or did not contest the error. The amendment was modified in markup, striking lines 9–13, relating to the use of this information. The amendment, as modified, was adopted by a voice vote.

Ranking Member Grassley offered an amendment (Grassley36–MDM13358) that changes a provision in S. 744 that governs what identification a person under 18 years of age may provide for work authorization purposes if the individual does not have a passport, green card, driver's license, or voter registration card. S. 744 states that the Secretary of Homeland Security may allow "other reliable means of identification, which may include an attestation by a person 21 years of age or older." The amendment replaces "person over 21" with "a parent or guardian." The amendment was adopted by a voice vote.

Ranking Member Grassley offered an amendment (Grassley38–MDM13360) that establishes a pilot program for parents to lock Social Security Numbers of their minor children in order to prevent identity theft. The amendment was adopted by a voice vote.

Ranking Member Grassley offered an amendment (Grassley44–MDM13530) to make it an "aggravated felony" under immigration law to have been convicted of a third offense of driving under the influence, if the offense was committed after the date of enactment. The amendment was modified by a second degree amendment offered by Senator Schumer (MDM13657), which struck language

stating "regardless of the States in which the convictions occurred or whether the offenses are classified as misdemeanors or felonies under Federal or State law," and the amendment was agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 17 Yeas, 1 Nays

Yeas (17): Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI), Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Graham (R–SC), Cornyn (R–TX), Lee (R–UT)*, Cruz (R–TX)*, Flake (R–AZ).*

Nays (1): Leahy (D–VT).

Senator Hatch offered an amendment (Hatch2–MDM13383) that increases penalties for drug offenses occurring on Federal land. The amendment creates a new stand-alone Federal crime for cultivating or manufacturing drugs on Federal property. The amendment was adopted by voice vote.

Senator Hatch offered an amendment (Hatch6–MDM13437) that requires the Department of Homeland Security to establish a mandatory biometric exit system for non-citizens at the ten U.S. airports with the highest volume of international travel within two years, followed by a Government Accountability Office report within five years. The amendment was modified by a second degree amendment (MDM13648) offered by Senator Schumer, to require a Government Accountability Office report three years after enactment, to require a cost analysis, and to clarify that funding to collect biometrics would come from the bill's Trust Fund. The amendment, as modified by the second degree amendment, was agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 13 Yeas, 5 Nays

Yeas (13): Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE)*, Blumenthal (D–CT), Hirono (D–HI), Hatch (R–UT)*, Graham (R–SC)*, Lee (R–UT), Flake (R–AZ).*

Nays (5): Leahy (D–VT), Grassley (R–IA), Sessions (R–AL), Cornyn (R–TX), Cruz (R–TX).**

Senator Hatch filed an amendment (Hatch7–MDM13393), which was offered by Senator Schumer on his behalf. The amendment terminates the Amerasian Homecoming Act of 1988 upon passage of S. 744. The amendment was agreed to by a voice vote.

Senator Graham offered an amendment (Graham1–DAV13389) that requires the Department of Homeland Security to terminate status for a refugee or asylee who travels to his or her home country without good cause, before the refugee or asylee has become a Lawful Permanent Resident. The amendment allows the Department of Homeland Security to waive the requirement for good cause. The amendment, as modified by a second degree amendment (MDM13651) offered by Senator Graham, was adopted by a voice vote.

Senator Graham offered an amendment (Graham2–DAV13390) that requires the Department of Homeland Security to share with Federal law enforcement, intelligence, and national security agencies information on individuals who have overstayed their visas. It also requires that "all reasonable efforts are made to locate the alien and to commence removal proceedings against the alien." The amendment was modified by a second degree amendment

(MDM13652) offered by Senator Graham that changed this language to say that "reasonably available enforcement resources are employed" to locate visa overstays and commence removal proceedings. The amendment was agreed to by a voice vote.

Senator Lee offered an amendment (Lee16–ARM13486) that reinstates the criminal offense of knowingly using fraudulent identification to prove employment eligibility—a provision in existing law that had been removed in the bill as drafted. The amendment was modified slightly by a second degree amendment (MDM13634) offered by Senator Lee, and the amendment was adopted by voice vote.

Senator Lee offered an amendment (Lee17–EAS13515) that makes attempting to use, possess, receive, buy, sell, or distribute a passport in violation of the laws a crime subject to the same penalties as those for using, possessing, receiving, buying, selling or distributing a passport in violation of the laws. The amendment was agreed to by voice vote.

Amendments Not Adopted

Ranking Member Grassley offered an amendment (Grassley27A–ARM 13551) that would have struck Section 3401 of the bill, which eliminates the one-year filing deadline for asylum applicants, and replaced it with a two and a half year filing deadline. It also would have struck section 3404 of the bill, which improves the efficiency of the asylum process by giving the asylum office initial jurisdiction over certain cases where the applicant has been found to have a credible fear of persecution. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 6 Yeas, 12 Nays

Yeas (6): Feinstein (D–CA), Grassley (R–IA), Hatch (R–UT)*, Sessions (R–AL)*, Cornyn (R–TX), Cruz (R–TX).**

Nays (12): Leahy (D–VT), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI), Graham (R–SC), Lee (R–UT), Flake (R–AZ).*

Ranking Member Grassley offered an amendment (Grassley27B–ARM13551) that would have removed a provision of S. 744 that allows Registered Provisional Immigrant applicants the ability to legalize despite having previously filed claims that were deemed frivolous or having failed to voluntarily depart the United States. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 9 Yeas, 9 Nays

Yeas (9): Feinstein (D–CA), Grassley (R–IA), Hatch (R–UT)*, Sessions (R–AL)*, Graham (R–SC), Cornyn (R–TX), Lee (R–UT), Cruz (R–TX)*, Flake (R–AZ).*

Nays (9): Leahy (D–VT), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI).*

Ranking Member Grassley offered an amendment (Grassley29–MDM13352) that would have required all employers to use the Employment Verification System not later than 18 months after date of enactment. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 5 Yeas, 13 Nays

Yeas (5): Grassley (R–IA), Sessions (R–AL), Cornyn (R–TX), Lee (R–UT)*, Cruz (R–TX).**

Nays (13): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE)*, Blumenthal (D–CT), Hirono (D–HI)*, Hatch (R–UT)*, Graham (R–SC)*, Flake (R–AZ).**

Ranking Member Grassley offered an amendment (Grassley34–ARM13474) that, as modified by his second degree amendment (MDM13622), would have made using another person's Social Security Number subject to a sentence enhancement for aggravated identity theft. The amendment also would have criminalized identity fraud committed to "facilitate or assist in harboring or hiring undocumented workers" with a sentence of up to 20 years. The amendment, as modified, was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 8 Yeas, 10 Nays

Yeas (8): Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Graham (R–SC), Cornyn (R–TX), Lee (R–UT), Cruz (R–TX)*, Flake (R–AZ).*

Nays (10): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE)*, Blumenthal (D–CT), Hirono (D–HI).**

Ranking Member Grassley offered an amendment (Grassley35–MDM13357) that would have delayed the preemption of State and local laws relating to employment verification until all employers are required to use the E-Verify System. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 5 Yeas, 13 Nays

Yeas (5): Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Lee (R–UT), Cruz (R–TX).**

Nays (13): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE)*, Blumenthal (D–CT), Hirono (D–HI)*, Graham (R–SC)*, Cornyn (R–TX)*, Flake (R–AZ).**

Ranking Member Grassley offered an amendment (Grassley43–ARM13616) that would have broadened the definition of a criminal street gang and allowed the Department of Homeland Security to determine criminal gang membership (as defined in the amendment) as grounds for inadmissibility or deportation. The amendment was not agreed to by a voice vote.

Ranking Member Grassley offered an amendment (Grassley45–MRW13334) to make it easier for prosecutors to seek the maximum penalties for illegal entry and reentry crimes by removing certain predicates. The amendment also narrowed the exception to criminal penalties for those providing emergency humanitarian assistance so that it applied only to the provision of food, medical care and related transportation. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 8 Yeas, 10 Nays

Yeas (8): Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Graham (R–SC), Cornyn (R–TX)*, Lee (R–UT), Cruz (R–TX), Flake (R–AZ).*

Nays (10): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE)*, Blumenthal (D–CT), Hirono (D–HI).*

Ranking Member Grassley offered an amendment (Grassley47–EAS13355) that would have struck Section 3717 of the bill, which requires timely custody hearings for all detained immigrants, timely charging documents, and regular and timely review of custody determinations. The amendment was not agreed to by a voice vote.

Ranking Member Grassley offered an amendment (Grassley49–MDM13414) that would have allowed Federal law enforcement officers to consider an individual's country of origin in connection with an investigation "as permitted by the Constitution and laws of the United States." The amendment was not agreed to by a voice vote.

Ranking Member Grassley offered an amendment (Grassley52–EAS13415) that would have required the Director of National Intelligence to submit to Congress an Intelligence Community Inspector General's report on the Federal government's handling of the Boston marathon bombing of April 15, 2013 that includes new areas for review. The amendment would have delayed the implementation of refugee, asylee, and student visa provisions until one year after the submission of this report and certain sub-reports. The amendment was not agreed to by a voice vote.

Senator Sessions offered an amendment (Sessions10–MRW13340), as modified by a second degree amendment (MDM13653), that would have expanded the definition of "public charge" such that people who received non-cash health benefits could not become legal permanent residents. This amendment would also have denied entry to individuals whom the Department of Homeland Security determines are likely to receive these types of benefits in the future. The amendment was not agreed to by a voice vote.

Senator Sessions offered an amendment (Sessions12–EAS13337) that would have mandated a minimum bond of $5,000 for nationals of non-contiguous countries who unlawfully entered and are apprehended within 100 miles of the border or present a flight risk. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 9 Yeas, 9 Nays

Yeas (9): Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Graham (R–SC)*, Cornyn (R–TX)*, Lee (R–UT), Cruz (R–TX)*, Flake (R–AZ), Feinstein (D–CA).*

Nays (9): Leahy (D–VT), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI).

Senator Sessions offered an amendment (Sessions31–OTT13233) that would have denied the earned income tax credit (EITC) that is available under current law to anyone who is not a U.S. citizen or a Legal Permanent Resident. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 8 Yeas, 10 Nays

Yeas (8): Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Graham (R–SC), Cornyn (R–TX)*, Lee (R–UT), Cruz (R–TX)*, Flake (R–AZ).*

Nays (10): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI).

Senator Sessions offered an amendment (Sessions32–MDM13332) that stated that it would have affirmed the authority of States or localities to enforce Federal immigration law. The amendment would have denied State Criminal Alien Assistance Program (SCAAP) funding to States that do not assist in Federal immigration law enforcement. It also would have required the Attorney General to approve more State and local requests to enter into 287(g) agreements that allow State and local agencies to assist with immigration enforcement, among other things. The amendment was modified slightly by a second degree amendment (MDM13638) offered by Senator Sessions. The amendment was not agreed to by a voice vote.

Senator Lee offered an amendment (Lee15–ARM13492) that would have required discrimination to be intentional in order for workers to be covered by anti-discrimination provisions. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 6 Yeas, 12 Nays

Yeas (6): Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Cornyn (R–TX), Lee (R–UT), Cruz (R–TX).**

Nays (12): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE)*, Blumenthal (D–CT), Hirono (D–HI)*, Graham (R–SC)*, Flake (R–AZ).**

Amendments Withdrawn

Senator Whitehouse offered an amendment (Whitehouse3–BAG13308) to extend S. 744's provision that prevents employers from using the E-Verify system to re-verify the employment authorization of a current employee. The amendment provided that reverification is also prohibited by an employer who takes over the company if there is substantial continuity in business operations. The amendment was withdrawn and did not receive a vote.

Senator Whitehouse offered the "Denying Firearms and Explosives to Dangerous Terrorists Act of 2013" as an amendment (Whitehouse5–ALB13431). This legislation was introduced as S. 34 in the 113th Congress by Senator Lautenberg, with Senators Durbin, Schumer, Feinstein, Whitehouse, and Blumenthal as cosponsors. The amendment was withdrawn and did not receive a vote.

Senator Blumenthal offered an amendment (Blumenthal6–ALB13433) to change the law to prohibit the sale of firearms or ammunition to an immigrant who is not "lawfully admitted for permanent residence." The amendment would make a similar change in the current law regarding possession of firearms and ammunition. The effect of this amendment would have been that only U.S. citizens, legal permanent residents, or those lawfully admitted for permanent residence, could purchase or possess firearms and ammunition. The amendment was withdrawn and did not receive a vote.

Senator Sessions offered an amendment (Sessions7–EAS133357) to require the Secretary of Homeland Security to submit to Congress a quarterly report identifying the countries that have refused

to accept repatriation of ten percent or more of their citizens who have been given final orders of removal from the United States or are directed to return to their home countries upon arrival in the United States. The amendment was modified by a second degree amendment offered by Senator Sessions (EAS13558), before being withdrawn.

4. TITLE IV

a. Overview of Amendments

Title IV makes a series of changes to non-immigrant, employment-based visas, as well as visas for tourists and students. It also establishes a new W non-immigrant visa program for temporary, low-skilled, non-agricultural workers. The provisions in Title IV are intended to make it easier for American businesses to hire foreign workers when needed, attract high-skilled talent to the country, promote foreign investment and job creation in American communities, and spur growth in domestic innovation.

Throughout the drafting and amendment process of Title IV, Senators placed an emphasis on giving priority to American workers seeking jobs, while also meeting the needs of businesses to ensure the continued success of our economy. The drafters of the bill and members of the Committee recognized that immigrants have the potential to help stimulate our economy by supplementing our workforce and helping American businesses to succeed. However, there was bipartisan consensus that employers should not engage in hiring practices that permit systematic displacement of qualified Americans by foreign workers. Several amendments offered by both Democratic and Republican Senators and adopted by the Committee sought to give American workers priority over foreign workers, and to increase transparency in the hiring of foreign workers. Amendments offered by Senators Schumer and Grassley were adopted that require employers to post vacancies online for U.S. workers before hiring a foreign worker (Schumer5), prioritize the hiring of American workers in the majority of cases (Schumer5), and disclose when they hire foreign workers for high-skilled work (Grassley58). An amendment offered by Senator Whitehouse (Whitehouse6) establishes a toll-free hotline for employees to report violations relating to H–1B visas, and requires a report by the Inspector General on the Department of Labor's enforcement of H–1B provisions, including the requirement for employers to pay H–1B visa holders the prevailing wage.

H–1B and L Nonimmigrant Visas

Ranking Member Grassley's amendment Grassley58, requiring transparent hiring of H–1B workers, was part of a larger discussion among the Committee members about how best to meet the needs of American businesses. Senators Schumer and Hatch negotiated a number of changes that were ultimately adopted by the Committee in a second degree amendment to Hatch10. Among other changes, the Hatch/Schumer second degree amendment to Hatch10 provided that (1) all H–1B employers must take good faith steps to recruit U.S. workers for the occupational classification for which an H–1B worker is sought, 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; (2) all employers must advertise the job on an Internet website maintained by the Secretary of Labor for such purpose; and, (3) if the employer is an "H–1B skilled worker dependent employer," the employer must offer the job to any U.S. worker who applies and is equally or better qualified for the job for which the nonimmigrant is sought. These obligations are to be enforced by the Labor Department. An amendment offered by Senator Klobuchar was incorporated into this agreement, to require the job listings posted by employers on the Department of Labor website to also be posted on State-based labor websites.

The Hatch/Schumer second degree amendment to Hatch10 also changed the formula set forth in S. 744 for calculating the annual number of H–1B visas made available, allowing the numeric cap to increase by certain increments if the cap is reached within a certain time period, provided that the unemployment level in the professional sector remains below 4.5 percent. During the Committee's deliberations, Senators noted that the underlying bill effectively doubles and potentially triples the number of H–1B visas to meet the needs of high tech industries, who have frequently voiced frustration that the existing cap for H–1B visas is reached within the first few days of visas becoming available each year. The Hatch/Schumer second degree amendment to Hatch10 made further changes requested by U.S. companies, such as creating a presumption that spouses of H–1B visa-holders may work, unless overridden by the Department of State because the visa-holder's home country does not provide reciprocity.

Other provisions of the underlying bill seek to address concerns about the H–1B visa program, including concerns that the program has been abused by a small number of companies that use a disproportionate number of the H–1B visas that are available each year. Specifically, the bill increases oversight of the H–1B visa program by establishing a clear complaints process; allowing the Secretary of Labor to review labor condition applications for fraud and misrepresentation; removing the requirement that the Secretary and the Secretary of Labor must show "reasonable cause" before commencing an investigation; and providing for random audits of H–1B employers and annual audits of "H–1B dependent" employers with over 100 employees. As noted, the bill strengthens recruiting obligations by requiring all companies to list job postings online and take good faith steps to recruit American workers for the occupational classification for which foreign workers are sought, obligations to be enforced by the Department of Labor. The bill creates additional obligations for companies that are "H–1B dependent", including heightened wage requirements, requirements that the company not displace a U.S. worker within a specified period of time, and limitations on outsourcing. H–1B dependent companies must also pay additional fees. Finally, the bill restricts further H–1B or L visas for companies that have a very large percentage of H–1B employees. Companies with 50 or more employees in the United States will not able to petition for any new or additional H–1B or L workers if their workforce comprises more than 75 percent H–1B or L workers in Fiscal Year 2015, 65 percent in Fiscal Year 2016, or if their companies are more than 50 percent H–1B or L workers in Fiscal Years 2017 and thereafter.

Some Senators sought to increase the number of visas available for high-skilled workers beyond what was provided in the underlying bill. For example, Senator Cruz offered an amendment (Cruz5) that would have immediately made available 325,000 H–1B visas irrespective of market conditions or unemployment rates. Senators opposing this amendment cited its potential to flood the job market with foreign workers, disadvantaging American job seekers. Such efforts were opposed by labor organizations, including the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the Service Employees International Union (SEIU). The amendment was not agreed to.

STEM Funding

The Committee adopted a bipartisan amendment proposed by Senators Hatch, Klobuchar, and Coons and modified by Senator Schumer (Hatch9) that reformulates certain fees to promote funding for Science, Technology, Engineering, and Math (STEM) training for American students, including education at the K–12 level, grants to minority groups, and individual loan repayment for higher education. A significant portion of the funds are directed to the States for their direct expenditures on STEM-related programs. The STEM provisions are funded by reallocating certain fees associated with H–1B visas and the labor certification applications filed by employers seeking an employment-based green card for an employee.

EB–5 Program

Chairman Leahy offered an amendment (Leahy2) to improve and enhance the EB–5 Regional Center Program, which facilitates foreign investment and job creation in American communities. Chairman Leahy's amendment, which was accepted unanimously by voice vote, makes the EB–5 Regional Center Program permanent and makes several other changes to ensure the longevity and integrity of the program. Certain aspects of the Regional Center program promote foreign capital investment in businesses that create jobs in communities within the United States that are either rural or experiencing a high rate of unemployment. Provisions were included in Chairman Leahy's amendment to ensure that investments made in Targeted Employment Areas, designated areas in which a reduced investment amount on the part of a foreign investor is permitted, will be concentrated in rural and truly high unemployment areas as Congress intended.

Qualified Entrepreneurs

Senate bill 744 creates a new three-year visa for qualified entrepreneurs who have received investment of at least $100,000 from a qualified investor and generated at least $250,000 in revenue and three jobs. The Committee adopted an amendment to these provisions offered by Senator Whitehouse (Whitehouse1) that allows investments by certain startup accelerators, including government-funded entities, to be used to reach this threshold.

Foreign Student Visas

Senate bill 744 contains several provisions to make it easier for foreign students to remain in the United States after they complete

their studies, which were preserved during the Committee's review. It was widely acknowledged during the Committee's consideration of the legislation that immigration policy should encourage well-educated students to remain in the United States, so they can contribute their newly acquired skills to the U.S. economy.

Ranking Member Grassley offered amendments, which were adopted, to prevent fraud in the student visa program through SEVIS (the Student and Exchange Visitor Information System) by certain educational institutions that claim to sponsor students. Senator Grassley's amendments include providing real time information to U.S. Immigration and Customs Enforcement about the status of student visas (Grassley77), and increasing criminal penalties on those who violate the terms of a student visa (Grassley69).

b. List of Amendments Adopted, Not Adopted and Withdrawn Relating to Title IV

In all, 48 amendments relating to Title IV were considered by the Committee, 17 offered by Democratic Senators and 31 offered by Republican Senators. Of the 48 amendments offered, 26 were adopted, all but one with bipartisan support.

Amendments Adopted

Chairman Leahy offered an amendment (Leahy2–MRW13335) that makes the EB–5 Regional Center Program permanent, requires the Department of Homeland Security to establish a binding preapproval system for business plans, and removes the indirect job counting requirement at the removal of conditions phase. The amendment was adopted by a voice vote.

Senator Schumer offered an amendment (Schumer3–EAS13447) that creates an E–6 Visa program to allow participation by citizens from certain sub-Saharan African and Caribbean nations who possess at least a high school degree or two years of work experience in their field. The annual cap on the E–6 visa program for citizens from all of these countries is 10,500 total. The amendment was adopted by a voice vote.

Senator Schumer offered an amendment (Schumer4–EAS13419) that expands the J-Visa program to allow individuals who are proficient in languages spoken as native languages in countries that received less than 5,000 immigrant visas the previous year to qualify as J-visa nonimmigrants if coming to perform any type of work requiring specialized knowledge of that language. The amendment was modified by a second degree amendment offered by Senator Schumer (EAS13536) and adopted by a voice vote.

Senator Schumer offered an amendment (Schumer5–EAS12443) that requires the Department of Labor to maintain a publicly available electronic registry of positions and vacancies. The amendment would also establish priority for U.S. workers over W visa temporary workers in filling those vacancies. Finally, it would provide more portability for W visa workers by creating a secondary registry of employers that can hire W visa workers already in the country if they cannot find American workers. The amendment was modified by a second degree amendment offered by Senator Schumer (EAS13560) and adopted by a voice vote.

Senator Whitehouse offered an amendment (Whitehouse1–AYO13346) that includes investments from qualified startup accelerators in determining whether the INVEST visa investment thresholds are satisfied. The amendment was modified by a second degree amendment offered by Senator Whitehouse (AYO13360) and adopted by a voice vote.

Senator Whitehouse offered an amendment (Whitehouse6–DAV13388) that requires the Department of Labor to create a toll-free hotline for employees to report violations relating to H–1B visas, and requires a report by the Inspector General on the Department of Labor's enforcement. The amendment was modified by a second degree amendment offered by Senator Whitehouse (DAV13418) that added a requirement that the Department of Labor offer an Internet website for reporting violations. The amendment, as modified, was adopted by a voice vote.

Senator Klobuchar offered an amendment (Klobuchar1–EAS13431) that allows abused spouses and children of non-immigrant, temporary visa holders to apply for independent immigration status using the existing Violence Against Women Act self-petition process. That process is currently only available to the abused spouses and children of U.S. citizens and lawful permanent residents. The amendment was adopted by a voice vote.

Senator Klobuchar offered an amendment (Klobuchar3–EAS13420) that creates a pilot program for processing short-term tourist visa applications by using videoconferences to conduct interviews. The Department of State would report to Congress on the pilot and recommend whether to broaden it or discontinue it if it posed an undue security risk. The amendment was adopted by a voice vote.

Senator Hirono offered an amendment (Hirono2–EAS13233) that allows crewmen on fishing vessels to change-out in Hawaii. Currently this practice is allowed in Guam, but not in Hawaii. The amendment was modified by a second degree amendment offered by Senator Hirono (EAS13539) and adopted by a voice vote.

Senator Hirono offered an amendment (Hirono4–ARM13402) that gives the Department of State authority to designate Hong Kong a visa waiver country if it meets the necessary requirements for that program. The amendment was adopted by a roll call vote as follows (votes by proxy indicated with *):

Tally: 14 Yeas, 4 Nays

Yeas (14): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT)*, Hirono (D–HI), Hatch (R–UT), Graham (R–SC)*, Lee (R–UT)*, Flake (R–AZ).*

*Nays (4): Grassley (R–IA), Sessions (R–AL), Cornyn (R–TX), Cruz (R–TX).**

Senator Hirono offered an amendment (Hirono15–ERN13168) that makes citizens of the Compact of Free Association States (COFA) eligible for Medicaid, as was the case before a legislative change in 1996. The amendment was adopted by a voice vote.

Ranking Member Grassley offered an amendment (Grassley58–ARM13459) that requires employers seeking H–1B visas to publicly post the name and location of the place H–1B visa applicants will be working. The amendment was adopted by a voice vote.

Ranking Member Grassley offered an amendment (Grassley69–ARM13558) that increases criminal penalties for individuals who misuse the Student and Exchange Visitor Program, requires certification for institutions enrolling foreign students, strengthen penalties for visa fraud, and prohibits certain schools from accessing the Student and Exchange Visitor Information System. The amendment was modified by a second degree amendment offered by Senator Schumer (MDM13605) that ensured the Department of Homeland Security has authority and discretion to decide whether to bar a school from using the student visa program. The amendment, as modified, was adopted by a voice vote.

Ranking Member Grassley offered an amendment (Grassley77–HEY13248) that would require the Department of Homeland Security to implement real-time transmission of data from the Student and Exchange Visitor Information System to the databases used by border officials within Customs and Border Protection (the TECS system). The amendment was adopted by a voice vote.

Senator Hatch offered an amendment (Hatch9–MDM13519), cosponsored by Senators Coons and Klobuchar, that increases the fee provided in the bill for the filing of a labor certification application, and would provide 70 percent of the funds collected to the States to improve science, technology, engineering and math (STEM) education. The amendment was modified by a second degree amendment offered by Senator Schumer (EAS13559) that made some of this funding, as well as the funding provided the already existing STEM fund under current law, more readily available to minority groups. The amendment, as modified, was adopted by a voice vote.

Senator Hatch offered an amendment (Hatch10–MDM13513), modified by a second degree amendment offered by Senator Schumer with Senator Hatch's support (MDM13698), that changes the formula for calculating annual levels of H–1B visas; removes a provision in S. 744 preventing non L-visa-dependent companies from allowing L-visa workers to work at other companies/client sites; creates a presumption that spouses of H–1B workers can work, unless overridden by the Department of State; and scales back the requirement in S. 744 that required all employers (not just H–1B skilled-worker dependent employers) to make good faith efforts to recruit U.S. workers for a job. The amendment as modified incorporated several different amendments that had been filed by Senator Hatch. Senator Schumer's second degree amendment to Hatch10 was adopted by a roll call vote as follows (votes by proxy indicated with *):

Tally: 16 Yeas, 2 Nays

Yeas (16): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT)*, Hirono (D–HI), Hatch (R–UT), Graham (R–SC), Cornyn (R–TX)*, Lee (R–UT)*, Cruz (R–TX)*, Flake (R–AZ).*

Nays (2): Grassley (R–IA), Sessions (R–AL).

The amendment as modified by Senator Schumer's second degree amendment was adopted by a voice vote.

Ranking Member Grassley offered several second degree amendments to Hatch10 that were not agreed to by roll call votes as follows (voted by proxy indicated with *):

Grassley 2nd Degree1–MDM13687:

Tally: 2 Yeas, 15 Nays, 1 Pass

Yeas (2): Grassley (R–IA), Sessions (R–AL).

Nays (15): Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE)*, Blumenthal (D–CT), Hirono (D–HI), Hatch (R–UT), Graham (R–SC)*, Cornyn (R–TX)*, Lee (R–UT)*, Cruz (R–TX)*, Flake (R–AZ).*

Pass (1): Leahy (D–VT).

Grassley 2nd Degree2:

Tally: 3 Yeas, 15 Nays

Yeas (3): Feinstein (D–CA), Grassley (R–IA), Sessions (R–AL).

Nays (15): Leahy (D–VT), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE)*, Blumenthal (D–CT), Hirono (D–HI), Hatch (R–UT), Graham (R–SC)*, Cornyn (R–TX), Lee (R–UT)*, Cruz (R–TX)*, Flake (R–AZ).*

Grassley 2nd Degree3–MDM13684:

Tally: 2 Yeas, 16 Nays

Yeas (2): Grassley (R–IA), Sessions (R–AL).

Nays (16): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE)*, Blumenthal (D–CT), Hirono (D–HI), Hatch (R–UT), Graham (R–SC)*, Cornyn (R–TX), Lee (R–UT)*, Cruz (R–TX)*, Flake (R–AZ).*

Grassley 2nd Degree4:

Tally: 3 Yeas, 15 Nays

Yeas (3): Franken (D–MN), Grassley (R–IA), Sessions (R–AL).**

Nays (15): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Coons (D–DE)*, Blumenthal (D–CT), Hirono (D–HI), Hatch (R–UT), Graham (R–SC)*, Cornyn (R–TX), Lee (R–UT)*, Cruz (R–TX)*, Flake (R–AZ).*

Senator Sessions offered an amendment (Sessions13–EAS13330) that would have required in-person interviews for any non-immigrant visa applicant who the Department of Homeland Security determines to be a threat to national security, is identified as a person of concern, or applies in certain visa categories. It also would have limited the Department of State's ability to waive the interview requirement. The amendment was modified by a second degree amendment offered by Senator Schumer (EAS13563) that struck the interview waiver limits, required that consular officers have access to all terrorism records and databases, denied admission to anyone whose information is listed in any terrorist watch list or database, and required any visa revocation be immediately provided to relevant consular, law enforcement, and terrorist screening databases and to all Department of Homeland Security port inspectors. The amendment, as modified by Senator Schumer's second degree amendment (EAS13563), was agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 10 Yeas, 8 Nays

Yeas (10): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI).*

Nays (8): Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Graham (R–SC), Cornyn (R–TX)*, Lee (R–UT)*, Cruz (R–TX)*, Flake (R–AZ).**

Amendments Not Adopted

Ranking Member Grassley offered an amendment (Grassley56–ARM13458) that would have struck the Secretary of State's authority to waive in-person visa applicant interviews for certain low-risk applicants, in consultation with the Secretary of Homeland Security. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 9 Yeas, 9 Nays

Yeas (9): Feinstein (D–CA), Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Graham (R–SC), Cornyn (R–TX)*, Lee (R–UT)*, Cruz (R–TX)*, Flake (R–AZ).*

Nays (9): Leahy (D–VT), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN)*, Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI).*

Ranking Member Grassley offered an amendment (Grassley60–ARM13461) that would have required all H–1B employers to certify that they made a good faith effort to recruit American workers for the position filled by the H–1B employee, instead of just H–1B dependent companies. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 2 Yeas, 15 Nays, 1 Pass

Yeas (2): Grassley (R–IA), Sessions (R–AL).

Nays (15): Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI), Hatch (R–UT), Graham (R–SC), Cornyn (R–TX), Lee (R–UT)*, Cruz (R–TX), Flake (R–AZ).*

Pass (1): Leahy (D–VT).

Ranking Member Grassley offered an amendment (Grassley62–ARM13463) that would have struck an exception permitting companies to avoid classification as an H–1B dependent company by not counting H–1B employees towards the H–1B dependent threshold if they are "intending immigrants" who have applied for a green card. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 2 Yeas, 15 Nays, 1 Pass

Yeas (2): Grassley (R–IA), Sessions (R–AL).

Nays (15): Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI), Hatch (R–UT), Graham (R–SC), Cornyn (R–TX)*, Lee (R–UT)*, Cruz (R–TX)*, Flake (R–AZ).*

Pass (1): Leahy (D–VT).

Ranking Member Grassley offered an amendment (Grassley67–ARM13467) that would have required the Secretary of Labor to conduct annual audits of one percent or more of all H–1B employers. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 2 Yeas, 16 Nays

Yeas (2): Grassley (R–IA), Sessions (R–AL).

Nays (16): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI), Hatch (R–UT)*, Graham (R–SC)*, Cornyn (R–TX)*, Lee (R–UT)*, Cruz (R–TX), Flake (R–AZ).*

Ranking Member Grassley offered an amendment (Grassley68–ARM13484) that would have delayed the effective date of the student visa provisions until one year after the second generation of the student visa tracking system ("SEVIS II") has been fully completed and deployed. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 9 Yeas, 9 Nays

Yeas (9): Feinstein (D–CA), Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Graham (R–SC)*, Cornyn (R–TX)*, Lee (R–UT)*, Cruz (R–TX)*, Flake (R–AZ).*

Nays (9): Leahy (D–VT), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI).*

Ranking Member Grassley offered an amendment (Grassley70–MDM13420) that would have conditioned the enactment of the E–5 special business visas for South Korea on Korea's lifting of "age-based" restrictions on imports of U.S. beef to Korea. The amendment was not agreed to by a voice vote.

Senator Sessions offered an amendment (Sessions1–EAS13466) that would have limited family visas, focused the new merit-based point system on education and employment, and imposed worldwide immigrant visa caps. It also would have required all non-immigrants to have an "Employment Authorization Document" to be eligible to work, and capped the issuance of those documents at one million annually. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 1 Yeas, 17 Nays

Yeas (1): Sessions (R–AL).

Nays (17): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI), Grassley (R–IA), Hatch (R–UT), Graham (R–SC), Cornyn (R–TX)*, Lee (R–UT), Cruz (R–TX), Flake (R–AZ).*

Senator Sessions offered an amendment (Sessions6–MRW13303) that would have eliminated a provision that allows the Department of Homeland Security, under certain criteria, to keep a country in the Visa Waiver Program even if the country's non-immigrant refusal rate is above three percent. It also would have conditioned the effectuation of changes to the Visa Waiver Program on full implementation of a biometric entry-exit system. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 6 Yeas, 12 Nays

Yeas (6): Grassley (R–IA), Hatch (R–UT), Sessions (R–AL), Graham (R–SC)*, Cornyn (R–TX)*, Cruz (R–TX).**

Nays (12): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI), Lee (R–UT), Flake (R–AZ).*

Senator Cruz offered an amendment (Cruz5–MDM13527) that would have immediately made available 325,000 H–1B visas irrespective of market conditions or unemployment rates. The amendment was not agreed to by a roll call vote as follows (votes by proxy indicated with *):

Tally: 4 Yeas, 14 Nays

Yeas (4): Hatch (R–UT), Cornyn (R–TX)*, Lee (R–UT)*, Cruz (R–TX).*

Nays (14): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI), Grassley (R–IA), Sessions (R–AL), Graham (R–SC), Flake (R–AZ).

Amendments Withdrawn

Senator Blumenthal offered an amendment (Blumenthal17–MDM13545) to provide whistleblower protections for H–2B visa holders (non-agricultural temporary workers). The amendment was withdrawn.

Ranking Member Grassley offered an amendment (Grassley71–ARM13476) to, among other things, makes E-Visa holders ineligible for any public benefit. The amendment was withdrawn.

Ranking Member Grassley offered an amendment (Grassley76–EAS13386) to prohibit the implementation of the W visa temporary-worker program, or the admission of a W visa temporary worker, until E-Verify is fully implemented. The amendment was withdrawn.

Senator Cornyn offered an amendment (Cornyn9–MDM13343) to eliminate W visa construction carve outs and exempt returning workers from annual visa caps. The amendment was withdrawn.

Senator Lee offered an amendment (Lee1–MDM13379) to strike the entire bill and replace it with a 12-page border security proposal. The amendment was withdrawn.

Senator Lee offered an amendment (Lee2–MDM13380) to strike the entire bill and replace it with S. 202, the Accountability Through Electronic Verification Act. The amendment was withdrawn.

Senator Lee offered an amendment (Lee3–MDM13381) to strike the entire bill and replace it with the I-Squared Act of 2013, governing H–1B visas and Science, Technology, Engineering, and Mathematics funding. The amendment was withdrawn.

Senator Lee offered an amendment (Lee18–MDM13343) to increase the W visa caps from 20,000 to 200,000 for the first year following enactment, ultimately increasing to 400,000 visas. The amendment was withdrawn.

Senator Lee offered an amendment (Lee19–EAS13425) to limit the ability of individuals to submit complaints about an employer's compliance with W visa program requirements. The amendment was withdrawn.

F. FINAL PASSAGE

On May 21, 2013, the Committee voted to report the Border Security, Economic Opportunity, and Immigration Modernization Act, as amended, favorably to the Senate. The Committee proceeded by roll call vote as follows:

Tally: 13 Yeas, 5 Nays

Yeas (13): Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT), Hirono (D–HI), Hatch (R–UT), Graham (R–SC), Flake (R–AZ).

Nays (5): Grassley (R–IA), Sessions (R–AL), Cornyn (R–TX), Lee (R–UT)*, Cruz (R–TX).*

III. SECTION-BY-SECTION SUMMARY OF THE BILL

Section 1. Short title, table of contents

This section provides that the legislation may be cited as the "Border Security, Economic Opportunity, and Immigration Modernization Act."

Section 2. Findings

This section states, inter alia, that the United States has a right to maintain its sovereignty by protecting its borders and controlling the flow of immigration, which is a source of security and strength for our country.

Section 3. Effective date triggers

This section sets forth definitions for the purpose of this title. The term "Commission" means the Southern Border Security Commission established pursuant to Section 3. The term "Comprehensive Southern Border Security Strategy" means the strategy established by the Secretary pursuant to Section 5(a) to achieve and maintain an effectiveness rate of 90 percent or higher in all border sectors. "Effective control" is defined as the ability to achieve and maintain persistent surveillance and an effectiveness rate of 90 percent or higher in a Border Patrol sector. The section defines "Effectiveness rate," in the case of a border sector, as the percentage calculated by dividing the number of apprehensions and "turn backs" in a given sector during a fiscal year by the total number of illegal entries in that sector during the fiscal year. The "Southern border" is defined as the international border between the United States and Mexico. The "Southern Border Fencing Strategy" is the strategy established by the Secretary of Homeland Security ("the Secretary") pursuant to Section 5(b) that identifies where fencing, including double-layer fencing, as well as infrastructure and technology, should be deployed along the Southern border. The Department of Homeland Security's (DHS) "Border Security Goal" is defined as a goal to achieve and maintain effective control in all border sectors of the Southern border.

This section also sets forth the "triggers" for the bill. It provides that no application for Registered Provisional Immigrant (RPI) status will be processed until the Secretary has submitted to Congress the Notice of Commencement for implementation of the Comprehensive Southern Border Security Strategy and the Southern Border Fencing Strategy.

Individuals who have been granted RPI status may not adjust their status to permanent resident (except for blue card recipients and DREAM Act beneficiaries) until the Comprehensive Southern Border Security Strategy is substantially deployed and substantially operational, the Southern Border Fencing Strategy has been implemented and substantially completed, a mandatory employ-

ment verification (E-Verify) system to be used by all employers has been implemented, and DHS is using an electronic exit system at air and sea ports of entry that operates by collecting machine-readable visa or passport information from air and vessel carriers.

A limited exception is made to allow the Secretary to permit RPIs to apply for adjustment of status after 10 years if litigation or force majeure has prevented one or more of the conditions precedent to adjustment of status from being implemented, or if any of the conditions precedent to adjustment of status has been declared unconstitutional.

The section provides authority for certain regulatory waivers to ensure expeditious construction of the physical border infrastructure, and provides for limited judicial review. The Secretary must provide notice and an explanation for the use of such waivers in the Federal Register, and any waiver that is used under this section expires when DHS certifies that the fencing strategy is substantially completed, or that the Southern Border Security Strategy is substantially deployed and operational—whichever is later.

Section 4. Southern Border Security Commission

If, after five years, "effective control" of all Southern border sectors has not been achieved in at least one of the five years following the date of enactment, a Southern Border Security Commission will be established. The Commission will comprise experts in the field of border security and will be appointed by the President (two members), the President pro tempore of the Senate (two members, upon the recommendation of each party), the Speaker of the House of Representatives (two members, upon the recommendation of each party), and the Governors of each State along the Southern border, or their appointees (four members).

The Commission shall review the state of border security in all Southern border sectors, and make recommendations on policies to achieve persistent surveillance of the Southern border and to achieve and maintain an effectiveness rate of 90 percent or higher for all Southern border sectors. The Commission's report shall be submitted, no later than 180 days from the end of the five-year period described above, to the President, the Secretary, and Congress. The Comptroller General of the United States will also review the report and the feasibility of its recommendations.

Section 5. Comprehensive Southern Border Security Strategy and Southern Border Fencing Strategy

Within 180 days of the enactment of this Act, the Secretary must submit a Comprehensive Southern Border Security Strategy to Congress and the Comptroller General of the United States. The Strategy will outline priorities to be met for achieving effective control of the Southern border and identify resources and capabilities needed to meet those priorities, including surveillance and detection capabilities used by Department of Defense (DOD), staffing requirements for Border Patrol Agents and Customs Officers, and fixed, mobile, and agent-portable surveillance systems and manned and unmanned aircraft. The Strategy shall also outline interim goals and milestones for successful implementation.

Also within 180 days of the enactment of this Act, the Secretary must submit a Southern Border Fencing Strategy to Congress and

the U.S. Comptroller General to identify areas of the Southern border where fencing—including double-layer fencing, infrastructure, and technology, including at ports of entry—should be put in place. The Secretary is required to consult with appropriate Federal agencies and State and local public and private stakeholders in determining the proper location for placement of fencing.

The Comprehensive Southern Border Security Strategy shall be submitted specifically to the Committee on Homeland Security and Governmental Affairs, the Committee on Appropriations, and the Committee on the Judiciary of the Senate; and to the Committee on Homeland Security, the Committee on Appropriations, and the Committee on the Judiciary of the House of Representatives. Semiannual reports must also be submitted to these Committees.

For both of these strategies, the Secretary shall immediately begin to implement the strategy and provide notice of commencement of this implementation to Congress and the Government Accountability Office (GAO). After such notice, processing of applications for RPI status may commence. The Secretary must also report to Congress semiannually on the status of the implementation of the Comprehensive Southern Border Security Strategy. Finally, GAO shall conduct an annual review of the reports submitted by the Secretary to assess the status and progress of the Southern Border Security Strategy

Section 6. Comprehensive Immigration Reform Trust Fund

To meet the trigger requirements, a Comprehensive Immigration Reform Trust Fund ("CIR Trust Fund") is created. The fund consists of two sources: first, $8,300,000,000, which shall be transferred from the Treasury to the fund; and second, fees, fines, and penalties on users of the immigration system in the future.

Of the $8,300,000,000 provided to the CIR Trust Fund to pay for the implementation of this law, $3,000,000,000 shall be made available to meet the requirements of the Comprehensive Southern Border Security Strategy; $2,000,000,000 shall be made available to the Secretary to carry out programs, projects, and activities recommended by the Southern Border Security Commission; $1,500,000,000 shall be made available to the Secretary to procure and deploy additional fencing, infrastructure, and technology in accordance with the Southern Border Fencing Strategy (provided that not less than $1,000,000,000 shall be used to deploy, repair, or replace fencing); $750,000,000 shall remain available for a six-year period to expand and implement the electronic employment verification system; $900,000,000 shall remain available for an eight-year period for the Secretary of State to implement this Act; and $150,000,000 shall be appropriated for startup costs for implementing this Act to be borne by the Secretary of Labor, the Secretary of Agriculture, and the Attorney General.

This section also provides that the first $8,300,000,000 of fees, fines, and penalties collected under this section shall be collected, deposited in the general fund of the Treasury, and used for Federal budget deficit reduction. This repays the $8,300,000,000 initially borrowed from the Treasury for startup implementation costs. Collections in excess of $8,300,000,000 shall be deposited into the CIR Trust Fund.

This section appropriates a total of $100,000,000 from the CIR Trust Fund each year from Fiscal Year 2014 through Fiscal Year 2018 for increased border prosecutions and for Operation Stonegarden ($50,000,000 per year, per program). The section authorizes appropriations from the CIR Trust Fund to carry out the operations and maintenance of border security and immigration enforcement programs contained in the bill. It requires the Secretary to provide an expenditure plan to Congress indicating how all of the monies appropriated in the Act will be spent. The section also establishes a Comprehensive Immigration Reform Startup Account consisting of $3,000,000,000 initially provided out of the Treasury, to fund the startup costs to be incurred by U.S. Citizenship and Immigration Services (USCIS) in registering the unauthorized population. These funds will be repaid to the Treasury by the unauthorized population through the application fees they will pay for the processing of their applications. The CIR Trust Fund account shall be audited annually by the Chief Financial Officer of DHS and the Inspector General of DHS, and this audit shall be made publicly available on a DHS website. This section contains an emergency designation for the purposes of complying with Section 4(g) of the Statutory Pay-As-You-Go Act of 2010.

Section 7. References to the Immigration and Nationality Act

This section clarifies that, except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Immigration and Nationality Act (INA).

Section 8. Definitions

This section specifies that in this Act, except as otherwise provided, the term "Department" means the Department of Homeland Security and the term "Secretary" means the Secretary of Homeland Security.

Section 9. Grant accountability

This section provides for waste, fraud, and abuse audits for grant programs that are administered by DHS and the National Science Foundation in this bill. A recipient of grant funds that is found to have an unresolved audit finding will be ineligible to receive grant funds for two years. Recipients may not keep funds in offshore accounts, nor use more than $25,000 for conferences without the approval of the awarding entity.

TITLE I—BORDER SECURITY

Section 1101. Definitions

This section establishes certain key definitions for Title I, including providing that the "Northern border" means the international border between the United States and Canada; the "Southern border" means the international border between the United States and Mexico; and the "Southwest border region" means the area in the United States that is within 100 miles of the Southern border.

Section 1102. Additional U.S. Customs and Border Protection Officers

By September 30, 2017, DHS must hire an additional 3,500 Customs and Border Protection (CBP) officers in order to reduce border-crossing and airport entry wait times and to enhance port security efforts. This section also raises the fee used by Visa Waiver Program travelers from $14 to $30 to pay for the increased number of CBP officers and permanently authorizes the Corporation for Travel Promotion created in the Travel Promotion Act of 2009.

Section 1103. National Guard Support to secure the southern border

A State's Governor, with the approval and logistical support of the Secretary of Defense, may order the State's National Guard to perform operations on the Southwest border in order to assist CBP operations. The National Guard may perform operations that include constructing fencing, increasing ground-based mobile surveillance systems, deploying unmanned and manned aircraft surveillance, providing radio capability for communication between CBP and local officials, and constructing checkpoints.

Section 1104. Enhancement of existing border security operations

Subsection (a)—Border Crossing Prosecutions. This section provides that $50,000,000 per year for five years will be appropriated to increase the number of border crossing prosecutions in the Tucson Sector to up to 210 per day, through increased funding for attorneys, administrative support staff, pre-trial services, public defenders, and additional personnel, and to reimburse State, local, and tribal law enforcement for detention costs related to border crossing prosecutions.

Subsection (b)—Funding Operation Stonegarden. Additional funding shall also go to Operation Stonegarden for grants and reimbursement to law enforcement agencies in the Southwest border region States for costs related to illegal immigration and drug smuggling. This section also creates a competitive grant program to allocate funds to law enforcement agencies.

Subsection (c)—Infrastructure Improvements. The Department of Homeland Security must construct additional Border Patrol stations and additional permanent forward operating bases as needed, to provide full operational support in rural, high-trafficked areas. This section also provides for a new grant program to allow DHS and the Secretary of Transportation, in consultation with the Governors of Southern and Northern border States, to provide grants to construct transportation and supporting infrastructure improvements at existing and new international border crossing ports.

Subsection (d)—New District Courts. This section provides for eight new Federal district court judgeships in the four Southwest border States, to be funded by a $10 increase in filing fees. In addition, this section provides for whistleblower protection for employees of the judicial branch.

Section 1105. Border Security on certain Federal land

Customs and Border Protection personnel are authorized to access Federal lands in the Southwest border region in Arizona for security activities, including routine motorized patrols and the deployment of communication, surveillance, and detection equipment.

The Secretaries of the Interior and Agriculture must conduct a programmatic environmental impact statement to analyze the impact of the security activities, and advise the Secretary of Homeland Security.

Section 1106. Equipment and technology

In the Southwest border region, CBP will be required to deploy additional mobile, video, and agent-portable surveillance systems and unmanned aerial vehicles, which must be operated along the Southern border in a manner to achieve constant surveillance; deploy additional fixed-wing aircraft and helicopters; acquire new rotorcraft and make upgrades to the existing helicopter fleet; acquire maritime equipment; and increase horse patrols. Unarmed, unmanned aerial vehicles are allowed to operate only within three miles of the Southern border in the San Diego and El Centro Sectors, but this limitation does not apply to the maritime operations of Customs and Border Protection.

Section 1107. Access to emergency personnel

With the consultation of border State Governors, DHS must establish a two-year grant program to improve emergency communication by providing satellite telephones for people living within the Southwest border region that are at greater risk of border violence due to lack of cellular service. Funding is available to DHS, the Department of Justice (DOJ), and the Department of the Interior for five years to purchase P25–compliant radios for Federal, State, and local law enforcement agents working in the border regions supporting CBP, as well as to upgrade the communications network of the Department of Justice to ensure coverage and capacity in the border region.

Section 1108. Southwest Border Region Prosecution Initiative

The Department of Justice must reimburse State, county, tribal, and municipal governments for costs associated with the prosecution and pre-trial detention of Federally-initiated criminal cases that local offices of the United States Attorneys declined to prosecute. These services shall include pre-trial services, clerical support, and public defenders' services. Reimbursement shall not be available if the Attorney General determines that there is reason to believe that the jurisdiction seeking reimbursement has engaged in unlawful conduct with respect to immigration-related apprehensions.

Section 1109. Interagency collaboration

The Department of Defense and DHS must collaborate to identify equipment used by DOD that could be used by CBP to improve border security.

Section 1110. State Criminal Alien Assistance Program (SCAAP) Reauthorization

The State Criminal Alien Assistance Program is reauthorized through 2015. Reimbursements are expanded to include reimbursement to States and localities for the cost of detaining individuals who were charged with committing deportable offenses prior to their conviction.

Section 1111. Use of force

After consulting with the Department of Justice, DHS must issue policies regarding the use of force by its personnel, including a requirement that all uses of force be reported. The Department of Homeland Security must also create procedures for investigating complaints, reviewing all uses of force, and disciplining personnel who commit violations.

Section 1112. Training for Border Security and Immigration Enforcement Officers

The Department of Homeland Security must ensure that all CBP, Border Patrol, and Immigration and Customs Enforcement (ICE) agents, as well as agriculture specialists within 100 miles of the border, receive appropriate training on individual rights, detecting fraudulent travel documents, the scope of enforcement authority, the use of force policies, immigration laws, social and cultural sensitivity toward border communities, the impact of border operations on communities, and environmental concerns to a particular area. Border community liaison officers must also receive training to better perform their duties. Not later than 90 days after enactment, DHS must establish standards to ensure the humane treatment of children in CBP custody, including adequate medical treatment and access to phone calls to family members.

Section 1113. Department of Homeland Security Border Oversight Task Force

An independent task force, consisting of 22 members appointed by the President, will be established to review and make recommendations regarding immigration and border enforcement policies, procedures, strategies, and programs, taking into consideration their impact on border communities. Members shall include law enforcement officials, members of the business community, local elected officials, private landowners, and representatives of faith and religious communities. The task force is empowered to take testimony, hold hearings, and request statistical information from Federal agencies. All recommendations made by the task force must receive a response from DHS within 180 days, describing how the Department will address the findings. Within two years of its first meeting, the task force must submit a final report to the President, Congress, and DHS regarding its findings.

Section 1114. Immigration Ombudsman

An Ombudsman for Immigration Related Concerns will be appointed within DHS, and shall have the authority to receive complaints from individuals and employers, conduct inspections of facilities or contract facilities of the immigration components of the Department, assist individuals and families who have been the victims of crimes committed by aliens or violence near the border, to request the Inspector General of DHS to conduct inspections, investigations, and audits, and to make recommendations concerning CBP, ICE, and USCIS. The Ombudsman must have a background in immigration law as well as civil and human rights law.

Section 1115. Protection of family values in apprehension programs

As soon as practicable after an individual is apprehended in a migration deterrence program, DHS and cooperating entities shall, for each such apprehended individual, inquire as to whether the person is a parent, legal guardian, or primary caregiver of a child or traveling with a spouse or child and ascertain whether repatriation of the individual presents any humanitarian concerns related to his or her physical safety. Due consideration must be given to the best interests of the child and to family unity. Rules must be promulgated within 120 days of enactment and training on these issues is mandatory.

Section 1116. Reports

The Secretary of Homeland Security shall prepare a report detailing the effectiveness rate for each Border Sector, the number of miles along the Southern border that are under persistent surveillance, the monthly wait times per passenger for crossing the Southern and Northern borders, and the allocations of personnel at each port of entry along the Southern and Northern borders. The report shall be submitted to the Committee on Homeland Security and Governmental Affairs and the Committee on the Judiciary of the Senate, as well as the Committee on Homeland Security and the Committee on the Judiciary of the House of Representatives. A report shall also be submitted on interagency collaboration.

Section 1117. Severability and delegation

If any provision of this Act or any amendment to the Act, or any application thereof to any person or circumstance, is held to be unconstitutional, the remainder of the provisions shall not be affected. This section permits the Secretary of Homeland Security to delegate any authorities provided under this Act to other appropriate Federal agencies.

Section 1118. Prohibition on land border crossing fees

This section prohibits the collection of any border crossing fees at land ports of entry along the Southern or Northern borders. It also prohibits any study relating to the imposition of a border crossing fee.

Section 1119: Human trafficking report

This section adds human trafficking to the Federal Bureau of Investigation's (FBI) Uniform Crime Reporting program. State and local governments receiving Edward Byrne Memorial Justice Assistance grants will be required to include human trafficking in their reporting of Part 1 Violent Crimes.

Section 1120. Rule of construction

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

Section 1121. Limitations on dangerous deportation practices

Within one year of enactment of this Act and every 180 days thereafter, DHS must submit written certification to Congress that DHS has only deported or removed migrants through an entry or

exit point on the Southern border during daylight hours, unless there is a compelling Government interest, an applicable local arrangement for repatriating Mexican nationals, or if the alien is not a minor and is deported through the same point of entry as the place where the migrant was apprehended, or agrees to such deportation.

TITLE II—IMMIGRANT VISAS

SUBTITLE A—REGISTRATION AND ADJUSTMENT OF REGISTERED PROVISIONAL IMMIGRANTS

Section 2101. Registered Provisional Immigrant status

This section establishes Registered Provisional Immigrant status. The Secretary, after conducting the requisite law enforcement and national security clearances, may grant RPI status to eligible aliens who apply within the application period and pay the fee, including any applicable penalties. To be eligible for RPI status, an alien must have been physically present in the United States on or before December 31, 2011, and have maintained a continuous presence since that date, except for certain limited absences. Other requirements, such as payment of taxes and national security and law enforcement clearances are described below.

Grounds for Ineligibility. Grounds for ineligibility for RPI status include the following: (1) conviction for a felony (other than a State or local offense for which an essential element was the alien's immigration status, or a violation of this Act); (2) conviction for an aggravated felony; (3) conviction for three or more misdemeanor offenses if the alien was convicted on different dates for each of the offenses (other than minor traffic offenses or a State or local offense for which an essential element was the alien's immigration status or a violation of this Act); (4) any foreign law offense, except for a purely political offense, that would render the alien inadmissible if it had been committed in the United States; (5) conviction for unlawful voting; (6) certain other grounds of inadmissibility set forth in INA Section 212(a); and (7) persons whom the Secretary knows or has reasonable grounds to believe are engaged in or likely to engage in terrorist activity.

Individuals who at the date of introduction of the bill in the Senate are lawful permanent residents, refugees, or asylees, or are lawfully present in a nonimmigrant status, may not apply for RPI status.

The Secretary has limited authority to waive some grounds of ineligibility to account for individual circumstances, such as the bar for individuals convicted of three or more misdemeanors, for humanitarian purposes, to ensure family unity, or if such a waiver is in the public interest. Waivers are not available to aliens who are convicted of a felony or an aggravated felony, persecutors, human traffickers, money launderers, those inadmissible on security grounds, polygamists, child abductors, unlawful voters, citizenship renouncers, or those who lie on their RPI applications.

Dependent Spouses and Children. Spouses and unmarried children under 21 may be included on the application if the spouse or child was physically present in the United States on or before December 31, 2012, maintained continuous physical presence since that date except for certain limited absences, and he or she meets

the eligibility requirements. Divorce, death, or separation because of domestic violence will not bar a spouse or unmarried child from re-applying for RPI status.

Applicable Taxes and Fees. In order to apply, an alien must have paid taxes assessed in accordance with Section 6203 of the Internal Revenue Code of 1986 and a $1,000 penalty fee, which may be paid in installments. The application form shall anonymously collect certain demographic data about each immigrant, which shall be compiled in a report to Congress on immigration trends.

Application Period; Ability to Apply. The application period is for one year following publication of a final rule and can be extended for 18 months by the Secretary. Aliens who appear prima facie eligible and are apprehended during the application period should be given a reasonable opportunity to apply for RPI status and shall not be removed until a final determination has been made concerning their application. An alien who departed from the United States subject to an order of removal and is outside the United States or illegally reentered the country after December 31, 2011, is not eligible to apply for RPI status. The Secretary has discretion to waive this bar in certain cases if the alien is the spouse or child of a U.S. citizen or lawful permanent resident; a parent of a child who is a U.S. citizen or lawful permanent resident; meets certain requirements set forth in the DREAM Act provisions; or is 16-years-old or older and was younger than 16 when he or she entered the United States and has been physically present in the United States for an aggregate period of three years within the preceding six years of the date of enactment.

If the Secretary is considering waiving the bar for RPI status in a circumstance described above and the applicant has been convicted of a crime, the Secretary shall consult with the convicting agency to identify any victims of that crime. If DHS identifies such a victim it shall make reasonable efforts to provide that victim with an opportunity to request consultation with DHS on the alien's application for a waiver, or provide notice regarding adjudication of the application. The Secretary may not make an adverse determination of inadmissibility or deportability based solely on information supplied during the identification of, notice to or consultation with a victim. The Secretary must submit an annual report to Congress detailing the identification and notice process described in this provision.

Suspension of Removal During Application Period. Aliens with RPI status shall not be detained or removed, unless the alien is or has become ineligible for RPI status or his or her RPI status had been revoked. Aliens in removal proceedings who are prima facie eligible for RPI status should be given an opportunity to apply for RPI status under certain circumstances. If an alien subject to a removal order is granted RPI status, he or she must file a motion to reopen removal proceedings.

Pending RPI Status. An alien who has a pending application for RPI status may receive advance parole if urgent humanitarian circumstances compel such travel. Such persons will not be considered unlawfully present or unauthorized to work under this Act. An employer who knows that an employee has applied or will apply for RPI status during the application period is not in violation of the

law if he or she continues to employ that individual pending adjudication of the application.

National Security and Law Enforcement Clearances. Before any alien may be granted RPI status, all national security and law enforcement clearances must be completed and an applicant must submit biometric and biographic data in accordance with DHS procedures. The Department of Homeland Security, in consultation with the Secretary of State and other interagency partners, shall also conduct additional security screenings upon determining that an alien or an alien-dependent spouse or child is or was a citizen or long-term resident of a region or country known to pose a threat, or contain groups or organizations that pose a threat, to the national security of the United States.

Renewal of RPI Status After Six Years. Registered Permanent Immigrant status shall be granted for an initial period of six years and may be extended if the alien remains eligible, meets certain employment requirements, successfully passes all background checks, and has not had his or her status revoked. To be eligible, an RPI applicant must demonstrate that he or she has met the employment requirement by being regularly employed throughout the period of admission as an RPI (allowing for brief periods of unemployment lasting not more than 60 days), and is not likely to become a public charge; or an applicant must demonstrate an average income or resources that are not less than 100 percent of the Federal poverty level throughout the period of admission. Certain exemptions exist for applicants who are unable to work because of a disability, pursuit of education, or other limited personal circumstances. An extension of RPI status may only be granted if the applicant has satisfied applicable Federal tax liability and paid the penalty fee. An extension of RPI status can only be granted if an applicant submits to and passes another series of background checks that are also required at initial registration.

Processing Fee for RPI First-Time Applicants and RPI Renewals. All individuals applying for RPI status, or an extension of that status, who are 16-years-old or older will be charged a processing fee as determined by the Secretary to cover the full costs of processing an application, including any costs incurred to adjudicate, process biometrics, perform national security and background checks, prevent and investigate fraud, and administer the collection of a fee. Aliens who are 21-years-old or older shall pay an additional $1,000 penalty, unless they are a DREAMer. The Secretary shall deny an application where the applicant fails to submit requested evidence, including biometrics.

Evidence of RPI Status. The Secretary must issue documentary evidence of RPI status to each individual whose application is approved, which shall be machine-readable and meet other criteria, and can serve as a valid travel document and as evidence of employment authorization.

DACA Recipients. The Secretary may grant RPI status to an individual granted Deferred Action for Childhood Arrivals (DACA) pursuant to the Secretary's memorandum of June 15, 2012, if that individual has not engaged in any conduct since being granted DACA that would make him or her ineligible for RPI status, and renewed national security and law enforcement clearances have been completed.

Terms and Conditions of RPI Status. An alien granted RPI status is authorized to work, may travel outside the United States subject to certain specified conditions, and shall be considered admitted to and lawfully present in the United States.

Revocation of RPI Status. The Secretary may revoke RPI status if the alien is no longer eligible for such status, knowingly used RPI documentation for an unlawful or fraudulent purpose, or was absent from the United States for any single period longer than 180 days or for more than 180 days in the aggregate in any calendar year, unless the failure to return was due to extenuating circumstances. If RPI status is revoked, any documentation issued to the alien is automatically invalid.

Eligibility for Federal Benefits. An alien who is granted RPI status is not eligible for any Federal means-tested benefit. The Department of Health and Human Services (HHS) shall conduct regular audits to ensure that RPIs are not fraudulently receiving any such benefits. A person in RPI status is not entitled to the premium assistance tax credit authorized under Section 36B of the Internal Revenue Code of 1986 for his or her healthcare coverage and shall be subject to the rules applicable to persons not lawfully present that are set forth in section 1402(e) of the Patient Protection and Affordable Care Act and in section 5000A(d)(3) of the Internal Revenue Code of 1986. An alien granted RPI status may be issued a Social Security number.

Dissemination of Information Concerning RPI Program. The Secretary shall broadly disseminate information on the RPI program in the languages most commonly spoken by aliens who would qualify for such status.

Registration in the Armed Services. This section amends Federal law so that an alien who is granted RPI status may enlist in the Armed Services.

Section 2102. Adjustment of status of registered provisional immigrants

This section gives the Secretary discretionary authority to adjust the status of a RPI to that of an alien lawfully admitted for permanent residence if the RPI meets the eligibility requirements. Aliens must establish their continued eligibility for RPI status, and show that they have not been outside the United States for more than 180 days in any calendar year unless it was due to extenuating circumstances beyond the applicant's control. If the Secretary has notified an alien of a pending revocation hearing, no adjustment of that alien's status may be made until a final determination has been made regarding that pending revocation. If the Secretary has notified the alien that he or she intends to revoke such status, the alien may not adjust his or her status until the Secretary makes a final determination not to revoke such status.

Adjustment Requirements. Registered Permanent Immigrants who apply for adjustment of status must demonstrate that they have satisfied any applicable Federal tax liability and pay a $1,000 penalty fee. They must also meet the employment requirement set forth in the bill, by showing that he or she was regularly employed throughout the period of admission (allowing for brief periods of unemployment lasting not more than 60 days), and is not likely to become a public charge; or by demonstrating an average income or

resources that are not less than 125 percent of the Federal poverty level throughout the period of admission. The alien may meet this requirement by submitting records maintained by the Social Security Administration, Internal Revenue Service, or any other Federal, State, or local government agency that establish compliance by a preponderance of the evidence. In the absence of such records, the alien may submit at least two forms of alternative reliable documentation such as bank records, employer records, sworn affidavits from a non-relative with direct knowledge of the applicant's work or education, and any additional documentation the Secretary may require. Full-time attendance at certain educational institutions may satisfy some or all of the employment requirement. Certain exceptions exist to the employment requirement based on age, disability, pregnancy, or dependency of an RPI. If extreme hardship is demonstrated by an alien or his or her spouse, parent or child who is a U.S. citizen, or lawful permanent resident, the Secretary may waive the employment requirement.

An RPI may seek adjustment of status to lawful permanent residence only if he or she is over 16-years-old and meets the basic English proficiency requirement specified in this section. If an alien is subject to registration under the Military Selective Service Act on or after the date on which their application for RPI status is granted, proof of that registration is required.

"Back of the Line." The status of an RPI may not be adjusted until after the Secretary of State certifies that immigrant visas have become available for all approved employment and family based petitions filed before the date of enactment.

Interview; Security and Law Enforcement Clearances. The Secretary may interview applicants for adjustment of status under this section. The Secretary may not adjust the status of an RPI until renewed national security and law enforcement clearances have been completed.

Fees and Penalties. The Secretary shall charge applicants a processing fee, as determined by the Secretary to cover the full costs of processing an application to adjust status, including any costs incurred to adjudicate, process biometrics, perform national security and background checks, prevent and investigate fraud, and administer the collection of a fee. In addition to the processing fee established by the Secretary, individuals who were 21 years of age or older on the date of introduction of this Act shall pay a $1,000 penalty to adjust, unless that individual meets the requirements under the DREAM Act set forth in section 245D(b). This penalty may be paid in installments.

Naturalization. A lawful permanent resident who was lawfully present in the United States and eligible for work authorization for not less than 10 years before becoming a lawful permanent resident may be naturalized in three years provided that he or she meets all requirements for naturalization, has resided continuously in the United States for at least three years after being lawfully admitted for permanent residence, and, during the three years immediately preceding the naturalization filing date, was physically present in the United States for fifty percent of the time.

Section 2103. The DREAM Act (Development, Relief, and Education for Alien Minors Act of 2013)

This section authorizes the Secretary to adjust the status of an RPI to that of a lawful permanent resident after five years (instead of the usual 10 years) if the RPI demonstrates that he or she was younger than 16 years of age on the date on which the alien initially entered the United States; has earned a high school diploma or certain equivalents (including a general education development certificate recognized under State law or a high school equivalency diploma); and has acquired a degree from an institution of higher education or has completed at least two years, in good standing, of a program for a bachelor's degree or higher education degree in the United States or has served in the Uniformed Services for at least four years and, if discharged, received an honorable discharge. The applicant must also provide a list of each secondary school he or she attended while in the United States.

The Secretary has authority to waive the above requirements for aliens who can demonstrate compelling circumstances that have prevented them from satisfying the higher education or Uniformed Services requirement. In obtaining a status adjustment, an alien must demonstrate that he or she meets the requirements that apply at citizenship, unless a physical or developmental disability or mental impairment prevents that individual from meeting such requirements.

Aliens seeking adjustment of status must submit biometric and biographic information and complete national security and law enforcement background checks. The Secretary must notify an alien of his or her determination as to whether the alien meets, or does not meet, the requirements set forth in Section 1 (DREAM Act eligibility requirements).

DACA Recipients. The Secretary may adopt streamlined procedures for individuals granted relief under the DACA program to adjust to lawful permanent resident status.

Treatment for Purposes of Naturalization. An alien adjusted to lawful permanent resident status under this section shall be considered to have been lawfully admitted for permanent residence and to have been in the United States as a lawful permanent resident during the period of RPI status. An individual may not apply for naturalization while in RPI status, except for those applying for military naturalization under INA section 328 or 329.

Higher Education. Under this section, States have the option to determine residence for the purposes of higher education, such that a State may choose to grant in-state tuition to out-of-status immigrants. RPIs who initially entered the United States before reaching 16 years of age, and those eligible for blue card status, shall be eligible for certain assistance under Title IV of the Higher Education Act of 1965, including certain student loans and work-study programs.

Section 2104. Additional requirements

This section specifies that, while the Secretary may consider the information provided by an alien seeking RPI status or extension or adjustment when considering any immigration application from the alien, the Secretary may not otherwise disclose the information subject to certain required disclosures. The Secretary is required to

disclose the information to law enforcement, intelligence, and national security agencies, components within DHS, and to a court or grand jury in connection with a criminal investigation or prosecution of a felony (not related to the applicant's immigration status), or for a national security investigation or prosecution, or to an official coroner for purposes of identifying a deceased person. The Secretary may audit information about applications for RPI status, extension of RPI status or adjustment for purposes of identifying fraud or fraud schemes. The Secretary may use evidence from audits and evaluations for purposes of investigating, prosecuting, referring for prosecution or denying or terminating immigration benefits.

This section protects employers in relation to the use of employment records submitted in connection with an application for RPI status or extension of RPI status.

The Secretary may establish or designate an administrative appeal process within DHS and allows for a single appeal for each administrative decision related to an application for RPI status, extension of RPI status, or adjustment under the RPI provisions or the DREAM Act provisions, or for blue card status or adjustment for those in blue card status. An alien shall not be removed until a final decision is rendered establishing ineligibility for RPI status or extension or adjustment, and the alien shall not be considered unlawfully present during the appeals process.

If an alien's application for RPI status or adjustment under general RPI provisions or the DREAM Act, or for blue card status or adjustment under the blue card status provisions, is denied or revoked after the exhaustion of administrative review, that person may seek review of the decision in accordance with Chapter 7 of Title 5 of the United States Code, before the U.S. District Court for the district in which the person resides. Alternatively, for decisions related to applications for RPI status, adjustment under the general RPI provisions or adjustment under the DREAM Act, an alien may seek review in a United States court of appeals in conjunction with the judicial review of an order of removal, deportation, or exclusion if the validity of the denial has not been upheld in a prior judicial proceeding.

Judicial review of decisions related to applications for RPI status, adjustment under the general RPI provisions or adjustment under the DREAM Act shall be based upon the administrative record established at the time of the review. The reviewing court may remand a case for consideration of additional evidence if the court finds that the additional evidence is material and there were reasonable grounds for failure to adduce the additional evidence before the Secretary. The district courts shall have jurisdiction over any cause or claim arising from a pattern or practice of the Secretary in the operation or implementation of this Act that is arbitrary, capricious or otherwise contrary to law. This section speaks to the scope of relief available in the districts courts and specifies how challenges to the validity of the system are to be handled by the courts.

Section 2015. Criminal penalties

This section creates criminal penalties of not more than $10,000 for any person who knowingly uses, publishes, or permits the improper use of information on these applications.

Section 2106. Grant program to assist eligible applicants

The Secretary may establish a program within U.S. Citizenship and Immigration Services to award grants, on a competitive basis, to eligible public or private nonprofit organizations that assist eligible applicants for Registered Provisional Immigrant status and blue card status.

The grant funds may be used for the design and implementation of programs that provide information to the public regarding the eligibility and benefits of RPI status; assistance to individuals submitting applications for Registered Provisional Immigrant status; assistance to individuals seeking to adjust their status to that of an alien admitted for permanent residence; and assistance to individuals on the rights and responsibilities of U.S. citizenship, civics and civics-based English as a second language, and in applying for U.S. citizenship.

Section 2107. Conforming amendments to the Social Security Act

This section allows those granted RPI status, or adjustment of status including under the DREAM Act provisions, to correct their Social Security records.

In addition, this section states that the removal of a parent from the United States or the involvement of a parent in an immigration proceeding shall constitute a compelling reason for a State not to file a petition to terminate parental rights, unless the parent is unfit or unwilling to be a parent. The provision ensures that the immigration status of a relative caregiver alone shall not disqualify the caregiver, and that adult relatives should receive preference if he or she meets all relevant State child protection standards.

Section 2108. Government contracting and acquisition of real property interest

This section provides that the competition requirement under Section 253(a) of Title 41 of the United States Code (USC) may be waived or modified by a Federal agency for any procurement conducted to implement this title or the amendments made by this title if the senior procurement executive for the agency conducting the procurement determines that the waiver or modification is necessary, and submits an explanation for such determination to the Committee on Homeland Security and Government Affairs of the Senate and the Committee on Homeland Security of the House of Representatives.

The Secretary of Homeland Security is authorized to make term, temporary limited, and part-time appointments of employees who will implement this title and the amendments made by this title without regard to the number of such employees, their ratio to permanent full-time employees, and the duration of their employment.

The Secretary of Homeland Security may acquire a leasehold interest in real property, and may provide in a lease entered into for the construction or modification of any facility on the leased property.

Section 2109. Long-Term legal residents of the Commonwealth of the Northern Mariana Islands

This section creates a mechanism to grant lawful permanent resident status to certain long-term legal residents of the Commonwealth of the Northern Mariana Islands (CNMI) who, following the federalization of immigration law in the CNMI in 2008, were left without a long-term permanent status. These individuals include those who are lawfully present in the CNMI under the immigration laws of the United States, are otherwise admissible to the United States under the INA, and meet certain criteria relating to their presence in the CNMI. The presence criteria are that the individual either resided continuously and lawfully in the CNMI from November 28, 2009, through the date of enactment; was born in the Northern Mariana Islands between January 1, 1974, and January 9, 1978; has been a continual permanent resident of the CNMI since May 8, 2008; is the spouse or child of such an alien; is an immediate relative of a U.S. citizen since May 8, 2008; resided in the Northern Mariana Islands as a guest worker under CNMI immigration law for at least five years before May 8, 2008; or is the spouse or child of the alien guest worker. Beginning five years after the date of enactment, the individuals described above may apply to receive an immigrant visa or adjust status to that of lawful permanent residence.

Section 2110. Rulemaking

Not later than one year after the date of enactment, the Secretary, the Attorney General, and the Secretary of State separately shall issue interim final regulations to implement this title and the amendments which shall take effect immediately upon publication in the Federal Register.

Section 2111. Statutory construction

Except as specifically provided, nothing in this title, or any amendment made by this title, may 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.

SUBTITLE B—AGRICULTURAL JOB OPPORTUNITIES BENEFITS

Section 2201. Short title

Section 2202. Definitions

This section defines "blue card status" as the status of an alien who has been lawfully admitted into the United States for temporary residence under Section 2211. The term "agricultural employment" is given the meaning that it carries in Section 3 of the Migrant and Seasonal Agricultural Worker Protection Act, without regard to whether the specific service or activity is temporary or seasonal.

Section 2211. Blue card status requirements

This section provides that prospective blue card workers must be able to document working in U.S. agriculture for a minimum of 100 work days or 575 hours in the two years prior to December 31,

2012, in order to be eligible to adjust to blue card status. The spouse or child of such alien may be eligible if he or she was physically present in the United States on or before December 31, 2012, and has maintained continuous presence since then. Applicants must pass a security and a law enforcement background check in order to be eligible for the program, just like any other Registered Provisional Immigrant.

The Department of Homeland Security will accept applications for blue card status from aliens in the United States during the one-year period beginning on date when DHS publishes the final rule. The Secretary of Homeland Security can extend the application period for 18 months.

The Secretary of Homeland Security shall collect biometric and biographic information for blue card workers and their dependent spouses and children to conduct national security and law enforcement clearances.

Blue card status expires eight years after the date on which final blue card regulations are published. The Department of Homeland Security shall set a processing fee that is sufficient to cover the program application and administrative costs. Blue card workers must pay a $100 fine to the Department of Homeland Security. Blue card documents will be machine-readable and tamper-resistant and contain a digitized photograph. A worker granted blue card status is not eligible for public assistance or public benefits until five years after the date on which the alien adjusts to green card status, consistent with any other immigrant entering the United States.

Blue card status may be revoked at any time if the person is no longer eligible for blue card status. Blue card holders may convert to RPI status if DHS determines that they cannot meet the work requirements applicable to blue card holders.

Section 2212. Adjustment to permanent resident status

Blue card workers (and spouses and children who meet certain eligibility requirements) are eligible to apply for permanent resident status if they have fulfilled their work requirements in U.S. agriculture, show that they have paid all applicable taxes, comply with the same criminal eligibility requirements used for determining RPI status, and pay a $400 fine. Fines are to be used to cover the costs of the program.

In order to be eligible, a worker must show that he or she performed at least five years of agricultural employment for at least 100 work days per year during the eight-year period beginning on the date of enactment or that he or she performed at least three years of agricultural employment for at least 150 work days per year during the five-year period beginning on the date of enactment. Certain credits may be given for extraordinary circumstances, though such credits cannot exceed 12 months of work.

If an employer or farm labor contractor has kept records of employment, the alien's burden of proof may be met by securing production of such records under regulations to be promulgated by the Secretary; otherwise, an applicant may meet the burden of proof by producing sufficient evidence to show the extent of his or her employment as a matter of just and reasonable inference. Penalties for making false statements in conjunction with blue card applica-

tions or adjustment to legal permanent resident status are punishable by up to five years in prison.

Legal services through the Legal Services Corporation may be made available for direct assistance to those applying for blue card status or adjustment, and to individuals granted blue card status.

Upon enactment, deportation of undocumented agricultural workers who are eligible for blue card status and sanctions against their employers shall be stayed until the blue card program is operational.

Spouses and minor children of blue card workers residing in the United States are eligible for derivative blue card status. Workers who successfully complete blue card requirements are eligible for lawful permanent residence and their spouses and children are eligible for such status as derivatives.

Section 2213. Use of information

Beginning on the first day of the blue card application period, DHS shall broadly disseminate information about the program.

Section 2214. Reports on blue cards

Not later than September 30, 2013, and annually thereafter for the next eight years, the Secretary of Homeland Security shall submit a report to Congress concerning the blue card program, including the number of aliens who applied for and were granted blue card status, and the number of blue card holders who applied for and received adjustment of status to lawful permanent residence.

Section 2215. Authorization of appropriations

Congress will make appropriations as necessary to implement the program for Fiscal Years 2013 and 2014.

Section 2221. Correction of social security records

This section provides a safe harbor for blue card holders for past misstatements.

Section 2231. Nonimmigrant classification for nonimmigrant agricultural workers

This section establishes a new temporary worker program to ensure an adequate agricultural workforce. Two visa programs are established: first, a portable, at-will employment based visa (W–3 visa) and second, a contract-based visa (W–2 visa) to replace the H–2A program. Regulations implementing the new program shall be issued within 12 months of enactment.

The H–2A program will sunset after the new visa programs are implemented and operational. The implementation of these programs is expected to be complete two years after the date of enactment.

Section 2232. Nonimmigrant agricultural worker program

A new Section 218A is created within the INA, establishing a nonimmigrant agricultural worker program for employment by contract and employment at will. Both contract and at-will visas will be valid for agricultural employment with Designated Agricultural Employers (DEAs), who have registered with the Department of Agriculture to employ guest workers (described further below). Var-

ious terms are defined, including agricultural employment, at-will agricultural worker, blue card, and electronic job registry. Initial employee eligibility would be based on an offer of employment from a Designated Agricultural Employer.

New Section 218A(c)—Numerical Limitation. For the first five years, the nonimmigrant visa program is capped at 112,333 per year. Visas shall be evenly distributed four times per calendar year. After the first year, the Secretary of Agriculture may modify disbursement of visas based on prior usage patterns. Unused visas can be rolled over to the next quarter but not to the next year.

During the first five years of the program, the Secretary of Agriculture has the authority to increase the cap to make additional visas available within a calendar year in response to a demonstrated labor shortage. The Secretary has the authority to reduce the cap within a fiscal year in response to the high unemployment rate of agricultural workers. The Secretary shall consider the evidence submitted by agricultural producers and farm worker organizations in making a determination to increase or decrease the cap.

The Secretary of Agriculture, in consultation with the Secretary of Labor, shall establish a new annual visa cap for each fiscal year after year six. To determine the cap for each fiscal year the Secretary shall consider appropriate factors, including but not limited to, demonstrated shortages of agricultural workers, the level of unemployment and underemployment of agricultural workers, the number of applications for the guest worker visa, the number of applications approved, the number of guest workers employers sought, and other factors. This cap is also subject to rules in case of emergency in case of labor shortages.

New Section 218A(d)—Nonimmigrant Worker Requirements. An alien is not eligible for the program if the alien has violated a material term of a previous admission as a non-immigrant agricultural worker; has failed to pass security and criminal background checks; or departed the United States subject to an order of exclusion, deportation or removal and is outside the United States or reentered the United States illegally after December 31, 2012 (subject to certain exceptions). Temporary workers are not eligible for means-tested federal benefits or assistance.

The visa term is for three years. The visa is portable for at-will workers, and for contract workers it ends upon fulfillment of contract term. A guest worker can renew his or her visa one time. After year six, guest worker must reside outside of the United States for three months before obtaining another visa. A spouse or child is not eligible for derivative status on a nonimmigrant visa.

Contract agricultural workers may seek employment with other designated agricultural workers after the completion of the contract period. At-will agricultural workers may seek and accept employment with any other designated agricultural employer. At-will and contract agricultural workers are provided a 60 day grace period to find work in between employment or must depart the country. A visa issued under this section shall not specify the geographical area or limit the type of employment which a worker may seek.

New Section 218A(e)—Employer Requirements. Each employer seeking to employ guest workers shall submit to the U.S. Department of Agriculture (USDA), through the Farm Service Agency or electronically to the USDA, an application for Designated Agricul-

tural Employer status. Such application shall include the employer's Employer Identification Number, the estimated number of nonimmigrant agricultural workers the employer will need each year, the anticipated periods during which the employer will need such workers, and a registration fee. The USDA shall assign each employer that meets the criteria with a Designated Agricultural Employer registration number. Designated Agricultural Employer status is for three years. The Secretary may provide assistance to agricultural employers, including helping such entities to register to be a DAE, providing Internet access for the submission of applications, and providing resources about the program.

A petition shall be submitted by a DAE to the Department of Homeland Security no later than 45 days before a worker is needed. Such petition shall include an attestation to all the requisite criteria to ensure their compliance with the system.

Employers must provide housing or an allowance for at-will and contract workers. Employers may provide a "reasonable housing allowance" instead of arranging for housing, but the employer shall upon request assist the employee in locating suitable housing. Such allowance must not be used for housing that is owned or maintained by the employer. The amount of allowance would be based upon HUD fair market rental rates for a two-bedroom dwelling occupied by four individuals. Contract workers may only get a housing allowance instead of housing if the State certifies that there is adequate housing available in the area of intended employment. The housing provisions do not apply to workers who live within normal commuting distance where the job site is within 50 miles of the U.S. border.

The contract visa program requires employers to provide daily worksite transportation or reimbursement for transportation. The at-will visa program does not require employers to provide transportation. The first employer pays for inbound travel to the United States for contract workers and at-will workers. Employers pay for outbound travel for contract workers who complete 27 months under their contracts with the same employer.

Nonimmigrant agricultural workers lose their status and must depart the United States if they were unemployed for more than 60 consecutive days. This requirement could be waived as necessary for workers who are injured or unable to work for extended periods of time through no fault of their own due to natural disasters such as crop freezes or droughts. A contract worker who breaches with his or her contract with an employer must depart the United States before accepting another job with a U.S. employer.

Employers must file job offers with their State workforce agencies no later than 60 days before such employer seeks to employ a nonimmigrant agricultural worker. These offers must be listed for 45 days. Employers shall keep records of all eligible, able, willing, and qualified U.S. workers who apply for agricultural employment with the employer. An employer may not seek a foreign worker unless the employer offers such employment to each eligible, able, willing, and qualified U.S. worker who applies for such employment.

Guest workers shall be provided equal labor protections under the law as domestic agricultural workers. An employer cannot hire

a nonimmigrant agricultural worker to replace an employee who is on strike or locked out. An employer may not displace U.S. workers to hire nonimmigrant agricultural workers. The three-quarters guarantee rule has required the employer under the H–2A program to guarantee the worker to receive 75 percent of the worker's wages under the contract period regardless of whether or not the work was completed (in other words, to guarantee 75 percent of the work, regardless of other circumstances). This rule is retained for employers who employ workers under the contract program, but this rule will not apply to an employer's workers who came to the United States in the at-will program.

Employers must provide worker's compensation to nonimmigrant agricultural workers. Employers must provide U.S. agricultural workers the same wages, benefits, and working conditions to their employees. Employers shall make only deductions from workers' wages that are authorized by law or are reasonable and customary in the occupation and area of employment.

New Section 218A(f)—Wages. If an employer pays on a piece-rate basis and requires a minimum productivity standard, the standard must be specified in the job offer and cannot be more than what has been normally required by other employers at the time of the employer's first application, unless the Secretary of Agriculture approves a higher rate. The wage rate from Fiscal Year 2014 through Fiscal Year 2016 shall be the higher of the local minimum wage or specific rates listed in the bill for these occupations. The Secretary of Agriculture is to index an increase in the required wage rate based on the movement of the Consumer Price Index ranging between 1.5 and 2.5 percent per year.

The Secretary of Agriculture shall determine the prevailing wage rate for the six categories of farm workers listed. The Adverse Effect Wage Rate (as in effect for the current H–2A program) will remain frozen while the new prevailing wage rate for the categories is being determined. A new prevailing wage shall be set by the Secretary of Agriculture by September 1, 2015. If a new prevailing wage rate is not established by September 1, 2015, the frozen AEWR shall be the prevailing wage for these job categories and adjusted for inflation in accordance with the Consumer Price Index.

New Section 218A(g)—Worker Protection. Nonimmigrant workers have the same rights and remedies under Federal, State, and local law as their U.S. counterparts. Workers are covered by the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and can pursue their grievances with employers covered under this act. In the event of a lawsuit between an employer and an employee, any party can request mediation of the complaint and mediation must be exhausted before the lawsuit may proceed.

The Secretary of Labor is given authority to establish a process to address worker grievances and complaints. The Secretary shall be able to impose administrative remedies and bar an employer from the program related to program violations and abuses. Employers are prohibited from discriminating against an employee who reports compliance violations or misconduct.

New Section 218A(i)—Special Procedure for Certain Occupations. Under the new agricultural visa program, the Secretary is authorized to continue the special procedures relating to housing, pay and visa application requirements for sheepherders, goat herders, bee-

keepers and other industries subject to such procedures under the current H–2A regulations.

New Section 218A(j)—Monitoring and Miscellaneous. Upon the full implementation of the mandatory Employment Verification system, this bill will ensure that everyone working in agriculture is legally authorized to be employed in the United States. In addition, DHS will implement a new electronic monitoring system to ensure that those who are legally authorized to work are actually working with the employer that petitioned them. This is intended to not only cut down on fraud and abuse of the system, but also to ensure compliance with program requirements and that nonimmigrant agricultural workers leave when legally required to do so.

Section 2234. Reports to Congress on nonimmigrant agricultural workers

The Department of Agriculture has to submit an annual report that provides information on W agricultural worker admissions. The Department of Homeland Security must submit an annual report on W agricultural workers violating the program rules who have not departed from the United States.

Section 2241. Rulemaking

The Secretary, the Secretary of Agriculture, the Secretary of Labor and the Secretary of State shall regularly consult in promulgating regulations to implement this subtitle. Regulations shall be issued not later than six months from the date of enactment of this Act.

Section 2242. Reports to Congress

Not later than 180 days after enactment, DHS and the Department of Agriculture shall jointly submit a report to Congress describing the implementation of this subtitle.

Section 2243. Benefits integrity programs

This section requires the creation of a benefit fraud assessment program to monitor fraud in the RPI, blue card, DREAM, and U visa programs.

Section 2244. Effective date

This subtitle shall take effect on that date on which regulations required by Section 2241 are issued (six months following enactment).

SUBTITLE C—FUTURE IMMIGRATION

Section 2301. Merit-Based Points Track One Immigrant Visas

This section sets the worldwide level of merit-based immigrants equal to 120,000 for each fiscal year. The cap may increase annually by up to five percent per year if the following conditions are met, but the cap may not exceed 250,000 in any year: first, if the worldwide level of visas available is less than 75 percent of the number of applicants, then the worldwide level will increase by five percent in the next fiscal year; second, if the worldwide level of visas is equal to or more than 75 percent of the number of applicants, then the worldwide level will stay the same, minus any

amount added for the recapture of unused visas; third, if the average unemployment level for the prior fiscal year is more than 8.5 percent, then worldwide level of merit-based visas may not increase; and the worldwide level will be increased by any unused numbers from the prior fiscal year.

Tiers One and Two. For the first four years, the 120,000 visas (subject to any increase) will be available to those with approved petitions in the 203(b)(3) category. Beginning in the fifth fiscal year after date of enactment, the Secretary will allocate 50 percent of the merit-based visas to Tier One and 50 percent to Tier Two. In each of the two tiers, the Secretary of Homeland Security will give preference to aliens in each of two tiers based upon a point allocation system, until the worldwide level is met. The first tier allows points to be earned based on education, employment experience, employment related education, entrepreneurship, employment in a high-demand occupation, civic involvement, English language proficiency, family relationships, age, and country of origin. The second tier allows points to be earned based on employment experience, special employment criteria, caregiver obligations, exceptional employment record, civic involvement, English language proficiency, family relationships, age, and country of origin. No one granted RPI status or those with pending or approved employment or family petitions may be granted a merit-based immigrant visa.

Unused numbers in Tier One will be recaptured in the following year, with two-thirds going to Tier One and one-third to either tier. Unused numbers in Tier Two will be recaptured in the following year with two-thirds going to Tier Two and one-third to either tier.

Modification of Points Allocated. The Secretary has authority to submit a proposal to Congress recommending a modification to the points allocated in each tier, and the proposal shall be considered by Congress under expedited procedures.

Study. The Comptroller General shall conduct a study of the new merit-based immigration system during the first seven years of the system. This study shall include the demographics of the population that utilizes the system.

Section 2302. Merit-Based Track Two

This section allows the Secretary of State to allocate merit-based immigrant visas beginning on October 1, 2014 for: employment-based visas that have been pending for five years; family-sponsored petitions that were filed prior to enactment and have been pending for at least five years; family-sponsored petitions filed after the date of enactment that have been pending for at least five years for adult married children and siblings; long-term alien workers who have been present for not less than 10 years, and are not admitted on a W visa under section 101(a)(15)(W) of the Act. Beginning in 2028, long-term aliens must be present for at least 20 years to adjust to permanent residence under this section.

Between Fiscal Years 2015 and 2021, each year, the Secretary shall allocate a seventh of the total number of employment-based visas that have been pending as of the date of enactment. Between Fiscal Years 2015 and 2021, the Secretary shall allocate a seventh of the total number of family-based visas that are pending as of the date of enactment, excluding petitions that are converted to the immediate relative category. Petitions for spouses and children of per-

manent residents who are accorded status under the INA are automatically converted to petitions to accord status as immediate relatives.

In Fiscal Year 2022, the Secretary of State shall allocate immigrant visas to 50 percent of the number of family based petitions approved after the date of enactment that were not issued as of October 2021. In Fiscal Year 2023, the Secretary shall allocate immigration visas to the remaining 50 percent of family based petitions filed after the date of enactment that were not issued by October 2021. Visas allocated for these family based petitions will be issued based on the order in which petitions were filed.

Registered Provisional Immigrants may apply for merit-based green cards under Merit-Based Track Two ten years after enactment of the bill.

The merit-based point system tracks will not be subject to per country limits.

Section 2303. Repeal of the Diversity Visa Program

This section amends the INA to repeal the Diversity Visa Program. Immigrants who were or are selected for diversity immigrant visas for Fiscal Years 2013 or 2014 will be eligible to receive them. All unused green cards may be recaptured through the date of enactment.

Section 2304. Worldwide levels and recapture of unused immigrant visas

In FY 2015, unused employment-based green cards from Fiscal Years 1992 to 2013 will be added to the FY 2015 green card allocation. After FY 2015, unused employment-based green card numbers will roll over to the following fiscal year.

This section maintains the current worldwide level of family-sponsored immigrants for a fiscal year at 480,000 visas, minus the number of immigrant visas issued to immediate relatives, with a floor of 226,000. This allocation remains in place for 18 months after the date of enactment. This section allows unused visas from 1992 through 2011 to be included in the allocation of family-sponsored immigrant visas for Fiscal Year 2015.

Section 2305. Reclassification of spouses and minor children of lawful permanent residents as immediate relatives

This section amends the definition of "immediate relative" to include a child or spouse of an alien admitted for lawful permanent residence. This allows for the automatic conversion to immediate relative designation for pending petitions filed on behalf of a spouse or child of a lawful permanent resident.

This section provides allocations for family-based immigrant visas for the period beginning on the date of enactment until 18 months after enactment. It caps unmarried sons or daughters of lawful permanent residents at 20 percent of the worldwide family-sponsored level; caps immigrant visas for married sons and daughters of U.S. citizens; and caps immigrant visas for brothers and sisters of U.S. citizens at 40 percent of the worldwide family-sponsored level.

Within 180 days of enactment, the Secretary of Homeland Security and the Secretary of State shall adopt a plan to broadly dis-

seminate information to the public regarding termination of the registration of aliens who evidenced an intention to become lawful permanent residents but who fail to adjust status within a year of notification that an immigrant visa is available. Termination can be overturned with two years, if the individual establishes good cause.

The section provides for the retention of priority dates for family-based and employment-based petitions by establishing that the priority date for a petition is the earliest priority date based on any petition filed on an alien's behalf, regardless of the category of subsequent petitions. For children who turn 21 during the course of processing of the parent's visa such that the child is no longer eligible to adjust as a minor child, that child would have his or her petition automatically convert to a petition for an unmarried son or daughter of an LPR upon the parent's admission as a resident. The child would retain the priority date established by the original petition.

This section also provides that VAWA self-petitioners may receive work authorization within 180 days of filing an application, or on the date such status is approved, whichever is earlier. There are other technical and conforming amendments included in this section.

Section 2306. Numerical limitations on individual foreign states

This section eliminates the per-country limits for employment-based immigrants and increases the per-country limit for family-based immigrants from seven to 15 percent. It also applies special rules for countries at the ceiling to distribute visas in a proportional way across the family categories.

Section 2307. Allocation of Immigrant Visas

Family-Sponsored Visas. Eighteen months from the date of enactment, the allocation of immigrant visas will be amended as follows: (1) the cap on immigrant visas to adult unmarried sons and daughters will be 35 percent of the worldwide family-sponsored level; (2) caps on immigrant visas for married sons and daughters of U.S. citizens who are 31 years of age and under at the time of filing will be 25 percent of the worldwide family-sponsored level; (3) caps on immigrant visas for unmarried sons and daughters of legal permanent residents will be 40 percent of the worldwide family-based level. This section strikes the availability of immigrant visas for siblings of U.S. citizens.

Employment-Based Visas. This section exempts the following categories from the annual numerical limits on employment-based immigrants: derivative beneficiaries of employment-based immigrants; immigrants of extraordinary ability in the sciences, arts, education, business or athletics; outstanding professors and researchers; multinational executives and managers; doctoral degree holders in STEM fields; physicians who have completed the foreign residency requirements or have received a waiver; and immigrants who have earned a master's degree or higher in a field of STEM from an accredited U.S. institution of higher education and have an offer of employment in a related field, if the qualifying degree was earned in the five years immediately before the petition was filed.

EB–2 Visas. This section allocates 40 percent of the worldwide level of employment-based visas to members of the professions holding advanced degrees or their equivalent whose services are sought in the sciences, arts, professions, or business by an employer in the United States (including certain aliens with foreign medical degrees). The Secretary may waive the job offer requirement if it is in the national interest, and shall waive the requirement for physicians serving patients who reside in a shortage area if the alien's work is in the public interest. These physicians must meet certain requirements before their status can be adjusted to lawful permanent residence. This section eliminates labor certification requirement for hiring advanced degree holders in STEM fields from a U.S. university who are applying under the EB–2 category.

EB–3, EB–4, and EB–5 Visas. This section increases the percentage of employment visas for skilled workers, professionals, and other professionals to 40 percent (the EB–3 category), increases the percentage of employment visas for certain special immigrants to 10 percent (the EB–4 category), and increases visas for those who foster employment creation to 10 percent (raising the EB–5 cap from 10,000 to 14,000). The numbers may roll down among those categories.

Naturalization of Employees of Certain National Security Facilities. Under this section, a person who is employed in a research capacity at a Federal national security, science and technology laboratory or agency for one year longer may be naturalized without regard to typical residency requirements, if other background investigation and other requirements are met.

Section 2308. Inclusion of communities adversely affected by a recommendation of the Defense Base Closure and Realignment Commission as targeted employment areas.

This section provides that a Targeted Employment Area for the purpose of the EB–5 visa includes "any community adversely affected by a recommendation of the Defense Base Closure and Realignment Commission."

Section 2309. V Nonimmigrant Visa

This section amends the V nonimmigrant visa status to be available to: those with approved petitions as the unmarried son or daughter of a U.S. citizen or of a lawful permanent resident, and to the married son or daughter of a U.S. citizen who is 31 years of age or under; or the sibling of a U.S. citizen or the married son or daughter of a U.S. citizen who is over 31 years of age. The Secretary may issue work authorization to those admitted under a V visa based on a pending family sponsored petition. A V visa terminates 30 days after the visa petition or adjustment of status is denied. Siblings and married sons and daughters of U.S. citizens over 31 years of age may not be authorized to work after being admitted on a V visa and may only be admitted for up to 90 days. This change is effective on the first day of the first fiscal year beginning after the date of enactment. V visas are subject to the public charge requirement. They do not have access to subsidies and they are not subject to the mandate under the Affordable Care Act.

Section 2310. Fiancé child status protection

This section amends K visa eligibility to include the fiancés of lawful permanent residents. It also clarifies that children who are adjusting with their parents from a fiancé visa to a family visa are included and provides certain age-out protections for the children of those being admitted as a fiancé. It provides that for purposes of both the visa petition and the adjustment application, the age of the dependent child is determined at the time the petition is filed.

Section 2311. Equal treatment for all step children

This section harmonizes the definition of stepchildren with other children under the Immigration and Nationality Act by including the definition of stepchildren as those who are 21 years of age and younger.

Section 2312. International Adoption Harmonization

This section amends the adoption age requirements to allow children under the age of 18 to be adopted. It also harmonizes adoptions between Hague Convention and Non-Hague Convention countries.

Section 2313. Relief for orphans, widows, and widowers

This section allows aliens who were excluded, deported, removed, or departed voluntarily before enactment based solely upon their lack of classification as an immediate relative due to the death of such citizen or resident to be eligible to apply for parole into the United States pursuant to the Secretary's discretionary authority. This section allows spouses of deceased U.S. citizens to apply for naturalization after three years of lawful permanent resident status.

This section allows for the adjudication of an immigrant visa application as if the death had not occurred for a widow or orphan of a qualifying relative who died before the completion of the immigrant visa processing. This section also preserves the eligibility of these individuals for any waivers based on their relationship to the qualifying relative as if the death had not occurred and recognizes that the death of the qualifying relative is the functional equivalent to hardship. It removes the physical presence requirement under 204(l).

Section 2314. Discretionary authority with respect to removal, deportation or inadmissibility of citizen and resident immediate family members

This section grants immigration judges discretion to terminate removal proceedings or waive inadmissibility with respect to a request for admission in cases where the judge or officer determines that removal or a finding of inadmissibility is against the public interest, would result in hardship to the alien's U.S. citizen or permanent resident parent, spouse, or child, or the judge determines the alien is prima facie eligible for naturalization. This waiver is not available to individuals who are subject to removal or who are inadmissible based on certain criminal and national security grounds.

Section 2315. Waivers of inadmissibility

This section makes inapplicable the unlawful presence inadmissibility grounds at 212 (a)(9)(B) to individuals who are the beneficiaries of an approved H nonimmigrant visa petition; initially entered the United States prior to age 16; and have earned a bachelor's degree or higher from a U.S. institution.

This section allows those who are parents of U.S. citizens or lawful permanent residents to be eligible to apply for a waiver for unlawful presence and strikes "extreme" from the hardship standard.

This section requires false claims to citizenship to be "knowing" and exempts children and individuals who are incapable of making a "knowing" claim due to mental disabilities. This section creates a waiver for misrepresentations and false claims to citizenship based on extreme hardship to the alien or the alien's citizen or legal permanent resident parent, spouse, son, or daughter. It also creates a waiver for VAWA self-petitioners if waivers would result in significant hardship to the alien or a parent or child of the alien.

Section 2316. Continuous presence

This section states that any period of continuous residence or continuous physical presence shall be deemed to end on the date that a notice to appear is filed with the Executive Office for Immigration Review (EOIR).

Section 2317. Global health care cooperation

This section requires the Secretary of Homeland Security to allow lawful permanent residents who are physicians or health workers to reside in a candidate country as designated by the Secretary of State and be considered physically present and continuously resident in a State in the United States, for purposes of meeting the naturalization requirements.

An individual who seeks to enter the United States for the purpose of performing labor as a physician or other health care worker is inadmissible unless the individual submits to the Secretary of Homeland Security or the Secretary of State an attestation that he or she is not seeking to enter the United States for such purpose during any period in which the individual has an outstanding obligation to the government of the individual's country of origin or residence. The Secretary of Homeland Security can waive a finding of inadmissibility subject to certain constraints.

Section 2318. Extension and improvement of the Iraqi Special Immigrant Visa Program

This section extends and improves the Iraqi Special Immigrant Visa program. It provides that any unused balance of principal SIVs available in Fiscal Years 2008 through 2012 may be carried forward and provided through the end of Fiscal Year 2018; and that employment "by or on behalf of the U.S. Government in Iraq" includes employment by a media or nongovernmental organization headquartered in the United States or an organization or entity closely associated with the U.S. mission in Iraq that has received U.S. Government funding through an official and documented contract, award, grant, or cooperative agreement. It further requires improvement in the processing of Iraqi SIV applications so that a determination is made within six months from the date of applica-

tion; and it provides a review process for Iraqis whose visa applications are denied.

Section 2319. Extension and improvement of the Afghan Special Immigrant Visa Program

This section extends and improves the Afghan Special Immigration Visa program. It increases the number of principal Afghan SIVs from 1,500 to 5,000 for Fiscal Years 2014 through 2018, giving the Afghan program parity with the Iraqi SIV program. It further provides that any unused balance of principal SIVs available in Fiscal Years 2009 through 2013 may be carried forward and provided through the end of Fiscal Year 2019. The section provides SIVs for parents and siblings of principal applicants who are in danger, and requires improvement in the processing of Afghan SIV applications so that a determination is made within six months from the date of application. It also provides a review process for Afghans whose visa applications are denied.

Section 2320. Elimination of sunsets for certain visa programs

This section eliminates sunsets for the Special Immigrant Nonminister Religious Worker Program, and the EB–5 Regional Center Program.

Section 2321. Special immigrant status for certain surviving spouses and children

This section creates a new special immigrant provision for surviving spouses and children of an employee of the U.S. Government who is killed abroad in the line of duty if the employee had performed faithful service for a total of 15 years or more, and the principal officer of the Foreign Service establishment in his or her discretion recommends granting special immigrant status and the Secretary of State approves his recommendation. This section takes effect beginning on January 31, 2013, and is retroactive.

Section 2322. Reunification of certain families of Filipino Veterans of World War II

This section allows individuals who are the sons or daughters of a U.S. citizen and whose parents were naturalized under Section 405 of the Immigration Act of 1990 or Section 1001 of the Second War Powers Act to receive green cards without regard to the numerical limits governing immigrant visas.

SUBTITLE D—CONRAD STATE 30 PROGRAM

Section 2401. Conrad State 30 Program

This section eliminates the sunset clause for the Conrad State 30 Program.

Section 2402. Retaining physicians who have practiced in medically underserved communities

This section exempts alien physicians who have completed service requirements in underserved areas from the annual numeric limits on employment-based immigrant visas. It also exempts the physicians' spouses and children from these limits.

Section 2403. Employment protections for physicians

This section creates certain employment protections for alien physicians working in underserved areas who agree to work under certain conditions after having completed graduate medical training in the United States on J–1 visas. Employment contracts for alien physicians must specify the maximum number of on-call hours per week; indicate whether the contracting facility or organization will pay for the alien's malpractice insurance premiums; describe all of the individual's work locations; and may not include a non-compete provision.

This section also allows physicians who are denied a Conrad 30 J–1 waiver because the program has been filled to get an extension of J–1 status for up to six months to pursue another waiver. Work authorization is available once the new J–1 waiver application is submitted. This provision also permits dual intent for J–1 doctors.

Section 2404. Allotment of Conrad 30 waivers

This section allots an increase to 35 waivers for any state that uses 90 percent of the waivers available to it in a given fiscal year, as long as at least five waivers were used in the previous fiscal year. All states are allotted an additional five waivers for each subsequent fiscal year if the same conditions are met. Any increase in allotments shall be maintained indefinitely, subject to constraints.

Section 2405. Amendments to the procedures, definitions, and other provisions related to physician immigration

This section establishes dual intent is established for physicians seeking graduate medical training and allowable visa status is created for physicians fulfilling waiver requirements in medically underserved areas. This section clarifies national interest waivers with respect to practice, geographic area, and the five-year service requirement. Short-term work authorization is allowed for physicians completing their residencies.

SUBTITLE E—INTEGRATION

Section 2501. Definitions

This section defines key terms used in this subtitle.

Section 2511. Office of Citizenship and New Americans

This section renames the Office of Citizenship in USCIS to "Office of Citizenship and New Americans." The office shall be headed by the "Chief of the Office of Citizenship and New Americans." The Office's new responsibilities include providing general leadership, consultation, and coordination of immigrant integration programs across the Federal Government and with State and local entities; setting goals and indicators and measuring progress; and engaging government and non-governmental stakeholders. The functions of the new Office shall take effect one year after the date of enactment of this Act.

Section 2521. Task Force on New Americans

The Secretary shall establish a Task Force on New Americans, which shall be fully functional not later than 18 months after the date of the enactment of this Act.

Section 2522. Purpose

This section stipulates that the Task Force will coordinate Federal program and policy response to integration issues and advise and assist the Secretary of Homeland Security in integration policy.

Section 2523. Membership

The Task Force shall be comprised of 13 Federal agency officials or their designees and shall be chaired by the Secretary of Homeland Security. Members include the Secretary of the Treasury, the Attorney General, the Secretary of Commerce, the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Secretary of Education, the Director of the Office of Management and Budget, the Administrator of the Small Business Administration, the Director of the Domestic Policy Council and the Director of the National Economic Council.

Section 2524. Functions

This section establishes that the Task Force shall meet at the call of the Chair, provide a coordinated Federal response to integration issues, liaise with their respective agencies, and provide recommendations no later than 18 months after Task Force is established.

Section 2531. Establishment of a United States Citizenship Foundation

This section authorizes the Secretary of Homeland Security to establish a nonprofit corporation, called the "United States Citizenship Foundation."

Section 2532. Funding

This section authorizes the United States Citizen Foundation ("Foundation") to solicit, accept, and make gifts of money and other property.

Section 2533. Purposes

The purpose of the Foundation is to expand citizenship preparation programs for permanent residents; to provide direct assistance for aliens seeking provisional immigrant status, legal permanent resident status, or naturalization as a U.S. citizen; and to coordinate immigrant integration with State and local entities.

Section 2534. Authorized activities

This section defines the authorized activities of the Foundation to include making United States citizenship instructions and naturalization application services accessible to low-income and other underserved permanent resident populations.

Section 2535. Council of Directors

This section establishes Council of Directors to be comprised of the Director of USCIS, the Chief of the Office of Citizenship and New Americans, and 10 Directors from national community-based organizations. Authorizes the Council to appoint an Executive Director to manage day-to-day operations.

Section 2536. Powers

This section defines the authorized powers of the Executive Director.

Section 2537. Initial Entry, Adjustment, and Citizenship Assistance Grant Program

This section authorizes the Secretary of Homeland Security through the Director of USCIS to award Initial Entry, Adjustment, and Citizenship Assistance (IEACA) grants to eligible public or private, nonprofit organizations. It defines the use of funds to include the design and implementation of programs that provide direct assistance to aliens who are preparing an initial application for Registered Provisional Immigrant status or agricultural card status, aliens seeking to adjust their status to Legal Permanent Resident (LPR), and legal permanent residents seeking to naturalize. Grant programs should assist applicants in the application process, rights and responsibilities of U.S. citizenship, English as a second language, and civics.

Section 2538. Pilot Program to promote immigrant integration at State and local levels

This section provides that the Chief of the Office of Citizenship and New Americans may award grants on a competitive basis to States and local governments or other qualifying entities to carry out programs to integrate new immigrants. A State or local government or other qualifying entity must submit an application including a proposal to meet integration objectives set forth in this Subtitle, the number of new immigrants in the applicant's jurisdiction; and a description of the challenges in introducing and integrating new immigrants into the State or local community. Priority will be given to entities who use matching funds from non-Federal sources; demonstrate collaboration with public and private entities; and are one of the 10 States with the highest rate of foreign-born residents or that have experienced a large increase in the population of immigrants during the most recent 10-year period.

The section defines activities as those used to introduce and integrate new immigrants into the State, including improving English language skills, improving access to workforce training program, teaching U.S. history and civics, teaching financial literacy, and engaging receiving communities. Each grant recipient shall submit an annual report to the Office of Citizenship and New Americans. The Chief shall also conduct an annual evaluation of each grant program.

Section 2539. Naturalization ceremonies

This section mandates that the Chief implement a strategy to enhance the public awareness of naturalization ceremonies.

Section 2541. Authorization of appropriations

This section authorizes the appropriation of $10,000,000 for the five-year period ending on September 30, 2018, in addition to any amounts otherwise made available to the Office. It further authorizes the appropriation of $100,000,000 for the five-year period ending on September 30, 2018, for the two grant programs and to implement the naturalization ceremony strategy.

Section 2551. Waiver of english requirement for senior new americans

This section adds a provision to waive the English language and civics and history requirements under INA Section 312(a) for any person older than 65 years of age who has been living in the United States for periods totaling at least five years after being lawfully admitted for permanent residence. It also waives the English language requirement for certain other persons aged 50 years and older who have been living in the United States for extensive periods of 15 to 20 years, and permits the Secretary, on a case-by-case basis, to waive the civics and history requirement for a person over 60 years of age who has been living in the United States for periods totaling at least 10 years after being lawfully admitted for permanent residence.

Section 2552. Filing of applications not requiring regular internet access

This section prohibits the Secretary of Homeland Security from requiring an applicant or petitioner for permanent residence or citizenship to file any application electronically, or requiring access to a customer account. This provision ceases to be effective on October 1, 2020, after which DHS must notify the Committees on the Judiciary in the House and Senate of such intention.

Section 2553 Permissible use of assisted housing by battered immigrants

This section makes public housing available to certain qualified battered immigrants.

TITLE III—INTERIOR ENFORCEMENT

Section 3101. Unlawful employment of aliens (setting up the mandatory E-Verify system)

New Sec.274A(a)—Making Employment of Unauthorized Aliens Unlawful. This title amends existing law that provides for the limited use of E-Verify, modernizing the system and eventually making its use mandatory for all U.S. employers. It provides that it is unlawful for an employer to hire, recruit, or refer for a fee an alien knowing that the alien is unauthorized to work in the United States, or to continue to employ such an alien. It will now also be unlawful for an employer to hire, recruit, or refer for a fee an alien without complying with the new E-Verify program, as set forth in (c) and (d) of this section. (Penalties—both civil and criminal—appear later in this Title.) This includes the employment of an alien who is hired through a contract, subcontract, or an exchange when the employer knew the alien to be unauthorized for work. An employer may rely on a State employment agency's referral of an employee when the agency has certified its compliance with E-Verify.

Good faith defense. A good faith defense is available when an employer, person, or entity can establish good faith compliance with the requirements set forth in subsection (c)(1)–(4) and those set forth in subsection (d) (see below). Generally, an employer is considered to have complied with a requirement under this subsection, notwithstanding a technical or procedural failure to meet such requirement, if there was a good faith attempt to comply with the re-

quirement. After the date on which an employer is required to use E-Verify, the employer will be presumed to have acted with knowledge in hiring an alien who lacks work authorization if such employer failed to use E-Verify.

Workforce and labor protections. All rights and remedies required under Federal, State, or local law relating to workplace rights, including back pay, are available to an alien despite the employee's unauthorized status or the employer or employee's failure to comply with E-Verify's requirements. Reinstatement is available to individuals who are authorized to work in the United States at the time relief is ordered or effectuated, or who lost employment-authorized status due to the unlawful acts of the employer.

New Section 274A(b)—Definitions. Key terms are defined. An "employer" includes any person or entity, including Federal, State and local governments, an agent or a System service provider acting on behalf of an employer, that hires, employs, recruits, or refers for a fee an individual for employment that is not casual, sporadic, irregular, or intermittent employment as defined by the Secretary.

New Section 274A(c)—Document Verification Requirements. Employers must examine designated documents in order to ascertain the identity and employment authorization of new hires, and must attest (under oath) that they have in fact examined such documents. Forms for this attestation will be available by paper, by telephone, and electronically. The Secretary of DHS shall make public on the USCIS website the documents, and pictures of the documents, that must be used for employment verification. An employer is in compliance with these provisions if the employer has followed applicable regulations in good faith, and a reasonable person could conclude that the documentation presented is genuine and reflects the identity of the applicant.

Acceptable documents. An employee must present one of the following to establish identity and employment-authorized status: a U.S. passport or passport card, a document that is issued to an alien lawfully admitted for permanent residence, or a valid document showing work-authorized status with a photograph of the bearer and security features, an enhanced driver's license that meets the requirements of REAL ID and is certified for use by the Secretary, or a foreign passport accompanied by a form indicating work authorization status (this list is set forth in subparagraph 274A (c)(1)(C)).

Alternatively, an employee may present one form of identification showing identity (a complying driver's license not described above, a voter registration card, a document that complies with the requirements of the Intelligence Reform and Terrorism Prevention Act of 2004, or alternatives established by the Secretary for those under 18 years of age such as an attestation by a parent or guardian) (subparagraph (c)(1)(D)); and one form of identification showing employment authorization (a Social Security Account Number card, other than one that is not valid for work authorization, or any other document identified by the Secretary and published in the Federal Register that evidences employment authorized status, if such documentation contains security features) (subparagraph (c)(1)(E)).

Identity authentication mechanism. In addition to verifying the documents described above, the employer must also use an identity

authentication mechanism, after it becomes available, to verify the identity of each individual the employer seeks to hire. There are two such mechanisms: the photo tool, which will allow an employer to match the photo on certain Government-issued documents with a photo maintained by USCIS in an electronic database (subclause (c)(1)(F)(iii)); or additional security measures to adequately verify the identity of an individual, which the Secretary shall develop to incorporate the most up-to-date technological advances (subclause (c)(1)(F)(iv)).

Individual attestation. Upon commencing employment, an individual must attest under penalty of perjury that he or she is authorized to work in the United States, on a form prescribed by DHS, and must provide his or her Social Security Account Number.

Retention of verification records. An employer must save authorization records for three years after hiring an individual or one year after termination, whichever is later. These forms may be retained electronically. The Secretary may promulgate regulations concerning the copying and retention of such documents.

Penalties. An employer who fails to comply with requirements may be penalized as set forth in Subsection 274A(e), below.

Civil rights protections. Nothing in this section may be construed to diminish existing civil rights protected by Federal law. An employer shall use the E-Verify system without regard to race, color, religion, sex, national origin or, unless specifically permitted in this section, to citizenship status.

No national identification cards. Nothing in this section may be construed to authorize, directly or indirectly, the issuance, use, or establishment of a national identification card.

New Section 274A(d)—Employment Verification System. This subsection provides for the creation of the Employment Verification System. The Department of Homeland Security, in consultation with the Commissioner of Social Security, must establish the System, and create processes to monitor the use and misuse of the system, including error rates, speed, and misuse of the system for discriminatory purposes.

Notification and direct access for individuals. The Department of Homeland Security shall create a process so that individuals can have direct access to their own case histories in E-Verify, shall develop protocols to notify individuals when their names have been processed through E-Verify, and shall establish a process for individuals to notify the Secretary of potential fraud.

Employer participation requirements. Different categories of employer must participate as follows:

(A) *Federal Government employers.* Federal Government employers who are not already participating in the system shall participate in E-Verify beginning 90 days after the enactment of this law.

(B) Federal contractors. Federal contractors shall participate as provided in the final rule that currently requires their participation, or any modification of it.

(C) Critical infrastructure. Beginning one year after regulations are implemented, the Secretary may direct certain critical-infrastructure related employers to use E-Verify to the extent necessary to protect the infrastructure (pursuant to regulations). These employers will be provided with 90 days notice.

(D) Employers with more than 5,000 employees. Not later than two years after regulations are published that implement E-Verify, employers with more than 5,000 employees shall use the System for new hires and those with expiring employment authorization documents.

(E) Employers with more than 500 employees. Not later than three years after regulations are published to implement E-Verify, employers with more than 500 employees shall use the System for new hires and those with expiring employment authorization documents.

(F) Agricultural Employment. Not later than four years after regulations are published to implement E-Verify, employers of employees performing agricultural employment shall use the System for new hires and those with expiring authorization documents.

(G) All employers. Not later than four years after regulations are published that implement E-Verify, all other employers must use the System for new hires and those with expiring employment authorization documents.

(H) Tribal government employers. Rule-making on E-Verify should consider the effects of the program on federally recognized Indian tribes and tribal members and consult with Indian tribes. These employers shall be required to use the System to verify new hires and those with expiring employment authorization documents no later than five years after the general regulations are published to implement E-Verify.

(I) Immigration law violators. An employer who has been found to have violated this law may be required to participate in the System if it is not otherwise required. An employer who is found to have committed pattern and practice violations may be required to use E-Verify for existing hires as well.

Voluntary participation in E-Verify is permitted. Failure to participate in the system when participation is legally required shall constitute a civil violation.

Procedures for participants in the System. Employers will be required to register with E-Verify before using it. The Secretary may require employers to undergo training, which shall be made available electronically on the USCIS website if practicable. The employer shall notify employees that it is using E-Verify and that information may be used for immigration enforcement purposes and may not be used to discriminate or take adverse action against the individual. The employer shall also obtain and record in a manner specified by DHS the employee's Social Security Number, proof of citizenship or noncitizen nationality, and other information that DHS might require.

Seeking confirmation—timing and limitations. An employer shall use the system to confirm the identity and status of any individual beginning on the date that an offer is accepted, and no later than three business days after the date on which employment begins, or in a time established by the Department of Homeland Security. An employer may not make employment or training contingent on E-Verify confirmation. If an individual has a limited period of employment authorized status, reverification of the person's status must be completed no more than three business days after the last day of such period.

Notification of confirmation, nonconfirmation, or a further action notice. The Department of Homeland Security shall provide employers with notice of confirmation, nonconfirmation, or a "further action notice" (notice that further action is required to verify the identity or work eligibility of an individual). DHS shall directly notify the individual and the employer of a nonconfirmation or further action notice by email, mail, text message, phone, or other direct communication. It shall also provide the applicant with information about filing an administrative appeal.

Confirmation of an individual's identity and work authorization shall be provided at the time of the inquiry, or not later than three days after the inquiry. The confirmation shall be recorded in a manner specified by the Department of Homeland Security.

In the event of a further action notice, the employer shall notify the employee of the notice and any procedures specified by DHS for addressing the notice not later than three business days after receipt of the notice, or during a reasonable time that DHS may establish. The individual shall affirmatively acknowledge in writing receipt of the notice. If the individual refuses to acknowledge the notice or acknowledges that he or she will not contest the further action notice, the employer shall notify the Department of Homeland Security.

Contesting a further action notice. Not later than 10 business days after receiving a further action notice, the individual shall contact the appropriate Federal agency and, if DHS requires, appear in person to verify his or her identity and employment eligibility using a secondary identification procedure. If a further action notice is not contested or not acknowledged within the time period specified by DHS, a nonconfirmation shall be issued, and the employer shall record the nonconfirmation and terminate the individual's employment. Unless an extension is granted by DHS, after considering the impact on the employer and the need of the individual to provide additional evidence, E-Verify shall provide a confirmation or nonconfirmation not later than 10 business days after the individual contests the further action notice. The Department of Homeland Security may establish procedures for reexamining confirmations or nonconfirmations in the event that subsequent information is received.

An employer may not terminate or take adverse action against an individual solely because of a failure of an individual to have his or her identity and employment eligibility confirmed, until (1) a final nonconfirmation has been issued; (2) if a further action notice was contested, the period to appeal has expired; or (3) if an appeal before an administrative law judge has been filed, the nonconfirmation has been upheld or the appeal has been withdrawn or dismissed.

Nonconfirmations and appeals. Not later than three business days after an employer receives a nonconfirmation notice, the employer must notify the applicant and provide information about appeals and a hearing and attest (through the E-Verify system) that notification has been made. The individual must acknowledge receipt of the notice in a manner prescribed by the Department of Homeland Security.

Consequences of nonconfirmation. If an employer has received a nonconfirmation for an employee, employment shall be terminated

when the time has expired for filing an administrative appeal and for requesting a hearing before an administrative law judge. If the employer does not terminate the employee, a rebuttable presumption is created that the employer hired an alien knowing that he or she was not authorized to work. This presumption does not apply to criminal prosecutions. If an individual does file an administrative appeal or seeks review by an administrative law judge, the employer shall not terminate the individual prior to resolution of the appeal unless DHS terminates the stay of the nonconfirmation. The Director of USCIS shall submit a weekly report to the Assistant Secretary of ICE that includes the name and information of employees who received a final nonconfirmation and the contact information of their current employer.

Obligations to respond to queries and provide additional information. Employers are obligated to respond to inquiries by the Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) within the time frame during which records are required to be maintained, if the inquiry relates to the functioning, accuracy, or possible misuse of the System. Failure to comply constitutes a violation of the employer's obligation to comply with the requirements governing the E-Verify system. Individuals may also be required to take further action to address questions identified by DHS regarding the documents relied on for verification. If the Secretary or Commissioner submits questions regarding an individual, the employer has three business days to notify the individual and must record the date and manner of the notification and receive acknowledgement of receipt from the individual.

Rulemaking. DHS shall implement regulations to implement and clarify use of the system, and to prevent misuse, discrimination, fraud, identity theft, or threats to confidentiality.

Designated agents. DHS shall certify, on an annual basis, third-party vendors to perform verification queries on behalf of employers under certain circumstances.

Requirement to provide information. This section establishes a multi-agency campaign to provide and distribute information about E-Verify. It authorizes $40 million for each Fiscal Year 2014 through 2016 for this program.

Authority to modify the information requirements of the E-Verify system. DHS, in consultation with the Social Security Administration (SSA) Commissioner, may, through notice and comment rulemaking, modify the information requirements for both employee and employers, and procedures to be followed.

Self-verification. DHS, in consultation with the Commissioner of the Social Security Administration, shall establish procedures for self-verification in a secure manner, and for employees to update their information.

Employer Protection from liability. An employer shall not be liable for any employment-related action taken with respect to a job applicant or employee on good-faith reliance on information provided by the System.

Administrative appeals, stays, and review for error. An individual who is notified of a nonconfirmation has 10 business days to file an administrative appeal of such nonconfirmation with the SSA (if the appeal is based on records maintained by the Commissioner),

or with the Department of Homeland Security. An individual who fails to timely contest a further action notice shall be denied review. An individual who files an administrative appeal shall receive a stay, unless the appeal is frivolous, filed for the purposes of delay, or time has run out. The Department of Homeland Security and the SSA Commissioner shall develop procedures for assessing evidence, which shall be filed within 10 business days of the date the appeal is filed. Appeals shall be resolved within 20 business days after the evidence and argument have been submitted. Filing deadlines may be extended for good cause in order to ensure accurate resolution of an appeal. Appeals shall be based on a preponderance of the evidence standard, and no damages, fees, or costs may be awarded in this process.

Review by Administrative Law Judge and remedies. Not later than 30 days after an administrative review is rendered, an individual may file for a review of the decision with an administrative law judge (ALJ) within the Department of Justice. This shall result in an automatic stay of the nonconfirmation. The Department of Homeland Security shall promulgate regulations for appeals, and the ALJ shall have the power to terminate a stay of nonconfirmation if the appeal is frivolous or dilatory, take evidence, subpoena witnesses and evidence, and enter a decision. The respondent to a complaint filed under this paragraph is either the Secretary or the Commissioner of Social Security, but the complaint must also be served on the Attorney General.

An order by an ALJ may be appealed, as detailed below. The order shall uphold or reverse the final determination and may order lost wages or other appropriate remedies. The employer may be ordered to pay the individual lost wages and reasonable costs and fees if the nonconfirmation was due to the employer's gross negligence or intentional misconduct. If the cause was government negligence, lost wages and costs and fees may be awarded.

Lost wages shall be calculated based on wage rate and work schedule and determined by the amount of time since employment was terminated, minus mitigation stemming from other employment or reinstatement. No lost wages will be awarded for any time spent out of employment-authorized status. An ALJ determination may be appealed by an individual who is adversely affected by an order within 45 days of entry of the order to the U.S. Court of Appeals for the circuit in which the violation allegedly occurred.

Management of the E-Verify system. The Department of Homeland Security shall establish, manage, and modify the System. The System shall be designed to maximize reliability, ease of use, accuracy, privacy and security. The E-Verify system shall also be subject to audits for misuse, fraud, anomalies, accuracy, and privacy. The Department of Homeland Security shall conduct interviews to audit the system. Accuracy audits shall be conducted each year and the error rate shall be reported. In any year the system has an error rate higher than 0.3 percent, the civil penalty for certain first-time violations by an employer may not exceed $1,000.

Any person, including a private third-party vendor, who retains document verification or system data as required by law, shall implement a security program to protect such data, which shall be accessible only to authorized personnel. Third-party vendors who retain document verification must also provide for backup and recov-

ery of records and provide for employee training. Authorized personnel must be registered with the E-Verify system.

Available facilities. The Department of Homeland Security shall make appropriate arrangements for employers and employees, including remote hires, who are unable to access the System to use other electronic and telephonic formats and/or Federal Government facilities or public facilities to use E-Verify.

Responsibilities of the Secretary. The Department of Homeland Security shall maintain a reliable method for verifying identification, document validity, authorization status, and all information that is necessary to the system. The Department of Homeland Security shall establish and develop a photo tool system for authenticating digital photographs (as described above). Audits shall be authorized and used to administer and enforce the immigration laws.

Identity fraud protection. To prevent identity fraud, DHS and the SSA shall establish a program to provide a reliable, secure method for an individual to suspend or limit the use of his or her Social Security Number or other identifying information by E-Verify. This shall include procedures for identifying and protecting against multiple or suspicious use. A monitoring and compliance unit will help to administer this program. The Department of Homeland Security and SSA shall establish a program by which parents can suspend or limit the use of a Social Security Number or other information of a minor under their care. The Department of Homeland Security and SSA shall also establish procedures for identifying Social Security Account Numbers that are subject to unusual multiple use or are otherwise suspected or determined to have been compromised by identity fraud.

Civil rights and civil liberties assessment. The Department of Homeland Security shall conduct regular assessments of the System, and employers and other entities shall respond to such assessments. The Officer for Civil Rights and Civil Liberties of the Department of Justice shall review the result and recommend to the Secretary any changes necessary to improve the civil rights and civil liberties protections of the System.

Grants to States. This section authorizes $250 million to help States to develop and share driver's license information in a manner that complies with the E-Verify photo tool.

Passports. The Secretary of State shall provide DHS access to passport and visa information as needed to confirm an employee's identity through E-Verify. The Commissioner, the Secretary and the Secretary of State shall update their information in a manner that promotes maximum accuracy and shall provide for prompt correction of erroneous information.

Limitation on use of the System. Records and data assembled for E-Verify may not be used for any purpose other than for employment verification or to ensure appropriate use of the System.

Annual report by DHS. Not later than 18 months after the publication of regulations that implement E-Verify, DHS shall issue a report on accuracy of responses, challenges to small employers, the rate of employer noncompliance in various categories of use of E-Verify, and the use of the appeals process by employees. The assessment shall also include the rate of employee noncompliance

and document fraud, and an assessment of the amount of time taken for various stages of the E-Verify process.

Annual GAO study and report. Not later than 18 months after the publication of implementing regulations, the Comptroller General shall undertake a study to evaluate the security, accuracy, and privacy of E-Verify. This report shall take into account the impact of E-Verify on employees and employers.

New 274A(e)—Compliance Provisions. The Department of Homeland Security shall establish procedures for the filing of complaints and conducting of investigations for potential violations of the prohibition against the knowing hire of aliens who are unauthorized to work, and against employers who illegally require employees to post employment bonds (see below). The Office of Special Counsel (OSC) shall be notified of such violations. Immigration officers may conduct investigations under this section, and compel evidence and witnesses by subpoena. The Department of Homeland Security, in cooperation with the Commissioner and the Attorney General, shall establish a Joint Employment Fraud Task Force.

If there is reasonable cause to believe there has been a civil violation of this section, DHS shall issue a written notice of its intention to issue a claim for a monetary fine or other penalty. The notice shall describe the violation and the material facts supporting it, and give the employer a reasonable opportunity to respond. The employer's response is due within 60 days, and the employer may also request a hearing before an ALJ. If no hearing is requested, the order shall be final and not subject to appeal.

Civil penalties. An employer who hires an alien whom he or she knows to be unauthorized, or fails to comply with the requirements of E-Verify, shall pay a civil penalty of between $3,500 and $7,500 for each violation. Second-time offenders shall pay between $5,000 and $15,000 for each violation; subsequent offenders shall pay between $10,000 and $25,000 for each violation. The Department of Homeland Security may establish enhanced penalties after the E-Verify system is fully established for failures to query E-Verify and for violations of wages, hours, and workplace health and safety. Violations that constitute failure to comply with the System, other than a minor or inadvertent failure, shall result in civil penalties of not less than $500 nor more than $2,000 for each violation; between $1,000 and $4,000 for second-time offenses; and $2,000 to $8,000 for subsequent violators. The Department of Homeland Security may impose additional penalties, including cease and desist orders and compliance plans. Criminal penalties are set forth in new 274A(k) and (l), described below.

The employer's compliance history, the existence of a compliance program, the size and sophistication of the employer, and the voluntary disclosure of violations may be considered by both DHS and administrative law judges, where applicable, to reduce penalties. Penalties may only be dropped below the statutory minimum where there has been no previous penalty. Penalties assessed under the antidiscrimination part of the INA that are for actions that are also a violation of E-Verify shall mitigate penalties under this section.

If DHS has reasonable cause to believe that an employer has failed to comply with this section, DHS may require that an employer certify compliance or institute a compliance program,

through methods established by The Department of Homeland Security. This shall not apply until DHS has certified to Congress that E-Verify is established and made mandatory for all employers.

Review of final determinations. A petition for review must be filed within 30 days with the judicial circuit for the employer's principal place of business at the time of the final penalty determination. The Department of Homeland Security and the Attorney General must be served in such a proceeding. The Court of Appeals shall conduct a de novo review of the administrative record on which the final determination was based. Any administrative remedies established by regulation must first be exhausted. The Attorney General, upon request by DHS, may bring a civil action to enforce penalties and compliance upon the employer once a final determination has been issued.

If any employer liable for a fee or penalty fails to fulfill his obligation as to liability, a lien may be filed on all property.

The Attorney General shall have jurisdiction to adjudicate administration proceedings under this subsection (e) in accordance with Administrative Procedure Act requirements.

New 274A(f)—Penalties for requiring indemnity bond. This subsection prohibits an employer from requiring an individual to post an indemnity bond for any liability arising from this section relating to the hiring of an individual. Employers shall be subject to a $10,000 penalty for each such violation.

New 274A(g)—Penalties for government contractors. An employer who is a Federal contractor shall be subject to debarment (of up to three years) if he or she is shown to have violated the criminal provisions of this section (through conviction) or has committed more than three civil violations. An administrative determination of liability shall not be reviewable in a debarment proceeding. Inadvertent violations of recordkeeping or verification requirements shall not be counted towards determining whether an employer is a repeat violator of this section. Contractors may also continue to be subject to contractual liability related to use of E-Verify.

New 274A(h)—Preemption. This section preempts State or local laws and ordinances relating to the hiring, continued employment, or status verification of unauthorized aliens, creating a consistent framework for all employers. There is an exception for States and localities to exercise their authority over business licensing and similar laws to penalize businesses that fail to use the System.

New 274A(i)—Deposit of amounts received. Civil penalties shall be deposited into the Comprehensive Immigration Reform Trust Fund.

New 274A(j)—Challenges to the validity of the system. Challenges shall be brought in the U.S. District Court for the District of Columbia and shall be limited to this section's constitutionality, and the compliance of DHS with the Administrative Procedures Act with regard to regulations. All such challenges must be brought within 180 days of the effective date of the challenged section or regulation.

New 274A(k)—Criminal penalties and injunctions for pattern and practice violations. An employer who engages in a pattern and practice of hiring a worker knowing that the worker is unauthorized to work, or who fails to comply with the System, shall be fined no more than $10,000 per unauthorized worker, imprisoned for not

more than two years, or both. The maximum term for any offense that is a criminal violation of the U.S. Code shall be enhanced by five years if it is part of a pattern and practice of violation involving the aforesaid conduct. The Department of Homeland Security may bring an action requesting a temporary or permanent injunction of such activity.

New 274A(l)—Criminal penalties for unlawful and abusive employment. Any employer who knowingly employs 10 or more aliens who are not authorized to work in a 12-month period, and violates certain labor and employment conditions, shall be fined and/or imprisoned not more than 10 years. Any person who attempts or conspires to commit these offenses will be punished in the same manner as a person who commits the offense.

Section 3101(b)—Report on the use of E-Verify in the agriculture industry

Not later than 18 months after date of enactment, DHS shall submit to Congress a report that fully assesses the functionality of E-Verify with respect to the agriculture industry.

Section 3101(c)—Report on the impact of the system on employers

Not later than 18 months after date of enactment, DHS shall submit to Congress a report on the impact of E-Verify on small business and on business in general.

Section 3101(d)—GAO Study of impact on employees and employers

The Government and Accountability Office (GAO) shall conduct a broad report on the effects of the E-Verify system and submit the report to Congress no later than four years after date of enactment.

Section 3101(e)—Repeal of pilot program

The E-Verify pilot program is repealed.

Section 3102. Increasing security and integrity of social security cards

The SSA Commissioner shall begin work to issue fraud-resistant, wear-resistance, and identify theft-resistant Social Security cards no later than 180 days after enactment, and complete this work no later than five years after enactment.

Replacement cards shall be limited to three per year and 10 for the life of the individual, subject to reasonable exceptions for compelling circumstances established by the Department of Homeland Security. Any person who knowingly possesses or uses a Social Security Account Number or card, knowing that the number on the card was fraudulently or falsely obtained from the SSA; knowingly and falsely represents someone else's Social Security Number to be his; knowingly buys or sells a Social Security Number or card; knowingly alters, counterfeits, or forges a card or number; or knowingly uses, distributes, or transfers a Social Security Number or card, knowing it to be forged or altered, shall be punished by up to five years in prison.

Under proper circumstances, records from the Social Security Administration may be disclosed to Federal law enforcement agencies.

Section 3103. Increasing security and integrity of immigration documents

The Department of Homeland Security shall submit to Congress no later than one year after enactment a report on the feasibility, advantages, and disadvantages of including biometric information, in addition to a photograph, on each employment authorization document it issues.

Section 3104. Responsibilities of the Social Security Administration

The Social Security Administration shall have the responsibilities of establishing a reliable and secure way to identify users of E-Verify and of running a secure system. Social Security information shall not be relayed to employers.

Section 3105. Improved prohibition on discrimination based on national origin or citizenship status

This section amends the current anti-discrimination provisions in the INA that make it an unfair immigration-related employment practice to discriminate based on national origin or citizenship status with respect to hiring, verification under E-Verify, and discharging. Certain exceptions are maintained for preference based on citizenship that is otherwise required by law. This section specifically defines an unfair immigration-related employment practice to include, in addition to discrimination based on nationality and citizenship status, the use of E-Verify to illegally discharge an employee, the use of E-Verify for an unauthorized purpose, the use of E-Verify to deny employment benefits, the requirement of self-verification as a condition of employment, the failure to provide notice under E-Verify as required by law, and the granting of access to the system by an unauthorized individual. It is also an unfair immigration-related employment practice to threaten, coerce, or retaliate against an individual for exercising their rights under this section or because an individual plans to file a charge.

An employer's request for additional documents other than those required by law, or refusal to honor documents, is also an unfair employment practice. It is also an unfair employment practice for an employer, if required to by law, to fail to provide employment documentation, including wages and hours, to an employee upon request. Additionally, an individual who is authorized to be employed in the United States may not be denied a professional, commercial, or business license on the basis of immigration status.

The U.S. Equal Employment Opportunity Commission (EEOC) may refer all matters alleging immigration-related unfair employment practices, including those added by this law, to the Special Counsel for Immigration-Related Unfair Employment Practices at the U.S. Department of Justice ("OSC").

An authorization of $40 million for each Fiscal Year 2014 through 2016 is provided. This section also increases applicable fines. For discriminatory practices, fines range from $2,000 to $5,000 for each violation, $4,000 to $10,000 for second-time offenders, and $8,000 to $25,000 for multiple-time offenders. For unfair employment practices related to the misuse of E-Verify, the use and abuse of document verification, and retaliation and intimidation, the fines range from $500 to $2,000.

Section 3106. Rulemaking

Not later than one year after the date of enactment, DHS and the Attorney General shall publish interim regulations pursuant to their obligations. Within a reasonable time after publication of the interim regulations, DHS and the Attorney General shall publish final regulations.

Section 3107. Office of the Small Business and Employee Advocate

The Department of Homeland Security shall establish within USCIS an Office of the Small Business and Employee Advocate (OSBEA) to assist small businesses comply with I–9 and E-Verify requirements. The office will inform small businesses about the verification practices required by INA Section 274A, assist in dealing with nonconfirmation notices, advise on penalties for violations, and propose changes to the administrative process. The OSBEA shall also make recommendations to Congress. OSBEA may also issue assistance orders if a small business or individual is suffering significant hardship as a result of employment verification laws or meets other requirements set forth in regulations. Assistance orders may require the Secretary to determine if an employee is authorized to work or to abate any penalty that OSBEA determines is arbitrary, capricious, or disproportionate to the underlying defense.

SUBTITLE B—PROTECTING UNITED STATES WORKERS

Section 3201. Protections for victims of serious violations of labor and employment law or crime

This section expands U visa eligibility for victims of serious labor violations. To qualify for a U visa, a worker must have suffered physical or mental abuse, or be a victim of criminal activity described below or of a covered violation. The alien must be helpful, or have been helpful, to a prosecutor or designated agency investigating certain criminal activity including stalking, child abuse of a minor, elder abuse, sexual exploitation, fraud in foreign labor contracting, or serious work place abuse, exploitation, or violation of whistleblower protections.

An alien may work in the United States if he or she has filed an application for a U visa or is a material witness to a bona fide claim or proceeding resulting from a covered violation.

Anyone who makes a false claim under this section is subject to a fine of up to $1,000.

When a workplace claim, as defined in this subsection, results in an enforcement action, any aliens arrested or detained and who are necessary to an investigation shall not be removed until the agency has an opportunity to interview the aliens.

Section 3202. Employment Verification System Education Account

Penalties under this title shall be deposited in the Comprehensive Immigration Reform Trust Fund and made available to DHS for employer and employee education.

Section 3203. Directive to the U.S. Sentencing Commission

The U.S. Sentencing Commission is directed to amend existing penalties for crimes that involve this Title, and related crimes if

they also involve violations of the INA, the Fair Labor Standards Act, or similar criminal conduct.

SUBTITLE C—OTHER PROVISIONS

Section 3301. Funding

This section appropriates $1 billion to set up the new E-Verify system. Such appropriations will be used in the first five years to increase the number of ICE agents to administer the system. The money shall also be used for all improvements to the system, including those used to guard against identity fraud, misuse of the system, and the security and privacy of the system. Money is also authorized to be used by the Social Security Administration.

Section 3302. Effective date

Except as otherwise indicated, the effective date for the provisions of this section and amendments thereto is the date of enactment.

Section 3303. Mandatory exit system

The Department of Homeland Security shall fully implement an interoperable database to provide for current and immediate access to information in law enforcement systems to determine whether to issue a visa. All databases that process information on aliens shall be integrated and provided to ICE, CBP, USCIS, DOJ, and the Department of State. Machine-readable passports, visas, and other travel documents shall be mandatory no later than December 31, 2015.

Biometric exit data program. No later than two years after the date of enactment, DHS will establish a mandatory biometric exit data system at the 10 highest volume airports in the United States, and will issue a report in three years analyzing its effectiveness. Absent intervening Congressional action, in six years DHS shall establish a biometric exit system at all Core 30 international airports in the United States. In six years, DHS shall submit a plan to Congress for the expansion of the biometric exit system to major sea and land ports based on the performance of the program described above and projected costs.

Integration and Interoperability. The Department of Homeland Security shall fully integrate all data on aliens, which are maintained by ICE, CBP, USCIS, DOJ Executive Office of Immigration Review, and DOS Bureau of Consular Affairs. The Department of Homeland Security shall implement an interoperable electronic data system to provide access to information that is relevant to whether to issue a visa or the admissibility or deportability of an alien to Federal law enforcement agencies and the intelligence community.

Information Sharing. The Department of Homeland Security shall report to the appropriate Federal law enforcement agency, intelligence agency, national security agency, or component of DHS any alien who has not departed the country when he or she was legally required to do so.

Section 3304. Identity-theft resistant manifest on departing aircraft and vessels

This section provides that an appropriate official for each commercial aircraft or vessel departing from the United States for international travel shall ensure transmission to CBP of identity-theft resistant departure manifest information covering alien passengers. This information shall be transmitted to a data center. Exceptions are made for military personnel traveling as passengers aboard chartered aircraft. Carriers may not themselves use this system. There shall be appropriated $500,000,000 to reimburse carriers for their reasonable actual expenses in carrying out their duties under this section.

Section 3305. Profiling

In making law enforcement decisions, covered DHS personnel may not consider race or ethnicity unless a specific suspect description exists. However, in conducting activities in connection with a specific investigation, Federal law enforcement officers may consider race and ethnicity only to the extent that there is trustworthy information, relevant to the locality or time frame, that links persons of a particular race or ethnicity to an identified criminal incident, scheme, or organization. In addition, DHS must conduct a study on law enforcement activity which will inform the promulgation of relevant regulations.

Section 3306. Enhanced penalties for certain drug offenses on Federal lands

This section enhances penalties for certain drug offenses that take place on Federal property, including the cultivation of controlled or hazardous substances, destruction of land resources, use of booby traps, and use of firearms. It also establishes the aggravated penalty of cultivating marijuana on Federal lands (not to exceed 10 years in prison) and mandates that these penalties be served consecutively with any term of imprisonment for the underlying offense of manufacturing and distributing a controlled substance.

SUBTITLE D—ASYLUM AND REFUGEE PROTECTIONS

Section 3401. Time limits and efficient adjudication of genuine asylum claims

This section eliminates the one-year deadline for filing an asylum claim, helping to reduce needless litigation. All asylum seekers will still need to meet the criteria for proving a genuine and meritorious asylum claim.

Section 3402. Refugee family protections

Under current law, spouses and children of refugees and asylees may accompany or join the principal applicant. This section provides similar protections for the children of children and accompanying spouses. This prevents refugees and asylees from having to choose between family members, and accounts for children who are the product of child rape in refugee camps.

Section 3403. Clarification on designation of certain refugees

This section terminates the processing of Amerasian refugee claims after the passage of the bill. Additionally, in order to process groups of refugees in cases of humanitarian emergencies, this section clarifies that the President, in consultation with the Secretary of State, may designate certain high-need groups as refugees and adopt efficient processes for adjudicating their claims. Each individual applicant would still need to qualify and pass the necessary security checks and be subject to the annual limit on refugees. This section incorporates those who have been protected under the Lautenberg Amendment, inter alia, Jewish and evangelical Christian individuals from the former Soviet Union and religious minorities from Iran.

Section 3404. Asylum determination efficiency

This section gives expert, trained asylum officers initial jurisdiction over an asylum claim after credible fear is shown rather than automatically referring asylum seekers to a judge for lengthy and costly court proceedings. After conducting the necessary review, the asylum officer could grant asylum or refer the case to an immigration judge for removal proceedings.

Section 3405. Stateless persons in the United States

This section would allow the small number of individuals in the United States, who have no nationality through no fault of their own, to apply for lawful status if they are not inadmissible under criminal or security grounds.

Section 3406. U visa accessibility

The current U visa cap is raised from 10,000 to 18,000, with no more than 3,000 to be made available for victims of a covered violation described in Section 3201, above.

Section 3407. Work authorization while applications for U and T visas are pending

This section grants U and T visa applicants the right to an employment authorization document (EAD) if no decision on their case is made within 180 days.

Section 3408. Representation at overseas refugee interviews

This section permits refugee applicants overseas to be represented by attorneys or accredited representatives. It also gives additional rights to applicants to have their case reviewed and imposes additional requirements on reviewing officers to document the basis for a decision.

Section 3409. Law enforcement and national security checks

This section requires a mandatory background check, including biographic and biometric data, for those seeking refugee or asylum status.

Section 3410. Tibetan refugee assistance

This section, which creates the "Tibetan Refugee Act of 2013," grants 5,000 immigrant visas per year for three years beginning on October 1, 2013, to natives of Tibet (including their children and

grandchildren) who have been continuously residing in India or Nepal since before the date of enactment. Preference is given to those not resettled in India or Nepal who are most likely to be resettled successfully in the United States.

Section 3411. Termination of asylum of refugee status

Any alien who is granted asylum or refugee status under the INA, who, without good cause as determined by the Secretary, returns to the country of persecution or feared persecution, shall have his or her refugee or asylum status terminated. The Secretary also has authority to waive this basis for termination if the alien establishes good cause for the return. Cubans are exempted.

Section 3412. Asylum clock

This section ensures that applicants for asylum are granted employment authorization 180 days after applying for asylum.

SUBTITLE E—SHORTAGE OF IMMIGRATION COURT RESOURCES FOR REMOVAL PROCEEDINGS

Section 3501. Shortage of Immigration Court personnel for removal proceedings

This section increases the number of immigration court judges to address the significant backlog of cases before our immigration courts. The number of immigration court judges is increased by 75 per year for the next three fiscal years, and the number of Board of Immigration Appeals personnel is increased by 30 per year for next three fiscal years.

Section 3502. Improving Immigration Court efficiency and reducing costs by increasing access to legal information

This section clarifies that the Attorney General has authority to appoint counsel in certain removal proceedings to help ensure that these proceedings are more expeditious and cost-effective. This section helps ensure that incompetent and particularly vulnerable individuals—including unaccompanied alien children and those with serious mental disabilities—will have some legal assistance, thereby reducing frivolous appeals and claims.

Aliens shall have the right to receive a complete copy of all relevant documents in possession of DHS (known as their "A-file.").

Section 3503. Office of access to legal program

This section codifies the existing Legal Orientation Program (LOP) for immigration detainees, which was established by the Department of Justice's Executive Office for Immigration Review in 2002. The LOP provides detainees with basic information about their rights and responsibilities, helping to make immigration proceedings more efficient and cost effective.

Section 3504. Codifying existing Board of Immigration Appeals and right to appeal

This section codifies the Board of Immigration Appeals (BIA), which is the reviewing body for immigration judge decisions but has never been codified under the law. The section emphasizes the importance of thorough reviews and written opinions that provide

guidance to immigration judges and help reduce the number of further appeals.

Section 3505. Improved training for Immigration Judges and Board Members

This section ensures that immigration judges have appropriate training and continuing education programs. Funding for these programs shall be appropriated from the CIR Trust Fund.

Section 3506. Improved resources and technology for the Immigration Courts and Board of Immigration Appeals

This section helps ensure that immigration judges are provided with updated reference materials, practice manuals, sufficient recording systems, transcription services, and adequate interpreters. Funding shall be appropriated from the CIR Trust Fund.

Section 3507. Transfer of responsibility for trafficking protections

This section requires leftover funds from HHS and its Office of Refugee Resettlement (ORR) under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 to be transferred to the Department of Justice to carry out functions set forth in that bill.

SUBTITLE F—PREVENTION OF TRAFFICKING IN PERSONS AND ABUSES INVOLVING WORKERS RECRUITED ABROAD

Section 3601. Definitions

This section defines foreign labor contractor and foreign labor contracting activity.

Section 3602. Disclosure

Any person who engages in foreign labor contracting shall make certain disclosures to workers in English as well as the workers' languages, including but not limited to the identity and addresses of employers, assurances and terms of conditions, and the visas' length, type, cost, the terms and conditions under which the visas may be renewed, and a clear statement of any expenses associated with securing or renewing the visas. This section requires labor contractors to explain to a worker that no significant additional requirements or changes may be made to the original contract signed by the worker without at least 24 hours to consider such changes and the specific consent of the worker, obtained voluntarily and without threat of penalty, and any significant changes made to the original contract that do not comply with this section shall be a violation of the law.

Section 3603. Prohibition on discrimination

This section establishes that an employer or a foreign labor contractor cannot discriminate based on a worker's race, color, creed, sex, national origin, religion, age, or disability. The standards of existing Federal law shall apply.

Section 3604. Recruitment fees

This section prohibits any foreign contractor from charging fees (including visa fees, processing fees, transportation fees, legal ex-

penses, placement fees, and other costs) to a worker for any foreign labor contracting activity.

Section 3605. Registration

This section authorizes Department of Labor regulations to certify foreign labor contractors for creation of a national registry that is publicly available and current. Further, this section requires registration of all foreign labor contractors and their employees. All employers must notify DOL of the foreign labor contractors that they use, a description of the services used, whether the contractor will receive any compensation, and if so, who is paying for the services. It also exempts employers who directly hire their own foreign employees. The Department of Labor shall promulgate regulations to establish electronic processing for the investigation and approval of applications for a certificate of registration of foreign labor.

Section 3606. Bonding requirement

Foreign labor contractors must post a bond in an amount sufficient to ensure the ability of the foreign labor contractor to discharge its responsibilities under the visa program and ensure protection of workers, including workers' wages.

Section 3607. Maintenance of lists

The Secretary shall maintain lists of foreign labor contractors registered under this section, along with information about their location, recruitment, and visa usage.

Section 3608. Amendment to Immigration and Nationality Act

Certain types of visas cannot be issued until the consular officer has provided to the applicant a copy of the pamphlet required by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, in the applicant's language.

Section 3609. Responsibilities of the Secretary of State

The Secretary of State shall make sure that each diplomatic mission has a person who is responsible for receiving information about violations and share that information with DOJ, DOL, or any other relevant federal agency. Certain non-personally identifiable information about visa users shall be made public by the Secretary.

Section 3610. Enforcement provisions

This section provides for a DOL complaint and enforcement process to be developed through regulations, a safe harbor for employers using DOL-registered foreign labor contractors, and civil actions by DOL to seek remedial action and/or damages for workers.

It also expands liability for abuses against foreign workers beyond foreign labor contractors to cover their ultimate employers as well. This section also provides workers with a right of action against an employer. Complaints must be filed within three years after the date on which the violation occurred or the employee became aware of the violation.

Section 3611. Detecting and preventing child trafficking

The Department of Homeland Security shall mandate the live training of all CBP personnel who are likely to come in to contact

with unaccompanied alien children. Such training shall incorporate the services of independent child welfare professionals with expertise in culturally competent, trauma-centered, and developmentally appropriate interviewing skills to assist CBP in screening children attempting to enter the United States.

Section 3612. Protecting child trafficking victims

This section requires all unaccompanied alien children in immigration proceedings to be transported and placed in the physical custody of the Office of Refugee Resettlement, generally within 72 hours after their apprehension (absent exceptional circumstances). Female officers must be continuously present during the transfer of female detainees.

The Department of Homeland Security must hire child welfare professionals in at least seven of the CBP stations with the largest number of unaccompanied alien children. Those professionals shall develop guidelines for treatment of unaccompanied alien children in DHS custody, conduct screenings of those children, notify DHS and ORR of children meeting the notification and transfer requirements, interview adult relatives accompanying unaccompanied alien children and provide an initial family relationship and trafficking assessment and recommendations to Office of Refugee Resettlement. They must also ensure each child receives emergency medical care when necessary; is properly clothed; and is provided with hygiene products, linens, nutrition, a safe and sanitary living environment, access to recreational programs if held for longer than 24 hours, access to legal services, and access to phone calls to family members.

The ORR shall submit final determinations on family relationships to DHS which shall consider such adult relatives for community-based support alternatives to detention. The Department of Homeland Security must submit an annual report on unaccompanied minors beginning 18 months after bill enactment.

The Department of Homeland Security must notify ORR of an unaccompanied child within 48 hours after encountering the child and must ensure that such children are provided an interview with a child welfare professional, an orientation, and notice of their rights under immigration law, including the right to relief from removal, the right to counsel, and relevant complaint mechanisms to report abuse. The Department of Homeland Security shall ensure that the orientation and notice be provided in the five most common languages spoken by unaccompanied children.

The Administrator of the U.S. Agency for International Development (USAID), in conjunction with DHS, HHS, DOJ, international organizations and nongovernmental organizations in the United States, shall develop a multi-year program to develop and implement best practices and sustainable program in the United States and within the country of return to ensure the safe and sustainable repatriation and reintegration of unaccompanied alien children (UAC). Annual reports on this process must be provided to the Judiciary Committees. Appropriations as necessary will be made.

Section 3613. Rule of construction

Nothing in this subtitle shall be construed to preempt or alter any other rights or remedies, including causes of action, available under any other Federal or State law.

Section 3614. Regulations

The Secretary, in consultation with the Secretary of Labor, shall prescribe regulations to implement this subtitle and to develop policies and procedures on protections against trafficking in the recruitment of workers abroad.

SUBTITLE G—INTERIOR ENFORCEMENT

Section 3701. Criminal street gangs

This section renders inadmissible and deportable any alien convicted of an offense for which an element was active participation in a street gang (as defined in 18 USC 512(a)), including individuals applying for RPI status. The section also renders inadmissible any alien who is applying for RPI status, or any alien who is outside the United States, and is applying for an immigration benefit, whom DHS determines has since the age of 18 knowingly and willingly participated in a criminal street gang. The section further provides for a waiver in cases where the alien was not convicted of gang-related offenses, if DHS determines that the alien renounced any association with the gang, is otherwise admissible, and is not a threat to the security of the United States.

Section 3702. Banning habitual drunk drivers from the United States

This section renders inadmissible and deportable any alien convicted of three offenses occurring on separate dates related to driving under the influence or driving while intoxicated. For deportation, at least one of the convictions must occur post-enactment. Further, the section makes conviction for a third drunk driving offense an aggravated felony. The provision takes effect on the date of enactment of the bill. It applies only if one of the convictions takes place after enactment of the bill.

Section 3703. Sexual abuse of a minor

This section expands the evidence that can be considered regarding the age of the victim in establishing "sexual abuse of a minor" to include "credible evidence extrinsic to the record of conviction." The section contains a prospective effective date, applying only to convictions on or after the date of enactment.

Section 3704. Illegal entry

This section modifies the INA's illegal entry provision by providing higher maximum penalties for aliens convicted of illegal entry who have a serious criminal record. It provides for increased civil penalties for aliens over the age of 18 who are apprehended illegally entering or attempting to enter the United States.

Section 3705. Reentry of removed alien

This section provides higher maximum penalties for aliens convicted of illegal reentry who have a sufficiently serious criminal

record. In addition, this section provides that an alien who illegally reenters must generally serve the remainder of any criminal sentence pending against him at the time of deportation, with no reduction for parole or supervised release unless the defendant affirmatively establishes that DHS has expressly consented to his reentry or that he is prima facie eligible for protection from removal. This section also contains an exception from aiding and abetting crimes for legitimate emergency humanitarian assistance.

Section 3706. Penalties related to removal

This section increases monetary penalties for owners and operators of vessels and aircraft for failing to detain known alien stowaways or permitting such aliens to land in the United States except where authorized by the Secretary of Homeland Security. However, it contains exceptions for instances where the owner or operator acts without compensation to provide humanitarian assistance to the stowaway.

Section 3707. Reform of passport, visa, and immigration fraud offenses

This section amends the criminal code and expands penalties pertaining to passport, visa, and document-related fraud. Specifically, this section addresses the following categories: (1) trafficking in passports (i.e., knowingly forging, counterfeiting, altering, or falsely making three or more passports); (2) false statements in an application for a passport (i.e., knowingly making any false statement or misrepresentation in an application for a U.S. passport); (3) schemes to defraud aliens (i.e., knowingly executing a scheme, in connection with any matter that is authorized by federal immigration laws to defraud any person); (4) misuse or attempts to misuse a passport (i.e., knowingly using any passport issued or designed for the use of another); (5) immigration and visa fraud (i.e., knowingly and without lawful authority producing, issuing or transferring three or more immigration documents). The section adds enhanced penalties if the crime was committed to facilitate an act of terrorism or drug trafficking.

Section 3708. Combating schemes to defraud aliens

This section requires the Secretary of Homeland Security and the Attorney General to promulgate rules to identify persons assisting aliens (other than immediate family) who submit written materials related to immigration benefits. It also requires any person who receives compensation in providing such assistance to sign a form as a preparer and provide identifying information.

The section authorizes the Attorney General to commence a civil action to enjoin any fraudulent immigration service provider from continuing to provide services that substantially interfere with the proper administration of the immigration laws or from continuing to willfully misrepresent his legal authority to provide representation. An immigration service provider is a non-attorney who is compensated for assisting aliens under the immigration laws.

Section 3709. Inadmissibility and removal for passport and immigration fraud offenses

This section renders inadmissible and removable any alien convicted of a passport or visa violation under Chapter 75 of Title 18. Section 209(c) provides that these amendments apply to conduct occurring on or after the date of enactment. It also states that nothing contained within the chapter will be construed to prohibit any lawfully authorized investigative, protective, or intelligence activity, or any activity under Title V of the Organized Crime Control Act.

Section 3710. Directives related to passport and document fraud

This section directs the United States Sentencing Commission to promulgate or amend the sentencing guidelines related to passport fraud offenses where appropriate, including for newly created offenses under this Act, to reflect the serious nature of such offenses. It also directs the Attorney General to write prosecution guidelines for individuals eligible for certain forms of immigration relief.

Section 3711. Inadmissible aliens

This section closes a loophole allowing aliens to avoid the bar on reentry by aliens ordered removed by unlawfully remaining in the United States. Specifically, Section 212(a) provides that the bar on admissibility applies to aliens who seek admission "not later than" five years (or 10, or 20, as the case may be) after the date of removal, in contrast to the current law's bar on admissibility for aliens who seek admission "within" five years (or 10, or 20, as the case may be) of the date of removal. Section 212(b) renders ineligible for future discretionary relief any alien who absconds after receiving a final order of removal. The bar applies until the alien leaves the United States and for 10 years after. However, Section 212(b) also clarifies that such an alien remains eligible for a motion to reopen to seek withholding of removal under certain circumstances.

The section also renders inadmissible any alien convicted of a crime of domestic violence, stalking, child abuse, child neglect, or child abandonment who served at least one year imprisonment or any alien who was convicted of more than one such crime not arising out of a single scheme of criminal misconduct. It further renders inadmissible any alien whom a court determines engaged in criminal contempt of a protection order issued for the purposes of preventing domestic violence. It also contains an effective date on or after the date of enactment of the Act.

Section 3712. Organized and abusive human smuggling activities

This section prohibits anyone acting for financial gain from directing or participating in an effort to bring five or more persons unlawfully into the United States. It provides for enhanced penalties in more extreme cases such as violations that result in serious bodily injury, death, bribery, corruption, or which involve 10 or more persons.

The section also makes it a crime to transmit to another person the location, movement, or activities of law enforcement agents while intending to further a federal crime relating to U.S. immigration; to destroy, alter, or damage any physical or electronic device

the Federal Government employs to control the border or any port of entry; or to construct any device intending to defeat, circumvent, or evade any such device. The section provides for an enhanced penalty if the person uses or carries a firearm in furtherance of the crime. It also prohibits the carrying or use of a firearm during and in relation to any alien smuggling crime.

Section 3713. Preventing criminals from renouncing citizenship during wartime

This section strikes language allowing for U.S. citizens to renounce their citizenship during times of war.

Section 3714. Diplomatic Security Service

This section authorizes Special Agents of the State Department and the Foreign Service to investigate identity theft, document fraud, peonage, slavery, and Federal offenses committed within the special maritime and territorial jurisdiction of the United States, except where it relates to military bases.

Section 3715. Secure alternative programs

This section directs the Secretary of Homeland Security to establish secure alternatives programs in each Field Office to ensure appearances at immigration proceedings and for the public safety. It also requires the Secretary to contract with nongovernmental community-based organizations to coordinate a continuum or supervision mechanisms and options to be applied on a case-by-case basis. With exceptions, the Secretary may use secure alternative programs to maintain custody over any alien detained under the INA, except for aliens detained under section 236A (aliens who pose a threat to national security).

Section 3716. Oversight of detention facilities

This section requires the Secretary to conduct regular inspections of Federal, State, and local facilities used to hold individuals under the authority of ICE for compliance with applicable detention standards. It also provides for additional routine oversight and requires the Secretary to seek input from nongovernmental organizations on detention facilities.

The section requires that compliance with DHS standards be deemed a material term in any new contract or agreement executed with detention facilities. It also requires the same for any contract or agreement that will not be renegotiated within 180 days of the effective date of the Act, and imposes meaningful financial penalties upon facilities that fail to comply with applicable detention standards issued by the Secretary.

The Secretary shall report to Congress no later than June 30 of each year on inspection and oversight of detention facilities.

Section 3717. Procedures for bond hearings and filing of notices to appear

This section modifies the procedures for custody hearings by requiring the Secretary to serve the relevant charging document upon the immigration court and the alien within 72 hours and by requiring the Secretary to immediately decide whether the alien will be released or retained in custody and to serve the alien notice

of the decision within 72 hours. For certain aliens, the immigration judge will review the custody determination de novo and order continued detention if reasonable alternatives will not assure the appearance of the alien at further proceedings and if the safety of any other person and the community may be at risk. The Attorney General must provide review every 90 days if the alien remains in custody.

Solitary confinement shall be limited to situations in which such confinement is necessary to control a threat to detainees, staff, or the security of a facility; to discipline an alien for a serious disciplinary infraction; or for good order during the last 24 hours before an alien is released. Solitary confinement is limited to the briefest term and under the least restrictive conditions practicable and consistent with the rationale for placement and with the progress achieved by the alien. Children may not be held in solitary confinement. Individuals placed in solitary for reason of mental incapacity or for their own protection may not be detained involuntarily in solitary confinement for more than 15 days unless DHS determines that any less restrictive alternative is more likely than not to cause greater harm to the individual. The Department of Homeland Security may not rely solely on an individual's age, physical disability, sexual orientation, gender identity, race, or religion in determining whether to use solitary confinement. Persons in solitary confinement shall receive three or more doctors' visits per week. Those detained for long periods of time shall have their cases reviewed in a timely manner. Disciplinary segregation is limited.

Section 3718. Sanctions for countries that delay or prevent repatriation of their nationals

The Secretary of State, upon notification from the Secretary of Homeland Security, shall order consular officers in foreign countries to discontinue granting visas to foreign representatives under Section 101(a)(15)(G) of the INA when the Secretary of Homeland Security determines that the government of a foreign country denies or unreasonably delays accepting the return of their citizens, subjects, nationals, or residents.

Section 3719. Gross violations of human rights

This section provides that any alien who planned, ordered, assisted, aided and abetted, committed, or otherwise participated, in the commission of torture, extrajudicial killing under color of law of any foreign nation, a war crime, or a widespread or systematic attack directed against a civilian population, as well as related activity, shall be inadmissible. Those who have committed a widespread or systematic attack on civilians or genocide are also denied admission.

Section 3720. Reporting and record keeping requirements relating to the detention of aliens

The Department of Homeland Security shall maintain information on detention mandated by this section and shall submit reports to Congress. The Department of Homeland Security, EOIR, the Director of ICE, and the Director of USCIS shall develop a shared database, or other system that allows for the databases of ICE, EOIR, and USCIS to develop a shared database relating to

detained aliens. Until the database is operational, DHS shall track the case outcomes of each detainee.

The database shall maintain the basis in law for the alien's detention, the place where the alien was apprehended, the location where ICE detains the alien until the alien is removed from custody, the gender and age of each detained alien in the custody of ICE, the number of days the alien is detained, the immigration charges being pursued, the status of the alien's removal proceedings, and each date on which the proceedings progress between stages and the events that have occurred after the alien received a final administrative or order of removal. It shall also include internal custody determinations of ICE, the risk assessment results, and the reason for the alien's release. The Department of Homeland Security shall provide similar information about detained individuals awaiting removal.

Section 3721. Powers of Immigration Officers and employees at sensitive locations

This section applies to enforcement actions by officers and agents of ICE and CBP at sensitive locations including hospitals and clinics; schools; organizations assisting victims of crime or abuse; organizations assisting children, pregnant women, victims of crime or abuse, or individuals with mental or physical disabilities; houses of worship; or other places DHS specifies. Enforcement actions may not take place at a "sensitive location" except under exigent circumstances and if prior approval is obtained from a supervisor. Officers in such cases must act discretely and make every effort to limit the time at the location. This does not apply to apprehensions at or near a land or sea border where an individual is being transferred to a hospital or healthcare provider.

Immigration and Customs Enforcement and CBP must ensure that employees receive annual training on compliance with this section. Annual reports must be provided regarding enforcement actions at sensitive locations.

SUBTITLE H—PROTECTION OF CHILDREN AFFECTED BY IMMIGRATION ENFORCEMENT

Section 3801 Short title

This section establishes the "Humane Enforcement and Legal Protections for Separated Children Act."

Section 3802. Definitions

This section defines key terms, including "children" as individuals under 18 years of age and "parents" as a biological or adoptive parent whose rights have not been relinquished or terminated. It defines a "detention facility" to include any Federal, State or local facility or privately owned detention facility, including facilities that hold individuals under a contract with Immigration and Customs Enforcement.

Section 3803. Apprehension procedures for immigration related activities

In any enforcement action, DHS shall as soon as possible, but generally not later than two hours after an enforcement action, in-

quire whether an individual is a parent or primary caregiver of a child in the United States and provide such individuals with the opportunity to make a minimum of two phone calls to arrange for the care of such child. The Department of Homeland Security shall also provide contract information for child welfare agencies and family courts in the child's area, as well as consulates, attorneys, and legal service providers who may provide help. The Department of Homeland Security shall notify child welfare agencies if the caregiver is unable to make care arrangements or the child is in imminent risk of serious harm. The Department of Homeland Security shall ensure that its personnel do not compel or request children to interpret or translate for interviews of their parents as part of an immigration enforcement action. The Department of Homeland Security shall ensure that any parent of a child in the United States is not transferred from his or her area of apprehension until the person has made arrangements for the care of the child or, if such arrangements can't be made, is informed of the care arrangements for the child. The parent should be placed in a detention facility proximate either to the location of apprehension or to the individual's habitual place of residence.

Section 3804. Access to children, state and local courts, child welfare agencies and Consular Officials

At all detention facilities, DHS shall prominently post information on the protections of this subtitle and information on potential eligibility for parole or release. The Department of Homeland Security shall ensure that individuals who are detained by DHS and are the parents of children in the United States are permitted regular phone calls and contact visits with their children. Such individuals shall also be provided with contact information for and granted telephone calls to child welfare agencies and family courts and shall also be permitted to participate fully in all family court proceedings impacting their right to custody of their children. The Department of Homeland Security shall ensure individuals are able to fully comply with all family court or child welfare agency orders impacting custody of their children. The Department of Homeland Security shall also provide access to U.S. passport applications for the purpose of obtaining travel documents for such individuals' children. Such individuals shall be afforded timely access to notary public services to help children apply for passports or for executing guardianship or other agreements to ensure the safety of their children and granted enough time before removal to obtain documents on behalf of their children if the children will accompany them on their return to their country of origin. Where it would not impact public safety or national security, DHS shall facilitate the ability of parents and caregivers to share information regarding travel arrangements with their consulate, children, welfare agencies, or other caregivers prior to the person's departure from the United States.

Section 3805. Mandatory training

The Department of Homeland Security and other agencies shall develop training on the protections provided by the sections above to all DHS personnel, cooperating entities, detention facilities, and

others who are likely to come into contact with individuals who are parents or primary caregivers of children in the United States.

Section 3806. Rulemaking

Not later than 180 days after the enactment of this Act, the Secretary shall promulgate regulations to implement the two previous sections of this Act.

Section 3807. Severability

TITLE IV—REFORMS TO NONIMMIGRANT WORKER PROGRAMS

SUBTITLE A—EMPLOYMENT-BASED NONIMMIGRANT VISAS

Section 4101. Market-based H–1B Visa limits

This section amends INA Section 214(g) by creating a new H–1B cap of 115,000 for the first fiscal year beginning after the date of enactment. That base number may fluctuate between 115,000 and 180,000 depending on market conditions.

The cap may increase under the following circumstances: if the cap is hit before day 45, then 20,000 more slots will be made available beginning on day 46; if the cap is hit between day 46 and day 60, then 15,000 slots will be made available beginning on day 61; if the cap is hit between day 61 and day 90, then 10,000 slots will be made available beginning on day 91; if the cap is hit between day 91 and day 275, then 5,000 slots will be made available beginning on day 276.

The cap may decrease under the following circumstances: if the number of approved petitions is between 5,000 and 9,999 fewer than the base allocation for that fiscal year, then the base will decrease for the next year by 5,000; if the number of approved petitions is between 10,000 and 14,999 fewer than the base allocation for that fiscal year, then the base will decrease for the next year by 10,000; if the number of approved petitions is between 15,000 and 19,999 fewer than the base allocation for that fiscal year, then the base will decrease for the next year by 15,000; if the number of approved petitions is more than 20,000 fewer than the base allocation for that fiscal year, then the base will decrease for the next year by 20,000.

The cap cannot increase when the unemployment rate in the "Management, Professional, and Related Occupations" sector, as published by the Bureau of Labor Statistics each month, averages 4.5 percent or greater in the prior year.

The current additional allocation of 20,000 visas for advanced degree recipients from U.S. universities is changed to apply solely to STEM advanced degree graduates from U.S. universities, and is increased from 20,000 to 25,000.

The Secretary of Homeland Security must publish data on the Internet that summarizes petition adjudication information for each fiscal year and must publish the annual limit in the Federal Register no later than March 2 prior to the start of the fiscal year.

Section 4102. Employment authorization for dependents of employment-based nonimmigrants

This section amends INA Section 214(c) to permit spouses of L-visa and H–1B holders to work. The Secretary of Homeland Secu-

rity may deny work authorizations to spouses of H–1B holders if they are nationals of a foreign country that does not permit reciprocal employment of spouses of U.S. workers.

Section 4103. Eliminating impediments to worker mobility

Section 4103(a) codifies policy that a prior approval for an H–1B or L–1 nonimmigrant petition involving the same employer and foreign national should be given deference in the context of an extension request, absent: (1) material error with regard to the previous petition approval; (2) a substantial change in circumstances; or (3) new information that adversely impacts the eligibility of the petitioner or the beneficiary. The Secretary of Homeland Security continues to have discretion to deny an extension.

Section 4103(b) amends INA Section 214(n) by providing that, in the event of early termination of an employment relationship of an H–1B nonimmigrant, there is a 60 day grace period in which the individual is regarded as in lawful H–1B status in order to find new employment. If an unemployed H–1B nonimmigrant finds new employment during this 60-day period, he or she will remain in lawful status during such time as his or her petition is pending to extend, change, or adjust their status to reflect this new employment.

Section 4103(c) amends INA Section 222(c) by explicitly allowing visa revalidation in the United States to be permitted for aliens admitted under INA Sections 101(a)(15)(A), (E), (G), (H), (I), (L), (N), (O), (P), (R), or (W) if the alien is otherwise eligible for such status and qualifies for an interview waiver pursuant to Section 222(h)(1) of the INA and Section 4103(d) of this bill. Section 4103(d) amends INA Section 222(h)(1) to provide for waiver of consular interviews for low-risk applicants.

Section 4104. STEM education and training

Section 4104(a) amends INA Section 212(a)(5)(A) by establishing a new $1,000 fee to be submitted with permanent labor certification applications for employment-based green cards. Fees collected under this section will be deposited into a newly-created STEM Education and Training Account contained in INA Section 286(w). A set percentage of this money shall be available for low-income students enrolled in STEM programs of study, directed through programs that serve minorities, women, and other underrepresented populations in the STEM fields. Money shall also be made available for veterans workforce investment and the establishment of "American Dream" accounts.

The section also amends the existing STEM education account in INA Section 286(s) to permit funds to be used for loan forgiveness and to fund STEM programs for low-income students, minority students, and women.

Section 4105. H–1B and L Visa fees

This section requires the collection of an additional fee for an H–1B or L visa petition, of $1,250 for employers with 25 or fewer employees, and $2,500 for employers with more than 25 employees. Those fees are to be placed into the CIR Trust Fund to fund the cost of this Act.

SUBTITLE B—H–1B VISA FRAUD AND ABUSE PROVISIONS

Section 4211. Modification of application requirements

Wage requirements. Section 4211(a)(1) provides that "H–1B dependent employers" must pay each H–1B worker at least a Level 2 wage (an "H–1B dependent employer" is defined in subsection 4211(e) based on the percentage of H–1B nonimmigrants in their workforce). The Department of Labor is required to create a three-tiered wage system to be used in such determinations (Section 4211(a)(2)). The first level constitutes the mean wage of the lowest two-thirds of wages surveyed, but in no case less than 80 percent of the mean of the wages surveyed. The second level constitutes the mean of the wages surveyed. The third level constitutes the mean of the highest two-thirds of wages surveyed. The Department of Labor is required to provide a four-level wage survey for educational, nonprofit, research, and governmental entities. When a professional athlete is paid according to league rules or regulations, the wages paid are not considered as adversely affecting similarly-employed U.S. workers.

H–2B nonimmigrants must be paid either the actual wage paid to similarly-employed U.S. workers or the prevailing wage for the occupation in the area of employment, whichever is higher. The prevailing wage is determined by the best information available which may include a collective bargaining agreement (CBA); if a CBA is not applicable, data from the Bureau of Labor Statistics (BLS); or, if BLS data is unavailable, a private survey.

Internet job posting requirement. Section 4211(b) provides that employers who intend to file an H–1B petition must first advertise the job opening on a new Department of Labor jobs website. The job description must include the wage ranges; terms of employment; minimum qualification requirements; how to apply; the title and description of the position, including the location where the work will be performed; and the name, city, and zip code of the employer. The advertisement must run for 30 calendar days.

Non-displacement. Section 4211(c) provides that an "H–1B skilled worker dependent employer" must demonstrate that they did not displace and would not displace a U.S. worker within the period of 90 days before or after the filing of a visa petition (an "H–1B skilled worker dependent employer" is defined as an employer for which H–1B nonimmigrants comprise more than 15 percent of their workforce in O*Net Job Zones 4 and 5). An "H–1B dependent employer" must demonstrate that they did not displace and would not displace a U.S. worker within the period of 180 days before or 180 days after the filing of an H–1B visa petition. In addition, no public employer may displace a Federal, State, or local employee, or a public school K–12 teacher with an H–1B nonimmigrant. No employer of any type may displace an American worker with the intent to hire an H–1B worker to replace that American worker.

Recruitment. Section 4211(c)(2) requires that all employers must take good faith steps to recruit U.S. workers for the occupational classification for which the nonimmigrant is sought, using procedures that meet industry-wide standards and offering compensation that is at least as great as that offered to H–1B nonimmigrants. All employers must advertise on an Internet website maintained by the Department of Labor. An H–1B skilled worker

dependent employer has further requirements, and must hire an equally or better qualified American who applies for the job.

Outplacement. All employers that are not H–1B dependent must pay a $500 fee to place an H–1B nonimmigrant employee at the site of another employer. H–1B dependent employers are prohibited from placing an H–1B nonimmigrant at the site of a third-party and from outsourcing, leasing, or otherwise contracting for the services or placement of an H–1B nonimmigrant employee. An H–1B dependent employer is exempt from the prohibition on outplacement if the employer is a nonprofit institution of higher education, a nonprofit research organization, or primarily a health care business and is petitioning for a physician, nurse, or a physical therapist. Such employer must also pay the $500 fee. Those fees are to be placed into the CIR Trust Fund Account to fund the cost of this Act.

Intending Immigrants Not Counted Towards H–1B or L-Visa Dependency. Intending immigrants are not counted as H–1B or L nonimmigrants for the purposes of determining whether an employer is an H–1B dependent company or a L visa dependent company. Intending immigrants are defined as persons for whom their employer has started the green card process, including those for whom an Immigrant Petition for Alien Worker (Form I–140) or Application to Register Permanent Residence or Adjust Status (Form I–485) has been filed. However, employers may only take advantage of this counting rule if the employer has actually filed immigrant status petitions for not less than 90 percent of current employees for whom the company filed labor certifications in the previous year.

Section 4212. Requirements for admission of nonimmigrant nurses in health professional shortage areas

This section reinstates and permanently authorizes the H–1C nonimmigrant category for foreign nurses who will work in medically under-served areas, which had expired in 2009. H–1C nurses may be admitted for three years and may extend their status once for an additional three-year period. No more than 300 H–1C nurses may be admitted per fiscal year.

Section 4213. New application requirements

Employers may not hire an H–1B nonimmigrant if they advertise for the position in a way that appears to seek only H–1B nonimmigrant workers or those working pursuant to Optional Practical Training at the expense of U.S. workers.

Under a new Section 212(n)(1)(I), employers with 50 or more employees in the United States are not able to petition for new or additional H–1B or L workers if their U.S. workforce was comprised of more than 75 percent H–1B or L workers in Fiscal Year 2015, 65 percent in Fiscal Year 2016, or 50 percent H–1B or L workers in Fiscal Years 2017 and thereafter. The workforce calculation does not include H–1B and L workers who are "intending immigrants," as described above. The provision does not include employers who are nonprofit institutions of higher education or nonprofit research organizations described in Internal Revenue Code Section 501(c)(3).

Employers are required to submit annual reports to the IRS that include Form W–2 Wage and Tax Statements for each H–1B non-

immigrant employed for the previous year, under a new INA Section 212(n)(1)(J).

Section 4214. Application review requirements

The Department of Labor has expanded authority to review labor condition applications (LCAs) for fraud, misrepresentation, or obvious inaccuracies rather than "only for completeness," and has up to 14 days to certify an LCA, increased from the current seven-day period.

Section 4221. General modification of procedures for investigation and disposition

This section extends the statute of limitations for investigations of H–1B violations from 12 months to 24 months from the time an alleged incident takes place. It also removes the requirement that investigations may be initiated only if there is "reasonable cause to believe" that a violation exists. The section creates a dedicated toll-free number and Internet website for the submission of H–1B complaints.

The Secretary of Labor is directed to conduct annual compliance audits of each employer with more than 100 employees in the United States if their workforces are composed of more than 15 percent H–1B non-immigrants, and may conduct voluntary surveys of employer compliance and audits of H–1B employers. Findings shall be made available to the public.

Section 4222. Investigation, working conditions, and penalties

This section generally expands the circumstances in which fines may be issued for new provisions such as the rule barring participation in the H–1B or L visa program by certain employers based on the percentages of their H–1B workers, the prohibition of advertisements targeting H–1B/Optional Practical Training (OPT) workers, and the W–2 IRS filing requirements. Fines of up to $2,000 (increased from $1,000) may be imposed for substantial failures to meet conditions, and fines of up to $10,000 (increased from $5,000) may be imposed for willful failures to meet conditions or for a willful misrepresentation of facts. In all instances, employers are liable to employees harmed by the violation for back wages and benefits.

Section 4223. Initiation of investigations

This section amends provisions authorizing the Secretary of Labor to investigate compliance with H–1B requirements, including by eliminating the need for there to be "reasonable cause" to suspect non-compliance before the Secretary commences the investigation. The section permits complaints from anonymous sources, and allows DOL employees themselves to file complaints. The provision provides that a complaint must be filed within 24 months of an alleged incident, up from the current 12 month timeframe.

Section 4224. Information sharing

U.S. Citizenship and Immigration Services must provide any information disclosed in its adjudication process that reveals that an employer is not complying with H–1B visa program requirements. The Department of Labor may initiate and conduct an investigation based on this information.

To notify American workers of potential job openings, this section requires DOL to facilitate the posting of job advertisements from H–1B employers on the Internet website of the State labor or workforce agency for the State in which the position will be primarily located.

Section 4225. Transparency of high-skilled immigration programs

The new Bureau of Immigration and Labor Market Research shall submit an annual report to Congress providing data on H–1B beneficiaries and employers. This includes data on which employers are dependent employers and the qualifications of immigrants hired on H–1B visas. A similar report on L–1s is to be prepared annually. An additional annual report is to be prepared describing the methods employers are using to meet the good faith recruiting requirements.

Section 4231. Posting available positions through the Department of Labor

Within 90 days of enactment, the Secretary of Labor must establish a searchable website for posting positions as required for H–1B advertisements, and provide notice when the site is operational. The advertising requirement does not take effect until 30 days after the date the website becomes operational.

Section 4232. Requirements for information for H–1B and L nonimmigrants

Individuals receiving H–1B or L–1 visas or immigration benefits must be provided with a brochure outlining employer obligations and employee rights.

Section 4233. Filing fee for H–1B dependent employers

This section provides that for each fiscal year beginning in Fiscal Year 2015, a fee of $5,000 is imposed for companies employing more than 50 workers in the United States if between 30 and 50 percent of their workforces are H–1B or L–1 nonimmigrants. From 2015 to 2017, the fee is $10,000 for similarly-sized companies where between 50 and 75 percent of their workforces are H–1B or L–1 nonimmigrants. The provision exempts "intending immigrants" from the calculation (i.e., does not include them in the numerator of the equation).

Section 4234. Providing premium processing of employment-based petitions

This section requires availability of premium processing for employment-based immigrant petitions and related administrative appeals.

Section 4235. Technical correction

This section corrects a typographical error created by the "Irish Peace Process Cultural and Training Program Act of 1998."

Section 4236. Application

This section clarifies that Subtitle B is applicable to applications filed on or after the date of enactment and shall not apply to existing employees of employers who file petitions for renewals or exten-

sion. It further provides that the non-displacement and recruitment requirements set forth in Section 4211(c) shall not apply to any application or petition filed by an employer on behalf of an existing employee.

Section 4237. Portability for beneficiaries of immigrant petitions

This section changes the adjustment portability rules. Regardless of whether an employer withdraws a green card petition, the petition shall remain valid with respect to a new job if the beneficiary changes jobs or employers after the petition is approved and the new job is the same or a similar occupation for which the petition was approved. Current law requires the petition to be pending 180 days before portability kicks in. The employer's legal obligation with respect to the petition terminates at the time the beneficiary changes jobs or employers.

In addition, aliens who have H–1B status, and their spouses, are eligible for an employment authorization document permitting work with any employer if an application for adjustment of status is pending on their behalf or if they have filed their own petition for adjustment of status.

SUBTITLE C—L VISA FRAUD AND ABUSE PROTECTIONS

Section 4301. Prohibition on outplacement of L nonimmigrants

This section prohibits outplacement of L–1 nonimmigrants to another employer unless the nonimmigrant is supervised and controlled by the petitioning employer, not placed in what is essentially an arrangement for hire, and pays a $500 fee. An L–1 dependent employer (more than 15 percent of its employees on L–1 visas) may not outplace at all. The $500 fee shall go to the STEM Education and Training Account established under Section 286(w).

Section 4302. L Employer petition requirements for employment at new offices

This section limits the approval of a new office L–1 petition to 12 months, and adds a new requirement that the petition can be approved only if the beneficiary of the application has not been the beneficiary of two or more new office L–1 petitions during the preceding two years. In addition, for approval of the petition, the petitioner must show an adequate business plan, sufficient physical premises to carry out the business, and sufficient financial ability to commence doing business immediately upon approval of the petition. This section also creates a detailed list of evidence that must be provided to obtain approval of an extension of a new office L–1 petition. Finally, this section provides the Secretary of Homeland Security with the discretionary authority to grant approval of a new office L–1 petition without all of the required evidence if justified by extraordinary circumstances.

Section 4303. Cooperation with the Secretary of State

The Secretary of Homeland Security must work cooperatively with the Secretary of State to verify the continued existence of a company.

Section 4304. Limitation on employment of L nonimmigrants

This section amends INA Section 214(c)(2), providing that employers with 50 or more employees in the United States are not able to petition for new or additional H–1B or L workers if their workforce is comprised of more than 75 percent H–1B or L workers in Fiscal Year 2015, 65 percent in Fiscal Year 2016, or 50 percent H–1B or L workers in Fiscal Years 2017 and thereafter. The workforce calculation does not include H–1B and L visa holders who are intending immigrants. The provision does not include in the definition of employers nonprofit institutions of higher education or nonprofit research organizations described in IRC Section 501(c)(3).

Section 4305. Filing fee for L nonimmigrants

This section provides that for each fiscal year beginning in 2014, a fee of $5,000 per petition shall be imposed on companies hiring L nonimmigrants if they employ more than 50 workers in the United States and between 30 and 50 percent of their workforces are H–1B or L nonimmigrants. From 2015 to 2017, the fee is $10,000 for similarly-sized companies for whom between 50 and 75 percent of their workforces are H–1B or L nonimmigrants. The provision exempts "intending immigrants" from the calculation (i.e., does not include them in the numerator of the equation). The provision does not include nonprofit institutions of higher education or nonprofit research organizations described in IRC Section 501(c)(3) in the definition of employers.

Section 4306. Investigation and disposition of complaints against L nonimmigrant employers

This section provides the Secretary of Homeland Security with the authority to conduct compliance investigations of L–1 employers. The Secretary can withhold the identity of the party providing information regarding potential violations, and is required to create a system to receive complaints regarding noncompliance. This section sets a requirement that complaints must be received within 24 months of the alleged violation in order to conduct an investigation. Prior to commencing an investigation, the Secretary must inform the L–1 employer of the intent to conduct an investigation and permit the employer to respond to the allegations. If a violation is found, the employer is permitted to have a hearing on the finding of a violation within 120 days of the finding, and a decision on the violation must be made within 120 days of the hearing. Penalties can be assessed in accordance with Section 4307 if there is a finding of a violation, and there is no judicial review of the finding of a violation.

This section also requires the Secretary of Homeland Security to conduct annual compliance audits of employers with more than 100 employees who employ more than 15 percent of their employees in L–1 status. The Secretary must also make available to the public a report describing the general findings of the audits under this section.

Section 4307. Penalties

The Department of Homeland Security shall impose administrative remedies, including civil monetary penalties up to $2000 per violation and one-year program debarment, if a violation is found.

If the violation constitutes a material misrepresentation or a willful failure to comply, the fine can be up to $10,000 and the period of program debarment is at least two years.

Section 4308. Prohibition on retaliation against L nonimmigrants

This section prohibits any retaliatory action against a job applicant, current employee or former employee for reporting what is reasonably believed to be a violation of L–1 provisions.

Section 4309. Reports on L nonimmigrants

This section requires reports to the Judiciary Committees of the House and Senate with data on petitions filed, approved, denied, withdrawn and awaiting action.

Section 4310. Application

All amendments made by this subtitle shall apply to applications filed on or after the date of enactment.

Section 4311. Report on L blanket petition process

Not later than six months after the date of enactment, the Inspector General of the Department of Homeland Security is required to submit a report to listed committees in Congress on the efficiency and reliability of the process for reviewing blanket petitions, including whether the process includes adequate safeguards against fraud and abuse.

SUBTITLE D—OTHER NONIMMIGRANT VISAS

Section 4401. Nonimmigrant visas for students

This section amends INA Section 214(b) to allow for dual intent for F–1 students and dependents where the principal is engaged in a full course of study at an established academic institution approved by the Department of Homeland Security. F–1 students living in Canada and Mexico commuting into the United States are also covered. This section also extends dual intent to the following nonimmigrant visa categories: E, F–1, F–2, H–1B, H–1C, L, O, P, V, and W. This section will not take effect until real-time transmission of data from the Student and Exchange Visitor Information System (SEVIS) to databases used by CBP is effective. The Department of Homeland Security will have 120 days after enactment to achieve this. The Secretary of Homeland Security is also prohibited from issuing F and M visas until this certification of real-time transmission of data has been issued.

Section 4402. Classification for specialty occupation workers from free trade countries

This section includes bilateral investment treaties and free trade agreements along with treaties of commerce and navigation. It allows specialty occupation workers to enter the United States pursuant to a free trade agreement provided that Department of Labor wage and related attestations are met, with a limit of 5,000 per fiscal year for each country.

In addition, a new E–6 nonimmigrant visa is created for people coming from sub-Saharan African countries under Section 104 of the African Growth and Opportunity Act or countries designated

under the Caribbean Basin Economic Recovery Act. Individuals are eligible if they are coming to perform services as employees and have at least a high school education or its equivalent. There is an annual cap of 10,500 for all nationalities covered under the E–6 program.

Section 4403. E visa reform

This section amends Section 101(a)(15)(E)(iii) to create 10,500 annual visas for individuals who are nationals of the Republic of Ireland if they have at least a high school education or have, within five years, at least two years of work experience in an occupation requiring two years of training and experience. This section also provides nonimmigrant visa waiver grounds for Irish nationals seeking these E–3 visas.

Section 4404. Other changes to nonimmigrant visas

This section expands employment portability under INA Section 214(n) to holders of O–1 visas (i.e., visas issued to temporary foreign workers of extraordinary ability). This section allows O–1 visa holders to accept new employment upon the filing of a new petition by the prospective employer. It also amends INA Section 214(c)(3) to waive the consultation requirement for O–1 visa holders seeking entry for motion picture or television production who seek readmission within three years after date of consultation issued in connection with previous admission, so long as previous consultations were favorable or raised no objection.

Section 4405. Treatment of nonimmigrants during adjudication of application

This section provides that nonimmigrants granted employment authorization pursuant to subsections A (foreign government officials), E (treaty traders and investors), G (foreign government officials at international organizations), H (temporary workers), I (foreign media representatives), J (exchange visitors), L (intracompany transferees), O (workers of extraordinary ability), P (athletes and entertainers), Q (international cultural exchange visitors) and R (religious workers) of INA Section 101(a)(15), or under INA Section 214(e) (Trade NAFTA (TN) workers from Canada and Mexico), and under any other sections the Secretary of Homeland Security may prescribe by regulation, are authorized to continue employment with the same employer while the employer's or authorizing agent's application or petition for an extension of stay remains pending.

Section 4406. Nonimmigrant elementary and secondary students

This section deletes the requirement that elementary and secondary public school students on F–1 student visas may only attend a public secondary school for a period not exceeding 12 months. Such students are required to reimburse the local educational agency under existing law.

Section 4407. J–1 Visa exchange visitor program fee

A $500 fee must be paid by the employer to the State Department for each nonimmigrant admitted under the Summer Work Travel Program. This fee shall be deposited in the CIR Trust Fund established by the bill.

Section 4408. J Visa Eligibility for speakers of certain foreign languages

This section creates a new J–1 category for persons coming to the United States to perform any type of work involving specialized knowledge or skill, including teaching on a full-time or part-time basis, that requires proficiency in a language spoken as a native language in countries of which fewer than 5,000 nationals were lawfully admitted for permanent residence in the United States in the previous year. The Department of State must publish a list of the eligible countries annually.

Section 4409. F–1 visa fee

A $100 fee is imposed on each F–1 student admitted. This fee is deposited in the CIR Trust Fund established by the bill.

Section 4410. Pilot program for remote nonimmigrant visa interviews

This section requires the Department of State to establish a pilot program for processing visitor visas using secure remote videoconferencing technology as a method for conducting any required in-person interview of applicants. Within 90 days of the termination of the pilot program, the State Department shall submit a written report to Congress that describes the results of the program and recommendations for whether the program should be continued, including based on security concerns.

Section 4411. Providing consular officers with access to all terrorist databases and requiring heightened scrutiny of applications for admission from persons listed on terrorist databases

Under this section, consular offices have access to all terrorism records and databases maintained by any agency or department to determine whether an applicant for admission poses a security threat to the United States. The head of such an agency may withhold such records if necessary to prevent the unauthorized disclosure of information that clearly identifies or might permit the identification of intelligence or sensitive law enforcement sources, methods, or activities.

The Department of State shall require every alien applying for admission to submit to biographic and biometric screening to determine whether the alien's name or biometric information is listed in any terror watch list or database maintained by any agency or department of the United States.

No person shall be granted a visa if the alien's name is listed on any watch list unless screening of the application against screening systems reveals no potentially pertinent links to terrorism; the consular officer submits the application for further review to the Secretary of State; and the heads of other relevant agencies (including DHS), and the Secretary of State in consultation with DHS, certifies the alien is admissible to the United States.

Section 4412. Visa revocation information

If the Department of State or DHS revokes a visa, the fact of the revocation must be immediately provided to relevant consular officers, law enforcement, and terrorist screening bases and a notice

of the revocation shall be posted to all DHS port inspectors and to all consular officers.

Section 4413. Status for certain battered spouses and children

This section creates a new INA Section 106 entitled "Relief for Abused Derivative Aliens." An "abused derivative alien" is a person who is the spouse or child admitted under a blue card status in this bill who has been subjected to battery or extreme cruelty by such principal alien. The Department of Homeland Security can grant or extend status for an abused derivative alien for the period for which the principal alien was initially admitted or a period of three years. The Department of Homeland Security may also grant extensions, employment authorization, and adjust to permanent residency if DHS determines the alien's continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest and the status under which the principal alien was admitted would have potentially allowed for eventual adjustment of status.

Termination of the relationship with the principal alien does not affect the status of an abused derivative alien.

Section 4414. Nonimmigrant crewmen landing temporarily in Hawaii

This section allows a nonimmigrant crewman to land temporarily in Hawaii and return to Hawaii, Guam, or the Commonwealth of the Northern Mariana Islands after having departed such port, even if the ship has not stopped at a foreign port.

Section 4415. Treatment of Compact of Free Association Migrants

This section makes citizens of the Compact of Free Association States (COFA), lawfully residing in the United States, eligible for Medicaid.

SUBTITLE E—JOLT ACT

Section 4501. Short title

The subtitle may be cited as the "Jobs Originated through Launching Travel Act of 2013" or the "JOLT Act of 2013."

Section 4502. Premium processing

This section provides that the Secretary of State shall establish a pilot premium processing program for visa interview appointments. Fees collected (which are in addition to normal application fees) are nonrefundable and shall be deposited as an offsetting collection to any Department of State appropriation, to recover the costs of providing consular services. The Secretary of State must submit a report to Congress about the pilot program no later than 18 months after enactment of the JOLT Act.

Section 4503. Encouraging Canadian tourism to the United States

This section allows admission as a visitor under INA Section 101(a)(15)(B) for certain Canadian retirees and their spouses for a period not to exceed 240 days during any single 365-day period. To be eligible, the applicant must be a Canadian citizen at least 55 years of age; maintain a residence in Canada; not be inadmissible

under INA Section 212; not be described in any ground of deportability under INA Section 237; not be engaged in employment or labor for hire in the United States; and not seek any form of assistance or benefit described in section 403(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(a)). Maintenance of a residence in the United States shall not be considered evidence of intent by the alien to abandon the alien's residence in Canada.

Section 4504. Retiree visa

This section creates a new "Z" visa for retirees and their spouses and children, if the retiree uses at least $500,000 in cash to purchase one or more residences in the United States, which each sold for more than 100 percent of the most recent appraised value of such residence, as determined by the property assessor in the city or county in which the residence is located; maintains ownership of residential property in the United States worth at least $500,000 during the entire period the alien remains in the United States; and resides for more than 180 days per year in a residence in the United States that is worth at least $250,000.

Applicant must be at least 55-years-old; possess health insurance coverage; not be inadmissible under INA Section 212; reside in a qualifying residence in the United States for more than 180 days per year; and not engage in employment in the United States (except for employment that is directly related to the management of the person's qualifying residential property in the United States). Applicants are not eligible for any form of assistance or benefit described in section 403(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(a)).

Section 4505. Incentives for foreign visitors visiting the United States during low peak seasons

This section requires the Secretary of State to make publically available data regarding the availability of visa appointments for each visa processing post so that applicants can identify periods of low demand, when wait times tend to be lower.

Section 4506. Visa waiver program enhanced security and reform

This section allows the Secretary of Homeland Security, in consultation with the Secretary of State, to designate any country as part of the Visa Waiver Program, so long as the country provides machine-readable passports and the visa refusal rate and overstay rate for nationals of that country were both under three percent in the previous fiscal year. The Secretary of Homeland Security, in consultation with the Secretary of State, also has the authority to waive the three percent threshold requirements if the country meets all of the other requirements, presents a low security risk, has a general downward trend in visa refusal rates, participates in counterterrorism efforts with the United States, and has a visa refusal rate of less than ten percent.

This section also allows the Secretary of Homeland Security to designate a visa waiver country into a period of probationary status, after which time that country can be removed from the Visa Waiver Program.

Hong Kong may participate in this program if it meets the requirements of the program.

Section 4507. Expediting entry for priority visitors

This section allows the Secretary of Homeland Security to include in trusted traveler programs individuals employed by international organizations, selected by the Secretary, which maintain strong working relationships with the United States. Citizens of countries that are state sponsors of terrorism cannot participate in such trusted traveler programs.

Section 4508. Visa processing

This section directs the Secretary of State to set a goal for U.S. Consulates worldwide of interviewing 80 percent of all nonimmigrant visa applicants within three weeks of receipt of application, and to expand resources in China and Brazil to keep visa appointment wait times under 15 days. This section also requires a semi-annual report to Congress of the progress toward reaching and maintaining these goals.

Section 4509. B-Visa fee

This section adds a $5 fee for all B–1 and B–2 visas. This fee shall be deposited into the Immigration Trust Fund Account.

SUBTITLE F—REFORMS TO THE H–2B PROGRAM

Section 4601. Extension of returning worker exemption to H–2B numerical limitation

This section expands the definition of "returning worker" who is not subject to the H–2B quota to include any worker who has been an H–2B nonimmigrant during Fiscal Year 2013. This provision shall expire after five years. The section also expands the definitions of aliens who can obtain a P visa to include ski instructors and snowboard instructors.

Section 4602. Other requirements for H–2B

This section requires H–2B employers to attest that they will not displace a United States worker in the same metropolitan statistical area where the H–2B worker will be hired within the period beginning 90 days before the start date and ending on the end date of the H–2B employment. H–2B employers are also required to pay reasonable travel costs for the H–2B worker to travel from the place of recruitment to the place of employment and from the place of employment to the H–2B worker's site of permanent residence or a subsequent worksite. In addition, this section imposes a $500 fee for H–2B temporary labor certifications, and requires that employers pay that fee without reimbursement or deduction from wages of the H–2B worker to pay the fee.

Section 4603. Executives and managers

This section modifies the business visitor rules to allow admission of multinational executives and managers coming to the United States for 90 days or less to oversee operations of the U.S. company. In addition, employees of multinational companies can be admitted as visitors for up to 180 days to participate in leadership

and development activities, even if those activities will include productive work. Such employees cannot receive remuneration from a U.S. source.

Section 4604. Honoraria

This section permits distinguished business visitors and entertainment personnel to receive honoraria payments.

Section 4605. Nonimmigrants participating in relief operations

An alien coming as a nonimmigrant to participate in critical infrastructure repairs or improvements may be admitted under the B visa program for no more than 90 days, if the nonimmigrant has been employed in a foreign country by one employer for not less than one year prior to the date of admission.

Section 4606. Nonimmigrants performing maintenance on common carriers

This section permits nonimmigrants who have specialized knowledge and who come in the United States to perform maintenance on common carriers for not more than 90 days, to come on B visas if the nonimmigrant has been employed by one employer for not less than one year in a foreign country. A fee of $500 shall be charged.

SUBTITLE G—MARKET RESEARCH AND STATISTICS

Section 4701. Bureau of immigration and labor market research

This section establishes an independent statistical agency called the Bureau of Immigration and Labor Market Research (the "Bureau") headed by a Commissioner that will be placed within USCIS in the Department of Homeland Security. The Commissioner shall be appointed by the President with the advice and consent of the Senate.

The Bureau will devise a methodology to determine the annual change to the cap for W nonimmigrants; supplement the recruitment methods employers use to attract W nonimmigrants; devise and publish a methodology to designate shortage occupations by job zone (in O*Net Job Zones 1, 2, and 3); conduct a survey every three months of the unemployment rate of construction workers and the impact on such workers; study and report to Congress on employment-based and immigrant and nonimmigrant visa programs; make annual recommendations to improve such programs; and carry out any functions necessary to accomplish the abovementioned duties.

The Commissioner shall establish a methodology to designate shortage occupations and the methodology will allow an employer to ask the Commissioner if a particular occupation in a particular area is a shortage occupation.

The employees of the Bureau shall have the expertise to identify U.S. labor shortages in the United States and make recommendations to the Commissioner on the impact of immigrant and nonimmigrant aliens on U.S. labor markets.

At the request of the Commissioner, the Secretary of Commerce, the Director of the Bureau of the Census, the Secretary of Labor, and the Commissioner of the Bureau of Labor Statistics shall pro-

vide data to the Commissioner, conduct appropriate surveys, and assist the Commissioner in preparing recommendations.

The Director of USCIS shall submit a budget to Congress that the Bureau will need to carry out its duties and the U.S. Comptroller General shall submit to Congress an audit of the budget.

The Bureau is established by a $20 million appropriation from the Treasury. Fees collected from those employers participating in this program shall also be used to establish and fund the Bureau. The Secretary may also establish other fees related to the hiring of alien workers and use such fees to fund the Bureau.

The new Bureau serves four main functions: (1) play a role in determining the numbers for the annual cap of the new worker visa; (2) declare shortage occupations; (3) expand the list of real-world recruitment methods registered employers may use in order to ensure the choices provided employers do not become outdated; and (4) report on every aspect of the employment immigration system and make yearly recommendations and reports to Congress on how to reform these programs to make them work best for the American economy.

Section 4702. Nonimmigrant classification for W nonimmigrants

This section creates a new nonimmigrant classification under INA Section 101(a)(15)(W)(i) (8 U.S.C. 1101(a)(15)(W)(i)). The W visa holder is an alien having a foreign residence who will come to the United States temporarily to perform services or labor for a registered employer in a registered position. The spouse and minor children of the W visa holder are allowed to accompany or to join and the spouse will be given work authorization for the same period of admission as the principal W nonimmigrant is allowed.

Section 4703. Admission of W nonimmigrant workers

A certified alien is eligible to be admitted to the United States as a W nonimmigrant if hired by a registered employer for employment in a registered position in a location that is not in an excluded geographic location. The spouse and minor children of the W visa holder may be admitted to the United States for the same period of time and the spouse will be given work authorization. The W nonimmigrant will apply to the Secretary of State at a U.S. embassy or consulate in a foreign country to be a certified alien. To be eligible, he or she cannot be inadmissible; has to pass a criminal background check; must agree to accept employment in the United States only if it is in a registered position; and meet any other criteria as established by the Secretary. He or she shall report to his or her initial employment no later than 14 days after first admitted to the United States.

A certified alien may be granted W nonimmigrant status for an initial period of three years and may renew his or her status for additional three year periods. He or she may not be unemployed for more than 60 consecutive days and must depart the United States if he or she is unable to obtain employment. W visa holders can travel outside the United States and be readmitted to the United States but cannot be readmitted for longer than the initial period of admission.

An employer seeking to be a registered employer shall submit an application to the Secretary with appropriate documentation to

demonstrate it is a bona fide employer with the estimated number of W nonimmigrants it will seek to employ each year, anticipated dates of employment, and a description of the type of work to be performed. The Secretary may refer an employer's application to the Secretary of Labor for potential investigation if there is evidence of fraud. The Secretary of Labor may audit any of these applications.

No employer may be approved to be a registered employer if the Secretary determines after notice and an opportunity for a hearing, that the employer has knowingly misrepresented a material fact, knowingly made a fraudulent statement, or knowingly failed to comply with the terms of such attestations; or failed to cooperate in the audit process in accordance with the regulations promulgated by the Secretary.

No employer may be approved to become a registered employer if within three years prior to the date of application, it has committed any hazardous occupation orders violations resulting in injury or death under the child labor provisions contained in Section 12; been assessed a civil money penalty for any repeated or willful violation of the minimum wage provisions of section six; or been assessed a civil money penalty for any repeated or willful violation of the overtime provisions of section seven (other than a repeated violation that is self-reported) of the Fair Labor Standards Act of 1938 and any applicable regulation.

No employer may be approved to become a registered employer if within three years prior to the date of application, it received a citation for a willful violation or repeated serious violation involving injury or death of section five of the Occupational Safety and Health Act of 1970 (OSHA).

An employer described above will be ineligible to be a registered employer for a period determined by the Secretary but no more than three years. An employer that has been convicted of any offense involving human trafficking or a violation of Chapter 77 of Title 18 of the United States Code shall be permanently ineligible to become a registered employer.

The Secretary shall approve applications to become registered employers for a term of three years. An employer may submit an application to renew its status as a registered employer for additional three year periods. At the time an employer's application is approved, such employer shall pay a fee in an amount determined by the Secretary to be sufficient to cover the costs of the registry of such employers. Each registered employer shall submit to the Secretary an annual report that demonstrates that the employer has provided the wages and working conditions that the registered employer agreed to provide its employees.

Each registered employer shall submit to the Secretary an application to designate a position for which the employer is seeking a W nonimmigrant as a registered position. Each application will describe each such position and include an attestation of the following: the number of employees of the employer; the occupational category, as classified by the Secretary of Labor, for which the registered position is sought; and whether the occupation is a shortage occupation.

A secondary registry is also created for employers who want to hire W visa holders who are already in the United States. This sec-

ondary registry still requires registration of the position as required above, but if they can prove they cannot hire an American worker, they may hire a W visa holder.

Employers must attempt to hire W visa holders inside the United States before bringing in workers located in other countries.

The wages to be paid will be either the actual wage paid by the employer to other employees with similar experience and qualification or the prevailing wage level for the occupational classification in the geographic area/metropolitan statistical area of the employment, whichever is higher. This must be included in the employer attestation.

The attestation will also attest that the working conditions will not adversely affect the working conditions of other workers employed in similar positions and that the employer has carried out the required recruiting activities and there is no qualified U.S. worker who has applied for the position who is ready, willing, and able to fill such position pursuant to the requirements outlined here.

The employer must also attest that there is not a strike, lockout, or work stoppage or labor dispute in the area where the W nonimmigrant will be employed. The employer also has to attest that he or she has not laid off and will not lay off a U.S. worker during the period beginning 90 days prior to and ending 90 days after the date the employer designates the registered position for which the W visa holder is sought unless the employer has notified such U.S. worker of the position and documented the legitimate reasons that such U.S. worker is not qualified or available for the position.

The Secretary shall provide each registered employer whose application is approved with a permit that includes the number and description of such employer's approved registered positions. The approval of a registered position is for a term that begins on the date of such approval and ends the earlier of either the date the employer's status as a registered employer is terminated or three years after the date of such approval or upon proper termination of the registered position by the employer.

Recruitment. Each registered position shall be for a position in an eligible occupation. A position may not be registered unless the registered employer advertises the position for 30 days, including the wage, range, location and proposed start date; on the Internet website maintained by the Secretary of Labor, and with the workforce agency of the State where the position will be located, and carries out not less than three of the additional recruiting activities described in this section or any other recruitment activities determined to be appropriate as added by the Commissioner.

Eligible and Ineligible Occupations. An occupation is an eligible occupation if it is a Zone One, Two, or Three occupation as defined in this section. An occupation may be ineligible to be considered as a registered position if it requires a bachelor's degree or higher or is an occupation that requires the W nonimmigrant to perform work as a computer operator, programmer, or repairer. The Secretary of Labor shall publish the eligible occupations an on-going basis on a publically available website.

If a W nonimmigrant terminates employment in a registered position or is terminated from such employment by the registered employer, such employer may fill the vacancy by hiring a certified

alien, a W nonimmigrant, a U.S. worker or an alien who has filed a petition for a visa.

Except as described below, a registered position shall be approved by the Secretary for three years. A registered position shall continue to be a registered position at the end of three years if the W nonimmigrant hired for such position has a pending petition for immigrant status filed by the registered employer or remains with the same employer. Such registered positions will terminate either on the date the petition is approved or denied or on the date of the W employee's termination of employment with the registered employer.

Employer Fees. The employer will pay a registration fee to be determined by the Secretary when the employer's application for the registered position is approved. The fees collected will be used to carry out this program. A registered employer will pay an additional fee for each approved registered position measured by a specific formula that considers the size of the business and the proportion of non-U.S. workers in the registered employee positions. These fees will be used to fund the operations of the new Bureau of Immigration and Labor Market Research described above.

Registered employers may not be required to pay an additional fee if they are a small business with 25 or fewer employees. No registered positions will be approved for employers who are not small businesses and where 30 percent or more of the employees are not U.S. workers.

Unemployment Rate. No W nonimmigrants may be hired for an eligible occupation in a metropolitan statistical area that has an unemployment rate that is more than 8.5 percent unless the Commissioner identifies the occupation as a shortage occupation or the Secretary approves the position under the safety valve described below.

Two Six-month Segments. Beginning April 1, 2015, unless the Secretary of Homeland Security extends the start date, the cap for W visas will be split into two six-month segments in a year. The annual cap on the maximum number of registered positions that may be approved each year are limited for the first four years: 20,000 for the first year; 35,000 the second year; 55,000 the third year and 75,000 the fourth year. For each year after the fourth year, the annual cap will be calculated according to a statistical formula that takes the following four factors into consideration: the rate of change in the number of new job openings in the economy; the inverse rate of change in the number of unemployed U.S. workers; the percentage change the Bureau recommends the annual cap should increase or decrease; and the percentage difference between the number of W visas requested in the prior fiscal year compared to the cap in the prior fiscal year.

Shortage Occupations. In addition to the number of registered positions made available for a given year, the Commissioner may make available an additional number of registered positions for shortage occupations in a particular geographical area. The Bureau's recommendations for determining annual cap recommendations will be subject to notice and comment and formal rulemaking.

Replacement Workers. In addition, certain positions that are refilled after a W nonimmigrant leaves and which are filled by another W nonimmigrant will not count against the W cap. Such reg-

istered employers who seek to fill these positions must have tried to recruit available W nonimmigrants who are not initial W nonimmigrants. Three recruiting steps (as opposed to seven, see below) must be used to hire these workers. W nonimmigrants who are not "initial" W workers will be paid the wages applicable to the rest of the program.

Additional Positions. The Secretary has the authority to make additional registered positions available for a specific registered employer if the annual cap for registered positions has been reached and none remain available for allocation. The Secretary may also make additional positions available if that registered employer is located in a metropolitan statistical area that has an unemployment rate greater than eight and a half percent (in other words, is banned from using the regular numbers) or if the registered employer has carried out no less than seven of the described recruiting activities and posts the position for no less than 30 days on the Secretary of Labor's Internet website and with the State workforce agency where the position will be located.

A W nonimmigrant hired to perform an eligible occupation pursuant to a special allocation of registered positions may not be paid less than the greater amount of either the level four wage set in the Foreign Labor Certification Data Center Online Wage Library or the mean of the highest two-thirds of wages surveyed for such occupation in that metropolitan statistical area.

A registered position made available for a year under this paragraph shall require the deduction of a visa number available under the regular W visa cap in the subsequent year or the earliest possible year for which a visa becomes available again under the cap.

Half of the total number of registered positions will be made available during the first six months of the year. The rest will be used during the second six-month period.

For the first month of each six-month period, a registered position may not be created in an occupation that is not a shortage occupation unless the Commissioner has not designated any shortage occupations that year. During the second, third, and fourth months of each six-month period, one-third of the number of registered positions allocated for such period shall be approved only for a registered employer that is a small business. Any remaining registered positions not allocated to small businesses will be made available for any registered employer during the last two months of each six-month period.

No more than 33 percent of the registered positions available per year may be granted to perform work in a construction occupation. The number of registered positions granted to construction occupations may not exceed 15,000 per year or 7,500 for any six-month period under any circumstances. A registered employer may not hire a certified alien for a registered position to perform work in a construction occupation if the unemployment rate for construction occupations in the corresponding occupational job zone in the corresponding metropolitan statistical areas is more than eight and a half percent. The unemployment rate will be determined by using the most recent survey taken by the Bureau or if no survey is available, by a recent, legitimate privately-conducted survey.

Portability and Promotion. A W nonimmigrant who is admitted to the United States by a registered employer may terminate such

employment for any reason and seek and accept employment with another registered employer in any other registered position within the terms and conditions of the W nonimmigrant visa. A registered employer who has applied for a registered position may promote the W nonimmigrant if such employee has been employed with that employer for no less than twelve months. Such a promotion will not increase the number of registered positions for that employer.

Prohibitions on Outplacement. A registered employer may not place, outsource, lease, or otherwise contract for the services or placement of a W nonimmigrant employee with another employer if more than 15 percent of the employees of the registered employer are W nonimmigrants.

Waiver of Rights Prohibited. A W nonimmigrant shall not be denied any right or any remedy under Federal, State, or local labor or employment law that would be applicable to a U.S. worker employed in a similar position with the employer because of the alien's status as a W nonimmigrant. A W nonimmigrant may not be required to waive any rights or protections under this Act.

Prohibition on Treatment as Independent Contractors. A W nonimmigrant is prohibited from being treated as an independent contractor under any Federal or State law and no person including an employer or labor contractor and any affiliated persons may treat the W nonimmigrant as an independent contractor. However, registered employers who operate as independent contractors may hire W nonimmigrants.

Use of Fees. A fee related to the hiring of a W nonimmigrant required to be paid by an employer under this Act shall be paid by the employer and may not be deducted from the wages or other compensation paid to a W nonimmigrant. The employer is not responsible for the W nonimmigrant's cost of round trip transportation from a certified alien's home to the location of the registered position and the cost of obtaining a foreign passport. An employer shall comply with all applicable Federal, State, and local tax laws with respect to each W nonimmigrant employed by the employer. Fees collected in this section shall be used to carry out the W nonimmigrant program and to fund the Bureau if any funds remain.

Whistleblower Protections. It is unlawful for an employer of a W nonimmigrant to intimidate, threaten, restrain, coerce, retaliate, discharge, or in any other manner discriminate against an employee or former employee because the employee or former employee discloses information to the employer or any other person that the employee or former employee reasonably believes demonstrates a violation of this section or cooperates or seeks to cooperate in an investigation or other proceeding concerning compliance with the requirements of this section.

Process and Enforcement. The Secretary shall establish a process for the receipt, investigation, and disposition of complaints with respect to the failure of a registered employer to meet a condition of this section or the layoff or non-hiring of a U.S. worker. The Secretary shall promulgate regulations for the receipt, investigation, and disposition of complaints by an aggrieved W nonimmigrant respecting a violation of this section. No investigation or hearing shall be conducted on a complaint concerning a violation unless the complaint was filed within six months of the violation. The Secretary shall determine within 30 days of the filing of the complaint

if there is reasonable cause to conduct an investigation and if there is a reasonable basis to believe that a violation of this section has occurred. If the Secretary decides there is a reasonable basis, she shall issue notice to the interested parties and offer an opportunity for a hearing on the complaint within 60 days. After the hearing, the Secretary has 60 days to make a finding on the matter awarding reasonable attorneys' fees and costs to the prevailing party.

Civil Penalties. After notice and an opportunity for a hearing, if the Secretary of Labor finds a violation of this subsection, the Secretary may impose administrative remedies and penalties including back wages, benefits, and civil monetary penalties. The Secretary of Labor may also impose a civil penalty for a violation of this subsection including a fine up to $2,000 per affected worker for the first violation and up to $4,000 for each subsequent violation. If the violation is found to be willful, the fine can be up to $5,000 per affected worker. If the violation is found to be willful and a U.S. worker was harmed, a fine up to $25,000 per violation per affected worker may be assessed. The Secretary of Labor may also impose a civil penalty for knowingly or recklessly failing to comply with the terms of representations made in petitions, applications, certifications, or attestations under this section, or with labor recruiters of up to $4,000 per affected worker. After the third offense of a failure to comply the fine can increase to $5,000.

Criminal Penalties. Anyone who misrepresents the number of full time employees or the number of employees who are U.S. workers for the purpose of reducing a fee or avoiding the cap shall be fined up to in accordance with title 18 of the United States Code in an amount of $25,000 or imprisoned for not more than one year or both.

Monitoring. United States Citizenship and Immigration Services in the Department of Homeland Security will implement a new electronic monitoring system modeled on the Student and Exchange Visitor Information Systems (SEVIS, the tracking system used by ICE to monitor foreign students) to monitor the presence and employment of W nonimmigrants and their movement from job to job. This new system will be coordinated with the use of the employment verification system described in Section 274A(d) for greater efficiency.

SUBTITLE H—INVESTING IN NEW VENTURE, ENTREPRENEURIAL STARTUPS, AND TECHNOLOGIES

Section 4801. Nonimmigrant invest visas

This section creates a new visa for immigrant entrepreneurs who seek to start new businesses and create jobs in the United States. Specifically, it creates a new, three-year nonimmigrant visa for individuals who are able to secure at least $100,000 in investments from an accredited investor, venture capitalist, startup accelerator, or government entity or combination of entities. Alternatively, an individual can obtain a nonimmigrant visa if he or she has a U.S. business that has created at least three jobs and has generated at least $250,000 in annual revenue for the previous two years. The section also creates a process for extending the nonimmigrant visa if the entrepreneur's business meets certain jobs, investment, or revenue thresholds.

Section 4802. Invest immigrant visa

This section creates a new "EB–6" immigrant visa category for certain entrepreneurs. To qualify, the entrepreneur must have maintained a valid nonimmigrant status for at least two years and have created at least five jobs in the United States. The entrepreneur must also have either secured at least $500,000 investment or generated at least $750,000 in annual revenue during the last two years.

For entrepreneurs with an advanced degree in STEM, the individual must have maintained a valid nonimmigrant status for at least two years, created at least four jobs in the United States, and secured $500,000 in investments. In the alternative, an entrepreneur with a STEM degree can obtain an immigrant visa if he or she has maintained a valid nonimmigrant status for at least two years, created at least three jobs, and generated at least $500,000 in annual revenue for two years. The immigrant visa is capped to 10,000 per year.

Section 4803. Administration and oversight

Not later than 16 months after the date of the enactment of this Act, the Secretary, in consultation with the Secretary of Commerce, the Administrator of the Small Business Administration, and other relevant agencies shall promulgate regulations. The Secretary has certain authority to adjust certain dollar amounts in this section.

Section 4804. Permanent authorization of EB–5 Regional Center Program

This section makes the EB–5 Regional Center Pilot Program permanent and makes several other reforms and improvements to the program. Section 4804(a) repeals the existing pilot program at Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note).

Section 4804(b) places the EB–5 Regional Center Program in INA Section 203(b)(5). This section provides a description of the requirements for approval of a designated regional center. The section establishes a preapproval procedure pursuant to which a commercial enterprise associated with a regional center may file a petition to have a business plan, investment documents, and economic analysis preapproved by the Secretary. Preapproval given under this section shall be binding for purposes of the adjudication of immigrant investor petitions affiliated with such investment opportunities, absent evidence of fraud, misrepresentation, criminal misuse, or threat to national security. This section also establishes a premium processing option for immigrant investors seeking to invest in such preapproved investment opportunities. The section sets out annual financial reporting requirements for regional centers, along with a range of sanctions for regional centers and regional center operators that act in a manner inconsistent with a regional center designation, or which file incomplete or inaccurate financial statements. The section provides authority to the Secretary of Homeland Security to ensure that individuals involved in a regional center do not have criminal or other disqualifying background information and provides the Secretary with authority to terminate previously approved regional centers. The section re-

quires certification from regional center operators that applicable securities laws are being complied with. The section also permits consultation between the Department of Homeland Security and the Department of Commerce in relation to the immigrant investor program.

Section 4805. Conditional permanent resident status for certain employment-based immigrants, spouses, and children

This section provides that spouses and children shall not be required to file separate I–829 petitions if the principal applicant includes family members in his or her I–829. If the dependent obtains permanent residence after the date when the principal files an I–829, the conditional basis of the dependent shall be removed upon approval of the principal's petition and the dependent's permanent residency will be unconditional when approved. For alien investors in regional centers, approved regional center financial statements shall serve to demonstrate fulfillment of the job creation requirements that all investors must meet under Section 203(b)(5).

Section 4806. EB–5 visa reforms

This section removes dependents from the EB–5 numerical cap. At least 5,000 EB–5 visas are reserved for investment in Targeted Employment Areas (TEA). Pursuant to this section, Targeted Employment Area designations shall be valid for five years and may be renewed for additional five-year periods if the area continues to meet the definition of a high unemployment or rural area. Individuals who invest in an approved Targeted Employment Area, which later loses that status, need not increase investment as a result.

This section provides authority for the Secretary of Commerce to adjust the minimum required investment amount to which an immigrant investor is subject. The section provides, beginning in 2016 and in the absence of action by the Secretary of Commerce, that the investment amounts required for EB–5 investors will adjust based on changes in the Consumer Price Index. A new adjustment will occur every five years thereafter.

The section defines full-time employment and provides that full-time employment may be measured in full-time equivalents, including intermittent or seasonal employment opportunities and construction jobs. "Capital" is defined to include all real, personal or mixed assets, whether tangible or intangible, owned or controlled by the investor, or held in trust for the benefit of the investor, to which the investor has unrestricted access, which shall be valued at the fair market value in U.S. dollars at the time it is invested. "High unemployment and poverty area" means an area consisting of a census tract or contiguous census tracts that has an unemployment rate at least 150 percent of the national rate and includes at least one tract with 20 percent of its residents living below the federal poverty level, or is in a federal or state enterprise zone.

A "rural area" means any area outside a metropolitan statistical area or within the outer boundary of any town with more than 20,000 people or any town with fewer than 20,000 people in a state with fewer than 1,500,000 people. The new definitions section applies to any applications filed on the date that is one year after the date of enactment.

The section also provides that where a principal alien's conditional permanent resident status is terminated under Section 216A, the child of that alien will continue to be considered a child should the principal alien file a new petition under section 203(b)(5) within one year after such termination.

This section provides authority to the Secretary to fix the compensation of, and appoint, individuals with the expertise necessary to administer the Regional Center Program. The section permits the Secretary to delegate certain authority to the Secretary of Commerce to evaluate commercial enterprise business plans and investment documents, including determinations concerning job creation. The section provides authority governing the use of fees and provides that necessary regulations may be adopted by the Secretary of Homeland Security and the Secretary of Commerce.

The section permits an immigrant investor to file concurrent petitions for classification under Section 203(b)(5) and for adjustment of status to a conditional lawful permanent resident.

Section 4807. Authorization of appropriations

This section authorizes appropriations for various sections of the bill from the Trust Fund.

SUBTITLE I—STUDENT AND EXCHANGE VISITOR PROGRAM

Section 4901. Short title

The subtitle may be referred to as the "Student Visa Integrity Act."

Section 4902. SEVIS and SEVP defined

The term SEVIS means the Student and Exchange Visitor Information Systems of the Department of Homeland Security. The term SEVP means the Student and Exchange Visitor Program of the Department of Homeland Security.

Section 4903. Increased criminal penalties

This section establishes a maximum penalty of 15 years in prison if a violator of 18 U.S.C. 1546(a) was an agent of an educational institutions with respect to participation in SEVIS.

Section 4904. Accreditation requirement

This section defines accredited for F–1 sponsorship as being any program accredited by the Secretary of Education.

Section 4905. Other academic institutions

The Department of Homeland Security shall require accreditation of academic institutions for F–1s if the institution is not already required to be accredited under the F–1 rules and an appropriate accrediting agency recognized by the Department of Education is able to provide such attestation. The Department of Homeland Security will have the ability to waive the requirement for institutions waiting more than a year for accreditation to be approved.

Section 4906. Penalties for failure to comply with SEVIS reporting requirements

Institutions that do not comply may be fined and barred from participation in the program.

Section 4907. Visa fraud

If DHS has "reasonable suspicion" that an owner of, or a designated school official at, an approved institution of higher education, an approved educational institution, or a designated exchange visitor program has committed fraud or attempted to commit fraud relating to SEVIS or if such owner or designated school official is indicted for such fraud, DHS may immediately suspend such certification without prior notification and suspend such official's or such school's access to SEVIS. A conviction of fraud shall lead to a permanent disqualification from filing future petitions and from having an ownership interest or a management role in any U.S. educational institution that enrolls F or M students.

Section 4908. Background checks

Individuals cannot be designated school officers (DSOs) or granted access to SEVIS unless the individual is a national of the United States or a permanent resident and during the most recent three-year period; the Department of Homeland Security has conducted a background check on the individual and determined the person has not been convicted of an immigration violations and is not a national security risk; and the individual has completed an online SEVIS training course.

Individuals may serve as interim DSOs while the background check is going on. If the interim DSO does not successfully complete the background check, DHS shall review each Form I–20 issued by the interim DSO. The Department of Homeland Security may collect a fee from an approved school for each background check conducted under this section. The section takes effect one year after enactment.

Section 4909. Revocation of authority to issue Form I–20 of Flight Schools Not Certified by the Federal Aviation Administration

The Department of Homeland Security shall prohibit any flight school in the United States from accessing SEVIS or issuing a Form I–20 to an alien seeking an F or M visa if the school has not been certified by DHS and the Federal Aviation Administration (FAA).

Section 4910. Revocation of accreditation

When an accrediting agency is required to notify the Secretary of Education and the state licensing authority of the final denial, withdrawal, suspension or termination of accreditation of an institution pursuant to Section 496 of the Higher Education Act of 1965, the agency shall notify DHS, and DHS shall immediately withdraw the school from SEVP and prohibit the school from accessing SEVIS.

Section 4911. Report on Risk assessment

Not later than 180 days after date of enactment, DHS shall submit to Congress a report that contains a risk assessment strategy for the issuance of I–20s.

Section 4912. Implementation of GAO recommendations

Within six months of enactment, DHS shall submit to the Judiciary Committees of the House and Senate a report describing the risks of Student and Exchange Visitor Program (SEVP), and a process to allocate SEVP's resources based on risk, quality control, and monitoring.

Section 4913. Implementation of SEVIS II

Within two years of enactment, DHS shall complete the deployment of both phases of the second generation of the SEVIS system.

IV. Congressional Budget Office Cost Estimate

The cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available for inclusion in this report. The estimate will be printed in either a supplemental report or the Congressional Record when it is available.

V. Regulatory Impact Evaluation

In compliance with subsection (b) of paragraph 11 of rule XXVI of the Standing Rules of the Senate, it is hereby stated that the passage of S. 744 will require the promulgation of regulations by the Department of Homeland Security, the Department of Justice, the Department of Labor, the Department of State, the Department of Commerce, the Department of Agriculture, and the United States Sentencing Commission, in consultation with the Department of Treasury, the Small Business Administration, the Social Security Administration, the Department of Defense, and other relevant Federal agencies and departments, to carry out the provisions of the bill.

VI. Conclusion

Following 37 hours of debate over the course of three weeks, and the disposition of 212 amendments, the Senate Judiciary Committee reported S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act, as amended on a bipartisan vote of 13 to 5. The Committee has approved legislation that will uphold the best values and traditions of a Nation that was built upon immigration. The bill will help reunite families, enrich our growing multi-cultural society, contribute to our traditions of innovation and invention, and give those who yearn to become Americans the opportunity to become full and lawful participants in our society and eventually to live as citizens of the United States of America. The Senators who serve on the Senate Judiciary Committee have laid a foundation for real and meaningful progress for the country, and have delivered tremendous hope to the millions of people who will benefit from these reforms. The Committee com-

mends this legislation to the Senate for its thorough consideration and approval.

VII. Additional and Minority Views

ADDITIONAL VIEWS FROM SENATOR HATCH

While I commend the committee for its productive work on this legislation, I still have a number of concerns that I believe need to be addressed in order to make this bill workable. Indeed, though I supported reporting this legislation out of the committee, there are some fundamental issues in this legislation that need to be fixed before it is, in my view, ready for final passage.

The major concerns I have with this legislation fall under the jurisdiction of the Senate Finance Committee, of which I am the Ranking Member. I filed amendments to address these issues, and, while they were not addressed during the Judiciary Committee's consideration of the bill, I have the assurances of several authors of this legislation—including the Senator from New York—that they will work with me to fix these problems once the bill is on the floor.

There are at least four specific Finance Committee issues that need to be addressed. First, the bill should stipulate that federal dollars cannot be used for purposes that were not contemplated under the 1996 federal welfare reform law. This would ensure that federal welfare benefits are not paid to individuals currently prohibited from receiving them.

Second, the bill should require immigrant applicants to show that they have paid back taxes and continue to pay taxes as a condition of their change in status. This would ensure that immigrant applicants satisfy their lawful federal tax obligations resulting from any period of their U.S. residency.

Third, the bill should apply a five-year waiting period for tax credits and cost-sharing subsidies under the Affordable Care Act for individuals going through the Blue Card or registered provisional immigrant pathways. A similar five-year waiting period already applies for legal immigrants to receive benefits under other federal means-tested health programs like Medicaid and the Children's Health Insurance Plan.

Fourth, the bill should prevent immigrant applicants from claiming unauthorized earnings to gain eligibility for Social Security coverage. This is essential to protecting the integrity of the Social Security system.

Each of these issues represents an opportunity to improve the underlying bill. I look forward to working with the authors of the bill to address these concerns. Once again, while I supported reporting this legislation out of the Judiciary Committee, my contin-

ued support for the bill is contingent on whether these vital matters are addressed in a reasonable and productive way.

ORRIN G. HATCH.

MINORITY VIEWS FROM SENATORS GRASSLEY, SESSIONS, LEE AND CRUZ

In 1986, the American people were promised that, in exchange for granting amnesty to millions of individuals illegally present in the United States, the border would be secured and the laws enforced. These promises were never kept. Unfortunately, S. 744 repeats these past mistakes and does very little to deliver more than the same empty promises.

Our immigration system is broken. We are committed to passing legislation that will provide a long-term solution to enhance legal immigration while deterring illegal immigration. We believe the Congress should pass legislation to secure our borders, enhance national security, improve visa processes, hold employers accountable, foster economic opportunities and provide better legal immigration avenues for people who are willing to work in the United States.

During the Senate Committee on the Judiciary's (Committee) consideration of S. 744, common-sense amendments offering real solutions were systematically rejected. Further, the bill's already serious flaws were exacerbated by the adoption of several amendments that significantly weaken current law, hamstring law enforcement, increase costs, and further complicate our legal immigration system. While some of the amendments made necessary improvements, the core provisions of the bill remain the same, leaving our borders unsecure and our immigration system deeply dysfunctional.

Real reform is what Americans deserve, and what we have a responsibility to deliver. Therefore, we were left with no choice but to oppose the bill. Given the enormous scope of this legislation and the long list of problems with the bill, we state here the primary reasons we were compelled to oppose S. 744.

LEGALIZATION BEFORE BORDER SECURITY

The bill grants legal status for people here illegally as soon as the Secretary for Homeland Security (Secretary) submits a "plan" to secure the border—not when the border is actually secured. The bill requires the Secretary, within 6 months of the bill being signed into law, to submit a "Comprehensive Southern Border Security Strategy" as well as a "Southern Border Fencing Strategy." After those so-called plans are submitted to Congress, the Secretary can start processing applications to legalize the estimated 11 million people that are in the United States. The result is that the undocumented population receives Registered Provisional Immigrant (RPI) status after a mere plan is submitted.

RPI status is more than probation. RPI status is legalization.

After the Secretary notifies Congress that she believes her plan has been accomplished, newly legalized immigrants (Registered

Provision Immigrants or RPIs) are given a path to obtain green cards and a special path to citizenship.

No one disputes that S. 744 provides legalization first and enforcement later. Without ensuring adequate border security and interior enforcement, the cycle is destined to repeat itself.

The bill offers more of what the American people are used to from Washington: plans, commissions, studies, and gimmicks. The border security plans written by the Secretary need only be "substantially" completed and implemented a decade down the road before green cards are distributed to millions of people. Despite attempts to improve the triggers, they remain inefficient and ineffective.

During markup, the Democrat majority and the bill's sponsors voted down every attempt to mandate meaningful control of our borders—including provisions required by current law, and even those included in the failed 2007 immigration bill. An amendment to require the Secretary to certify to Congress that she has maintained effective control over the entire southern border for 6 months before legalization begins was rejected.[1] An amendment to require objective metrics for determining border security was defeated.[2] Amendments to significantly increase border security personnel, assets, and completion of border fencing were rejected.[3] Finally, an amendment to retain current law and to maintain 100 percent operational control of the border as defined in the Secure Fence Act was also voted down.[4]

Under the Secure Fence Act of 2006, Congress required that the entire border should be 100% operationally controlled by the Department of Homeland Security. This was also the metric the Senate used as a trigger in the 2007 immigration bill. Under current law, operational control means the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband. S. 744 substantially weakens current law by only requiring the southern border to be "90% effectively secured."

Furthermore, S. 744 weakens the ability of Congress to have a say in the border security plans put together by the Executive Branch. Who is going to ensure that the strategy the Secretary submits is sufficient, thoughtful, and feasible? What if the strategy she submits lacks sufficient detail, or does not address issues that agents in the field are concerned about? Congress has to hold the Secretary accountable. Congress should vote on the strategies. An amendment to require fast tracked Congressional approval of the Secretary's border security plan and her assessment of its completion was rejected.[5]

The bill also substantially weakens current law mandating a biometric entry/exit system at all ports of entry (air, land, and sea). In 1993, when the first World Trade Center bombing occurred, Congress required the Executive Branch to develop a system to track the entries and exits of all foreign nationals. Despite the fact

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[1] Grassley4.
[2] Cornyn1.
[3] Cruz1 and Sessions9.
[4] Sessions11.
[5] Lee4.

that this biometric entry/exit system has been mandated in six different statutes dating back to 1996 and recommended by the 9/11 Commission, administration after administration has dismissed the need to implement an effective entry-exit system. An amendment to retain current law and control the flow of people coming and going was rejected on several occasions.[6] Instead, the bill provides for a non-biometric exit system, which is easily circumvented through fraud, and only provides the exit system at air and sea ports.

The bottom line is that this bill provides for legalization, but does not secure the border. The triggers in this bill are meaningless hurdles that allow for the immediate processing and granting of initial RPI status. The result is de facto amnesty because these individuals will be admitted lawfully into the United States. Once these immigrants are no longer "undocumented," the urgency to meet existing enforcement deadlines will dissipate. Moreover, legalizing the current undocumented population before our borders are secure assures that this bill will only cause another buildup of undocumented individuals. The American people and those individuals who have rightfully waited their turn in line and gained citizenship deserve better than the approach set forth by this bill.

LEGALIZATION PITFALLS AND LOOPHOLES

Time and time again, we have been told that S. 744 will allow people here illegally to register and "earn" legal status, then become contributing members of society. However, the bill fails to address just how to prevent a continued influx of individuals who will replace those currently "living in the shadows."

Remarkably, the bill virtually suspends enforcement during the two and a half year legalization application period, and prohibits law enforcement from detaining or removing anyone claiming eligibility, without any requirement to prove that they are, in fact, eligible. Law enforcement is even required to inform those here illegally about legalization and give them the opportunity to apply. Under the bill, undocumented immigrants already here can apply for and receive RPI status even if they have committed document fraud, provided false statements to authorities, and absconded court-ordered removal proceedings.

During this time, there is an "enforcement holiday," limiting the ability of enforcement officers to detain or remove any individual who merely claims eligibility for RPI status, regardless of whether there is proof to back up that claim.

Perhaps the "enforcement holiday" would only be mildly concerning if we were dealing with individuals who had only violated civil immigration laws. Unfortunately, the bill extends to those with criminal records. This includes individuals who have gang affiliations, felony arrests, and multiple misdemeanor criminal convictions. Moreover, the bill permits individuals who attain RPI status to continue criminal behavior, so long as their behavior and subsequent convictions remain below the eligibility threshold. In fact, S. 744 goes even further and provides the Secretary waiver

[6] Sessions4 and Sessions6.

authority in order to dismiss misdemeanor criminal convictions for purposes of determining eligibility for RPI status.

Further, the bill does not limit those outside the country from applying for RPI status. The bill states that individuals who have previously been deported or otherwise removed from the country are ineligible for RPI status. However, one need only turn a few pages to discover the Secretary has sole and unreviewable discretion to waive this provision and permit large classes of individuals to apply for RPI status. Another waiver is provided that allows individual aliens who have been removed, or reentered illegally, to apply for status if they are fortunate enough to have a relative who does, in fact, qualify for RPI status. This weakens and undermines current law, where Congress has already declared that individuals who reenter illegally are not entitled to immigration benefits.

Amendments to prohibit those ordered removed, those currently in removal proceedings, and those who have absconded and failed to show up for removal proceedings from applying or being granted legal status were voted down.[7] An amendment to prohibit spousal abusers, child abusers, drunk drivers, and other serious criminals from obtaining legal status was also rejected.[8]

The process for obtaining RPI status is ripe for abuse and potentially encourages crafty behavior for individuals to game the system. Under the bill, individuals applying for RPI status are permitted to file numerous amended applications in the event their initial application is denied for failure to complete properly or provide required documentation. In practice, one could continue to file numerous amended applications, knowing each application is incomplete, resulting in a perpetual limbo where an individual can remain here for an indeterminate time without any possibility of removal.

Another area of potential abuse permits otherwise ineligible individuals to remain indefinitely in the United States. Sections 2104, 2105, and 2212 combine to provide for a stay of removal until a newly created administrative appellate review process of the application has been exhausted. One need only imagine the vast loophole created that will allow ineligible applicants to remain in the United States pending a typically extremely lengthy review process. Moreover, this, like the other provisions discussed above, provides an incentive for ineligible applicants to file for relief. When combined with a never ending application process and an expansive, time consuming appeals process, individuals can remain here for years without ever obtaining RPI status, and without any fear of removal.

We tried to close loopholes and strengthen the legalization program through amendments. For example, an amendment to require a person here illegally who applies for legal status to disclose his or her previous identity theft and the social security numbers used, and allow for agencies to notify rightful assignees was rejected.[9] An amendment to remove "sworn affidavits" from the list of documents that RPIs may use to satisfy the employment requirement for ob-

[7] Grassley11 and Lee8.
[8] Cornyn3.
[9] Grassley18.

taining a green card was also rejected.[10] Amendments to require illegal immigrants to pay back taxes before receiving legal status, to clarify eligibility for the child tax credit, and to limit the earned income tax credit were voted down.[11] An amendment to provide that individuals who have been unlawfully present in the United States are ineligible for federal, state, or local means-tested welfare benefits was also rejected.[12] Finally, an amendment to ensure that all applications could be filed electronically, and that the Secretary develop a detection and deterrence plan against benefits fraud was voted down.[13]

S. 744 provides many avenues for people here illegally to receive taxpayer funded assistance in filing their applications for legalization. First, the bill creates a $50 million grant program for nonprofit organizations to: 1) inform the public regarding the legalization program; 2) screen individuals to ascertain their eligibility; 3) assist people here illegally in submitting applications for RPI status and waivers; and 4) assist individuals with regard to the rights and responsibilities of U.S. citizenship, including civics and English requirements, and how to apply for citizenship. Second, S. 744 allows the government to create a new public-private partnership called the United States Citizenship Foundation. The focus of this new Foundation is to expand citizenship preparation programs, and to coordinate immigrant integration with state and local entities. U.S. Citizenship and Immigration Services already perform many of the same functions, rendering it redundant. Combined, these grants and this new foundation expand the role of government and expend unnecessary funds from the already stretched resources of the American people.

CONGRESS SHOULD LEGISLATE, NOT DELEGATE

We are concerned that the bill provides unfettered and unchecked authority to the Executive Branch, and mainly to the Secretary. On almost every other page, there is language that allows the Secretary to waive certain provisions of law. The Secretary may define terms as she sees fit. In many cases, the discretion is unreviewable, both by the American people and by other branches of government.

The Secretary has $8.3 billion immediately at her disposal with no accountability to Congress, no parameters on how taxpayer funding will be spent, and no assurance that the funding will be repaid to the Treasury as the authors intend.

As drafted, S. 744 permits the Secretary to provide legal status to millions of people here illegally simply after the mere submission of a border security and fencing strategy. The bill gives almost sole discretion over the plans and implementation of these strategies without any input from Congress. Will a Secretary who believes that the border is stronger than ever before be willing to make it stronger? Will a Secretary who does not believe a biometric exit system is feasible ensure that a mandated system is put in place?

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[10] Lee12.
[11] Lee10, Sessions30 and Sessions31.
[12] Cruz2.
[13] Sessions16.

Will a Secretary who does not believe anything should stand in the way of legalization ensure that the triggers are achieved?

The application period for people to apply for RPI Status is estimated to take 12 months. However, the Secretary has the authority to extend that time period an additional 18 months. In addition to unilaterally determining how long the application period should last, the Secretary can waive fees and penalties for anybody and everybody that applies. Additionally, the Secretary can excuse certain behavior and determine what documentation or evidence is acceptable.

If passed, S. 744 will give unlimited power to the Executive Branch to define the terms and conditions of enforcement actions against people here unlawfully. Certain companies can be exempt from the employment verification participation requirement. The Secretary of State has the authority to limit in-person interviews of visa applicants abroad, and the Secretary of Homeland Security is not required to interview anyone that applies for RPI Status. The proponents of the bill claim that more manpower will be provided for, but it allows the Executive Branch to determine if 3,500 new Customs and Border Protection Officers will be assigned to the border or customs responsibilities.

The unfettered grant of waiver authority is further illustrated by a section that provides the Secretary and Immigration Judges to waive certain crimes that would otherwise make an individual ineligible for legal status. This broad grant of power undermines the immigration laws and creates serious problems. Immigration Judges and the Secretary are essentially granted prosecutorial discretion to allow an inadmissible individual, who may also be in removal proceedings, to remain in the country if failure to do so is "against the public interest or would result in hardship to the alien's" family. It is hard to imagine any situation where some type of "hardship" would not be present. This provision leads us down a path with many unknown consequences that have not been examined.

With regard to the future flow and legal guestworker program, the Executive Branch has the ability to change the number of "W" nonimmigrants allowed into the United States. Again, without input from Congress, the administration can determine how many workers, what types of workers, and how employers are monitored through the program.

There are hundreds of examples of waivers, grants of discretion, and authorities for the Executive Branch to define our immigration laws. Simply stated, S. 744 provides too much discretion to the Executive Branch with little or no oversight and effectively passes responsibility from Congress to the Executive Branch to implement it by Administrative fiat.

WEAKENING OF CRIMINAL LAW AND ENFORCEMENT EFFORTS

One of the major reasons why immigration is a subject of significant public interest is the failure of the federal government to enforce existing law. Eleven million people have unlawfully entered the country or overstayed their visa because the federal government did not deter them or take action to remove them. S. 744 significantly weakens current criminal laws and will hinder the abil-

ity of law enforcement to protect Americans from criminal undocumented aliens.

Enforcement of the immigration laws has been lax and increasingly selective in the last few years. As a result, States have been forced to deal with the criminal activity that surrounds the flow of people here illegally. They have stepped up efforts to control the effects of illegal immigration within their borders. The States should be able to protect their people and stem the lawlessness within their borders. Yet, time and again, this administration has denied them the opportunity and tried to stop them.

Despite the name of title III, "Interior Enforcement," the reality is that the bill does almost nothing to strengthen and enhance our interior enforcement efforts. It does nothing to encourage federal, state and local law enforcement efforts to apprehend and detain illegal aliens who pose a risk to our communities. It ignores sanctuary cities, and effectively sends a signal to states with enforcement-minded laws that they have no authority to control their own borders.

Unfortunately, the bill fails states and local jurisdictions even more. Nothing in the bill would enable the States to control their own borders when the federal government does not. Nothing in the bill would enhance federal-state cooperation in enforcing immigration laws against people who are in the country illegally. The federal government will continue to look the other way as millions of new people enter the country illegally. Meanwhile, the bill gives the States no new authority to act when the federal government refuses to act. Unfortunately, an amendment to accommodate a state or local's request for federal assistance through the 287(g) program was rejected.[14]

Proponents of S. 744 claim that the bill includes the single largest increase in immigration enforcement in American history. They say that mandatory electronic employment verification is the solution to future illegal immigration. Yet, it's concerning that S. 744 delays for years the implementation of a mandatory electronic employment verification system, through which 99.7 percent of all work eligible employees are confirmed immediately today. As drafted, the bill gives some employers a free pass in participating, while some employers will not be required to use the system for at least six years after enactment. An amendment to require implementation of the new system within 18 months for all employers was rejected.[15] Another amendment to delay the preemption of all state E-Verify laws until the new system is fully implemented was also rejected.[16]

Another concern that fell on deaf ears during Committee consideration of S. 744 was the dangerous and unnecessary change to existing criminal law. While the bill does increase the punishment in several cases, it also increases the thresholds required for actions to constitute a crime.

Under current law, it is a misdemeanor for a foreign national to unlawfully attempt to enter the United States. Section 3704 removes "attempting to enter the United States" as a crime. There-

[14] Sessions32.
[15] Grassley29.
[16] Grassley35.

fore, under the bill, a person here illegally can attempt to cross the border as many times as he likes without any consequences, taxing already limited resources. Only when the illegal alien successfully enters the United States will he be charged with a crime. This does not deter illegal aliens from crossing the border nor does it punish an existing criminal act. Instead, it will likely encourage illegal immigration.

Section 3704 weakens existing law by punishing persons only if they have already been convicted of 3 or more misdemeanors on different days. Therefore, under the bill, an illegal alien can commit many more than 3 misdemeanors, as long as he is convicted of them all on the same day. This will undoubtedly lead to additional crimes that go unpunished and undeterred by these dangerous changes to existing law.

Additionally, Section 3705 of the bill only punishes illegal aliens who are removed from the country three or more times. Effectively, it gives a pass to all aliens who come into the country three times before they are caught and removed those three times. Consequently, the bill encourages an illegal immigrant to attempt, or even cross the border up to three times before any serious consequence will be administered. We are concerned that this encourages, rather than discourages illegal behavior.

Section 3707 weakens the current law regarding passport fraud. Under the bill, only those who make and distribute illegal passports three or more times will be charged with a crime. As a result, the bill gives a pass to criminals, including possible terrorists, to make illegal passports multiple times before being punished under the law.

S. 744 would also allow a person to knowingly purchase materials for making illegal passports, but only charge the person with a crime if ten or more passports are made. So, effectively this bill would weaken current law by allowing the knowing purchase of materials to make illegal passports. Why does the bill allow a person to knowingly break the law, but not punish them for it? Purchasing and collecting the materials to make a fraudulent passport is just as harmful a crime as actually making the illegal fake passports.

This section of the bill also tries to remove criminal liability from users of illegal passports and immigration documents. This is unwise, dangerous, and does very little to stop illegal activity. If there is not a market for illegal documents, there would be no makers of illegal documents. We are concerned that this bill as written will encourage the making of fraudulent documents threatening our national security and weakening our security at the borders and points of entry.

The purpose of the federal criminal code is to punish criminal activity and to deter illegal behavior. However, this bill fails to achieve both of those goals. An amendment would have reinstated current law for these provisions ensuring we do not create a situation where illegal entry and document fraud run rampant, but it was rejected.[17]

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[17] Grassley43.

We are also concerned that the bill is weak on foreign national criminal street gang members. The bill creates a convoluted and useless process for determining when foreign national members of criminal street gangs are admissible. Section 3701 requires that the Department of Homeland Security must prove that a foreign national is a member of a criminal street gang, has a prior felony conviction for drug trafficking or violent crime, and that they have knowledge that the gang is continuing to commit crime and that the individual has acted to further gang activity. Even if this near impossible standard is met, the bill would allow the Secretary to waive the foreign national through the immigration process if the foreign national merely renounced his association with the criminal gang, even if the foreign national meets all the above criteria. Simply stated, this provision will undoubtedly allow more criminal street gang members admission into the country despite their continued or known association with dangerous criminal street gangs.

Current law already states that foreign nationals who have federal felony drug trafficking or felony violent crime convictions are subject to deportation or are inadmissible to the United States. Section 3701 will not be used, then, because it is easier to prove that someone is a convicted drug trafficker, than to prove they are both a drug trafficker and gang member.

This legislation is dangerous and represents a serious blow to national security. Criminal street gangs are plagues on communities, but are particularly dangerous to immigrant communities, often times praying on recent immigrants to further their criminal activities that include drug trafficking, prostitution, sex trafficking, and other violent crimes.

An amendment was offered that would have protected the United States from dangerous foreign nationals by expanding the number of serious crimes that prevented admissibility or allowed deportation of foreign nationals.[18] That amendment also shifted the burden of proof onto the foreign national to prove he is not a danger to the community and is not in a criminal gang—similar to a provision in existing law requiring the burden be placed on suspected terrorists to prove to the Secretary that they are, in fact, not terrorists. This amendment would also have corrected the unnecessary provision granting the Secretary the ability to issue a waiver; instead it gives discretion to immigration judges to determine if the foreign national is a danger to the community. This amendment was unfortunately rejected along a party-line vote of the Committee, notwithstanding the Committee members recognizing the importance of the issue and the dangers created by the new loopholes the bill has created for foreign national gang members.

With regard to domestic violence, we are pleased that the bill makes domestic violence an inadmissible offense. Current law already makes domestic violence an offense for which an alien can be removed, so this change is long overdue. However, the bill makes it harder for an immigrant to be inadmissible for the same crime for which he can be removed. Under the bill, an undocumented immigrant must have served at least one year in prison for domestic violence to be inadmissible. This one-year prison require-

[18] Grassley45.

ment is not the same standard for removing an abuser, thus potentially allowing such individuals to remain in the country.

We are also deeply concerned that this bill makes it harder for the government to detain people here unlawfully, including even serious criminals. Section 3717 places new, onerous burdens on the government when it detains undocumented immigrants, including those who have committed serious crimes and are aggravated felons. The current Administration is already releasing criminal aliens without just cause. In February 2013, the Department released 622 illegal aliens who had been convicted of crimes, including 32 with multiple felony convictions.[19]

S. 744 also fails to protect the safety of the American people by not addressing the Supreme Court decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001). This holding has hindered detention operations of the federal government. In Zavydas, the Court held that immigrants admitted to the United States that are subsequently ordered removed could not be detained for more than 6 months if the government is unable show that there is a likelihood of removal in the reasonable future. Four years later, in *Clark v. Martinez*, 543 U.S. 371 (2005), the Supreme Court extended the decision to people here illegally as well. As a result, the Departments of Justice and Homeland Security have had no choice but to release thousands of dangerous, violent foreign nationals into our neighborhoods.

These decisions have a serious impact on public safety. If the Department of Homeland Security cannot obtain travel documents or if the country of origin refuses to take back their nationals, then the U.S. Government has no recourse except to release the individual. As a result, dangerous persons are allowed to go free into the community and cause harm. For example, six years ago, a Vietnamese immigrant was ordered deported after serving time in prison for armed robbery and assault. He was never removed because these Supreme Court decisions handicapped federal authorities. Immigration officials could not deport him without the cooperation of the Vietnamese government which declined to cooperate. When released, the individual purportedly killed five people in a San Francisco home in March 2012.

This is a real problem with serious consequences. There are many other criminal aliens that warrant deportation that were subsequently released because of these decisions. According to statistics provided by the Department of Homeland Security, there are many countries that are not cooperating or that take longer to repatriate their nationals. Countries like Iran, Pakistan, China, Somalia and Liberia are on their list. These decisions have placed a stranglehold on enforcement operations, yet S. 744 does nothing to address this issue.

While S. 744 fails to acknowledge the need to enhance enforcement efforts, amendments that further undermine law enforcement were accepted by the committee. For example, one amendment would prohibit Border Patrol from returning illegal border crossers to Mexico during nighttime hours absent certain circumstances.[20]

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[19] *http://www.foxnews.com/politics/2013/05/16/ice-admits-hundreds-illegal-immigrants-with-criminal-records-released/*.

[20] Coons2.

Another amendment would limit enforcement actions at certain locations, including college campuses and hospitals, essentially turning public places into sanctuary shelters.[21]

Immigration enforcement officials told Congress and the committee that agents in the field were handicapped from enforcing the laws on the books. This bill does little to nothing to help; rather it further undermines their efforts and diminishes the responsibilities they swore to uphold.

Finally, S. 744 facilitates fraud in our immigration system, undermines identity theft protections, and does very little to hold perpetrators accountable. The Committee failed to include an amendment that would criminalize the use of a social security number when the immigrant knows the number is not his own, but does not specifically know the number belongs to another individual.[22] This amendment would have fixed the holding in the Supreme Court case Flores-Figueroa. In effect, the government must prove that the thief knew he or she is stealing a real person's identity, not just creating what he or she believes is a fake document. Identity theft is a horrible crime. It effectively robs an honest American of his or her good name and credit. It is even worse when the identity is that of a minor child who has their social security number stolen for years, only to learn about the identity theft when they apply for a job, college, or a loan. Unfortunately, the amendment to fix this problem was rejected.

NATIONAL SECURITY CONCERNS

While proponents of S. 744 contend that the bill will make America safer, we have concerns that the bill will put public safety and the homeland at risk. The bill contains extremely dangerous national security loopholes, including the inability of the U.S. government to share information with foreign governments about immigrants who have had their status revoked. An amendment to preserve the ability of law enforcement to access critical national security and public safety information and to authorize the Secretary of State to share limited information with a foreign government, while protecting legitimate privacy interests, was rejected.[23]

As previously noted, under S. 744, the Secretary of State has the authority to limit in-person interviews of visa applicants abroad, and the Secretary of Homeland Security is not required to interview anyone that applies for Registered Provisional Immigrant Status. We learned a valuable lesson after September 11, 2001, because the hijackers were not interviewed and applications were rubber-stamped. An amendment to require aliens who may be a threat to national security to submit to an in-person interview with a consular officer when applying for a visa was voted down.[24]

We also learned that there are gaping holes in the student visa process, yet the committee rejected attempts to delay the expansion

[21] Blumenthal8.
[22] Grassley34.
[23] Cornyn5.
[24] Sessions13.

of the student visa program until the tracking system in place was improved.[25]

An amendment to clarify the authority of the Secretary of Homeland Security and the Secretary of State to refuse or revoke visas when in the national interest, as was the case with the Christmas Day bomber, was also rejected.[26]

S. 744 does not address the concerns brought to the surface by recent events like the Boston terrorist bombing. We are profoundly troubled with the lack of concern about lessons that can be learned from the failings of the immigration process, which may have contributed to recent events like the Boston terrorist bombing. We need to understand and address these failures before proceeding with some of the provisions in this bill, especially the asylum and student visa expansion measures. Putting revised procedures in place before gaining understanding of what does not work in our current system is not good stewardship of the trust the People have placed in us. Our nation's security is at risk and we cannot ignore it. We need to understand what is wrong with the system to prevent events like the Boston Bombing from happening again. However, an amendment to delay an expansion of asylum and student visa programs until there has been a coordinated review detailing the intelligence and immigration failures of the Boston Marathon terrorist attack was ultimately rejected.[27]

Our national security must be a paramount concern with any immigration reform. Eliminating weaknesses in our system, including along the border and in the interior, would make our nation safer. Regrettably, this bill falls short of this goal.

UNNECESSARY EXPANSION OF JUDICIAL REVIEW, BURDENSOME COURT PROCEDURES, FRIVOLOUS LITIGATION, AND INCREASED COSTS FOR THE AMERICAN TAXPAYER

This bill and its amendments raise important concerns over the expansion of judicial review and access to United States courts in immigration cases, the imposition of burdensome court procedures, and the encouragement of frivolous litigation, all which implicate the unnecessary use of taxpayer dollars.

We are concerned that the bill gives unnecessarily broad judicial review of the denial of any application, which would necessarily create a litany of litigation and undermine the enforcement of our immigration laws. Any denial of RPI status can be reviewed in any district court and circuit court throughout the country. Applicants can challenge *anything* with respect to their application and can appeal their case through the various levels of review at the Department of Homeland Security and within the federal court system. This broad review is unnecessary because a review process already exists within DHS. Currently, an individual may appeal a denied application to the Department's Administrative Appeals Unit for a completely new review of the application. Unlimited access to the federal courts only allows for another unnecessary and costly bite at the apple.

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[25] Grassley68.
[26] Sessions15.
[27] Grassley52.

In addition, we are concerned that the bill treats these reviews as a right rather than a discretionary benefit. Consequently, the federal courts will be inundated with petitions for review if the Secretary denied even a small portion of the millions of applications that will be filed under RPI, the Agricultural Blue-Card program, and other visa programs. The Judicial Conference of the United States has expressed its serious concerns over the increased workload for the federal court system looming in this bill.

S. 744 also encourages individuals with meritless applications to take advantage of the review system for one important benefit: an undocumented immigrant who applies for RPI status cannot be deported or detained so long as their application is pending with the Department, and in some circuits, the federal court system. The timeframe of the pending appeal could span a decade. The addition of class action lawsuits to the workload of the courts only amplifies the delays, and the potential for court interference if the Secretary dares to deny RPI status to an individual. One need not even exhaust administrative remedies in order to file a class action lawsuit under the bill. We are concerned that this will result in tying the system completely in knots and render the Department unable to reasonably administer the legalization program.

Class actions are particularly troublesome under the bill, as Section 2104 specifically authorizes such litigation over any "regulation, written policy, or written directive, issue or unwritten policy or practice initiated by or under the authority of the Secretary of Homeland Security." We are concerned the harmful effect of this provision will be that lawyers will be able to use federal funding to file class action lawsuits against the government any time they believe a particular policy or action of the Department of Homeland Security was not lenient enough or did not give their clients everything they desired. An amendment to address concerns with the scope of federal court review and class actions was rejected.[28]

In addition, Section 3502 of the bill creates a right to counsel at taxpayer expense for people who are here illegally and in immigration proceedings, including a right to counsel for "aliens considered particularly vulnerable when compared to other aliens in removal proceedings." Currently, there is no right to counsel for people who are here illegally. Immigrants have a right to obtain counsel, but not for counsel to be provided to them at taxpayer expense. Yet, the bill provides the Attorney General with the sole and unreviewable discretion to appoint counsel to any alien in removal proceedings. Such a broad standard gives the Attorney General almost unlimited power to appoint these aliens counsel at the taxpayers' expense.

Moreover, Section 2212 allows for the Legal Services Corporation ("LSC") to provide legal services to aliens for various issues, including their application for "blue card" status as agricultural workers under Section 2211, grievances against employers for the same agricultural workers under Section 2232, and any Title III, Subtitle F claims, which may entail a broad array of civil rights, employment, or class action claims. The LSC is a federally funded nonprofit that provides legal services for low-income *Americans*. Ex-

[28] Grassley 17.

tending these federal dollars to provide for noncitizens immigration services is unprecedented and unwarranted given the increasingly high costs.

Adding to these costs, Section 3503 directs the Attorney General to establish an Office of Legal Access Programs to educate aliens of their legal rights and available procedures under United States immigration law within five days of their arrival, as well as establish other programs to assist immigrants. We are concerned that these programs will just facilitate the filing of lawsuits.

We strongly believe that the taxpayer should not have to pay for these legal counsel expenses. These costs have never been borne by the American taxpayer, and we are deeply concerned that these unprecedented provisions will increase delay and meritless litigation, not reduce it. Undocumented individuals already have a number of options in order to obtain legal help in their immigration proceedings. For example, there are a number of grant programs that provide legal assistance to illegal immigrants in immigration proceedings. Law firms have pro bono programs and law schools have legal clinics where attorneys and law students provide legal services to people who are here illegally.

Even under the current system, more and more illegal immigrants are getting legal representation in immigration court. In 2012, 56 percent of aliens were represented in the immigration courts, which is an increase from 45 percent in 2009.[29] Also, 79 percent of aliens were represented on appeal in 2012 before the Board of Immigration Appeals.[30] For those aliens who are not represented in immigration court, the immigration judges under current policies take extra care and spend additional time to make sure that the individual understands the proceedings and his or her rights and responsibilities under the law.[31]

Further, under Section 3501, the bill mandates that the Attorney General increase the total number of immigration judges, support staff, staff attorneys and other positions in the immigration courts. However, it is not clear how the bill sponsors came up with the numbers contained in the bill, or what the effect of the legislation will be on the workload of the immigration court system. In fact, it is possible that the effect of the legislation will be to reduce the workload of the immigration court system—at least initially—because RPI applicants cannot be removed.

As stewards of the taxpayer dollar, we strongly believe that there should be an informed determination as to what the impact of this bill is on the immigration caseload and how many people are actually necessary to do the job. There should not be a mandate of specific numbers of hires in the bill before that information is available.

We are concerned that the bill adopts a number of provisions that impose burdensome procedures on the immigration system. For example, Section 3717 of the bill provides that the Department of Homeland Security can only request a period of up to 72 hours

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[29] DEPARTMENT OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, FY 2012 STATISTICAL YEARBOOK, AT FIGURE 9.

[30] Department of Justice, Executive Office for Immigration Review, FY 2012 STATISTICAL YEARBOOK, AT FIGURE 30.

[31] Department of Justice, Executive Office for Immigration Review, FY 2012 STATISTICAL YEARBOOK, AT G1.

before a bond hearing must occur. If this artificial timeframe is not met, an alien would have to be released, even if DHS is trying to obtain critical evidence. Current immigration court procedures already take into account that illegal immigrants should receive a bond hearing expeditiously.[32] The failure to appear rate for aliens released on bond in immigration court has risen from 22 percent in 2009 to 29 percent in 2012. We are concerned that this provision will cause people in removal proceedings to be released on bond to not appear for their hearings, thus posing a serious public safety risk.

Moreover, this provision requires that Immigration Judges hold bond hearings every 90 days for any alien in custody, even if there are no changes in circumstances and even if the alien is the reason for the delay in getting the case resolved. Under current law, a person receives a bond hearing if there is a change in circumstances. We are concerned that this requirement will clog the immigration courts with an unprecedented number of unnecessary bond hearings and result in a drain of resources. An amendment to address concerns with these unworkable bond hearing requirements was rejected.[33]

Another costly drain of resources results from the high number of aliens from noncontiguous countries ("Other Than Mexico" or OTM) that illegally cross our southern border. The total cost for the U.S. to place these individuals in court proceedings and remove them to their respective countries is necessarily far greater than the removal of aliens in the Mexican population. We are concerned that the bond requirement for these individuals is too low and does not serve as a sufficient deterrent against entering this country via Mexico. As of April 2, 2013, the OTM numbers on the southwest border were up 67 percent from Fiscal Year 2012 to Fiscal Year 2013.[34] We know that some of the OTMs include terrorists who enter the U.S. via the southern border. Secretary Napolitano has testified before Congress to that fact.[35] We also know that a majority of OTMs fail to appear for their immigration proceedings and simply disappear into the United States. Increasing bonds for these nationals would deter absconders, assist CBP and ICE in covering detention and removal costs, or at minimum, provide a disincentive to cross. An amendment to increase the minimum bond of aliens who are OTMs from $1,500 to $5,000 was narrowly defeated.

Finally, we are also concerned with Section 3504's requirement that the Board of Immigration Appeals produce written opinions addressing all issues raised—regardless of whether they are relevant or have any effect on the outcome of a case. These requirements will just make the decision-making process more time-consuming and burdensome, as well as increase backlog problems. We are concerned that these requirements will also encourage litigation and make it easier to file frivolous appeals in federal court.

Overall, this bill is a handout for immigration lawyers, providing numerous avenues for individuals to bring lawsuits and opening up

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[32] Department of Justice, Immigration Court Practice Manual, at 125.
[33] Grassley47.
[34] Border Patrol Daily Report from April 2, 2013.
[35] House Committee on Homeland Security hearing "Understanding the Homeland Threat Landscape," July 25, 2012.

the already-burdened district courts to run of the mill immigration cases. This will inevitably flood and bog down the system. Moreover, the bill imposes burdensome and unnecessary procedures that will just frustrate enforcement of our immigration laws. Rather than bogging down the system with litigation and unworkable requirements, we should be enhancing the ability of our law enforcement community to administer the immigration laws.

CONCLUSION

This bill has a long way to go to meet the demands of the American people. Serious considerations must be given to the bill's shortcomings, including but not limited to the cost, the lack of border security, the unlimited and unreviewable discretion to the Executive Branch, the ramifications to national security, the ability to hold perpetrators of fraud and abuse accountable, and the weakening of criminal law.

More importantly, S. 744 does not fix our legal immigration system. Everyone acknowledges that our legal immigration system needs improving. This bill takes a step forward in creating a merit-based system, but backhandedly provides some favoritism to low skilled and family based connections. It complicates our legal immigration system by creating even more categories of visas and reducing transparency through a series of exemptions from visa caps.

Further, S. 744 provides a special path to citizenship for people who intentionally broke our laws even before the borders are secured. The Committee rejected an amendment that would have allowed immigrants here illegally to obtain legal status—to come out of the shadows and work legally—but not to be eligible for citizenship.[36] The bill proponents said that citizenship is essential to reform; indeed, a senior Democrat confessed, "If we don't have a path to citizenship, there is no reform."

Rewarding those here illegally with citizenship is not reforming our immigration system. The special path to citizenship provided in this bill is unfair to millions of legal immigrants who follow the law. Furthermore, combined with weak border and interior enforcement measures in this bill, this special path to citizenship only encourages more illegal immigration.

At the end of the day, we must ask ourselves if the bill will solve the problem once and for all. One way to measure that is by ensuring that we are tough on people who enter the country after the law is passed. Amendments to signal a zero-tolerance policy for future lawbreakers were defeated, sending a clear message that enforcement measures will be lax in the years ahead. "Reform" is not a word to throw around loosely to sell this product to the American people; it must truly achieve reform so that future generations do not have to deal with the same problems as this Congress.

S. 744 fails to deliver anything more than the same empty promises Washington has been making for 30 years. The last thing this country needs right now is another 1,000 plus page bill that, like Obamacare, was negotiated behind closed doors with special interests.

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[36] Cruz3.

We want immigration reform to pass, but only if it actually fixes the broken system, rather than allowing the problems to grow and fester. For these reasons, we could not support the bill in its current form.

CHARLES E. GRASSLEY.
JEFF SESSIONS.
MIKE LEE.
TED CRUZ.

MINORITY VIEWS FROM SENATORS GRASSLEY AND SESSIONS

S. 744 Fails To Adequately Protect American Workers and Neglects To Hold Employers Who Use the H–1B and L Visa Programs Accountable

In 2008, the United States Citizenship and Immigration Services (USCIS) highlighted the fraud in the H–1B visa program and found that some employers who use the program violate the law in various ways. The agency's Benefit Fraud and Compliance Assessment has highlighted the rampant fraud and abuse that is taking place in the program. The internal report by USCIS showed a 20% violation rate of a random sample of H–1B petitions. People weren't working where they were supposed to. Documents were forged. Foreign workers weren't being paid what they were promised. Job duties were significantly different from the position description listed in their application to the Department of Labor. Site visits established that the reported business locations were non-existent, there was no evidence of daily business activity, the business locations were unable to support the number of employees claimed, or there was no evidence that the employers ever intended for the beneficiaries to fill the actual jobs offered. According to the report, "In one instance, the position described on the petition and [Labor Condition Application] was that of a business development analyst. However, when USCIS conducted its review, the petitioner stated the H–1B beneficiary would be working in a laundromat doing laundry and maintaining washing machines."

Too often, the fraud and abuse is disavowed by proponents of the program because they falsely see the demand for these visas increase year after year. Yet, they fail to ignore that some companies petition for thousands of foreign workers and that the top ten companies that use the program swallow up over 50% of the supply of available visas. Consider the data from fiscal year 2012.[1]

Rank	Employer	FY 12 H–1B Initial Petitions
1	Cognizant	9281
2	Tata	7469
3	Infosys	5600
4	Wipro	4304
5	Accenture	4037
6	HCL America	2070
7	Tech Mahindra SATYAM	1963
8	IBM & IBM India	1846
9	Larsen & Toubro	1932
10	Deloitte	1668

[1] Analysis by Ron Hira, Professor, Rochester Institute of Technology. Mr. Hira used I–129 data by employer, USCIS, fiscal 2012.

Rank	Employer	FY 12 H–1B Initial Petitions
11	Microsoft	1497
12	Patni	1260
13	Syntel	1161
14	Intel	812
15	Amazon.Com	773
16	Qualcomm	729
17	Google	646
18	PricewaterhouseCoopers	599
19	Synechron	572
20	Mphasis	569

Too often, the easy answer has been to increase the annual caps on the H–1B visa program and allow more foreign workers to enter and work here. There's also been a push against protections for American workers who, we believe, are disadvantaged, displaced, and underpaid because of the program.

Under current law, an employer wishing to bring in a foreign worker under the H–1B visa program must apply to the Department of Labor and state that: (1) the employer will offer the alien the prevailing wage (or actual wage if that is higher); (2) the employer will provide working conditions that will not adversely affect the working conditions of similarly employed workers; and (3) there is no strike or lockout. The application must specify the number of workers sought, the occupational classification, wage rates and conditions under which the alien will be employed.

Under current law, only some employers must attest that they cannot find qualified American workers before petitioning for a foreign worker. These are called H–1B dependent employers. H–1B dependent employers are defined under current law, and again in this bill as employers that have a certain number of H–1B visa holders. For example, a company is H–1B dependent if that employer has more than 51 total employees and of those, at least 15% are H–1B nonimmigrants. These employers have to take good faith steps to recruit U.S. workers and offer the job to a U.S. worker who is equally or better qualified. These employers must also attest that they did not or will not displace a U.S. worker within 90 days of applying.

Under current law, the Secretary of Labor reviews the labor condition applications ONLY for completeness and obvious inaccuracies. The Secretary is required to provide the certification, thus creating a rubber-stamping process. The Secretary, despite indicators of fraud or misrepresentation, is required to approve the labor condition application.

S. 744 takes the right step forward by increasing worker protections for Americans and providing more authority to the Executive Branch to investigate fraud. Unfortunately, the bill is slanted to ensure that only H–1B dependent employers undergo more scrutiny. All employers who bring in H–1B visa holders should be held to the same standard. All employers, not just some, should be required to make a good faith effort to recruit U.S. workers. All employers, not just some, should be required to offer the job to a U.S. worker who is equally or better qualified. All employers, not just some, should be required to attest that they did not or will not dis-

place a U.S. worker within 180 days of applying for an H–1B worker.

S. 744 includes a so-called "market-based escalator" that allows the numerical cap to fluctuate based on demand. It's a complicated cap that the agency won't be able to execute. The cap goes up if businesses apply for the annual allotment of visas in the first few weeks or months of a new fiscal year.

S. 744 attempts to address the concern that employers are able to bring in foreign workers without looking at American workers first. It says that an employer must take good faith steps to recruit U.S. workers, and the employers have to advertise the job on a Department of Labor website. However, the bill states that only *some* employers must offer the job to any U.S. worker that is equally or better qualified, setting up a different standard for employers.

However, the bill also includes a generous, unnecessary, and lucrative carve-out for H–1B dependent employers by allowing them to forego counting "intending immigrants" in their workforce numbers. Because the bill intends to have dual standards in place for employers, H–1B dependent employers who want to get around the worker protections, wage requirements, and displacement rules simply can apply for green cards for their foreign workers and not have to meet the standards in law. The committee rejected an amendment eliminating this carve-out, which would have ensured that all employers are playing on a level playing field.[2]

The bill also includes a provision that allows employers to outplace L–1 visa holders with other employers at a minimal cost. The underlying bill requires that when an L-visa holder is outplaced at a client site, the client must attest that no employee has been displaced 90 days before or after they import the L visa holder. But, for a mere $500, under the bill as drafted, it's acceptable if companies don't attest to this.

Groups that represent American workers have opposed S. 744. The International Federation of Professional and Technical Engineers, a branch of the AFL–CIO which represents 90,000 engineers opposes the bill in its current form saying, "Hundreds of thousands of foreign STEM workers will enter the United States each year for the sole purpose of working in jobs that Americans would normally do." They say that "the bill fails miserably in fixing the worker abuses inherent in the program."

The Communications Workers of America, which represents 700,000 men and women in the telecommunications industry, said that S. 744 will "create preferential treatment for foreign born workers." They further criticized efforts to dilute the requirement that employers offer the job to any United States worker who applies, and is equally or better qualified for the job for which the nonimmigrant is sought. The Communications Workers of American also said, "We can spend millions to educate a STEM workforce but without employers willing to hire these U.S. STEM workers, our work is for naught."

We tried to prevent the dilution of worker protections and require employers to be on equal footing when it comes to hiring H–1B visa holders. The committee rejected an amendment on two occasions that would have ensured that employers make a good faith

[2] Grassley62.

effort to recruit U.S. workers and to hire U.S. workers that are equally or better qualified than a foreign worker.[3]

S. 744 as drafted states that H–1B dependent employers would be required to offer level two wages to an H–1B nonimmigrant. The Secretary of Labor would survey employers to determine the prevailing wage for each occupational classification. The responses to those surveys would then allow the Secretary to determine three levels that are commensurate with experience, education and level of supervision. Level two wages are the "mean" of wages surveyed. An amendment that would require all employers, not just H–1B dependent employers, to pay the new level two wage to H–1B visa holders was rejected.[4]

The committee also rejected an amendment that would sunset, after five years, the provision that authorizes unlimited green cards for STEM advanced degree graduates if there are fewer American students graduating in STEM fields in United States higher educational institutions than were enrolled in such fields on the date of the enactment of this Act.[5]

Earlier in the year, the Judiciary Committee heard testimony from Dr. Karen Panetta, Professor of Electrical and Computer Engineering and Director of the Simulation Research Laboratory at Tufts University. She discussed how offshoring companies dominate the H–1B program, and that their global hiring is 70% men. She said, "In the United States, where outsourcing companies get more than half of the capped H–1B visas, the ratio is more like 85% men." She implied that very few women get H–1B visas, but also that women were being pushed out of STEM fields. The committee rejected an amendment that would have provided more protections for high-skilled female workers.[6] The amendment would have prohibited all employers from displacing women 180 days before or after they apply for a foreign worker, the same 180-day standard that H–1B dependent employers would abide by under S. 744.

Finally, the committee voted down an attempt to hold all employers accountable by allowing the Secretary of Labor to conduct random audits on employers who use the H–1B visa program.[7] Random audits will serve as a deterrent against companies that want to misuse the program. If an employer is hiring foreign nationals, they should be held accountable, and if they're not doing anything wrong, they have nothing to fear.

The H–1B program has served and could again serve a valuable purpose if used properly. However, it's being misused and abused. It's failing the American worker and is not fulfilling the original purpose that Congress intended when it created it. Reforms are needed to put integrity back into the program and to ensure that American workers and students are given every chance to fill high-skilled jobs in this country.

CHARLES E. GRASSLEY.
JEFF SESSIONS.

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[3] Grassley60 and Grassley Second Degree Number 1 to Hatch10.
[4] Grassley Second Degree Number 4 to Hatch 10.
[5] Grassley Second Degree Number 2 to Hatch10.
[6] Grassley Second Degree Number 3 to Hatch 10.
[7] Grassley67.

MINORITY VIEWS FROM SENATORS GRASSLEY, SESSIONS AND LEE

S. 744 Creates Additional, Permanent Article III Judgeships in a Haphazard Fashion Rather Than Addressing the Unlimited Judicial Review Allowed Under the Bill

Creation of Additional Article III Judgeships—Section 1104 of the bill creates eight new Article III judgeships and converts two temporary judgeships to permanent. The eight new Article III judgeships are in the following districts: the Eastern District of California (3); Arizona (2); the Western District of Texas (2); and, the Southern District of Texas (1). The conversions of two temporary judgeships to permanent Article III judgeships are in the following districts: Arizona (1); and, the Central District of California (1). While we recognize that these districts have higher caseload statistics according to the Administrative Office of the U.S. Courts, we continue to believe that we should not be expanding judgeships in some districts when we have other districts where the caseloads are low and getting lower. A far more efficient allocation of government resources would be to offset any increase in judgeships in districts with higher caseloads, with a decrease in judgeships in those districts with exceptionally low caseloads. Moreover, part of the justification for the new judgeships offered by the amendment's authors, was that as a result of the underlying legislation, district courts in the border states will be inundated with petitions for review of the Secretary's decisions. If true, the answer should not be to expand the judiciary in a haphazard fashion, but instead to address the underlying issue, which is the unlimited judicial review the bill creates for the new legalization and other visa programs.

Charles E. Grassley.
Jeff Sessions.
Mike Lee.

VIII. Changes to Existing Law Made by the Bill, as Reported

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee finds that it is necessary to dispense with the requirement of paragraph 12 to expedite the business of the Senate.

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