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110TH CONGRESS
1ST SESSION

S. 1639

To provide for comprehensive immigration reform and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 18, 2007

Mr. KENNEDY (for himself and Mr. SPECTER) introduced the following bill; which was read the first time

JUNE 19, 2007

Read the second time and placed on the calendar

A BILL

To provide for comprehensive immigration reform and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EFFECTIVE DATE TRIGGERS.

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

as amended by title IV, the programs established by title IV, and the programs established by title VI that grant legal status to any individual or that adjust the current status of any individual who is unlawfully present in the United States to that of an alien lawfully admitted for permanent residence, shall become effective on the date that the Secretary submits a written certification to the President and the Congress, based on analysis by and in consultation with the Comptroller General, that each of the following border security and other measures are established, funded, and operational:

(1) OPERATIONAL CONTROL OF THE INTERNATIONAL BORDER WITH MEXICO.—The Secretary of Homeland Security has established and demonstrated operational control of 100 percent of the international land border between the United States and Mexico, including the ability to monitor such border through available methods and technology.

(2) STAFF ENHANCEMENTS FOR BORDER PATROL.—The United States Customs and Border Protection Border Patrol has hired, trained, and reporting for duty 20,000 full-time agents as of the date of the certification under this subsection.

(3) STRONG BORDER BARRIERS.—There has been—

(A) installed along the international land border between the United States and Mexico as of the date of the certification under this subsection, at least—

(i) 300 miles of vehicle barriers;

(ii) 370 miles of fencing; and

(iii) 105 ground-based radar and camera towers; and

(B) deployed for use along the international land border between the United States and Mexico, as of the date of the certification under this subsection, 4 unmanned aerial vehicles, and the supporting systems for such vehicles.

(4) CATCH AND RETURN.—The Secretary of Homeland Security is detaining all removable aliens apprehended crossing the international land border between the United States and Mexico in violation of Federal or State law, except as specifically mandated by Federal or State law or humanitarian circumstances, and United States Immigration and Customs Enforcement has the resources to maintain this practice, including the resources necessary to detain up to 31,500 aliens per day on an annual basis.

(5) WORKPLACE ENFORCEMENT TOOLS.—In compliance with the requirements of title III of this Act, the Secretary of Homeland Security has established, and is using, secure and effective identification tools to prevent unauthorized workers from obtaining employment in the United States. Such identification tools shall include establishing—

(A) strict standards for identification documents that are required to be presented by the alien to an employer in the hiring process, including the use of secure documentation that—

(i) contains—

(I) a photograph of the alien; and

(II) biometric data identifying the alien; or

(ii) complies with the requirements for such documentation under the REAL ID Act (Public Law 109–13; 119 Stat. 231); and

(B) an electronic employment eligibility verification system that is capable of querying Federal and State databases in order to restrict fraud, identity theft, and use of false social security numbers in the hiring of aliens by an employer by electronically providing a digitized

version of the photograph on the alien's original Federal or State issued document or documents for verification of that alien's identity and work eligibility.

(6) PROCESSING APPLICATIONS OF ALIENS.—The Secretary of Homeland Security has received, and is processing and adjudicating in a timely manner, applications for Z nonimmigrant status under title VI of this Act, including conducting all necessary background and security checks required under that title.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the border security and other measures described in subsection (a) shall be completed as soon as practicable, subject to the necessary appropriations.

(c) PRESIDENTIAL PROGRESS REPORT.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, and every 90 days thereafter until the requirements under subsection (a) are met, the President shall submit a report to Congress detailing the progress made in funding, meeting, or otherwise satisfying each of the requirements described under paragraphs (1) through (6) of subsection (a), including detailing any contractual agreements reached to carry out such measures.

(2) PROGRESS NOT SUFFICIENT.—If the President determines that sufficient progress is not being made, the President shall include in the report required under paragraph (1) specific funding recommendations, authorization needed, or other actions that are or should be undertaken by the Secretary of Homeland Security.

(d) GAO REPORT.—Not later than 30 days after the certification is submitted under subsection (a), the Comptroller General shall submit a report to Congress on the accuracy of such certification.

SEC. 2. IMMIGRATION SECURITY ACCOUNT.

Section 286 of the Immigration and Nationality Act, as amended by section 623, is further amended by adding at the end the following:

''(z) IMMIGRATION SECURITY ACCOUNT.—

(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the ''Immigration Security Account''.

(2) SOURCE OF FUNDS.—Immediately upon enactment, $4,400,000,000 shall be transferred from the general fund of the Treasury to the Immigration Security Account.

(3) APPROPRIATIONS.—

(A) There are hereby appropriated such sums that are provided under subsection 2 to remain available until five years after enactment.

(B) These sums shall be available for the Secretary of Homeland Security to meet the trigger requirements set forth in title I, section 1, of this Act.

(C) To the extent funds are not exhausted pursuant to (b), they shall be available to the Secretary of Homeland Security for one or more of the following activities:

(i) Fencing and Infrastructure;

(ii) Towers;

(iii) Detention beds;

(iv) Employment Eligibility Verification System, including funds for expenditures under section 306 of this Act, relating to the State Records Improvement Grant Program;

(v) Implementation of programs authorized in titles IV and VI; and

(vi) Other Federal border and interior enforcement requirements to ensure the in-

tegrity of programs authorized in titles IV and VI.

(4) TRANSFERS.—The Secretary of Homeland Security shall have the authority to transfer amounts out of the Immigration Security Account as appropriate to carry out subsections (3)(b) and (3)(c) of this section.

(5) REPORTING.—The Secretary of Homeland Security shall submit to the Committees on the Judiciary and Appropriations of the Senate a plan for expenditure of the funds under subsection 2 within 60 days of enactment of this Act, and update the plan annually, that—

(A) identifies one-time and on-going costs;

(B) identifies the level of funding for each program, project, and activity, and if that funding will supplement an appropriated program, project, or activity;

(C) identifies the amount of funding to be obligated in each fiscal year, by program, project, and activity;

(D) includes milestones for completion of each identified program, project, or activity; and

(E) demonstrates how activities will further the goals and objectives of this Act.

(6) NOTIFICATIONS.—The Secretary of Homeland Security shall notify the Committees on Judiciary and Appropriations of the Senate 15 days prior to reprogramming funds from the original allocation or transferring funds out of the Immigration Security Account.

TITLE I—BORDER ENFORCEMENT

Subtitle A—Assets for Controlling United States Borders

SEC. 101. ENFORCEMENT PERSONNEL.

(a) ADDITIONAL PERSONNEL.—

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

(2) INVESTIGATIVE PERSONNEL.—

(A) IMMIGRATION AND CUSTOMS ENFORCEMENT INVESTIGATORS.—Section 5203 of

the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3734) is amended by striking ''800'' and inserting ''1000''.

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

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

(4) RECRUITMENT OF FORMER MILITARY PERSONNEL.—

(A) IN GENERAL.—The Commissioner of United States Customs and Border Protection,

in conjunction with the Secretary of Defense or a designee of the Secretary of Defense, shall establish a program to actively recruit members of the Army, Navy, Air Force, Marine Corps, and Coast Guard who have elected to separate from active duty.

(B) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Commissioner shall submit a report on the implementation of the recruitment program established pursuant to subparagraph (A) to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) U.S. CUSTOMS AND BORDER PROTECTION OFFICERS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of the fiscal years 2008 through 2012 to carry out paragraph (1) of subsection (a).

(2) DEPUTY UNITED STATES MARSHALS.—There are authorized to be appropriated to the Attorney General such sums as may be necessary for each of the fiscal years 2008 through 2012 to carry out subsection (a)(3).

(3) BORDER PATROL AGENTS.—Section 5202 of the Intelligence Reform and Terrorism Prevention Act of 2004 (118 Stat. 3734) is amended to read as follows:

"SEC. 5202. INCREASE IN FULL-TIME BORDER PATROL AGENTS.

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

"(1) 2,000 in fiscal year 2007;

"(2) 2,400 in fiscal year 2008;

"(3) 2,400 in fiscal year 2009;

"(4) 2,400 in fiscal year 2010;

"(5) 2,400 in fiscal year 2011; and

"(6) 2,400 in fiscal year 2012.

"(b) NORTHERN BORDER.—In each of the fiscal years 2008 through 2012, in addition to the border patrol agents assigned along the northern border of the United States during the previous fiscal year, the Secretary shall assign a number of border patrol agents equal to not less

than 20 percent of the net increase in border patrol agents during each such fiscal year.

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

(c) SHADOW WOLVES APPREHENSION AND TRACKING.—

(1) PURPOSE.—The purpose of this subsection is to authorize the Secretary, acting through the Assistant Secretary of Immigration and Customs Enforcement (referred to in this subsection as the "Secretary"), to establish new units of Customs Patrol Officers (commonly known as "Shadow Wolves") during the 5-year period beginning on the date of enactment of this Act.

(2) ESTABLISHMENT OF NEW UNITS.—

(A) IN GENERAL.—During the 5-year period beginning on the date of enactment of this Act, the Secretary is authorized to establish within United States Immigration and Customs Enforcement up to 5 additional units of Customs Patrol Officers in accordance with this subsection, as appropriate.

(B) MEMBERSHIP.—Each new unit established pursuant to subparagraph (A) shall consist of up to 15 Customs Patrol Officers.

(3) DUTIES.—The additional Immigration and Customs Enforcement units established pursuant to paragraph (2)(A) shall operate on Indian reservations (as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452)) located on or near (as determined by the Secretary) an international border with Canada or Mexico, and such other Federal land as the Secretary determines to be appropriate, by—

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

(B) carrying out such other duties as the Secretary determines to be necessary.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2008 through 2013.

SEC. 102. TECHNOLOGICAL ASSETS.

(a) ACQUISITION.—Subject to the availability of appropriations for such purpose, the Secretary shall procure

additional unmanned aerial vehicles, cameras, poles, sensors, and other technologies necessary to achieve operational control of the borders of the United States.

(b) INCREASED AVAILABILITY OF EQUIPMENT.—The Secretary and the Secretary of Defense shall develop and implement a plan to use authorities provided to the Secretary of Defense under chapter 18 of title 10, United States Code, to increase the availability and use of Department of Defense equipment, including unmanned aerial vehicles, tethered aerostat radars, and other surveillance equipment, to assist the Secretary in carrying out surveillance activities conducted at or near the international land borders of the United States to prevent illegal immigration.

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

SEC. 103. INFRASTRUCTURE.

Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) is amended—

(1) in subsection (a), by striking "Attorney General, in consultation with the Commissioner of

Immigration and Naturalization,'' and inserting ''Secretary of Homeland Security''; and

(2) in subsection (b)—

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

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

''(1) FENCING NEAR SAN DIEGO, CALIFORNIA.—In carrying out subsection (a), the Secretary shall provide for the construction along the 14 miles of the international land border of the United States, starting at the Pacific Ocean and extending eastward, of second and third fences, in addition to the existing reinforced fence, and for roads between the fences.''.

(C) in paragraph (2), as redesignated—

(i) in the header, by striking ''SECURITY FEATURES'' and inserting—''ADDITIONAL FENCING ALONG SOUTHWEST BORDER''; and

(ii) by striking subparagraphs (A) through (C) and inserting the following:

''(A) REINFORCED FENCING.—In carrying out subsection (a), the Secretary of Homeland

Security shall construct reinforced fencing along not less than 700 miles of the southwest border where fencing would be most practical and effective and provide for the installation of additional physical barriers, roads, lighting, cameras, and sensors to gain operational control of the southwest border.

"(B) PRIORITY AREAS.—In carrying out this section, the Secretary of Homeland Security shall—

"(i) identify the 370 miles along the southwest border where fencing would be most practical and effective in deterring smugglers and aliens attempting to gain illegal entry into the United States; and

"(ii) not later than December 31, 2008, complete construction of reinforced fencing along the 370 miles identified under clause (i).

"(C) CONSULTATION.—

"(i) IN GENERAL.—In carrying out this section, the Secretary of Homeland Security shall consult with the Secretary of Interior, the Secretary of Agriculture, States, local governments, Indian tribes,

and property owners in the United States to minimize the impact on the environment, culture, commerce, and quality of life for the communities and residents located near the sites at which such fencing is to be constructed.

"(ii) SAVINGS PROVISION.—Nothing in this subparagraph may be construed to—

"(I) create any right of action for a State, local government, or other person or entity affected by this subsection; or

"(II) affect the eminent domain laws of the United States or of any State.

"(D) LIMITATION ON REQUIREMENTS.—Notwithstanding subparagraph (A), nothing in this paragraph shall require the Secretary of Homeland Security to install fencing, physical barriers, roads, lighting, cameras, and sensors in a particular location along an international border of the United States, if the Secretary determines that the use or placement of such resources is not the most appropriate means to

achieve and maintain operational control over the international border at such location.''; and

(D) in paragraph (5), as redesignated, by striking ''to carry out this subsection not to exceed $12,000,000'' and inserting ''such sums as may be necessary to carry out this subsection''.

SEC. 104. PORTS OF ENTRY.

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

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

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

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

Subtitle B—Other Border Security Initiatives

SEC. 111. BIOMETRIC ENTRY-EXIT SYSTEM.

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

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

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

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

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

(b) INSPECTION OF APPLICANTS FOR ADMISSION.—Section 235(d) (8 U.S.C. 1225 (d)) is amended by adding at the end the following:

''(5) AUTHORITY TO COLLECT BIOMETRIC DATA.—In conducting inspections under subsections (a) and (b), immigration officers are authorized to collect biometric data from—

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

''(B) any lawful permanent resident who is entering the United States and who is not re-

garded as seeking admission pursuant to section 101(a)(13)(C).''.

(c) COLLECTION OF BIOMETRIC DATA FROM ALIEN CREWMEN.—Section 252 (8 U.S.C. 1282) is amended by adding at the end the following:

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

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

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

''(C) WITHHOLDERS OF BIOMETRIC DATA.—Any alien who fails or has failed to comply with a lawful request for biometric data under section 215(c), 235(d), or 252(d) is inadmissible.''; and

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

''(2) The Secretary may waive the application of subsection (a)(7)(C) for an individual alien or class of aliens.''.

(e) IMPLEMENTATION.—Section 7208 of the 9/11 Commission Implementation Act of 2004 (8 U.S.C. 1365b) is amended—

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

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

(2) in subsection (l)—

(A) by striking "There are authorized" and inserting the following:

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

(B) by adding at the end the following:

"(2) IMPLEMENTATION AT ALL LAND BORDER PORTS OF ENTRY.—There are authorized to be appropriated such sums as may be necessary for each of fiscal years 2008 and 2009 to implement the automated biometric entry and exit data system at all land border ports of entry.".

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

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

§ 758. Unlawful flight from immigration or customs controls

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

"(b) FAILURE TO STOP.—Any person who, while operating a motor vehicle, aircraft, or vessel, knowingly or recklessly disregards or disobeys the lawful command of an officer of the Department of Homeland Security engaged in the enforcement of the immigration, customs, or maritime laws, or the lawful command of any law enforcement agent assisting such officer, shall be fined under this title, imprisoned not more than two years, or both.

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

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

"(A) in excess of the applicable or posted speed limit,

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

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

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

"(3) be fined under this title, imprisoned not more than 30 years, or both, if the violation caused serious bodily injury to any person; or

"(4) be fined under this title, imprisoned for any term of years or life, or both, if the violation resulted in the death of any person.

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

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

"(f) FORFEITURE PROCEDURES.—Seizures and forfeitures under this section shall be governed by the provi-

sions of chapter 46 of this title, relating to civil forfeitures, including section 981(d) of such title, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in that section shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Secretary of Homeland Security or the Attorney General. Nothing in this section shall limit the authority of the Secretary to seize and forfeit motor vehicles, aircraft, or vessels under the Customs laws or any other laws of the United States.

''(g) DEFINITIONS.—For purposes of this section—

''(1) The term 'checkpoint' includes, but is not limited to, any customs or immigration inspection at a port of entry.

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

''(3) The term 'law enforcement agent' means any Federal, State, local or tribal official authorized to enforce criminal law, and, when conveying a command covered under subsection (b) of this section, an air traffic controller.

"(4) The term 'motor vehicle' means any motorized or self-propelled means of terrestrial transportation.

"(5) The term 'serious bodily injury' has the meaning given in section 2119(2) of this title.".

SEC. 113. RELEASE OF ALIENS FROM NONCONTIGUOUS COUNTRIES.

Section 236(a)(2) (8 U.S.C. 1226(a)(2)) is amended—

(1) by striking "on";

(2) in subparagraph (A)—

(A) by inserting "except as provided under subparagraph (B), upon the giving of a" before "bond"; and

(B) by striking "or" at the end;

(3) by redesignating subparagraph (B) as subparagraph (C); and

(4) by inserting after subparagraph (A) the following:

"(B) upon the giving of a bond of not less than $5,000 with security approved by, and containing conditions prescribed by, the Secretary or the Attorney General, if the alien—

"(i) is a national of a noncontiguous country;

"(ii) has not been admitted or paroled into the United States; and

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

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

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

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

"§ 1703. Seizure and forfeiture of vessels, vehicles, other conveyances and instruments of international traffic";

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

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

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

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

(4) by inserting ", vehicle, other conveyance or instrument of international traffic" after the word "vessel" everywhere it appears in the text of subsections (a) and (b); and

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

"(c) Acts constituting prima facie evidence of vessel, vehicle, or other conveyance or instrument of international traffic engaged in smuggling 'For the purposes of this section, prima facie evidence that a conveyance is being, or has been, or is attempted to be employed in smuggling or to defraud the revenue of the United States shall be—

'(1) in the case of a vessel, the fact that a vessel has become subject to pursuit as provided in section 1581 of this title, or is a hovering vessel, or that a vessel fails, at any place within the customs waters of the United States or within a customs-enforcement area, to display light as required by law.

'(2) in the case of a vehicle, other conveyance or instrument of international traffic, the fact that a vehicle, other conveyance or instrument of international traffic has any compartment or equipment that is built or fitted out for smuggling.'."

(b) CLERICAL AMENDMENT.—The table of sections for Chapter 5 in title 19, United States Code, is amended by striking the items relating to section 1703 and inserting in lieu thereof the following:

"1703. Seizure and forfeiture of vessels, vehicles, other conveyances or instruments of international traffic.

"(a) Vessels, vehicles, other conveyances or instruments of international traffic subject to seizure and forfeiture.

"(b) Vessels, vehicles, other conveyances or instruments of international traffic defined.

"(c) Acts constituting prima facie evidence of vessel, vehicle, other conveyance or instrument of international traffic engaged in smuggling.".

Subtitle C—Other Measures

SEC. 121. DEATHS AT UNITED STATES-MEXICO BORDER.

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

(1) the causes of the deaths; and

(2) the total number of deaths.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Commissioner of the Bureau of Customs and Border Protection shall submit to the Secretary a report that—

(1) analyzes trends with respect to the statistics collected under subsection (a) during the preceding year; and

(2) recommends actions to reduce the deaths described in subsection (a).

SEC. 122. BORDER SECURITY ON CERTAIN FEDERAL LAND.

(a) DEFINITIONS.—In this section:

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

(2) SECRETARY CONCERNED.—The term ''Secretary concerned'' means—

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

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

(b) SUPPORT FOR BORDER SECURITY NEEDS.—

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

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

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

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

(2) COORDINATION.—In providing training for Customs and Border Protection agents under paragraph (l)(B), the Secretary shall coordinate with the Secretary concerned to ensure that the training is appropriate to the mission of the National Park Service, the United States Fish and Wildlife Service, the Forest Service, or the relevant agency of the Department of the Interior or the Department of Agriculture to minimize the adverse impact on natural and cultural resources from border protection activities.

(c) ANALYSIS OF DAMAGE TO PROTECTED LANDS.—The Secretary and Secretaries concerned shall develop an

analysis of damage to protected lands relating to illegal border activity, including the cost of equipment, training, recurring maintenance, construction of facilities, restoration of natural and cultural resources, recapitalization of facilities, and operations.

(d) RECOMMENDATIONS.—The Secretary shall—

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

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

(e) BORDER PROTECTION STRATEGY.—The Secretary, the Secretary of the Interior, and the Secretary of Agriculture shall jointly develop a border protection strategy that supports the border security needs of the

United States in the manner that best protects the homeland, including—

(1) units of the National Park System;

(2) National Forest System land;

(3) land under the jurisdiction of the United States Fish and Wildlife Service; and

(4) other relevant land under the jurisdiction of the Department of the Interior or the Department of Agriculture.

SEC. 123. SECURE COMMUNICATION.

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

(1) among all Border Patrol agents conducting operations between ports of entry;

(2) between Border Patrol agents and their respective Border Patrol stations; and

(3) between all appropriate border security agencies of the Department and State, local, and tribal law enforcement agencies.

SEC. 124. UNMANNED AIRCRAFT SYSTEMS

(a) UNMANNED AIRCRAFT AND ASSOCIATED INFRASTRUCTURE.—The Secretary shall acquire and maintain

unmanned aircraft systems for use on the border, including related equipment such as—

(1) additional sensors;

(2) critical spares;

(3) satellite command and control; and

(4) other necessary equipment for operational support.

(b) AUTHORIZATION OF APPROPRIATIONS.—

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

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

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

(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) shall remain available until expended.

SEC. 125. SURVEILLANCE TECHNOLOGIES PROGRAMS.

(a) AERIAL SURVEILLANCE PROGRAM.—

(1) IN GENERAL.—In conjunction with the border surveillance plan developed under section 5201 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 8 U.S.C. 1701 note), the Secretary, not later than 90 days after the date of enactment of this Act, shall develop and implement a program to fully integrate and utilize aer-

ial surveillance technologies, including unmanned aerial vehicles, to enhance the security of the international border between the United States and Canada and the international border between the United States and Mexico. The goal of the program shall be to ensure continuous monitoring of each mile of each such border.

(2) ASSESSMENT AND CONSULTATION REQUIREMENTS.—In developing the program under this subsection, the Secretary shall—

(A) consider current and proposed aerial surveillance technologies;

(B) assess the feasibility and advisability of utilizing such technologies to address border threats, including an assessment of the technologies considered best suited to address respective threats;

(C) consult with the Secretary of Defense regarding any technologies or equipment which the Secretary may deploy along an international border of the United States; and

(D) consult with the Administrator of the Federal Aviation Administration regarding safety, airspace coordination and regulation, and

any other issues necessary for implementation of the program.

(3) ADDITIONAL REQUIREMENTS.—

(A) IN GENERAL.—The program developed under this subsection shall include the use of a variety of aerial surveillance technologies in a variety of topographies and areas, including populated and unpopulated areas located on or near an international border of the United States, in order to evaluate, for a range of circumstances—

(i) the significance of previous experiences with such technologies in border security or critical infrastructure protection;

(ii) the cost and effectiveness of various technologies for border security, including varying levels of technical complexity; and

(iii) liability, safety, and privacy concerns relating to the utilization of such technologies for border security.

(4) CONTINUED USE OF AERIAL SURVEILLANCE TECHNOLOGIES.—The Secretary may continue the operation of aerial surveillance technologies while as-

sessing the effectiveness of the utilization of such technologies.

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

(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

(b) INTEGRATED AND AUTOMATED SURVEILLANCE PROGRAM.—

(1) REQUIREMENT FOR PROGRAM.—Subject to the availability of appropriations, the Secretary shall establish a program to procure additional unmanned aerial vehicles, cameras, poles, sensors, satellites, radar coverage, and other technologies necessary to achieve operational control of the international borders of the United States and to establish a security perimeter known as a ''virtual fence'' along such international borders to provide a barrier to illegal

immigration. Such program shall be known as the Integrated and Automated Surveillance Program.

(2) PROGRAM COMPONENTS.—The Secretary shall ensure, to the maximum extent feasible, the Integrated and Automated Surveillance Program is carried out in a manner that—

(A) the technologies utilized in the Program are integrated and function cohesively in an automated fashion, including the integration of motion sensor alerts and cameras, whereby a sensor alert automatically activates a corresponding camera to pan and tilt in the direction of the triggered sensor;

(B) cameras utilized in the Program do not have to be manually operated;

(C) such camera views and positions are not fixed;

(D) surveillance video taken by such cameras can be viewed at multiple designated communications centers;

(E) a standard process is used to collect, catalog, and report intrusion and response data collected under the Program;

(F) future remote surveillance technology investments and upgrades for the Program can be integrated with existing systems;

(G) performance measures are developed and applied that can evaluate whether the Program is providing desired results and increasing response effectiveness in monitoring and detecting illegal intrusions along the international borders of the United States;

(H) plans are developed under the Program to streamline site selection, site validation, and environmental assessment processes to minimize delays of installing surveillance technology infrastructure;

(I) standards are developed under the Program to expand the shared use of existing private and governmental structures to install remote surveillance technology infrastructure where possible; and

(J) standards are developed under the Program to identify and deploy the use of nonpermanent or mobile surveillance platforms that will increase the Secretary's mobility and ability to identify illegal border intrusions.

(3) REPORT TO CONGRESS.—Not later than 1 year after the initial implementation of the Integrated and Automated Surveillance Program, the Secretary shall submit to Congress a report regarding the Program. The Secretary shall include in the report a description of the Program together with any recommendation that the Secretary finds appropriate for enhancing the program.

(4) EVALUATION OF CONTRACTORS.—

(A) REQUIREMENT FOR STANDARDS.—The Secretary shall develop appropriate standards to evaluate the performance of any contractor providing goods or services to carry out the Integrated and Automated Surveillance Program.

(B) REVIEW BY THE INSPECTOR GENERAL.—The Inspector General of the Department shall timely review each new contract related to the Program that has a value of more than $5,000,000, to determine whether such contract fully complies with applicable cost requirements, performance objectives, program milestones, and schedules. The Inspector General shall report the findings of such review to the Secretary in a timely manner. Not later than 30 days after the date the Secretary re-

ceives a report of findings from the Inspector General, the Secretary shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a report of such findings and a description of any the steps that the Secretary has taken or plans to take in response to such findings.

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

SEC. 126. SURVEILLANCE PLAN.

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

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

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

(2) A description of the compatibility of new surveillance technologies with surveillance tech-

nologies in use by the Secretary on the date of the enactment of this Act.

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

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

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

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

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

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

SEC. 127. NATIONAL STRATEGY FOR BORDER SECURITY.

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

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

(1) The implementation schedule for the comprehensive plan for systematic surveillance described in section 136.

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

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

(A) to prevent the entry of terrorists, other unlawful aliens, instruments of terrorism, nar-

cotics, and other contraband into the United States; and

(B) to protect critical infrastructure at or near such ports of entry or borders.

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

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

(6) An assessment of staffing needs for all border security functions, taking into account threat and vulnerability information pertaining to the borders and the impact of new security programs, policies, and technologies.

(7) A description of the border security roles and missions of Federal, State, regional, local, and tribal authorities, and recommendations regarding actions the Secretary can carry out to improve coordination with such authorities to enable border se-

curity and enforcement activities to be carried out in a more efficient and effective manner.

(8) An assessment of existing efforts and technologies used for border security and the effect of the use of such efforts and technologies on civil rights, personal property rights, privacy rights, and civil liberties, including an assessment of efforts to take into account asylum seekers, trafficking victims, unaccompanied minor aliens, and other vulnerable populations.

(9) A prioritized list of research and development objectives to enhance the security of the international land and maritime borders of the United States.

(10) A description of ways to ensure that the free flow of travel and commerce is not diminished by efforts, activities, and programs aimed at securing the international land and maritime borders of the United States.

(11) An assessment of additional detention facilities and beds that are needed to detain unlawful aliens apprehended at United States ports of entry or along the international land borders of the United States.

(12) A description of the performance metrics to be used to ensure accountability by the bureaus of the Department in implementing such Strategy.

(13) A schedule for the implementation of the security measures described in such Strategy, including a prioritization of security measures, realistic deadlines for addressing the security and enforcement needs, an estimate of the resources needed to carry out such measures, and a description of how such resources should be allocated.

(c) CONSULTATION.—In developing the National Strategy for Border Security, the Secretary shall consult with representatives of—

(1) State, local, and tribal authorities with responsibility for locations along the international land and maritime borders of the United States; and

(2) appropriate private sector entities, nongovernmental organizations, and affected communities that have expertise in areas related to border security.

(d) COORDINATION.—The National Strategy for Border Security shall be consistent with the National Strategy for Maritime Security developed pursuant to Homeland Security Presidential Directive 13, dated December 21, 2004.

(e) SUBMISSION TO CONGRESS.—

(1) STRATEGY.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit to Congress the National Strategy for Border Security.

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

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

SEC. 128. BORDER PATROL TRAINING CAPACITY REVIEW.

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

(b) COMPONENTS OF REVIEW.—The review under subsection (a) shall include the following components:

(1) An evaluation of the length and content of the basic training curriculum provided to new Bor-

der Patrol agents by the Federal Law Enforcement Training Center, including a description of how such curriculum has changed since September 11, 2001, and an evaluation of language and cultural diversity training programs provided within such curriculum.

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

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

(4) An evaluation of whether utilizing comparable non-Federal training programs, proficiency testing, and long-distance learning programs may affect—

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

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

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

SEC. 129. BIOMETRIC DATA ENHANCEMENTS.

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

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

(2) in consultation with the Secretary of State, collect all fingerprints from each alien required to provide fingerprints during the alien's initial enrollment in the integrated entry and exit data system described in section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a).

SEC. 130. US-VISIT SYSTEM.

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

(1) Equipping all land border ports of entry of the United States with the U.S.-Visitor and Immigrant Status Indicator Technology (US–VISIT) system implemented under section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a);

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

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

SEC. 131. DOCUMENT FRAUD DETECTION.

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

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

(c) ASSESSMENT.—

(1) REQUIREMENT FOR ASSESSMENT.—The Inspector General of the Department shall conduct an independent assessment of the accuracy and reliability of the Forensic Document Laboratory.

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

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

SEC. 132. BORDER RELIEF GRANT PROGRAM.

(a) GRANTS AUTHORIZED.—

(1) IN GENERAL.—The Secretary is authorized to award grants, subject to the availability of appropriations, to an eligible law enforcement agency to provide assistance to such agency to address—

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

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

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

(3) COMPETITIVE BASIS.—The Secretary shall award grants under this subsection on a competitive basis, except that the Secretary shall give priority to applications from any eligible law enforcement agency serving a community—

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

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

(i) Canada; or

(ii) Mexico.

(b) USE OF FUNDS.—Grants awarded pursuant to subsection (a) may only be used to provide additional resources for an eligible law enforcement agency to address criminal activity occurring along any such border, including—

(1) to obtain equipment;

(2) to hire additional personnel;

(3) to upgrade and maintain law enforcement technology;

(4) to cover operational costs, including overtime and transportation costs; and

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

(c) APPLICATION.—

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

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

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

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

(d) DEFINITIONS.—For the purposes of this section:

(1) ELIGIBLE LAW ENFORCEMENT AGENCY.—The term ''eligible law enforcement agency'' means a tribal, State, or local law enforcement agency—

(A) located in a county no more than 100 miles from a United States border with—

(i) Canada; or

(ii) Mexico; or

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

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

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

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

(C) any other unique challenges that local law enforcement face due to a lack of security along the United States border.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated $100,000,000 for each of fiscal years 2008 through 2012 to carry out the provisions of this section.

(2) DIVISION OF AUTHORIZED FUNDS.—Of the amounts authorized under paragraph (1)—

(A) ⅔ shall be set aside for eligible law enforcement agencies located in the 6 States with the largest number of undocumented alien apprehensions; and

(B) ⅓ shall be set aside for areas designated as a High Impact Area under subsection (d).

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

SEC. 133. PORT OF ENTRY INFRASTRUCTURE ASSESSMENT STUDY.

(a) REQUIREMENT TO UPDATE.—Not later than January 31 of each year, the Administrator of General Services, in consultation with U.S. Customs and Border Protection, shall update the Port of Entry Infrastructure Assessment Study prepared by U.S. Customs and Border Protection in accordance with the matter relating to the ports of entry infrastructure assessment that is set out in the joint explanatory statement in the conference report accompanying H.R. 2490 of the 106th Congress, 1st session (House of Representatives Rep. No. 106–319, on page 67) and submit such updated study to Congress.

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

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

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

(2) include the projects identified in the National Land Border Security Plan required by section; and

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

(A) fulfill immediate security requirements; and

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

(d) PROJECT IMPLEMENTATION.—The Commissioner shall implement the infrastructure and technology improvement projects described in subsection (c) in the order

of priority assigned to each project under subsection (c)(3).

(e) DIVERGENCE FROM PRIORITIES.—The Commissioner may diverge from the priority order if the Commissioner determines that significantly changed circumstances, such as immediate security needs or changes in infrastructure in Mexico or Canada, compellingly alter the need for a project in the United States.

SEC. 134. NATIONAL LAND BORDER SECURITY PLAN.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary, after consultation with representatives of Federal, State, and local law enforcement agencies and private entities that are involved in international trade across the northern border or the southern border, shall submit a National Land Border Security Plan to Congress.

(b) VULNERABILITY ASSESSMENT.—

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

(2) PORT SECURITY COORDINATORS.—The Secretary may establish 1 or more port security coordi-

nators at each port of entry located on the northern border or the southern border—

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

(B) to provide other assistance with the preparation of the plan required in subsection (a).

SEC. 135. PORT OF ENTRY TECHNOLOGY DEMONSTRATION PROGRAM.

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

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

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

(3) train personnel under realistic conditions.

(b) TECHNOLOGY AND FACILITIES.—

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

(A) inspections;

(B) communications;

(C) port tracking;

(D) identification of persons and cargo;

(E) sensory devices;

(F) personal detection;

(G) decision support; and

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

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

(A) cross-training among agencies;

(B) advanced law enforcement training; and

(C) equipment orientation.

(c) DEMONSTRATION SITES.—

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

(2) SELECTION CRITERIA.—To ensure that at least 1 of the facilities selected as a port of entry demonstration site for the demonstration program has the most up-to-date design, contains sufficient space to conduct the demonstration program, has a traffic volume low enough to easily incorporate new

technologies without interrupting normal processing activity, and can efficiently carry out demonstration and port of entry operations, at least 1 port of entry selected as a demonstration site shall—

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

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

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

(d) RELATIONSHIP WITH OTHER AGENCIES.—The Secretary shall permit personnel from an appropriate Federal or State agency to utilize a demonstration site described in subsection (c) to test technologies that enhance port of entry operations, including technologies described in subparagraphs (A) through (H) of subsection (b)(1).

(e) REPORT.—

(1) REQUIREMENT.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary shall submit to Congress a report on the activities carried out at each

demonstration site under the technology demonstration program established under this section.

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

SEC. 136. COMBATING HUMAN SMUGGLING.

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

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

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

(2) adequate and effective personnel training;

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

(4) effective utilization of—

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

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

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

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

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

(d) SAVINGS PROVISION.—Nothing in this section may be construed to provide additional authority to any State or local entity to enforce Federal immigration laws.

SEC. 137. INCREASE OF FEDERAL DETENTION SPACE AND THE UTILIZATION OF FACILITIES IDENTIFIED FOR CLOSURES AS A RESULT OF THE DEFENSE BASE CLOSURE REALIGNMENT ACT OF 1990.

(a) CONSTRUCTION OR ACQUISITION OF DETENTION FACILITIES.—

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

(b) CONSTRUCTION OF OR ACQUISITION OF DETENTION FACILITIES.—

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

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

(3) USE OF INSTALLATIONS UNDER BASE CLOSURE LAWS.—In acquiring additional detention facilities under this subsection, the Secretary shall consider the transfer of appropriate portions of military installations approved for closure or realignment under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) for use in accordance with subsection (a).

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

(c) ANNUAL REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, in consultation with the heads of other appropriate Federal agencies, the Secretary shall submit to Congress an assessment of the additional detention facilities and bed space needed to detain unlawful

aliens apprehended at the United States ports of entry or along the international land borders of the United States.

(d) TECHNICAL AND CONFORMING AMENDMENT.—Section 241(g)(1) (8 U.S.C. 1231(g)(1)) is amended by striking ''may expend'' and inserting ''shall expend''.

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

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

(a) ESTABLISHMENT OF COMMISSION.—

(1) IN GENERAL.—There is established an independent commission to be known as the United States-Mexico Border Enforcement Review Commission (referred to in this section as the ''Commission'').

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

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

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

(3) MEMBERSHIP.—The Commission shall be composed of 17 voting members, who shall be appointed as follows:

(A) The Governors of the States of California, New Mexico, Arizona, and Texas shall each appoint 4 voting members of whom—

(i) 1 shall be a local elected official from the State's border region;

(ii) 1 shall be a local law enforcement official from the State's border region; and

(iii) 2 shall be from the State's communities of academia, religious leaders, civic leaders or community leaders.

(B) 2 nonvoting members, of whom—

(i) 1 shall be appointed by the Secretary;

(ii) 1 shall be appointed by the Attorney General; and

(iii) 1 shall be appointed by the Secretary of State.

(4) QUALIFICATIONS.—

(A) IN GENERAL.—Members of the Commission shall be—

(i) individuals with expertise in migration, border enforcement and protection,

civil and human rights, community relations, crossborder trade and commerce or other pertinent qualifications or experience; and

(ii) representative of a broad cross section of perspectives from the region along the international border between the United States and Mexico;

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

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

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

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

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

(8) MEETINGS.—

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

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

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

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

(b) DUTIES.—The Commission shall review, examine, and make recommendations regarding border enforcement policies, strategies, and programs, including recommendations regarding—

(1) the protection of human and civil rights of community residents and migrants along the inter-

national border between the United States and Mexico;

(2) the adequacy and effectiveness of human and civil rights training of enforcement personnel on such border;

(3) the adequacy of the complaint process within the agencies and programs of the Department that are employed when an individual files a grievance;

(4) the effect of the operations, technology, and enforcement infrastructure along such border on the—

(A) environment;

(B) cross border traffic and commerce; and

(C) the quality of life of border communities;

(5) local law enforcement involvement in the enforcement of Federal immigration law; and

(6) any other matters regarding border enforcement policies, strategies, and programs the Commission determines appropriate.

(c) INFORMATION AND ASSISTANCE FROM FEDERAL AGENCIES.—

(1) INFORMATION FROM FEDERAL AGENCIES.—The Commission may seek directly from any depart-

ment or agency of the United States such information, including suggestions, estimates, and statistics, as allowed by law and as the Commission considers necessary to carry out the provisions of this section. Upon request of the Commission, the head of such department or agency shall furnish such information to the Commission.

(2) ASSISTANCE FROM FEDERAL AGENCIES.—The Administrator of General Services shall, on a reimbursable basis, provide the Commission with administrative support and other services for the performance of the Commission's functions. The departments and agencies of the United States may provide the Commission with such services, funds, facilities, staff, and other support services as they determine advisable and as authorized by law.

(d) COMPENSATION.—

(1) IN GENERAL.—Members of the Commission shall serve without pay.

(2) REIMBURSEMENT OF EXPENSES.—All members of the Commission shall be reimbursed for reasonable travel expenses and subsistence, and other reasonable and necessary expenses incurred by them in the performance of their duties.

(e) REPORT.—Not later than 2 years after the date of the first meeting called pursuant to (a)(8)(A), the Commission shall submit a report to the President and Congress that contains—

(1) findings with respect to the duties of the Commission;

(2) recommendations regarding border enforcement policies, strategies, and programs;

(3) suggestions for the implementation of the Commission's recommendations; and

(4) a recommendation as to whether the Commission should continue to exist after the date of termination described in subsection (g), and if so, a description of the purposes and duties recommended to be carried out by the Commission after such date.

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

(g) SUNSET.—Unless the Commission is reauthorized by Congress, the Commission shall terminate on the date that is 90 days after the date the Commission submits the report described in subsection (e).

SEC. 139. NORTHERN BORDER PROSECUTION REIMBURSEMENT.

(a) SHORT TITLE.—This section may be cited as the "Northern Border Prosecution Initiative Reimbursement Act".

(b) NORTHERN BORDER PROSECUTION INITIATIVE.—

(1) INITIATIVE REQUIRED.—From amounts made available to carry out this section, the Attorney General, acting through the Director of the Bureau of Justice Assistance of the Office of Justice Programs, shall carry out a program, to be known as the Northern Border Prosecution Initiative, to provide funds to reimburse eligible northern border entities for costs incurred by those entities for handling case dispositions of criminal cases that are federally initiated but federally declined-referred. This program shall be modeled after the Southwestern Border Prosecution Initiative and shall serve as a partner program to that initiative to reimburse local jurisdictions for processing Federal cases.

(2) PROVISION AND ALLOCATION OF FUNDS.—Funds provided under the program shall be provided in the form of direct reimbursements and shall be allocated in a manner consistent with the manner

under which funds are allocated under the Southwestern Border Prosecution Initiative.

(3) USE OF FUNDS.—Funds provided to an eligible northern border entity may be used by the entity for any lawful purpose, including the following purposes:

(A) Prosecution and related costs.

(B) Court costs.

(C) Costs of courtroom technology.

(D) Costs of constructing holding spaces.

(E) Costs of administrative staff.

(F) Costs of defense counsel for indigent defendants.

(G) Detention costs, including pre-trial and post-trial detention.

(4) DEFINITIONS.—In this section:

(A) The term ''eligible northern border entity'' means—

(i) any of the following States: Alaska, Idaho, Maine, Michigan, Minnesota, Montana, New Hampshire, New York, North Dakota, Ohio, Pennsylvania, Vermont, Washington, and Wisconsin; or

(ii) any unit of local government within a State referred to in clause (i).

(B) The term ''federally initiated'' means, with respect to a criminal case, that the case results from a criminal investigation or an arrest involving Federal law enforcement authorities for a potential violation of Federal criminal law, including investigations resulting from multi-jurisdictional task forces.

(C) The term ''federally declined-referred'' means, with respect to a criminal case, that a decision has been made in that case by a United States Attorney or a Federal law enforcement agency during a Federal investigation to no longer pursue Federal criminal charges against a defendant and to refer the investigation to a State or local jurisdiction for possible prosecution. The term includes a decision made on an individualized case-by-case basis as well as a decision made pursuant to a general policy or practice or pursuant to prosecutorial discretion.

(D) The term ''case disposition'', for purposes of the Northern Border Prosecution Initiative, refers to the time between a suspect's arrest and the resolution of the criminal charges through a county or State judicial or

prosecutorial process. Disposition does not include incarceration time for sentenced offenders, or time spent by prosecutors on judicial appeals.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $28,000,000 for fiscal year 2008 and such sums as may be necessary for each succeeding fiscal year.

Subtitle D—Asylum and Detention Safeguards

SEC. 140. SHORT TITLE.

This subtitle may be cited as the ''Secure and Safe Detention and Asylum Act''.

SEC. 141. DEFINITIONS.

In this subtitle:

(1) CREDIBLE FEAR OF PERSECUTION.—The term ''credible fear of persecution'' has the meaning given that term in section 235(b)(1)(B)(v) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(B)(v)).

(2) DETAINEE.—The term ''detainee'' means an alien in the custody of the Department of Homeland Security who is held in a detention facility.

(3) DETENTION FACILITY.—The term ''detention facility'' means any Federal facility in which an

alien detained pending the outcome of a removal proceeding, or an alien detained pending the execution of a final order of removal, is detained for more than 72 hours, or any other facility in which such detention services are provided to the Federal Government by contract, and does not include detention at any port of entry in the United States.

(4) REASONABLE FEAR OF PERSECUTION OR TORTURE.—The term ''reasonable fear of persecution or torture'' has the meaning given that term in section 208.31 of title 8, Code of Federal Regulations.

(5) STANDARD.—The term ''standard'' means any policy, procedure, or other requirement.

SEC. 142. RECORDING EXPEDITED REMOVAL INTERVIEWS.

(a) IN GENERAL.—The Secretary shall establish quality assurance procedures and take steps to effectively ensure that questions by employees of the Department exercising expedited removal authority under section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)) are asked in a standard manner, and that both these questions and the answers provided in response to them are recorded in a uniform fashion.

(b) FACTORS RELATING TO SWORN STATEMENTS.—Where practicable, as determined by the Secretary in his

discretion, any sworn or signed written statement taken of an alien as part of the record of a proceeding under section 235(b)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(A)) shall be accompanied by a recording of the interview which served as the basis for that sworn statement.

(c) EXEMPTION AUTHORITY.—

(1) IN GENERAL.—Subsection (b) sha1l not apply to interviews that occur at facilities, locations, or areas exempted by the Secretary pursuant to this subsection.

(2) EXEMPTION.—The Secretary or the Secretary's designee may exempt any facility, location, or area from the requirements of this section based on a determination by the Secretary or the Secretary's designee that compliance with subsection (b) at that facility would impair operations or impose undue burdens or costs.

(3) REPORT.—The Secretary or the Secretary's designee shall report annually to Congress on the facilities that have been exempted pursuant to this subsection.

(d) INTERPRETERS.—The Secretary shall ensure that a competent interpreter, not affiliated with the government of the country from which the alien may claim asy-

lum, is used when the interviewing officer does not speak a language understood by the alien and there is no other Federal, State, or local government employee available who is able to interpret effectively, accurately, and impartially.

(e) RECORDINGS IN IMMIGRATION PROCEEDINGS.—Recordings of interviews of aliens subject to expedited removal shall be included in the record of proceeding and may be considered as evidence in any further proceedings involving the alien.

(f) NO PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create any right, benefit, trust, or responsibility, whether substantive or procedural, enforceable in law or equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees, or agents, or any person, nor does this section create any right of review in any administrative, judicial, or other proceeding.

SEC. 143. OPTIONS REGARDING DETENTION DECISIONS.

Section 236 of the Immigration and Nationality Act (8 U.S.C. 1226) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) in the first sentence by striking ''Attorney General'' and inserting ''Secretary of Homeland Security''; and

(ii) in the second sentence by striking ''Attorney General'' and inserting ''Secretary'';

(B) in paragraph (2)—

(i) in subparagraph (A)—

(I) by striking ''Attorney General'' and inserting ''Secretary''; and

(II) by striking ''or'' at the end;

(ii) in subparagraph (B), by striking ''but'' at the end; and

(iii) by inserting after subparagraph (B) the following:

''(C) the alien's own recognizance; or

''(D) a secure alternatives program as provided for in this section; but'';

(2) in subsection (b), by striking ''Attorney General'' and inserting ''Secretary'';

(3) in subsection (c)—

(A) by striking ''Attorney General'' and inserting ''Secretary'' each place it appears; and

(B) in paragraph (2), by inserting ''or for humanitarian reasons,'' after ''such an investigation,''; and

(4) in subsection (d)—

(A) in paragraph (1), by striking ''Attorney General'' and inserting ''Secretary'';

(B) in paragraph (1), in subparagraphs (A) and (B), by striking ''Service'' each place it appears and inserting ''Department of Homeland Security''; and

(C) in paragraph (3), by striking ''Service'' and inserting ''Secretary of Homeland Security''.

SEC. 144. REPORT TO CONGRESS ON PAROLE PROCEDURES AND STANDARDIZATION OF PAROLE PROCEDURES.

(a) IN GENERAL.—The Attorney General and the Secretary of Homeland Security shall jointly conduct a review and report to the appropriate Committees of the Senate and the House of Representatives within 180 days of the date of enactment of this Act regarding the effectiveness of parole and custody determination procedures applicable to aliens who have established a credible fear of persecution and are awaiting a final determination regard-

ing their asylum claim by the immigration courts. The report shall include the following:

(1) An analysis of the rate at which release from detention (including release on parole) is granted to aliens who have established a credible fear of persecution and are awaiting a final determination regarding their asylum claim by the immigration courts throughout the United States, and any disparity that exists between locations or geographical areas, including explanation of the reasons for this disparity and what actions are being taken to have consistent and uniform application of the standards for granting parole.

(2) An analysis of the effect of the procedures and policies applied with respect to parole and custody determinations both by the Attorney General and the Secretary on the alien's pursuit of their asylum claim before an immigration court.

(3) An analysis of the effect of the procedures and policies applied with respect to parole and custody determinations both by the Attorney General and the Secretary on the alien's physical and psychological well-being.

(4) An analysis of the effectiveness of the procedures and policies applied with respect to parole

and custody determinations both by the Attorney General and the Secretary in securing the alien's presence at the immigration court proceedings.

(b) RECOMMENDATIONS.—The report shall include recommendations with respect to whether the existing parole and custody determination procedures applicable to aliens who have established a credible fear of persecution and are awaiting a final determination regarding their asylum claim by the immigration courts should be modified in order to ensure a more consistent application of these procedures in a way that both respects the interests of aliens pursuing valid claims of asylum and ensures the presence of the aliens at the immigration court proceedings.

SEC. 145. LEGAL ORIENTATION PROGRAM.

(a) IN GENERAL.—The Attorney General, in consultation with the Secretary of Homeland Security, shall ensure that all detained aliens in immigration and asylum proceedings receive legal orientation through a program administered and implemented by the Executive Office for Immigration Review of the Department of Justice.

(b) CONTENT OF PROGRAM.—The legal orientation program developed pursuant to this section shall be based on the Legal Orientation Program carried out by the Ex-

ecutive Office for Immigration Review on the date of the enactment of this Act.

(c) EXPANSION OF LEGAL ASSISTANCE.—The Secretary shall ensure the expansion through the United States Citizenship and Immigration Service of public-private partnerships that facilitate pro bono counseling and legal assistance for aliens awaiting a credible fear of persecution interview or an interview related to a reasonable fear of persecution or torture determination under section 241(b)(3).

SEC. 146. CONDITIONS OF DETENTION.

(a) IN GENERAL.—The Secretary shall ensure that standards governing conditions and procedures at detention facilities are fully implemented and enforced, and that all detention facilities comply with the standards.

(b) PROCEDURES AND STANDARDS.—The Secretary shall promulgate new standards, or modify existing detention standards, to comply with the following policies and procedures:

(1) FAIR AND HUMANE TREATMENT.—Procedures to prevent detainees from being subject to degrading or inhumane treatment such as physical abuse, sexual abuse or harassment, or arbitrary punishment.

(2) LIMITATIONS ON SOLITARY CONFINEMENT.—Procedures limiting the use of solitary confinement, shackling, and strip searches of detainees to situations where the use of such techniques is necessitated by security interests, the safety of officers and other detainees, or other extraordinary circumstances.

(3) INVESTIGATION OF GRIEVANCES.—Procedures for the prompt and effective investigation of grievances raised by detainees.

(4) ACCESS TO TELEPHONES.—Procedures permitting detainees sufficient access to telephones, and the ability to contact, free of charge, legal representatives, the immigration courts, the Board of Immigration Appeals, and the Federal courts through confidential toll-free numbers.

(5) LOCATION OF FACILITIES.—Location of detention facilities, to the extent practicable, near sources of free or low-cost legal representation with expertise in asylum or immigration law.

(6) PROCEDURES GOVERNING TRANSFERS OF DETAINEES.—Procedures governing the transfer of a detainee that take into account—

(A) the detainee's access to legal representatives; and

1 (B) the proximity of the facility to the
2 venue of the asylum or removal proceeding.
3 (7) QUALITY OF MEDICAL CARE.—
4 (A) IN GENERAL.—Essential medical care
5 provided promptly at no cost to the detainee,
6 including dental care, eye care, mental health
7 care, and where appropriate, individual and
8 group counseling, medical dietary needs, and
9 other medically necessary specialized care. Med-
10 ical facilities in all detention facilities used by
11 the Department maintain current accreditation
12 by the National Commission on Correctional
13 Health Care (NCCHC). Requirements that each
14 medical facility that is not accredited by the
15 Joint Commission on the Accreditation of
16 Health Care Organizations (JCAHO) will seek
17 to obtain such accreditation. Maintenance of
18 complete medical records for every detainee
19 which shall be made available upon request to
20 a detainee, his legal representative, or other au-
21 thorized individuals.
22 (B) EXCEPTION.—A detention facility that
23 is not operated by the Department of Homeland
24 Security or by a private contractor on behalf of
25 the Department of Homeland Security shall not

be required to maintain current accreditation by the NCCHC or to seek accreditation by the JCAHO.

(8) TRANSLATION CAPABILITIES.—The employment of detention facility staff that, to the extent practicable, are qualified in the languages represented in the population of detainees at a detention facility, and the provision of alternative translation services when necessary.

(9) RECREATIONAL PROGRAMS AND ACTIVITIES.—Frequent access to indoor and outdoor recreational programs and activities.

(c) Special Standards for Noncriminal Detainees.—The Secretary shall promulgate new standards, or modifications to existing standards, that—

(1) recognize the distinctions between persons with criminal convictions or a history of violent behavior and all other detainees; and

(2) ensure that procedures and conditions of detention are appropriate for a noncriminal, nonviolent population.

(d) SPECIAL STANDARDS FOR SPECIFIC POPULATIONS.—The Secretary shall promulgate new standards, or modifications to existing standards, that—

(1) recognize the unique needs of—

(A) victims of persecution, torture, trafficking, and domestic violence;

(B) families with children;

(C) detainees who do not speak English; and

(D) detainees with special religious, cultural, or spiritual considerations; and

(2) ensure that procedures and conditions of detention are appropriate for the populations described in paragraph (1).

(e) TRAINING OF PERSONNEL.—

(1) IN GENERAL.—The Secretary shall ensure that personnel in detention facilities are given specialized training to better understand and work with the population of detainees held at the facilities where such personnel work. The training should address the unique needs of—

(A) aliens who have established credible fear of persecution;

(B) victims of torture or other trauma and victims of persecution, trafficking, and domestic violence; and

(C) families with children, detainees who do not speak English, and detainees with spe-

cial religious, cultural, or spiritual considerations.

(2) SPECIALIZED TRAINING.—The training required by this subsection shall be designed to better enable personnel to work with detainees from different countries, and detainees who cannot speak English. The training shall emphasize that many detainees have no criminal records and are being held for civil violations.

(f) NO PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create any right, benefit, trust, or responsibility, whether substantive or procedural, enforceable in law or equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees, or agents, or any person, nor does this section create any right of review in any administrative, judicial, or other proceeding.

SEC. 147. OFFICE OF DETENTION OVERSIGHT.

(a) ESTABLISHMENT OF THE OFFICE.—

(1) IN GENERAL.—There shall be established within the Department an Office of Detention Oversight (in this section referred to as the ''Office'').

(2) HEAD OF THE OFFICE.—There shall be at the head of the Office an Administrator. At the discretion of the Secretary, the Administrator of the

Office shall be appointed by, and shall report to, either the Secretary or the Assistant Secretary of Homeland Security for United States Immigration and Customs Enforcement. The Office shall be independent of the Office of Detention and Removal Operations, but shall be subject to the supervision and direction of the Secretary or Assistant Secretary.

(3) SCHEDULE.—The Office shall be established and the Administrator of the Office appointed not later than 6 months after the date of the enactment of this Act.

(b) RESPONSIBILITIES OF THE OFFICE.—

(1) INSPECTIONS OF DETENTION CENTERS.—The Administrator of the Office shall—

(A) undertake regular and, where appropriate, unannounced inspections of all detention facilities;

(B) develop a procedure for any detainee or the detainee's representative to file a confidential written complaint directly with the Office; and

(C) report to the Secretary and to the Assistant Secretary all findings of a detention facility's noncompliance with detention standards.

(2) INVESTIGATIONS.—The Administrator of the Office shall—

(A) initiate investigations, as appropriate, into allegations of systemic problems at detention facilities or incidents that constitute serious violations of detention standards;

(B) conduct any review or audit relating to detention as directed by the Secretary or the Assistant Secretary;

(C) report to the Secretary and the Assistant Secretary the results of all investigations, reviews, or audits; and

(D) refer matters, where appropriate, for further action to—

(i) the Department of Justice;

(ii) the Office of the Inspector General of the Department;

(iii) the Office of Civil Rights and Civil Liberties of the Department; or

(iv) any other relevant office or agency.

(3) REPORT TO CONGRESS.—

(A) IN GENERAL.—The Administrator of the Office shall submit to the Secretary, the Assistant Secretary, the Committee on the Judici-

ary and the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on the Judiciary and the Committee on Homeland Security of the House of Representatives an annual report on the Administrator's findings on detention conditions and the results of the completed investigations carried out by the Administrator.

(B) CONTENTS OF REPORT.—Each report required by subparagraph (A) shall include—

(i) a description of—

(I) each detention facility found to be in noncompliance with the standards for detention required by this subtitle; and

(II) the actions taken by the Department to remedy any findings of noncompliance or other identified problems; and

(ii) information regarding whether such actions were successful and resulted in compliance with detention standards.

(c) COOPERATION WITH OTHER OFFICES AND AGENCIES.—Whenever appropriate, the Administrator of

the Office shall cooperate and coordinate its activities with—

(1) the Office of the Inspector General of the Department;

(2) the Office of Civil Rights and Civil Liberties of the Department;

(3) the Privacy Officer of the Department;

(4) the Department of Justice; or

(5) any other relevant office or agency.

SEC. 148. SECURE ALTERNATIVES PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a secure alternatives program under which an alien who has been detained may be released under enhanced supervision to prevent the alien from absconding and to ensure that the alien makes appearances related to such detention.

(b) PROGRAM REQUIREMENTS.—

(1) NATIONWIDE IMPLEMENTATION.—The Secretary shall facilitate the development of the secure alternatives program on a nationwide basis, as a continuation of existing pilot programs such as the Intensive Supervision Appearance Program developed by the Department.

(2) UTILIZATION OF ALTERNATIVES.—In facilitating the development of the secure alternatives

program, the Secretary shall have discretion to utilize a continuum of alternatives to a supervision of the alien, including placement of the alien with an individual or organizational sponsor, or in a supervised group home.

(3) ALIENS ELIGIBLE FOR SECURE ALTERNATIVES PROGRAM.—

(A) IN GENERAL.—Aliens who would otherwise be subject to detention based on a consideration of the release criteria in section 236(b)(2), or who are released pursuant to section 236(c)(2), shall be considered for the secure alternatives program.

(B) DESIGN OF PROGRAMS.—In developing the secure alternatives program, the Secretary shall take into account the extent to which the program includes only those alternatives to detention that reasonably and reliably ensure—

(i) the alien's continued presence at all future immigration proceedings;

(ii) the alien's compliance with any future order or removal; and

(iii) the public safety or national security.

(C) CONTINUED EVALUATION.—The Secretary shall evaluate regularly the effectiveness of the program, including the effectiveness of the particular alternatives to detention used under the program, and make such modifications as the Secretary deems necessary to improve the program's effectiveness or to deter abuse.

(4) CONTRACTS AND OTHER CONSIDERATIONS.—The Secretary may enter into contracts with qualified nongovernmental entities to implement the secure alternatives program and, in designing such program, shall consult with relevant experts and consider programs that have proven successful in the past.

SEC. 149. LESS RESTRICTIVE DETENTION FACILITIES.

(a) CONSTRUCTION.—To the extent practicable, the Secretary shall facilitate the construction or use of secure but less restrictive detention facilities for the purpose of long-term detention where detainees are held longer than 72 hours.

(b) CRITERIA.—In pursuing the development of detention facilities pursuant to this section, the Secretary shall—

(1) consider the design, operation, and conditions of existing secure but less restrictive detention facilities; and

(2) to the extent practicable, construct or use detention facilities where—

(A) movement within and between indoor and outdoor areas of the facility is subject to minimal restrictions;

(B) detainees have ready access to social, psychological, and medical services;

(C) detainees with special needs, including those who have experienced trauma or torture, have ready access to services and treatment addressing their needs;

(D) detainees have frequent access to programs and recreation;

(E) detainees are permitted contact visits with legal representatives and family members; and

(F) special facilities are provided to families with children.

(c) FACILITIES FOR FAMILIES WITH CHILDREN.—In any case in which release or secure alternatives programs are not a practicable option, the Secretary shall, to the extent practicable, ensure that special detention fa-

cilities for the purposes of long-term detention where detainees are held longer than 72 hours are specifically designed to house parents with their minor children, including ensuring that—

(1) procedures and conditions of detention are appropriate for families with minor children; and

(2) living and sleeping quarters for children under 14 years of age are not physically separated from at least 1 of the child's parents.

(d) PLACEMENT IN NONPUNITIVE FACILITIES.—Among the factors to be considered with respect to placing a detainee in a less restrictive facility is whether the detainee is—

(1) part of a family with minor children;

(2) a victim of persecution, torture, trafficking, or domestic violence; or

(3) a nonviolent, noncriminal detainee.

(e) PROCEDURES AND STANDARDS.—Where necessary, the Secretary shall promulgate new standards, or modify existing detention standards, to promote the development of less restrictive detention facilities.

(f) NO PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create any right, benefit, trust, or responsibility, whether substantive or procedural, enforceable in law or equity by a party against the United

States, its departments, agencies, instrumentalities, entities, officers, employees, or agents, or any person, nor does this section create any right of review in any administrative, judicial, or other proceeding.

SEC. 150. AUTHORIZATION OF APPROPRIATIONS; EFFECTIVE DATE.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subtitle.

(b) EFFECTIVE DATE.—This subtitle and the amendments made by this subtitle shall take effect on the date that is 180 days after the date of the enactment of this Act.

TITLE II—INTERIOR ENFORCEMENT

SEC. 201. ADDITIONAL IMMIGRATION PERSONNEL.

(a) DEPARTMENT OF HOMELAND SECURITY.—

(1) TRIAL ATTORNEYS.—In each of the fiscal years 2008 through 2012, the Secretary, subject to the availability of appropriations for such purpose, shall increase the number of positions for attorneys in the Office of General Counsel of the Department who represent the Department in immigration matters by not less than 100 compared to the number

of such positions for which funds were made available during the preceding fiscal year.

(2) USCIS ADJUDICATORS.—In each of the fiscal years 2008 through 2012, the Secretary, subject to the availability of appropriations for such purpose, shall increase the number of positions for adjudicators in the United States Citizenship and Immigration Service by not less than 100 compared to the number of such positions for which funds were made available during the preceding fiscal year.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2008 through 2012 such sums as may be necessary to carry out paragraphs (1) and (2).

(b) DEPARTMENT OF JUSTICE.—

(1) JUDICIAL CLERKS.—The Attorney General shall, subject to the availability of appropriations for such purpose, appoint necessary law clerks for immigration judges and Board of Immigration Appeals members of no less than one per judge and member. A law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5 [5 USCS §§ 6301 et seq.].

(2) LITIGATION ATTORNEYS.—In each of the fiscal years 2008 through 2012, the Attorney General, subject to the availability of appropriations for such purpose, shall increase the number of positions for attorneys in the Office of Immigration Litigation by not less than 50 compared to the number of such positions for which funds were made available during the preceding fiscal year.

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

(4) IMMIGRATION JUDGES.—In each of the fiscal years 2008 through 2012, the Attorney General, subject to the availability of appropriations for such purpose, shall—

(A) increase by not less than 20 the number of full-time immigration judges compared to the number of such positions for which funds

were made available during the preceding fiscal year; and

(B) increase by not less than 80 the number of positions for personnel to support the immigration judges described in subparagraph (A) compared to the number of such positions for which funds were made available during the preceding fiscal year.

(5) BOARD OF IMMIGRATION APPEALS MEMBERS.—The Attorney General shall, subject to the availability of appropriations, increase by 10 the number members of the Board of Immigration Appeals over the number of members serving on the date of enactment of this Act.

(6) STAFF ATTORNEYS.—In each of the fiscal years 2008 through 2012, the Attorney General shall, subject to the availability of appropriations for such purpose—

(A) increase the number of positions for full-time staff attorneys in the Board of Immigration Appeals by not less than 20 compared to the number of such positions for which funds were made available during the preceding fiscal year; and

(B) increase the number of positions for personnel to support the staff attorneys described in subparagraph (A) by not less than 10 compared to the number of such positions for which funds were made available during the preceding fiscal year.

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

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

(d) LEGAL ORIENTATION PROGRAM.—

(1) CONTINUED OPERATION.—The Director of the Executive Office for Immigration Review shall continue to operate a legal orientation program to

provide basic information about immigration court procedures for immigration detainees and shall expand the legal orientation program to provide such information on a nationwide basis.

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

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

(a) IN GENERAL.—

(1) AMENDMENTS.—Section 241(a) (8 U.S.C. 1231(a)) is amended—

(A) by striking ''Attorney General'' the first place it appears, except for the first reference in clause (a)(4)(B)(i), and inserting ''Secretary of Homeland Security'';

(B) by striking ''Attorney General'' any other place it appears and inserting ''Secretary'';

(C) in paragraph (1)—

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

''(ii) If a court, the Board of Immigration Appeals, or an immigration judge

orders a stay of the removal of the alien, the expiration date of the stay of removal.''; (ii) by amending subparagraph (C) to read as follows:

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

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

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

(iii) by adding at the end the following:

''(D) TOLLING OF PERIOD.—If, at the time described in subparagraph (B), the alien is not in the custody of the Secretary under the

authority of this Act, the removal period shall not begin until the alien is taken into such custody. If the Secretary lawfully transfers custody of the alien during the removal period to another Federal agency or to a State or local government agency in connection with the official duties of such agency, the removal period shall be tolled, and shall recommence on the date on which the alien is returned to the custody of the Secretary.'';

(D) in paragraph (2), by adding at the end the following: ''If a court, the Board of Immigration Appeals, or an immigration judge orders a stay of removal of an alien who is subject to an administrative final order of removal, the Secretary, in the exercise of discretion, may detain the alien during the pendency of such stay of removal.'';

(E) in paragraph (3), by amending subparagraph (D) to read as follows:

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

"(i) to prevent the alien from absconding;

"(ii) for the protection of the community; or

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

(F) in paragraph (6), by striking "removal period and, if released," and inserting "removal period, in the discretion of the Secretary, without any limitations other than those specified in this section, until the alien is removed. If an alien is released, the alien";

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

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

"(7) PAROLE.—If an alien detained pursuant to paragraph (6) is an applicant for admission, the Secretary of Homeland Security, in the Secretary's discretion, may parole the alien under section 212(d)(5) and may provide, notwithstanding section 212(d)(5), that the alien shall not be returned to custody unless either the alien violates the conditions of the alien's parole or the alien's removal becomes

reasonably foreseeable, provided that in no circumstance shall such alien be considered admitted.

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

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

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

"(i) has effected an entry into the United States;

"(ii) has made all reasonable efforts to comply with the alien's removal order;

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

"(iv) has not conspired or acted to prevent removal.

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

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

"(ii) may consider any other evidence, including—

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

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

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

"(E) AUTHORITY TO DETAIN FOR ADDITIONAL PERIOD.—The Secretary, in the exercise of the Secretary's discretion and without

any limitations other than those specified in this section, may detain an alien beyond the 90-day period authorized under subparagraph (D) until the alien is removed, if the Secretary—

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

"(ii) certifies in writing—

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

"(II) after receipt of a written recommendation from the Secretary of State, that the release of the alien would likely have serious adverse foreign policy consequences for the United States;

"(III) based on information available to the Secretary (including classified, sensitive, or national security information, and regardless of the grounds upon which the alien was or-

dered removed), that there is reason to believe that the release of the alien would threaten the national security of the United States;

"(IV) that—

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

"(bb) the alien—

"(AA) has been convicted of 1 or more aggravated felonies (as defined in section 101(a)(43)(A)), or of 1 or more attempts or conspiracies to commit any such aggravated felonies for an aggregate term of imprisonment of at least 5 years; or

(BB) has committed a crime of violence (as defined in section 16 of title 18,

United States Code, but not including a purely political offense) and, because of a mental condition or personality disorder and behavior associated with that condition or disorder, is likely to engage in acts of violence in the future; or

''(V) that—

''(aa) the release of the alien would threaten the safety of the community or any person, notwithstanding conditions of release designed to ensure the safety of the community or any person; and

''(bb) the alien has been convicted of 1 or more aggravated felonies (as defined in section 101(a)(43)) for which the alien was sentenced to an aggregate term of imprisonment of not less than 1 year.

"(F) ATTORNEY GENERAL REVIEW.—If the Secretary authorizes an extension of detention under subparagraph (E), the alien may seek review of that determination before the Attorney General. If the Attorney General concludes that the alien should be released, then the Secretary shall release the alien pursuant to subparagraph (I). The Attorney General, in consultation with the Secretary, shall promulgate regulations governing review under this paragraph.

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

"(H) RENEWAL AND DELEGATION OF CERTIFICATION.—

"(i) RENEWAL.—The Secretary may renew a certification under subparagraph

(E)(ii) every 6 months, without limitation, after providing the alien with an opportunity to request reconsideration of the certification and to submit documents or other evidence in support of that request. If the Secretary does not renew such certification, the Secretary shall release the alien, pursuant to subparagraph (I). If the Secretary authorizes an extension of detention under paragraph (E), the alien may seek review of that determination before the Attorney General. If the Attorney General concludes that the alien should be released, then the Secretary shall release the alien pursuant to subparagraph (I).

"(ii) DELEGATION.—Notwithstanding any other provision of law, the Secretary may not delegate the authority to make or renew a certification described in subclause (II), (III), or (V) of subparagraph (E)(ii) below the level of the Assistant Secretary for Immigration and Customs Enforcement.

"(iii) HEARING.—The Secretary may request that the Attorney General, or a

designee of the Attorney General, provide for a hearing to make the determination described in subparagraph (E)(ii)(IV)(bb)(BB).

"(I) RELEASE ON CONDITIONS.—If it is determined that an alien should be released from detention, the Secretary may, in the Secretary's discretion, impose conditions on release in accordance with the regulations prescribed pursuant to paragraph (3).

"(J) REDETENTION.—The Secretary, without any limitations other than those specified in this section, may detain any alien subject to a final removal order who has previously been released from custody if—

"(i) the alien fails to comply with the conditions of release;

"(ii) the alien fails to continue to satisfy the conditions described in subparagraph (B); or

"(iii) upon reconsideration, the Secretary determines that the alien can be detained under subparagraph (E).

"(K) APPLICABILITY.—This paragraph and paragraphs (6) and (7) shall apply to any

alien returned to custody under subparagraph (I) as if the removal period terminated on the day of the redetention.

"(L) DETENTION REVIEW PROCESS FOR ALIENS WHO HAVE EFFECTED AN ENTRY AND FAIL TO COOPERATE WITH REMOVAL.—The Secretary shall detain an alien until the alien makes all reasonable efforts to comply with a removal order and to cooperate fully with the Secretary's efforts, if the alien—

"(i) has effected an entry into the United States; and

"(ii)(I) and the alien faces a significant likelihood that the alien will be removed in the reasonably foreseeable future, or would have been removed if the alien had not—

"(aa) failed or refused to make all reasonable efforts to comply with a removal order;

"(bb) failed or refused to fully cooperate with the Secretary's efforts to establish the alien's identity and carry out the removal order, including the failure to make timely application

in good faith for travel or other documents necessary to the alien's departure; or

"(cc) conspired or acted to prevent removal; or

"(II) the Secretary makes a certification as specified in subparagraph (E), or the renewal of a certification specified in subparagraph (H).

"(M) DETENTION REVIEW PROCESS FOR ALIENS WHO HAVE NOT EFFECTED AN ENTRY.—Except as otherwise provided in this subparagraph, the Secretary shall follow the guidelines established in section 241.4 of title 8, Code of Federal Regulations, when detaining aliens who have not effected an entry. The Secretary may decide to apply the review process outlined in this paragraph.

"(9) JUDICIAL REVIEW.—Judicial review of any action or decision made pursuant to paragraph (6), (7), or (8) shall be available exclusively in a habeas corpus proceeding brought in a United States district court and only if the alien has exhausted all administrative remedies (statutory and nonstatutory) available to the alien as of right.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1)—

(A) shall take effect on the date of the enactment of this Act; and

(B) shall apply to—

(i) any alien subject to a final administrative removal, deportation, or exclusion order that was issued before, on, or after the date of the enactment of this Act, unless (a) that order was issued and the alien was subsequently released or paroled before the enactment of this Act and (b) the alien has complied with and remains in compliance with the terms and conditions of that release or parole; and

(ii) any act or condition occurring or existing before, on, or after the date of the enactment of this Act.

SEC. 203. AGGRAVATED FELONY.

(a) DEFINITION OF AGGRAVATED FELONY.—Section 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended—

(1) by striking ''The term 'aggravated felony' means—'' and inserting ''Notwithstanding any other provision of law, the term 'aggravated felony' applies to an offense described in this paragraph, whether in

violation of Federal or State law, and to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years, and regardless of whether the conviction was entered before, on, or after September 30, 1996, and means—'';

(2) in subparagraph (A), by striking ''murder, rape, or sexual abuse of a minor;'' and inserting ''murder, rape, or sexual abuse of a minor, whether or not the minority of the victim is established by evidence contained in the record of conviction or by evidence extrinsic to the record of conviction;'';

(3) in subparagraph (N), by striking ''paragraph (1)(A) or (2) of''; and

(4) by striking the undesignated matter following subparagraph (U).

(b) EFFECTIVE DATE AND APPLICATION.—

(1) IN GENERAL.—The amendments made by subsection (a) shall—

(A) take effect on the date of the enactment of this Act; and

(B) apply to any conviction that occurred on or after the date of the enactment of this Act.

(2) APPLICATION OF IIRAIRA AMENDMENTS.—The amendments to section 101(a)(43) of the Immigration and Nationality Act made by section 321 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 110 Stat. 3009–627) shall continue to apply, whether the conviction was entered before, on, or after September 30, 1996.

SEC. 204. INADMISSIBILITY AND DEPORTABILITY OF GANG MEMBERS.

(a) DEFINITION OF CRIMINAL GANG.—Section 101(a) (8 U.S.C. 1101(a)) is amended by inserting after paragraph (51) the following:

''(52)(A) The term 'criminal gang' means an ongoing group, club, organization, or association of 5 or more persons—

''(i) that has, as 1 of its primary purposes, the commission of 1 or more of the criminal offenses described in subparagraph (B); and

''(ii) the members of which engage, or have engaged within the past 5 years, in a continuing series of offenses described in subparagraph (B).

''(B) Offenses described in this subparagraph, whether in violation of Federal or State law or in

violation of the law of a foreign country, regardless of whether charged, and regardless of whether the conduct occurred before, on, or after the date of the enactment of this paragraph, are—

"(i) a felony drug offense (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

"(ii) a felony offense involving firearms or explosives, including a violation of section 924(c), 924(h), or 931 of title 18 (relating to purchase, ownership, or possession of body armor by violent felons);

"(iii) an offense under section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to the importation of an alien for immoral purpose);

"(iv) a felony crime of violence as defined in section 16 of title 18, United States Code, which is punishable by a sentence of imprisonment of 5 years or more, including first degree murder, arson, possession, brandishment, or discharge of firearm in connection with crime of violence or drug trafficking offense, use of a

short-barreled or semi-automatic weapons, use of a machine gun, murder of individuals involved in aiding a Federal investigation, kidnapping, bank robbery if death results or a hostage is kidnapped, sexual exploitation and other abuse of children, selling or buying of children, activities relating to material involving the sexual exploitation of a minor, activities relating to material constituting or containing child pornography, or illegal transportation of a minor;

''(v) a crime involving obstruction of justice; tampering with or retaliating against a witness, victim, or informant; or burglary;

''(vi) any conduct punishable under sections 1028 and 1029 of title 18, United States Code (relating to fraud and related activity in connection with identification documents or access devices), sections 1581 through 1594 of such title (relating to peonage, slavery and trafficking in persons), section 1952 of such title (relating to interstate and foreign travel or transportation in aid of racketeering enterprises), section 1956 of such title (relating to the laundering of monetary instruments), section 1957 of such title (relating to engaging in

monetary transactions in property derived from specified unlawful activity), or sections 2312 through 2315 of such title (relating to interstate transportation of stolen motor vehicles or stolen property); and

"(vii) a conspiracy to commit an offense described in clause (i) through (vi).".

(b) INADMISSIBILITY.—Section 212(a)(2) (8 U.S.C. 1182(a)(2)) is amended—

(1) by redesignating subparagraph (F) as subparagraph (L); and

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

"(F) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—Unless the Secretary of Homeland Security or the Attorney General waives the application of this subparagraph, any alien who a consular officer, the Attorney General, or the Secretary of Homeland Security knows or has reason to believe participated in a criminal gang, knowing or having reason to know that such participation promoted, furthered, aided, or supported the illegal activity of the gang, is inadmissible.".

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

"(F) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—Any alien, in or admitted to the United States, who at any time has participated in a criminal gang, knowing or having reason to know that such participation promoted, furthered, aided, or supported the illegal activity of the gang is deportable. The Secretary of Homeland Security or the Attorney General may waive the application of this subparagraph.".

(d) TEMPORARY PROTECTED STATUS.—Section 244 (8 U.S.C. 1254a) is amended—

(1) by striking ", Attorney General" each place it appears and inserting "Secretary of Homeland Security";

(2) in subparagraph (c)(2)(B)—

(A) in clause (i), by striking "or" and inserting a semicolon;

(B) in clause (ii), by striking the period at the end and inserting "or"; and

(C) by adding at the end the following:

"(iii) the alien participates in, or at any time after admission has participated in, knowing or having reason to know that such participation promoted, furthered, aided, or supported the illegal activity of the gang, the activities of a criminal gang."; and

(3) in subsection (d)—

(A) in paragraph (2)—

(i) by striking "Subject to paragraph (3), such" and inserting "Such"; and

(ii) by striking "(under paragraph (3))";

(B) by striking paragraph (3); and

(C) by redesignating paragraph (4) as paragraph (3); and

(D) in paragraph (3), as redesignated, by adding at the end the following: "The Secretary of Homeland Security may detain an alien provided temporary protected status under this section whenever appropriate under any other provision.".

(e) INCREASED PENALTIES BARRING THE ADMISSION OF CONVICTED SEX OFFENDERS FAILING TO REG-

ISTER AND REQUIRING DEPORTATION OF SEX OFFENDERS FAILING TO REGISTER.—

(1) INADMISSIBILITY.—Section 212(a)(2)(A)(i) (8 U.S.C. 1182(a)(2)(A)(i)), as amended by section 209(a)(3), is further amended—

(A) in subclause (II), by striking ''or'' at the end;

(B) in subclause (III), by striking the comma at the end and inserting a semicolon; and

(C) by inserting after subclause (III) the following:

''(IV) a violation of section 2250 of title 18, United States Code (relating to failure to register as a sex offender); or''.

(2) DEPORTABILITY.—Section 237(a)(2)(A)(i) (8 U.S.C. 1227(a)(2)(A)(i)) is amended—

(A) in subclause (I), by striking '', and'' and inserting a semicolon;

(B) in subclause (II), by striking the comma at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(III) a violation of section 2250 of title 18, United States Code (relat-

ing to failure to register as a sex offender).''.

(f) PRECLUDING ADMISSIBILITY OF ALIENS CONVICTED OF SERIOUS CRIMINAL OFFENSES AND DOMESTIC VIOLENCE, STALKING, CHILD ABUSE AND VIOLATION OF PROTECTION ORDERS.—

(1) INADMISSIBILITY ON CRIMINAL AND RELATED GROUNDS; WAIVERS.—Section 212 (8 U.S.C. 1182) is amended—

(A) in subsection (a)(2), by adding at the end the following:

''(J) CRIMES OF DOMESTIC VIOLENCE, STALKING, OR VIOLATION OF PROTECTIVE ORDERS; CRIMES AGAINST CHILDREN.—

''(i) DOMESTIC VIOLENCE, STALKING, AND CHILD ABUSE.—Any alien who has been convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment, provided the alien served at least 1 year's imprisonment for the crime or provided the alien was convicted of or admitted to acts constituting more than 1 such crime, not arising out of a single scheme of criminal misconduct, is inadmis-

sible. In this clause, the term 'crime of domestic violence' means any crime of violence (as defined in section 16 of title 18, United States Code) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local or foreign government.

"(ii) VIOLATORS OF PROTECTION ORDERS.—Any alien who at any time is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that constitutes criminal contempt of the portion of a pro-

tection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued, is inadmissible. In this clause, the term 'protection order' means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as an independent order in another proceeding.

''(iii) APPLICABILITY.—This subparagraph shall not apply to an alien who has been battered or subjected to extreme cruelty and who is not and was not the primary perpetrator of violence in the relationship, upon a determination by the Attorney General or the Secretary of Homeland Security that—

''(I) the alien was acting in self-defense;

"(II) the alien was found to have violated a protection order intended to protect the alien; or

"(III) the alien committed, was arrested for, was convicted of, or pled guilty to committing a crime that did not result in serious bodily injury."; and

(B) in subsection (h)—

(i) by striking "The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2)" and inserting "The Attorney General or the Secretary of Homeland Security may waive the application of subparagraphs (A)(i)(I), (B), (D), (E), (F), (J), and (K) of subsection (a)(2)"; and

(ii) by inserting "or Secretary of Homeland Security" after "the Attorney General" each place it appears.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to any acts that occurred on or after the date of the enactment of this Act.

SEC. 205. INCREASED CRIMINAL PENALTIES RELATED TO DRUNK DRIVING, ILLEGAL ENTRY, PERJURY, AND FIREARMS OFFENSES.

(a) DRUNK DRIVING.—

(1) INADMISSIBILITY.—Section 212(a)(2) (8 U.S.C. 1182(a)(2)) is amended by inserting after subparagraph (J), as added by section 204(f) the following:

"(K) DRUNK DRIVERS.—Any alien who has been convicted of 1 felony for driving under the influence under Federal or State law, for which the alien was sentenced to more than 1 year imprisonment, is inadmissible." .

(2) DEPORTABILITY.—Section 237(a)(2) (8 U.S.C. 1227(a)(2)) is amended by adding at the end the following:

"(F) DRUNK DRIVERS.—Unless the Secretary of Homeland Security or the Attorney General waives the application of this subparagraph, any alien who has been convicted of 1 felony for driving under the influence under Federal or State law, for which the alien was sentenced to more than 1 year imprisonment, is deportable.".

(3) CONFORMING AMENDMENT.—Section 212(h) (8 U.S.C. 1182(h)) is amended—

(A) in the subsection heading, by striking "Subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E)" and inserting "Certain Provisions in Subsection (a)(2)"; and

(B) in the matter preceding paragraph (1), by striking "and (E)" and inserting "(E), and (F)".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act and shall apply to convictions entered on or after such date.

(b) ILLEGAL ENTRY.—

(1) IN GENERAL.—Section 275 (8 U.S.C. 1325) is amended to read as follows:

"SEC. 275. ILLEGAL ENTRY.

"(a) IN GENERAL.—

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

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

"(B) knowingly eludes examination or inspection by an immigration officer (including

failing to stop at the command of such officer), or a customs or agriculture inspection at a port of entry; or

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

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

"(A) shall, for the first violation, be fined under title 18, United States Code, imprisoned not more than 6 months, or both;

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

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

"(D) if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 30 months, shall be fined under such title, imprisoned not more than 15 years, or both; and

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

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

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

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

"(4) DURATION OF OFFENSE.—An offense under this subsection continues until the alien is dis-

1 covered within the United States by an immigration
2 officer.
3 "(5) ATTEMPT.—Whoever attempts to commit
4 any offense under this section shall be punished in
5 the same manner as for a completion of such of-
6 fense.
7 "(b) IMPROPER TIME OR PLACE; CIVIL PEN-
8 ALTIES.—Any alien who is apprehended while entering, at-
9 tempting to enter, or knowingly crossing or attempting to
10 cross, the border to the United States at a time or place
11 other than as designated by immigration officers shall be
12 subject to a civil penalty, in addition to any criminal or
13 other civil penalties that may be imposed under any other
14 provision of law, in an amount equal to—
15 "(1) not less than $50 and not more than $250
16 for each such entry, crossing, attempted entry, or at-
17 tempted crossing; or
18 "(2) twice the amount specified in paragraph
19 (1) if the alien had previously been subject to a civil
20 penalty under this subsection.".
21 (2) CLERICAL AMENDMENT.—The table of con-
22 tents is amended by striking the item relating to sec-
23 tion 275 and inserting the following:

"Sec. 275. Illegal entry.".

24 (3) EFFECTIVE DATE.—Section 275(a)(4) of
25 the Immigration and Nationality Act, as added by

this Act, shall apply only to violations of section 275(a)(1) committed on or after the date of the enactment of this Act.

(c) PERJURY AND FALSE STATEMENTS.—Any person who willfully submits any materially false, fictitious, or fraudulent statement or representation (including any document, attestation, or sworn affidavit for that person or any person) relating to an application for any benefit under the immigration laws (including for Z non-immigrant status) will be subject to prosecution for perjury under section 1621 of title 18, United States Code, or for making such a statement or representation under section 1001 of that title.

(d) INCREASED PENALTIES RELATING TO FIREARMS OFFENSES.—

(1) PENALTIES RELATED TO REMOVAL.—Section 243 (8 U.S.C. 1253) is amended—

(A) in subsection (a)(1)—

(i) in the matter preceding subparagraph (A), by inserting ''212(a)'' or after ''section''; and

(ii) in the matter following subparagraph (D)—

(I) by striking ''or imprisoned not more than four years'' and insert-

ing ''and imprisoned for not more than 5 years''; and

(II) by striking '', or both'';

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

(2) PROHIBITING CARRYING OR USING A FIREARM DURING AND IN RELATION TO AN ALIEN SMUGGLING CRIME.—Section 924(c) of title 18, United States Code, is amended—

(A) in paragraph (1)—

(i) in subparagraph (A), by inserting '', alien smuggling crime,'' after ''any crime of violence'';

(ii) in subparagraph (A), by inserting '', alien smuggling crime,'' after ''such crime of violence''; and

(iii) in subparagraph (D)(ii), by inserting '', alien smuggling crime,'' after ''crime of violence''; and

(B) by adding at the end the following:

"(6) For purposes of this subsection, the term 'alien smuggling crime' means any felony punishable under section 274(a), 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324(a), 1327, and 1328).".

(3) INADMISSIBILITY FOR FIREARMS OFFENSES.—Section 212(a)(2)(A) (8 U.S.C. 1182(a)(2)(A)), as amended by sections 204(e) and 209(a)(3), is amended—

(A) in clause (i), by inserting after subclause (IV) the following:

"(V) a crime involving the purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18, United States Code), provided the alien was sentenced to at least 1 year for the offense,"; and

(B) in clause (ii), by striking "Clause (i)(I)" and inserting "Subclauses (I), (IV), and (V) of clause (i)".

SEC. 206. ILLEGAL ENTRY.

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

"SEC. 275. ILLEGAL ENTRY.

"(a) IN GENERAL.—

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

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

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

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

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

"(A) shall, for the first violation, be fined under title 18, United States Code, imprisoned not more than 6 months, or both;

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

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

"(D) if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 30 months, shall be fined under such title, imprisoned not more than 15 years, or both; and

"(E) if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 60 months, such alien shall be

fined under such title, imprisoned not more than 20 years, or both.

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

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

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

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

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

"(b) IMPROPER TIME OR PLACE; CIVIL PENALTIES.—Any alien who is apprehended while entering, attempting to enter, or knowingly crossing or attempting to cross the border to the United States at a time or place

other than as designated by immigration officers shall be subject to a civil penalty, in addition to any criminal or other civil penalties that may be imposed under any other provision of law, in an amount equal to—

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

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

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

"Sec. 275. Illegal Entry.".

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

SEC. 207. ILLEGAL REENTRY.

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

"SEC. 276. REENTRY OF REMOVED ALIEN.

Strike subsections (a) through (c) of section 276 of the Immigration and Nationality Act, and insert the following:

1 "(a) REENTRY AFTER REMOVAL.—Any alien who
2 has been denied admission, excluded, deported, or re-
3 moved, or who has departed the United States while an
4 order of exclusion, deportation, or removal is outstanding,
5 and subsequently enters, attempts to enter, crosses the
6 border to, attempts to cross the border to, or is at any
7 time found in the United States, shall be fined under title
8 18, United States Code, and imprisoned not less than 60
9 days and not more than 2 years.

10 "(b) REENTRY OF CRIMINAL OFFENDERS.—Not-
11 withstanding the penalty provided in subsection (a), if an
12 alien described in that subsection—

13 "(1) was convicted for 3 or more misdemeanors
14 or a felony before such removal or departure, the
15 alien shall be fined under title 18, United States
16 Code, and imprisoned not less than 1 year and not
17 more than 10 years, or both;

18 "(2) was convicted for a felony before such re-
19 moval or departure for which the alien was sen-
20 tenced to a term of imprisonment of not less than
21 30 months, the alien shall be fined under such title,
22 and imprisoned not less than 2 years and not more
23 than 15 years, or both;

24 "(3) was convicted for a felony before such re-
25 moval or departure for which the alien was sen-

tenced to a term of imprisonment of not less than 60 months, the alien shall be fined under such title, and imprisoned not less than 4 years and not more than 20 years, or both;

''(4) was convicted for 3 felonies before such removal or departure, the alien shall be fined under such title, and imprisoned not less than 4 years and not more than 20 years, or both; or

''(5) was convicted, before such removal or departure, for murder, rape, kidnapping, or a felony offense described in chapter 77 (relating to peonage and slavery) or 113B (relating to terrorism) of such title, the alien shall be fined under such title, and imprisoned not less than 5 years and not more than 20 years, or both.

''(c) REENTRY AFTER REPEATED REMOVAL.—Any alien who has been denied admission, excluded, deported, or removed 3 or more times and thereafter enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in the United States, shall be fined under title 18, United States Code, and imprisoned not less than 2 years and not more than 10 years, or both.''.

''(d) PROOF OF PRIOR CONVICTIONS.—The prior convictions described in subsection (b) are elements of the

crimes described in that subsection, and the penalties in that subsection shall apply only in cases in which the conviction or convictions that form the basis for the additional penalty are—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(g) REENTRY OF ALIEN REMOVED PRIOR TO COMPLETION OF TERM OF IMPRISONMENT.—Any alien removed pursuant to section 241(a)(4) who enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in, the United States shall

be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release unless the alien affirmatively demonstrates that the Secretary of Homeland Security has expressly consented to the alien's reentry. Such alien shall be subject to such other penalties relating to the reentry of removed aliens as may be available under this section or any other provision of law.

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

''(i) DEFINITIONS.—In this section:

''(1) FELONY.—Term 'felony' means any criminal offense punishable by a term of imprisonment of more than 1 year under the laws of the United States, any State, or a foreign government.

''(2) MISDEMEANOR.—The term 'misdemeanor' means any criminal offense punishable by a term of imprisonment of not more than 1 year under the applicable laws of the United States, any State, or a foreign government.

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

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

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

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

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

"CHAPTER 75—PASSPORT, VISA, AND IMMIGRATION FRAUD

"Sec.
"1541. Trafficking in passports.
"1542. False statement in an application for a passport.
"1543. Forgery and unlawful production of a passport.
"1544. Misuse of a passport.
"1545. Schemes to defraud aliens.
"1546. Immigration and visa fraud.
"1547. Marriage fraud.
"1548. Attempts and conspiracies.
"1549. Alternative penalties for certain offenses.
"1550. Seizure and forfeiture.
"1551. Additional jurisdiction.
"1552. Definitions.
"1553. Authorized law enforcement activities.".

"SEC. 1541. TRAFFICKING IN PASSPORTS.

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

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

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

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

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

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

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

"SEC. 1542. FALSE STATEMENT IN AN APPLICATION FOR A PASSPORT.

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

"(b) VENUE.—

"(1) An offense under subsection (a) may be prosecuted in any district,

"(A) in which the false statement or representation was made or the application for a United States passport was prepared or signed, or

"(B) in which or to which the application was mailed or presented.

"(2) An offense under subsection (a) involving an application prepared and adjudicated outside the United States may be prosecuted in the district in which the resultant passport was or would have been produced.

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

"SEC. 1543. FORGERY AND UNLAWFUL PRODUCTION OF A PASSPORT.

''(a) FORGERY.—Any person who—

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

''(2) knowingly transfers any passport knowing it to be forged, counterfeited, altered, falsely made, stolen, or to have been produced or issued without lawful authority,

shall be fined under this title, imprisoned not more than 15 years, or both.

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

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

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

''(3) transfers or furnishes a passport to any person for use by any person other than the person for whom the passport was issued or designed,

shall be fined under this title, imprisoned not more than 15 years, or both.

"SEC. 1544. MISUSE OF A PASSPORT.

"Any person who knowingly—

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

"(2) uses any passport in violation of the conditions or restrictions therein contained, or in violation of the laws, regulations, or rules governing the issuance and use of the passport;

"(3) secures, possesses, uses, receives, buys, sells, or distributes any passport knowing it to be forged, counterfeited, altered, falsely made, procured by fraud, or produced or issued without lawful authority; or

"(4) violates the terms and conditions of any safe conduct duly obtained and issued under the authority of the United States,

shall be fined under this title, imprisoned not more than 15 years, or both.

"SEC. 1545. SCHEMES TO DEFRAUD ALIENS.

"(a) IN GENERAL.—Any person who knowingly executes a scheme or artifice, in connection with any matter that is authorized by or arises under Federal immigration laws or any matter the offender claims or represents is authorized by or arises under Federal immigration laws, to—

"(1) defraud any person, or

1 ''(2) obtain or receive money or anything else of
2 value from any person, by means of false or fraudu-
3 lent pretenses, representations, or promises,
4 shall be fined under this title, imprisoned not more than
5 15 years, or both.
6 ''(b) MISREPRESENTATION.—Any person who know-
7 ingly and falsely represents that such person is an attor-
8 ney or accredited representative (as that term is defined
9 in section 1292.1 of title 8, Code of Federal Regulations
10 (or any successor regulation to such section)) in any mat-
11 ter arising under Federal immigration laws shall be fined
12 under this title, imprisoned not more than 15 years, or
13 both.
14 **''SEC. 1546. IMMIGRATION AND VISA FRAUD.**
15 ''(a) IN GENERAL.—Any person who knowingly—
16 ''(1) uses any immigration document issued or
17 designed for the use of another;
18 ''(2) forges, counterfeits, alters, or falsely
19 makes any immigration document;
20 ''(3) completes, mails, prepares, presents, signs,
21 or submits any immigration document knowing it to
22 contain any materially false statement or representa-
23 tion;
24 ''(4) secures, possesses, uses, transfers, re-
25 ceives, buys, sells, or distributes any immigration

document knowing it to be forged, counterfeited, altered, falsely made, stolen, procured by fraud, or produced or issued without lawful authority;

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

''(6) transfers or furnishes, without lawful authority, an immigration document to another person for use by a person other than the person for whom the immigration document was issued or designed,

shall be fined under this title, imprisoned not more than 15 years, or both.

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

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

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

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

"(4) completes, mails, prepares, presents, signs, or submits 10 or more immigration documents knowing the documents to contain any materially false statement or representation,

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

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

"(d) EMPLOYMENT DOCUMENTS.—Whoever uses—

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

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

"(3) a false attestation,

for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act (8 U.S.C.

1324a(b)), shall be fined under this title, imprisoned not more than 5 years, or both.''.

''SEC. 1547. MARRIAGE FRAUD.

''(a) EVASION OR MISREPRESENTATION.—Any person who—

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

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

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

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

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

''(b) MULTIPLE MARRIAGES.—Any person who—

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

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

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

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

"(d) DURATION OF OFFENSE.—

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

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

"SEC. 1548. ATTEMPTS AND CONSPIRACIES.

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

"SEC. 1549. ALTERNATIVE PENALTIES FOR CERTAIN OFFENSES.

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

(1) if committed to facilitate a drug trafficking crime (as defined in 929(a)) is 20 years; and

(2) if committed to facilitate an act of international terrorism (as defined in section 2331) is 25 years.

"SEC. 1550. SEIZURE AND FORFEITURE.

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

''(b) APPLICABLE LAW.—Seizures and forfeitures under this section shall be governed by the provisions of chapter 46 relating to civil forfeitures, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in section 981(d) shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Secretary of Homeland Security, the Secretary of State, or the Attorney General.

"SEC. 1551. ADDITIONAL JURISDICTION.

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

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

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

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

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

"(4) the offense is committed to facilitate an act of international terrorism (as defined in section 2331) or a drug trafficking crime (as defined in section 929(a)(2)) that affects or would affect the national security of the United States;

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

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

"SEC. 1552. DEFINITIONS.

"As used in this chapter:

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

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

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

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

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

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

"(4) The term 'immigration document'—

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

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

"(5) The term 'immigration laws' includes—

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

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

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

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

"(7) A person does not exercise 'lawful authority' if the person abuses or improperly exercises lawful authority the person otherwise holds.

"(8) The term 'passport' means—

"(A) a travel document attesting to the identity and nationality of the bearer that is issued under the authority of the Secretary of State, a foreign government, or an international organization; or

"(B) any instrument purporting to be a document described in subparagraph (A).

"(9) The term 'to present' means to offer or submit for official processing, examination, or adjudication. Any such presentation continues until the official processing, examination, or adjudication is complete.

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

"(11) The term 'produce' means to make, prepare, assemble, issue, print, authenticate, or alter.

"(12) The term 'State' means a State of the United States, the District of Columbia, or any com-

monwealth, territory, or possession of the United States.

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

"SEC. 1553. AUTHORIZED LAW ENFORCEMENT ACTIVITIES.

''Nothing in this chapter shall prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (84 Stat. 933).

(b) Protection for Legitimate Refugees and Asylum Seekers—

(1) PROSECUTION GUIDELINES.—The Attorney General, in consultation with the Secretary of Homeland Security, shall develop binding prosecution guidelines for federal prosecutors to ensure that any

prosecution of an alien seeking entry into the United States by fraud is consistent with the obligations of the United States under Article 31(1) of the Convention Relating to the Status of Refugees, done at Geneva July 28, 1951 (as made applicable by the Protocol Relating to the Status of Refugees, done at New York January 31, 1967 (19 UST 6223)).

(2) NO PRIVATE RIGHT OF ACTION.—The guidelines required by subparagraph (1), and any internal office procedures adopted pursuant thereto, are intended solely for the guidance of attorneys for the United States. This section, the guidelines required by subsection (a), and the process for determining such guidelines are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

SEC. 209. INADMISSIBILITY AND REMOVAL FOR PASSPORT AND IMMIGRATION FRAUD OFFENSES.

(a) INADMISSIBILITY.—Section 212(a)(2)(A)(i) (8 U.S.C. 1182(a)(2)(A)(i)) is amended—

(1) in subclause (I), by striking ‘, or’ at the end and inserting a semicolon;

(2) in subclause (II), by striking the comma at the end and inserting '; or'; and

(3) by inserting after subclause (II) the following:

"(III) a violation of (or a conspiracy or attempt to violate) section 1541, 1545, subsection (b) of section 1546, or subsection (b) of section 1547 of title 18, United States Code,'.

(b) REMOVAL.—Section 237(a)(3)(B)(iii) (8 U.S.C. 1227(a)(3)(B)(iii)) is amended to read as follows:

"(iii) a violation of (or a conspiracy or attempt to violate) section 1541, 1545, 1546, or subsection (b) of section 1547 of title 18, United States Code,".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to proceedings pending on or after the date of the enactment of this Act, with respect to conduct occurring on or after that date.

SEC. 210. INCARCERATION OF CRIMINAL ALIENS.

(a) INSTITUTIONAL REMOVAL PROGRAM.—

(1) CONTINUATION.—The Secretary shall continue to operate the Institutional Removal Program (referred to in this section as the 'Program') or shall develop and implement another program to—

(A) identify removable criminal aliens in Federal and State correctional facilities;

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

(C) remove such aliens from the United States after the completion of their sentences.

(2) EXPANSION.—The Secretary may extend the scope of the Program to all States.

(b) TECHNOLOGY USAGE.—Technology, such as videoconferencing, shall be used to the maximum extent practicable to make the Program available in remote locations. Mobile access to Federal databases of aliens, such as IDENT, and live scan technology shall be used to the maximum extent practicable to make these resources available to State and local law enforcement agencies in remote locations.

(c) REPORT TO CONGRESS.—Not later than 6 months after the date of the enactment of this Act, and annually thereafter, the Secretary shall submit a report to Congress on the participation of States in the Program and in any other program authorized under subsection (a).

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

SEC. 211. ENCOURAGING ALIENS TO DEPART VOLUNTARILY.

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

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

''(1) INSTEAD OF REMOVAL PROCEEDINGS.—If an alien is not described in paragraph (2)(A)(iii) or (4) of section 237(a), the Secretary of Homeland Security may permit the alien to voluntarily depart the United States at the alien's own expense under this subsection instead of being subject to proceedings under section 240.';

(B) by striking paragraph (3);

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

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

''(2) BEFORE THE CONCLUSION OF REMOVAL PROCEEDINGS.—If an alien is not described in paragraph (2)(A)(iii) or (4) of section 237(a), the Attorney General may permit the alien to voluntarily depart the United States at the alien's own expense under this subsection after the initiation of removal proceedings under section 240 and before the con-

clusion of such proceedings before an immigration judge.'';

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

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

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

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

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

''(B) BEFORE THE CONCLUSION OF REMOVAL PROCEEDINGS.—Permission to voluntarily depart under paragraph (2) shall not be valid for any period in excess of 60 days, and may be granted only after a finding that the alien has the means to depart the United States

and intends to do so. An alien permitted to voluntarily depart under paragraph (2) shall post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, to be surrendered upon proof that the alien has departed the United States within the time specified. An immigration judge may waive the requirement to post a voluntary departure bond in individual cases upon a finding that the alien has presented compelling evidence that the posting of a bond will pose a serious financial hardship and the alien has presented credible evidence that such a bond is unnecessary to guarantee timely departure.'';

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

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

(vi) in subparagraph (E), as redesignated, by striking ''subparagraph (B)''

each place that term appears and inserting "subparagraph (C)"; and

(F) in paragraph (4), by striking "paragraph (1)" and inserting "paragraphs (1) and (2)";

(2) in subsection (b)(2), by striking "a period exceeding 60 days" and inserting "any period in excess of 45 days";

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

"(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

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

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

"(3) ADVISALS.—Agreements relating to voluntary departure granted during removal proceedings under section 240, or at the conclusion of such proceedings, shall be presented on the record before the immigration judge. The immigration

judge shall advise the alien of the consequences of a voluntary departure agreement before accepting such agreement.

"(4) FAILURE TO COMPLY WITH AGREEMENT.—If an alien agrees to voluntary departure under this section and fails to depart the United States within the time allowed for voluntary departure or fails to comply with any other terms of the agreement (including failure to timely post any required bond), the alien is—

"(A) ineligible for the benefits of the agreement;

"(B) subject to the penalties described in subsection (d); and

"(C) subject to an alternate order of removal if voluntary departure was granted under subsection (a)(2) or (b)";

(4) by amending subsection (d) to read as follows:

"(d) PENALTIES FOR FAILURE TO DEPART.—If an alien is permitted to voluntarily depart under this section and fails to voluntarily depart from the United States within the time period specified or otherwise violates the terms of a voluntary departure agreement, the alien will be subject to the following penalties:

"(1) CIVIL PENALTY.—The alien shall be liable for a civil penalty of $3,000. The order allowing voluntary departure shall specify the amount of the penalty, which shall be acknowledged by the alien on the record. If the Secretary thereafter establishes that the alien failed to depart voluntarily within the time allowed, no further procedure will be necessary to establish the amount of the penalty, and the Secretary may collect the civil penalty at any time thereafter and by whatever means provided by law. An alien will be ineligible for any benefits under this chapter until this civil penalty is paid.

"(2) INELIGIBILITY FOR RELIEF.—The alien shall be ineligible during the time the alien remains in the United States and for a period of 10 years after the alien's departure for any further relief under this section and sections 240A, 245, 248, and 249. The order permitting the alien to depart voluntarily shall inform the alien of the penalties under this subsection.

"(3) REOPENING.—The alien shall be ineligible to reopen the final order of removal that took effect upon the alien's failure to depart, or upon the alien's other violations of the conditions for voluntary departure, during the period described in paragraph

(2). This paragraph does not preclude a motion to reopen to seek withholding of removal under section 241(b)(3) or protection against torture, if the motion—

"(A) presents material evidence of changed country conditions arising after the date of the order granting voluntary departure in the country to which the alien would be removed; and

"(B) makes a sufficient showing to the satisfaction of the Attorney General that the alien is otherwise eligible for such protection."; and

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

"(e) ELIGIBILITY.—

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

"(2) RULEMAKING.—The Secretary may promulgate regulations to limit eligibility or impose additional conditions for voluntary departure under subsection (a)(1) for any class of aliens. The Secretary or Attorney General may by regulation limit eligibility or impose additional conditions for vol-

untary departure under subsections (a)(2) or (b) of this section for any class or classes of aliens.''; and

(6) in subsection (f), by adding at the end the following: ''Notwithstanding section 242(a)(2)(D) of this Act, sections 1361, 1651, and 2241 of title 28, United States Code, any other habeas corpus provision, and any other provision of law (statutory or nonstatutory), no court shall have jurisdiction to affect, reinstate, enjoin, delay, stay, or toll the period allowed for voluntary departure under this section.''.

(b) RULEMAKING.—The Secretary shall promulgate regulations to provide for the imposition and collection of penalties for failure to depart under section 240B(d) of the Immigration and Nationality Act (8 U.S.C. 1229c(d)).

(c) EFFECTIVE DATES.—

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

(2) EXCEPTION.—The amendment made by subsection (a)(6) shall take effect on the date of the enactment of this Act and shall apply with respect

to any petition for review which is filed on or after such date.

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

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

(1) in clause (i), by striking ''seeks admission within 5 years of the date of such removal (or within 20 years'' and inserting ''seeks admission not later than 5 years after the date of the alien's removal (or not later than 20 years after the alien's removal''; and

(2) in clause (ii), by striking ''seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of'' and inserting ''seeks admission not later than 10 years after the date of the alien's departure or removal (or not later than 20 years after''.

(b) BAR ON DISCRETIONARY RELIEF.—Section 274D (8 U.S.C. 1324d) is amended—

(1) in subsection (a), by striking ''Commissioner'' and inserting ''Secretary of Homeland Security''; and

(2) by adding at the end the following:

"(c) INELIGIBILITY FOR RELIEF.—

"(1) IN GENERAL.—Unless a timely motion to reconsider under section 240(c)(6) or a timely motion to reopen under section 240(c)(7) is granted, an alien described in subsection (a) shall be ineligible for any discretionary relief from removal (including cancellation of removal and adjustment of status) during the time the alien remains in the United States and for a period of 10 years after the alien's departure from the United States.

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

"(A) presents material evidence of changed country conditions arising after the date of the final order of removal in the country to which the alien would be removed; and

"(B) makes a sufficient showing to the satisfaction of the Attorney General that the alien is otherwise eligible for such protection.".

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

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

Section 922 of title 18, United States Code, is amended—

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

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

(3) in subsection (y)—

(A) in the header, by striking ''Admitted Under Nonimmigrant Visas'' and inserting ''not Lawfully Admitted for Permanent Residence'';

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

''(B) the term ''lawfully admitted for permanent residence'' has the same meaning as in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).'';

(C) in paragraph (2), by striking ''under a nonimmigrant visa'' and inserting ''but not lawfully admitted for permanent residence''; and

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

SEC. 214. UNIFORM STATUTE OF LIMITATIONS FOR CERTAIN IMMIGRATION, PASSPORT, AND NATURALIZATION OFFENSES.

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

''SEC. 3291. IMMIGRATION, PASSPORT, AND NATURALIZATION OFFENSES.

''No person shall be prosecuted, tried, or punished for a violation of any section of chapters 69 (relating to nationality and citizenship offenses), 75 (relating to passport, visa, and immigration offenses), or for a violation of any criminal provision under section 243, 266, 274, 275, 276, 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1253, 1306, 1324, 1325, 1326, 1327, and 1328), or for an attempt or conspiracy to violate any such section, unless the indictment is returned or the information filed not later than 10 years after the commission of the offense.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 213 of title 18, United States Code, is amend-

ed by striking the item relating to section 3291 and inserting the following:

"3291. Immigration, passport, and naturalization offenses.".

SEC. 215. DIPLOMATIC SECURITY SERVICE.

(a) Section 2709(a)(1) of title 22, United States Code, is amended to read as follows:

"(1) conduct investigations concerning—

"(A) illegal passport or visa issuance or use;

"(B) identity theft or document fraud affecting or relating to the programs, functions, and authorities of the Department of State;

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

"(D) Federal offenses committed within the special maritime and territorial jurisdiction defined in paragraph (9) of section 7 of title 18, United States Code, except as that jurisdiction relates to the premises of United States military missions and related residences;".

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

SEC. 216. STREAMLINED PROCESSING OF BACKGROUND CHECKS CONDUCTED FOR IMMIGRATION BENEFITS.

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

"(e) INTERAGENCY TASK FORCE.—

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

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

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Director of the Federal Bureau of Investigation such sums as are necessary for each fiscal year, 2008 through 2012 for enhancements to existing systems for conducting background

1 and security checks necessary to support immigration se-
2 curity and orderly processing of applications.

3 (c) REPORT ON BACKGROUND AND SECURITY
4 CHECKS.—

5 (1) IN GENERAL.—Not later than 180 days
6 after the date of the enactment of this Act, the Di-
7 rector of the Federal Bureau of Investigation shall
8 submit to the Committee on the Judiciary of the
9 Senate and the Committee on the Judiciary of the
10 House of Representatives a report on the back-
11 ground and security checks conducted by the Fed-
12 eral Bureau of Investigation on behalf of United
13 States Citizenship and Immigration Services.

14 (2) CONTENT.—The report required under
15 paragraph (1) shall include—

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

18 (B) a statistical breakdown of the back-
19 ground and security check delays associated
20 with different types of immigration applications;

21 (C) a statistical breakdown of the back-
22 ground and security check delays by applicant
23 country of origin; and

24 (D) the steps that the Director of the Fed-
25 eral Bureau of Investigation is taking to expe-

dite background and security checks that have been pending for more than 180 days.

SEC. 217. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM.

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

(1) indigent defense;

(2) criminal prosecution;

(3) autopsies;

(4) translators and interpreters; and

(5) courts costs.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) PROCESSING CRIMINAL ILLEGAL ALIENS.—There are authorized to be appropriated $400,000,000 for each of the fiscal years 2008 through 2013 to carry out subsection (a).

(2) COMPENSATION UPON REQUEST.—Section 241(i)(5) (8 U.S.C. 1231(i)) is amended to read as follows:

"(5) There are authorized to be appropriated to carry this subsection—

"(A) such sums as may be necessary for fiscal year 2008;

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

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

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

(c) TECHNICAL AMENDMENT.—Section 501 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1365) is amended by striking "Attorney General" each place it appears and inserting "Secretary of Homeland Security".

SEC. 218. TRANSPORTATION AND PROCESSING OF ILLEGAL ALIENS APPREHENDED BY STATE AND LOCAL LAW ENFORCEMENT OFFICERS.

(a) IN GENERAL.—The Secretary may provide sufficient transportation and officers to take illegal aliens apprehended by State and local law enforcement officers into custody for processing at a detention facility operated by the Department.

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

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

(a) GRANTS AUTHORIZED.—The Secretary may award grants to Indian tribes with lands adjacent to an international border of the United States that have been adversely affected by illegal immigration.

(b) USE OF FUNDS.—Grants awarded under subsection (a) may be used for—

(1) law enforcement activities;

(2) health care services;

(3) environmental restoration; and

(4) the preservation of cultural resources.

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

(1) describes the level of access of Border Patrol agents on tribal lands;

(2) describes the extent to which enforcement of immigration laws may be improved by enhanced access to tribal lands;

(3) contains a strategy for improving such access through cooperation with tribal authorities; and

(4) identifies grants provided by the Department for Indian tribes, either directly or through

State or local grants, relating to border security expenses.

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

SEC. 220. ALTERNATIVES TO DETENTION.

The Secretary shall conduct a study of—

(1) the effectiveness of alternatives to detention, including electronic monitoring devices and intensive supervision programs, in ensuring alien appearance at court and compliance with removal orders;

(2) the effectiveness of the Intensive Supervision Appearance Program and the costs and benefits of expanding that program to all States; and

(3) other alternatives to detention, including—

(A) release on an order of recognizance;

(B) appearance bonds; and

(C) electronic monitoring devices.

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

(a) IN GENERAL.—Section 287(g) (8 U.S.C. 1357(g)) is amended—

(1) in paragraph (2), by adding at the end the following: "If such training is provided by a State or

political subdivision of a State to an officer or employee of such State or political subdivision of a State, the cost of such training (including applicable overtime costs) shall be reimbursed by the Secretary of Homeland Security.''; and

(2) in paragraph (4), by adding at the end the following: ''The cost of any equipment required to be purchased under such written agreement and necessary to perform the functions under this subsection shall be reimbursed by the Secretary of Homeland Security.''.

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

SEC. 222. PROTECTING IMMIGRANTS FROM CONVICTED SEX OFFENDERS.

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

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

''(viii) Clause (i) shall not apply to a citizen of the United States who has been convicted of an offense described in subparagraph (A), (I), or (K) of section

101(a)(43), unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that the citizen poses no risk to the alien with respect to whom a petition described in clause (i) is filed.''; and

(2) in subparagraph (B)(i), by amending subclause (II) to read as follows:

''(II) Subclause (I) shall not apply in the case of an alien admitted for permanent residence who has been convicted of an offense described in subparagraph (A), (I), or (K) of section 101(a)(43), unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that the alien lawfully admitted for permanent residence poses no risk to the alien with respect to whom a petition described in subclause (I) is filed.''.

(b) NONIMMIGRANTS.—Section 101(a)(15)(K) (8 U.S.C. 1101(a)(15)(K)), is amended by inserting ''(other than a citizen described in section 204(a)(1)(A)(viii))''

after ''citizen of the United States'' each place that phrase appears.

SEC. 223. LAW ENFORCEMENT AUTHORITY OF STATES AND POLITICAL SUBDIVISIONS AND TRANSFER TO FEDERAL CUSTODY.

(a) IN GENERAL.—Title II (8 U.S.C. 1151 et. seq.) is amended by adding after section 240C the following new section:

''SEC. 240D. LAW ENFORCEMENT AUTHORITY OF STATES AND POLITICAL SUBDIVISIONS AND TRANSFER OF ALIENS TO FEDERAL CUSTODY.

''(a) TRANSFER.—If the head of a law enforcement entity of a State (or, if appropriate, a political subdivision of the State) exercising authority with respect to the apprehension or arrest of an alien submits a request to the Secretary of Homeland Security that the alien be taken into Federal custody, the Secretary of Homeland Security—

''(1) shall—

''(A) deem the request to include the inquiry to verify immigration status described in section 642(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373(c)), and expeditiously inform the requesting entity whether such individual is

an alien lawfully admitted to the United States or is otherwise lawfully present in the United States; and

"(B) if the individual is an alien who is not lawfully admitted to the United States or otherwise is not lawfully present in the United States—

"(i) take the illegal alien into the custody of the Federal Government not later than 72 hours after—

"(I) the conclusion of the State charging process or dismissal process; or

"(II) the illegal alien is apprehended, if no State charging or dismissal process is required; or

"(ii) request that the relevant State or local law enforcement agency temporarily detain or transport the alien to a location for transfer to Federal custody; and

"(2) shall designate at least 1 Federal, State, or local prison or jail or a private contracted prison or detention facility within each State as the central facility for that State to transfer custody of aliens to the Department of Homeland Security.

"(b) REIMBURSEMENT.—

"(1) IN GENERAL.—The Secretary of Homeland Security shall reimburse a State, or a political subdivision of a State, for expenses, as verified by the Secretary, incurred by the State or political subdivision in the detention and transportation of an alien as described in subparagraphs (A) and (B) of subsection (c)(1).

"(2) COST COMPUTATION.—Compensation provided for costs incurred under subparagraphs (A) and (B) of subsection (c)(1) shall be—

"(A) the product of—

"(i) the average daily cost of incarceration of a prisoner in the relevant State, as determined by the chief executive officer of a State (or, as appropriate, a political subdivision of the State); multiplied by

"(ii) the number of days that the alien was in the custody of the State or political subdivision; plus

"(B) the cost of transporting the alien from the point of apprehension or arrest to the location of detention, and if the location of detention and of custody transfer are different, to the custody transfer point; plus

"(C) the cost of uncompensated emergency medical care provided to a detained alien during the period between the time of transmittal of the request described in subsection (c) and the time of transfer into Federal custody.

"(c) REQUIREMENT FOR APPROPRIATE SECURITY.—The Secretary of Homeland Security shall ensure that—

"(1) aliens incarcerated in a Federal facility pursuant to this section are held in facilities which provide an appropriate level of security; and

"(2) if practicable, aliens detained solely for civil violations of Federal immigration law are separated within a facility or facilities.

"(d) REQUIREMENT FOR SCHEDULE.—In carrying out this section, the Secretary of Homeland Security shall establish a regular circuit and schedule for the prompt transportation of apprehended aliens from the custody of those States, and political subdivisions of States, which routinely submit requests described in subsection (c), into Federal custody.

"(e) AUTHORITY FOR CONTRACTS.—

"(1) IN GENERAL.—The Secretary of Homeland Security may enter into contracts or cooperative agreements with appropriate State and local law en-

1 forcement and detention agencies to implement this
2 section.
3 "(2) DETERMINATION BY SECRETARY.—Prior
4 to entering into a contract or cooperative agreement
5 with a State or political subdivision of a State under
6 paragraph (1), the Secretary shall determine wheth-
7 er the State, or if appropriate, the political subdivi-
8 sion in which the agencies are located, has in place
9 any formal or informal policy that violates section
10 642 of the Illegal Immigration Reform and Immi-
11 grant Responsibility Act of 1996 (8 U.S.C. 1373).
12 The Secretary shall not allocate any of the funds
13 made available under this section to any State or po-
14 litical subdivision that has in place a policy that vio-
15 lates such section.".
16 (b) AUTHORIZATION OF APPROPRIATIONS FOR THE
17 DETENTION AND TRANSPORTATION TO FEDERAL CUS-
18 TODY OF ALIENS NOT LAWFULLY PRESENT.—There are
19 authorized to be appropriated $850,000,000 for fiscal year
20 2008 and each subsequent fiscal year for the detention
21 and removal of aliens not lawfully present in the United
22 States under the Immigration and Nationality Act (8
23 U.S.C. 1101 et seq.).

SEC. 224. LAUNDERING OF MONETARY INSTRUMENTS.

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

(1) by inserting ''section 1590 (relating to trafficking with respect to peonage, slavery, involuntary servitude, or forced labor),'' after ''section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction),''; and

(2) by inserting ''section 274(a) of the Immigration and Nationality Act (8 U.S.C.1324(a)) (relating to bringing in and harboring certain aliens),'' after ''section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling),''.

SEC. 225. COOPERATIVE ENFORCEMENT PROGRAMS.

Not later than 2 years after the date of the enactment of this Act, the Secretary shall negotiate and execute, where practicable, a cooperative enforcement agreement described in section 287(g) of the Immigration and Nationality Act (8 U.S.C. 1357(g)) with at least 1 law enforcement agency in each State, to train law enforcement officers in the detection and apprehension of individuals engaged in transporting, harboring, sheltering, or encouraging aliens in violation of section 274 of such Act (8 U.S.C. 1324).

SEC. 226. EXPANSION OF THE JUSTICE PRISONER AND ALIEN TRANSFER SYSTEM.

Not later than 60 days after the date of enactment of this Act, the Attorney General shall issue a directive to expand the Justice Prisoner and Alien Transfer System (JPATS) so that such System provides additional services with respect to aliens who are illegally present in the United States. Such expansion should include—

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

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

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

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

SEC. 227. DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.

(a) IN GENERAL.—Pursuant to the authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall promulgate or amend the sentencing guidelines, policy statements, and official

commentaries related to passport fraud offenses, including the offenses described in chapter 75 of title 18, United States Code, as amended by section 208 of this Act, to reflect the serious nature of such offenses.

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

SEC. 228. CANCELLATION OF VISAS.

Section 222(g) (8 U.S.C. 1202(g)) is amended—

(1) in paragraph (1)—

(A) by striking ''Attorney General'' and inserting ''Secretary'';

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

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

(2) in paragraph (2)(A), by striking ''(other than the visa described in paragraph (1)) issued in

a consular office located in the country of the alien's nationality'' and inserting ''(other than a visa described in paragraph (1)) issued in a consular office located in the country of the alien's nationality or foreign residence''.

SEC. 229. JUDICIAL REVIEW OF VISA REVOCATION.

(a) IN GENERAL.—Section 221(i) of the Immigration and Nationality Act (8 U.S.C. 1201(i)) is amended by striking ''There shall be no means of judicial review'' and all that follows and inserting the following: ''Notwithstanding any other provision of law, including section 2241 of title 28, United States Code, any other habeas corpus provision, and sections 1361 and 1651 of such title, a revocation under this subsection may not be reviewed by any court, and no court shall have jurisdiction to hear any claim arising from, or any challenge to, such a revocation, provided that the revocation is executed by the Secretary.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall—

(1) take effect on the date of the enactment of this Act; and

(2) apply to all revocations made on or after such date.

TITLE III—WORKSITE ENFORCEMENT

Sec. 301. Purposes.

Sec. 302. Unlawful employment of aliens.
Sec. 303. Effective date.
Sec. 304. Disclosure of certain taxpayer information to assist in immigration enforcement.
Sec. 305. Increasing security and integrity of Social Security cards.
Sec. 306. Increasing security and integrity of identity documents.
Sec. 307. Voluntary advanced verification program to combat identity theft.
Sec. 308. Responsibilities of the Social Security Administration.
Sec. 309. Immigration enforcement support by the Internal Revenue Service and the Social Security Administration.
Sec. 310. Authorization of appropriations.

TITLE III—WORKSITE ENFORCEMENT

SEC. 301. PURPOSES.

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

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

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

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

(e) To authorize the Secretary of Homeland Security to confirm issuance of state identity documents, including

driver's licenses, and to obtain and transmit individual photographic images held by states for identity authentication purposes.

(f) To collect information on employee hires.

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

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

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

(j) To establish the following:

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

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

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

(4) a streamlined enforcement procedure to ensure efficient adjudication of violations of this Title;

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

(6) an enhancement of criminal and civil penalties;

(7) increased coordination of information and enforcement between the Internal Revenue Service and the Department of Homeland Security regarding employers who have violations related to the employment of unauthorized aliens;

(8) increased penalties under the Internal Revenue Code for employers who have violations relating to the employment of unauthorized aliens.

SEC. 302. UNLAWFUL EMPLOYMENT OF ALIENS.

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

"(a) MAKING EMPLOYMENT OF UNAUTHORIZED ALIENS UNLAWFUL.—

"(1) IN GENERAL.—It is unlawful for an employer—

"(A) to hire, or to recruit or refer for a fee, an alien for employment in the United States knowing or with reckless disregard that the alien is an unauthorized alien (as defined in subsection (b)(1)) with respect to such employment; or

"(B) to hire, or to recruit or refer for a fee, for employment in the United States an individual without complying with the requirements of subsections (c) and (d).

"(2) CONTINUING EMPLOYMENT.—It is unlawful for an employer, after hiring an alien for employment, to continue to employ the alien in the United States knowing or with reckless disregard that the alien is (or has become) an unauthorized alien with respect to such employment.

"(3) USE OF LABOR THROUGH CONTRACT.—For purposes of this section, an employer who uses a contract, subcontract, or exchange to obtain the labor of an alien in the United States knowing that the alien is an unauthorized alien (as defined in subsection (b)(1)) with respect to performing such labor, shall be considered to have hired the alien for employment in the United States in violation of paragraph (1)(A).

"(A) By regulation, the Secretary may require, for purposes of ensuring compliance with the immigration laws, that an employer include in a written contract, subcontract, or exchange an effective and enforceable requirement that the contractor or subcontractor adhere to the immigration laws of the United States, including use of EEVS.

"(B) The Secretary may establish procedures by which an employer may obtain confirmation from the Secretary that the contractor or subcontractor has registered with the EEVS and is utilizing the EEVS to verify its employees.

"(C) The Secretary may establish such other requirements for employers using contractors or subcontractors as the Secretary deems necessary to prevent knowing violations of this paragraph.

"(4) APPLICATION TO FEDERAL GOVERNMENT.—For purposes of this section, the term 'employer' includes entities in any branch of the Federal Government.

"(5) DEFENSE.—An employer that establishes that it has complied in good faith with the require-

ments of subsections (c)(1) through (c)(4), pertaining to document verification requirements, and subsection (d) has established an affirmative defense that the employer has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral, however:

"(A) until such time as the Secretary has required an employer to participate in the EEVS or such participation is permitted on a voluntary basis pursuant to subsection (d), a defense is established without a showing of compliance with subsection (d); and

"(B) to establish a defense, the employer must also be in compliance with any additional requirements that the Secretary may promulgate by regulation pursuant to subsections (c), (d), and (k).

"(6) An employer is presumed to have acted with knowledge or reckless disregard if the employer fails to comply with written standards, procedures or instructions issued by the Secretary. Such standards, procedures or instructions shall be objective and verifiable.

"(b) DEFINITIONS.—

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

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

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

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

"(c) DOCUMENT VERIFICATION REQUIREMENTS.—Any employer hiring, recruiting, or referring an individual for employment in the United States shall take all reasonable steps to verify that the individual is authorized to work in the United States, including the requirements of subsection (d) and the following paragraphs:

"(1) Attestation after examination of documentation.

"(A) IN GENERAL.—The employer must attest, under penalty of perjury and on a form prescribed by the Secretary, that it has verified

the identity and work authorization status of the individual by examining—

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

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

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

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

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

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

"(I) contains a photograph of the individual, biometric data, such as fingerprints, or such other personal identifying information relating to the individual as the Secretary finds, by regulation, sufficient for the purposes of this subsection;

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

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

"(iii) a temporary interim benefits card valid under section 218C(c) of the Immigration and Nationality Act, as amended by section 602 of the Comprehensive Immigration Reform Act of 2007,

bearing a photograph and an expiration date, and issued by the Secretary to aliens applying for temporary worker status under the Z-visa.

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

"(i) an individual's driver's license or identity card issued by a State, the Commonwealth of the Northern Mariana Islands, or an outlying possession of the United States, provided that the issuing State or entity has certified to the Secretary of Homeland Security that it is in compliance with the minimum standards required under section 202 of the REAL ID Act of 2005 (division B of Public Law 109–13) (49 U.S.C. 30301 note) and implementing regulations issued by the Secretary of Homeland Security once those requirements become effective;

"(ii) an individual's driver's license or identity card issued by a State, the Commonwealth of the Northern Mariana Islands, or an outlying possession of the

United States which is not compliant with section 202 of the REAL ID Act of 2005 if—

"(I) the driver's license or identity card contains the individual's photograph as well as the individual's name, date of birth, gender, height, eye color and address,

"(II) the card has been approved for this purpose in accordance with timetables and procedures established by the Secretary pursuant to subsection (c)(1)(F) of this section, and

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

"(iii) for individuals under 16 years of age who are unable to present a document listed in clause (i) or (ii), documentation of personal identity of such other type as the

Secretary finds provides a reliable means of identification, provided it contains security features to make it resistant to tampering, counterfeiting, and fraudulent use; or

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

"(D) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION.—The following documents may be accepted as evidence of employment authorization—

"(i) a social security account number card issued by the Commissioner of Social Security (other than a card which specifies on its face that the card is not valid for

employment in the United States). The Secretary, in consultation with the Commissioner of Social Security, may require by publication of a notice in the Federal Register that only a social security account number card described in Section 305 of this Title be accepted for this purpose; or

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

"(E) AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS.—If the Secretary finds that any document or class of documents described in subparagraph (B), (C), or (D) as establishing employment authorization or identity does not reliably establish such authorization or identity or is being used fraudulently to an unacceptable degree, the Secretary shall, with no-

tice to the public provided in the Federal Register, prohibit or restrict the use of that document or class of documents for purposes of this subsection.

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

"(2) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—The individual must attest, under penalty of perjury on the form prescribed by the Secretary, that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Secretary to be hired, recruited, or referred for such employment. Such attestation may be manifested by either a hand-written or electronic signature.

"(3) RETENTION OF VERIFICATION FORM.—After completion of such form in accordance with paragraphs (1) and (2), the employer must retain a paper, microfiche, microfilm, or electronic version of the form and make it available for inspection by offi-

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

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

"(B) in the case of the hiring of an individual—

"(i) seven years after the date of such hiring; or

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

"(4) Copying of documentation and recordkeeping required.

"(A) Notwithstanding any other provision of law, the employer shall copy all documents presented by an individual pursuant to this subsection and shall retain a paper, microfiche, microfilm, or electronic copy as prescribed in paragraph (3), but only (except as otherwise

1 permitted under law) for the purposes of com-
2 plying with the requirements of this subsection.
3 Such copies shall reflect the signatures of the
4 employer and the employee, as well as the date
5 of receipt.

6 ''(B) The employer shall also maintain
7 records of Social Security Administration cor-
8 respondence regarding name and number
9 mismatches or no-matches and the steps taken
10 to resolve such issues.

11 ''(C) The employer shall maintain records
12 of all actions and copies of any correspondence
13 or action taken by the employer to clarify or re-
14 solve any issue that raises reasonable doubt as
15 to the validity of the alien's identity or work au-
16 thorization.

17 ''(D) The employer shall maintain such
18 records as prescribed in this subsection. The
19 Secretary may prescribe the manner of record-
20 keeping and may require that additional records
21 be kept or that additional documents be copied
22 and maintained. The Secretary may require
23 that these documents be transmitted electroni-
24 cally, and may develop automated capabilities to
25 request such documents.

"(5) PENALTIES.— An employer that fails to comply with any requirement of this subsection shall be penalized under subsection (e)(4)(B).

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

"(7) The employer shall use the procedures for document verification set forth in this paragraph for all employees without regard to national origin or citizenship status.

"(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.—

"(1) IN GENERAL.—The Secretary, in cooperation and consultation with the Secretary of State, the Commissioner of Social Security, and the states, shall implement and specify the procedures for EEVS. The participating employers shall timely register with EEVS and shall use EEVS as described in subsection (d)(5).

"(2) IMPLEMENTATION SCHEDULE.—

"(A) As of the date of enactment of this section, the Secretary in his discretion, with notice to the public provided in the Federal Reg-

ister, is authorized to require any employer or industry which the Secretary determines to be part of the critical infrastructure, a federal contractor, or directly related to the national security or homeland security of the United States to participate in the EEVS. This requirement may be applied to both newly hired and current employees. The Secretary shall notify employers subject to this subparagraph 30 days prior to EEVS.

''(B) No later than 6 months after the date of enactment of this section, the Secretary shall require additional employers or industries to participate in the EEVS. This requirement shall be applied to new employees hired, and current employees subject to reverification because of expiring work authorization documentation or expiration of immigration status, on or after the date on which the requirement takes effect. The Secretary, by notice in the Federal Register, shall designate these employers or industries, in his discretion, based upon risks to critical infrastructure, national security, immigration enforcement, or homeland security needs.

"(C) No later than 18 months after the date of enactment of this section, the Secretary shall require all employers to participate in the EEVS with respect to newly hired employees and current employees subject to reverification because of expiring work authorization documentation or expiration of immigration status.

"(D) No later than three years after the date of enactment of this section, all employers shall participate in the EEVS with respect to new employees, all employees whose identity and employment authorization have not been previously verified through EEVS, and all employees in Z status who have not previously presented a secure document evidencing their Z status. The Secretary may specify earlier dates for participation in the EEVS in his discretion for some or all classes of employer or employee.

"(E) The Secretary shall create the necessary systems and processes to monitor the functioning of the EEVS, including the volume of the workflow, the speed of processing of queries, and the speed and accuracy of responses. These systems and processes shall be audited by the Government Accountability Office 9

1 months after the date of enactment of this sec-
2 tion and 24 months after the date of enactment
3 of this section. The Government Accountability
4 Office shall report the results of the audits to
5 Congress.

6 "(3) PARTICIPATION IN EEVS.—The Secretary
7 has the following discretionary authority to require
8 or to permit participation in the EEVS—

9 "(A) To permit any employer that is not
10 required to participate in the EEVS to do so on
11 a voluntary basis;

12 "(B) To require any employer that is re-
13 quired to participate in the EEVS with respect
14 to its newly hired employees also to do so with
15 respect to its current workforce if the Secretary
16 has reasonable cause to believe that the em-
17 ployer has engaged in any violation of the immi-
18 gration laws.

19 "(4) CONSEQUENCE OF FAILURE TO PARTICI-
20 PATE.—If an employer is required under this sub-
21 section to participate in the EEVS and fails to com-
22 ply with the requirements of such program with re-
23 spect to an individual—

"(A) such failure shall be treated as a violation of subsection (a)(1)(B) of this section with respect to that individual, and

"(B) a rebuttable presumption is created that the employer has violated subsection (a)(1)(A) or (a)(2) of this section.

"Subparagraph (B) shall not apply in any prosecution under subsection 274A(f)(1).

"(5) PROCEDURES FOR PARTICIPANTS IN THE EEVS.—

"(A) IN GENERAL.—An employer participating in the EEVS must register in the EEVS and conform to the following procedures in the event of hiring, recruiting, or referring any individual for employment in the United States:

"(i) REGISTRATION OF EMPLOYERS.—The Secretary, through notice in the Federal Register, shall prescribe procedures that employers must follow to register in the EEVS. In prescribing these procedures, the Secretary shall have authority to require employers to provide:

"(I) employer's name;

"(II) employer's Employment Identification Number (EIN);

"(III) company address;

"(IV) name, position and social security number of the employer's employees accessing the EEVS; and

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

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

"(ii) PROVISION OF ADDITIONAL INFORMATION.—The employer shall obtain from the individual (and the individual shall provide) and shall record in such manner as the Secretary may specify—

"(I) an individual's social security account number,

"(II) if the individual does not attest to United States nationality under subsection (c)(2) of this section, such identification or authorization

number established by the Department of Homeland Security as the Secretary of Homeland Security shall specify, and

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

"(iii) PRESENTATION OF DOCUMENTATION.—The employer, and the individual whose identity and employment eligibility are being confirmed, shall fulfill the requirements of subsection (c) of this section.

"(iv) PRESENTATION OF BIOMETRICS.—Employers who are enrolled in the Voluntary Advanced Verification Program to Combat Identity Theft under section 307 of this Title shall, in addition to documentary evidence of identity and work eligibility, electronically provide the fingerprints of the individual to the Department of Homeland Security."

"(B) SEEKING CONFIRMATION.—

"(i) The employer shall use the EEVS to provide to the Secretary all required information in order to obtain confirmation of the identity and employment eligibility of any individual no earlier than the date of hire and no later than on the first day of employment (or recruitment or referral, as the case may be). An employer may not, however, make the starting date of an individual's employment contingent on the receipt of a confirmation of the identity and employment eligibility.

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

"(iii) For initial verification of an employee hired before the employer is subject to the employment eligibility verification system, all required procedures must be complete on such date as the Secretary shall specify in accordance with subparagraph (d)(2)(D).

"(iv) The Secretary shall provide, and the employer shall utilize, as part of EEVS, a method of communicating notices and requests for information or action on the part of the employer with respect to expiring work authorization or status and other matters. Additionally, the Secretary shall provide a method of notifying employers of a confirmation, nonconfirmation or a notice that further action is required ("further action notice"). The employer shall communicate to the individual that is the subject of the verification all information provided to the employer by the EEVS for communication to the individual.

"(C) CONFIRMATION OR NONCONFIRMATION.—

"(i) INITIAL RESPONSE.—The verification system shall provide a confirmation, a nonconfirmation, or a further action notice of an individual's identity and employment eligibility at the time of the inquiry, unless for technological reasons or due to unforeseen circumstances, the EEVS is unable to provide such confirma-

tion or further action notice. In such situations, the system shall provide confirmation or further action notice within 3 business days of the initial inquiry. If providing confirmation or further action notice, the EEVS shall provide an appropriate code indicating such confirmation or such further action notice.

"(ii) CONFIRMATION UPON INITIAL INQUIRY.—When the employer receives an appropriate confirmation of an individual's identity and work eligibility under the EEVS, the employer shall record the confirmation in such manner as the Secretary may specify.

"(iii) FURTHER ACTION NOTICE UPON INITIAL INQUIRY AND SECONDARY VERIFICATION.—

"(I) FURTHER ACTION NOTICE.—If the employer receives a further action notice of an individual's identity or work eligibility under the EEVS, the employer shall inform the individual without delay for whom the confirmation is sought of the further

action notice and any procedures specified by the Secretary for addressing the further action notice. The employee must acknowledge in writing the receipt of the further action notice from the employer.

"(II) CONTEST.—Within ten business days from the date of notification to the employee, the employee must contact the appropriate agency to contest the further action notice and, if the Secretary so requires, appear in person at the appropriate Federal or state agency for purposes of verifying the individual's identity and employment authorization. The Secretary, in consultation with the Commissioner of Social Security and other appropriate Federal and State agencies, shall specify an available secondary verification procedure to confirm the validity of information provided and to provide a final confirmation or nonconfirmation. An individual contesting a further action no-

tice must attest under penalty of perjury to his identity and employment authorization.

"(III) NO CONTEST.—If the individual does not contest the further action notice within the period specified in subparagraph (5)(C)(iii)(II), a final nonconfirmation shall issue. The employer shall then record the nonconfirmation in such manner as the Secretary may specify.

"(IV) FINALITY.—The EEVS shall provide a final confirmation or nonconfirmation within 10 business days from the date of the employee's contesting of the further action notice. As long as the employee is taking the steps required by the Secretary and the agency that the employee has contacted to resolve a further action notice, the Secretary shall extend the period of investigation until the secondary verification procedure allows the Secretary to provide a final confirmation or nonconfirmation. If the

employee fails to take the steps required by the Secretary and the appropriate agency, a final nonconfirmation may be issued to that employee.

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

In no case shall an employer terminate employment of an individual solely because of a failure of the individual to have identity and work eligibility confirmed under this section until a nonconfirmation becomes final and the period to timely file an administrative appeal has passed, and in the case where an administrative appeal has been denied, the period to timely file a petition for judicial review has passed. When final confirmation or nonconfirmation is provided, the confirmation system shall provide an appropriate code indicating such confirmation or nonconfirmation. An

individual's failure to contest a further action notice shall not be considered an admission of guilt with respect to any violation of this section or any provision of law.

"(D) CONSEQUENCES OF NONCONFIRMATION.—

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

"(ii) CONTINUED EMPLOYMENT AFTER FINAL NONCONFIRMATION.—If the employer continues to employ (or to recruit or refer) an individual after receiving final nonconfirmation (unless the individual filed an administrative appeal of a final noncon-

1 firmation notice under paragraph (7) with-
2 in the time period prescribed in that para-
3 graph and the Secretary of the Commis-
4 sioner stayed the final nonconfirmation no-
5 tice pending the resolution of the adminis-
6 trative appeal), a rebuttable presumption is
7 created that the employer has violated sub-
8 sections (a)(1)(A) and (a)(2) of this sec-
9 tion. The previous sentence shall not apply
10 in any prosecution under subsection (f)(1)
11 of this section.
12 ''(E) OBLIGATION TO RESPOND TO QUE-
13 RIES AND ADDITIONAL INFORMATION.—
14 ''(i) Employers are required to comply
15 with requests from the Secretary through
16 EEVS for information, including queries
17 concerning current and former employees
18 that relate to the functioning of the EEVS,
19 the accuracy of the responses provided by
20 the EEVS, and any suspected fraud or
21 identity theft in the use of the EEVS.
22 Failure to comply with such a request is a
23 violation of section (a)(1)(B).
24 ''(ii) Individuals being verified
25 through EEVS may be required to take

further action to address irregularities identified in the documents relied upon for purposes of employment verification. The employer shall communicate to the individual any such requirement for further actions and shall record the date and manner of such communication. The individual must acknowledge in writing the receipt of this communication from the employer. Failure to communicate such a requirement is a violation of section (a)(1)(B).

"(iii) The Secretary is authorized, with notice to the public provided in the Federal Register, to implement, clarify, and supplement the requirements of this paragraph in order to facilitate the functioning of the EEVS or to prevent fraud or identity theft in the use of the EEVS.

"(F) IMPERMISSIBLE USE OF THE EEVS.—

"(i) An employer may not use the EEVS to verify an individual prior to extending to the individual an offer of employment.

"(ii) An employer may not require an individual to verify the individual's own employment eligibility through the EEVS as a condition of extending to that individual an offer of employment. Nothing in this paragraph shall be construed to prevent an employer from encouraging an employee or a prospective employee from verifying the employee's or a prospective employee's own employment eligibility prior to obtaining employment pursuant to paragraph (5)(H).

"(iii) An employer may not terminate an individual's employment solely because that individual has been issued a further action notice.

"(iv) An employer may not take the following actions solely because an individual has been issued a further action notice:

"(I) reduce salary, bonuses or other compensation due to the employee;

"(II) suspend the employee without pay;

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

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

"(v) An employer may not, in the course of utilizing the procedures for document verification set forth in subsection (c), require that a prospective employee present additional documents or different documents than those prescribed under that subsection.

"(vi) The Secretary of Homeland Security shall develop the necessary policies and procedures to monitor employers' use

of the EEVS and their compliance with the requirements set forth in this section. Employers are required to comply with requests from the Secretary for information related to any monitoring, audit or investigation undertaken pursuant to this subparagraph.

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

''(viii) Any employer found to have violated subparagraphs (i)–(v) shall pay a civil penalty of up to $10,000 for each violation.

''(ix) This paragraph is not intended to, and does not, create any right, benefit, trust, or responsibility, whether substantive or procedural, enforceable at law or equity by a party against the United States, its

departments, agencies, instrumentalities, entities, officers, employees, or agents, or any person, nor does it create any right of review in a judicial proceeding.

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

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

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

"(G) Based on a regular review of the EEVS and the document verification procedures to identify fraudulent use and to assess the security of the documents being used to establish identity or employment authorization, the Secretary in consultation with the Commissioner of Social Security may modify by Notice published in the Federal Register the documents that must be presented to the employer, the information that must be provided to EEVS by the employer, and the procedures that must be followed by employers with respect to any aspect of the EEVS if the Secretary in his discretion concludes that the modification is necessary to ensure that EEVS accurately and reliably determines the work authorization of employees while providing protection against fraud and identity theft.

"(H) Subject to appropriate safeguards to prevent misuse of the system, the Secretary in consultation with the Commissioner of Social

Security, shall establish secure procedures to permit an individual who seeks to verify the individual's own employment eligibility prior to obtaining or changing employment, to contact the appropriate agency and, in a timely manner, correct or update the information used by the EEVS.

''(6) Protection from liability for actions taken on the basis of information provided by the confirmation system.—No employer participating in the EEVS shall be liable under any law for any employment-related action taken with respect to the employee in good faith reliance on information provided through the confirmation system.

''(7) ADMINISTRATIVE REVIEW.—

''(A) IN GENERAL.—An individual who receives a final nonconfirmation notice may, not later than 15 days after the date that such notice is received, file an administrative appeal of such final notice. An individual who did not timely contest a further action notice may not avail himself of this paragraph. Unless the Secretary of Homeland Security, in consultation with the Commissioner of Social Security, speci-

fies otherwise, all administrative appeals shall be filed as follows:

"(i) NATIONALS OF THE UNITED STATES.—An individual claiming to be a national of the United States shall file the administrative appeal with the Commissioner.

"(ii) ALIENS.—An individual claiming to be an alien authorized to work in the United States shall file the administrative appeal with the Secretary.

"(B) REVIEW FOR ERROR.—The Secretary and the Commissioner shall each develop procedures for resolving administrative appeals regarding final nonconfirmations based upon the information that the individual has provided, including any additional evidence that was not previously considered. Appeals shall be resolved within 30 days after the individual has submitted all evidence relevant to the appeal. The Secretary and the Commissioner may, on a case by case basis for good cause, extend this period in order to ensure accurate resolution of an appeal before him. Administrative review under this paragraph (7) shall be limited to whether

the final nonconfirmation notice is supported by the weight of the evidence.

"(C) ADMINISTRATIVE RELIEF.—The relief available under this paragraph (7) is limited to an administrative order upholding, reversing, modifying, amending, or setting aside the final nonconfirmation notice. The Secretary or the Commissioner shall stay the final nonconfirmation notice pending the resolution of the administrative appeal unless the Secretary or the Commissioner determines that the administrative appeal is frivolous, unlikely to succeed on the merits, or filed for purposes of delay and terminates the stay.

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

"(8) JUDICIAL REVIEW.—

"(A) EXCLUSIVE PROCEDURE.—Notwithstanding any other provision of law (statutory or nonstatutory) including sections 1361 and

1651 of title 28, no court shall have jurisdiction to consider any claim against the United States, or any of its agencies, officers, or employees, challenging or otherwise relating to a final nonconfirmation notice or to the EEVS, except as specifically provided by this paragraph. Judicial review of a final nonconfirmation notice is governed only by chapter 158 of title 28, except as provided below.

"(B) REQUIREMENTS FOR REVIEW OF A FINAL NONCONFIRMATION NOTICE.—With respect to review of a final nonconfirmation notice under subsection (a), the following requirements apply:

"(i) DEADLINE.—The petition for review must be filed no later than 30 days after the date of the completion of the administrative appeal.

"(ii) VENUE AND FORMS.—The petition for review shall be filed with the United States Court of Appeals for the judicial circuit wherein the petitioner resided when the final nonconfirmation notice was issued. The record and briefs do not have to be printed. The court of appeals shall

review the proceeding on a typewritten record and on typewritten briefs.

"(iii) SERVICE.—The respondent is either the Secretary of Homeland Security or the Commissioner of Social Security, but not both, depending upon who issued (or affirmed) the final nonconfirmation notice. In addition to serving the respondent, the petitioner must also serve the Attorney General.

"(iv) PETITIONER'S BRIEF.—The petitioner shall serve and file a brief in connection with a petition for judicial review not later than 40 days after the date on which the administrative record is available, and may serve and file a reply brief not later than 14 days after service of the brief of the respondent, and the court may not extend these deadlines, except for good cause shown. If a petitioner fails to file a brief within the time provided in this paragraph, the court shall dismiss the appeal unless a manifest injustice would result. The court of appeals may set an expedited briefing schedule.

"(v) SCOPE AND STANDARD FOR REVIEW.—The court of appeals shall decide the petition only on the administrative record on which the final nonconfirmation order is based. The burden shall be on the petitioner to show that the final nonconfirmation decision was arbitrary, capricious, not supported by substantial evidence, or otherwise not in accordance with law. Administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.

"(vi) STAY.—The court of appeals shall stay the final nonconfirmation notice pending its decision on the petition for review unless the court determines that the petition for review is frivolous, unlikely to succeed on the merits, or filed for purposes of delay.

"(C) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—A court may review a final nonconfirmation order only if—

"(1) the petitioner has exhausted all administrative remedies available to the alien as of right, and

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

"(D) LIMIT ON INJUNCTIVE RELIEF.—Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions in this section, other than with respect to the application of such provisions to an individual petitioner.

"(9) MANAGEMENT OF EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.—

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

"(i) respond to inquiries made by participating employers at any time through the internet concerning an individual's identity and whether the individual is authorized to be employed;

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

"(iii) provide information to, and request action by, employers and individuals using the system, including notifying employers of the expiration or other relevant change in an employee's employment authorization, and directing an employer to convey to the employee a request to contact the appropriate Federal or State agency.

"(B) DESIGN AND OPERATION OF SYSTEM.—The EEVS shall be designed and operated—

"(i) to maximize its reliability and ease of use by employers consistent with

insulating and protecting the privacy and security of the underlying information;

"(ii) to respond accurately to all inquiries made by employers on whether individuals are authorized to be employed and to register any times when the system is unable to receive inquiries;

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

"(iv) to allow for auditing use of the system to detect fraud and identify theft, and to preserve the security of the information in all of the system, including but not limited to the following:

"(I) to develop and use algorithms to detect potential identity theft, such as multiple uses of the same identifying information or documents;

"(II) to develop and use algorithms to detect misuse of the system by employers and employees;

1 "(III) to develop capabilities to
2 detect anomalies in the use of the sys-
3 tem that may indicate potential fraud
4 or misuse of the system;
5 "(IV) to audit documents and in-
6 formation submitted by potential em-
7 ployees to employers, including au-
8 thority to conduct interviews with em-
9 ployers and employees;
10 "(v) to confirm identity and work au-
11 thorization through verification of records
12 maintained by the Secretary, other Federal
13 departments, states, the Commonwealth of
14 the Northern Mariana Islands, or an out-
15 lying possession of the United States, as
16 determined necessary by the Secretary, in-
17 cluding:
18 "(I) records maintained by the
19 Social Security Administration as
20 specified in (D);
21 "(II) Birth and death records
22 maintained by vital statistics agencies
23 of any state or other United States
24 jurisdiction;

"(III) Passport and visa records (including photographs) maintained by the United States Department of State;

"(IV) State driver's license or identity card information (including photographs) maintained by State department of motor vehicles.

"(vi) to confirm electronically the issuance of the employment authorization or identity document and to display the digital photograph that the issuer placed on the document so that the employer can compare the photograph displayed to the photograph on the document presented by the employee. If in exceptional cases a photograph is not available from the issuer, the Secretary shall specify a temporary alternative procedure for confirming the authenticity of the document.

"(C) The Secretary is authorized, with notice to the public provided in the Federal Register, to issue regulations concerning operational and technical aspects of the EEVS and

the efficiency, accuracy, and security of the EEVS.

"(D) ACCESS TO INFORMATION.—

"(i) Notwithstanding any other provision of law, the Secretary of Homeland Security shall have access to relevant records described at paragraph (9)(B)(v), for the purposes of preventing identity theft and fraud in the use of the EEVS and enforcing the provisions of this section governing employment verification. A State or other non-Federal jurisdiction that does not provide such access shall not be eligible for any grant or other program of financial assistance administered by the Secretary.

"(ii) The Secretary, in consultation with the Commissioner of Social Security and other appropriate Federal and State agencies, shall develop policies and procedures to ensure protection of the privacy and security of personally identifiable information and identifiers contained in the records accessed pursuant to this paragraph and subparagraph (d)(5)(E)(i). The Secretary, in consultation with the Com-

missioner and other appropriate Federal and State agencies, shall develop and deploy appropriate privacy and security training for the Federal and State employees accessing the records pursuant to this paragraph and subparagraph (d)(5)(E)(i).

"(iii) The Chief Privacy Officer of the Department of Homeland Security shall conduct regular privacy audits of the policies and procedures established under subparagraph (9)(D)(ii), including any collection, use, dissemination, and maintenance of personally identifiable information and any associated information technology systems, as well as scope of requests for this information. The Chief Privacy Officer shall review the results of the audits and recommend to the Secretary and the Privacy and Civil Liberties Oversight Board any changes necessary to improve the privacy protections of the program.

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

"(i) As part of the EEVS, the Secretary shall establish a reliable, secure

method, which, operating through the EEVS and within the time periods specified, compares the name, alien identification or authorization number, or other relevant information provided in an inquiry against such information maintained or accessed by the Secretary in order to confirm (or not confirm) the validity of the information provided, the correspondence of the name and number, whether the alien is authorized to be employed in the United States (or, to the extent that the Secretary determines to be feasible and appropriate, whether the Secretary's records verify United States citizenship), and such other information as the Secretary may prescribe.

''(ii) As part of the EEVS, the Secretary shall establish a reliable, secure method, which, operating through the EEVS, displays the digital photograph described in paragraph (d)(9)(B)(vi).

''(iii) The Secretary shall have authority to prescribe when a confirmation, non-

confirmation or further action notice shall be issued.

"(iv) The Secretary shall perform regular audits under the EEVS, as described in paragraph (d)(9)(B)(iv) of this section and shall utilize the information obtained from such audits, as well as any information obtained from the Commissioner of Social Security pursuant to section 304 of the Comprehensive Immigration Act of 2007, for the purposes of this Title and of immigration enforcement in general.

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

"(F) RESPONSIBILITIES OF THE SECRETARY OF STATE.—As part of the EEVS, the Secretary of State shall provide to the Secretary access to passport and visa information as needed to confirm that a passport or passport card presented under section (c)(1)(B) belongs to the subject of the EEVS check, or that

a passport or visa photograph matches an individual;

"(G) UPDATING INFORMATION.—The Commissioner of Social Security and the Secretaries of Homeland Security and State shall update their information in a manner that promotes maximum accuracy and shall provide a process for the prompt correction of erroneous information.

"(10) LIMITATION ON USE OF THE EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.—Notwithstanding any other provision of law, nothing in this subsection shall be construed to permit or allow any department, bureau, or other agency of the United States Government to utilize any information, database, or other records assembled under this subsection for any purpose other than for the enforcement and administration of the immigration laws, anti-terrorism laws, or for enforcement of Federal criminal law related to the functions of the EEVS, including prohibitions on forgery, fraud and identity theft.

"(11) UNAUTHORIZED USE OR DISCLOSURE OF INFORMATION.—Any employee of the Department of Homeland Security or another Federal or State

agency who knowingly uses or discloses the information assembled under this subsection for a purpose other than one authorized under this section shall pay a civil penalty of $5,000–$50,000 for each violation.

"(12) CONFORMING AMENDMENT.—Public Law 104–208, div. C, title IV, subtitle A, sections 401–05 are repealed, provided that nothing in this subsection shall be construed to limit the authority of the Secretary to allow or continue to allow the participation of Basic Pilot employers in the EEVS established by this subsection.

"(13) FUNDS.—In addition to any appropriated funds, the Secretary is authorized to use funds provided in sections 286(m) and (n), for the maintenance and operation of the EEVS. EEVS shall be considered an immigration adjudication service for purposes of sections 286(m) and (n)."

"(14) The employer shall use the procedures for EEVS specified in this section for all employees without regard to national origin or citizenship status.

"(e) COMPLIANCE.—

"(1) COMPLAINTS AND INVESTIGATIONS.—The Secretary of Homeland Security shall establish procedures—

"(A) for individuals and entities to file complaints respecting potential violations of subsection (a) or (g)(1);

"(B) for the investigation of those complaints which the Secretary deems it appropriate to investigate; and

"(C) for the investigation of such other violations of subsection (a) or (g)(1) as the Secretary determines to be appropriate.

"(2) AUTHORITY IN INVESTIGATIONS.—In conducting investigations and hearings under this subsection—

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

"(B) immigration officers designated by the Secretary may compel by subpoena the attendance of witnesses and the production of evidence at any designated place in an investigation or case under this subsection. In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph, the Secretary

may request that the Attorney General apply in an appropriate district court of the United States for an order requiring compliance with such subpoena, and any failure to obey such order may be punished by such court as a contempt thereof. Failure to cooperate with such subpoena shall be subject to further penalties, including but not limited to further fines and the voiding of any mitigation of penalties or termination of proceedings under subsection (e)(3)(B).

''(3) COMPLIANCE PROCEDURES.—

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

''(i) describe the violation;

''(ii) specify the laws and regulations allegedly violated;

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

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

"(B) REMISSION OR MITIGATION OF PENALTIES.—Whenever any employer receives written pre-penalty notice of a fine or other penalty in accordance with subparagraph (A), the employer may file, within 15 days from receipt of such notice, with the Secretary a petition for the remission or mitigation of such fine or penalty, or a petition for termination of the proceedings. The petition may include any relevant evidence or proffer of evidence the employer wishes to present, and shall be filed and considered in accordance with procedures to be established by the Secretary. If the Secretary finds that such fine, penalty, or forfeiture was incurred erroneously, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine or penalty, the Secretary may remit or mitigate the same

upon such terms and conditions as the Secretary deems reasonable and just, or order termination of any proceedings relating thereto. Such mitigating circumstances may include, but need not be limited to, good faith compliance and participation in, or agreement to participate in, the EEVS, if not otherwise required.

''This subparagraph shall not apply to an employer that has or is engaged in a pattern or practice of violations of subsection (a)(1)(A), (a)(1)(B), or (a)(2) or of any other requirements of this section.

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

and any mitigation or remission of the penalty that the Secretary deems appropriate.

"(4) CIVIL PENALTIES.—

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

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

"(2) if an employer has previously been fined under subsection (e)(4)(A), pay a civil penalty of $10,000 for each unauthorized alien with respect to which a violation of either subsection (a)(1)(A) or (a)(2) occurred; and

"(3) if an employer has previously been fined more than once under subsection (e)(4), pay a civil penalty of $25,000 for each unauthorized alien with respect to which a violation of either subsection has occurred. This penalty shall apply, in addition to any penalties previously assessed, to employers who fail to

comply with a previously issued and final order under this section.

"(4) if an employer has previously been fined more than twice under subsection (e)(4)(A), pay a civil penalty of $75,000 for each alien with respect to which a violation of either subsection (a)(1) or (a)(2) occurred;

"(5) In addition to any penalties previously assessed, an employer who fails to comply with a previously issued and final order under this section shall be fined $75,000 for each violation.

"(B) RECORDKEEPING OR VERIFICATION PRACTICES.—Any employer that violates or fails to comply with any requirement of subsection (b), (c), and (d), shall pay a civil penalty as follows:

"(1) pay a civil penalty of $1,000 for each violation;

"(2) if an employer has previously been fined under subsection (e)(4)(B), pay a civil penalty of $2,000 for each violation; and

"(3) if an employer has previously been fined more than once under subsection (e)(4), pay a civil penalty of $5,000 for each violation. This penalty shall apply, in addition to any penalties previously assessed, to employers who fail to comply with a previously issued and final order under this section.

"(4) if an employer has previously been fined more than twice under subsection (e)(4)(B), pay a civil penalty of $15,000 for each violation.

"(5) In addition to any penalties previously assessed, an employer who fails to comply with a previously issued and final order under this section shall be fined $15,000 for each violation.

"(C) OTHER PENALTIES.—The Secretary may impose additional penalties for violations, including cease and desist orders, specially designed compliance plans to prevent further violations, suspended fines to take effect in the event of a further violation, and in appropriate cases, the remedy provided by paragraph (g)(2). All penalties in this section may be adjusted

every four years to account for inflation as provided by law.

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

"(5) ORDER OF INTERNAL REVIEW AND CERTIFICATION OF COMPLIANCE.—If the Secretary has reasonable cause to believe that an employer has failed to comply with this section, the Secretary is authorized, at any time, to require that the employer certify that it is in compliance with this section, or has instituted a program to come into compliance. Within 60 days of receiving a notice from the Secretary requiring such a certification, the employer's chief executive officer or similar official with responsibility for, and authority to bind the company on, all hiring and immigration compliance notices shall certify under penalty of perjury that the employer is in conformance with the requirements of subsections (c)(1) through (c)(4), pertaining to document

verification requirements, and with subsection (d), pertaining to the EEVS (once that system is implemented according to the requirements of (d)(1)), and with any additional requirements that the Secretary may promulgate by regulation pursuant to subsections (c), (d), and (k), or that the employer has instituted a program to come into compliance with these requirements. At the request of the employer, the Secretary may extend the 60-day deadline for good cause. The Secretary is authorized to publish in the Federal Register standards or methods for such certification, require specific recordkeeping practices with respect to such certifications, and audit the records thereof at any time. This authority shall not be construed to diminish or qualify any other penalty provided by this section.

"(6) JUDICIAL REVIEW.—

"(A) Notwithstanding any other provision of law (statutory or nonstatutory) including sections 1361 and 1651 of title 28, no court shall have jurisdiction to consider a final determination or penalty claim issued under subparagraph (3)(C), except as specifically provided by this paragraph. Judicial review of a final determination under paragraph (e)(4) is governed

only by chapter 158 of title 28, except as specifically provided below. The filing of a petition as provided in this paragraph shall stay the Secretary's determination until entry of judgment by the court. The Secretary is authorized to require that petitioner provide, prior to filing for review, security for payment of fines and penalties through bond or other guarantee of payment acceptable to the Secretary.

(B) REQUIREMENTS FOR REVIEW OF A FINAL DETERMINATION.—With respect to judicial review of a final determination or penalty claim issued under subparagraph (3)(C), the following requirements apply:

(i) DEADLINE.—The petition for review must be filed no later than 30 days after the date of the final determination or penalty claim issued under subparagraph (3)(C).

(ii) VENUE AND FORMS.—The petition for review shall be filed with the court of appeals for the judicial circuit wherein the employer resided when the final determination or penalty claim was issued. The record and briefs do not have to be print-

ed. The court of appeals shall review the proceeding on a typewritten record and on typewritten briefs.

(iii) SERVICE.—The respondent is either the Secretary of Homeland Security or the Commissioner of Social Security, but not both, depending upon who issued (or affirmed) the final nonconfirmation notice. In addition to serving the respondent, the petitioner must also serve the Attorney General.

(iv) PETITIONER'S BRIEF.—The petitioner shall serve and file a brief in connection with a petition for judicial review not later than 40 days after the date on which the administrative record is available, and may serve and file a reply brief not later than 14 days after service of the brief of the respondent, and the court may not extend these deadlines, except for good cause shown. If a petitioner fails to file a brief within the time provided in this paragraph, the court shall dismiss the appeal unless a manifest injustice would result.

(v) SCOPE AND STANDARD FOR REVIEW.—The court of appeals shall decide the petition only on the administrative record on which the final determination is based. The burden shall be on the petitioner to show that the final determination was arbitrary, capricious, not supported by substantial evidence, or otherwise not in accordance with law. Administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.

"(C) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—A court may review a final determination under subparagraph (3)(C) only if—

(1) the petitioner has exhausted all administrative remedies available to the petitioner as of right, and

(2) another court has not decided the validity of the order, unless the reviewing court finds that the petition presents grounds that could not have been presented in the prior judicial proceeding or that the remedy provided by the prior pro-

ceeding was inadequate or ineffective to test the validity of the order.

"(D) LIMIT ON INJUNCTIVE RELIEF.—Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions in this section, other than with respect to the application of such provisions to an individual petitioner.

"(7) ENFORCEMENT OF ORDERS.—If an employer fails to comply with a final determination issued against that employer under this subsection, and the final determination is not subject to review as provided in paragraph (6), the Attorney General may file suit to enforce compliance with the final determination in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final determination shall not be subject to review.

"(8) LIENS.—

"(A) CREATION OF LIEN.—If any employer liable for a fee or penalty under this section neglects or refuses to pay such liability and fails

to file a petition for review (if applicable) as provided in paragraph 6 of this subsection, such liability is a lien in favor of the United States on all property and rights to property of such person as if the liability of such person were a liability for a tax assessed under the Internal Revenue Code of 1986. If a petition for review is filed as provided in paragraph 6 of this subsection, the lien (if any) shall arise upon the entry of a final judgment by the court. The lien continues for 20 years or until the liability is satisfied, remitted, set aside, or is terminated.

"(B) EFFECT OF FILING NOTICE OF LIEN.—Upon filing of a notice of lien in the manner in which a notice of tax lien would be filed under section 6323(f)(1) and (2) of the Internal Revenue Code of 1986, the lien shall be valid against any purchaser, holder of a security interest, mechanic's lien or judgment lien creditor, except with respect to properties or transactions specified in subsection (b), (c), or (d) of section 6323 of the Internal Revenue Code of 1986 for which a notice of tax lien properly filed on the same date would not be valid. The notice of lien shall be considered a notice of lien

for taxes payable to the United States for the purpose of any State or local law providing for the filing of a notice of a tax lien. A notice of lien that is registered, recorded, docketed, or indexed in accordance with the rules and requirements relating to judgments of the courts of the State where the notice of lien is registered, recorded, docketed, or indexed shall be considered for all purposes as the filing prescribed by this section. The provisions of section 3201(e) of chapter 176 of title 28 shall apply to liens filed as prescribed by this section.

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

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

"(1) CRIMINAL PENALTY.—Any employer which engages in a pattern or practice of knowing violations of subsection (a)(1)(A) or (a)(2) shall be fined not more than $75,000 for each unauthorized alien with respect to whom such a violation occurs, im-

prisoned for not more than six months for the entire pattern or practice, or both.

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

"(g) PROHIBITION OF INDEMNITY BONDS.—

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

"(2) CIVIL PENALTY.—Any employer which is determined, after notice and opportunity for mitigation of the monetary penalty under subsection (e), to

have violated paragraph (1) of this subsection shall be subject to a civil penalty of $10,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such paragraph to the employee or, if the employee cannot be located, to the general fund of the Treasury.

"(h) GOVERNMENT CONTRACTS.—

"(1) EMPLOYERS.—Whenever an employer who does not hold Federal contracts, grants, or cooperative agreements is determined by the Secretary to be a repeat violator of this section or is convicted of a crime under this section, the employer shall be subject to debarment from the receipt of Federal contracts, grants, or cooperative agreements for a period of up to two years in accordance with the procedures and standards prescribed by the Federal Acquisition Regulations. The Secretary or the Attorney General shall advise the Administrator of General Services of any such debarment, and the Administrator of General Services shall list the employer on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs for the period of the debarment. The Administrator of General Services, in consultation with the Secretary and Attorney General, may waive operation of this sub-

1 section or may limit the duration or scope of the de-
2 barment.
3 "(2) CONTRACTORS AND RECIPIENTS.—When-
4 ever an employer who holds Federal contracts,
5 grants, or cooperative agreements is determined by
6 the Secretary to be a repeat violator of this section
7 or is convicted of a crime under this section, the em-
8 ployer shall be subject to debarment from the receipt
9 of Federal contracts, grants, or cooperative agree-
10 ments for a period of up to two years in accordance
11 with the procedures and standards prescribed by the
12 Federal Acquisition Regulations. Prior to debarring
13 the employer, the Secretary, in cooperation with the
14 Administrator of General Services, shall advise all
15 agencies holding contracts, grants, or cooperative
16 agreements with the employer of the proceedings to
17 debar the employer from the receipt of new Federal
18 contracts, grants, or cooperative agreements for a
19 period of up to two years. After consideration of the
20 views of agencies holding contracts, grants or coop-
21 erative agreements with the employer, the Secretary
22 may, in lieu of proceedings to debar the employer
23 from the receipt of new Federal contracts, grants, or
24 cooperative agreements for a period of up to two
25 years, waive operation of this subsection, limit the

duration or scope of the proposed debarment, or may refer to an appropriate lead agency the decision of whether to seek debarment of the employer, for what duration, and under what scope in accordance with the procedures and standards prescribed by the Federal Acquisition Regulation. However, any proposed debarment predicated on an administrative determination of liability for civil penalty by the Secretary or the Attorney General shall not be reviewable in any debarment proceeding.

''(3) Indictments for violations of this section or adequate evidence of actions that could form the basis for debarment under this subsection shall be considered a cause for suspension under the procedures and standards for suspension prescribed by the Federal Acquisition Regulation.

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

''(i) MISCELLANEOUS PROVISIONS.—

''(1) DOCUMENTATION.—In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent

1 residence) authorized to be employed in the United
2 States, the Secretary shall provide that any limita-
3 tions with respect to the period or type of employ-
4 ment or employer shall be conspicuously stated on
5 the documentation or endorsement.

6 ''(2) PREEMPTION.—The provisions of this sec-
7 tion preempt any State or local law that requires the
8 use of the EEVS in a fashion that conflicts with
9 Federal policies, procedures or timetables, or that
10 imposes civil or criminal sanctions (other than
11 through licensing and similar laws) upon those who
12 employ, or recruit or refer for a fee for employment,
13 unauthorized aliens.

14 ''(j) DEPOSIT OF AMOUNTS RECEIVED.—Except as
15 otherwise specified, civil penalties collected under this sec-
16 tion shall be deposited by the Secretary into the general
17 fund of the Treasury.

18 ''(k) NO MATCH NOTICE.—

19 ''(1) For the purpose of this subsection, a no
20 match notice is written notice from the Social Secu-
21 rity Administration (SSA) to an employer reporting
22 earnings on a Form W–2 that employees' names or
23 corresponding social security account numbers fail to
24 match SSA records. The Secretary, in consultation
25 with the Commissioner of the Social Security Ad-

ministration, is authorized to establish by regulation requirements for verifying the identity and work authorization of employees who are the subject of no-match notices. The Secretary shall establish by regulation a reasonable period during which an employer must allow an employee who is subject to a no-match notice to resolve the no match notice with no adverse employment consequences to the employee. The Secretary may also establish penalties for non-compliance by regulation.

''(l) CHALLENGES TO VALIDITY.—

''(1) IN GENERAL.—Any right, benefit, or claim not otherwise waived or limited pursuant to this section is available in an action instituted in the United States District Court for the District of Columbia, but shall be limited to determinations of—

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

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

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

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

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

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

SEC. 303. EFFECTIVE DATE.

This title shall become effective on the date of enactment.

SEC. 304. DISCLOSURE OF CERTAIN TAXPAYER INFORMATION TO ASSIST IN IMMIGRATION ENFORCEMENT.

(a) DISCLOSURE OF CERTAIN TAXPAYER IDENTITY INFORMATION.—

(1) IN GENERAL.—Section 6103(l) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(21) DISCLOSURE OF CERTAIN TAXPAYER IDENTITY INFORMATION BY SOCIAL SECURITY ADMINISTRATION TO DEPARTMENT OF HOMELAND SECURITY.—

"(A) IN GENERAL.—From taxpayer identity information or other information which has been disclosed or otherwise made available to the Social Security Administration and upon written request by the Secretary of Homeland Security (in this paragraph referred to as the 'Secretary'), the Commissioner of Social Security shall disclose directly to officers, employees, and contractors of the Department of Homeland Security—

"(i) the taxpayer identity information of each person who has filed an information return required by reason of section 6051 after calendar year 2005 and before

the date specified in subparagraph (D) which contains—

"(I) 1 (or any greater number the Secretary shall request) taxpayer identifying number, name, and address of any employee (within the meaning of such section) that did not match the records maintained by the Commissioner of Social Security, or

"(II) 2 (or any greater number the Secretary shall request) names, and addresses of employees (within the meaning of such section), with the same taxpayer identifying number,

"and the taxpayer identity of each such employee, and

"(ii) the taxpayer identity of each person who has filed an information return required by reason of section 6051 after calendar year 2005 and before the date specified in subparagraph (D) which contains the taxpayer identifying number (assigned under section 6109) of an employee (within the meaning of section 6051)—

"(I) who is under the age of 14 (or any lesser age the Secretary shall request), according to the records maintained by the Commissioner of Social Security,

"(II) whose date of death, according to the records so maintained, occurred in a calendar year preceding the calendar year for which the information return was filed,

"(III) whose taxpayer identifying number is contained in more than one (or any greater number the Secretary shall request) information return filed in such calendar year, or

"(IV) who is not authorized to work in the United States, according to the records maintained by the Commissioner of Social Security,

"and the taxpayer identity and date of birth of each such employee.

"(B) REIMBURSEMENT.—The Secretary shall transfer to the Commissioner the funds necessary to cover the additional cost directly incurred by the Commissioner in carrying out the searches or manipulations requested by the Secretary."

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

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

"(9) DISCLOSURE TO DHS CONTRACTORS.—Notwithstanding any other provision of this section, no return or return information shall be disclosed to any contractor of the Department of Homeland Security unless such Department, to the satisfaction of the Secretary—

"(A) has requirements in effect which require each such contractor which would have access to returns or return information to provide safeguards (within the meaning of paragraph (4)) to protect the confidentiality of such returns or return information,

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

"(C) submits the findings of the most recent review conducted under subparagraph (B) to the Secretary as part of the report required by paragraph (4)(E), and

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

The certification required by subparagraph (D) shall include the name and address of each contractor, a description of the contract or agreement with such contractor, and the duration of such contract or agreement.".

(3) CONFORMING AMENDMENTS.—

(A) Section 6103(a)(3) of such Code is amended by striking "or (20)" and inserting "(20), or (21)".

(B) Section 6103(p)(3)(A) of such Code is amended by adding at the end the following new sentence: "The Commissioner of Social Security shall provide to the Secretary such information as the Secretary may require in carrying out this paragraph with respect to return information inspected or disclosed under the authority of subsection (l)(21).".

(C) Section 6103(p)(4) of such Code is amended—

(i) by striking "or (17)" both places it appears and inserting "(17), or (21)"; and

(ii) by striking ''or (20)'' each place it appears and inserting ''(20), or (21)''.

(D) Section 6103(p)(8)(B) of such Code is amended by inserting ''or paragraph (9)'' after ''subparagraph (A)''.

(E) Section 7213(a)(2) of such Code is amended by striking ''or (20)'' and inserting ''(20), or (21)''.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security such sums as are necessary to carry out the amendments made by this section.

(c) REPEAL OF REPORTING REQUIREMENTS.—

(1) REPORT ON EARNINGS OF ALIENS NOT AUTHORIZED TO WORK.—Subsection (c) of section 290 of the Immigration and Nationality Act (8 U.S.C. 1360) is repealed.

(2) REPORT ON FRAUDULENT USE OF SOCIAL SECURITY ACCOUNT NUMBERS.—Subsection (b) of section 414 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 8 U.S.C. 1360 note) is repealed.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsection (a) shall apply to disclosures made after the date of the enactment of this Act.

(2) CERTIFICATIONS.—The first certification under section 6103(p)(9)(D) of the Internal Revenue Code of 1986, as added by subsection (a)(2), shall be made with respect to calendar year 2007.

(3) REPEALS.—The repeals made by subsection (c) shall take effect on the date of the enactment of this Act.

SEC. 305. INCREASING SECURITY AND INTEGRITY OF SOCIAL SECURITY CARDS.

(a) FRAUD-RESISTANT, TAMPER-RESISTANT AND WEAR-RESISTANT SOCIAL SECURITY CARDS.—

(1) ISSUANCE.—

(A) PRELIMINARY WORK.—Not later than 180 days after the date of enactment of this title, the Commissioner of Social Security shall begin work to administer and issue fraud-resistant, tamper-resistant Social Security cards.

(B) COMPLETION.—Not later than two years after the date of enactment of this title, the Commissioner of Social Security shall only issue fraud-resistant, tamper-resistant and wear-resistant Social Security cards.

(2) AMENDMENT.—Section 205(c)(2)(G) of the Social Security Act (42 U.S.C. 405(c)(2)(G)) is amended to read—

"(i) The Commissioner of Social Security shall issue a social security card to each individual at the time of the issuance of a social security account number to such individual. The social security card shall be fraud-resistant, tamper-resistant and wear-resistant."

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection and the amendments made by this subsection.

(4) REPORT ON FEASIBILITY OF INCLUDING BIOMETRICS.—Within 180 days of enactment, the Commissioner of Social Security shall provide to Congress a report on the utility, costs and feasibility of including a photograph and other biometric information on the Social Security card.

(b) MULTIPLE CARDS.—Section 205(c)(2)(G) of the Social Security Act (42 U.S.C. 405(c)(2)(G)) is further amended by adding at the end the following:

"(ii) The Commissioner of Social Security shall not issue a replacement Social

Security card to any individual unless the Commissioner determines that the purpose for requiring the issuance of the replacement document is legitimate.''

SEC. 306. INCREASING SECURITY AND INTEGRITY OF IDENTITY DOCUMENTS.

(a) PURPOSE.—The Secretary of Homeland Security, shall establish the State Records Improvement Grant Program (referred to in this section as the ''Program''), under which the Secretary may award grants to States for the purpose of advancing the purposes of this Act and of issuing or implementing plans to issue driver's license and identity cards that can be used for purposes of verifying identity under this Title and that comply with the state license requirements in section 202 of the REAL ID Act of 2005 (division B of Public Law 109–13; 49 U.S.C. 30301 note).

(b) States that do not certify their intent to comply with the REAL ID Act and implementing regulations or that do not submit a compliance plan acceptable to the Secretary are not eligible for grants under the Program. Driver's license or identification cards issued by States that do not comply with REAL ID may not be used to verify identity under this Title except under conditions approved by the Secretary.

(c) GRANTS AND CONTRACTS AUTHORIZED.—

(1) IN GENERAL.—The Secretary is authorized to award grants, subject to the availability of appropriations, to a State to provide assistance to such State agency to meet the deadlines for the issuance of a driver's license which meets the requirements of section 202 of the REAL ID Act of 2005 (division B of Public Law 109–13; 49 U.S.C. 30301 note).

(2) DURATION.—Grants may be awarded under this subsection during fiscal years 2007 through 2011.

(3) COMPETITIVE BASIS.—The Secretary shall give priority to States whose REAL ID implementation plan is compatible with the employment verification systems, processes, and implementation schedules set forth in Section 302, as determined by the Secretary. Minimum standards for compatibility will include the ability of the State to promptly verify the document and provide access to the digital photograph displayed on the document.

(4) Where the Secretary of Homeland Security determines that compliance with REAL ID and with the requirements of the employment verification system can best be met by awarding grants or contracts to a State, a group of States, a government agency,

or a private entity, the Secretary may utilize Program funds to award such a grant, grants, contract or contracts.

(5) On an expedited basis, the Secretary shall award grants or contracts for the purpose of improving the accuracy and electronic availability of states' records of births, deaths, driver's licenses, and of other records necessary for implementation of EEVS and as otherwise necessary to advance the purposes of this Act.

(d) USE OF FUNDS.—Grants or contracts awarded pursuant to the Program may be used to assist State compliance with the REAL ID requirements, including, but not limited to—

(1) upgrade and maintain technology;

(2) obtain equipment;

(3) hire additional personnel;

(4) cover operational costs, including overtime; and

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

(e) APPLICATION.—

(1) IN GENERAL.—Each eligible state seeking a grant under this section shall submit an application to the Secretary at such time, in such manner, and

accompanied by such information as the Secretary may reasonably require.

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

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

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

(f) CONDITIONS.—All grants under the Program shall be conditioned on the recipient providing REAL ID compliance certification and implementation plans acceptable to the Secretary which include—

(1) adopting appropriate security measures to protect against improper issuance of driver's licenses and identity cards, tampering with electronic issuance systems, and identity theft as the Secretary may prescribe;

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

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

All grants shall also be conditioned on the recipient agreeing to adhere to the timetables and procedures for issuing REAL ID driver's licenses and identification cards as specified in section 274A(c)(1)(F). All grants shall further be conditioned on the recipient agreeing to implement the requirements of this Act and any implementing regulations to the satisfaction of the Secretary of Homeland Security.

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

(h) SUPPLEMENT NOT SUPPLANT.—Amounts appropriated for grants under this section shall be used to supplement and not supplant other State and local public funds obligated for the purposes provided under this title.

(i) ADDITIONAL USES.—Amounts authorized under this section may also be used to assist in sharing of law enforcement information between States and the Department of Homeland Security for purposes of implementing Section 602(c), at the discretion of the Secretary.

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

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

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

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

(b) LIMITED RETENTION PERIOD FOR FINGERPRINTS.—

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

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

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

(e) SAFEGUARDING OF FINGERPRINT INFORMATION.—The Secretary, subject to specifications and limitations set forth under this section and other relevant provi-

sions of this Act, shall be responsible for safely and securely maintaining and storing all fingerprints submitted under this program.

SEC. 308. RESPONSIBILITIES OF THE SOCIAL SECURITY ADMINISTRATION.

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

"(I) RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL SECURITY.—

"(i) As part of the verification system, the Commissioner of Social Security shall, subject to the provisions of section 274A(d) of the Immigration and Nationality Act, establish a reliable, secure method that, operating through the EEVS and within the time periods specified in section 274A(d) of the Immigration and Nationality Act:

"(I) compares the name, social security account number and available citizenship information provided in an inquiry against such information maintained by the Commissioner in order to confirm (or not confirm) the

validity of the information provided regarding an individual whose identity and employment eligibility must be confirmed;

"(II) the correspondence of the name, number, and any other identifying information;

"(III) whether the name and number belong to an individual who is deceased;

"(IV) whether an individual is a national of the United States (when available); and

"(V) whether the individual has presented a social security account number that is not valid for employment.

The EEVS shall not disclose or release social security information to employers through the confirmation system (other than such confirmation or nonconfirmation).

"(ii) SOCIAL SECURITY ADMINISTRATION DATABASE IMPROVEMENTS.—For purposes of preventing identity theft, pro-

tecting employees, and reducing burden on employers, and notwithstanding section 6103 of title 26, United States Code, the Commissioner of Social Security, in consultation with the Secretary, shall review the Social Security Administration databases and information technology to identify any deficiencies and discrepancies related to name, birth date, citizenship status, or death records of the social security accounts and social security account holders likely to contribute to fraudulent use of documents, or identity theft, or to affect the proper functioning of the EEVS and shall correct any identified errors. The Commissioner shall ensure that a system for identifying and correcting such deficiencies and discrepancies is adopted to ensure the accuracy of the Social Security Administration's databases.

''(iii) NOTIFICATION TO 'FREEZE' USE OF SOCIAL SECURITY NUMBER.—The Commissioner of Social Security, in consultation with the Secretary of Homeland Security, shall establish a secure process where-

by an individual can request that the Commissioner preclude any confirmation under the EEVS based on that individual's Social Security number until it is reactivated by that individual.''.

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

(a) TIGHTENING REQUIREMENTS FOR THE PROVISION OF SOCIAL SECURITY NUMBERS ON FORM W–2 WAGE AND TAX STATEMENTS.—Section 6724 of the Internal Revenue Code of 1986 (relating to waiver; definitions and special rules) is amended by adding at the end the following new subsection:

''(f) Special rules with respect to social security numbers on withholding exemption certificates.

''(l) Reasonable cause waiver not to apply.

Subsection (a) shall not apply with respect to the social security account number of an employee furnished under section 6051(a)(2).

''(2) EXCEPTION.—

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

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

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

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

"(i) in any case in which not less than 50 of the statements required to be made by an employer pursuant to section 6051 either fail to include an employee's social security account number or include an incorrect social security account number, or

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

(b) ENFORCEMENT.—

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

(2) SPECIAL AGENTS; SUPPORT STAFF.—The Secretary of the Treasury shall assign to the unit a minimum of 10 full-time special agents and necessary support staff and is authorized to employ up

to 200 full time special agents for this unit based on investigative requirements and work load.

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

(c) INCREASE IN PENALTY ON EMPLOYER FAILING TO FILE CORRECT INFORMATION RETURNS.—Section 6721 of such Code (relating to failure to file correct information returns) is amended as follows—

(1) in subsection (a)(1)—

(A) by striking ''$50'' and inserting ''$200'', and

(B) by striking ''$250,000'' and inserting ''$1,000,000'',

(2) in subsection (b)(1)(A), by striking ''$15 in lieu of $50'' and inserting ''$60 in lieu of $200'',

(3) in subsection (b)(1)(B), by striking ''$75,000'' and inserting ''$300,000'',

(4) in subsection (b)(2)(A), by striking ''$30 in lieu of $50'' and inserting ''$120 in lieu of $200'',

(5) in subsection (b)(2)(B), by striking ''$150,000'' and inserting ''$600,000'',

(6) in subsection (d)(A) in paragraph (1)—

(A) by striking "'$100,000' for '$250,000'" and inserting "'$400,000' for '$1,000,000'" in subparagraph (A),

(B) by striking "'$25,000' for '$75,000'" and inserting "'$100,000' for '$300,000'" in subparagraph (B), and

(C) by striking "'$50,000' for '$150,000'" and inserting "'$200,000' for '$600,000'" in subparagraph (C),

(D) in paragraph (2)(A), by striking "$5,000,000" and inserting "$2,000,000", and

(E) in the heading, by striking "$5,000,000" and inserting "$2,000,000",

(7) in subsection (e)(2)—

(A) by striking "$100" and inserting "$400",

(B) by striking "$25,000" and inserting "$100,000" in subparagraph (C)(i), and

(C) by striking "$100,000" and inserting "$400,000" in subparagraph (C)(ii), and

(8) in subsection (e)(3)(A), by striking "$250,000" and inserting "$1,000,000".

(d) EFFECTIVE DATE.—The amendments made by subsections (b) and (c) shall apply to failures occurring after December 31, 2006.

SEC. 310. AUTHORIZATION OF APPROPRIATIONS.

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

(1) In each of the five years beginning on the date of the enactment of this Act, the appropriations necessary to increase to a level not less than 4500 the number of personnel of the Department of Homeland Security assigned exclusively or principally to an office or offices dedicated to monitoring and enforcing compliance with sections 274A and 274C of the Immigration and Nationality Act (8 U.S.C. 1324a and 1324c), including compliance with the requirements of the EEVS. These personnel shall perform the following compliance and monitoring activities:

(A) Verify Employment Identification Numbers of employers participating in the EEVS.

(B) Verify compliance of employers participating in the EEVS with the requirements for participation that are prescribed by the Secretary.

(C) Monitor the EEVS for multiple uses of Social Security Numbers and any immigration identification numbers for evidence that could indicate identity theft or fraud.

(D) Monitor the EEVS to identify discriminatory practices.

(E) Monitor the EEVS to identify employers who are not using the system properly, including employers who fail to make appropriate records with respect to their queries and any notices of confirmation, nonconfirmation, or further action.

(F) Identify instances where employees allege that an employer violated their privacy rights.

(G) Analyze and audit the use of the EEVS and the data obtained through the EEVS to identify fraud trends, including fraud trends across industries, geographical areas, or employer size.

(H) Analyze and audit the use of the EEVS and the data obtained through the EEVS to develop compliance tools as necessary to respond to changing patterns of fraud.

(I) Provide employers with additional training and other information on the proper use of the EEVS.

(J) Perform threshold evaluation of cases for referral to the U.S. Immigration and Customs Enforcement and to liaise with the U.S. Immigration and Customs Enforcement with respect to these referrals.

(K) Any other compliance and monitoring activities that, in the Secretary's judgment, are necessary to ensure the functioning of the EEVS.

(L) Investigate identity theft and fraud detected through the EEVS and undertake the necessary enforcement actions.

(M) Investigate use of fraudulent documents or access to fraudulent documents through local facilitation and undertake the necessary enforcement actions.

(N) Provide support to the U.S. Citizenship and Immigration Services with respect to

the evaluation of cases for referral to the U.S. Immigration and Customs Enforcement.

(O) Perform any other investigations that, in the Secretary's judgment, are necessary to ensure the functioning of the EEVS, and undertake any enforcement actions necessary as a result of these investigations.

(2) The appropriations necessary to acquire, install and maintain technological equipment necessary to support the functioning of the EEVS and the connectivity between U.S. Citizenship and Immigration Services and the U.S. Immigration and Customs Enforcement with respect to the sharing of information to support the EEVS and related immigration enforcement actions.

(b) There are authorized to be appropriated to Commissioner of Social Security such sums as may be necessary to carry out the provisions of this Act, including Section 308 of this Act.

TITLE IV—NEW TEMPORARY WORKER PROGRAM

Subtitle A—Seasonal Non-Agricultural and Year-Round Nonimmigrant Temporary Workers

SEC. 401. NONIMMIGRANT TEMPORARY WORKER.

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

(1) in subparagraph (H)—

(A) by striking subclause (ii)(b);

(B) by striking ''or (iii)'' and inserting ''(iii)''; and

(C) by striking ''; and the alien spouse'' and inserting ''; or (iv) the alien spouse'';

(2) by striking ''or'' at the end of subparagraph (U);

(3) by striking the period at the end of subparagraph (V) and inserting a semi-colon; and

(4) by inserting at the end the following new subparagraphs.—

''(W) [Reserved];

''(X) [Reserved]; or

''(Y) subject to section 218A, an alien having a residence in a foreign country which the

alien has no intention of abandoning and who is coming temporarily to the United States—

"(i) to perform temporary labor or services other than the labor or services described in clause (i)(b), (i)(b1), (i)(c), or (iii) of subparagraph (H), subparagraph (D), (E), (I), (L), (O), (P), or (R), or section 214(e) (if United States workers who are able, willing, and qualified to perform such labor or services cannot be found in the United States);

"(ii) to perform seasonal non-agricultural labor or services; or

"(iii) as the spouse or child of an alien described in clause (i) or (ii) of this subparagraph.".

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

(c) EFFECTIVE DATE.—The effective date of the amendment made by subparagraph (1)(A) of subsection (a) shall be the date on which the Secretary of Homeland

Security makes the certification described in section 1(a) of this Act.

(d) SUNSET OF Y–1 VISA PROGRAM.—

(1) SUNSET.—Notwithstanding any other provision of this Act, or any amendment made by this Act, no alien may be issued a new visa as a Y–1 nonimmigrant (as defined in section 218B of the Immigration and Nationality Act, as added by section 403) on the date that is 5 years after the date that the first such visa is issued.

(2) CONSTRUCTION.—Nothing in paragraph (1) may be construed to affect issuance of visas to Y–2B nonimmigrants (as defined in such section 218B), under the AgJOBS Act of 2007, as added by subtitle C, under the H–2A visa program, or any visa program other than the Y–1 visa program.

SEC. 402. ADMISSION OF NONIMMIGRANT WORKERS.

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

"SEC. 218A. ADMISSION OF Y NONIMMIGRANTS.

''(a) APPLICATION PROCEDURES.—

''(1) LABOR CERTIFICATION.—The Secretary of Labor shall prescribe by regulation the procedures for a United States employer to obtain a labor cer-

tification of a job opportunity under the terms set forth in section 218B.

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

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

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

"(A) the procedures for collection and verification of biometric data from an alien seeking a Y nonimmigrant visa or admission in Y nonimmigrant status; and

"(B) the procedure and standards for validating an employment arrangement between a United States employer and an alien seeking a visa or admission described in (A).

"(b) APPLICATION FOR CERTIFICATION OF A JOB OPPORTUNITY OFFERED TO Y NONIMMIGRANT WORKERS.—An employer desiring to employ a Y nonimmigrant worker shall, with respect to a specific opening that the employer seeks to fill with such a Y nonimmigrant, submit an application for labor certification of the job opportunity filed in accordance with the procedures established by section 218B.

"(c) PETITION TO EMPLOY Y NONIMMIGRANT WORKERS.—

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

"(A) evidence that the employer has obtained a certification under section 218B from the Secretary of Labor for the position sought to be filled by a Y nonimmigrant worker and that such certification remains valid;

"(B) evidence that the job offer was and remains valid;

"(C) the name and other biographical information of the alien beneficiary and any accompanying spouse or child; and

"(D) any biometrics from the beneficiary that the Secretary of Homeland Security may require by regulation.

"(2) TIMING OF FILING.—

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

"(B) EXPIRATION OF CERTIFICATION.—If a labor certification is not filed in support of a petition under this subsection with the Secretary of Homeland Security within 180 days of the date of certification by the Secretary of Labor, then the certification expires and may not support a Y nonimmigrant petition or be the basis for Y nonimmigrant visa issuance.

"(3) ABILITY TO REQUEST DOCUMENTATION.—The Secretary of Homeland Security may request information to verify the attestations the employer made during the labor certification process, and any

other fact relevant to the adjudication of the petition.

"(4) ADJUDICATION OF PETITION.—

"(A) POST-ADJUDICATION ACTION.—After review of the petition, if the Secretary—

"(i) is satisfied that the petition meets all of the requirements of paragraph (1), and any other requirements the Secretary has prescribed in regulations, he may approve the petition and by fax, cable, electronic, or any other means assuring expedited delivery—

"(I) transmit a copy of the notice of action on the petition to the petitioner; and

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

"(ii) finds that the employer is not eligible or that the petition is otherwise not approvable, the Secretary may—

"(I) deny the petition without seeking additional evidence and inform the petitioner—

"(aa) that the petition was denied and the reason for the denial;

"(bb) of any available process for administrative appeal of the decision; and

"(cc) that the denial is without prejudice to the filing of any subsequent petitions, except as provided in section 218B(e)(4);

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

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

"(B) VALIDITY OF APPROVED PETITION.—An approved petition shall have the same period of validity as the certification described in subsection (c)(1)(A) and expire on the same date that the certification expires, except that the

1 Secretary of Homeland Security may terminate
2 in his discretion an approved petition—
3 "(i) when he determines that any ma-
4 terial fact, including, but not limited to the
5 proffered wage rate, the geographic loca-
6 tion of employment, or the duties of the
7 position, has changed in a way that would
8 invalidate the recruitment actions; or
9 "(ii) when he or the Secretary of
10 Labor makes a finding of fraud or mis-
11 representation concerning the facts on the
12 petition or any other representation made
13 by the employer before the Secretary of
14 Labor or Secretary of Homeland Security.
15 "(C) ADMINISTRATIVE REVIEW.—The Sec-
16 retary of Homeland Security shall authorize a
17 single level of administrative review with the
18 United States Citizenship and Immigration
19 Services Administrative Appeals Office of a pe-
20 tition denial or termination.
21 "(d) AUTHORIZATION TO GRANT Y NONIMMIGRANT
22 VISA.—
23 "(1) IN GENERAL.—A consular officer may
24 grant a single-entry temporary visa to a Y non-
25 immigrant who demonstrates an intent to perform

labor or services in the United States (other than the labor or services described in clause (i)(b), (i)(b1), (i)(c), or (iii) of section 101(a)(15)(H), subparagraph (D), (E), (I), (L), (O), (P), or (R) of section 101(a)(15), or section 214(e) (if United States workers who are able, willing, and qualified to perform such labor or services cannot be found in the United States).

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

"(I) a valid Y nonimmigrant visa; or

"(II) documentation of Y nonimmigrant status, as described in subsection (m).

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

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

"(2) EVIDENCE OF EMPLOYMENT OFFER.—The alien's evidence of employment shall be provided in

accordance with the requirements issued by the Secretary of State, in consultation with the Secretary of Labor. In carrying out this paragraph, the Secretary may consider evidence from employers, employer associations, and labor representatives.

"(3) FEES.—

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

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

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

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

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

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

"(5) APPLICATION CONTENT AND WAIVER.—

"(A) APPLICATION FORM.—The alien shall submit to the Secretary of State a completed application, which contains evidence that the re-

quirements under paragraphs (1) and (2) have been met.

"(B) CONTENT.—In addition to any other information that the Secretary requires to determine an alien's eligibility for Y nonimmigrant status, the Secretary of State shall require an alien to provide information concerning the alien's—

"(i) physical and mental health;

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

"(iii) immigration history; and

"(iv) involvement with groups or individuals that have engaged in terrorism, genocide, persecution, or who seek the overthrow of the United States Government.

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

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

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

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

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

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

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

"(A) that the annual wage of the principal Y nonimmigrant paid by the principal nonimmigrant's U.S. employer, combined with the annual wage of the principal Y nonimmigrant's

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

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

"(f) GROUNDS OF INADMISSIBILITY.—

"(1) WAIVED GROUNDS OF INADMISSIBILITY.—In determining an alien's admissibility as a Y nonimmigrant, such alien shall be found to be inadmis-

sible if the alien would be subject to the grounds of inadmissibility under section 601(d)(2).

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

"(3) CONSTRUCTION.—Nothing in this subsection shall be construed as affecting the authority of the Secretary other than under this paragraph to waive the provisions of section 212(a).

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

"(h) GROUNDS OF INELIGIBILITY.—

"(1) IN GENERAL.—An alien is ineligible for a Y nonimmigrant visa or Y nonimmigrant status if the alien is described in section 601(d)(1)(A), (D), (E), (F), or (G) of the [insert title of Act].

"(2) INELIGIBILITY OF DERIVATIVE Y–3 NONIMMIGRANTS.—An alien is ineligible for Y–3 non-

immigrant status if the principal Y nonimmigrant is ineligible under paragraph (1).

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

"(i) PERIOD OF AUTHORIZED ADMISSION.—

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

"(A) Y–1 NONIMMIGRANTS.—Except as provided in (2), aliens granted admission as Y–1 nonimmigrants shall be granted an authorized period of admission of two years. Subject to paragraph (4), such two-year period of admission may be extended for two additional two-year periods.

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

"(2) Y–1 NONIMMIGRANTS WITH Y–3 DEPENDENTS.—A Y–1 nonimmigrant who has accompanying or following-to-join derivative family members in Y–3 nonimmigrant status shall be limited to two two-

year periods of admission. If the family members accompany the Y–1 nonimmigrant during the alien's first period of admission the family members may not accompany or join the Y–1 nonimmigrant during the alien's second period of admission. If the Y–1 nonimmigrant's family members accompany or follow to join the Y–1 nonimmigrant during the alien's second period of admission, but not his first period of admission, then the Y–1 nonimmigrant shall not be granted any additional periods of admission in Y nonimmigrant status. The period of authorized admission of a Y–3 nonimmigrant shall expire on the same date as the period of authorized admission of the principal Y–1 nonimmigrant worker.

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

"(A) the alien is not authorized to be employed during such 14-day period except in the employment for which the alien was previously authorized; and

"(B) the total period of employment, including such 14-day period, may not exceed the maximum applicable period of admission under paragraph (1).

"(4) EXTENSIONS OF THE PERIOD OF ADMISSION.—

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

"(B) EXTENSION OF Y–1 NONIMMIGRANT STATUS.—A Y–1 nonimmigrant described in paragraph (1)(A) who has spent 24 months in the United States in Y–1 nonimmigrant status may not seek extension or be readmitted to the United States as a Y–1 nonimmigrant unless the alien has resided and been physically present outside the United States for the immediate prior 12 months.

"(5) LIMITATION ON ADMISSION.—

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

"(B) Y–2B NONIMMIGRANTS.—An alien who has been admitted to the United States in Y–2B nonimmigrant status may not, after expiration of the alien's period of authorized admission, be readmitted to the United States as a Y nonimmigrant after expiration of the alien's period of authorized admission, regardless of whether the alien was employed or present in the United States for all or only a part of such period, unless the alien has resided and been physically present outside the United States for the immediately preceding two months.

"(C) READMISSION WITH NEW EMPLOYMENT.—Nothing in this paragraph shall be construed to prevent a Y nonimmigrant, whose period of authorized admission has not yet expired or been terminated under subsection (j), and who leaves the United States in a timely fashion after completion of the employment described in the petition of the Y nonimmigrant's most recent employer, from reentering the United States as a Y nonimmigrant to work for a new employer, if the alien and the new employer have complied with all applicable requirements of this section and section 218B.

"(6) INTERNATIONAL COMMUTERS.—An alien who maintains actual residence and place of abode outside the United States and commutes, on days the alien is working, into the United States to work as a Y–1 nonimmigrant, shall be granted an authorized period of admission of three years. The limitations described in paragraphs (3) and (4) shall not apply to commuters described in this paragraph.

"(j) TERMINATION.—

"(1) IN GENERAL.—The period of authorized admission of a Y nonimmigrant shall terminate immediately if:

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

"(B)(i) the alien commits an act that makes the alien removable from the United States under section 237;

"(ii) the alien becomes inadmissible under section 212 (except as provided in subsection (f)); or

"(iii) the alien becomes ineligible under subsection (h);

"(C) the alien uses the documentation of his or her Y nonimmigrant status issued under subsection (m) for unlawful or fraudulent purposes;

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

"(i) 60 or more consecutive days;

"(ii) in the case of a Y–1 nonimmigrant, an aggregate period of 120 days, provided that the alien's 14-day period to lawfully depart the United States shall not be considered to begin until the

date that the alien has been provided notice of the termination; or

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

"(E) the alien is a Y–3 nonimmigrant whose spouse or parent in Y–1 nonimmigrant status is an alien described in subparagraphs (A), (B), (C), or (D).

"(2) EXCEPTION.—The period of authorized admission of a Y nonimmigrant shall not terminate for unemployment under subparagraph (1)(D) if the alien submits documentation to the Secretary of Homeland Security that establishes that such unemployment was caused by—

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

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

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

"(3) RETURN TO FOREIGN RESIDENCE.—Any alien whose period of authorized admission terminates under paragraph (1) shall be required to leave the United States immediately and register such departure at a designated port of departure in a manner to be prescribed by the Secretary.

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

"(k) VISITS OUTSIDE THE UNITED STATES.—

"(A) IN GENERAL.—Under regulations established by the Secretary of Homeland Security, a Y nonimmigrant—

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

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

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

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

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

"(B) EFFECT ON PERIOD OF AUTHORIZED ADMISSION.—Time spent outside the United States under subparagraph (A) shall not extend the most recent period of authorized admission in the United States.

"(l) BARS TO EXTENSION OR ADMISSION.—An alien may not be granted Y nonimmigrant status if—

"(1) the alien has violated any material term or condition of such status granted previously, including failure to comply with the change of address reporting requirements under section 265;

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

"(3) the granting of such status would allow the alien to exceed limitations on stay in the United States in Y status described in subsection (i).

"(m) EVIDENCE OF NONIMMIGRANT STATUS.—Each Y nonimmigrant shall be issued documentary evidence of nonimmigrant status, which—

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

"(2) shall, during the alien's authorized period of admission under subsection (i), serve as a valid entry document for the purpose of applying for admission to the United States—

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

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

"(ii) is applying for admission at a land border port of entry; and

"(B) in conjunction with a valid passport, if the alien is applying for admission at an air or sea port of entry;

"(3) may be accepted during the period of its validity by an employer as evidence of employment authorization and identity under section 274A(b)(1)(B); and

"(4) shall be issued to the Y nonimmigrant by the Secretary of Homeland Security promptly after such alien's admission to the United States as a Y nonimmigrant and reporting to the employer's worksite under subsection (q) or, at the discretion of the Secretary of Homeland Security, may be issued by the Secretary of State at a consulate instead of a visa.

"(n) PERMANENT BARS FOR OVERSTAYS.—

"(1) IN GENERAL.—Any Y nonimmigrant who remains beyond his or her initial authorized period of admission is permanently barred from any future benefits under the immigration laws, except—

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

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

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

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

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

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

"(o) PENALTY FOR ILLEGAL ENTRY OR OVERSTAY.—

"(1) ILLEGAL ENTRY.—Any alien who after the date of the enactment of this section, unlawfully enters, attempts to enter, or crosses the border, and is physically present in the United States after such date in violation of the immigration laws, is barred permanently from any future benefits under the immigration laws, except as provided in paragraph (3) or (4).

"(2) OVERSTAY.—Any alien, other than a Y nonimmigrant, who, after the date of the enactment of this section remains unlawfully in the United States beyond the period of authorized admission, is barred for a period of ten years from any future

1 benefits under the immigration laws, except as pro-
2 vided in paragraph (3) or (4).
3 "(3) RELIEF.—Notwithstanding the bar in
4 paragraph (1) or (2), an alien may apply for—
5 "(A) asylum under section 208(a);
6 "(B) withholding of removal under section
7 241(b)(3); or
8 "(C) protection under the Convention
9 Against Torture and Other Cruel, Inhuman or
10 Degrading Treatment or Punishment, done at
11 New York December 10, 1984.
12 "(4) EXCEPTION.—Overstay of the authorized
13 period of admission may be excused in the discretion
14 of the Secretary where it is demonstrated that:
15 "(A) the period of overstay was due to ex-
16 traordinary circumstances beyond the control of
17 the applicant, and the Secretary finds the pe-
18 riod commensurate with the circumstances; and
19 "(B) the alien has not otherwise violated
20 his nonimmigrant status.
21 "(p) PORTABILITY.—A Y nonimmigrant worker, who
22 was previously issued a visa or otherwise provided Y non-
23 immigrant status, may accept a new offer of employment
24 with a subsequent employer, if—

"(1) the position being offered the Y nonimmigrant has been certified by the Secretary of Labor under section 218B and the employer complies with all requirements of this section and section 218B;

"(2) the alien, after lawful admission to the United States, did not work without authorization; and

"(3) the subsequent employer has notified the Secretary of Homeland Security under subsection (q) of the Y nonimmigrant's change of employment.

"(q) REPORTING OF START AND TERMINATION OF EMPLOYMENT.—

"(1) START OF Y WORKER EMPLOYMENT.—A Y nonimmigrant shall report in the manner prescribed by the Secretary of Homeland Security to the employer whose job offer was the basis for issuance of the alien's Y nonimmigrant visa within 7 days of admission into the United States.

"(2) EMPLOYER NOTIFICATION REQUIREMENT.—An employer shall within three days make notification in the manner prescribed by the Secretary of Homeland Security, of the following events:

"(A) a Y nonimmigrant worker has reported for work pursuant to paragraph (1) after admission in Y nonimmigrant status;

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

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

"(D) a Y nonimmigrant worker on whose behalf the employer has filed a petition under this subsection that has been approved by the Secretary of Homeland Security has failed to report for work within three days of the employment start date agreed upon between the employer and the Y nonimmigrant.

"(3) VERIFICATION.—An employer shall provide upon request of the Secretary of Homeland Security verification that an alien who has been granted admission as a Y nonimmigrant worker was or continues to be employed by the employer.

"(4) FINE.—Any employer that fails to comply with the notification requirements of this subsection shall pay to the Secretary of Homeland Security a fine, in an amount and under procedures established by the Secretary in regulation.

"(r) NO THREATENING OF EMPLOYEES.—It shall be a violation of this section for an employer who has filed a petition under this section to threaten the alien beneficiary of such petition with the withdrawal of such a petition in retaliation for the beneficiary's exercise of a right protected by section 218B.

"(s) CHANGE OF STATUS.—

"(1) IN GENERAL.—

"(A) A Y nonimmigrant may apply to change status to another nonimmigrant status, subject to section 248 and if otherwise eligible.

"(B) No alien admitted to the United States under the immigration laws in a classification other than Y nonimmigrant status may change status to Y nonimmigrant status.

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

"(2) CONSTRUCTION.—Nothing in this subsection shall be construed to prevent an alien who is precluded from changing status to a particular Y nonimmigrant classification under subparagraphs (1)(B), (C), or (D) from leaving the United States and applying at a U.S. consulate for the desired nonimmigrant visa, subject to all applicable eligi-

bility requirements, in the appropriate Y classification.

"(t) VISITATION OF Y NONIMMIGRANT BY SPOUSE OR CHILD WITHOUT A Y–3 NONIMMIGRANT VISA.—Nothing in this section shall be construed to prohibit the spouse or child of a Y nonimmigrant worker to be admitted to the United States under any other existing legal basis for which the spouse or child may qualify.

"(u) CHANGE OF ADDRESS.—A Y nonimmigrant shall comply with the change of address reporting requirements under section 265 through electronic or paper notification."

(b) CONFORMING AMENDMENT REGARDING CREATION OF TREASURY ACCOUNTS.—Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by inserting at the end the following new subsections—

"(w) TEMPORARY WORKER PROGRAM ACCOUNT.—

"(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'Temporary Worker Program Account'. Notwithstanding any other section of this Act, there shall be deposited into the account all fines and civil penalties collected under sections 218A, 218B, or 218F and Title VI of [name

of Act], except as specifically provided otherwise in such sections.

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

"(A) for the administration of the Standing Commission on Immigration and Labor Markets, established under section 409 of the [Insert title of Act]; and

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

"(i) one-third to the Secretary of Labor to carry out the Secretary of Labor's functions and responsibilities, including enforcement of labor standards under sections 218A, 218B, and 218F, and under applicable labor laws including the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) and the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.). Such activities shall include

random audits of employers that participate in the Y visa program; and

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

"(x) STATE IMPACT ASSISTANCE ACCOUNT.—

"(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'State Impact Assistant Account'.

"(2) SOURCE OF FUNDS.—Notwithstanding any other provision under this Act, there shall be deposited as offsetting receipts into the State Impact Assistance Account all State Impact Assistance fees collected under sections 218A(e)(3)(B) and section 601(e)(6)(C) of the [Insert title of Act].

"(3) USE OF FUNDS.—Amounts deposited into the State Impact Assistance Account may only be used to carry out the State Impact Assistance Grant Program established under paragraph (4).

"(4) STATE IMPACT ASSISTANCE GRANT PROGRAM.—

"(A) ESTABLISHMENT.—The Secretary of Health and Human Services, in consultation with the Secretary of Education, shall establish

the State Impact Assistance Grant Program (referred to in this subsection as the 'Program'), under which the Secretary may award grants to States to provide health and education services to noncitizens in accordance with this paragraph.

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

"(i) NONCITIZEN POPULATION.—Eighty percent of such amounts shall be allocated so that each State receives the greater of—

"(I) $5,000,000; or

"(II) after adjusting for allocations under subclause (I), the percentage of the amount to be distributed under this clause that is equal to the noncitizen resident population of the State divided by the noncitizen resident population of all States, based on the most recent data available from the Bureau of the Census.

"(ii) HIGH GROWTH RATES.—Twenty percent of such amounts shall be allocated among the 20 States with the largest growth rates in noncitizen resident population, as determined by the Secretary of Health and Human Services, so that each such State receives the percentage of the amount distributed under this clause that is equal to—

"(I) the growth rate in the noncitizen resident population of the State during the most recent 3-year period for which data is available from the Bureau of the Census; divided by

"(II) the average growth rate in noncitizen resident population for the 20 States during such 3-year period.

"(iii) LEGISLATIVE APPROPRIATIONS.—The use of grant funds allocated to States under this paragraph shall be subject to appropriation by the legislature of each State in accordance with the terms and conditions under this paragraph.

"(C) FUNDING FOR LOCAL GOVERNMENT.—

"(i) DISTRIBUTION CRITERIA.—Grant funds received by States under this paragraph shall be distributed to units of local government based on need and function.

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

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

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

"(D) USE OF FUNDS.—States and units of local government shall use grant funds received

under this paragraph to provide health services, educational services, and related services to noncitizens within their jurisdiction directly, or through contracts with eligible services providers, including—

"(i) health care providers;

"(ii) local educational agencies; and

"(iii) charitable and religious organizations.

"(E) STATE DEFINED.—In this paragraph, the term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"(F) CERTIFICATION.—In order to receive a payment under this section, the State shall provide the Secretary of Health and Human Services with a certification that the State's proposed uses of the fund are consistent with (D).

"(G) ANNUAL REPORT.—The Secretary of Health and Human Services shall inform the

States annually of the amount of funds available to each State under the Program.''.

''(c) CLERICAL AMENDMENT.—The table of contents Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 218 the following:

''Sec. 218A. Admission of Y nonimmigrants.''.

SEC. 403. GENERAL Y NONIMMIGRANT EMPLOYER OBLIGATIONS.

(a) IN GENERAL.—Title II (8 U.S.C. 1201 et seq.) is amended by inserting after section 218A of the Immigration and Nationality Act, as added by section 402, the following:

''SEC. 218B. GENERAL Y NONIMMIGRANT EMPLOYER OBLIGATIONS.

''(a) GENERAL REQUIREMENTS.—Each employer who seeks to employ a Y nonimmigrant shall—

''(1) file in accordance with subsection (b) an application for labor certification of the position that the employer seeks to fill with a Y nonimmigrant that contains—

''(A) the attestation described in subsection (c);

''(B) a description of the nature and location of the work to be performed;

"(C) the anticipated period (expected beginning and ending dates) for which the workers will be needed; and

"(D) the number of job opportunities in which the employer seeks to employ the workers;

"(2) include with the application filed under paragraph (1) a copy of the job offer describing the wages and other terms and conditions of employment and the bona fide occupational qualifications that shall be possessed by a worker to be employed in the job opportunity in question; and

"(3) be required to pay, with respect to an application to employ a Y–1 worker—

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

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

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

"(ii) $750, in the case of an employer employing between 26 and 150 employees;

"(iii) $1,000, in the case of an employer employing between 151 and 500 employees; or

"(iv) $1,250, in the case of an employer employing more than 500 employees;

"provided that an employer who provides a Y nonimmigrant health insurance coverage shall not be required to pay the impact fee.

"(b) REQUIRED PROCEDURE.—Each employer of Y nonimmigrants shall comply with the following requirements:

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

"(A) Not later than 90 days before the date on which an application is filed under subsection (a)(1) submitting a copy of the job opportunity, including a description of the wages and other terms and conditions of employment and the minimum education, training, experi-

ence and other requirements of the job, to the designated state agency and—

"(i) authorizing the designated state agency to post the job opportunity on the Internet website established under section 414 of [Title of bill], with local job banks, and with unemployment agencies and other labor referral and recruitment sources pertinent to the job involved; and

"(ii) authorizing the designated state agency to notify labor organizations in the State in which the job is located and, if applicable, the office of the local union which represents the employees in the same or substantially equivalent job classification of the job opportunity;

"(B) posting the availability of the job opportunity for which the employer is seeking a worker in conspicuous locations at the place of employment for all employees to see for a period of time beginning not later than 90 days before the date on which an application is filed under subsection (a)(1) and ending no earlier than 14 days before such filing date;

"(C) advertising the availability of the job opportunity for which the employer is seeking a worker in one of the three highest circulation publications in the labor market that is likely to be patronized by a potential worker for not fewer than 10 consecutive days during the period of time beginning not later than 90 days before the date on which an application is filed under subsection (a)(1) and ending no earlier than 14 days before such filing date; and

"(D) advertising the availability of the job opportunity in professional, trade, or ethnic publications that are likely to be patronized by a potential worker, as recommended by the designated state agency. The employer shall not be required to advertise in more than three such recommended publications.

"(2) EFFORTS TO EMPLOY UNITED STATES WORKERS.—An employer that seeks to employ a Y nonimmigrant shall first offer the job with, at a minimum, the same wages, benefits, and working conditions, to any eligible United States worker who applies, is qualified for the job and is available at the time of need.

"(3) DEFINITION.—For purposes of this subsection, 'designated state agency' shall mean the state agency designated to perform the functions in this subsection in the area of employment in the State in which the employer is located.

"(c) APPLICATION.—An application under this section for labor certification of a position that an employer seeks to fill with a Y nonimmigrant shall be filed with the Secretary of Labor and shall include an attestation by the employer of the following:

"(1) with respect to an application for labor certification of a position that an employer seeks to fill with a Y–1 or Y–2B nonimmigrant—

"(A) PROTECTION OF UNITED STATES WORKERS.—The employment of a Y nonimmigrant—

"(i) will not adversely affect the wages and working conditions of workers in the United States similarly employed; and

"(ii) did not and will not cause the separation from employment of a United States worker employed by the employer within the 180-day period beginning 90 days before the date on which the petition is filed.

"(B) WAGES.—

"(i) IN GENERAL.—The Y nonimmigrant worker will be paid not less than the greater of—

"(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

"(II) the prevailing competitive wage level for the occupational classification in the area of employment, taking into account experience and skill levels of employees.

"(ii) CALCULATION.—The wage levels under subparagraph (A) shall be calculated based on the best information available at the time of the filing of the application.

"(iii) PREVAILING COMPETITIVE WAGE LEVEL.—For purposes of subclause (i)(II), the prevailing competitive wage level shall be determined as follows:

"(I) If the job opportunity is covered by a collective bargaining agreement between a union and the em-

ployer, the prevailing competitive wage shall be the wage rate set forth in the collective bargaining agreement.

"(II) If the job opportunity is not covered by such an agreement and it is on a project that is covered by a wage determination under a provision of subchapter IV of chapter 31 of title 40, United States Code, or the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), the prevailing competitive wage level shall be the appropriate statutory wage.

"(III)(aa) If the job opportunity is not covered by such an agreement and it is not on a project covered by a wage determination under a provision of subchapter IV of chapter 31 of title 40, United States Code, or the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), the prevailing competitive wage level shall be based on published wage data for the occupation from the Bureau of Labor Statistics, including the Occupational

Employment Statistics survey, Current Employment Statistics data, National Compensation Survey, and Occupational Employment Projections program. If the Bureau of Labor Statistics does not have wage data applicable to such occupation, the employer may base the prevailing competitive wage level on data from another wage survey approved by the state workforce agency under regulations promulgated by the Secretary of Labor.

"(bb) Such regulations shall require, among other things, that such surveys are statistically valid and recently conducted.

"(D) LABOR DISPUTE.—There is not a strike, lockout, or work stoppage in the course of a labor dispute in the occupation at the place of employment at which the Y nonimmigrant will be employed. If such strike, lockout, or work stoppage occurs following submission of the application, the employer will provide notification in accordance with regulations promulgated by the Secretary of Labor.

"(E) PROVISION OF INSURANCE.—If the position for which the Y nonimmigrant is sought is not covered by the State workers' compensation law, the employer will provide, at no cost to the Y nonimmigrant, insurance covering injury and disease arising out of, and in the course of, the worker's employment, which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

"(F) NOTICE TO EMPLOYEES.—

"(i) IN GENERAL.—The employer has provided notice of the filing of the application to the bargaining representative of the employer's employees in the occupational classification and area of employment for which the Y nonimmigrant is sought.

"(ii) No bargaining representative.—If there is no such bargaining representative, the employer has—

"(I) posted a notice of the filing of the application in a conspicuous location at the place or places of employment for which the Y nonimmigrant is sought; or

"(II) electronically disseminated such a notice to the employer's employees in the occupational classification for which the Y nonimmigrant is sought.

"(G) RECRUITMENT.—That—

"(i) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services described in the application; and

"(ii) good faith efforts have been taken to recruit United States workers, in accordance with regulations promulgated by the Secretary of Labor, which efforts included—

"(I) the completion of recruitment during the period beginning on the date that is 90 days before the date on which the application was filed with the Department of Labor and ending on the date that is 14 days before such filing date; and

"(II) the wages that the employer would be required by law to

1 provide for the Y nonimmigrant were
2 used in conducting recruitment.
3 "(H) INELIGIBILITY.—The employer is not
4 currently ineligible from using the Y non-
5 immigrant program described in this section.
6 "(I) BONA FIDE OFFER OF EMPLOY-
7 MENT.—The job for which the Y nonimmigrant
8 is sought is a bona fide job—
9 "(i) for which the employer needs
10 labor or services;
11 "(ii) which has been and is clearly
12 open to any United States worker; and
13 "(iii) for which the employer will be
14 able to place the Y nonimmigrant on the
15 payroll.
16 (J) PUBLIC AVAILABILITY AND RECORDS
17 RETENTION.—A copy of each application filed
18 under this section and documentation sup-
19 porting each attestation, in accordance with
20 regulations promulgated by the Secretary of
21 Labor, will—
22 "(i) be provided to every Y non-
23 immigrant employed under the petition;

"(ii) be made available for public examination at the employer's place of business or work site;

"(iii) be made available to the Secretary of Labor during any audit; and

"(iv) remain available for examination for 5 years after the date on which the application is filed.

"(K) NOTIFICATION UPON SEPARATION FROM OR TRANSFER OF EMPLOYMENT.—The employer will notify the Secretary of Labor and the Secretary of Homeland Security of a Y nonimmigrant's separation from employment or transfer to another employer not more than 3 business days after the date of such separation or transfer, in accordance with section 218A(q)(2).

"(L) ACTUAL NEED FOR LABOR OR SERVICES.—The application was filed not more than 60 days before the date on which the employer needed labor or services for which the Y nonimmigrant is sought.

"(d) AUDIT OF ATTESTATIONS.—

"(1) REFERRALS BY SECRETARY OF HOMELAND SECURITY.—The Secretary of Homeland Security

shall refer all petitions approved under section 218A to the Secretary of Labor for potential audit.

(2) AUDITS AUTHORIZED.—The Secretary of Labor may audit any approved petition referred pursuant to paragraph (1), in accordance with regulations promulgated by the Secretary of Labor.

"(e) INELIGIBLE EMPLOYERS.—

"(1) IN GENERAL.—In addition to any other applicable penalties under law, the Secretary of Labor and the Secretary of Homeland Security shall not, for the period described in paragraph (2), approve an employer's petition or application for a labor certification under any immigrant or nonimmigrant program if the Secretary of Labor determines, after notice and an opportunity for a hearing, that the employer submitting such documents—

"(A) has, with respect to the application required under subsection (a), including attestations required under subsection (b)—

"(i) misrepresented a material fact;

"(ii) made a fraudulent statement; or

"(iii) failed to comply with the terms of such attestations; or

"(B) failed to cooperate in the audit process in accordance with regulations promulgated by the Secretary of Labor;

"(C) has been convicted of any of the offenses codified in Chapter 77 of Title 18 of the United States Code (slave labor) or any conspiracy to commit such offenses, or any human trafficking offense under state or territorial law;

"(D) has, within three years prior to the date of application:

"(i) committed any hazardous occupation orders violation resulting in injury or death under the child labor provisions contained in section 12 of the Fair Labor Standards Act and any regulation thereunder;

"(ii) been assessed a civil money penalty for any repeated or willful violation of the minimum wage provisions of section 6 of the Fair Labor Standards Act; or

"(iii) been assessed a civil money penalty for any repeated or willful violation of the overtime provisions of section 7 of the Fair Labor Standards Act or any regula-

tions thereunder, other than a repeated violation that is self-reported; or

"(E) has, within three years prior to the date of application, received a citation for:

"(i) a willful violation; or

"(ii) repeated serious violations involving injury or death of section 5 of the Occupational Safety and Health Act, or any standard, rule, or order promulgated pursuant to section 6 of the Occupational Safety and Health Act, or any regulations prescribed pursuant to that. This subsection shall also apply to equivalent violations of a plan approved under section 18 of the Occupational Safety and Health Act.

"(2) LENGTH OF INELIGIBILITY.—An employer described in paragraph (1) shall be ineligible to participate in the labor certification programs of the Secretary of Labor for not less than the time period determined by the Secretary, not to exceed 3 years. However, an employer who has been convicted of any of the offenses codified in Chapter 77 of Title 18 of the United States Code (slave labor) or any conspiracy to commit such offenses, or any human trafficking offense under state or territorial law shall

be permanently ineligible to participate in the labor certification programs.

"(3) EMPLOYERS IN HIGH UNEMPLOYMENT AREAS.—The Secretary of Labor may not approve any employer's application under subsection (b) if the work to be performed by the Y nonimmigrant is not agriculture based and is located in a county where the unemployment rate during the most recently completed year is more than 7 percent. An employer in a high unemployment area may petition the Secretary for a waiver of this provision. The Secretary shall promulgate regulations for the expeditious review of such waivers, which shall specify that the employer must satisfy the requirements of section (b) above and in addition must provide documentation of its recruitment efforts, including proof that it has advertised the position in one of the three publications that have the highest circulation in the labor market that is likely to be patronized by a potential worker for not fewer than 20 consecutive days under the rules and conditions set forth in section (b). An employer who has provided proof of advertising in accordance with this section shall be deemed to be in compliance with the requirements of subsection (b)(1)(D) of this section. The Secretary

shall provide for a process to promptly respond to all waiver requests, and shall maintain on the Department of Labor's website an annual list of counties to which this subsection applies.

"(4) INELIGIBILITY FOR PETITIONS.—The Secretary of Labor shall inform the Secretary of Homeland Security of a determination under paragraph (1) with respect to a specific employer. The Secretary of Homeland Security shall not, for the period described in paragraph (2), approve the petitions or applications of any such employer for any immigrant or nonimmigrant program, regardless of whether such application or petition requires a labor certification.

"(f) PROHIBITION OF INDEPENDENT CONTRACTORS.—

"(1) COVERAGE.—Notwithstanding any other provision of law—

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

"(B) no person, including an employer or labor contractor and any persons who are affiliated with or contract with an employer or labor

contractor, may treat a Y nonimmigrant as an independent contractor; and

"(C) this provision shall not be construed to prevent employers who operate as independent contractors from employing Y nonimmigrants as employees.

"(2) APPLICABILITY OF LAWS.—A Y 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 United States worker employed in a similar position with the employer because of the alien's status as a nonimmigrant worker.

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

"(g) WHISTLEBLOWER PROTECTION.—

"(1) PROHIBITED ACTIVITIES.—It shall be unlawful for an employer or a labor contractor of a Y 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—

"(A) discloses information to the employer or any other person that the employee or former employee reasonably believes demonstrates a violation of this Act or [title of bill]; or

"(B) cooperates or seeks to cooperate in an investigation or other proceeding concerning compliance with the requirements of this Act or [title of bill].

"(2) RULEMAKING.—The Secretary of Labor shall promulgate regulations that establish a process by which a nonimmigrant alien described in section 101(a)(15)(Y) or 101(a)(15)(H) who files a nonfrivolous complaint (as defined by the Federal Rules of Civil Procedure) regarding a violation of this Act, [title of bill] or any other Federal labor or employment law, or any other rule or regulation pertaining to such laws and is otherwise eligible to remain and work in the United States prior to the expiration of the maximum period of stay authorized for that nonimmigrant classification for a period of 120 consecutive days or such additional time period as the Secretary shall determine through rulemaking is necessary to collect information or take evidence from the nonimmigrant alien regarding a complaint or

1 agency investigation. This period shall be allowed to
2 exceed the maximum period of stay authorized for
3 that nonimmigrant classification if the Secretary of
4 Labor has designated the nonimmigrant alien as a
5 necessary witness.

6 ''(h) LABOR RECRUITERS.—With respect to the em-
7 ployment of Y nonimmigrant workers—

8 ''(1) IN GENERAL.—Each employer that en-
9 gages in foreign labor contracting activity and each
10 foreign labor contractor shall ascertain and disclose,
11 to each such worker who is recruited for employment
12 at the time of the worker's recruitment—

13 ''(A) the place of employment;

14 ''(B) the compensation for the employ-
15 ment;

16 ''(C) a description of employment activi-
17 ties;

18 ''(D) the period of employment;

19 ''(E) any other employee benefit to be pro-
20 vided and any costs to be charged for each ben-
21 efit;

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

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

"(H) the existence of any arrangement with any owner, employer, foreign contractor, or its agent where such person receives a commission from the provision of items or services to workers;

"(I) the extent to which workers will be compensated through workers' compensation, private insurance, or otherwise for injuries or death, including—

"(i) work related injuries and death during the period of employment;

"(ii) the name of the State workers' compensation insurance carrier or the name of the policyholder of the private insurance;

"(iii) the name and the telephone number of each person who must be notified of an injury or death; and

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

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

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

"(ii) the entity that will pay such costs; and

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

"(K) a statement, in a form specified by the Secretary of Labor, describing the protections of this Act and of the Trafficking Victims Protection Act of 2000, P.L. 106–486, for workers recruited abroad.

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

"(3) LANGUAGES.—The information required to be disclosed under paragraph (1) shall be provided in writing in English or, as necessary and reasonable, in the language of the worker being recruited. The Secretary of Labor shall make forms available in English, Spanish, and other languages, as necessary and reasonable, which may be used in pro-

viding workers with information required under this section.

"(4) FEES.—A person conducting a foreign labor contracting activity shall not assess any fee to a worker for such foreign labor contracting activity.

"(5) TERMS.—No employer or foreign labor contractor shall, without justification, violate the terms of any agreement related to the requirements of this section made by that contractor or employer regarding employment under this program.

"(6) TRAVEL COSTS.—If the foreign labor contractor or employer charges the employee for transportation, such transportation costs shall be reasonable.

"(7) OTHER WORKER PROTECTIONS.—

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

"(B) REGISTRATION OF FOREIGN LABOR CONTRACTORS.—

"(i) IN GENERAL.—No person shall engage in foreign labor recruiting activity

unless such person has a certificate of registration from the Secretary of Labor specifying the activities that such person is authorized to perform. An employer who retains the services of a foreign labor contractor shall only use those foreign labor contractors who are registered under this subparagraph.

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

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

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

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

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

"(iv) REFUSAL TO ISSUE; REVOCATION; SUSPENSION.—In accordance with regulations promulgated by the Secretary of Labor, the Secretary may refuse to issue or renew, or may suspend or revoke, a certificate of registration under this subparagraph if—

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

"(II) the applicant for, or holder of, the certification is not the real party in interest in the application or certificate of registration and the real party in interest—

"(aa) is a person who has been refused issuance or renewal of a certificate;

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

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

"(III) the applicant for or holder of the certification has failed to comply with this Act.

"(C) REMEDY FOR VIOLATIONS.—An employer engaging in foreign labor contracting activity and a foreign labor contractor that violates the provisions of this subsection shall be subject to remedies for foreign labor contractor violations under subsections (j) and (k). If a foreign labor contractor who is an agent of an employer violates any provision of this subsection when acting within the scope of its agency, the employer shall be subject to remedies under subsections (j) and (k). An employer shall not be subject to remedies for violations committed by a foreign labor contractor when such contractor is acting in direct contravention of an express, written contractual provision contained in the agreement between the employer and the foreign labor contractor. An employer that violates a provision of this subsection relating to employer obligations shall

be subject to remedies under subsections (j) and (k).

"(D) EMPLOYER NOTIFICATION.—An employer shall notify the Secretary of Labor if the employer becomes aware of a violation of this subsection by a foreign labor recruiter.

"(E) WRITTEN AGREEMENTS.—A foreign labor contractor may not violate the terms of any written agreements made with an employer relating to any contracting activity or worker protection under this subsection.

"(F) BONDING REQUIREMENT.—The Secretary of Labor may require a foreign labor contractor to post a bond in an amount sufficient to ensure the protection of individuals recruited by the foreign labor contractor. The Secretary may consider the extent to which the foreign labor contractor has sufficient ties to the United States to adequately enforce this subsection.

"(i) WAIVER OF RIGHTS PROHIBITED.—A Y nonimmigrant may not be required to waive any rights or protections under this Act. Nothing under this subsection shall be construed to affect the interpretation of other laws.

"(j) ENFORCEMENT.—With respect to violations of the provisions of this section relating to the employment of Y nonimmigrant workers—

"(1) IN GENERAL.—The Secretary of Labor shall promulgate regulations for the receipt, investigation, and disposition of complaints by an aggrieved person respecting a violation of this section.

"(2) FILING DEADLINE.—No investigation or hearing shall be conducted on a complaint concerning a violation under this section unless the complaint was filed not later than 12 months after the date of such violation.

"(3) REASONABLE BASIS.—The Secretary of Labor shall conduct an investigation under this subsection if there is reasonable basis to believe that a violation of this section has occurred. The process established under this subsection shall provide that, not later than 30 days after a complaint is filed, the Secretary shall determine if there is reasonable cause to find such a violation.

"(4) NOTICE AND HEARING.—

"(A) IN GENERAL.—Not later than 60 days after the Secretary of Labor makes a determination of reasonable basis under paragraph (3), the Secretary shall issue a notice to

the interested parties and offer an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code.

"(B) COMPLAINT.—If the Secretary of Labor, after receiving a complaint under this subsection, does not offer the aggrieved person or organization an opportunity for a hearing under subparagraph (A), the Secretary shall notify the aggrieved person or organization of such determination and the aggrieved person or organization may seek a hearing on the complaint under procedures established by the Secretary which comply with the requirements of section 556.

"(C) HEARING DEADLINE.—Not later than 60 days after the date of a hearing under this paragraph, the Secretary of Labor shall make a finding on the matter in accordance with paragraph (5).

"(5) ATTORNEY'S FEES.—A complainant who prevails in an action under this section with respect to a claim related to wages or compensation for employment, or a claim for a violation of subsection (j), shall be entitled to an award of reasonable attorney's fees and costs.

"(6) POWER OF THE SECRETARY.—The Secretary may bring an action in any court of competent jurisdiction—

"(A) to seek remedial action, including injunctive relief;

"(B) to recover the damages described in subsection (k); or

"(C) to ensure compliance with terms and conditions described in subsection (g).

"(7) SOLICITOR OF LABOR.—Except as provided in section 518(a) of title 28, United States Code, the Solicitor of Labor may appear for and represent the Secretary of Labor in any civil litigation brought under this subsection. All such litigation shall be subject to the direction and control of the Attorney General.

"(8) PROCEDURES IN ADDITION TO OTHER RIGHTS OF EMPLOYEES.—The rights and remedies provided to workers under this section are in addition to any other contractual or statutory rights and remedies of the workers, and are not intended to alter or affect such rights and remedies.

"(k) PENALTIES.—With respect to violations of the provisions of this section relating to the employment of Y–1 or Y–2B nonimmigrants—

"(1) IN GENERAL.—If, after notice and an opportunity for a hearing, the Secretary of Labor finds a violation of this section, the Secretary may impose administrative remedies and penalties, including—

"(A) back wages;

"(B) benefits; and

"(C) civil monetary penalties.

"(2) CIVIL PENALTIES.—The Secretary of Labor may impose, as a civil penalty—

"(A) for a violation of subsections (b) through (g)—

"(i) a fine in an amount not more than $2,000 per violation per affected worker and $4,000 per violation per affected worker for each subsequent violation;

"(ii) if the violation was willful, a fine in an amount not more than $5,000 per violation per affected worker;

"(iii) if the violation was willful and if in the course of such violation a United States worker was harmed, a fine in an amount not more than $25,000 per violation per affected worker; and

"(B) for a violation of subsection (h)—

"(i) a fine in an amount not less than $500 and not more than $4,000 per violation per affected worker;

"(ii) if the violation was willful, a fine in an amount not less than $2,000 and not more than $5,000 per violation per affected worker; and

"(iii) if the violation was willful and if in the course of such violation a United States worker was harmed, a fine in an amount not less than $6,000 and not more than $35,000 per violation per affected worker.

"(C) for knowingly or recklessly failing to comply with the terms of representations made in petitions, applications, certifications, or attestations under any immigrant or nonimmigrant program, or with representations made in materials required by section (h) (concerning labor recruiters)—

"(1) a fine in an amount not more than $4,000 per affected worker; and

"(2) upon the occasion of a third offense of failure to comply with representations, a fine in an amount not to exceed $5,000 per affected worker

and designation as an ineligible employer, recruiter, or broker for purposes of any immigrant or non-immigrant program.

"(3) USE OF CIVIL PENALTIES.—All penalties collected under this subsection shall be deposited in the Treasury in accordance with section 286(w).

"(4) CRIMINAL PENALTIES.—If a willful and knowing violation of subsection (g) causes extreme physical or financial harm to an individual, the person in violation of such subsection may be imprisoned for not more than 6 months, fined in an amount not more than $35,000, or both.

"(l) DEFINITIONS.—Unless otherwise provided, in this section and section 218A:

"(1) AGGRIEVED PERSON.—The term 'aggrieved person' means a person adversely affected by an alleged violation of this section, including—

"(A) a worker whose job, wages, or working conditions are adversely affected by the violation; and

"(B) a representative authorized by a worker whose jobs, wages, or working conditions are adversely affected by the violation who brings a complaint on behalf of such worker.

"(2) AREA OF EMPLOYMENT.—The terms 'area of employment' and 'area of intended employment' mean the area within normal commuting distance of the worksite or physical location at which the work of the Y worker is or will be performed. If such worksite or location is within a Metropolitan Statistical Area, any place within such area is deemed to be within the area of employment.

"(3) CONVENTION AGAINST TORTURE.—The term 'Convention Against Torture' shall refer to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention, as implemented by section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998 (Public Law 105–277, 112 Stat. 2681, 2681–821).

"(4) DERIVATIVE Y NONIMMIGRANT.—The term 'derivative' Y nonimmigrant means an alien described at paragraph (Y)(iii) of subsection 101(a)(15).

"(5) ELIGIBLE; ELIGIBLE INDIVIDUAL.—The term 'eligible', when used with respect to an indi-

vidual, or 'eligible individual', means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A) with respect to that employment.

''(6) EMPLOY; EMPLOYEE; EMPLOYER.—The terms 'employ', 'employee', and 'employer' have the meanings given such terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

''(7) FELONY.—The term 'felony', with regard to a conviction in a foreign jurisdiction, means a crime for which a sentence of one year or longer in prison may be imposed.

''(8) FORCE MAJEURE EVENT.—The term 'force majeure event' shall mean an event that is beyond the control of either party, including, without limitation, hurricanes, earthquakes, act of terrorism, war, fire, civil disorder or other events of a similar or different kind.

''(9) FOREIGN LABOR CONTRACTOR.—The term 'foreign labor contractor' means any person who for any compensation or other valuable consideration paid or promised to be paid, performs any foreign labor contracting activity.

''(10) FOREIGN LABOR CONTRACTING ACTIVITY.—The term 'foreign labor contracting activity'

means recruiting, soliciting, hiring, employing, or furnishing, an individual who resides outside of the United States for employment in the United States as a nonimmigrant alien described in section 101(a)(15)(H)(ii)(c).

"(11) FULL TIME.—The term 'full time', with respect to a job in agricultural labor or services, means any job in which the individual is employed 5.75 or more hours per day; and for any job, means in any period of authorized admission or portion of such period, employment or study for at least 90 percent of the total number of work-hours in such period, calculated at a rate of 1,575 work-hours per year (1,438 work-hours per year for agricultural employment). Each credit-hour of study shall be counted as the equivalent of 50 work-hours.

"(12) JOB OPPORTUNITY.—The term 'job opportunity' means a job opening for temporary or seasonal full-time employment at a place in the United States to which United States workers can be referred.

"(B) STATUTORY CONSTRUCTION.—Nothing in this paragraph is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

"(14) MISDEMEANOR.—The term 'misdemeanor', with regard to a conviction in a foreign jurisdiction, means a crime for which a sentence of no more than 364 days in prison may be imposed.

"(15) REGULATORY DROUGHT.—The term 'regulatory drought' means a decision subsequent to the filing of the application under section 218B by an entity not under the control of the employer making such filing which restricts the employer's access to water for irrigation purposes and reduces or limits the employer's ability to produce an agricultural commodity, thereby reducing the need for labor.

"(16) SEASONAL.—Labor is performed on a 'seasonal' basis if—

"(A) ordinarily, it pertains to or is of the kind exclusively performed at certain seasons or periods of the year; and

"(B) from its nature, it may not be continuous or carried on throughout the year.

"(17) SECRETARY.—Except as otherwise provided, the term 'Secretary' means the Secretary of Homeland Security.

"(18) SEPARATION FROM EMPLOYMENT.—The term 'separation from employment' means the worker's loss of employment, other than through a dis-

charge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract. The term does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether the employee accepts the offer. Nothing in this paragraph shall limit an employee's rights under a collective bargaining agreement or other employment contract.

''(19) UNITED STATES WORKER.—The term 'United States worker' means an employee who is—

''(A) a citizen or national of the United States; or

''(B) an alien who is—

''(i) lawfully admitted for permanent residence;

''(ii) admitted as a refugee under section 207;

''(iii) granted asylum under section 208; or

"(iv) otherwise authorized, under this Act or by the Secretary of Homeland Security, to be employed in the United States.'.

"(20) Y NONIMMIGRANT; Y NONIMMIGRANT WORKER.—

"(A) The term 'Y nonimmigrant' means an alien admitted to the United States under paragraph (Y)(i) or (Y)(ii) of subsection 101(a)(15), or the spouse or child of such nonimmigrant in derivative status under (Y)(iii); and

"(B) The term 'Y nonimmigrant worker' means an alien admitted to the United States under paragraph (Y)(i) or (Y)(ii) of subsection 101(a)(15).

"(21) Y–1 NONIMMIGRANT; Y–1 WORKER.—The term 'Y–1 nonimmigrant' or 'Y–1 worker' means an alien admitted to the United States under paragraph (i) of subsection 101(a)(15)(Y).

"(23) Y–2B NONIMMIGRANT; Y–2B WORKER.—The term 'Y–2B nonimmigrant' or 'Y–2B worker' means an alien admitted to the United States under paragraph (ii) of subsection 101(a)(15)(Y).

"(24) Y–3 NONIMMIGRANT.—The term 'Y–3 nonimmigrant' means an alien admitted to the

United States under paragraph (iii) of subsection 101(a)(15)(Y).''.

''(b) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 218A, as added by section 402, the following:

''Sec. 218B. Employer obligations.''.

Subtitle B—Seasonal Agricultural Nonimmigrant Temporary Workers

SEC. 404. AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT.

(a) IN GENERAL.—Title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.) is amended inserting the following after section 218B:

''SEC. 218C. H–2A EMPLOYER APPLICATIONS.

''(a) APPLICATIONS TO THE SECRETARY OF LABOR.—

''(1) IN GENERAL.—No alien may be admitted to the United States as an H–2A worker, or otherwise provided status as an H–2A worker, unless the employer has filed with the Secretary of Labor an application containing—

''(A) the assurances described in subsection (b);

''(B) a description of the nature and location of the work to be performed;

"(C) the anticipated period (expected beginning and ending dates) for which the workers will be needed; and

"(D) the number of job opportunities in which the employer seeks to employ the workers.

"(2) ACCOMPANIED BY JOB OFFER.—Each application filed under paragraph (1) shall be accompanied by a copy of the job offer describing the wages and other terms and conditions of employment and the bona fide occupational qualifications that shall be possessed by a worker to be employed in the job opportunity in question.

"(b) ASSURANCES FOR INCLUSION IN APPLICATIONS.—The assurances referred to in subsection (a)(1) are the following:

"(1) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.—With respect to a job opportunity that is covered under a collective bargaining agreement:

"(A) UNION CONTRACT DESCRIBED.—The job opportunity is covered by a union contract which was negotiated at arm's length between a bona fide union and the employer.

"(B) STRIKE OR LOCKOUT.—The specific job opportunity for which the employer is requesting an H–2A worker is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute.

"(C) NOTIFICATION OF BARGAINING REPRESENTATIVES.—The employer, at the time of filing the application, has provided notice of the filing under this paragraph to the bargaining representative of the employer's employees in the occupational classification at the place or places of employment for which aliens are sought.

"(D) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job opportunity is temporary or seasonal.

"(E) OFFERS TO UNITED STATES WORKERS.—The employer has offered or will offer the job to any eligible United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is, or the nonimmigrants are, sought and who will be available at the time and place of need.

"(F) PROVISION OF INSURANCE.—If the job opportunity is not covered by the State

workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker's employment which will provide benefits at least equal to those provided under the State's workers' compensation law for comparable employment.

"(2) JOB OPPORTUNITIES NOT COVERED BY COLLECTIVE BARGAINING AGREEMENTS.—With respect to a job opportunity that is not covered under a collective bargaining agreement:

"(A) STRIKE OR LOCKOUT.—The specific job opportunity for which the employer has applied for an H–2A worker is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute.

"(B) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job opportunity is temporary or seasonal.

"(C) BENEFIT, WAGE, AND WORKING CONDITIONS.—The employer will provide, at a minimum, the benefits, wages, and working conditions required by section 218E to all workers employed in the job opportunities for which the employer has applied for an H–2A worker

under subsection (a) and to all other workers in the same occupation at the place of employment.

"(D) NONDISPLACEMENT OF UNITED STATES WORKERS.—The employer did not displace and will not displace a United States worker employed by the employer during the period of employment and for a period of 30 days preceding the period of employment in the occupation at the place of employment for which the employer has applied for an H–2A worker.

"(E) REQUIREMENTS FOR PLACEMENT OF THE NONIMMIGRANT WITH OTHER EMPLOYERS.—The employer will not place the nonimmigrant with another employer unless—

"(i) the nonimmigrant performs duties in whole or in part at 1 or more worksites owned, operated, or controlled by such other employer;

"(ii) there are indicia of an employment relationship between the nonimmigrant and such other employer; and

"(iii) the employer has inquired of the other employer as to whether, and has no

actual knowledge or notice that, during the period of employment and for a period of 30 days preceding the period of employment, the other employer has displaced or intends to displace a United States worker employed by the other employer in the occupation at the place of employment for which the employer seeks approval to employ H–2A workers.

"(F) STATEMENT OF LIABILITY.—The application form shall include a clear statement explaining the liability under subparagraph (E) of an employer if the other employer described in such subparagraph displaces a United States worker as described in such subparagraph.

"(G) PROVISION OF INSURANCE.—If the job opportunity is not covered by the State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State's workers' compensation law for comparable employment.

"(H) EMPLOYMENT OF UNITED STATES WORKERS.—

"(i) RECRUITMENT.—The employer has taken or will take the following steps to recruit United States workers for the job opportunities for which the H–2A nonimmigrant is, or H–2A nonimmigrants are, sought:

(I) CONTACTING FORMER WORKERS.—The employer shall make reasonable efforts through the sending of a letter by United States Postal Service mail, or otherwise, to contact any United States worker the employer employed during the previous season in the occupation at the place of intended employment for which the employer is applying for workers and has made the availability of the employer's job opportunities in the occupation at the place of intended employment known to such previous workers, unless the worker was terminated from employment by the employer for a lawful job-related reason or aban-

1 doned the job before the worker com-
2 pleted the period of employment of
3 the job opportunity for which the
4 worker was hired.

5 (II) FILING A JOB OFFER WITH
6 THE LOCAL OFFICE OF THE STATE
7 EMPLOYMENT SECURITY AGENCY.—
8 Not later than 28 days before the
9 date on which the employer desires to
10 employ an H–2A worker in a tem-
11 porary or seasonal agricultural job op-
12 portunity, the employer shall submit a
13 copy of the job offer described in sub-
14 section (a)(2) to the local office of the
15 State workforce agency which serves
16 the area of intended employment and
17 authorize the posting of the job oppor-
18 tunity on its electronic job registry,
19 except that nothing in this subclause
20 shall require the employer to file an
21 interstate job order under section 653
22 of title 20, Code of Federal Regula-
23 tions.

24 ''(III) ADVERTISING OF JOB OP-
25 PORTUNITIES.—Not later than 14

days before the date on which the employer desires to employ an H–2A worker in a temporary or seasonal agricultural job opportunity, the employer shall advertise the availability of the job opportunities for which the employer is seeking workers in a publication in the local labor market that is likely to be patronized by potential farm workers.

"(IV) EMERGENCY PROCEDURES.—The Secretary of Labor shall, by regulation, provide a procedure for acceptance and approval of applications in which the employer has not complied with the provisions of this subparagraph because the employer's need for H–2A workers could not reasonably have been foreseen.

"(ii) JOB OFFERS.—The employer has offered or will offer the job to any eligible United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is, or non-

immigrants are, sought and who will be available at the time and place of need.

"(iii) PERIOD OF EMPLOYMENT.—The employer will provide employment to any qualified United States worker who applies to the employer during the period beginning on the date on which the H–2A worker departs for the employer's place of employment and ending on the date on which 50 percent of the period of employment for which the H–2A worker who is in the job was hired has elapsed, subject to the following requirements:

"(I) PROHIBITION.—No person or entity shall willfully and knowingly withhold United States workers before the arrival of H–2A workers in order to force the hiring of United States workers under this clause.

"(II) COMPLAINTS.—Upon receipt of a complaint by an employer that a violation of subclause (I) has occurred, the Secretary of Labor shall immediately investigate. The Secretary of Labor shall, within 36 hours

of the receipt of the complaint, issue findings concerning the alleged violation. If the Secretary of Labor finds that a violation has occurred, the Secretary of Labor shall immediately suspend the application of this clause with respect to that certification for that date of need.

"(III) PLACEMENT OF UNITED STATES WORKERS.—Before referring a United States worker to an employer during the period described in the matter preceding subclause (I), the Secretary of Labor shall make all reasonable efforts to place the United States worker in an open job acceptable to the worker, if there are other job offers pending with the job service that offer similar job opportunities in the area of intended employment.

"(iv) STATUTORY CONSTRUCTION.—Nothing in this subparagraph shall be construed to prohibit an employer from using such legitimate selection criteria relevant to the type of job that are normal or cus-

tomary to the type of job involved so long as such criteria are not applied in a discriminatory manner.

"(v) UNITED STATES WORKER.—For purpose of this subparagraph, the term "United States worker" means an alien described in section 218G(14) except an alien admitted or otherwise provided status under section 101(a)(15)(Z).

"(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF OF EMPLOYER MEMBERS.—

"(1) IN GENERAL.—An agricultural association may file an application under subsection (a) on behalf of 1 or more of its employer members that the association certifies in its application has or have agreed in writing to comply with the requirements of this section and sections 218E, 218F, and 218G.

"(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If an association filing an application under paragraph (1) is a joint or sole employer of the temporary or seasonal agricultural workers requested on the application, the certifications granted under subsection (e)(2)(B) to the association may be used for the certified job opportunities of any of its producer members named on the application, and

1 such workers may be transferred among such pro-
2 ducer members to perform the agricultural services
3 of a temporary or seasonal nature for which the cer-
4 tifications were granted.
5 ''(d) WITHDRAWAL OF APPLICATIONS.—
6 ''(1) IN GENERAL.—An employer may withdraw
7 an application filed pursuant to subsection (a), ex-
8 cept that if the employer is an agricultural associa-
9 tion, the association may withdraw an application
10 filed pursuant to subsection (a) with respect to 1 or
11 more of its members. To withdraw an application,
12 the employer or association shall notify the Sec-
13 retary of Labor in writing, and the Secretary of
14 Labor shall acknowledge in writing the receipt of
15 such withdrawal notice. An employer who withdraws
16 an application under subsection (a), or on whose be-
17 half an application is withdrawn, is relieved of the
18 obligations undertaken in the application.
19 ''(2) LIMITATION.—An application may not be
20 withdrawn while any alien provided status under sec-
21 tion 101(a)(15)(H)(ii)(a) pursuant to such applica-
22 tion is employed by the employer.
23 ''(3) OBLIGATIONS UNDER OTHER STATUTES.—
24 Any obligation incurred by an employer under any
25 other law or regulation as a result of the recruit-

ment of United States workers or H–2A workers under an offer of terms and conditions of employment required as a result of making an application under subsection (a) is unaffected by withdrawal of such application.

"(e) REVIEW AND APPROVAL OF APPLICATIONS.—

"(1) RESPONSIBILITY OF EMPLOYERS.—The employer shall make available for public examination, within 1 working day after the date on which an application under subsection (a) is filed, at the employer's principal place of business or worksite, a copy of each such application (and such accompanying documents as are necessary).

"(2) RESPONSIBILITY OF THE SECRETARY OF LABOR.—

"(A) COMPILATION OF LIST.—The Secretary of Labor shall compile, on a current basis, a list (by employer and by occupational classification) of the applications filed under subsection (a). Such list shall include the wage rate, number of workers sought, period of intended employment, and date of need. The Secretary of Labor shall make such list available for examination in the District of Columbia.

"(B) REVIEW OF APPLICATIONS.—The Secretary of Labor shall review such an application only for completeness and obvious inaccuracies. Unless the Secretary of Labor finds that the application is incomplete or obviously inaccurate, the Secretary of Labor shall certify that the intending employer has filed with the Secretary of Labor an application as described in subsection (a). Such certification shall be provided within 7 days of the filing of the application."

"SEC. 218D. H–2A EMPLOYMENT REQUIREMENTS.

"(a) PREFERENTIAL TREATMENT OF ALIENS PROHIBITED.—Employers seeking to hire United States workers shall offer the United States workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H–2A workers. Conversely, no job offer may impose on United States workers any restrictions or obligations which will not be imposed on the employer's H–2A workers.

"(b) MINIMUM BENEFITS, WAGES, AND WORKING CONDITIONS.—Except in cases where higher benefits, wages, or working conditions are required by the provisions of subsection (a), in order to protect similarly em-

ployed United States workers from adverse effects with respect to benefits, wages, and working conditions, every job offer which shall accompany an application under section 218C(b)(2) shall include each of the following benefit, wage, and working condition provisions:

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

"(A) IN GENERAL.—An employer applying under section 218C(a) for H–2A workers shall offer to provide housing at no cost to all workers in job opportunities for which the employer has applied under that section and to all other workers in the same occupation at the place of employment, whose place of residence is beyond normal commuting distance.

"(B) TYPE OF HOUSING.—In complying with subparagraph (A), an employer may, at the employer's election, provide housing that meets applicable Federal standards for temporary labor camps or secure housing that meets applicable local standards for rental or public accommodation housing or other substantially similar class of habitation, or in the absence of applicable local standards, State standards for rental or public accommodation

housing or other substantially similar class of habitation. In the absence of applicable local or State standards, Federal temporary labor camp standards shall apply.

"(C) FAMILY HOUSING.—If it is the prevailing practice in the occupation and area of intended employment to provide family housing, family housing shall be provided to workers with families who request it.

"(D) WORKERS ENGAGED IN THE RANGE PRODUCTION OF LIVESTOCK.—The Secretary of Labor shall issue regulations that address the specific requirements for the provision of housing to workers engaged in the range production of livestock.

"(E) LIMITATION.—Nothing in this paragraph shall be construed to require an employer to provide or secure housing for persons who were not entitled to such housing under the temporary labor certification regulations in effect on June 1, 1986.

"(F) CHARGES FOR HOUSING.—

"(i) CHARGES FOR PUBLIC HOUSING.—If public housing provided for migrant agricultural workers under the aus-

1 pices of a local, county, or State govern-
2 ment is secured by an employer, and use of
3 the public housing unit normally requires
4 charges from migrant workers, such
5 charges shall be paid by the employer di-
6 rectly to the appropriate individual or enti-
7 ty affiliated with the housing's manage-
8 ment.

9 "(ii) DEPOSIT CHARGES.—Charges in
10 the form of deposits for bedding or other
11 similar incidentals related to housing shall
12 not be levied upon workers by employers
13 who provide housing for their workers. An
14 employer may require a worker found to
15 have been responsible for damage to such
16 housing which is not the result of normal
17 wear and tear related to habitation to re-
18 imburse the employer for the reasonable
19 cost of repair of such damage.

20 "(G) HOUSING ALLOWANCE AS ALTER-
21 NATIVE.—

22 "(i) IN GENERAL.—If the requirement
23 set out in clause (ii) is satisfied, the em-
24 ployer may provide a reasonable housing
25 allowance instead of offering housing

under subparagraph (A). Upon the request of a worker seeking assistance in locating housing, the employer shall make a good faith effort to assist the worker in identifying and locating housing in the area of intended employment. An employer who offers a housing allowance to a worker, or assists a worker in locating housing which the worker occupies, pursuant to this clause shall not be deemed a housing provider under section 203 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1823) solely by virtue of providing such housing allowance. No housing allowance may be used for housing which is owned or controlled by the employer.

"(ii) CERTIFICATION.—The requirement of this clause is satisfied if the Governor of the State certifies to the Secretary of Labor that there is adequate housing available in the area of intended employment for migrant farm workers and H–2A workers who are seeking temporary housing while employed in agricultural work.

Such certification shall expire after 3 years unless renewed by the Governor of the State.

"(iii) AMOUNT OF ALLOWANCE.—

"(I) NONMETROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this subparagraph is a nonmetropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for nonmetropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

"(II) METROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this paragraph is in a metro-

politan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for metropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

"(2) REIMBURSEMENT OF TRANSPORTATION.—

"(A) TO PLACE OF EMPLOYMENT.—A worker who completes 50 percent of the period of employment of the job opportunity for which the worker was hired shall be reimbursed by the employer for the cost of the worker's transportation and subsistence from the place from which the worker came to work for the employer (or place of last employment, if the worker traveled from such place) to the place of employment.

"(B) FROM PLACE OF EMPLOYMENT.—A worker who completes the period of employment

for the job opportunity involved shall be reimbursed by the employer for the cost of the worker's transportation and subsistence from the place of employment to the place from which the worker, disregarding intervening employment, came to work for the employer, or to the place of next employment, if the worker has contracted with a subsequent employer who has not agreed to provide or pay for the worker's transportation and subsistence to such subsequent employer's place of employment.

"(C) LIMITATION.—

"(i) AMOUNT OF REIMBURSEMENT.—Except as provided in clause (ii), the amount of reimbursement provided under subparagraph (A) or (B) to a worker or alien shall not exceed the lesser of—

"(I) the actual cost to the worker or alien of the transportation and subsistence involved; or

"(II) the most economical and reasonable common carrier transportation charges and subsistence costs for the distance involved.

"(ii) DISTANCE TRAVELED.—No reimbursement under subparagraph (A) or (B) shall be required if the distance traveled is 100 miles or less, or the worker is not residing in employer-provided housing or housing secured through an allowance as provided in paragraph (1)(G).

"(D) EARLY TERMINATION.—If the worker is laid off or employment is terminated for contract impossibility (as described in paragraph (4)(D)) before the anticipated ending date of employment, the employer shall provide the transportation and subsistence required by subparagraph (B) and, notwithstanding whether the worker has completed 50 percent of the period of employment, shall provide the transportation reimbursement required by subparagraph (A).

"(E) TRANSPORTATION BETWEEN LIVING QUARTERS AND WORKSITE.—The employer shall provide transportation between the worker's living quarters and the employer's worksite without cost to the worker, and such transportation will be in accordance with applicable laws and regulations.

"(3) REQUIRED WAGES.—

"(A) IN GENERAL.—An employer applying for workers under section 218C(a) shall offer to pay, and shall pay, all workers in the occupation for which the employer has applied for workers, not less (and is not required to pay more) than the greater of the prevailing wage in the occupation in the area of intended employment or the adverse effect wage rate. No worker shall be paid less than the greater of the hourly wage prescribed under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable State minimum wage.

"(B) LIMITATION.—Effective on the date of the enactment of the Agricultural Job Opportunities, Benefits, and Security Act of 2007 and continuing for 3 years thereafter, no adverse effect wage rate for a State may be more than the adverse effect wage rate for that State in effect on January 1, 2003, as established by section 655.107 of title 20, Code of Federal Regulations.

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

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

"(I) the 12-month percentage change in the Consumer Price Index for All Urban Consumers between December of the second preceding year and December of the preceding year; and

"(II) 4 percent.

"(ii) SUBSEQUENT ANNUAL ADJUSTMENTS.—Beginning on the first March 1 that is not less than 4 years after the date of enactment of this section, and each March 1 thereafter, the adverse effect

wage rate then in effect for each State shall be adjusted by the lesser of—

"(I) the 12-month percentage change in the Consumer Price Index for All Urban Consumers between December of the second preceding year and December of the preceding year; and

"(II) 4 percent.

"(D) DEDUCTIONS.—The employer shall make only those deductions from the worker's wages that are authorized by law or are reasonable and customary in the occupation and area of employment. The job offer shall specify all deductions not required by law which the employer will make from the worker's wages.

"(E) FREQUENCY OF PAY.—The employer shall pay the worker not less frequently than twice monthly, or in accordance with the prevailing practice in the area of employment, whichever is more frequent.

(F) HOURS AND EARNINGS STATEMENTS.—The employer shall furnish to the worker, on or before each payday, in 1 or more written statements—

"(i) the worker's total earnings for the pay period;

"(ii) the worker's hourly rate of pay, piece rate of pay, or both;

"(iii) the hours of employment which have been offered to the worker (broken out by hours offered in accordance with and over and above the ¾ guarantee described in paragraph (4);

"(iv) the hours actually worked by the worker;

"(v) an itemization of the deductions made from the worker's wages; and

"(vi) if piece rates of pay are used, the units produced daily.

(G) REPORT ON WAGE PROTECTIONS.—Not later than December 31, 2009, the Comptroller General of the United States shall prepare and transmit to the Secretary of Labor, the Committee on the Judiciary of the Senate, and Committee on the Judiciary of the House of Representatives, a report that addresses—

"(i) whether the employment of H–2A or unauthorized aliens in the United States agricultural workforce has depressed

United States farm worker wages below the levels that would otherwise have prevailed if alien farm workers had not been employed in the United States;

''(ii) whether an adverse effect wage rate is necessary to prevent wages of United States farm workers in occupations in which H–2A workers are employed from falling below the wage levels that would have prevailed in the absence of the employment of H–2A workers in those occupations;

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

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

''(v) recommendations for future wage protection under this section.

"(H) COMMISSION ON WAGE STANDARDS.—

"(i) ESTABLISHMENT.—There is established the Commission on Agricultural Wage Standards under the H–2A program (in this subparagraph referred to as the 'Commission').

"(ii) COMPOSITION.—The Commission shall consist of 10 members as follows:

"(I) Four representatives of agricultural employers and 1 representative of the Department of Agriculture, each appointed by the Secretary of Agriculture.

"(II) Four representatives of agricultural workers and 1 representative of the Department of Labor, each appointed by the Secretary of Labor.

"(iii) FUNCTIONS.—The Commission shall conduct a study that shall address—

"(I) whether the employment of H–2A or unauthorized aliens in the United States agricultural workforce has depressed United States farm worker wages below the levels that

would otherwise have prevailed if alien farm workers had not been employed in the United States;

"(II) whether an adverse effect wage rate is necessary to prevent wages of United States farm workers in occupations in which H–2A workers are employed from falling below the wage levels that would have prevailed in the absence of the employment of H–2A workers in those occupations;

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

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

1 "(V) recommendations for future
2 wage protection under this section.
3 "(iv) The Commission may for the
4 purpose of carrying out this section, hold
5 such hearings, sit and act at such times
6 and places, take such testimony, and re-
7 ceive such evidence as the Commission con-
8 siders appropriate.
9 "(v) INTERIM REPORT.—The Commis-
10 sion shall issue an interim report, pub-
11 lished in the Federal Register, with oppor-
12 tunity and comment, for a period of at
13 least 90 days.
14 "(vi) FINAL REPORT.—After consid-
15 ering recommendations from interested
16 persons (including an opportunity for com-
17 ment from the public and affected States),
18 the Commission shall submit a report to
19 the Congress setting forth the findings of
20 the study conducted under clause (iii) not
21 later than December 31, 2009.
22 "(vii) TERMINATION DATE.—The
23 Commission shall terminate upon submit-
24 ting its final report.
25 "(4) GUARANTEE OF EMPLOYMENT.—

"(A) OFFER TO WORKER.—The employer shall guarantee to offer the worker employment for the hourly equivalent of at least ¾ of the work days of the total period of employment, beginning with the first work day after the arrival of the worker at the place of employment and ending on the expiration date specified in the job offer. For purposes of this subparagraph, the hourly equivalent means the number of hours in the work days as stated in the job offer and shall exclude the worker's Sabbath and Federal holidays. If the employer affords the United States or H–2A worker less employment than that required under this paragraph, the employer shall pay such worker the amount which the worker would have earned had the worker, in fact, worked for the guaranteed number of hours.

"(B) FAILURE TO WORK.—Any hours which the worker fails to work, up to a maximum of the number of hours specified in the job offer for a work day, when the worker has been offered an opportunity to do so, and all hours of work actually performed (including voluntary work in excess of the number of hours

specified in the job offer in a work day, on the worker's Sabbath, or on Federal holidays) may be counted by the employer in calculating whether the period of guaranteed employment has been met.

"(C) ABANDONMENT OF EMPLOYMENT, TERMINATION FOR CAUSE.—If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, the worker is not entitled to the '¾ guarantee' described in subparagraph (A).

"(D) CONTRACT IMPOSSIBILITY.—If, before the expiration of the period of employment specified in the job offer, the services of the worker are no longer required for reasons beyond the control of the employer due to any form of natural disaster, including a flood, hurricane, freeze, earthquake, fire, drought, plant or animal disease or pest infestation, or regulatory drought, before the guarantee in subparagraph (A) is fulfilled, the employer may terminate the worker's employment. In the event of such termination, the employer shall fulfill the employment guarantee in subparagraph (A) for the work days that have elapsed

from the first work day after the arrival of the worker to the termination of employment. In such cases, the employer will make efforts to transfer the United States worker to other comparable employment acceptable to the worker. If such transfer is not effected, the employer shall provide the return transportation required in paragraph (2)(D).

"(5) MOTOR VEHICLE SAFETY.—

"(A) MODE OF TRANSPORTATION SUBJECT TO COVERAGE.—

"(i) IN GENERAL.—Except as provided in clauses (iii) and (iv), this subsection applies to any H–2A employer that uses or causes to be used any vehicle to transport an H–2A worker within the United States.

"(ii) DEFINED TERM.—In this paragraph, the term 'uses or causes to be used'—

"(I) applies only to transportation provided by an H–2A employer to an H–2A worker, or by a farm labor contractor to an H–2A worker

at the request or direction of an H–2A employer; and

"(II) does not apply to—

"(aa) transportation provided, or transportation arrangements made, by an H–2A worker, unless the employer specifically requested or arranged such transportation; or

"(bb) car pooling arrangements made by H–2A workers themselves, using 1 of the workers' own vehicles, unless specifically requested by the employer directly or through a farm labor contractor.

"(iii) CLARIFICATION.—Providing a job offer to an H–2A worker that causes the worker to travel to or from the place of employment, or the payment or reimbursement of the transportation costs of an H–2A worker by an H–2A employer, shall not constitute an arrangement of, or participation in, such transportation.

"(iv) AGRICULTURAL MACHINERY AND EQUIPMENT EXCLUDED.—This subsection does not apply to the transportation of an H–2A worker on a tractor, combine, harvester, picker, or other similar machinery or equipment while such worker is actually engaged in the planting, cultivating, or harvesting of agricultural commodities or the care of livestock or poultry or engaged in transportation incidental thereto.

"(v) COMMON CARRIERS EXCLUDED.—This subsection does not apply to common carrier motor vehicle transportation in which the provider holds itself out to the general public as engaging in the transportation of passengers for hire and holds a valid certification of authorization for such purposes from an appropriate Federal, State, or local agency.

"(B) APPLICABILITY OF STANDARDS, LICENSING, AND INSURANCE REQUIREMENTS.—

"(i) In general.—When using, or causing to be used, any vehicle for the purpose of providing transportation to which

this subparagraph applies, each employer shall—

"(I) ensure that each such vehicle conforms to the standards prescribed by the Secretary of Labor under section 401(b) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1841(b)) and other applicable Federal and State safety standards;

"(II) ensure that each driver has a valid and appropriate license, as provided by State law, to operate the vehicle; and

"(III) have an insurance policy or a liability bond that is in effect which insures the employer against liability for damage to persons or property arising from the ownership, operation, or causing to be operated, of any vehicle used to transport any H–2A worker.

"(ii) AMOUNT OF INSURANCE REQUIRED.—The level of insurance required shall be determined by the Secretary of

Labor pursuant to regulations to be issued under this subsection.

"(iii) EFFECT OF WORKERS' COMPENSATION COVERAGE.—If the employer of any H–2A worker provides workers' compensation coverage for such worker in the case of bodily injury or death as provided by State law, the following adjustments in the requirements of subparagraph (B)(i)(III) relating to having an insurance policy or liability bond apply:

"(I) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under such State law.

"(II) An insurance policy or liability bond shall be required of the employer for circumstances under which coverage for the transportation of such workers is not provided under such State law.

"(c) COMPLIANCE WITH LABOR LAWS.—An employer shall assure that, except as otherwise provided in

this section, the employer will comply with all applicable Federal, State, and local labor laws, including laws affecting migrant and seasonal agricultural workers, with respect to all United States workers and alien workers employed by the employer, except that a violation of this assurance shall not constitute a violation of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.).

''(d) COPY OF JOB OFFER.—The employer shall provide to the worker, not later than the day the work commences, a copy of the employer's application and job offer described in section 218C(a), or, if the employer will require the worker to enter into a separate employment contract covering the employment in question, such separate employment contract.

''(e) RANGE PRODUCTION OF LIVESTOCK.—Nothing in this section, section 218C, or section 218E shall preclude the Secretary of Labor and the Secretary from continuing to apply special procedures and requirements to the admission and employment of aliens in occupations involving the range production of livestock.

''(f) EVIDENCE OF NONIMMIGRANT STATUS.—Each H–2A nonimmigrant shall be issued documentary evidence of nonimmigrant status, which—

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

"(2) shall, during the alien's authorized period of admission as an H–2A nonimmigrant, serve as a valid entry document for the purpose of applying for admission to the United States—

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

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

"(ii) is applying for admission at a land border port of entry; or

"(B) in conjunction with a valid passport, if the alien is applying for admission at an air or sea port of entry;

"(3) may be accepted during the period of its validity by an employer as evidence of employment authorization and identity under section 274A(b)(1)(B); and

"(4) shall be issued to the H–2A nonimmigrant by the Secretary promptly after such alien's admission to the United States as an H–2A nonimmigrant and reporting to the employer's worksite under or, at the discretion of the Secretary, may be issued by

the Secretary of State at a consulate instead of a visa.

"SEC. 218E. PROCEDURE FOR ADMISSION AND EXTENSION OF STAY OF H–2A WORKERS.

''(a) PETITIONING FOR ADMISSION.—An employer, or an association acting as an agent or joint employer for its members, that seeks the admission into the United States of an H–2A worker may file a petition with the Secretary. The petition shall be accompanied by an accepted and currently valid certification provided by the Secretary of Labor under section 218C(e)(2)(B) covering the petitioner.

''(b) EXPEDITED ADJUDICATION BY THE SECRETARY.—The Secretary shall establish a procedure for expedited adjudication of petitions filed under subsection (a) and within 7 working days shall, by fax, cable, or other means assuring expedited delivery, transmit a copy of notice of action on the petition to the petitioner and, in the case of approved petitions, to the appropriate immigration officer at the port of entry or United States consulate (as the case may be) where the petitioner has indicated that the alien beneficiary (or beneficiaries) will apply for a visa or admission to the United States.

''(c) CRITERIA FOR ADMISSIBILITY.—

"(1) IN GENERAL.—An H–2A worker shall be considered admissible to the United States if the alien is otherwise admissible under this section, section 218C, and section 218D, and the alien is not ineligible under paragraph (2).

"(2) DISQUALIFICATION.—An alien shall be considered inadmissible to the United States and ineligible for nonimmigrant status under section 101(a)(15)(H)(ii)(a) if the alien has, at any time during the past 5 years—

"(A) violated a material provision of this section, including the requirement to promptly depart the United States when the alien's authorized period of admission under this section has expired; or

"(B) otherwise violated a term or condition of admission into the United States as a nonimmigrant, including overstaying the period of authorized admission as such a nonimmigrant.

"(3) WAIVER OF INELIGIBILITY FOR UNLAWFUL PRESENCE.—

"(A) IN GENERAL.—An alien who has not previously been admitted into the United States pursuant to this section, and who is otherwise eligible for admission in accordance with para-

graphs (1) and (2), shall not be deemed inadmissible by virtue of section 212(a)(9)(B). If an alien described in the preceding sentence is present in the United States, the alien may apply from abroad for H–2A status, but may not be granted that status in the United States.

"(B) MAINTENANCE OF WAIVER.—An alien provided an initial waiver of ineligibility pursuant to subparagraph (A) shall remain eligible for such waiver unless the alien violates the terms of this section or again becomes ineligible under section 212(a)(9)(B) by virtue of unlawful presence in the United States after the date of the initial waiver of ineligibility pursuant to subparagraph (A).

"(d) PERIOD OF ADMISSION.—

"(1) IN GENERAL.—The alien shall be admitted for the period of employment in the application certified by the Secretary of Labor pursuant to section 218C(e)(2)(B), not to exceed 10 months except as specified in paragraph (2), supplemented by a period of not more than 1 week before the beginning of the period of employment for the purpose of travel to the worksite and a period of 14 days following the period of employment for the purpose of departure

or extension based on a subsequent offer of employment, except that—

"(A) the alien is not authorized to be employed during such 14-day period except in the employment for which the alien was previously authorized; and

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

"(2) CONSTRUCTION.—Nothing in this subsection shall limit the authority of the Secretary to extend the stay of the alien under any other provision of this Act.

"(e) ABANDONMENT OF EMPLOYMENT.—

"(1) IN GENERAL.—An alien admitted or provided status under section 101(a)(15)(H)(ii)(a) who abandons the employment which was the basis for such admission or status shall be considered to have failed to maintain nonimmigrant status as an H–2A worker and shall depart the United States or be subject to removal under section 237(a)(1)(C)(i).

"(2) REPORT BY EMPLOYER.—The employer, or association acting as agent for the employer, shall notify the Secretary not later than 7 days after an H–2A worker prematurely abandons employment.

"(3) REMOVAL BY THE SECRETARY.—The Secretary shall promptly remove from the United States any H–2A worker who violates any term or condition of the worker's nonimmigrant status.

"(4) VOLUNTARY TERMINATION.—Notwithstanding paragraph (1), an alien may voluntarily terminate his or her employment if the alien promptly departs the United States upon termination of such employment.

"(f) REPLACEMENT OF ALIEN.—

"(1) IN GENERAL.—Upon presentation of the notice to the Secretary required by subsection (e)(2), the Secretary of State shall promptly issue a visa to, and the Secretary shall admit into the United States, an eligible alien designated by the employer to replace an H–2A worker—

"(A) who abandons or prematurely terminates employment; or

"(B) whose employment is terminated after a United States worker is employed pursuant to section 218C(b)(2)(H)(iii), if the United States worker voluntarily departs before the end of the period of intended employment or if the employment termination is for a lawful job-related reason.

"(2) CONSTRUCTION.—Nothing in this subsection is intended to limit any preference required to be accorded United States workers under any other provision of this Act.

"(g) IDENTIFICATION DOCUMENT.—

"(1) IN GENERAL.—Each alien authorized to be admitted under section 101(a)(15)(H)(ii)(a) shall be provided an identification and employment eligibility document to verify eligibility for employment in the United States and verify the alien's identity.

"(2) REQUIREMENTS.—No identification and employment eligibility document may be issued which does not meet the following requirements:

"(A) The document shall be capable of reliably determining whether—

"(i) the individual with the identification and employment eligibility document whose eligibility is being verified is in fact eligible for employment;

"(ii) the individual whose eligibility is being verified is claiming the identity of another person; and

"(iii) the individual whose eligibility is being verified is authorized to be admitted

into, and employed in, the United States as an H–2A worker.

"(B) The document shall be in a form that is resistant to counterfeiting and to tampering.

"(C) The document shall—

"(i) be compatible with other databases of the Secretary for the purpose of excluding aliens from benefits for which they are not eligible and determining whether the alien is unlawfully present in the United States; and

"(ii) be compatible with law enforcement databases to determine if the alien has been convicted of criminal offenses.

"(h) EXTENSION OF STAY OF H–2A ALIENS IN THE UNITED STATES.—

"(1) EXTENSION OF STAY.—If an employer seeks approval to employ an H–2A alien who is lawfully present in the United States, the petition filed by the employer or an association pursuant to subsection (a), shall request an extension of the alien's stay and a change in the alien's employment.

"(2) LIMITATION ON FILING A PETITION FOR EXTENSION OF STAY.—A petition may not be filed for an extension of an alien's stay to a date that is

more than 10 months after the date of the alien's last admission to the United States under this section.

"(3) WORK AUTHORIZATION UPON FILING A PETITION FOR EXTENSION OF STAY.—

"(A) IN GENERAL.—An alien who is lawfully present in the United States may commence the employment described in a petition under paragraph (1) on the date on which the petition is filed.

"(B) DEFINITION.—For purposes of subparagraph (A), the term 'file' means sending the petition by certified mail via the United States Postal Service, return receipt requested, or delivered by guaranteed commercial delivery which will provide the employer with a documented acknowledgment of the date of receipt of the petition.

"(C) HANDLING OF PETITION.—The employer shall provide a copy of the employer's petition to the alien, who shall keep the petition with the alien's identification and employment eligibility document as evidence that the petition has been filed and that the alien is authorized to work in the United States.

"(D) APPROVAL OF PETITION.—Upon approval of a petition for an extension of stay or change in the alien's authorized employment, the Secretary shall provide a new or updated employment eligibility document to the alien indicating the new validity date, after which the alien is not required to retain a copy of the petition.

"(4) LIMITATION ON AN INDIVIDUAL'S STAY IN STATUS.—

"(A) MAXIMUM PERIOD.—The maximum continuous period of authorized status as an H–2A worker (including any extensions), other than a worker admitted pursuant to subsection (d)(2), is 10 months.

"(B) REQUIREMENT TO REMAIN OUTSIDE THE UNITED STATES.—

"(i) IN GENERAL.—Subject to clause (ii), in the case of an alien outside the United States whose period of authorized status as an H–2A worker (including any extensions) has expired, the alien may not again apply for admission to the United States as an H–2A worker unless the alien has remained outside the United States for

a continuous period equal to at least ⅕ the duration of the alien's previous period of authorized status as an H–2A worker (including any extensions).

"(ii) EXCEPTION.—Clause (i) shall not apply in the case of an alien if the alien's period of authorized status as an H–2A worker (including any extensions) was for a period of not more than 10 months and such alien has been outside the United States for at least 2 months during the 12 months preceding the date the alien again is applying for admission to the United States as an H–2A worker.

"(i) SPECIAL RULES FOR ALIENS EMPLOYED AS DAIRY WORKERS.—Notwithstanding any provision of this Act, an alien admitted under section 101(a)(15)(H)(ii)(a) for employment as a dairy worker—

"(1) may be admitted for a period of up to 3 years;

"(2) may not be extended beyond 3 years; and

"(3) shall not be subject to the requirements of subsection (h)(4).

"SEC. 218F. WORKER PROTECTIONS AND LABOR STANDARDS ENFORCEMENT.

"(a) ENFORCEMENT AUTHORITY.—

"(1) INVESTIGATION OF COMPLAINTS.—

"(A) AGGRIEVED PERSON OR THIRD-PARTY COMPLAINTS.—The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting a petitioner's failure to meet a condition specified in section 218C(b), or an employer's misrepresentation of material facts in an application under section 218C(a). Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure, or misrepresentation, respectively. The Secretary of Labor shall conduct an investigation under this subparagraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

"(B) DETERMINATION ON COMPLAINT.—Under such process, the Secretary of Labor shall provide, within 30 days after the date

such a complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding described in subparagraph (C), (D), (E), or (G). If the Secretary of Labor determines that such a reasonable basis exists, the Secretary of Labor shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code, within 60 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary of Labor may consolidate the hearings under this subparagraph on such complaints.

"(C) FAILURES TO MEET CONDITIONS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(A), (1)(B), (1)(D), (1)(F), (2)(A), (2)(B), or (2)(G) of section 218C(b), a substantial failure to meet a condition of paragraph (1)(C), (1)(E), (2)(C),

(2)(D), (2)(E), or (2)(H) of section 218C(b), or a material misrepresentation of fact in an application under section 218C(a)—

"(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $1,000 per violation) as the Secretary of Labor determines to be appropriate; and

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

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

"(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money pen-

alties in an amount not to exceed $5,000 per violation) as the Secretary of Labor determines to be appropriate;

"(ii) the Secretary of Labor may seek appropriate legal or equitable relief to effectuate the purposes of subsection (d)(1); and

"(iii) the Secretary may disqualify the employer from the employment of H–2A workers for a period of 2 years.

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

"(i) the Secretary of Labor shall notify the Secretary of such finding and may,

in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $15,000 per violation) as the Secretary of Labor determines to be appropriate; and

"(ii) the Secretary may disqualify the employer from the employment of H–2A workers for a period of 3 years.

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

"(G) FAILURES TO PAY WAGES OR REQUIRED BENEFITS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, that the employer has failed to pay the wages, or provide the housing allowance, transportation, subsistence reimbursement, or guarantee of employment, required under section 218D(b), the Secretary of Labor shall assess payment of back wages, or other required benefits, due any United States worker or H–2A worker employed by the employer in the specific employment in question. The back wages or

other required benefits under section 218D(b) shall be equal to the difference between the amount that should have been paid and the amount that actually was paid to such worker.

"(2) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as limiting the authority of the Secretary of Labor to conduct any compliance investigation under any other labor law, including any law affecting migrant and seasonal agricultural workers, or, in the absence of a complaint under this section, under section 218C or 218D.

"(b) RIGHTS ENFORCEABLE BY PRIVATE RIGHT OF ACTION.—H–2A workers may enforce the following rights through the private right of action provided in subsection (c), and no other right of action shall exist under Federal or State law to enforce such rights:

"(1) The providing of housing or a housing allowance as required under section 218D(b)(1).

"(2) The reimbursement of transportation as required under section 218D(b)(2).

"(3) The payment of wages required under section 218D(b)(3) when due.

"(4) The benefits and material terms and conditions of employment expressly provided in the job offer described in section 218C(a)(2), not including

the assurance to comply with other Federal, State, and local labor laws described in section 218D(c), compliance with which shall be governed by the provisions of such laws.

''(5) The guarantee of employment required under section 218D(b)(4).

''(6) The motor vehicle safety requirements under section 218D(b)(5).

''(7) The prohibition of discrimination under subsection (d)(2).

''(c) PRIVATE RIGHT OF ACTION.—

''(1) MEDIATION.—Upon the filing of a complaint by an H–2A worker aggrieved by a violation of rights enforceable under subsection (b), and within 60 days of the filing of proof of service of the complaint, a party to the action may file a request with the Federal Mediation and Conciliation Service to assist the parties in reaching a satisfactory resolution of all issues involving all parties to the dispute. Upon a filing of such request and giving of notice to the parties, the parties shall attempt mediation within the period specified in subparagraph (B).

''(A) MEDIATION SERVICES.—The Federal Mediation and Conciliation Service shall be

available to assist in resolving disputes arising under subsection (b) between H–2A workers and agricultural employers without charge to the parties.

"(B) 90-DAY LIMIT.—The Federal Mediation and Conciliation Service may conduct mediation or other nonbinding dispute resolution activities for a period not to exceed 90 days beginning on the date on which the Federal Mediation and Conciliation Service receives the request for assistance unless the parties agree to an extension of this period of time.

"(C) AUTHORIZATION.—

"(i) IN GENERAL.—Subject to clause (ii), there are authorized to be appropriated to the Federal Mediation and Conciliation Service $500,000 for each fiscal year to carry out this section.

"(ii) MEDIATION.—Notwithstanding any other provision of law, the Director of the Federal Mediation and Conciliation Service is authorized to conduct the mediation or other dispute resolution activities from any other appropriated funds available to the Director and to reimburse such

appropriated funds when the funds are appropriated pursuant to this authorization, such reimbursement to be credited to appropriations currently available at the time of receipt.

"(2) MAINTENANCE OF CIVIL ACTION IN DISTRICT COURT BY AGGRIEVED PERSON.—An H–2A worker aggrieved by a violation of rights enforceable under subsection (b) by an agricultural employer or other person may file suit in any district court of the United States having jurisdiction over the parties, without regard to the amount in controversy, without regard to the citizenship of the parties, and without regard to the exhaustion of any alternative administrative remedies under this Act, not later than 3 years after the date the violation occurs.

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

"(4) PREEMPTION OF STATE CONTRACT RIGHTS.—Nothing in this Act shall be construed to diminish the rights and remedies of an H–2A worker under any other Federal or State law or regulation or under any collective bargaining agreement, except that no court or administrative action shall be available under any State contract law to enforce the rights created by this Act.

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

"(6) AWARD OF DAMAGES OR OTHER EQUITABLE RELIEF.—

"(A) If the court finds that the respondent has intentionally violated any of the rights enforceable under subsection (b), it shall award actual damages, if any, or equitable relief.

"(B) Any civil action brought under this section shall be subject to appeal as provided in chapter 83 of title 28, United States Code.

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

"(7) WORKERS' COMPENSATION BENEFITS.—

"(A) EXCLUSIVE REMEDY.—Notwithstanding any other provision of this section, where a State's workers' compensation law is applicable and coverage is provided for an H–2A worker, the workers' compensation benefits shall be the exclusive remedy for the loss of such worker under this section in the case of bodily injury or death in accordance with such State's workers' compensation law.

"(B) RELATIONSHIP TO OTHER RELIEF.—The exclusive remedy prescribed in subparagraph (A) precludes the recovery under paragraph (6) of actual damages for loss from an injury or death but does not preclude other equitable relief, except that such relief shall not include back or front pay or in any manner, di-

rectly or indirectly, expand or otherwise alter or affect—

"(i) a recovery under a State workers' compensation law; or

"(ii) rights conferred under a State workers' compensation law.

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

"(8) TOLLING OF STATUTE OF LIMITATIONS.—If it is determined under a State workers' compensation law that the workers' compensation law is not applicable to a claim for bodily injury or death of an H–2A worker, the statute of limitations for bringing an action for actual damages for such injury or death under subsection (c) shall be tolled for the period during which the claim for such injury or death under such State workers' compensation law was pending. The statute of limitations for an action for actual damages or other equitable relief arising out of the same transaction or occurrence as the injury or death of the H–2A worker shall be tolled for the period during which the claim for such injury or

death was pending under the State workers' compensation law.

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

"(10) SETTLEMENTS.—Any settlement by the Secretary of Labor with an H–2A employer on behalf of an H–2A worker of a complaint filed with the Secretary of Labor under this section or any finding by the Secretary of Labor under subsection (a)(1)(B) shall preclude any right of action arising out of the same facts between the parties under any Federal or State court or administrative proceeding, unless specifically provided otherwise in the settlement agreement.

"(d) DISCRIMINATION PROHIBITED.—

"(1) IN GENERAL.—It is a violation of this subsection for any person who has filed an application under section 218C(a), to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other

manner discriminate against an employee (which term, for purposes of this subsection, includes a former employee and an applicant for employment) because the employee has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of section 218C or 218D or any rule or regulation pertaining to section 218C or 218D, or because the employee cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer's compliance with the requirements of section 218C or 218D or any rule or regulation pertaining to either of such sections.

"(2) DISCRIMINATION AGAINST H–2A WORKERS.—It is a violation of this subsection for any person who has filed an application under section 218C(a), to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against an H–2A employee because such worker has, with just cause, filed a complaint with the Secretary of Labor regarding a denial of the rights enumerated and enforceable under subsection (b) or instituted, or caused to be instituted, a private right of action under subsection (c) regarding the denial of the rights enumerated under subsection (b), or has

1 testified or is about to testify in any court pro-
2 ceeding brought under subsection (c).

3 "(e) AUTHORIZATION TO SEEK OTHER APPRO-
4 PRIATE EMPLOYMENT.—The Secretary of Labor and the
5 Secretary shall establish a process under which an H–2A
6 worker who files a complaint regarding a violation of sub-
7 section (d) and is otherwise eligible to remain and work
8 in the United States may be allowed to seek other appro-
9 priate employment in the United States for a period not
10 to exceed the maximum period of stay authorized for such
11 nonimmigrant classification.

12 "(f) ROLE OF ASSOCIATIONS.—

13 "(1) VIOLATION BY A MEMBER OF AN ASSOCIA-
14 TION.—An employer on whose behalf an application
15 is filed by an association acting as its agent is fully
16 responsible for such application, and for complying
17 with the terms and conditions of sections 218C and
18 218D, as though the employer had filed the applica-
19 tion itself. If such an employer is determined, under
20 this section, to have committed a violation, the pen-
21 alty for such violation shall apply only to that mem-
22 ber of the association unless the Secretary of Labor
23 determines that the association or other member
24 participated in, had knowledge, or reason to know,
25 of the violation, in which case the penalty shall be

invoked against the association or other association member as well.

"(2) VIOLATIONS BY AN ASSOCIATION ACTING AS AN EMPLOYER.—If an association filing an application as a sole or joint employer is determined to have committed a violation under this section, the penalty for such violation shall apply only to the association unless the Secretary of Labor determines that an association member or members participated in or had knowledge, or reason to know of the violation, in which case the penalty shall be invoked against the association member or members as well.

"SEC. 218G. DEFINITIONS.

"For purposes of this section and section 218C, 218D, 218E, and 218F:

"(1) AGRICULTURAL EMPLOYMENT.—The term 'agricultural employment' means any service or activity that is considered to be agricultural under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or agricultural labor under section 3121(g) of the Internal Revenue Code of 1986 or the performance of agricultural labor or services described in section 101(a)(15)(H)(ii)(a).

"(2) BONA FIDE UNION.—The term 'bona fide union' means any organization in which employees

1 participate and which exists for the purpose of deal-
2 ing with employers concerning grievances, labor dis-
3 putes, wages, rates of pay, hours of employment, or
4 other terms and conditions of work for agricultural
5 employees. Such term does not include an organiza-
6 tion formed, created, administered, supported, domi-
7 nated, financed, or controlled by an employer or em-
8 ployer association or its agents or representatives.

9 ''(3) DISPLACE.—The term 'displace', in the
10 case of an application with respect to 1 or more H–
11 2A workers by an employer, means laying off a
12 United States worker from a job for which the H–
13 2A worker or workers is or are sought.

14 ''(4) ELIGIBLE.—The term 'eligible', when used
15 with respect to an individual, means an individual
16 who is not an unauthorized alien (as defined in sec-
17 tion 274A).

18 ''(5) EMPLOYER.—The term 'employer' means
19 any person or entity, including any farm labor con-
20 tractor and any agricultural association, that em-
21 ploys workers in agricultural employment.

22 ''(6) H–2A EMPLOYER.—The term 'H–2A em-
23 ployer' means an employer who seeks to hire 1 or
24 more nonimmigrant aliens described in section
25 101(a)(15)(H)(ii)(a).

"(7) H–2A WORKER.—The term 'H–2A worker' means a nonimmigrant described in section 101(a)(15)(H)(ii)(a).

"(8) JOB OPPORTUNITY.—The term 'job opportunity' means a job opening for temporary or seasonal full-time employment at a place in the United States to which United States workers can be referred.

"(9) LAYING OFF.—

"(A) IN GENERAL.—The term 'laying off', with respect to a worker—

"(i) means to cause the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, contract impossibility (as described in section 218D(b)(4)(D)), or temporary suspension of employment due to weather, markets, or other temporary conditions; but

"(ii) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer (or, in the case of a placement of

a worker with another employer under section 218C(b)(2)(E), with either employer described in such section) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

''(B) STATUTORY CONSTRUCTION.—Nothing in this paragraph is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

''(10) REGULATORY DROUGHT.—The term 'regulatory drought' means a decision subsequent to the filing of the application under section 218C by an entity not under the control of the employer making such filing which restricts the employer's access to water for irrigation purposes and reduces or limits the employer's ability to produce an agricultural commodity, thereby reducing the need for labor.

''(11) SEASONAL.—

''(A) IN GENERAL.—The term 'seasonal', with respect to the performance of labor, means that the labor—

"(i) ordinarily pertains to or is of the kind exclusively performed at certain seasons or periods of the year; and

"(ii) because of the nature of the labor, cannot be continuous or carried on throughout the year.

"(B) EXCEPTION.—Labor performed on a dairy farm shall be considered to be seasonal labor.

"(12) SECRETARY.—Except as otherwise provided, the term 'Secretary' means the Secretary of Homeland Security.

"(13) TEMPORARY.—A worker is employed on a 'temporary' basis where the employment is intended not to exceed 10 months.

"(14) UNITED STATES WORKER.—The term 'United States worker' means any worker, whether a national of the United States, an alien lawfully admitted for permanent residence, or any other alien, who is authorized to work in the job opportunity within the United States, except an alien admitted or otherwise provided status under section 101(a)(15)(H)(ii)(a).".

(b) TABLE OF CONTENTS.—The table of contents of the Immigration and Nationality Act (8 U.S.C. 1101 et

seq.) is amended by striking the item relating to section 218 and inserting the following:

"Sec. 218C. H–2A employer applications.
"Sec. 218D. H–2A employment requirements.
"Sec. 218E. Procedure for admission and extension of stay of H–2A workers.
"Sec. 218F. Worker protections and labor standards enforcement.
"Sec. 218G. Definitions.".

(c) CONFORMING AMENDMENT.—Section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) is amended by inserting "or work on a dairy farm," after "seasonal nature,".

SEC. 405. DETERMINATION AND USE OF USER FEES.

(a) SCHEDULE OF FEES.—The Secretary shall establish and periodically adjust a schedule of fees for the employment of aliens pursuant to the amendment made by section 404(a) of this Act and a collection process for such fees from employers. Such fees shall be the only fees chargeable to employers for services provided under such amendment.

(b) DETERMINATION OF SCHEDULE.—

(1) IN GENERAL.—The schedule under subsection (a) shall reflect a fee rate based on the number of job opportunities indicated in the employer's application under section 218C of the Immigration and Nationality Act, as amended by section 404 of this Act, and sufficient to provide for the direct costs of providing services related to an employer's

authorization to employ aliens pursuant to the amendment made by section 404(a) of this Act, to include the certification of eligible employers, the issuance of documentation, and the admission of eligible aliens.

(2) PROCEDURE.—

(A) IN GENERAL.—In establishing and adjusting such a schedule, the Secretary shall comply with Federal cost accounting and fee setting standards.

(B) PUBLICATION AND COMMENT.—The Secretary shall publish in the Federal Register an initial fee schedule and associated collection process and the cost data or estimates upon which such fee schedule is based, and any subsequent amendments thereto, pursuant to which public comment shall be sought and a final rule issued.

(c) USE OF PROCEEDS.—Notwithstanding any other provision of law, all proceeds resulting from the payment of the fees pursuant to the amendment made by section 404(a) of this Act shall be available without further appropriation and shall remain available without fiscal year limitation to reimburse the Secretary, the Secretary of State, and the Secretary of Labor for the costs of carrying out

sections 218C and 218E of the Immigration and Nationality Act, as amended and added, respectively, by section 404 of this Act, and the provisions of this Act.

SEC. 406. REGULATIONS.

(a) REQUIREMENT FOR THE SECRETARY TO CONSULT.—The Secretary shall consult with the Secretary of Labor and the Secretary of Agriculture during the promulgation of all regulations to implement the duties of the Secretary under this Act and the amendments made by this Act.

(b) REQUIREMENT FOR THE SECRETARY OF STATE TO CONSULT.—The Secretary of State shall consult with the Secretary, the Secretary of Labor, and the Secretary of Agriculture on all regulations to implement the duties of the Secretary of State under this Act and the amendments made by this Act.

(c) REQUIREMENT FOR THE SECRETARY OF LABOR TO CONSULT.—The Secretary of Labor shall consult with the Secretary of Agriculture and the Secretary on all regulations to implement the duties of the Secretary of Labor under this Act and the amendments made by this Act.

(d) DEADLINE FOR ISSUANCE OF REGULATIONS.—All regulations to implement the duties of the Secretary, the Secretary of State, and the Secretary of Labor created under sections 218C, 218D, 218E, 218F, and 218G of

the Immigration and Nationality Act, as amended or added by section 404 of this Act, shall take effect on the effective date of section 404 and shall be issued not later than 1 year after the date of enactment of this Act, or the date such regulations are promulgated, whichever is sooner.

SEC. 407. REPORTS TO CONGRESS.

(a) ANNUAL REPORT.—Not later than September 30 of each year, the Secretary shall submit a report to Congress that identifies, for the previous year—

(1) the number of job opportunities approved for employment of aliens admitted under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), and the number of workers actually admitted, disaggregated by State and by occupation;

(2) the number of such aliens reported to have abandoned employment pursuant to subsection 218E(e)(2) of such Act;

(3) the number of such aliens who departed the United States within the period specified in subsection 218E(d) of such Act;

(4) the number of aliens who applied for adjustment of status pursuant to section 623;

(5) the number of such aliens whose status was adjusted under section 623;

(6) the number of aliens who applied for permanent residence pursuant to section 214A(j) of the Immigration and Nationality Act, as amended by 623(b); and

(7) the number of such aliens who were approved for permanent residence pursuant to section 214A(j) of the Immigration and Nationality Act, as amended by 623(b).

(b) IMPLEMENTATION REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall prepare and submit to Congress a report that describes the measures being taken and the progress made in implementing this Act.

SEC. 408. EFFECTIVE DATE.

Except as otherwise provided, sections 404 and 405 shall take effect 1 year after the date of the enactment of this Act, or the date such regulations are promulgated, whichever is sooner.

SEC. 409. NUMERICAL LIMITATIONS.

Section 214(g) of the Act (8 U.S.C. 1184(g)) is amended—

(1) in paragraph (1)—

(A) by striking ''(beginning with fiscal year 1992)'';

(B) by striking subparagraph (B) and inserting the following:

''(B) under section 101(a)(15)(Y)(i), may not exceed 200,000 for each fiscal year; or

''(C) under section 101(a)(15)(Y)(iii), may not exceed twenty percent of the annual limit on admissions of aliens under section 101(a)(15)(Y)(i) for that fiscal year; or

''(D) under section 101(a)(15)(Y)(ii)(II), may not exceed—

''(i) 100,000 for the first fiscal year in which the program is implemented;

''(ii) in any subsequent fiscal year, subject to clause (iii), the number for the previous fiscal year as adjusted in accordance with the method set forth in paragraph (2); and

''(iii) 200,000 for any fiscal year.'';

and

(2) by renumbering paragraph (2) as paragraph (3), and renumbering all subsequent paragraphs accordingly, and inserting the following as paragraph (2):

"(2) MARKET-BASED ADJUSTMENT.—With respect to the numerical limitation set in subparagraph (A)(ii) or (D)(ii) of paragraph (1)—

"(A) if the total number of visas allocated for that fiscal year are allotted within the first half of that fiscal year, then an additional 15 percent of the allocated number shall be made available immediately and the allocated amount for the following fiscal year shall increase by 15 percent of the original allocated amount in the prior fiscal year;

"(B) if the total number of visas allocated for that fiscal year are allotted within the second half of that fiscal year, then the allocated amount for the following fiscal year shall increase by 10 percent of the original allocated amount in the prior fiscal year; and

"(C) with the exception of the first subsequent fiscal year to the fiscal year in which the program is implemented, if fewer visas were allotted the previous fiscal year than the number of visas allocated for that year and the reason was not due to processing delays or delays in promulgating regulations, then the allocated amount for the following fiscal year shall de-

crease by 10 percent of the allocated amount in the prior fiscal year.''

(3) in paragraph (9)(A) by striking ''an alien who has already been counted toward the numerical limitation of paragraph (1)(B) during fiscal year 2004, 2005, or 2006 shall not again be counted toward such limitation during fiscal year 2007.'' and inserting ''an alien who has been present in the United States as an H–2B nonimmigrant during any 1 of 3 fiscal years immediately preceding the fiscal year of the approved start date of a petition for a nonimmigrant worker described in section 101(a)(15)(H)(ii)(b) shall not be counted toward such limitation for the fiscal year in which the petition is approved. Such alien shall be considered a returning worker.''

SEC. 410. REQUIREMENTS FOR PARTICIPATING COUNTRIES.

(a) IN GENERAL.—The Secretary of State, in cooperation with the Secretary and the Attorney General, may, as a condition of authorizing the grant of nonimmigrant visas for Y nonimmigrants who are citizens or nationals of any foreign country, negotiate with each such country to enter into a bilateral agreement with the

United States that conforms to the requirements under subsection (b).

(b) REQUIREMENTS OF BILATERAL AGREEMENTS.—It is the sense of Congress that each agreement negotiated under subsection (a) shall require the participating home country to—

(1) accept the return of nationals who are ordered removed from the United States within 3 days of such removal;

(2) cooperate with the United States Government to—

(A) identify, track, and reduce gang membership, violence, and human trafficking and smuggling; and

(B) control illegal immigration;

(3) provide the United States Government with—

(A) passport information and criminal records of aliens who are seeking admission to, or are present in, the United States; and

(B) admission and entry data to facilitate United States entry-exit data systems;

(4) educate nationals of the home country regarding United States temporary worker programs to ensure that such nationals are not exploited; and

(5) evaluate means to provide housing incentives in the alien's home country for returning workers; and

(6) agree to such other terms as the Secretary of State considers appropriate and necessary.

SEC. 411. COMPLIANCE INVESTIGATORS.

(a) The Secretary of Labor, subject to the availability of appropriations for such purpose, shall increase, by not less than 200 per year for each of the five fiscal years after the date of enactment of [name of bill], the number of positions for compliance investigators and attorneys dedicated to the enforcement of labor standards, including those contained in sections 218A, 218B, and 218C, the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) and the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) in geographic and occupational areas in which a high percentage of workers are Y nonimmigrants.

SEC. 412. STANDING COMMISSION ON IMMIGRATION AND LABOR MARKETS.

(a) ESTABLISHMENT OF COMMISSION.—

(1) IN GENERAL.—There is established an independent Federal agency within the Executive Branch to be known as the Standing Commission on Immi-

gration and Labor Markets (referred to in this section as the "Commission").

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

(A) to study nonimmigrant programs and the numerical limits imposed by law on admission of nonimmigrants;

(B) to study the numerical limits imposed by law on immigrant visas;

(C) to study the allocation of immigrant visas through the merit-based system;

(D) to make recommendations to the President and Congress with respect to such programs.

(3) MEMBERSHIP.—The Commission shall be composed of—

(A) 6 voting members—

(i) who shall be appointed by the President, with the advice and consent of the Senate, not later than 6 months after the establishment of the Y Nonimmigrant Worker Program;

(ii) who shall serve for 3-year staggered terms, which can be extended for 1 additional 3-year term;

(iii) who shall select a Chair from among the voting members to serve a 2-year term, which can be extended for 1 additional 2-year term;

(iv) who shall have expertise in economics, demography, labor, business, or immigration or other pertinent qualifications or experience;

(v) who may not be an employee of the Federal Government or of any State or local government; and

(vi) not more than 3 of whom may be members of the same political party.

(B) 7 ex-officio members, including—

(i) the Secretary;

(ii) the Secretary of State;

(iii) the Attorney General;

(iv) the Secretary of Labor;

(v) the Secretary of Commerce;

(vi) the Secretary of Health and Human Services; and

(vii) the Secretary of Agriculture.

(4) VACANCIES.—Any vacancy in the Commission shall be filled in the same manner as the original appointment.

(5) MEETINGS.—

(A) INITIAL MEETING.—The Commission shall meet and begin carrying out the duties described in subsection (b) as soon as practicable.

(B) SUBSEQUENT MEETINGS.—After its initial meeting, the Commission shall meet at least once per quarter upon the call of the Chair or a majority of its members.

(C) QUORUM.—Four voting members of the Commission shall constitute a quorum.

(b) DUTIES OF THE COMMISSION.—The Commission shall—

(1) examine and analyze—

(A) the development and implementation of the programs;

(B) the criteria for the admission of nonimmigrant workers;

(C) the formula for determining the annual numerical limitations of nonimmigrant workers;

(D) the impact of nonimmigrant workers on immigration;

(E) the impact of nonimmigrant workers on the economy, unemployment rate, wages, workforce, and businesses of the United States;

(F) the numerical limits imposed by law on immigrant visas and its effect on the economy, unemployment rate, wages, workforce, and businesses of the United States;

(G) the allocation of immigrant visas through the evaluation system established by title V of this Act; and

(H) any other matters regarding the programs that the Commission considers appropriate;

(2) not later than 18 months after the date of enactment, and every year thereafter, submit a report to the President and Congress that—

(A) contains the findings of the analysis conducted under paragraph (1);

(B) makes recommendations regarding the necessary adjustments to the programs studied to meet the labor market needs of the United States; and

(C) makes other recommendations regarding the programs, including legislative or administrative action, that the Commission determines to be in the national interest.

(c) INFORMATION AND ASSISTANCE FROM FEDERAL AGENCIES.—

(1) INFORMATION.—The head of any Federal department or agency that receives a request from the Commission for information, including suggestions, estimates, and statistics, as the Commission considers necessary to carry out the provisions of this section, shall furnish such information to the Commission, to the extent allowed by law.

(2) ASSISTANCE.—

(A) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall, on a reimbursable basis, provide the Commission with administrative support and other services for the performance of the Commission's functions.

(B) OTHER FEDERAL AGENCIES.—The departments and agencies of the United States may provide the Commission with such services, funds, facilities, staff, and other support services as the heads of such departments and agencies determine advisable and authorized by law.

(d) PERSONNEL MATTERS.—

(1) STAFF.—

(A) APPOINTMENT AND COMPENSATION.—The Chair, in accordance with rules agreed

upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions.

(B) FEDERAL EMPLOYEES.—

(i) IN GENERAL.—Except as provided under clause (ii), the executive director and any personnel of the Commission who are employees shall be considered to be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of such title.

(ii) COMMISSION MEMBERS.—Clause (i) shall not apply to members of the Commission.

(2) DETAILEES.—Any employee of the Federal Government may be detailed to the Commission without reimbursement from the Commission. Such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(3) CONSULTANT SERVICES.—The Commission may procure the services of experts and consultants in accordance with section 3109 of title 5, United

States Code, at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of such title 5.

(e) COMPENSATION AND TRAVEL EXPENSES.—

(1) COMPENSATION.—Each voting member of the Commission may be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(2) TRAVEL EXPENSES.—Members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, under section 5703(b) of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(f) FUNDING.—Fees and fines deposited into the Temporary Worker Program Account under section 286(w) of the Immigration and Nationality Act, as added by section 402 of [name of the Act], may be used by the Commission to carry out its duties under this section.

SEC. 412. AGENCY REPRESENTATION AND COORDINATION.

Section 274A(e) (8 U.S.C. 1324a(e)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A), by striking the comma at the end and inserting a semicolon;

(B) in subparagraph (B), by striking ", and" and inserting a semicolon;

(C) in subparagraph (C), by striking "paragraph (2)." and inserting "paragraph (1); and"; and

(D) by inserting after subparagraph (C) the following:

"(D) United States Immigration and Customs Enforcement officials may not misrepresent to employees or employers that they are a member of any agency or organization that provides domestic violence services, enforces health and safety law, provides health care services, or any other services intended to protect life and safety.".

SEC. 413. BILATERAL EFFORTS WITH MEXICO TO REDUCE MIGRATION PRESSURES AND COSTS.

(a) FINDINGS.—Congress makes the following findings:

(1) Migration from Mexico to the United States is directly linked to the degree of economic opportunity and the standard of living in Mexico.

(2) Mexico comprises a prime source of migration to the United States.

(3) Remittances from Mexican citizens working in the United States reached a record high of nearly $17,000,000,000 in 2004.

(4) Migration patterns may be reduced from Mexico to the United States by addressing the degree of economic opportunity available to Mexican citizens.

(5) Many Mexican assets are held extra-legally and cannot be readily used as collateral for loans.

(6) A majority of Mexican businesses are small or medium size with limited access to financial capital.

(7) These factors constitute a major impediment to broad-based economic growth in Mexico.

(8) Approximately 20 percent of Mexico's population works in agriculture, with the majority of this population working on small farms and few on large commercial enterprises.

(9) The Partnership for Prosperity is a bilateral initiative launched jointly by the President of the

United States and the President of Mexico in 2001, which aims to boost the social and economic standards of Mexican citizens, particularly in regions where economic growth has lagged and emigration has increased.

(10) The Presidents of Mexico and the United States and the Prime Minister of Canada, at their trilateral summit on March 23, 2005, agreed to promote economic growth, competitiveness, and quality of life in the agreement on Security and Prosperity Partnership of North America.

(b) SENSE OF CONGRESS REGARDING PARTNERSHIP FOR PROSPERITY.—It is the sense of Congress that the United States and Mexico should accelerate the implementation of the Partnership for Prosperity to help generate economic growth and improve the standard of living in Mexico, which will lead to reduced migration, by—

(1) increasing access for poor and under served populations in Mexico to the financial services sector, including credit unions;

(2) assisting Mexican efforts to formalize its extra-legal sector, including the issuance of formal land titles, to enable Mexican citizens to use their assets to procure capital;

(3) facilitating Mexican efforts to establish an effective rural lending system for small- and medium-sized farmers that will—

(A) provide long term credit to borrowers;

(B) develop a viable network of regional and local intermediary lending institutions; and

(C) extend financing for alternative rural economic activities beyond direct agricultural production;

(4) expanding efforts to reduce the transaction costs of remittance flows in order to increase the pool of savings available to help finance domestic investment in Mexico;

(5) encouraging Mexican corporations to adopt internationally recognized corporate governance practices, including anti-corruption and transparency principles;

(6) enhancing Mexican efforts to strengthen governance at all levels, including efforts to improve transparency and accountability, and to eliminate corruption, which is the single biggest obstacle to development;

(7) assisting the Government of Mexico in implementing all provisions of the Inter-American Convention Against Corruption (ratified by Mexico on

May 27, 1997) and urging the Government of Mexico to participate fully in the Convention's formal implementation monitoring mechanism;

(8) helping the Government of Mexico to strengthen education and training opportunities throughout the country, with a particular emphasis on improving rural education; and

(9) encouraging the Government of Mexico to create incentives for persons who have migrated to the United States to return to Mexico.

(c) SENSE OF CONGRESS REGARDING BILATERAL PARTNERSHIP ON HEALTH CARE.—It is the sense of Congress that the Government of the United States and the Government of Mexico should enter into a partnership to examine uncompensated and burdensome health care costs incurred by the United States due to legal and illegal immigration, including—

(1) increasing health care access for poor and under served populations in Mexico;

(2) assisting Mexico in increasing its emergency and trauma health care facilities along the border, with emphasis on expanding prenatal care in the United States-Mexico border region;

(3) facilitating the return of stable, incapacitated workers temporarily employed in the United

States to Mexico in order to receive extended, long-term care in their home country; and

(4) helping the Government of Mexico to establish a program with the private sector to cover the health care needs of Mexican nationals temporarily employed in the United States.

SEC. 414. WILLING WORKER-WILLING EMPLOYER ELECTRONIC DATABASE.

(a) ELECTRONIC JOB REGISTRY LINK.—

(1) The Secretary of Labor shall establish a publicly accessible Web page on the internet website of the Department of Labor that provides a single Internet link to each State workforce agency's statewide electronic registry of jobs available throughout the United States to United States workers.

(2) The Secretary of Labor shall promulgate regulations regarding the maintenance of electronic job registry records by the employer for the purpose of audit or investigations.

(3) The Secretary of Labor shall ensure that job opportunities advertised on a State workforce agency statewide electronic job registry established under this section are accessible—

(A) by the State workforce agencies, which may further disseminate job opportunity information to interested parties; and

(B) through the internet, for access by workers, employers, labor organizations and other interested parties.

(4) The Secretary of Labor may work with private companies and nonprofit organizations in the development and operation of the job registry link and system under paragraph (1).

(b) ELECTRONIC REGISTRY OF CERTIFIED APPLICATIONS.—

(1) The Secretary of Labor shall compile, on a current basis, a registry (by employer and by occupational classification) of the approved labor certification applications filed under this program. Such registry shall include the wage rate, number of workers sought, period of intended employment, and date of need. The Secretary of Labor shall make such registry publicly available through an Internet website.

(2) The Secretary of Labor may consult with the Secretary of Homeland Security, and others as appropriate, in the establishment of the registry described in paragraph (1) to ensure its compatibility

with any system designed to track Y nonimmigrant employment that is operated and maintained by the Secretary of Homeland Security.

(3) The Secretary of Labor shall ensure that job opportunities advertised on the electronic job registry established under this subsection are accessible by the State workforce agencies, which may further disseminate job opportunity information to other interested parties.

SEC. 415. ENUMERATION OF SOCIAL SECURITY NUMBER.

The Secretary of Homeland Security, in coordination with the Commissioner of the Social Security Administration, shall implement a system to allow for the prompt enumeration of a Social Security number after the Secretary of Homeland Security has granted an alien Y nonimmigrant status.

SEC. 416. CONTRACTING.

Nothing in this section shall be construed to limit the authority of the Secretary of Homeland Security or Secretary of Labor to contract with or license United States entities, as provided for in regulation, to implement any provision of this title, either entirely or in part, to the extent that each Secretary in his discretion determines that such implementation is feasible, cost-effective, secure, and in the interest of the United States. However, nothing in

this provision shall be construed to alter or amend any of the requirements of OMB Circular A–76 or any other current law governing federal contracting. Any inherently governmental work already performed by employees of the Department of Homeland Security or the Department of Labor, or any inherently governmental work generated by the requirements of this legislation, shall continue to be performed by Federal employees, and any current commercial work, or new commercial work generated by the requirements of this legislation, that is subject to public-private competition under OMB Circular A–76 or any other relevant law shall continue to be subject to public-private competition.

SEC. 417. FEDERAL RULEMAKING REQUIREMENTS.

(a) The Secretaries of Labor and Homeland Security shall each issue an interim final rule within six months of the date of enactment of this subtitle to implement this title and the amendments made by this title. Each such interim final rule shall become effective immediately upon publication in the Federal Register. Each such interim final rule shall sunset two years after issuance unless the relevant Secretary issues a final rule within two years of the issuance of the interim final rule.

(b) The exemption provided under subsection (a) shall sunset no later than two years after the date of en-

actment of this title, provided that, such sunset shall not be construed to impose any requirements on, or affect the validity of, any rule issued or other action taken by either Secretary under such exemption.

Subtitle C—Nonimmigrant Visa Reform

SEC. 418. STUDENT VISAS.

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

(1) in clause (i)—

(A) by striking ''who is'' and inserting, ''who is—

''(I)'';

(B) by striking ''consistent with section 214(*l*)'' and inserting ''consistent with section 214(m)'';

(C) by striking the comma at the end and inserting the following: ''; or

''(II) engaged in temporary employment for optional practical training for an aggregate period of not more than 24 months and related to such alien's major area of study, where such alien has been lawfully en-

rolled on a full time basis as a non-immigrant under clause (i) or (iv) at a college, university, conservatory, or seminary described in subclause (i)(I) for one full academic year and such employment occurs:

"(aa) during the student's annual vacation and at other times when school is not in session, if the student is currently enrolled, and is eligible for registration and intends to register for the next term or session;

"(bb) while school is in session, provided that practical training does not exceed 20 hours a week while school is in session; or

"(cc) within a 26-month period after completion of all course requirements for the degree (excluding thesis or equivalent);"; and

(D) by striking ''Attorney General'' the two times that phrase appears and inserting ''Secretary of Homeland Security''.

(2) in clause (ii)—

(A) by inserting ''or (iv)'' after ''clause (i)''; and

(B) by striking '', and'' and inserting a semicolon; and

(3) by adding at the end the following:

''(iv) an alien described in clause (i), except that the alien is not required to have a residence in a foreign country that the alien has no intention of abandoning, who has been accepted at and plans to attend an accredited graduate program in mathematics, engineering, information technology, or the natural sciences in the United States for the purpose of obtaining an advanced degree; and

''(v) an alien who maintains actual residence and place of abode in the alien's country of nationality, who is described in clause (i), except that the alien's actual course of study may involve a distance learning program, for which the alien is

temporarily visiting the United States for a period not to exceed 30 days;''.

(b) OFF CAMPUS WORK AUTHORIZATION FOR FOREIGN STUDENTS.—

(1) IN GENERAL.—An alien admitted as a nonimmigrant student described in section 101(a)(15)(F) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F)) may be employed in an off-campus position unrelated to the alien's field of study if—

(A) the alien has enrolled full-time at the educational institution and is maintaining good academic standing;

(B) the employer provides the educational institution and the Secretary of Labor with an attestation that the employer—

(i) has spent at least 21 days recruiting United States workers to fill the position; and

(ii) will pay the alien and other similarly situated workers at a rate equal to not less than the greater of—

(I) the actual wage level for the occupation at the place of employment; or

(II) the prevailing wage level for the occupation in the area of employment; and

(C) the alien will not be employed more than—

(i) 20 hours per week during the academic term; or

(ii) 40 hours per week during vacation periods and between academic terms.

(2) DISQUALIFICATION.—If the Secretary of Labor determines that an employer has provided an attestation under paragraph (1)(B) that is materially false or has failed to pay wages in accordance with the attestation, the employer, after notice and opportunity for a hearing, may be disqualified for a period of no more than 5 years from employing an alien student under paragraph (1).

(3) SOCIAL SECURITY.—Any employment engaged in by a student pursuant to paragraph (1) of this subsection shall, for purposes of section 210 of the Social Security Act (42 USC 410) and section 3121 of the Internal Revenue Code (26 USC 3121), not be considered to be for a purpose related to section 101(a)(15)(F) of the Immigration and Nationality Act.

(c) CLARIFYING THE IMMIGRANT INTENT PROVISION.—Subsection (b) of section 214 of the Immigration and Nationality Act (8 U.S.C. 1184(b)) is amended—

(1) by striking the parenthetical phrase ''(other than a nonimmigrant described in subparagraph (L) or (V) of section 101(a)(15), and other than a nonimmigrant described in any provision of section 101(a)(15)(H)(i) except subclause (b1) of such section)'' in the first sentence; and

(2) by striking ''under section 101(a)(15)'' and inserting in its place ''under the immigration laws.''.

(d) GRANTING DUAL INTENT TO CERTAIN NONIMMIGRANT STUDENTS.—Subsection (h) of section 214 of the Immigration and Nationality Act (8 U.S.C. 1184(h)) is amended—

(1) by inserting ''(F)(iv),'' following ''(H)(i)(b) or (c),''; and

(2) by striking ''if the alien had obtained a change of status'' and inserting in its place ''if the alien had been admitted as, provided status as, or obtained a change of status''.

SEC. 419. H–1B STREAMLINING AND SIMPLIFICATION.

(a) H–1B AMENDMENTS.—Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)) is amended—

(1) in paragraph (1) by deleting clauses (i) through (vii) of subparagraph (A) and inserting in their place—

"(i) 115,000 in fiscal year 2008;

"(ii) in any subsequent fiscal year, subject to clause (iii), the number for the previous fiscal year as adjusted in accordance with the method set forth in paragraph (2); and

"(iii) 180,000 for any fiscal year; or".

(2) in paragraph (9), as renumbered by Section 405—

(A) by striking "The annual numeric limitations described in clause (i) shall not exceed" from subclause (ii) of subparagraph (B) and inserting the following: "Without respect to the annual numeric limitation described in clause (i), the Secretary may issue a visa or otherwise grant nonimmigrant status pursuant to section 1101(a)(15)(H)(i)(b) in the following quantities:";

(B) by striking subparagraph (B)(iv); and

(C) by striking subparagraph (D).

(b) REQUIRING A DEGREE.—Paragraph (2) of section 214(i) of the Immigration and Nationality Act (8 U.S.C. 1184(i)) is amended—

(1) by deleting the comma at the end of subparagraph (A) and inserting in its place "; and"; and

(2) by striking subparagraphs (B) and (C) and inserting the following:

"(B) attainment of a bachelor's or higher degree in the specific specialty from an educational institution in the United States accredited by a nationally recognized accrediting agency or association (or an equivalent degree from a foreign educational institution that is equivalent to such an institution) as a minimum for entry into the occupation in the United States.".

(c) PROVISION OF W–2 FORMS.—Section 214(g)(5) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(5)), as renumbered by Section 405, is amended to read as follows:

"(5) In the case of a nonimmigrant described in section 1101(a)(15)(H)(i)(b) of this title—

"(A) The period of authorized admission as such a nonimmigrant may not exceed six

years; [Provided that, this provision shall not apply to such a nonimmigrant who has filed a petition for an immigrant visa under section 203(b)(1), if 365 days or more have elapsed since filing and it has not been denied, in which case the Secretary of Homeland Security may extend the stay of an alien in one-year increments until such time as a final decision is made on the alien's lawful permanent residence].

"(B) If the alien is granted an initial period of admission less than six years, any subsequent application for an extension of stay for such alien must include the Form W–2 Wage and Tax Statement filed by the employer for such employee, and such other form or information relating to such employment as the Secretary of Homeland Security may in his discretion specify, with respect to such nonimmigrant alien employee for the period of admission granted to the alien.

"(C) Notwithstanding section 6103 of title 26, United States Code, or any other law, the Commissioner of Internal Revenue or the Commissioner of the Social Security Administration

shall upon request of the Secretary confirm whether the Form W–2 Wage and Tax Statement filed by the employer under clause (i) matches a Form W–2 Wage and Tax Statement filed with the Internal Revenue Service or the Social Security Administration, as the case may be.''

(d) EXTENSION OF H–1B STATUS FOR MERIT-BASED ADJUSTMENT APPLICANTS.—

(1) Section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(4)) is amended by inserting before the period: ''; Provided that, this provision shall not apply to such a nonimmigrant who has filed a petition for an immigrant visa accompanied by a qualifying employer recommendation under section 203(b)(1), if 365 days or more have elapsed since filing and it has not been denied, in which case the Secretary of Homeland Security may extend the stay of an alien in one-year increments until such time as a final decision is made on the alien's lawful permanent residence.''

(2) Sections 106(a) and 106(b) of the American Competitiveness in the Twenty-First Century Act of 2000—Immigration Services and Infrastructure Im-

provements Act of 2000, Public Law 106–313, are hereby repealed.

SEC. 420. H–1B EMPLOYER REQUIREMENTS.

(a) APPLICATION OF NONDISPLACEMENT AND GOOD FAITH RECRUITMENT REQUIREMENTS TO ALL H–1B EMPLOYERS.—

(1) AMENDMENTS.—Section 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(n)) is amended—

(A) in paragraph (1)—

(i) in subparagraph (E);

(I) in clause (i), by striking ''(E)(i) In the case of an application described in clause (ii), the'' and inserting ''(E) The''; and

(II) by striking clause (ii);

(ii) in subparagraph (F), by striking ''In the case of'' and all that follows through ''where—'' and inserting the following: ''The employer will not place the nonimmigrant with another employer if—''; and

(iii) in subparagraph (G), by striking ''In the case of an application described in

subparagraph (E)(ii), subject'' and inserting ''Subject'';

(B) in paragraph (2)—

(i) in subparagraph (E), by striking ''If an H–1B-dependent employer'' and inserting ''If an employer that employs H–1B nonimmigrants''; and

(ii) in subparagraph (F), by striking ''The preceding sentence shall apply to an employer regardless of whether or not the employer is an H–1B-dependent employer.''; and

(C) by striking paragraph (3).

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to applications filed on or after the date of the enactment of this Act.

(b) NONDISPLACEMENT REQUIREMENT.—

(1) EXTENDING TIME PERIOD FOR NONDISPLACEMENT.—Section 212(n) of such Act, as amended by subsection (a), is further amended—

(A) in paragraph (1)—

(i) in subparagraph (E), by striking ''90 days'' each place it appears and inserting ''180 days'';

(ii) in subparagraph (F)(ii), by striking "90 days" each place it appears and inserting "180 days"; and

(B) in paragraph (2)(C)(iii), by striking "90 days" each place it appears and inserting "180 days".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1)—

(A) shall apply to applications filed on or after the date of the enactment of this Act; and

(B) shall not apply to displacements for periods occurring more than 90 days before such date.

(c) H–1B NONIMMIGRANTS NOT ADMITTED FOR JOBS ADVERTISED OR OFFERED ONLY TO H–1B NONIMMIGRANTS.—Section 212(n)(1) of such Act, as amended by this section, is further amended—

(1) by inserting after subparagraph (G) the following:

"(H)(i) The employer has not advertised the available jobs specified in the application in an advertisement that states or indicates that—

"(I) the job or jobs are only available to persons who are or who may become H–1B nonimmigrants; or

"(II) persons who are or who may become H–1B nonimmigrants shall receive priority or a preference in the hiring process.

"(ii) The employer has not only recruited persons who are, or who may become, H–1B nonimmigrants to fill the job or jobs."; and

(2) in the undesignated paragraph at the end, by striking "The employer" and inserting the following:

"(K) The employer".

(d) LIMIT ON PERCENTAGE OF H–1B EMPLOYEES.—Section 212(n)(1) of such Act, as amended by this section, is further amended by inserting after subparagraph (H), as added by subsection (d)(1), the following:

"(I) If the employer employs not less than 50 employees in the United States, not more than 50 percent of such employees are H–1B nonimmigrants.".

SEC. 421. H–1B GOVERNMENT AUTHORITY AND REQUIREMENTS.

(a) SAFEGUARDS AGAINST FRAUD AND MISREPRESENTATION IN APPLICATION REVIEW PROCESS.—Section 212(n)(1)(K) of the Immigration and Nationality Act, as redesignated by section 2(d)(2), is amended—

(1) by inserting ''and through the Department of Labor's website, without charge.'' after ''D.C.'';

(2) by inserting '', clear indicators of fraud, misrepresentation of material fact,'' after ''completeness'';

(3) by striking ''or obviously inaccurate'' and inserting '', presents clear indicators of fraud or misrepresentation of material fact, or is obviously inaccurate'';

(4) by striking ''within 7 days of'' and inserting ''not later than 14 days after''; and

(5) by adding at the end the following: ''If the Secretary's review of an application identifies clear indicators of fraud or misrepresentation of material fact, the Secretary may conduct an investigation and hearing under paragraph (2).''

(b) INVESTIGATIONS BY DEPARTMENT OF LABOR.—Section 212(n)(2) of such Act is amended—

(1) in subparagraph (A)—

(A) by striking ''12 months'' and inserting ''24 months''; and

(B) by striking ''The Secretary shall conduct'' and all that follows and inserting ''Upon the receipt of such a complaint, the Secretary may initiate an investigation to determine if

such a failure or misrepresentation has occurred.'';

(2) in subparagraph (C)(i)—

(A) by striking ''a condition of paragraph (1)(B), (1)(E), or (1)(F)'' and inserting ''a condition under subparagraph (B), (C)(i), (E), (F), (H), (I), or (J) of paragraph (1)''; and

(B) by striking ''(1)(C)'' and inserting ''(1)(C)(ii)'';

(3) in subparagraph (G)—

(A) in clause (i), by striking ''if the Secretary'' and all that follows and inserting ''with regard to the employer's compliance with the requirements of this subsection.'';

(B) in clause (ii), by striking ''and whose identity'' and all that follows through ''failure or failures.'' and inserting ''the Secretary of Labor may conduct an investigation into the employer's compliance with the requirements of this subsection.'';

(C) in clause (iii), by striking the last sentence;

(D) by striking clauses (iv) and (v);

(E) by redesignating clauses (vi), (vii), and (viii) as clauses (iv), (v), and (vi), respectively;

(F) in clause (iv), as redesignated, by striking ''meet a condition described in clause (ii), unless the Secretary of Labor receives the information not later than 12 months'' and inserting ''comply with the requirements under this subsection, unless the Secretary of Labor receives the information not later than 24 months'';

(G) by amending clause (v), as redesignated, to read as follows:

''(v) The Secretary of Labor shall provide notice to an employer of the intent to conduct an investigation. The notice shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced. The Secretary is not required to comply with this clause if the Secretary determines that such compliance would interfere with an effort by the Secretary to investigate or secure compliance by the employer with the requirements of this subsection. A determination by the Secretary under this

clause shall not be subject to judicial review.''.

(H) in clause (vi), as redesignated, by striking ''An investigation'' and all that follows through ''the determination.'' and inserting ''If the Secretary of Labor, after an investigation under clause (i) or (ii), determines that a reasonable basis exists to make a finding that the employer has failed to comply with the requirements under this subsection, the Secretary shall provide interested parties with notice of such determination and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, not later than 120 days after the date of such determination.''; and

(I) by adding at the end the following:

''(vii) If the Secretary of Labor, after a hearing, finds a reasonable basis to believe that the employer has violated the requirements under this subsection, the Secretary may impose a penalty under subparagraph (C).''; and

(4) by striking subparagraph (H).

(c) INFORMATION SHARING BETWEEN DEPARTMENT OF LABOR AND DEPARTMENT OF HOMELAND SECU-

RITY.—Section 212(n)(2) of such Act, as amended by this section, is further amended by inserting after subparagraph (G) the following:

"(H) The Director of United States Citizenship and Immigration Services shall provide the Secretary of Labor with any information contained in the materials submitted by H–1B employers as part of the adjudication process that indicates that the employer is not complying with H–1B visa program requirements. The Secretary may initiate and conduct an investigation and hearing under this paragraph after receiving information of noncompliance under this subparagraph.".

(d) AUDITS.—Section 212(n)(2)(A) of such Act, as amended by this section, is further amended by adding at the end the following: "The Secretary may conduct surveys of the degree to which employers comply with the requirements under this subsection and may conduct annual compliance audits of employers that employ H–1B nonimmigrants. The Secretary shall conduct annual compliance audits of not less than 1 percent of the employers that employ H–1B nonimmigrants during the applicable calendar year."

(e) PENALTIES.—Section 212(n)(2)(C) of such Act, as amended by this section, is further amended—

(1) in clause (i)(I), by striking ''$1,000'' and inserting ''$2,000'';

(2) in clause (ii)(I), by striking ''$5,000'' and inserting ''$10,000''; and

(3) in clause (vi)(III), by striking ''$1,000'' and inserting ''$2,000''.

(f) INFORMATION PROVIDED TO H–1B NONIMMIGRANTS UPON VISA ISSUANCE.—Section 212(n) of such Act, as amended by this section, is further amended by inserting after paragraph (2) the following:

''(3)(A) Upon issuing an H–1B visa to an applicant outside the United States, the issuing office shall provide the applicant with—

''(i) a brochure outlining the employer's obligations and the employee's rights under Federal law, including labor and wage protections; and

''(ii) the contact information for Federal agencies that can offer more information or assistance in clarifying employer obligations and workers' rights.''.

''(B) Upon the issuance of an H–1B visa to an alien inside the United States, the officer of the De-

partment of Homeland Security shall provide the applicant with—

"(i) a brochure outlining the employer's obligations and the employee's rights under Federal law, including labor and wage protections; and

"(ii) the contact information for Federal agencies that can offer more information or assistance in clarifying employer's obligations and workers' rights.".

SEC. 422. L–1 VISA FRAUD AND ABUSE PROTECTIONS.

(a) IN GENERAL.—Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended—

(1) by striking "Attorney General" each place it appears and inserting "Secretary of Homeland Security";

(2) in subparagraph (E), by striking "In the case of an alien spouse admitted under section 101(a)(15)(L), who" and inserting "Except as provided in subparagraph (H), if an alien spouse admitted under section 101(a)(15)(L)"; and

(3) by adding at the end the following:

"(G)(i) If the beneficiary of a petition under this subsection is coming to the United

States to open, or be employed in, a new facility, the petition may be approved for up to 12 months only if the employer operating the new facility has—

"(I) a business plan;

"(II) sufficient physical premises to carry out the proposed business activities; and

"(III) the financial ability to commence doing business immediately upon the approval of the petition.

"(ii) An extension of the approval period under clause (i) may not be granted until the importing employer submits an application to the Secretary of Homeland Security that contains—

"(I) evidence that the importing employer meets the requirements of this subsection;

"(II) evidence that the beneficiary meets the requirements under section 101(a)(15)(L);

"(III) a statement summarizing the original petition;

"(IV) evidence that the importing employer has fully complied with the business plan submitted under clause (i)(I);

"(V) evidence of the truthfulness of any representations made in connection with the filing of the original petition;

"(VI) evidence that the importing employer, during the preceding 12 months, has been doing business at the new facility through regular, systematic, and continuous provision of goods or services, or has otherwise been taking commercially reasonable steps to establish the new facility as a commercial enterprise;

"(VII) a statement of the duties the beneficiary has performed at the new facility during the preceding 12 months and the duties the beneficiary will perform at the new facility during the extension period approved under this clause;

"(VIII) a statement describing the staffing at the new facility, including the number of employees and the

types of positions held by such employees;

"(IX) evidence of wages paid to employees;

"(X) evidence of the financial status of the new facility; and

"(XI) any other evidence or data prescribed by the Secretary.

"(iii) Notwithstanding subclauses (I) through (VI) of clause (ii), and subject to the maximum period of authorized admission set forth in subparagraph (D), the Secretary of Homeland Security may approve a petition subsequently filed on behalf of the beneficiary to continue employment at the facility described in this subsection for a period beyond the initially granted 12-month period if the importing employer demonstrates that the failure to satisfy any of the requirements described in those subclauses was directly caused by extraordinary circumstances beyond the control of the importing employer.

"(iv) For purposes of determining the eligibility of an alien for classification

under section 101(a)(15)(L), the Secretary of Homeland Security shall work cooperatively with the Secretary of State to verify a company or facility's existence in the United States and abroad.''.

(b) INVESTIGATIONS AND AUDITS BY DEPARTMENT OF HOMELAND SECURITY.—

(1) DEPARTMENT OF HOMELAND SECURITY INVESTIGATIONS.—Section 214(c)(2) of such Act, as amended by this section, is further amended by adding at the end the following:

''(I)(i) The Secretary of Homeland Security may initiate an investigation of any employer that employs nonimmigrants described in section 101(a)(15)(L) with regard to the employer's compliance with the requirements of this subsection.

''(ii) If the Secretary of Homeland Security receives specific credible information from a source who is likely to have knowledge of an employer's practices, employment conditions, or compliance with the requirements under this subsection, the Secretary may conduct an investigation into the employer's compliance with the requirements of this subsection. The Secretary

may withhold the identity of the source from the employer, and the source's identity shall not be subject to disclosure under section 552 of title 5.

"(iii) The Secretary of Homeland Security shall establish a procedure for any person desiring to provide to the Secretary of Homeland Security information described in clause (ii) that may be used, in whole or in part, as the basis for the commencement of an investigation described in such clause, to provide the information in writing on a form developed and provided by the Secretary of Homeland Security and completed by or on behalf of the person.

"(iv) No investigation described in clause (ii) (or hearing described in clause (vi) based on such investigation) may be conducted with respect to information about a failure to comply with the requirements under this subsection, unless the Secretary of Homeland Security receives the information not later than 24 months after the date of the alleged failure.

"(v) Before commencing an investigation of an employer under clause (i) or (ii), the Secretary of Homeland Security shall provide no-

tice to the employer of the intent to conduct such investigation. The notice shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced. The Secretary is not required to comply with this clause if the Secretary determines that to do so would interfere with an effort by the Secretary to investigate or secure compliance by the employer with the requirements of this subsection. There shall be no judicial review of a determination by the Secretary under this clause.

"(vi) If the Secretary of Homeland Security, after an investigation under clause (i) or (ii), determines that a reasonable basis exists to make a finding that the employer has failed to comply with the requirements under this subsection, the Secretary shall provide interested parties with notice of such determination and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, not later than 120 days after the date of such determination. If such a hearing is requested, the Secretary shall make a finding concerning the

matter by not later than 120 days after the date of the hearing.

"(vii) If the Secretary of Homeland Security, after a hearing, finds a reasonable basis to believe that the employer has violated the requirements under this subsection, the Secretary may impose a penalty under section 214(c)(2)(J).".

(2) AUDITS.—Section 214(c)(2)(I) of such Act, as added by paragraph (1), is amended by adding at the end the following:

"(viii) The Secretary of Homeland Security may conduct surveys of the degree to which employers comply with the requirements under this section and may conduct annual compliance audits of employers that employ H–1B nonimmigrants. The Secretary shall conduct annual compliance audits of not less than 1 percent of the employers that employ nonimmigrants described in section 101(a)(15)(L) during the applicable calendar year.".

(3) REPORTING REQUIREMENT.—Section 214(c)(8) of such Act is amended by inserting "(L)," after "(H),".

(c) PENALTIES.—Section 214(c)(2) of such Act, as amended by this section, is further amended by adding at the end the following:

"(J)(i) If the Secretary of Homeland Security finds, after notice and an opportunity for a hearing, a failure by an employer to meet a condition under subparagraph (F), (G), (H), (I), or (K) or a misrepresentation of material fact in a petition to employ 1 or more aliens as nonimmigrants described in section 101(a)(15)(L)—

"(I) the Secretary of Homeland Security may impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $2,000 per violation) as the Secretary determines to be appropriate; and

"(II) the Secretary of Homeland Security may not, during a period of at least 1 year, approve a petition for that employer to employ 1 or more aliens as such nonimmigrants.

"(ii) If the Secretary of Homeland Security finds, after notice and an opportunity for a hearing, a willful failure by an employer to

meet a condition under subparagraph (F), (G), (H), (I), or (K) or a misrepresentation of material fact in a petition to employ 1 or more aliens as nonimmigrants described in section 101(a)(15)(L)—

"(I) the Secretary of Homeland Security may impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $10,000 per violation) as the Secretary determines to be appropriate; and

"(II) the Secretary of Homeland Security may not, during a period of at least 2 years, approve a petition filed for that employer to employ 1 or more aliens as such nonimmigrants.

"(iii) If the Secretary of Homeland Security finds, after notice and an opportunity for a hearing, a willful failure by an employer to meet a condition under subparagraph (L)(i)—

"(I) the Secretary of Homeland Security may impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $10,000

per violation) as the Secretary determines to be appropriate; and

"(II) the employer shall be liable to employees harmed for lost wages and benefits.".

SEC. 423. WHISTLEBLOWER PROTECTIONS.

(a) H–1B WHISTLEBLOWER PROTECTIONS.—Section 212(n)(2)(C)(iv) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(C)(iv)) is amended—

(1) by inserting "take, fail to take, or threaten to take or fail to take, a personnel action, or" before "to intimidate"; and

(2) by adding at the end the following: "An employer that violates this clause shall be liable to the employees harmed by such violation for lost compensation, including back pay.".

(b) L–1 WHISTLEBLOWER PROTECTIONS.—Section 214(c)(2) of such Act, as amended by section 4, is further amended by adding at the end the following:

"(L)(i) It is a violation of this subparagraph for an employer who has filed a petition to import 1 or more aliens as nonimmigrants described in section 101(a)(15)(L) to take, fail to take, or threaten to take or fail to take, a personnel action, or to intimidate, threaten, re-

strain, coerce, blacklist, discharge, or discriminate in any other manner against an employee because the employee—

"(I) has disclosed information that the employee reasonably believes evidences a violation of this subsection, or any rule or regulation pertaining to this subsection; or

"(II) cooperates or seeks to cooperate with the requirements of this subsection, or any rule or regulation pertaining to this subsection.

"(ii) An employer that violates this subparagraph shall be liable to the employees harmed by such violation for lost wages and benefits.

"(iii) In this subparagraph, the term "employee" includes—

"(I) a current employee;

"(II) a former employee; and

"(III) an applicant for employment.".

SEC. 424. LIMITATIONS ON APPROVAL OF L–1 PETITIONS FOR START-UP COMPANIES.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended—

(a) by striking ''Attorney General'' each place it appears and inserting ''Secretary of Homeland Security'';

(b) in subparagraph (E), by striking ''In the case'' and inserting ''Except as provided in subparagraph (H), in the case''; and

(c) by adding at the end the following:

(G)(i) If the beneficiary of a petition under this subsection is coming to the United States to be employed in a new office, the petition may be approved for a period not to exceed 12 months only if the alien has not been the beneficiary of two or more petitions under this subparagraph within the immediately preceding two years and only if the employer operating the new office has—

''(I) an adequate business plan;

''(II) sufficient physical premises to carry out the proposed business activities; and

''(III) the financial ability to commence doing business immediately upon the approval of the petition.

''(ii) An extension of the approval period under clause (i) may not be granted until the

1 importing employer submits to the Secretary of
2 Homeland Security—
3 "(I) evidence that the importing em-
4 ployer meets the requirements of this sub-
5 section;
6 "(II) evidence that the beneficiary
7 meets the requirements of section
8 101(a)(15)(L);
9 "(III) a statement summarizing the
10 original petition;
11 "(IV) evidence that the importing em-
12 ployer has substantially complied with the
13 business plan submitted under clause (i);
14 "(V) evidence of the truthfulness of
15 any representations made in connection
16 with the filing of the original petition if re-
17 quested by the Secretary;
18 "(VI) evidence that the importing em-
19 ployer, from the date of petition approval
20 under clause (i), has been doing business
21 at the new office through regular, system-
22 atic, and continuous provision of goods or
23 services;
24 "(VII) a statement of the duties the
25 beneficiary has performed at the new office

during the approval period under clause (i) and the duties the beneficiary will perform at the new office during the extension period approved under this clause;

"(VIII) a statement describing the staffing at the new office, including the number of employees and the types of positions held by such employees;

"(IX) evidence of wages paid to employees if the beneficiary will be employed in a managerial or executive capacity;

"(X) evidence of the financial status of the new office; and

"(XI) any other evidence or data prescribed by the Secretary.

"(iii) A new office employing the beneficiary of an L–1 petition approved under this subparagraph must do business through regular, systematic, and continuous provision of goods or services for the entire period of petition approval.

"(iv) Notwithstanding clause (iii) or subclauses (I) through (VI) of clause (ii), and subject to the maximum period of authorized admission set forth in subpara-

graph (D), the Secretary of Homeland Security may in his discretion approve a subsequently filed petition on behalf of the beneficiary to continue employment at the office described in this subsection for a period beyond the initially granted 12-month period if the importing employer has been doing business at the new office through regular, systematic, and continuous provision of goods or services for the 6 months immediately preceding the date of extension petition filing and demonstrates that the failure to satisfy any of the requirements described in those subclauses was directly caused by extraordinary circumstances, as determined by the Secretary in his discretion.

''(H)(i) The Secretary of Homeland Security may not authorize the spouse of an alien described under section 101(a)(15)(L), who is a dependent of a beneficiary under subparagraph (G), to engage in employment in the United States during the initial 12-month period described in subparagraph (G)(i).

"(ii) A spouse described in clause (i) may be provided employment authorization upon the approval of an extension under subparagraph (G)(ii).

"(I) For purposes of determining the eligibility of an alien for classification under section 101(a)(15)(L) of this Act, the Secretary of Homeland Security shall establish procedures with the Department of State to verify a company or office's existence in the United States and abroad."

SEC. 425. MEDICAL SERVICES IN UNDERSERVED AREAS.

(a) PERMANENT AUTHORIZATION OF THE CONRAD PROGRAM.—

(1) IN GENERAL.—Section 220(c) of the Immigration and Nationality Technical Corrections Act of 1994 (8 U.S.C. 1182 note) (as amended by section 1(a) of Public Law 108–441 and section 2 of Public Law 109–477) is amended by striking "and before June 1, 2008.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if enacted on June 1, 2007.

(b) PILOT PROGRAM REQUIREMENTS.—Section 214(l) of the Immigration and Nationality Act (8 U.S.C. 1184(l)) is amended—

(1) by adding at the end the following:

"(4)(A) Notwithstanding paragraph (1)(B), the Secretary of Homeland Security may grant up to a total of 50 waivers for a State under section 212(e) in a fiscal year if, after the first 30 such waivers for the State are granted in that fiscal year—

"(i) an interested State agency requests a waiver; and

"(ii) the requirements under subparagraph (B) are met.

"(B) The requirements under this subparagraph are met if—

"(i) fewer than 20 percent of the physician vacancies in the health professional shortage areas of the State, as designated by the Secretary of Health and Human Services, were filled in the most recent fiscal year;

"(ii) all of the waivers allotted for the State under paragraph (1)(B) were used in the most recent fiscal year; and

"(iii) all underserved highly rural States—

"(I) used the minimum guaranteed number of waivers under section 212(e) in health professional shortage areas in the most recent fiscal year; or

"(II) all agreed to waive the right to receive the minimum guaranteed number of such waivers.

"(C) In this paragraph:

"(i) The term 'health professional shortage area' has the meaning given the term in section 332(a)(1) of the Public Health Service Act (42 U.S.C. 254e(a)(1));

"(ii) The term 'underserved highly rural State' means a State with at least 30 counties with a population density of not more than 10 people per square mile, based on the latest available decennial census conducted by the Bureau of Census.

"(iii) The term 'minimum guaranteed number' means—

"(I) for the first fiscal year of the pilot program, 15;

"(II) for each subsequent fiscal year, the sum of—

"(aa) the minimum guaranteed number for the second fiscal year; and

"(bb) 3, if any State received additional waivers under this paragraph in the first fiscal year.

"(III) for the third fiscal year, the sum of—

"(aa) the minimum guaranteed number for the second fiscal year; and

"(bb) 3, if any State received additional waivers under this paragraph in the first fiscal year.".

(c) TERMINATION DATE.—The authority provided by the amendments made by subsection (b) shall expire on September 30, 2011.

(d) Section 212(j) of the Immigration and Nationality Act (8 U.S.C. 1182(j)) is amended by—

(1) revising the preamble of paragraph (2) to read "An alien who has graduated from a medical school and who is coming to the United States to practice primary care or specialty medicine as a member of the medical profession may not be admitted as a nonimmigrant under section 1101(a)(15)(H)(i)(b) of this title unless—"

(2) redesignating paragraph (2) as paragraph (3);

(3) adding new paragraph (2) to read—

''(2)(A) An alien who is coming to the United States to receive graduate medical education or training (or seeks to acquire status as a nonimmigrant under section 1101(a)(15)(J) to receive graduate medical education or training) may not change status under section 1258 to a nonimmigrant under section 1101(a)(15)(H)(i)(b) until the alien graduates from the medical education or training program and meets the requirements of paragraph (3)(B).

''(B) Any occupation that an alien described in paragraph (2)(A) may be employed in while receiving graduate medical education or training shall not be deemed a ''specialty occupation'' within the meaning of section 1184(i) for purposes of section 1101(a)(15)(H)(i)(b).''

(e) Section 101(a)(15)(J) is amended by adding ''(except an alien coming to the United States to receive graduate medical education or training)'' after ''abandoning''.

(f) Section 214(h) of the Immigration and Nationality Act (8 U.S.C. 1184(h)) is amended by inserting ''(E), (J) who is coming to the United States to receive

graduate medical education or training,'' after ''subparagraph'' where that term first appears.

(g) MEDICAL RESIDENTS INELIGIBLE FOR H–1B NONIMMIGRANT STATUS.—Section 214(i) of the Immigration and Nationality Act (8 U.S.C. 1184(i)) is amended to read—

''(1) Except as provided in paragraph (3), for purposes of section 101(a)(15)(H)(i)(b), section 101(a)(15)(E)(iii), and paragraph (2), the term ''specialty occupation''—

''(A) means an occupation that requires—

''(i) theoretical and practical application of a body of highly specialized knowledge, and

''(ii) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States; and

''(B) shall not include graduate medical education or training.''

(h) Section 214(l) of the Immigration and Nationality Act (8 U.S.C. 1184(l)) is amended—

(1) in paragraph (1)(C)(i) by striking ''Attorney General'' and inserting ''Secretary of Homeland Security'';

(2) in paragraph (1)(C) by striking subclause (ii) and inserting the following:

"(ii) the alien has accepted employment with the health facility or health care organization and agrees to continue to work for a total of not less than 3 years; and

"(iii) the alien begins employment within 90 days of:

"(I) receiving such waiver; or

"(II) receiving nonimmigrant status or employment authorization pursuant to an application filed under paragraph (2)(A) (if such application is filed with 90 days of eligibility of completing graduate medical education or training under a program approved pursuant to section 212(j)(1));

"whichever is latest."

(3) by striking at the end ".", inserting "; or" and adding new paragraph (1)(E) to read—

"(E) in the case of a request by an interested State agency, the alien agrees to practice primary care or specialty medicine care, for a

continuous period of 2 years, only at a federally qualified health facility, health care organization or center, or in a rural health clinic that is located in:

"(i) a geographic area which is designated by the Secretary of Health and Human Services as having a shortage of health care professionals; and

"(ii) a State that utilized less than 10 of the total allotted waivers for the State under paragraph (1)(B) (excluding the number of waivers available pursuant to paragraph (1)(D)(ii)) in the most recent fiscal year."

(4) in paragraph (2), by amending subparagraph (A) to read as follows:

"(A) Notwithstanding section 248(a)(2), upon submission of a request to an interested Federal agency or an interested State agency for recommendation of a waiver under this section by a physician who is maintaining valid nonimmigrant status under section 101(a)(15)(J), the Secretary of Homeland Security may accept as properly filed an application to change the status of such physician to

[any applicable nonimmigrant status]. Upon favorable recommendation by the Secretary of State of such request, and approval by the Secretary of Homeland Security the waiver under this section, the Secretary of Homeland Security may change the status of such physician to that of [an appropriate nonimmigrant status.]''

(5) in paragraph (3)(A) amended by inserting ''requirement of or'' before ''agreement entered into''.

(i) PERIOD OF AUTHORIZED ADMISSION FOR PHYSICIANS ON H–1B VISAS WHO WORK IN MEDICALLY UNDERSERVED COMMUNITIES.—Section 214(g)(5), as renumbered by Section 405 and amended by Section 719(c), is further amended by adding at the end the following new subparagraph:

''(D) The period of authorized admission under subparagraph (A) shall not apply to an alien physician who fulfills the requirements of section 214(l)(1)(E) and who has practiced primary or specialty care in a medically underserved community for a continuous period of 5 years.''

SEC. 426. B–1 VISITOR VISA GUIDELINES AND DATA TRACKING SYSTEMS.

(a) GUIDELINES.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act—

(A) the Secretary of State shall review existing regulations or internal guidelines relating to the decisionmaking process with respect to the issuance of B–1 visas by consular officers and determine whether modifications are necessary to ensure that such officers make decisions with respect to the issuance of B–1 visas as consistently as possible while ensuring security and maintaining officer discretion over such issuance determinations; and

(B) the Secretary of Homeland Security shall review existing regulations or internal guidelines relating to the decisionmaking process of Customs and Border Protection officers concerning whether travelers holding a B–1 visitor visa are admissible to the United States and the appropriate length of stay and shall determine whether modifications are necessary to ensure that such officers make decisions with respect to travelers admissibility and length of stay as consistently as possible while ensuring

security and maintaining officer discretion over such determinations.

(2) MODIFICATION.—If after conducting the reviews under paragraph (1), the Secretary of State or the Secretary of Homeland Security determine that modifications to existing regulations or internal guidelines, or the establishment of new regulations or guidelines, are necessary, the relevant Secretary shall make such modifications during the 6-month period referred to in such paragraph.

(3) CONSULTATIONS.—In making determinations and preparing guidelines under paragraph (1), the Secretary of State and the Secretary of Homeland Security shall consult with appropriate stakeholders, including consular officials and immigration inspectors.

(b) DATA TRACKING SYSTEMS.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act—

(A) the Secretary of State shall develop and implement a system to track aggregate data relating to the issuance of B–1 visitor visas in order to ensure the consistent application of the guidelines established under subsection (a)(1)(A); and

(B) the Secretary of Homeland Security shall develop and implement a system to track aggregate data relating to admissibility decision, and length of stays under, B–1 visitor visas in order to ensure the consistent application of the guidelines established under subsection (a)(1)(B).

(2) LIMITATION.—The systems implemented under paragraph (1) shall not store or track personally identifiable information, except that this paragraph shall not be construed to limit the application of any other system that is being implemented by the Department of State or the Department of Homeland Security to track travelers or travel to the United States.

(c) PUBLIC EDUCATION.—The Secretary of State and the Secretary of Homeland Security shall carry out activities to provide guidance and education to the public and to visa applicants concerning the nature, purposes, and availability of the B–1 visa for business travelers.

(d) REPORT.—Not later than 6 and 18 months after the date of enactment of this Act, the Secretary of State and the Secretary of Homeland Security shall submit to Congress, reports concerning the status of the implementation of this section.

SEC. 427. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this title, and the amendments made by this title.

TITLE V—IMMIGRATION BENEFITS

SEC. 501. REBALANCING OF IMMIGRANT VISA ALLOCATION.

(a) FAMILY-SPONSORED IMMIGRANTS.—Section 201(c) of the Immigration and Nationality Act (8 U.S.C. 1151(c)) is amended to read as follows:

"(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—

"(1) For each fiscal year until visas needed for petitions described in section 503(f)(2) of the [Insert title of Act] become available, the worldwide level of family-sponsored immigrants under this subsection is 567,000 for petitions for classifications under 203(a), plus any immigrant visas not required for the class specified in (d).

"(2) Except as provided in paragraph (1), the worldwide level of family-sponsored immigrants under this subsection for a fiscal year is 127,000, plus any immigrant visas not required for the class specified in (d).".

(b) MERIT-BASED IMMIGRANTS.—Section 201(d) of the Immigration and Nationality Act (8 U.S.C. 1151(d)) is amended to read as follows:

"(d) WORLDWIDE LEVEL OF MERIT-BASED, SPECIAL, AND EMPLOYMENT CREATION IMMIGRANTS.—

"(1) IN GENERAL.—The worldwide level of merit-based, special, and employment creation immigrants under this subsection for a fiscal year—

"(A) for the first five fiscal years shall be equal to the number of immigrant visas made available to aliens seeking immigrant visas under section 203(b) of this Act for fiscal year 2005, plus any immigrant visas not required for the class specified in (c), of which:

"(i) at least 10,000 will be for exceptional aliens in nonimmigrant status under section 101(a)(15)(Y); and

"(ii) 90,000 will be for aliens who were the beneficiaries of an application that was pending or approved at the time of the effective date of this section, per Section 502(d) of the [Insert title of Act].

"(B) stating in the sixth fiscal year, shall be equal to 140,000 for each fiscal year until aliens described in section 101(a)(15)(Z) of this

Act first become eligible for an immigrant visa, plus any immigrant visas not required for the class specified in (c), of which:

"(i) at least 10,000 will be for exceptional aliens in nonimmigrant status under section 101(a)(15)(Y); and

"(ii) no more than 90,000 will be for aliens who were the beneficiaries of an application that was pending or approved at the time of the effective date of this section, per Section 502(d) of the [Insert title of Act].

"(C)(i) 380,000, for each fiscal year starting in the first fiscal year in which aliens described in section 101(a)(15)(Z) of this Act become eligible for an immigrant visa, of which at least 10,000 will be for exceptional aliens in nonimmigrant status under section 101(a)(15)(Y), plus any immigrant visas not required for the class specified in (c); plus

"(ii) the temporary supplemental allocation of additional visas described in paragraph (2) for nonimmigrants described in section 101(a)(15)(Z).

"(2) TEMPORARY SUPPLEMENTAL ALLOCATION.—The temporary supplemental allocation of visas described in this paragraph is as follows:

"(A) for the first five fiscal years in which aliens described in section 101(a)(15)(Z) of this Act are eligible for an immigrant visa, the number calculated pursuant to section 503(f)(2) of the [Insert title of Act];

"(B) in the sixth fiscal year in which aliens described in section 101(a)(15)(Z) of this Act are eligible for an immigrant visa, the number calculated pursuant to section 503(f)(3) of [Insert title of Act]; and

"(C) starting in the seventh fiscal year in which aliens described in section 101(a)(15)(Z) of this Act are eligible for an immigrant visa, the number equal to the number of Z nonimmigrants who became aliens admitted for permanent residence based on the merit-based evaluation system in the prior fiscal year until no further Z nonimmigrants adjust status;

"(3) TERMINATION OF TEMPORARY SUPPLEMENTAL ALLOCATION.—The temporary supplemental allocation of visas shall terminate when the

number of visas calculated pursuant to paragraph (2)(C) is zero.

"(4) LIMITATION.—The temporary supplemental visas in paragraph (2) shall not be awarded to any individual other than an individual described in section 101(a)(15)(Z).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the fiscal year subsequent to the fiscal year of enactment.

SEC. 502. INCREASING AMERICAN COMPETITIVENESS THROUGH A MERIT-BASED EVALUATION SYSTEM FOR IMMIGRANTS.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the United States benefits from a work force that has diverse skills, experience and training.

(b) CREATION OF MERIT-BASED EVALUATION SYSTEM FOR IMMIGRANTS AND REALLOCATION OF VISAS.—Section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)) is amended by—

(1) striking paragraphs (1), (2), and (3) and inserting the following:

"(1) MERIT-BASED IMMIGRANTS.—Visas shall first be made available in a number not to exceed 95 percent of such worldwide level, plus any visas not required for the classes in paragraphs (2) and (3),

1 to qualified immigrants selected through a merit-
2 based evaluation system.
3 "(A) The merit-based evaluation system
4 shall initially consist of the following criteria
5 and weights:

Category	Description	Max pts
Employment		**47**
Occupation	U.S. employment in Specialty Occupation (DoL definition)—**20 pts**	
	U.S. employment in High Demand Occupation (BLS largest 10-yr job growth, top 30)	
National interest/critical infrastructure—	**16 pts**	
	U.S. employment in STEM or health occupation, current for at least 1 year—**8 pts** (extraordinary or ordinary)	
Employer endorsement	A U.S. employer willing to pay 50% of LPR application fee either 1) offers a job, or 2) attests for a current employee—**6 pts**	
Experience	Years of work for U.S. firm—**2 pts/year (max 10 pts)**	
Age of worker	Worker's age: 25–39—**3 pts**	
Education	M.D., M.B.A., Graduate degree, etc.—**20 pts**	**28**
(terminal degree)	Bachelor's degree—**16 pts**	
	Associate's degree—**10 pts**	
	High School diploma or GED—**6 pts**	
	Completed certified Perkins Vocational Education program—**5 pts**	
	Completed DoL Registered Apprenticeship—**8 pts**	
	STEM, assoc & above—**8 pts**	
English & civics	Native speaker of English or TOEFL score of 75 or higher—**15 pts**	**15**

Category	Description	Max pts
	TOEFL score of 60–74—**10 pts** Pass USCIS Citizenship Tests in English & Civics—**6 pts**	
Extended family (Applied if threshold of 55 in above categories.)		
	Adult (21 or older) son or daughter of USC—**8 pts** Adult (21 or older) son or daughter of LPR—**6 pts** Sibling of USC or LPR—**4 pts** If had applied for a family visa in any of the above categories after May 1, 2005—**2 pts**	**10**
		100
Supplemental schedule for Zs		
Agriculture National Interest	Worked in agriculture for 3 years, 150 days per year—**21 pts** Worked in agriculture for 4 years (150 days for 3 years, 100 days for 1 year)—**23 pts** Worked in agriculture for 5 years, 100 days per year—**25 pts**	**25**
U.S. employment exp.	Year of lawful employment—**1 pt**	**15**
Home ownership	Own place of residence—**1 pt/year owned**	**5**
Medical Insurance	Current medical insurance for entire family	**5**

1 "(B) The Secretary of Homeland Security,
2 after consultation with the Secretaries of Com-
3 merce and Labor, shall establish procedures to
4 adjudicate petitions filed pursuant to the merit-
5 based evaluation system. The Secretary may es-

tablish a time period in a fiscal year in which such petitions must be submitted.

"(C) The Standing Commission on Immigration and Labor Markets established pursuant to Section 407 of the [Insert title of Act] shall submit recommendations to Congress concerning the establishment of procedures for modifying the selection criteria and relative weights accorded such criteria in order to ensure that the merit-based evaluation system corresponds to the current needs of the United States economy and the national interest.

"(D) No modifications to the selection criteria and relative weights accorded such criteria that are established by the [Insert title of Act] should take effect earlier than the sixth fiscal year in which aliens described in section 101(a)(15)(Z) of this Act are eligible for an immigrant visa.

"(E) The application of the selection criteria to any particular visa petition or application pursuant to the merit-based evaluation system shall be within the Secretary's sole and unreviewable discretion.

"(F) Any petition filed pursuant to this paragraph that has not been found by the Secretary to have qualified in the merit-based evaluation system shall be deemed denied on the first day of the third fiscal year following the date of such application. Such denial shall not preclude the petitioner from filing a successive petition pursuant to this paragraph. Notwithstanding this paragraph, the Secretary may deny a petition when denial is appropriate under other provisions of law, including but not limited to sections 204(c).".

(2) redesignating paragraph (4) as paragraph (2), by striking "7.1 percent" and inserting "4,200", and striking "5,000" and inserting "2,500";

(3) redesignating paragraph (5) as paragraph (3), by striking "7.1 percent" and inserting "2,800", and striking "3,000" and inserting "1,500";

(4) redesignating paragraph (6) as paragraph (4).

(c) PROCEDURE FOR GRANTING IMMIGRANT STATUS.—Section 204(a)(1) of the Immigration and Nation-

1 ality Act (8 U.S.C. 1154(a)(1)) is amended by striking
2 subparagraphs (E) and (F).
3 (d) EFFECTIVE DATE.—
4 (1) IN GENERAL.—Subject to paragraph (2),
5 the amendments made by this section shall take ef-
6 fect on the first day of the fiscal year subsequent to
7 the fiscal year of enactment, unless such date is less
8 than 270 days after the date of enactment, in which
9 case the amendments shall take effect on the first
10 day of the following fiscal year.
11 (2) PENDING AND APPROVED PETITIONS AND
12 APPLICATIONS.—Petitions for an employment-based
13 visa filed for classification under section 203(b)(1),
14 (2), or (3) of the Immigration and Nationality Act
15 (as such provisions existed prior to the enactment of
16 this section) that were filed prior to the date of the
17 introduction of the [Insert title of Act] and were
18 pending or approved at the time of the effective date
19 of this section, shall be treated as if such provision
20 remained effective and an approved petition may
21 serve as the basis for issuance of an immigrant visa.
22 Aliens with applications for a labor certification pur-
23 suant to section 212(a)(5)(A) of the Immigration
24 and Nationality Act shall preserve the immigrant

visa priority date accorded by the date of filing of such labor certification application.

(e) CONFORMING AMENDMENTS.—

(1) Section 201 of the Immigration and Nationality Act (8 U.S.C. 1151) is amended by striking ''employment-based'' each place it appears and inserting ''merit-based''.

(2) Section 202 of the Immigration and Nationality Act (8 U.S.C. 1152) is amended by striking ''employment-based'' each place it appears and inserting ''merit-based''.

(3) Section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)) is amended by:

(A) striking the heading and first sentence and inserting the following:

''(b) Preference allocation for merit-based, special and employment creation immigrants. Aliens subject to the worldwide level specified in section 201(d) for merit-based, special and employment creation immigrants in a fiscal year shall be allotted visas as follows:'';

(B) striking ''employment based'' and inserting ''merit-based'' and striking ''paragraphs (1), (2), and (3)'' and inserting ''paragraph (1)'' in subparagraph (6)(B)(i); and

(C) striking ''employment based'' and inserting ''merit-based'' and striking ''each of paragraphs (1) through (3)'' and inserting ''paragraph (1)'' in subparagraph (6)(B)(iii).

(4) Section 212(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(4)) is amended by striking subparagraph (D).

(5) Section 213A(f) of the Immigration and Nationality Act (8 U.S.C. 1183a(f)) is amended by:

(A) striking subparagraph (4);

(B) striking subparagraph (5) and inserting the following:

''(4) NON-PETITIONING CASES.—Such term also includes an individual who does not meet the requirement of paragraph (1)(D) but who is a spouse, parent, mother in law, father in law, sibling, child (if at least 18 years of age), son, daughter, son in law, daughter in law, sister in law, brother in law, grandparent, or grandchild of a sponsored alien or a legal guardian of a sponsored alien, meets the requirements of paragraph (1) (other than subparagraph (D)), and executes an affidavit of support with respect to such alien in a case in which—

"(A) the individual petitioning under section 204 for the classification of such alien died after the approval of such petition; and

"(B) the Secretary of Homeland Security has determined for humanitarian reasons that revocation of such petition under section 205 would be inappropriate.";

(C) redesignating subparagraph (6) as subparagraph (5); and

(D) striking "(6)" and inserting "(5)" in subparagraph (1)(E).

(6) Section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) is amended by striking paragraph (5).

(7) Section 218(g)(3) of the Immigration and Nationality Act (8 U.S.C. 1188) is amended by striking paragraph (3) and redesignating paragraph (4) as paragraph (3).

(8)(A) Section 207(c)(3) of the Immigration and Nationality Act (8 U.S.C. 1157(c)(3)) is amended by striking "(5)," in the first sentence.

(B) Section 209(c) of the Immigration and Nationality Act (8 U.S.C. 1159(c)) is amended by striking "(5)," in the second sentence.

(C) Section 210(c)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1160(c)(2)(A)) is amended by striking ''paragraphs (5) and,'' and inserting ''paragraph''.

(D) Section 237(a)(1)(H)(i)(II) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(1)(H)(i)(II)) is amended by striking ''paragraphs (5) and,'' and inserting ''paragraph''.

(E) Section 245(h)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1255(h)(2)(A)) is amended by striking ''(5)(a),''.

(F) Section 245A(d)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1255a(d)(2)(A)) is amended by striking ''paragraphs (5) and,'' and inserting ''paragraph''.

(G) Section 286(s)(6) of the Immigration and Nationality Act (8 U.S.C. 1356(s)(6) is amended by striking ''and section 212(a)(5)(A)''.

(f) REFERENCES TO SECRETARY OF HOMELAND SECURITY.—

(1) Section 203 of the Immigration and Nationality Act (8 U.S.C. 1153) is amended by striking ''Attorney General'' each place it appears and inserting ''Secretary of Homeland Security''.

(2) Section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) is amended by striking ''Attorney General'' each place it appears, except for section 204(f)(4)(B), and inserting ''Secretary of Homeland Security''.

SEC. 503. REDUCING CHAIN MIGRATION AND PERMITTING PETITIONS BY NATIONALS.

(a) CAP EXEMPT CATEGORIES.—Paragraph (1) of section 201(b) of the Immigration and Nationality Act (8 U.S.C. 1151(b)) is amended by adding the following two new subparagraphs at the end:

''(F) Aliens admitted under section 211(a) on the basis of a prior issuance of a visa under section 203(a) to their accompanying parent who is an immediate relative.

''(G) Aliens born to an alien lawfully admitted for permanent residence during a temporary visit abroad.''.

(b) IMMEDIATE RELATIVES.—

(1) IMMEDIATE RELATIVE REDEFINED.—Paragraph (2) of section 201(b) of the Immigration and Nationality Act (8 U.S.C. 1151(b)) is amended to read as follows:

''(2) IMMEDIATE RELATIVES.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'immediate relative' means a child or spouse of a citizen of the United States (and each child of such child or spouse who is accompanying or following to join the alien).

"(B) SPOUSE OF A DECEASED U.S. CITIZEN.—An alien who was the spouse of a citizen of the United States and not legally separated from the citizen at the time of the citizen's death, who was married to the citizen for not less than 2 years at the time of the citizen's death (or, if married for less than 2 years at the time of the citizen's death, who proves by a preponderance of the evidence that the marriage was entered into in good faith and not solely for the purpose of obtaining an immigration benefit), and each child of such alien, may be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen's death if the spouse files a petition under section 204(a)(1)(A)(ii) before the earlier of—

"(i) 2 years after such date; or

"(ii) the date on which the spouse remarries.

"(C) BATTERED SPOUSE OR CHILD.—An alien who has filed a petition under clause (iii) or (iv) of section 204(a)(1)(A) remains an immediate relative if the United States citizen spouse or parent loses United States citizenship on account of the abuse.".

(2) PETITION.—Section 204(a)(1)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)(ii)) is amended by striking "in the second sentence of section 201(b)(2)(A)(i)" and inserting "in section 201(b)(2)(B)".

(c) PREFERENCE CATEGORIES.—Section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)) is amended:

(1) By striking paragraph (1) and inserting the following:

"(1) Parents of a citizen of the United States if the citizen is at least 21 years of age. Qualified immigrants who are the parents of a citizen of the United States where the citizen is at least 21 years of age shall be allocated visas in a number not to exceed 40,000, plus any visas not required for the classes specified in paragraph (3), or".

(2) By striking paragraph (2) and inserting the following:

"(2) Spouses or children of an alien lawfully admitted for permanent residence or a national. Qualified immigrants who are the spouses or children of an alien lawfully admitted for permanent residence or a noncitizen national of the United States as defined in section 101(a)(22)(B) of this Act who is resident in the United States shall be allocated visas in a number not to exceed 87,000, plus any visas not required for the class specified in paragraph (1)"

(3) By striking paragraph (3) and inserting the following:

"(3) FAMILY-BASED VISA PETITIONS FILED BEFORE JANUARY 1, 2007, FOR WHICH VISAS WILL BE AVAILABLE BEFORE JANUARY 1, 2027.—

"(A) IN GENERAL.—The allocation of immigrant visas described in paragraph (4) shall apply to an alien for whom—

"(i) a family-based visa petition was filed on or before January 1, 2007; and

"(ii) as of January 1, 2007, the Secretary of Homeland Security calculates under subparagraph (B) that a visa can

reasonably be expected to become available before January 1, 2027.

"(B) REASONABLE EXPECTATION OF AVAILABLITY OF VISAS.—In calculating the date on which a family-based visa can reasonably be expected to become available for an alien described in subparagraph (A), the Secretary of Homeland Security shall take into account—

"(i) the number of visas allocated annually for the family preference class under which the alien's petition was filed;

"(ii) the effect of any per country ceilings applicable to the alien's petition;

"(iii) the number of petitions filed before the alien's petition was filed that were filed under the same family preference class; and

"(iv) the rate at which visas made available in the family preference class under which the alien's petition was filed were unclaimed in previous years.

"(4) ALLOCATION OF FAMILY-BASED IMMIGRANT VISAS.—Immigrant visas totaling 440,000 shall be allotted visas as follows:

"(A) Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas totaling 70,400 immigrant visas, plus any visas not required for the class specified in (D).

"(B) Qualified immigrants who are the unmarried sons or unmarried daughters of an alien lawfully admitted for permanent residence, shall be allocated visas totaling 110,000 immigrant visas, plus any visas not required for the class specified in (A).

"(C) Qualified immigrants who are the married sons or married daughters of citizens of the United States shall be allocated visas totaling 70,400 immigrant visas, plus any visas not required for the class specified in (A) and (B).

"(D) Qualified immigrants who are the brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age, shall be allocated visas totaling 189,200 immigrant visas, plus any visas not required for the class specified in (A), (B), and (C).".

(4) By striking paragraph (4).

(d) PETITION.—Section 204(a)(1)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)(i)) is amended by striking ", (3), or (4)" after "paragraph (1)".

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the first day of the fiscal year subsequent to the fiscal year of enactment.

(2) PENDING AND APPROVED PETITIONS.—Petitions for a family-sponsored visa filed for classification under section 203(a)(1), (2)(B), (3), or (4) of the Immigration and Nationality Act (as such provisions existed prior to the enactment of this section) which were filed before May 1, 2005, regardless of whether the petitions have been approved before May 1, 2005, shall be treated as if such provision remained in effect, and an approved petition may be the basis of an immigrant visa pursuant to section 203(a)(3).

(f) DETERMINATIONS OF NUMBER OF INTENDING LAWFUL PERMANENT RESIDENTS.—

(1) SURVEY OF PENDING AND APPROVED FAMILY-BASED PETITIONS.—The Secretary of Homeland Security may require a submission from petitioners

with approved or pending family-based petitions filed for classification under section 203(a)(1), (2)(B), (3), or (4) of the Immigration and Nationality Act (as such provisions existed prior to the enactment of this section) filed on or before May 1, 2005 to determine that the petitioner and the beneficiary have a continuing commitment to the petition for the alien relative under the classification. In the event the Secretary requires a submission pursuant to this section, the Secretary shall take reasonable steps to provide notice of such a requirement. In the event that the petitioner or beneficiary is no longer committed to the beneficiary obtaining an immigrant visa under this classification or if the petitioner does not respond to the request for a submission, the Secretary of Homeland Security may deny the petition if the petition has not been adjudicated or revoke the petition without additional notice pursuant to section 205 if it has been approved.

(2) FIRST SURVEY OF Z NONIMMIGRANTS INTENDING TO ADJUST STATUS.—The Secretary shall establish procedures by which nonimmigrants described in section 101(a)(15)(Z) who seek to become aliens lawfully admitted for permanent residence under the merit-based immigrant system shall estab-

lish their eligibility, pay any applicable fees and penalties, and file their petitions. No later than the conclusion of the eighth fiscal year after the effective date of section 218D of the Immigration and Nationality Act, the Secretary will determine the total number of qualified applicants who have followed the procedures set forth in this section. The number calculated pursuant to this paragraph shall be 20 percent of the total number of qualified applicants. The Secretary will calculate the number of visas needed per year.

(3) SECOND SURVEY OF Z NONIMMIGRANTS INTENDING TO ADJUST STATUS.—No later than the conclusion of the thirteenth fiscal year after the effective date of section 218D of the Immigration and Nationality Act, the Secretary will determine the total number of qualified applicants not described in paragraph (2) who have followed the procedures set forth in this section. The number calculated pursuant to this paragraph shall be the lesser of:

(A) the number of qualified applicants, as determined by the Secretary pursuant to this paragraph; and

(B) the number calculated pursuant to paragraph (2).

(g) CONFORMING AMENDMENTS.—

(1) Section 212(d)(12)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(12)(B)) is amended by striking ''201(b)(2)(A)'' and inserting ''201(b)(2)'';

(2) Section 101(a)(15)(K) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(K)) is amended by striking ''201(b)(2)(A)(i)'' and inserting ''201(b)(2)'';

(3) Section 204(a) of the Immigration and Nationality Act (8 U.S.C. 1154(a)) is amended by striking ''201(b)(2)(A)(i)'' each place it appears and inserting ''201(b)(2)'';

(4) Section 214(r)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1184(r)(3)(A)) is amended by striking ''201(b)(2)(A)(i)'' and inserting ''201(b)(2)''.

SEC. 504. CREATION OF PROCESS FOR IMMIGRATION OF FAMILY MEMBERS IN HARDSHIP CASES.

(a) IN GENERAL.—The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by adding a new section 203A reading:

''SEC. 203A. IMMIGRANT VISAS FOR HARDSHIP CASES.

''(a) IN GENERAL.—Immigrant visas under this section may not exceed 5,000 per fiscal year.

"(b) DETERMINATION OF ELIGIBILITY.—The Secretary of Homeland Security may grant an immigrant visa to an applicant who satisfies the following qualifications:

"(1) FAMILY RELATIONSHIP.—Visas under this section will be given to aliens who are:

"(A) the unmarried sons or daughters of citizens of the United States;

"(B) the unmarried sons or the unmarried daughters of aliens lawfully admitted for permanent residence;

"(C) the married sons or married daughters of citizens of the United States; or

"(D) the brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age,

"(2) NECESSARY HARDSHIP.—The petitioner must demonstrate to the satisfaction of the Secretary of Homeland Security that the lack of an immigrant visa under this clause would result in extreme hardship to the petitioner or the beneficiary that cannot be relieved by temporary visits as a nonimmigrant.

"(3) INELIGIBILITY TO IMMIGRATE THROUGH OTHER MEANS.—The alien described in clause (1) must be ineligible to immigrate or adjust status

through other means, including but not limited to obtaining an immigrant visa filed for classification under section 201(b)(2)(A) or section 203(a) or (b) of this Act, and obtaining cancellation of removal under section 240A(b) of this Act. A determination under this section that an alien is eligible to immigrate through other means does not foreclose or restrict any later determination on the question of eligibility by the Secretary of Homeland Security or the Attorney General.

''(c) PROCESSING OF APPLICATIONS.—

''(1) An alien selected for an immigrant visa pursuant to this section shall remain eligible to receive such visa only if the alien files an application for an immigrant visa or an application for adjustment of status within the fiscal year in which the visa becomes available, or at such reasonable time as the Secretary may specify after the end of the fiscal year for petitions approved in the last quarter of the fiscal year.

''(2) All petitions for an immigrant visa under this section shall automatically terminate if not granted within the fiscal year in which they were filed. The Secretary may in his discretion establish such reasonable application period or other proce-

dures for filing petitions as he may deem necessary in order to ensure their orderly processing within the fiscal year of filing.

"(3) The secretary may reserve up to 2,500 of the immigrant visas under this section for approval in the period between March 31 and September 30 of a fiscal year.

"(d) Decisions whether an alien qualifies for an immigrant visa under this section are in the unreviewable discretion of the Secretary.".

SEC. 505. ELIMINATION OF DIVERSITY VISA PROGRAM.

(a) Section 201 of the Immigration and Nationality Act (8 U.S.C. 1151) is amended—

(1) in subsection (a)—

(A) by inserting "and" at the end of paragraph (1);

(B) by striking "; and" at the end of paragraph (2) and inserting a period; and

(C) by striking paragraph (3); and

(2) by striking subsection (e).

(b) Section 203 of the Immigration and Nationality Act (8 U.S.C. 1153) is amended—

(1) by striking subsection (c);

(2) in subsection (d), by striking "(a), (b), or (c)," and inserting "(a) or (b),";

(3) in subsection (e), by striking paragraph (2) and redesignating paragraph (3) as paragraph (2);

(4) in subsection (f), by striking ''(a), (b), or (c)'' and inserting ''(a) or (b)''; and

(5) in subsection (g), by striking ''(a), (b), and (c)'' and inserting ''(a) and (b)''.

(c) Section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) is amended—

(1) by striking subsection (a)(1)(I);

(2) by redesignating subparagraphs (J), (K), and (L) of subsection (a)(1) as subparagraphs (I), (J), and (K), respectively; and

(3) in subsection (e), by striking ''(a), (b), or (c)'' and inserting ''(a) or (b)''.

(d) REPEAL OF TEMPORARY REDUCTION IN VISAS FOR OTHER WORKERS.—Section 203(e) of the Nicaraguan Adjustment and Central American Relief Act, as amended (Public Law 105–100; 8 U.S.C. 1153 note), is repealed.

(e) EFFECTIVE DATE.—

(1) The amendments made by this section shall take effect on October 1, 2008;

(2) No alien may receive lawful permanent resident status based on the diversity visa program on or after the effective date of this section.

(g) CONFORMING AMENDMENTS.—Section 203 of the Immigration and Nationality Act (8 U.S.C. 1153(a)) is amended by redesignating paragraphs (d), (e), (f), (g), and (h) as paragraphs (c), (d), (e), (f), and (g), respectively.

SEC. 506. FAMILY VISITOR VISAS.

(a) Section 101(a)(15)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(B)) is amended to read as follows:

> ''(B) an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he or she has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure. The requirement that the alien have a residence in a foreign country which the alien has no intention of abandoning shall not apply to an alien described in section 214(s) who is seeking to enter as a temporary visitor for pleasure;''.

(b) Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding at the end the following new subsection:

"(s) PARENT VISITOR VISAS.—

"(1) IN GENERAL.—The parent of a United States citizen at least 21 years of age, or the spouse or child of an alien in nonimmigrant status under 101(a)(15)(Y)(i), demonstrating satisfaction of the requirements of this subsection may be granted a nonimmigrant visa under section 101(a)(15)(B) as a temporary visitor for pleasure.

"(2) REQUIREMENTS.—An alien seeking a nonimmigrant visa under this subsection must demonstrate through presentation of such documentation as the Secretary may by regulations prescribe, that—

"(A) the alien's United States citizen son or daughter who is at least 21 years of age or the alien's spouse or parent in nonimmigrant status under 101(a)(15)(Y)(i), is sponsoring the alien's visit to the United States;

"(B) the sponsoring United States citizen, or spouse or parent in nonimmigrant status under 101(a)(15)(Y)(i), has, according to such procedures as the Secretary may by regulations

prescribe, posted on behalf of the alien a bond in the amount of $1,000, which shall be forfeit if the alien overstays the authorized period of admission (except as provided in subparagraph (5)(B)) or otherwise violates the terms and conditions of his or her nonimmigrant status; and

"(C) the alien, the sponsoring United States citizen son or daughter, or the spouse or parent in nonimmigrant status under 101(a)(15)(Y)(i), possesses the ability and financial means to return the alien to his or her country of residence.

"(3) TERMS AND CONDITIONS.—An alien admitted as a visitor for pleasure under the provisions of this subsection—

"(A) may not stay in the United States for an aggregate period in excess of 30 days within any calendar year;

"(B) must, according to such procedures as the Secretary may by regulations prescribe, register with the Secretary upon departure from the United States; and

"(C) may not be issued employment authorization by the Secretary or be employed.

"(4) CERTIFICATION.—

"(A) REPORT.—No later than January 1 of each year, the Secretary of Homeland Security shall submit a written report to Congress estimating the percentage of aliens admitted to the United States during the preceding fiscal year as visitors for pleasure under the terms and conditions of this subsection who have remained in the United States beyond their authorized period of admission (except as provided in subparagraph (5)(B)). When preparing this report, the Secretary shall determine which countries, if any, have a disproportionately high rate of nationals overstaying their period of authorized admission under this subsection.

"(B) TERMINATION OF ELIGIBILITY OF NATIONALS OF CERTAIN COUNTRIES.—Except as provided in subparagraph (C), if the Secretary reports under subparagraph (A) for two consecutive fiscal years that the percentage of aliens overstaying their period of authorized admission exceeds 7 percent, the Secretary may, in his discretion, determine that no more visas under this section may be issued for those countries whose nationals have a disproportion-

ately high rate of aliens overstaying their period of authorized admission under this subsection.

"(C) TERMINATION OF THE PROGRAM.—Notwithstanding subparagraph (B), if the Secretary reports under subparagraph (A) for two consecutive fiscal years that the percentage of aliens overstaying their period of authorized admission under this subsection exceeds 7 percent and the percentage is not significantly affected by countries whose nationals have a disproportionately high rate of aliens overstaying their period of authorized admission, the Secretary may, in his discretion, determine that no more visas may be issued under this subsection as of the date of the second consecutive report described in subparagraph (A) finding an overstay rate in excess of 7 percent.

"(D) EFFECT ON EXISTING VISAS.—In the event the Secretary determines to that no more visas shall be issued under subparagraphs (B) or (C), all visas previously issued under this subsection and still valid on the date that the Secretary determines that no more visas should be issued shall expire on the visa's date of expi-

ration or 12 months after the date of the determination, whichever is soonest.

"(5) PERMANENT BARS FOR OVERSTAYS.—

"(A) IN GENERAL.—Any alien admitted as a visitor for pleasure under the terms and conditions of this subsection who remains in the United States beyond his or her authorized period of admission is permanently barred from any future immigration benefits under the immigration laws, except—

"(i) asylum under section 208(a);

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

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

"(B) EXCEPTION.—Overstay of the authorized period of admission granted to aliens admitted as visitors for pleasure under the terms and conditions of this subsection may be excused in the discretion of the Secretary where it is demonstrated that—

"(i) the period of overstay was due to extraordinary circumstances beyond the control of the applicant, and the Secretary finds the period commensurate with the circumstances; and

"(ii) the alien has not otherwise violated his or her nonimmigrant status.

"(6) BAR ON SPONSOR OF OVERSTAY.—The United States citizen or Y–1 nonimmigrant sponsor of an alien—

"(A) admitted as a visitor for pleasure under the terms and conditions of this subsection, and

"(B) who remains in the United States beyond his or her authorized period of admission,

shall be permanently barred from sponsoring that alien or any other alien for admission as a visitor for pleasure under the terms and conditions of this subsection, and, in the case of a Y–1 nonimmigrant sponsor, shall have his Y–1 nonimmigrant status terminated.

"(7) CONSTRUCTION.—Nothing in this subsection shall be construed, except as provided in this subsection, to make inapplicable the requirements for admissibility and eligibility, as well as the terms

and conditions of admission, as a nonimmigrant under section 101(a)(15)(B).''.

SEC. 507. PREVENTION OF VISA FRAUD.

(a) Section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) is amended by adding a paragraph at the end:

''(h) FRAUD PREVENTION.—The Secretary of Homeland Security may audit and evaluate the information furnished as part of the applications filed under subsection (a) and refer evidence of fraud to appropriate law enforcement agencies based on the audit information.''.

(b) Sections 286(v)(2)(B) and (C) of the Immigration and Nationality Act (8 U.S.C. 1356(v)(2)(B), (C)) are amended to read as follows:

''(B) SECRETARY OF HOMELAND SECURITY.—One-third of the amounts deposited into the Fraud Prevention and Detection Account shall remain available to the Secretary of Homeland Security until expended for programs and activities to prevent and detect immigration benefit fraud, including but not limited to fraud with respect to petitions under paragraph (1) or (2)(A) of section 214(c) to grant an alien nonimmigrant status described in subparagraph (H)(i), (H)(ii), or (L) of section 101(a)(15).

"(C) SECRETARY OF LABOR.—One third of the amounts deposited into the Fraud Prevention and Detection Account shall remain available to the Secretary of Labor until expended for enforcement programs and activities described in section 212(n), and for enforcement programs, and fraud detection and prevention activities not otherwise authorized under 212(n), to be conducted by the Secretary of Labor that focus on industries likely to employ nonimmigrants.".

SEC. 508. INCREASING PER-COUNTRY LIMITS FOR FAMILY-BASED AND EMPLOYMENT-BASED IMMIGRANTS.

(a) Section 202(a) of the Immigration and Nationality Act (8 U.S.C. 1152(a)) is amended by amending paragraph (2) to read as follows:

"(2) PER COUNTRY LEVELS FOR FAMILY-SPONSORED AND MERIT-BASED IMMIGRANTS.—Subject to paragraphs (3), (4), (5), (6), and (7), the total number of immigrant visas made available to natives of any single foreign state or dependent area under subsections (a) and (b) of section 203 in any fiscal year may not exceed 10 percent (in the case of a single foreign state) or 3 percent (in the case of a de-

pendent area) of the total number of such visas made available under such subsections in that fiscal year;''.

(b) Section 202(a) of the Immigration and Nationality Act (8 U.S.C. 1152(a)) is amended by adding at the end the following:

''(6) RULES FOR CERTAIN FAMILY-BASED PETITION FILED BEFORE MAY 1, 2005.—In the event that the per country levels in paragraph (2) prevent the use of otherwise available visas described in section 201(c)(1)(B), then the per country level will not apply for such visas.

''(7) EXCEPTION FOR Z NONIMMIGRANTS.—Paragraph (2) shall not apply to aliens who are nonimmigrants described in section 101(a)(15)(Z) of this Act who are eligible to seek lawful permanent resident status based on a petition for classification under section 203(b)(1) of this Act.''.

SEC. 509. EXEMPTION FROM IMMIGRANT VISA LIMIT.

Section 201(b)(1) (8 U.S.C. 1151(b)(1)) is amended by inserting after subparagraph (G), as added by section 503 of this Act, the following:

''(H) Aliens who are eligible for a visa under paragraph (1) or (3) of section 203(a) and who have a parent who was naturalized

pursuant to section 405 of the Immigration Act of 1990 (8 U.S.C. 1440 note).''.

TITLE VI—NONIMMIGRANTS IN THE UNITED STATES PREVIOUSLY IN UNLAWFUL STATUS

SEC. 601. (a) IN GENERAL.—Notwithstanding any other provision of law, (including section 244(h) of the Immigration and Nationality Act (hereinafter ''the Act'') (8 U.S.C. 1254a(h)), the Secretary may permit an alien, or dependent of such alien, described in this section, to remain lawfully in the United States under the conditions set forth in this title.

(b) DEFINITION OF Z NONIMMIGRANTS.—Section 101(a)(15) of the Act (8 U.S.C. 1101(a)(15)) is amended by inserting at the end the following new subparagraph—

''(Z) subject to Title VI of the [Insert title of Act], an alien who—

''(i) is physically present in the United States, has maintained continuous physical presence in the United States since January 1, 2007, is employed, and seeks to continue performing labor, services or education; or

"(ii) is physically present in the United States, has maintained continuous physical presence in the United States since January 1, 2007, and—

"(I) is the spouse or parent (65 years of age or older) of an alien described in (i); or

"(II) was, within two years of the date on which [Name of this Act] was introduced, the spouse of an alien who was subsequently classified as a Z nonimmigrant under this section, or is eligible for such classification, if—

"(aa) the termination of the relationship with such spouse was connected to domestic violence; and

"(bb) the spouse has been battered or subjected to extreme cruelty by the spouse or parent who is a Z nonimmigrant.

"(iii) is under 18 years of age at the time of application for nonimmigrant status under this subparagraph, is physically present in the United States, has main-

tained continuous physical presence in the United States since January 1, 2007, and was born to or legally adopted by at least one parent who is at the time of application described in (i) or (ii).''

(c) PRESENCE IN THE UNITED STATES.—

(1) IN GENERAL.—The alien shall establish that the alien was not present in lawful status in the United States on January 1, 2007, under any classification described in section 101(a)(15) of the Act (8 U.S.C. 1101(a)(15)) or any other immigration status made available under a treaty or other multinational agreement that has been ratified by the Senate.

(2) CONTINUOUS PRESENCE.—For purposes of this section, an absence from the United States without authorization for a continuous period of 90 days or more than 180 days in the aggregate shall constitute a break in continuous physical presence.

(d) OTHER CRITERIA.—

(1) GROUNDS OF INELIGIBILITY.—An alien is ineligible for Z nonimmigrant status if the Secretary determines that the alien—

(A)(1) is inadmissible to the United States under section 212(a) of the Act (8 U.S.C. 1182(a)), except as provided in paragraph (2);

(2) Nothing in this paragraph shall require the Secretary to commence removal proceedings against an alien.

(B) is subject to the execution of an outstanding administratively final order of removal, deportation, or exclusion;

(C) is described in or is subject to section 241(a)(5) of the Act;

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

(E) is an alien—

(i) for whom there are reasonable grounds for believing that the alien has committed a serious criminal offense as described in section 101(h) of the Act outside the United States before arriving in the United States; or

(ii) for whom there are reasonable grounds for regarding the alien as a danger to the security of the United States; or

(F) has been convicted of—

(i) a felony;

(ii) an aggravated felony as defined at section 101(a)(43) of the Act;

(iii) 3 or more misdemeanors under Federal or State law; or

(iv) a serious criminal offense as described in section 101(h) of the Act;

(G) has entered or attempted to enter the United States illegally on or after January 1, 2007; and

(H) with respect to an applicant for Z–2 or Z–3 nonimmigrant status, a Z–2 nonimmigrant, or a Z–3 nonimmigrant who is under 18 years of age, the alien is ineligible for Z nonimmigrant status if the principal Z–1 nonimmigrant or Z–1 nonimmigrant status applicant is ineligible.

(I) The Secretary may in his discretion waive ineligibility under subparagraph (B) or (C) if the alien has not been physically removed from the United States and if the alien dem-

onstrates that his departure from the United States would result in extreme hardship to the alien or the alien's spouse, parent or child.

(2) GROUNDS OF INADMISSIBILITY.—

(A) IN GENERAL.—In determining an alien's admissibility under paragraph (1)(A)—

(i) paragraphs (6)(A)(i) (with respect to an alien present in the United States without being admitted or paroled before the date of application, but not with respect to an alien who has arrived in the United States on or after January 1, 2007), (6)(B), (6)(C)(i), (6)(C)(ii), (6)(D), (6)(F), (6)(G), (7), (9)(B), (9)(C)(i)(I), and (10)(B) of section 212(a) of the Act shall not apply, but only with respect to conduct occurring or arising before the date of application;

(ii) the Secretary may not waive—

(I) subparagraph (A), (B), (C), (D)(ii), (E), (F), (G), (H), or (I) of section 212(a)(2) of the Act (relating to criminals);

(II) section 212(a)(3) of the Act (relating to security and related grounds);

(III) with respect to an application for Z nonimmigrant status, section 212(a)(6)(C)(i) of the Act;

(IV) paragraph (6)(A)(i) of section 212(a) of the Act (with respect to any entries occurring on or after January 1, 2007);

(V) section 212(a)(9)(C)(i)(II);

(VI) subparagraph (A), (C), or (D) of section 212(a)(10) of the Act (relating to polygamists, child abductors, and unlawful voters);

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

(B) CONSTRUCTION.—Nothing in this paragraph shall be construed as affecting the authority of the Secretary other than under this

paragraph to waive the provisions of section 212(a) of the Act.

(e) ELIGIBILITY REQUIREMENTS.—To be eligible for Z nonimmigrant status an alien shall meet the following and any other applicable requirements set forth in this section:

(1) ELIGIBILITY.—The alien must not fall within a class of aliens ineligible for Z nonimmigrant status listed under subsection (d)(1).

(2) ADMISSIBILITY.—The alien must not be inadmissible as a nonimmigrant to the United States under section 212, except as provided in subsection (d)(2), regardless of whether the alien has previously been admitted to the United States.

(3) PRESENCE.—To be eligible for Z–1 or Z–2 nonimmigrant status, or for nonimmigrant status under section 101(a)(15)(Z)(iii)(I), the alien must—

(A) have been physically present in the United States before January 1, 2007, and have maintained continuous physical presence in the United States since that date;

(B) be physically present in the United States on the date of application for Z nonimmigrant status; and

(C) be on January 1, 2007, and on the date of application for Z nonimmigrant status, not present in lawful status in the United States under any classification described in section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) or any other immigration status made available under a treaty or other multinational agreement that has been ratified by the Senate.

(4) EMPLOYMENT.—An alien seeking Z–1 nonimmigrant status must be employed in the United States on the date of filing of the application for Z–1 nonimmigrant status.

(5) FEES AND PENALTIES.—

(A) PROCESSING FEES.—

(i) An alien making an initial application for Z nonimmigrant status shall be required to pay a processing fee in an amount sufficient to recover the full cost of adjudicating the application, but no more than $1,500 for a single Z nonimmigrant.

(ii) An alien applying for extension of his Z nonimmigrant status shall be required to pay a processing fee in an amount sufficient to cover administrative

and other expenses associated with processing the extension application, but no more than $1,500 for a single Z nonimmigrant.

(B) PENALTIES.—

(i) An alien making an initial application for Z–1 nonimmigrant status shall be required to pay, in addition to the processing fee in subparagraph (A), a penalty of $1,000.

(ii) A Z–1 nonimmigrant making an initial application for Z–1 nonimmigrant status shall be required to pay a $500 penalty for each alien seeking Z–2 or Z–3 nonimmigrant status derivative to the Z–1 applicant.

(iii) An alien who is a Z–2 or Z–3 nonimmigrant and who has not previously been a Z–1 nonimmigrant, and who changes status to that of a Z–1 nonimmigrant, shall in addition to processing fees be required to pay the initial application penalties applicable to Z–1 nonimmigrants.

(C) STATE IMPACT ASSISTANCE FEE.—In addition to any other amounts required to be paid under this subsection, a Z–1 nonimmigrant making an initial application for Z–1 nonimmigrant status shall be required to pay a State impact assistance fee equal to $500.

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

(E) DEPOSIT, ALLOCATION, AND SPENDING OF PENALTIES.—

(i) DEPOSIT OF PENALTIES.—The penalty under subparagraph (B) shall be deposited and remain available as provided by section 286(w).

(ii) DEPOSIT OF STATE IMPACT ASSISTANCE FUNDS.—The funds under subparagraph (C) shall be deposited and remain available as provided by section 286(x).

(6) INTERVIEW.—An applicant for Z nonimmigrant status must appear to be interviewed.

(7) MILITARY SELECTIVE SERVICE.—The alien shall establish that if the alien is within the age pe-

riod required under the Military Selective Service Act (50 U.S.C. App. 451 et seq.) that such alien has registered under that Act.

(f) APPLICATION PROCEDURES.—

(1) IN GENERAL.—The Secretary of Homeland Security shall prescribe by notice in the Federal Register, in accordance with the procedures described in section 610 of the [NAME OF THIS ACT], the procedures for an alien in the United States to apply for Z nonimmigrant status and the evidence required to demonstrate eligibility for such status.

(2) INITIAL RECEIPT OF APPLICATIONS.—The Secretary of Homeland Security, or such other entities as are authorized by the Secretary to accept applications under the procedures established under this subsection, shall accept applications from aliens for Z nonimmigrant status for a period of one year starting the first day of the first month beginning no more than 180 days after the date of enactment of this section. If, during the one-year initial period for the receipt of applications for Z nonimmigrant status, the Secretary of Homeland Security determines that additional time is required to register applicants for Z nonimmigrant status, the Secretary

may in his discretion extend the period for accepting applications by up to 12 months.

(3) BIOMETRIC DATA.—Each alien applying for Z nonimmigrant status must submit biometric data in accordance with procedures established by the Secretary of Homeland Security.

(g) CONTENT OF APPLICATION FILED BY ALIEN.—

(1) APPLICATION FORM.—The Secretary of Homeland Security shall create an application form that an alien shall be required to complete as a condition of obtaining Z nonimmigrant status.

(2) APPLICATION INFORMATION.—

(A) IN GENERAL.—The application form shall request such information as the Secretary deems necessary and appropriate, including but not limited to, information concerning the alien's physical and mental health; complete criminal history, including all arrests and dispositions; gang membership, renunciation of gang affiliation; immigration history; employment history; and claims to United States citizenship.

(3) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—

(A) SUBMISSION OF FINGERPRINTS.—The Secretary may not accord Z nonimmigrant status unless the alien submits fingerprints and other biometric data in accordance with procedures established by the Secretary.

(B) BACKGROUND CHECKS.—The Secretary shall utilize fingerprints and other biometric data provided by the alien to conduct appropriate background checks of such alien to search for criminal, national security, or other law enforcement actions that would render the alien ineligible for classification under this section.

(h) TREATMENT OF APPLICANTS.—

(1) IN GENERAL.—An alien who files an application for Z nonimmigrant status shall, upon submission of any evidence required under paragraphs (f) and (g) and after the Secretary has conducted appropriate background checks, to include name and fingerprint checks, that have not by the end of the next business day produced information rendering the applicant ineligible—

(A) be granted probationary benefits in the form of employment authorization pending final adjudication of the alien's application;

(B) may in the Secretary's discretion receive advance permission to re-enter the United States pursuant to existing regulations governing advance parole;

(C) may not be detained for immigration purposes, determined inadmissible or deportable, or removed pending final adjudication of the alien's application, unless the alien is determined to be ineligible for Z nonimmigrant status; and

(D) may not be considered an unauthorized alien (as defined in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3))) unless employment authorization under subparagraph (A) is denied.

(2) TIMING OF PROBATIONARY BENEFITS.—No probationary benefits shall be issued to an alien until the alien has passed all appropriate background checks or the end of the next business day, whichever is sooner.

(3) CONSTRUCTION.—Nothing in this section shall be construed to limit the Secretary's authority to conduct any appropriate background and security checks subsequent to issuance of evidence of probationary benefits under paragraph (4).

(4) PROBATIONARY AUTHORIZATION DOCUMENT.—The Secretary shall provide each alien described in paragraph (1) with a counterfeit-resistant document that reflects the benefits and status set forth in paragraph (h)(1). The Secretary may by regulation establish procedures for the issuance of documentary evidence of probationary benefits and, except as provided herein, the conditions under which such documentary evidence expires, terminates, or is renewed. All documentary evidence of probationary benefits shall expire no later than six months after the date on which the Secretary begins to approve applications for Z nonimmigrant status.

(5) BEFORE APPLICATION PERIOD.—If an alien is apprehended between the date of enactment and the date on which the period for initial registration closes under subsection (f)(2), and the alien can establish prima facie eligibility for Z nonimmigrant status, the Secretary shall provide the alien with a reasonable opportunity to file an application under this section after such regulations are promulgated.

(6) DURING CERTAIN PROCEEDINGS.—Notwithstanding any provision of the Act, if the Secretary determines that an alien who is in removal proceedings is prima facie eligible for Z nonimmigrant

status, then the Secretary shall affirmatively communicate such determination to the immigration judge. The immigration judge shall then terminate or administratively close such proceedings and permit the alien a reasonable opportunity to apply for such classification.

(i) ADJUDICATION OF APPLICATION FILED BY ALIEN.—

(1) IN GENERAL.—The Secretary may approve the issuance of documentation of status, as described in subsection (j), to an applicant for a Z nonimmigrant visa who satisfies the requirements of this section.

(2) EVIDENCE OF CONTINUOUS PHYSICAL PRESENCE, EMPLOYMENT, OR EDUCATION.—

(A) PRESUMPTIVE DOCUMENTS.—A Z nonimmigrant or an applicant for Z nonimmigrant status may presumptively establish satisfaction of each required period of presence, employment, or study by submitting records to the Secretary that demonstrate such presence, employment, or study, and that the Secretary verifies have been maintained by the Social Security Administration, the Internal Revenue

Service, or any other Federal, State, or local government agency.

(B) VERIFICATION.—Each Federal agency, and each State or local government agency, as a condition of receipt of any funds under Section 286(x), shall within 90 days of enactment ensure that procedures are in place under which such agency shall—

(i) consistent with all otherwise applicable laws, including but not limited to laws governing privacy, provide documentation to an alien upon request to satisfy the documentary requirements of this paragraph; or

(ii) notwithstanding any other provision of law, including section 6103 of title 26, United States Code, provide verification to the Secretary of documentation offered by an alien as evidence of—

(I) presence or employment required under this section, or

(II) a requirement for any other benefit under the immigration laws.

(C) OTHER DOCUMENTS.—A Z nonimmigrant or an applicant for Z nonimmigrant

status who is unable to submit a document described in subparagraph (i) may establish satisfaction of each required period of presence, employment, or study by submitting to the Secretary at least 2 other types of reliable documents that provide evidence of employment, including—

(i) bank records;

(ii) business records;

(iii) employer records;

(iv) records of a labor union or day labor center; and

(v) remittance records.

(D) ADDITIONAL DOCUMENTS.—The Secretary may—

(i) designate additional documents to evidence the required period of presence, employment, or study; and

(ii) set such terms and conditions on the use of affidavits as is necessary to verify and confirm the identity of any affiant or otherwise prevent fraudulent submissions.

(3) PAYMENT OF INCOME TAXES.—

(A) IN GENERAL.—Not later than the date on which status is adjusted under this section, the alien establishes the payment of any applicable Federal tax liability by establishing that—

(i) no such tax liability exists;

(ii) all outstanding liabilities have been paid; or

(iii) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

(B) APPLICABLE FEDERAL TAX LIABILITY.—For purposes of clause (i), the term 'applicable Federal tax liability' means liability for Federal taxes, including penalties and interest, owed for any year during the period of employment required by subparagraph (D)(i) for which the statutory period for assessment of any deficiency for such taxes has not expired.

(C) IRS COOPERATION.—The Secretary of the Treasury shall establish rules and procedures under which the Commissioner of Internal Revenue shall provide documentation to an alien upon request to establish the payment of all taxes required by this subparagraph.

(D) IN GENERAL.—The alien may satisfy such requirement by establishing that—

(i) no such tax liability exists;

(ii) all outstanding liabilities have been met; or

(iii) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service and with the department of revenue of each State to which taxes are owed.

(4) BURDEN OF PROOF.—An alien who is applying for a Z nonimmigrant visa under this section shall prove, by a preponderance of the evidence, that the alien has satisfied the requirements of this section.

(5) DENIAL OF APPLICATION.—

(i) An alien who fails to satisfy the eligibility requirements for a Z nonimmigrant visa shall have his application denied and may not file additional applications.

(ii) An alien who fails to submit requested initial evidence, including requested biometric data, and requested additional evidence by the date required by

the Secretary shall, except where the alien demonstrates to the satisfaction of the Secretary that such failure was reasonably excusable or was not willful, have his application considered abandoned. Such application shall be denied and the alien may not file additional applications.

(j) EVIDENCE OF NONIMMIGRANT STATUS.—

(1) IN GENERAL.—Documentary evidence of nonimmigrant status shall be issued to each Z nonimmigrant.

(2) FEATURES OF DOCUMENTATION.—Documentary evidence of Z nonimmigrant status:

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

(B) shall be designed in consultation with U.S. Immigration and Customs Enforcement's Forensic Document Laboratory;

(C) shall, during the alien's authorized period of admission under subsection (k), serve as a valid travel and entry document for the purpose of applying for admission to the United

1 States where the alien is applying for admission
2 at a Port of Entry.
3 (D) may be accepted during the period of
4 its validity by an employer as evidence of em-
5 ployment authorization and identity under sec-
6 tion 274A(b)(1)(B); and
7 (E) shall be issued to the Z nonimmigrant
8 by the Secretary of Homeland Security prompt-
9 ly after final adjudication of such alien's appli-
10 cation for Z nonimmigrant status, except that
11 an alien may not be granted permanent Z non-
12 immigrant status until all appropriate back-
13 ground checks on the alien are completed to the
14 satisfaction of the Secretary of Homeland Secu-
15 rity.
16 (k) PERIOD OF AUTHORIZED ADMISSION.—
17 (1) INITIAL PERIOD.—The initial period of au-
18 thorized admission as a Z nonimmigrant shall be
19 four years.
20 (2) EXTENSIONS.—
21 (A) IN GENERAL.—Z nonimmigrants may
22 seek an indefinite number of four-year exten-
23 sions of the initial period of authorized admis-
24 sion.

(B) REQUIREMENTS.—In order to be eligible for an extension of the initial or any subsequent period of authorized admission under this paragraph, an alien must satisfy the following requirements:

(i) ELIGIBILITY.—The alien must demonstrate continuing eligibility for Z nonimmigrant status;

(ii) ENGLISH LANGUAGE AND CIVICS.—

(I) REQUIREMENT AT FIRST RENEWAL.—At or before the time of application for the first extension of Z nonimmigrant status, an alien who is 18 years of age or older must demonstrate an attempt to gain an understanding of the English language and knowledge of United States civics by taking the naturalization test described in sections 312(a)(1) and (2) by demonstrating enrollment in or placement on a waiting list for English classes.

(II) REQUIREMENT AT SECOND RENEWAL.—At or before the time of

application for the second extension of Z nonimmigrant status, an alien who is 18 years of age or older must pass the naturalization test described in sections 312(a)(1) and (2). The alien may make up to three attempts to demonstrate such understanding and knowledge but must satisfy this requirement prior to the expiration of the second extension of Z nonimmigrant status.

(III) EXCEPTION.—The requirement of subclauses (I) and (II) shall not apply to any person who, on the date of the filing of the person's application for an extension of Z nonimmigrant status—

(aa) is unable because of physical or developmental disability or mental impairment to comply therewith;

(bb) is over 50 years of age and has been living in the United States for periods totaling at least 20 years; or

(cc) is over 55 years of age and has been living in the United States for periods totaling at least fifteen years.

(iii) EMPLOYMENT.—With respect to an extension of Z–1 or Z–3 nonimmigrant status an alien must demonstrate satisfaction of the employment or study requirements provided in subsection (m) during the alien's most recent authorized period of stay as of the date of application; and

(iv) FEES.—The alien must pay a processing fee in an amount sufficient to recover the full cost of adjudicating the application, but no more than $1,500 for a single Z nonimmigrant.

(C) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—An alien applying for extension of Z nonimmigrant status may be required to submit to a renewed security and law enforcement background check that must be completed to the satisfaction of the Secretary of

1 Homeland Security before such extension may
2 be granted.
3 (D) TIMELY FILING AND MAINTENANCE OF
4 STATUS.—
5 (i) IN GENERAL.—An extension of
6 stay under this paragraph, or a change of
7 status to another Z nonimmigrant status
8 under subsection (l), may not be approved
9 for an applicant who failed to maintain Z
10 nonimmigrant status or where such status
11 expired or terminated before the applica-
12 tion was filed.
13 (ii) EXCEPTION.—Failure to file be-
14 fore the period of previously authorized
15 status expired or terminated may be ex-
16 cused in the discretion of the Secretary
17 and without separate application, with any
18 extension granted from the date the pre-
19 viously authorized stay expired, where it is
20 demonstrated at the time of filing that:
21 (I) the delay was due to extraor-
22 dinary circumstances beyond the con-
23 trol of the applicant, and the Sec-
24 retary finds the delay commensurate
25 with the circumstances; and

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

(iii) EXEMPTIONS FROM PENALTY AND EMPLOYMENT REQUIREMENTS.—An alien demonstrating extraordinary circumstances under clause (ii), including the spouse of a Z–1 nonimmigrant who has been battered or has been the subject of extreme cruelty perpetrated by the Z–1 nonimmigrant, and who is changing to Z–1 nonimmigrant status, may be exempted by the Secretary, in his discretion, from—

(I) the requirements under subsection (m) for a period of up to 180 days; and

(II) the penalty provisions of section (e)(6)(B)(iii), except that the alien must pay the penalty under section (e)(6)(B) at the time of application for the alien's first subsequent extension of Z–1 nonimmigrant status.

(E) BARS TO EXTENSION.—Except as provided in subparagraph (D), a Z nonimmigrant

shall not be eligible to extend such nonimmigrant status if:

(i) the alien has violated any term or condition of his or her Z nonimmigrant status, including but not limited to failing to comply with the change of address reporting requirements under section 265;

(ii) the period of authorized admission of the Z nonimmigrant has been terminated for any reason; or

(iii) with respect to a Z–2 or Z–3 nonimmigrant, the principal alien's Z–1 nonimmigrant status has been terminated.

(l) CHANGE OF STATUS.—

(1) CHANGE FROM Z NONIMMIGRANT STATUS.—

(A) IN GENERAL.—A Z nonimmigrant may not change status under section 248 to another nonimmigrant status, except another Z nonimmigrant status or status under subparagraph (U) of section 101(a)(15).

(B) CHANGE FROM Z–A STATUS.—A Z–A nonimmigrant may change status to Z nonimmigrant status at the time of renewal ref-

erenced in section 214A(j)(1)(C) of the Immigration and Nationality Act.

(C) LIMIT ON CHANGES.—A Z nonimmigrant may not change status more than one time per 365-day period. The Secretary may, in his discretion, waive the application of this subparagraph to an alien if it is established to the satisfaction of the Secretary that application of this subparagraph would result in extreme hardship to the alien.

(2) NO CHANGE TO Z NONIMMIGRANT STATUS.—A nonimmigrant under the immigration laws may not change status under section 248 to Z nonimmigrant status.

(m) EMPLOYMENT.—

(1) Z–1 AND Z–3 NONIMMIGRANTS.—

(A) IN GENERAL.—Z–1 and Z–3 nonimmigrants shall be authorized to work in the United States.

(B) CONTINUOUS EMPLOYMENT REQUIREMENT.—All requirements that an alien be employed or seeking employment for purposes of this Title shall not apply to an alien who is under 16 years or over 65 years of age. A Z–1 or Z–3 nonimmigrant between 16 and 65

years of age must remain continuously employed full time in the United States as a condition of such nonimmigrant status, except where—

(i) the alien is pursuing a full course of study at an established college, university, seminary, conservatory, trade school, academic high school, elementary school, or other academic institution or language training program;

(ii) the alien is employed while also engaged in study at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or language training program;

(iii) the alien cannot demonstrate employment because of a physical or mental disability (as defined under section 3(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)) or as a result of pregnancy if such condition is evidenced by the submission of documentation prescribed by the Secretary; or

(iv) the alien's ability to work has been temporarily interrupted by an event that the Secretary has determined to be a force majeure interruption.

(2) Z–2 NONIMMIGRANTS.—Z–2 nonimmigrants shall be authorized to work in the United States.

(3) PORTABILITY.—Nothing in this subsection shall be construed to limit the ability of a Z nonimmigrant to change employers during the alien's period of authorized admission.

(n) TRAVEL OUTSIDE THE UNITED STATES.—

(1) IN GENERAL.—A Z nonimmigrant—

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

(B) may be readmitted (if otherwise admissible) without having to obtain a visa if—

(i) the alien's most recent period of authorized admission has not expired;

(ii) the alien is the bearer of valid documentary evidence of Z nonimmigrant status that satisfies the conditions set forth in section (j); and

(iii) the alien is not subject to the bars on extension described in subsection (k)(2)(E).

(2) ADMISSIBILITY.—On seeking readmission to the United States after travel outside the United States an alien granted Z nonimmigrant status must establish that he or she is not inadmissible, except as provided by subsection (d)(2).

(3) EFFECT ON PERIOD OF AUTHORIZED ADMISSION.—Time spent outside the United States under paragraph (1) shall not extend the most recent period of authorized admission in the United States under subsection (k).

(o) TERMINATION OF BENEFITS.—

(1) IN GENERAL.—Any benefit provided to a Z nonimmigrant or an applicant for Z nonimmigrant status under this section shall terminate if—

(A) the Secretary determines that the alien is ineligible for such classification and all review procedures under section 603 of the [Insert title of Act] have been exhausted or waived by the alien;

(B)(i) the alien is found removable from the United States under section 237 of the Immigration and Nationality Act (8 U.S.C. 1227);

(ii) the alien becomes inadmissible under section 212 (except as provided in subsection (d)(2), or

(iii) the alien becomes ineligible under subsection (d)(1);

(C) the alien has used documentation issued under this section for unlawful or fraudulent purposes;

(D) in the case of the spouse or child of an alien applying for a Z nonimmigrant visa or classified as a Z nonimmigrant under this section, the benefits for the principal alien are terminated;

(E) with respect to a Z–1 or Z–3 nonimmigrant, the employment or study requirements under subsection (m) have been violated; or

(F) with respect to probationary benefits, the alien's application for Z nonimmigrant status is denied.

(2) DENIAL OF IMMIGRANT VISA OR ADJUSTMENT APPLICATION.—Any application for an immigrant visa or adjustment of status to lawful permanent resident status made under this section by an alien whose Z nonimmigrant status is terminated under paragraph (1) shall be denied.

(3) DEPARTURE FROM THE UNITED STATES.—Any alien whose period of authorized admission or

1 probationary benefits is terminated under paragraph
2 (1), as well as the alien's Z–2 or Z–3 nonimmigrant
3 dependents, shall depart the United States imme-
4 diately.

5 (4) INVALIDATION OF DOCUMENTATION.—Any
6 documentation that is issued by the Secretary of
7 Homeland Security under subsection (j) or pursuant
8 to subsection (h)(4) to any alien, whose period of au-
9 thorized admission terminates under paragraph (1),
10 shall automatically be rendered invalid for any pur-
11 pose except departure.

12 (p) REVOCATION.—If, at any time after an alien has
13 obtained status under section 601 of the [Insert title of
14 Act] but not yet adjusted such status to that of an alien
15 lawfully admitted for permanent residence under section
16 602, the Secretary may, for good and sufficient cause, if
17 it appears that the alien was not in fact eligible for status
18 under section 601, revoke the alien's status following ap-
19 propriate notice to the alien.

20 (q) DISSEMINATION OF INFORMATION ON Z PRO-
21 GRAM.—During the 2-year period immediately after the
22 issuance of regulations implementing this title, the Sec-
23 retary, in cooperation with entities approved by the Sec-
24 retary, shall broadly disseminate information respecting Z
25 classification under this section and the requirements to

be satisfied to obtain such classification. The Secretary shall disseminate information to employers and labor unions to advise them of the rights and protections available to them and to workers who file applications under this section. Such information shall be broadly disseminated, in no fewer than the top five principal languages, as determined by the Secretary in his discretion, spoken by aliens who would qualify for classification under this section, including to television, radio, and print media to which such aliens would have access.

(r) DEFINITIONS.—In this title and section 214A of the Immigration and Nationality Act:

(1) Z NONIMMIGRANT; Z NONIMMIGRANT WORKER.—The term ''Z nonimmigrant worker'' means an alien admitted to the United States under paragraph (Z) of subsection 101(a)(15). The term does not include aliens granted probationary benefits under subsection (h) and whose applications for nonimmigrant status under section 101(a)(15)(Z) of the Act have not yet been adjudicated.

(2) Z–1 NONIMMIGRANT; Z–1 WORKER.—The term ''Z–1 nonimmigrant'' or ''Z–1 worker'' means an alien admitted to the United States under paragraph (i)(I) of subsection 101(a)(15)(Z).

(3) Z–A NONIMMIGRANT; Z–A WORKER.—The term ''Z–A nonimmigrant'' or ''Z–A worker'' means an alien admitted to the United States under paragraph (ii)(II) of subsection 101(a)(15)(Z).

(4) Z–2 NONIMMIGRANT.—The term ''Z–2 nonimmigrant'' means an alien admitted to the United States under paragraph (ii) of subsection 101(a)(15)(Z).

(5) Z–3 NONIMMIGRANT; Z–3 WORKER.—The term ''Z–3 nonimmigrant'' or ''Z–3 worker'' means an alien admitted to the United States under paragraph (iii) of subsection 101(a)(15)(Z).

SEC. 602. EARNED ADJUSTMENT FOR Z STATUS ALIENS.

(a) LAWFUL PERMANENT RESIDENCE.—

(1) Z–1 NONIMMIGRANTS.—

(A) PROHIBITION ON IMMIGRANT VISA.—A Z–1 nonimmigrant may not be issued an immigrant visa pursuant to sections 221 and 222.

(B) ADJUSTMENT.—Notwithstanding sections 245 (a) and (c), the status of any Z–1 nonimmigrant may be adjusted by the Secretary of Homeland Security to that of an alien lawfully admitted for permanent residence.

(C) REQUIREMENTS.—A Z–1 nonimmigrant may adjust status to that of an alien

lawfully admitted for permanent residence upon satisfying, in addition to all other requirements imposed by law, including the merit requirements set forth in section 203(b)(1)(A)[INSERT CITE], the following requirements:

(i) STATUS.—The alien must be in valid Z–1 nonimmigrant status.

(ii) CONSULAR APPLICATION.—

(I) IN GENERAL.—A Z–1 nonimmigrant's application for adjustment of status to that of an alien lawfully admitted for permanent residence must be filed in person with a United States consulate abroad.

(II) PLACE OF APPLICATION.—Unless otherwise directed by the Secretary of State, a Z–1 nonimmigrant applying for adjustment of status under this paragraph shall make an application at a consular office in the alien's country of origin. A consular office in a country that is not a Z–1 nonimmigrant's country of origin may as a matter of discretion, or shall at

the direction of the Secretary of State, accept an application for adjustment of status from such an alien.

(iii) APPROVED PETITION.—The alien must be the beneficiary of an approved petition under section 204 of the Act or have an approved petition that was filed pursuant to the evaluation system under section 203(b)(1)(A) of the Act.

(iv) ADMISSIBILITY.—The alien must not be inadmissible under section 212(a), except for those grounds previously waived under subsection (d)(2).

(v) FEES AND PENALTIES.—In addition to the fees payable to the Secretary of Homeland Security and Secretary of State in connection with the filing of an immigrant petition and application for adjustment of status, a Z–1 head of household must pay a $4,000 penalty at the time of submission of any immigrant petition on his behalf, regardless of whether the alien submits such petition on his own behalf or the alien is the beneficiary of an immigrant petition filed by another party.

(D) EXEMPTIONS.—Section 602(a)(1)(c)(ii) shall not apply to an alien who, on the date on which the application for adjustment of status is filed under this section, is exempted from the employment requirements under subsection (m)(1)(B)(iii).

(E) FAILURE TO ESTABLISH LAWFUL ADMISSION TO THE UNITED STATES.—Unless exempted under subparagraph (D), a Z immigrant who fails to depart and reenter the United States in accordance with paragraph (1) may not become a lawful permanent resident under this section.

(2) Z–2 AND Z–3 NONIMMIGRANTS.—

(A) RESTRICTION ON VISA ISSUANCE OR ADJUSTMENT.—An application for an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence of a Z–2 nonimmigrant or a Z–3 nonimmigrant under 18 years of age may not be approved before the adjustment of status of the alien's principal Z–1 nonimmigrant.

(B) ADJUSTMENT OF STATUS.—

(i) ADJUSTMENT.—Notwithstanding sections 245 (a) and (c), the status of any

Z–2 or Z–3 nonimmigrant may be adjusted by the Secretary of Homeland Security to that of an alien lawfully admitted for permanent residence.

(ii) REQUIREMENTS.—A Z–2 or Z–3 nonimmigrant may adjust status to that of an alien lawfully admitted for permanent residence upon satisfying, in addition to all other requirements imposed by law, the following requirements:

(I) STATUS.—The alien must be in valid Z–2 or Z–3 nonimmigrant status.

(II) APPROVED PETITION.—The alien must be the beneficiary of an approved petition under section 204 of the Act or have an approved petition that was filed pursuant to the merit-based evaluation system under section 203(b)(1)(A) of the Act.

(III) ADMISSIBILITY.—The alien must not be inadmissible under section 212(a), except for those grounds previously waived under subsection (d)(2).

(IV) FEES.—The alien must pay the fees payable to the Secretary of Homeland Security and Secretary of State in connection with the filing of an immigrant petition and application for an immigrant visa.

(3) MAINTENANCE OF WAIVERS OF INADMISSIBILITY.—The grounds of inadmissibility not applicable under section (d)(2) shall also be considered inapplicable for purposes of admission as an immigrant or adjustment pursuant to this subsection.

(4) APPLICATION OF OTHER LAW.—In processing applications under this subsection on behalf of aliens who have been battered or subjected to extreme cruelty, the Secretary shall apply—

(A) the provisions under section 204(a)(1)(J) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(J)); and

(B) the protections, prohibitions, and penalties under section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367).

(5) BACK OF THE LINE.—An alien may not adjust status to that of a lawful permanent resident under this section until 30 days after an immigrant

visa becomes available for approved petitions filed under sections 201, 202, and 203 of the Act that were filed before May 1, 2005.

(6) INELIGIBILITY FOR PUBLIC BENEFITS.—For purposes of section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613), an alien whose status has been adjusted under this section shall not be eligible for any Federal means-tested public benefit unless the alien meets the alien eligibility criteria for such benefit under title IV of such Act (8 U.S.C. 1601 et seq.).

(7) MEDICAL EXAMINATION.—An applicant for earned adjustment shall undergo an appropriate medical examination (including a determination of immunization status) that conforms to generally accepted professional standards of medical practice.

(8) PAYMENT OF INCOME TAXES.—

(A) IN GENERAL.—Not later than the date on which status is adjusted under this section, the applicant shall satisfy any applicable Federal tax liability accrued during the period of Z status by establishing that—

(i) no such tax liability exists;

(ii) all outstanding liabilities have been paid; or

(iii) the applicant has entered into, and is in compliance with, an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

(B) IRS COOPERATION.—The Secretary of the Treasury shall establish rules and procedures under which the Commissioner of Internal Revenue shall provide documentation to—

(i) the applicant, upon request, to establish the payment of all taxes required under this subsection; or

(ii) the Secretary, upon request, regarding the payment of Federal taxes by an alien applying for a benefit under this section.

(9) DEPOSIT OF FEES.—Fees collected under this paragraph shall be deposited into the Immigration Examination Fee Account and shall remain available as provided under subsections (m) and (n) of section 286 of the Immigration and Nationality Act (8 U.S.C. 1356).

(10) DEPOSIT OF PENALTIES.—Penalties collected under this paragraph shall be deposited into

the Temporary Worker Program Account and shall remain available as provided under section 286(w) of the Immigration and Nationality Act.

SEC. 603. ADMINISTRATIVE REVIEW, REMOVAL PROCEEDINGS, AND JUDICIAL REVIEW FOR ALIENS WHO HAVE APPLIED FOR LEGAL STATUS.

(a) ADMINISTRATIVE REVIEW FOR ALIENS WHO HAVE APPLIED FOR STATUS UNDER THIS TITLE.—

(1) EXCLUSIVE REVIEW.—Administrative review of a determination respecting nonimmigrant status under this title shall be conducted solely in accordance with this subsection.

(2) ADMINISTRATIVE APPELLATE REVIEW.—Except as provided in subparagraph (b)(2), an alien whose status under this title has been denied, terminated, or revoked may file not more than one appeal of the denial, termination, or rescission with the Secretary not later than 30 calendar days after the date of the decision or mailing thereof, whichever occurs later in time. The Secretary shall establish an appellate authority to provide for a single level of administrative appellate review of a denial, termination, or rescission of status under [this Act].

(3) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional newly discovered or previously unavailable evidence as the administrative appellate review authority may decide to consider at the time of the determination.

(4) LIMITATION ON MOTIONS TO REOPEN AND RECONSIDER.—During the administrative appellate review process the alien may file not more than one motion to reopen or to reconsider. The Secretary's decision whether to consider any such motion is committed to the Secretary's discretion.

(b) REMOVAL OF ALIENS WHO HAVE BEEN DENIED STATUS UNDER THIS TITLE.—

(1) SELF-INITIATED REMOVAL.—Any alien who receives a denial under subsection (a) may request, not later than 30 calendar days after the date of the denial or the mailing thereof, whichever occurs later in time, that the Secretary place the alien in removal proceedings. The Secretary shall place the alien in removal proceedings to which the alien would otherwise be subject, unless the alien is subject to an administratively final order of removal, provided that

no court shall have jurisdiction to review the timing of the Secretary's initiation of such proceedings. If the alien is subject to an administratively final order of removal, the alien may seek review of the denial under this section pursuant to subsection 242(h) as though the order of removal had been entered on the date of the denial, provided that the court shall not review the order of removal except as otherwise provided by law.

(2) ALIENS WHO ARE DETERMINED TO BE INELIGIBLE DUE TO CRIMINAL CONVICTIONS.—

(A) AGGRAVATED FELONS.—Notwithstanding any other provision of this Act, an alien whose application for status under this title has been denied or whose status has been terminated or revoked by the Secretary under clause (1)(F)(ii) of subsection 601(d) of [this Act] because the alien has been convicted of an aggravated felony, as defined in paragraph 101(a)(43) of the INA, may be placed forthwith in proceedings pursuant to section 238(b) of the INA.

(B) OTHER CRIMINALS.—Notwithstanding any other provision of this Act, any other alien whose application for status under this title has

been denied or whose status has been terminated or revoked by the Secretary under clauses (1)(F) (i), (iii), or (iv) of subsection [CITE: 601(d)] of [this Act] may be placed forthwith in removal proceedings under section 240 of the INA.

(C) FINAL DENIAL, TERMINATION OR RESCISSION.—The Secretary's denial, termination, or rescission of the status of any alien described in clauses (i) and (ii) of this subparagraph shall be final for purposes of subparagraph 242(h)(3)(C) of the INA and shall represent the exhaustion of all review procedures for purposes of subsections 601(h) (relating to treatment of applicants) and 601(o) (relating to termination of proceedings) of this Act, notwithstanding paragraph (a)(2) of this section.

(3) LIMITATION ON MOTIONS TO REOPEN AND RECONSIDER.—During the removal process under this subsection the alien may file not more than one motion to reopen or to reconsider. The Secretary's or Attorney General's decision whether to consider any such motion is committed to the Attorney General's discretion.

(c) JUDICIAL REVIEW.—Section 242 of the Immigration and Nationality Act is amended by adding at the end the following subsection (h):

"(h) JUDICIAL REVIEW OF ELIGIBILITY DETERMINATIONS RELATING TO STATUS UNDER TITLE VI OF [THIS ACT].—

"(1) EXCLUSIVE REVIEW.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in this subsection, no court shall have jurisdiction to review a determination respecting an application for status under title VI of [this Act], including, without limitation, a denial, termination, or rescission of such status.

"(2) NO REVIEW FOR LATE FILINGS.—An alien may not file an application for status under title VI of [this Act] beyond the period for receipt of such applications established by subsection 601(f) thereof. The denial of any application filed beyond the expiration of the period established by that subsection shall not be subject to judicial review or remedy.

"(3) REVIEW OF A DENIAL, TERMINATION, OR RESCISSION OF STATUS UNDER TITLE VI OF [THIS

ACT].—A denial, termination, or rescission of status under subsection 601 of [this Act] may be reviewed only in conjunction with the judicial review of an order of removal under this section, provided that:

"(A) the venue provision set forth in (b)(2) shall govern;

"(B) the deadline for filing the petition for review in (b)(1) shall control;

"(C) the alien has exhausted all administrative remedies available to the alien as of right, including but not limited to the timely filing of an administrative appeal pursuant to subsection 603(a) of [this Act];

"(D) the court shall decide a challenge to the denial of status only on the administrative record on which the Secretary's denial, termination, or rescission was based;

"(E) LIMITATION ON REVIEW.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court reviewing a denial, termination, or rescission of status under Title VI of [this Act] may review any discretionary decision or action of the Sec-

retary regarding any application for or termination or rescission of such status; and

"(F) LIMITATION ON MOTIONS TO REOPEN AND RECONSIDER.—The alien may file not more than one motion to reopen or to reconsider in proceedings brought under this section.

"(4) STANDARD FOR JUDICIAL REVIEW.—Judicial review of the Secretary's denial, termination, or rescission of status under title VI of [this Act] relating to any alien shall be based solely upon the administrative record before the Secretary when he enters a final denial, termination, or rescission. The administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary. The legal determinations are conclusive unless manifestly contrary to law.

"(5) CHALLENGES ON VALIDITY OF THE SYSTEM.—

"(A) IN GENERAL.—Any claim that title VI of [this Act], or any regulation, written policy, or written directive issued or unwritten policy or practice initiated by or under the authority of the Secretary of Homeland Security to implement that title, violates the Constitution of the United States or is otherwise in violation

of law is available exclusively in an action instituted in the United States District Court for the District of Columbia in accordance with the procedures prescribed in this paragraph. Nothing in this subparagraph shall preclude an applicant for status under title VI of [this Act] from asserting that an action taken or decision made by the Secretary with respect to his status under that title was contrary to law in a proceeding under section 603 of [this Act] and paragraph (b)(2) of this section.

"(B) DEADLINES FOR BRINGING ACTIONS.—Any action instituted under this paragraph,

(i) must, if it asserts a claim that title VI of [this Act] or any regulation, written policy, or written directive issued by or under the authority of the Secretary to implement that title violates the Constitution or is otherwise unlawful, be filed no later than one year after the date of the publication or promulgation of the challenged regulation, policy or directive or, in cases challenging the validity of the Act, within one year of enactment; and

(ii) must, if it asserts a claim that an unwritten policy or practice initiated by or under the authority of the Secretary violates the Constitution or is otherwise unlawful, be filed no later than one year after the plaintiff knew or reasonably should have known of the unwritten policy or practice.

''(C) CLASS ACTIONS.—Any claim described in subparagraph (A) that is brought as a class action shall be brought in conformity with Public Law 109–2 and the Federal Rules of Civil Procedure.''

''(D) PRECLUSIVE EFFECT.—The final disposition of any claim brought under subparagraph (5)(A) shall be preclusive of any such claim asserted in a subsequent proceeding under this subsection or under subsection 603 [of this Act].

''(E) EXHAUSTION AND STAY OF PROCEEDINGS.—No claim brought under this paragraph shall require the plaintiff to exhaust administrative remedies under subsection 603 of [this Act], but nothing shall prevent the court from staying proceedings under this paragraph

to permit the Secretary to evaluate an allegation of an unwritten policy or practice or to take corrective action. In issuing such a stay, the court shall take into account any harm the stay may cause to the claimant. The court shall have no authority to stay proceedings initiated under any other section of the INA.''

SEC. 604. MANDATORY DISCLOSURE OF INFORMATION.

(a) IN GENERAL.—Except as otherwise provided in this section, no Federal agency or bureau, or any officer or employee of such agency or bureau, may—

(1) use the information furnished by the applicant pursuant to an application filed under section 601 and 602, for any purpose, other than to make a determination on the application;

(2) make any publication through which the information furnished by any particular applicant can be identified; or

(3) permit anyone other than the sworn officers, employees or contractors of such agency, bureau, or approved entity, as approved by the Secretary of Homeland Security, to examine individual applications that have been filed.

(b) REQUIRED DISCLOSURES.—The Secretary of Homeland Security and the Secretary of State shall pro-

vide the information furnished pursuant to an application filed under section 601 and 602, and any other information derived from such furnished information, to—

(1) a law enforcement entity, intelligence agency, national security agency, component of the Department of Homeland Security, court, or grand jury in connection with a criminal investigation or prosecution or a national security investigation or prosecution, in each instance about an individual suspect or group of suspects, when such information is requested by such entity;

(2) a law enforcement entity, intelligence agency, national security agency, or component of the Department of Homeland Security in connection with a duly authorized investigation of a civil violation, in each instance about an individual suspect or group of suspects, when such information is requested by such entity; or

(3) an official coroner for purposes of affirmatively identifying a deceased individual, whether or not the death of such individual resulted from a crime.

(c) INAPPLICABILITY AFTER DENIAL.—The limitations under subsection (a)—

(1) shall apply only until an application filed under section 601 and 602 is denied and all opportunities for administrative appeal of the denial have been exhausted; and

(2) shall not apply to the use of the information furnished pursuant to such application in any removal proceeding or other criminal or civil case or action relating to an alien whose application has been granted that is based upon any violation of law committed or discovered after such grant.

(d) CRIMINAL CONVICTIONS.—Notwithstanding any other provision of this section, information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement and law enforcement purposes.

(e) AUDITING AND EVALUATION OF INFORMATION.—The Secretary may audit and evaluate information furnished as part of any application filed under sections 601 and 602, any application to extend such status under section 601(k), or any application to adjust status to that of an alien lawfully admitted for permanent residence under section 602, for purposes of identifying fraud or fraud schemes, and may use any evidence detected by means of audits and evaluations for purposes of inves-

tigating, prosecuting or referring for prosecution, denying, or terminating immigration benefits.

(f) USE OF INFORMATION IN PETITIONS AND APPLICATIONS SUBSEQUENT TO ADJUSTMENT OF STATUS.—If the Secretary has adjusted an alien's status to that of an alien lawfully admitted for permanent residence pursuant to section 602, then at any time thereafter the Secretary may use the information furnished by the alien in the application for adjustment of status or in the applications for status pursuant to sections 601 or 602 to make a determination on any petition or application.

(g) CRIMINAL PENALTY.—Whoever knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than $10,000.

(h) CONSTRUCTION.—Nothing in this section shall be construed to limit the use, or release, for immigration enforcement purposes of information contained in files or records of the Secretary or Attorney General pertaining to an application filed under sections 601 or 602, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(i) REFERENCES.—References in this section to section 601 or 602 are references to sections 601 and 602 of this Act and the amendments made by those sections.

SEC. 605. EMPLOYER PROTECTIONS.

(a) Copies of employment records or other evidence of employment provided by an alien or by an alien's employer in support of an alien's application for Z nonimmigrant status shall not be used in a prosecution or investigation (civil or criminal) of that employer under section 247A (8 U.S.C. 1324a) or the tax laws of the United States for the prior unlawful employment of that alien, regardless of the adjudication of such application or reconsideration by the Secretary of such alien's prima facie eligibility determination.

(b) APPLICABILITY OF OTHER LAW.—Nothing in this section may be used to shield an employer from liability under section 274B of the Immigration and Nationality Act (8 U.S.C. 1324b) or any other labor or employment law.

SEC. 606. ENUMERATION OF SOCIAL SECURITY NUMBER.

The Secretary of Homeland Security, in coordination with the Commissioner of the Social Security Administration, shall implement a system to allow for the prompt enumeration of a Social Security number after the Secretary of Homeland Security has granted an alien Z nonimmigrant status or any probationary benefits based upon application for such status.

SEC. 607. PRECLUSION OF SOCIAL SECURITY CREDITS FOR PERIODS WITHOUT WORK AUTHORIZATION.

(a) INSURED STATUS.—Section 214 of the Social Security Act (42 U.S.C. 414) is amended by striking subsection (c) and inserting the following new subsections:

''(c)(1) Except as provided in paragraph (2), for purposes of subsections (a) and (b), no quarter of coverage shall be credited for any calendar year beginning on or after January 1, 2004, with respect to an individual who is not a natural-born United States citizen, unless the Commissioner of Social Security determines, on the basis of information provided to the Commissioner in accordance with an agreement entered into under subsection (d) or otherwise, that the individual was authorized to be employed in the United States during such quarter.

''(2) Paragraph (1) shall not apply to an individual who was assigned a social security account number prior to January 1, 2004.

''(d) Not later than 180 days after the date of the enactment of this subsection, the Secretary of Homeland Security shall enter into an agreement with the Commissioner of Social Security to provide such information as the Commissioner determines necessary to carry out the limitation on crediting quarters of coverage under subsection (c).''.

(b) BENEFIT COMPUTATION.—Section 215(e) of the Social Security Act (42 U.S.C. 415(e)) is amended—

(1) by striking ''and'' at the end of paragraph (1);

(2) by striking the period at the end of paragraph (2) and inserting ''; and''; and

(3) by adding at the end the following new paragraph:

''(3) in computing the average indexed monthly earnings of an individual, there shall not be counted any wages or self-employment income for any year for which no quarter of coverage may be credited to such individual as a result of the application of section 214(c).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to benefit applications filed on or after the date that is 180 days after the date of the enactment of this Act based on the wages or self-employment income of an individual with respect to whom a primary insurance amount has not been determined under title II of the Social Security Act (42 U.S.C. 401 et seq.) before such date.

SEC. 608. PAYMENT OF PENALTIES AND USE OF PENALTIES COLLECTED.

(a) The Secretary shall by regulation establish procedures allowing for the payment of 80 percent of the penalties described in Section 601(e)(6)(B) and Section 602(a)(1)(C)(v) through an installment payment plan.

(b) Any penalties received under this title with respect to an application for Z–1 nonimmigrant status shall be used in the following order of priority:

(1) shall be credited as offsetting collections to appropriations provided pursuant to section 611 for the fiscal year in which this Act is enacted and the subsequent fiscal year; and

(2) shall be deposited and remain available as otherwise provided under this title.

SEC. 609. LIMITATIONS ON ELIGIBILITY.

(a) IN GENERAL.—An alien is not ineligible for any immigration benefit under any provision of this title, or any amendment made by this title, solely on the basis that the alien violated section 1543, 1544, or 1546 of title 18, United States Code, or any amendments made by the [NAME OF THIS ACT], during the period beginning on the date of the enactment of such Act and ending on the date on which the alien applies for any benefits under this title, except with respect to any forgery, fraud or misrepre-

sentation on the application for Z nonimmigrant status filed by the alien.

(b) PROSECUTION.—An alien who commits a violation of section 1543, 1544, or 1546 of such title or any amendments made by the [NAME OF THIS ACT], during the period beginning on the date of the enactment of such Act and ending on the date that the alien applies for eligibility for such benefit may be prosecuted for the violation if the alien's application for such benefit is denied.

SEC. 610. RULEMAKING.

(a) The Secretary shall issue an interim final rule within six months of the date of enactment of this subtitle to implement this title and the amendments made by this title. The interim final rule shall become effective immediately upon publication in the Federal Register. The interim final rule shall sunset two years after issuance unless the Secretary issues a final rule within two years of the issuance of the interim final rule.

(b) The exemption provided under this section shall sunset no later than two years after the date of enactment of this subtitle, provided that, such sunset shall not be construed to impose any requirements on, or affect the validity of, any rule issued or other action taken by the Secretary under such exemptions.

SEC. 611. AUTHORIZATION OF APPROPRIATIONS.

(a) The first $4,400,000,000 of such penalties shall be deposited into the general fund of the Treasury as repayment of funds transferred into the Immigration Security Account under section 286(z)(1) of the Immigration and Nationality Act.

(b) Penalties in excess of $4,400,000,000 shall be deposited and remain available as otherwise provided under this Act.

(c) SENSE OF CONGRESS.—It is the sense of the Congress that funds authorized to be appropriated under subsection (a) should be directly appropriated so as to facilitate the orderly and timely commencement of the processing of applications filed under sections 601 and 602.

Subtitle B—DREAM Act

SEC. 612. SHORT TITLE.

This subtitle may be cited as the ''Development, Relief, and Education for Alien Minors Act of 2007'' or the ''DREAM Act of 2007''.

SEC. 613. DEFINITIONS.

In this subtitle:

(1) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given that term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(2) UNIFORMED SERVICES.—The term ''uniformed services'' has the meaning given that term in section 101(a) of title 10, United States Code.

SEC. 614. ADJUSTMENT OF STATUS OF CERTAIN LONG-TERM RESIDENTS WHO ENTERED THE UNITED STATES AS CHILDREN.

(a) SPECIAL RULE FOR CERTAIN LONG-TERM RESIDENTS WHO ENTERED THE UNITED STATES AS CHILDREN.—

(1) IN GENERAL.—Notwithstanding any other provision of law and except as otherwise provided in this subtitle, the Secretary may beginning on the date that is three years after the date of enactment of this Act adjust to the status of an alien lawfully admitted for permanent residence an alien who is determined to be eligible for or has been issued a probationary Z or Z nonimmigrant visa if the alien demonstrates that—

(A) the alien has been physically present in the United States for a continuous period since January 1, 2007, is under 30 years of age on the date of enactment, and had not yet reached the age of 16 years at the time of initial entry;

(B) the alien has earned a high school diploma or obtained a general education development certificate in the United States;

(C) The alien has not abandoned the alien's residence in the United States. The Secretary shall presume that the alien has abandoned such residence if the alien is absent from the United States for more than 365 days, in the aggregate, during the period of conditional residence, unless the alien demonstrates that alien has not abandoned the alien's residence. An alien who is absent from the United States due to active service in the uniformed services has not abandoned the alien's residence in the United States during the period of such service.

(D) The alien has—

(i) acquired a degree from an institution of higher education in the United States or has completed at least 2 years, in good standing, in a program for a bachelor's degree or higher degree in the United States; or

(ii) The alien has served in the uniformed services for at least 2 years and, if

discharged, has received an honorable discharge.

(E) The alien has provided a list of all of the secondary educational institutions that the alien attended in the United States; and

(F) The alien is in compliance with the eligibility and admissibility criteria set forth in section 601(d).

(b) TREATMENT OF PERIOD FOR PURPOSES OF NATURALIZATION.—Solely for purposes of title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.), an alien who has been granted probationary benefits under section 601(h) or Z nonimmigrant status and has satisfied the requirements of subparagraphs (a)(1)(A) through (F) shall beginning on the date that is eight years after the date of enactment be considered to have satisfied the requirements of Section 316(a)(1) of the Act (8 U.S.C. 1427(a)(1)).

(c) EXEMPTION FROM NUMERICAL LIMITATIONS.—Nothing in this section may be construed to apply a numerical limitation on the number of aliens who may be eligible for adjustment of status.

(d) REGULATIONS.—

(1) PROPOSED REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the

Secretary shall publish proposed regulations implementing this section. Such regulations shall be effective immediately on an interim basis, but are subject to change and revision after public notice and opportunity for a period for public comment.

(2) INTERIM, FINAL REGULATIONS.—Within a reasonable time after publication of the interim regulations in accordance with paragraph (1), the Secretary shall publish final regulations implementing this section.

SEC. 615. EXPEDITED PROCESSING OF APPLICATIONS; PROHIBITION ON FEES.

Regulations promulgated under this subtitle shall provide that no additional fee will be charged to an applicant for a Z nonimmigrant visa for applying for benefits under this subtitle.

SEC. 616. HIGHER EDUCATION ASSISTANCE.

(a) Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1623) shall have no force or effect with respect to an alien who is a probationary Z or Z nonimmigrant.

(b) Notwithstanding any provision of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), with respect to assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), an alien

who adjusts status to that of a lawful permanent resident under this title, or who is a probationary Z or Z nonimmigrant under this title and who meets the eligibility criteria set forth in section 614(a)(1)(A), (B), and (F), shall be eligible for the following assistance under such title IV:

(1) Student loans under parts B, D, and E of such title IV (20 U.S.C. 1071 et seq., 1087a et seq., 1087aa et seq.), subject to the requirements of such parts.

(2) Federal work-study programs under part C of such title IV (42 U.S.C. 2751 et seq.), subject to the requirements of such part.

(3) Services under such title IV (20 U.S.C. 1070 et seq.), subject to the requirements for such services.

SEC. 617. DELAY OF FINES AND FEES.

(a) Payment of the penalties and fees specified in section 601(e)(6) shall not be required with respect to an alien who meets the eligibility criteria set forth in section 614(a)(1)(A), (B), and (F) until the date that is six years and six months after the date of enactment of this Act or the alien reaches the age of 24, whichever is later. If the alien makes all of the demonstrations specified in section 614(a)(1) by such date, the penalties shall be waived.

If the alien fails to make the demonstrations specified in section 614(a)(1) by such date, the alien's Z nonimmigrant status will be terminated unless the alien pays the penalties and fees specified in section 601(e)(6) consistent with the procedures set forth in section 608 within 90 days.

(b) With respect to an alien who meets the eligibility criteria set forth in section 614(a)(1)(A) and (F), but not the eligibility criteria in section 614(a)(1)(B), the individual who pays the penalties specified in section 601(e)(6) shall be entitled to a refund when the alien makes all the demonstrations specified in section 614(a)(1).

SEC. 618. GAO REPORT.

Seven years after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, which sets forth—

(1) the number of aliens who were eligible for adjustment of status under section 623(a);

(2) the number of aliens who applied for adjustment of status under section 623(a); and

(3) the number of aliens who were granted adjustment of status under section 623(a).

SEC. 619. REGULATIONS, EFFECTIVE DATE, AUTHORIZATION OF APPROPRIATIONS.

(a) REGULATIONS.—The Secretary shall issue regulations to carry out the amendments made by this subtitle not later than the first day of the seventh month that begins after the date of enactment of this Act.

(b) EFFECTIVE DATE.—This subtitle shall take effect on the date that regulations required by subsection (a) are issued, regardless of whether such regulations are issued on an interim basis or on any other basis.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to implement this subtitle, including any sums needed for costs associated with the initiation of such implementation.

PART II—CORRECTION OF SOCIAL SECURITY RECORDS

SEC. 620. CORRECTION OF SOCIAL SECURITY RECORDS.

(a) IN GENERAL.—Section 208(e)(1) of the Social Security Act (42 U.S.C. 408(e)(1)) is amended—

(1) in subparagraph (B)(ii), by striking ''or'' at the end;

(2) in subparagraph (C), by inserting ''or'' at the end;

(3) by inserting after subparagraph (C) the following:

"(D) who is granted nonimmigrant status pursuant to section 101(a)(15)(Z–A) of the Immigration and Nationality Act,"; and

(4) by striking "1990." and inserting "1990, or in the case of an alien described in subparagraph (D), if such conduct is alleged to have occurred before the date on which the alien was granted such nonimmigrant status.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the seventh month that begins after the date of the enactment of this Act.

Subtitle C—Agricultural Workers

SEC. 621. SHORT TITLE.

This subtitle may be cited as the "Agricultural Job Opportunities, Benefits, and Security Act of 2007" or the "AgJOBS Act of 2007".

PART I—ADMISSION OF AGRICULTURAL WORKERS

SEC. 622. ADMISSION OF AGRICULTURAL WORKERS.

(a) Z–A NONIMMIGRANT VISA CATEGORY.—

(1) ESTABLISHMENT.—Paragraph (15) of section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)), as amended by section 601(b),

is further amended by adding at the end the following new subparagraph:

"(Z–A)(i) an alien who is coming to the United States to perform any service or activity that is considered to be agricultural under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), agricultural labor under section 3121(g) of the Internal Revenue Code of 1986, or the performance of agricultural labor or services described in subparagraph (H)(ii)(a), who meets the requirements of section 214A of this Act; or

"(ii) the spouse or minor child of an alien described in clause (i) who is residing in the United States.".

(b) REQUIREMENTS FOR ISSUANCE OF NONIMMIGRANT VISA.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by inserting after section 214 the following new section:

"SEC. 214A. ADMISSION OF AGRICULTURAL WORKERS.

"(a) DEFINITIONS.—In this section:

"(1) AGRICULTURAL EMPLOYMENT.—The term 'agricultural employment' means any service or activity that is considered to be agricultural under section 3(f) of the Fair Labor Standards Act of 1938

(29 U.S.C. 203(f)) or agricultural labor under section 3121(g) of the Internal Revenue Code of 1986 or the performance of agricultural labor or services described in section 101(a)(15)(H)(ii)(a).

"(2) DEPARTMENT.—The term 'Department' means the Department of Homeland Security.

"(3) EMPLOYER.—The term 'employer' means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment.

"(4) QUALIFIED DESIGNATED ENTITY.—The term 'qualified designated entity' means—

"(A) a qualified farm labor organization or an association of employers designated by the Secretary; or

"(B) any such other person designated by the Secretary if that Secretary determines such person is qualified and has substantial experience, demonstrated competence, and has a history of long-term involvement in the preparation and submission of applications for adjustment of status under section 209, 210, or 245, the Act entitled 'An Act to adjust the status of Cuban refugees to that of lawful permanent residents of the United States, and for other

purposes', approved November 2, 1966 (Public Law 89–732; 8 U.S.C. 1255 note), Public Law 95–145 (8 U.S.C. 1255 note), or the Immigration Reform and Control Act of 1986 (Public Law 99–603; 100 Stat. 3359) or any amendment made by that Act.

"(5) SECRETARY.—Except as otherwise provided, the term 'Secretary' means the Secretary of Homeland Security.

"(6) TEMPORARY.—A worker is employed on a 'temporary' basis when the employment is intended not to exceed 10 months.

"(7) WORK DAY.—The term 'work day' means any day in which the individual is employed 5.75 or more hours in agricultural employment.

"(8) Z–A DEPENDENT VISA.—The term 'Z–A dependent visa' means a nonimmigrant visa issued pursuant to section 101(a)(15)(Z–A)(ii).

"(9) Z–A VISA.—The term 'Z–A visa' means a nonimmigrant visa issued pursuant to section 101(a)(15)(Z–A)(i).

"(b) AUTHORIZATION FOR PRESENCE, EMPLOYMENT, AND TRAVEL IN THE UNITED STATES.—

"(1) IN GENERAL.—An alien issued a Z–A visa or a Z–A dependent visa may remain in, and be em-

ployed in, the United States during the period such visa is valid.

"(2) AUTHORIZED EMPLOYMENT.—The Secretary shall provide an alien who is granted a Z–A visa or a Z–A dependent visa an employment authorized endorsement or other appropriate work permit, in the same manner as an alien lawfully admitted for permanent residence.

"(3) AUTHORIZED TRAVEL.—An alien who is granted a Z–A visa or a Z–A dependent visa is authorized to travel outside the United States (including commuting to the United States from a residence in a foreign country) in the same manner as an alien lawfully admitted for permanent residence.

"(c) QUALIFICATIONS.—

"(1) Z–A VISA.—Notwithstanding any other provision of law, the Secretary shall, pursuant to the requirements of this section, grant a Z–A visa to an alien if the Secretary determines that the alien—

(A) has performed agricultural employment in the United States for at least 863 hours or 150 work days during the 24-month period ending on December 31, 2006;

(B) applied for such status during the 18-month application period beginning on the first

day of the seventh month that begins after the date of enactment of this Act;

(C) is admissible to the United States under section 212, except as otherwise provided in paragraph (4);

(D) has not been convicted of any felony or a misdemeanor, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of $500; and

"(E) meets the requirements of paragraph (3).

"(2) Z–A DEPENDENT VISA.—Notwithstanding any other provision of law, the Secretary shall grant a Z–A dependent visa to an alien who is—

(A) described in section 101(a)(15)(Z-A)(ii);

(B) meets the requirements of paragraph (3); and

(C) is admissible to the United States under section 212, except as otherwise provided in paragraph (4).

"(3) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—

(A) FINGERPRINTS.—An alien seeking a Z–A visa or a Z–A dependent visa shall submit

fingerprints to the Secretary at such time and in manner as the Secretary may require.

(B) BACKGROUND CHECKS.—The Secretary shall utilize fingerprints provided under subparagraph (A) and other biometric data provided by an alien to conduct a background check of the alien, including searching the alien's criminal history and any law enforcement actions taken with respect to the alien and ensuring that the alien is not a risk to national security.

"(4) WAIVER OF CERTAIN GROUNDS OF INADMISSIBILITY.—In the determination of an alien's eligibility for a Z–A visa or a Z–A dependent visa the following shall apply:

(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (5), (6)(A), (7), and (9) of section 212(a) shall not apply.

(B) WAIVER OF OTHER GROUNDS.—

"(i) IN GENERAL.—Except as provided in clause (ii), the Secretary may waive any provision of such section 212(a), other than the paragraphs described in subparagraph (A), in the case of individual

aliens for humanitarian purposes, to ensure family unity, or if such waiver is otherwise in the public interest.

"(ii) GROUNDS THAT MAY NOT BE WAIVED.—Except as provided in subparagraph (C), subparagraphs (A), (B), and (C) of paragraph (2), and paragraphs (3) and (4) of section 212(a) may not be waived by the Secretary under clause (i).

"(iii) CONSTRUCTION.—Nothing in this subparagraph shall be construed as affecting the authority of the Secretary other than under this subparagraph to waive provisions of such section 212(a).

"(C) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for a Z–A visa or a Z–A dependent visa by reason of a ground of inadmissibility under section 212(a)(4) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

"(d) APPLICATION.—

"(1) IN GENERAL.—An alien seeking a Z–A visa shall submit an application to the Secretary for

1 such a visa, including information regarding any Z–
2 A dependent visa for the spouse of child of the alien.
3 ''(2) SUBMISSION.—Applications for a Z–A visa
4 under may be submitted—
5 ''(A) to the Secretary if the applicant is
6 represented by an attorney or a nonprofit reli-
7 gious, charitable, social service, or similar orga-
8 nization recognized by the Board of Immigra-
9 tion Appeals under section 292.2 of title 8,
10 Code of Federal Regulations (or similar suc-
11 cessor regulations); or
12 ''(B) to a qualified designated entity if the
13 applicant consents to the forwarding of the ap-
14 plication to the Secretary.
15 ''(3) PROOF OF ELIGIBILITY.—
16 ''(A) IN GENERAL.—An alien may estab-
17 lish that the alien meets the requirement for a
18 Z–A visa through government employment
19 records or records supplied by employers or col-
20 lective bargaining organizations, and other reli-
21 able documentation as the alien may provide.
22 The Secretary shall establish special procedures
23 to properly credit work in cases in which an
24 alien was employed under an assumed name.

"(B) DOCUMENTATION OF WORK HISTORY.—

"(i) BURDEN OF PROOF.—An alien applying for a Z–A visa or applying for adjustment of status described in subsection (j) has the burden of proving by a preponderance of the evidence that the alien has performed the requisite number of hours or days of agricultural employment required for such application or adjustment of status, as applicable.

"(ii) TIMELY PRODUCTION OF RECORDS.—If an employer or farm labor contractor employing such an alien has kept proper and adequate records respecting such employment, the alien's burden of proof under clause (i) may be met by securing timely production of such records under regulations to be promulgated by the Secretary.

"(iii) SUFFICIENT EVIDENCE.—An alien may meet the burden of proof under clause (i) to establish that the alien has performed the requisite number of hours or days of agricultural employment by pro-

ducing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference.

"(4) APPLICATIONS SUBMITTED TO QUALIFIED DESIGNATED ENTITIES.—

"(A) REQUIREMENTS.—Each qualified designated entity shall agree—

"(i) to forward to the Secretary an application submitted to that entity pursuant to paragraph (2)(B) if the alien for whom the application is being submitted has consented to such forwarding;

"(ii) not to forward to the Secretary any such application if such an alien has not consented to such forwarding; and

"(iii) to assist an alien in obtaining documentation of the alien's work history, if the alien requests such assistance.

"(B) NO AUTHORITY TO MAKE DETERMINATIONS.—No qualified designated entity may make a determination required by this section to be made by the Secretary.

"(5) APPLICATION FEES.—

"(A) FEE SCHEDULE.—The Secretary shall provide for a schedule of fees that—

"(i) shall be charged for applying for a Z–A visa under this section or for an adjustment of status described in subsection (j); and

"(ii) may be charged by qualified designated entities to help defray the costs of services provided to such aliens making such an application.

"(B) PROHIBITION ON EXCESS FEES BY QUALIFIED DESIGNATED ENTITIES.—A qualified designated entity may not charge any fee in excess of, or in addition to, the fees authorized under subparagraph (A)(ii) for services provided to applicants.

"(6) LIMITATION ON ACCESS TO INFORMATION.—Files and records collected or compiled by a qualified designated entity for the purposes of this section are confidential and the Secretary shall not have access to such a file or record relating to an alien without the consent of the alien, except as allowed by a court order issued pursuant to [__].

"(7) TREATMENT OF APPLICANTS.—

(A) IN GENERAL.—An alien who files an application under this section to receive a Z–A visa and any spouse or child of the alien seek-

ing a Z–A dependant visa, on the date described in subparagraph (B)—

"(i) shall be granted probationary benefits in the form of employment authorization pending final adjudication of the alien's application;

"(ii) may in the Secretary's discretion receive advance permission to re-enter the United States pursuant to existing regulations governing advance parole;

"(iii) may not be detained for immigration purposes, determined inadmissible or deportable, or removed pending final adjudication of the alien's application, unless the alien is determined to be ineligible for Z–A visa; and

"(iv) may not be considered an unauthorized alien (as defined in section 274A) until the date on which [the alien's application for a Z–A visa] is denied.

"(B) TIMING OF PROBATIONARY BENEFITS.—

"(i) IN GENERAL.—Subject to clause (ii), an alien who submits an application for a Z–A visa under subsection (d), in-

cluding any evidence required under such subsection, and any spouse or child of the alien seeking a Z–A dependent visa shall receive the probationary benefits described in clauses (i) through (iv) of subparagraph (A) at the earlier of—

"(I) the date and time that the alien has passed all appropriate background checks, including name and fingerprint checks; or

"(II) the end of the next business day after the date that the Secretary receives the alien's application for Z–A visa.

"(ii) EXCEPTION.—If the Secretary determines that the alien fails the background checks referred to in clause (i)(I), the alien may not be granted probationary benefits described in clauses (i) through (iv) of subparagraph (A).

"(C) PROBATIONARY AUTHORIZATION DOCUMENT.—The Secretary shall provide each alien granted probationary benefits described in clauses (i) through (iv) of subparagraph (A) with a counterfeit-resistant document that re-

flects the benefits and status set forth in subparagraph (A). The Secretary may by regulation establish procedures for the issuance of documentary evidence of probationary benefits and, except as provided herein, the conditions under which such documentary evidence expires, terminates, or is renewed.

"(D) CONSTRUCTION.—Nothing in this section may be construed to limit the Secretary's authority to conduct any appropriate background and security checks subsequent to issuance of evidence of probationary benefits under this paragraph.

"(8) TEMPORARY STAY OF REMOVAL AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

"(A) BEFORE APPLICATION PERIOD.—Beginning on the date of enactment of the AgJOBS Act of 2007, the Secretary shall provide that, in the case of an alien who is apprehended prior to the first date of the application period described in subsection (c)(1)(B) and who can establish a nonfrivolous case of eligibility for a Z–A visa (but for the fact that the alien may not apply for such status until the beginning of such period), the alien—

"(i) may not be removed; and

"(ii) shall be granted authorization to engage in employment in the United States and be provided an employment authorized endorsement or other appropriate work permit for such purpose.

"(B) DURING APPLICATION PERIOD.—The Secretary shall provide that, in the case of an alien who presents a nonfrivolous application for Z–A visa during the application period described in subsection (c)(1)(B), including an alien who files such an application within 30 days of the alien's apprehension, and until a final determination on the application has been made in accordance with this section, the alien—

"(i) may not be removed; and

"(ii) shall be granted authorization to engage in employment in the United States and be provided an employment authorized endorsement or other appropriate work permit for such purpose.

"(e) NUMERICAL LIMITATIONS.—

"(1) Z–A VISA.—The Secretary may not issue more than 1,500,000 Z–A visas.

"(2) Z–A DEPENDENT VISA.—The Secretary may not count any Z–A dependent visa issued against the numerical limitation described in paragraph (1).

"(f) EVIDENCE OF NONIMMIGRANT STATUS.—

"(1) IN GENERAL.—Documentary evidence of nonimmigrant status shall be issued to each alien granted a Z–A visa or a Z–A dependent visa.

"(2) FEATURES OF DOCUMENTATION.—Documentary evidence of a Z–A visa or a Z–A dependent visa—

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

"(B) shall be designed in consultation with U.S. Immigration and Customs Enforcement's Forensic Document Laboratory;

"(C) shall serve as a valid travel and entry document for an alien granted a Z–A visa or a Z–A dependent visa for the purpose of applying for admission to the United States where the alien is applying for admission at a port of entry;

"(D) may be accepted during the period of its validity by an employer as evidence of employment authorization and identity under section 274A; and

"(E) shall be issued to the alien granted the visa by the Secretary promptly after final adjudication of such alien's application for the visa, except that an alien may not be granted a Z–A visa or a Z–A dependent visa until all appropriate background checks on each alien are completed to the satisfaction of the Secretary.

"(g) FINE.—An alien granted a Z–A visa shall pay a fine of $100 to the Secretary.

"(h) TREATMENT OF ALIENS GRANTED A Z–A VISA.—

"(1) IN GENERAL.—Except as otherwise provided under this subsection, an alien granted a Z–A visa or a Z–A dependent visa shall be considered to be an alien lawfully admitted for permanent residence for purposes of any law other than any provision of this Act.

"(2) DELAYED ELIGIBILITY FOR CERTAIN FEDERAL PUBLIC BENEFITS.—An alien granted a Z–A visa shall not be eligible, by reason of such status,

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)) until 5 years after the date on which the alien is granted an adjustment of status under subsection (d).

"(3) TERMS OF EMPLOYMENT.—

"(A) PROHIBITION.—No alien granted a Z–A visa may be terminated from employment by any employer during the period of a Z–A visa except for just cause.

"(B) TREATMENT OF COMPLAINTS.—

"(i) ESTABLISHMENT OF PROCESS.—The Secretary shall establish a process for the receipt, initial review, and disposition of complaints by aliens granted a Z–A visa who allege that they have been terminated without just cause. No proceeding shall be conducted under this subparagraph with respect to a termination unless the Secretary determines that the complaint was filed not later than 6 months after the date of the termination.

"(ii) INITIATION OF ARBITRATION.—If the Secretary finds that an alien has

filed a complaint in accordance with clause (i) and there is reasonable cause to believe that the alien was terminated from employment without just cause, the Secretary shall initiate binding arbitration proceedings by requesting the Federal Mediation and Conciliation Service to appoint a mutually agreeable arbitrator from the roster of arbitrators maintained by such Service for the geographical area in which the employer is located. The procedures and rules of such Service shall be applicable to the selection of such arbitrator and to such arbitration proceedings. The Secretary shall pay the fee and expenses of the arbitrator, subject to the availability of appropriations for such purpose.

"(iii) ARBITRATION PROCEEDINGS.—The arbitrator shall conduct the proceeding under this subparagraph in accordance with the policies and procedures promulgated by the American Arbitration Association applicable to private arbitration of employment disputes. The arbitrator shall make findings respecting whether the

termination was for just cause. The arbitrator may not find that the termination was for just cause unless the employer so demonstrates by a preponderance of the evidence. If the arbitrator finds that the termination was not for just cause, the arbitrator shall make a specific finding of the number of days or hours of work lost by the employee as a result of the termination. The arbitrator shall have no authority to order any other remedy, including reinstatement, back pay, or front pay to the affected employee. Not later than 30 days after the date of the conclusion of the arbitration proceeding, the arbitrator shall transmit the findings in the form of a written opinion to the parties to the arbitration and the Secretary. Such findings shall be final and conclusive, and no official or court of the United States shall have the power or jurisdiction to review any such findings.

''(iv) EFFECT OF ARBITRATION FINDINGS.—If the Secretary receives a finding of an arbitrator that an employer has ter-

minated the employment of an alien who is granted a Z–A visa without just cause, the Secretary shall credit the alien for the number of days of work not performed during such period of termination for the purpose of determining if the alien meets the qualifying employment requirement of subsection (f)(2).

"(v) TREATMENT OF ATTORNEY'S FEES.—Each party to an arbitration under this subparagraph shall bear the cost of their own attorney's fees for the arbitration.

"(vi) NONEXCLUSIVE REMEDY.—The complaint process provided for in this subparagraph is in addition to any other rights an employee may have in accordance with applicable law.

"(vii) EFFECT ON OTHER ACTIONS OR PROCEEDINGS.—Any finding of fact or law, judgment, conclusion, or final order made by an arbitrator in the proceeding before the Secretary shall not be conclusive or binding in any separate or subsequent action or proceeding between the employee

and the employee's current or prior employer brought before an arbitrator, administrative agency, court, or judge of any State or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts, except that the arbitrator's specific finding of the number of days or hours of work lost by the employee as a result of the employment termination may be referred to the Secretary pursuant to clause (iv).

''(4) RECORD OF EMPLOYMENT.—

''(A) IN GENERAL.—Each employer of an alien who is granted a Z–A visa shall annually—

''(i) provide a written record of employment to the alien; and

''(ii) provide a copy of such record to the Secretary.

''(B) CIVIL PENALTIES.—

''(i) IN GENERAL.—If the Secretary finds, after notice and opportunity for a hearing, that an employer of an alien granted a Z–A visa has failed to provide

the record of employment required under subparagraph (A) or has provided a false statement of material fact in such a record, the employer shall be subject to a civil money penalty in an amount not to exceed $1,000 per violation.

"(ii) LIMITATION.—The penalty applicable under clause (i) for failure to provide records shall not apply unless the alien has provided the employer with evidence of employment authorization granted under this subsection.

"(i) TERMINATION OF A GRANT OF Z–A VISA.—

"(1) IN GENERAL.—The Secretary may terminate a Z–A visa or a Z–A dependent visa granted to an alien only if the Secretary determines that the alien is deportable.

"(2) GROUNDS FOR TERMINATION.—Prior to the date that an alien granted a Z–A visa or a Z–A dependent visa becomes eligible for adjustment of status described in subsection (j), the Secretary may deny adjustment to permanent resident status and provide for termination of the alien's Z–A visa or Z–A dependent visa if—

"(A) the Secretary finds, by a preponderance of the evidence, that the grant of a Z–A visa was the result of fraud or willful misrepresentation (as described in section 212(a)(6)(C)(i)); or

"(B) the alien—

"(i) commits an act that makes the alien inadmissible to the United States as an immigrant, except as provided under subsection (c)(4);

"(ii) is convicted of a felony or 3 or more misdemeanors committed in the United States;

"(iii) is convicted of an offense, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of $500; or

"(iv) in the case of an alien granted a Z–A visa, fails to perform the agricultural employment described in subsection (j)(1)(A) unless the alien was unable to work in agricultural employment due to the extraordinary circumstances described in subsection (j)(1)(A)(iii).

"(3) REPORTING REQUIREMENT.—The Secretary shall promulgate regulations to ensure that the alien granted a Z–A visa complies with the qualifying agricultural employment described in subsection (j)(1)(A) at the end of the 5-year work period, which may include submission of an application pursuant to this subsection.

"(j) ADJUSTMENT TO PERMANENT RESIDENCE.—

"(1) Z–A VISA.—Except as provided in this subsection, the Secretary shall award the maximum number of points available pursuant to section 203(b)(1) and adjust the status of an alien granted a Z–A visa to that of an alien lawfully admitted for permanent residence under this Act, if the Secretary determines that the following requirements are satisfied:

"(A) QUALIFYING EMPLOYMENT.—

"(i) IN GENERAL.—Subject to clauses (ii) and (iii), the alien has performed at least—

"(I) 5 years of agricultural employment in the United States for at least 100 work days per year, during the 5-year period beginning on the

date of enactment of the AgJobs Act of 2007; or

"(II) 3 years of agricultural employment in the United States for at least 150 work days per year, during the 3-year period beginning on such date of enactment.

"(ii) FOUR-YEAR PERIOD OF EMPLOYMENT.—An alien shall be considered to meet the requirements of clause (i) if the alien has performed 4 years of agricultural employment in the United States for at least 150 work days during 3 years of those 4 years and at least 100 work days during the remaining year, during the 4-year period beginning on such date of enactment.

"(iii) EXTRAORDINARY CIRCUMSTANCES.—In determining whether an alien has met the requirement of clause (i), the Secretary may credit the alien with not more than 12 additional months to meet the requirement of that clause if the alien was unable to work in agricultural employment due to—

"(I) pregnancy, injury, or disease, if the alien can establish such pregnancy, disabling injury, or disease through medical records;

"(II) illness, disease, or other special needs of a minor child, if the alien can establish such illness, disease, or special needs through medical records; or

"(III) severe weather conditions that prevented the alien from engaging in agricultural employment for a significant period of time.

"(B) PROOF.—An alien may demonstrate compliance with the requirements of subparagraph (A) by submitting—

"(i) the record of employment described in subsection (h)(4); or

"(ii) such documentation as may be submitted under subsection (d)(3).

"(C) APPLICATION PERIOD.—Not later than 8 years after the date of the enactment of the AgJOBS Act of 2007, the alien must—

"(i) apply for adjustment of status; or

"(ii) renew the alien's Z visa status as described in section 601(k)(2).

"(D) FINE.—The alien pays to the Secretary a fine of $400; or

"(2) SPOUSES AND MINOR CHILDREN.—Notwithstanding any other provision of law, the Secretary shall confer the status of lawful permanent resident on the spouse and minor child of an alien granted any adjustment of status under paragraph (1), including any individual who was a minor child on the date such alien was granted a Z–A visa, if the spouse or minor child applies for such status, or if the principal alien includes the spouse or minor child in an application for adjustment of status to that of a lawful permanent resident.

"(3) GROUNDS FOR DENIAL OF ADJUSTMENT OF STATUS.—The Secretary may deny an alien granted a Z–A visa or a Z–A dependent visa an adjustment of status under this Act and provide for termination of such visa if—

"(A) the Secretary finds by a preponderance of the evidence that grant of the Z–A visa was the result of fraud or willful misrepresentation (as described in section 212(a)(6)(C)(i)); or

"(B) the alien—

"(i) commits an act that makes the alien inadmissible to the United States under section 212, except as provided under subsection (c)(4);

"(ii) is convicted of a felony or 3 or more misdemeanors committed in the United States; or

"(iii) is convicted of an offense, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of $500.

"(4) GROUNDS FOR REMOVAL.—Any alien granted Z–A visa status who does not apply for adjustment of status or renewal of Z status under section 601(k)(2) prior to the expiration of the application period described in subsection (c)(1)(B) or who fails to meet the other requirements of paragraph (1) by the end of the application period, is deportable and may be removed under section 240.

"(5) PAYMENT OF TAXES.—

"(A) IN GENERAL.—Not later than the date on which an alien's status is adjusted as described in this subsection, the alien shall establish that the alien does not owe any applicable Federal tax liability by establishing that—

"(i) no such tax liability exists;

"(ii) all such outstanding tax liabilities have been paid; or

"(iii) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

"(B) APPLICABLE FEDERAL TAX LIABILITY.—In this paragraph, the term 'applicable Federal tax liability' means liability for Federal taxes, including penalties and interest, owed for any year during the period of employment required under paragraph (1)(A) for which the statutory period for assessment of any deficiency for such taxes has not expired.

"(C) IRS COOPERATION.—The Secretary of the Treasury shall establish rules and procedures under which the Commissioner of Internal Revenue shall provide documentation to an alien upon request to establish the payment of all taxes required by this subsection.

"(6) ENGLISH LANGUAGE.—

"(A) IN GENERAL.—Not later than the date on which a Z–A nonimmigrant's status is adjusted or renewed under section 601(k)(2), a

Z–A nonimmigrant who is 18 years of age or older must pass the naturalization test described in sections 312(a)(1) and (2).

"(B) EXCEPTION.—The requirement of subparagraph (A) shall not apply to any person who, on the date of the filing of the person's application for an extension of Z–A nonimmigrant status—

(i) is unable because of physical or developmental disability or mental impairment to comply therewith;

(ii) is over fifty years of age and has been living in the United States for periods totaling at least twenty years, or

(iii) is over fifty-five years of age and has been living in the United States for periods totaling at least fifteen years.

"(7) PRIORITY OF APPLICATIONS.—

"(A) BACK OF LINE.—An alien may not adjust status to that of a lawful permanent resident under this subsection until 30 days after the date on which an immigrant visa becomes available for approved petitions filed under sections 201, 202, and 203 of the Act

that were filed before May 1, 2005 (referred to in this paragraph as the 'processing date').

"(B) OTHER APPLICANTS.—The processing of applications for an adjustment of status under this subsection shall be processed not later than 1 year after the processing date.

"(C) CONSULAR APPLICATION.—

(i) IN GENERAL.—A Z–A nonimmigrant's application for adjustment of status to that of an alien lawfully admitted for permanent residence must be filed in person with a United States consulate abroad.

(ii) PLACE OF APPLICATION.—Unless otherwise directed by the Secretary of State, a Z–A nonimmigrant applying for adjustment of status under this paragraph shall make an application at a consular office in the alien's country of origin. The Secretary of State shall direct a consular office in a country that is not a Z–A nonimmigrant's country of origin to accept an application for adjustment of status from such an alien, where the Z–A nonimmigrant's country of origin is not contig-

uous to the United States, and as consular resources make possible.

"(k) CONFIDENTIALITY OF INFORMATION.—Applicants for Z–A nonimmigrant status under this subtitle shall be afforded confidentiality as provided under section 604.

"(l) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—

"(1) CRIMINAL PENALTY.—Any person who—

"(A) applies for a Z–A visa or a Z–A dependent visa under this section or an adjustment of status described in subsection (j) and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

"(B) creates or supplies a false writing or document for use in making such an application, shall be fined in accordance with title 18, United States Code, imprisoned not more than 5 years, or both.

"(2) INADMISSIBILITY.—An alien who is convicted of a crime under paragraph (1) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(6)(C)(i).

"(m) ELIGIBILITY FOR LEGAL SERVICES.—Section 504(a)(11) of Public Law 104–134 (110 Stat. 1321–53 et seq.) shall not be construed to prevent a recipient of funds under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) from providing legal assistance directly related to an application for a Z–A visa under subsection (b) or an adjustment of status under subsection (j).

"(n) ADMINISTRATIVE AND JUDICIAL REVIEW.—Administrative or judicial review of a determination on an application for a Z–A visa shall be such as is provided under section 603.

"(o) PUBLIC OUTREACH.—Beginning not later than the first day of the application period described in subsection (c)(1)(B), the Secretary shall cooperate with qualified designated entities to broadly disseminate information regarding the availability of Z–A visas, the benefits of such visas, and the requirements to apply for and be granted such a visa.".

(c) NUMERICAL LIMITATIONS.—

(1) WORLDWIDE LEVEL OF IMMIGRATION.—Section 201(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(1)), as amended by [____], is further amended—

(A) in subparagraph (A), by striking ''subparagraph (A) or (B)'' and inserting ''subparagraph (A), (B), or (N)''; and

(B) by adding at the end, the following new subparagraph:

''(N) Aliens issued a Z–A visa or a Z–A dependent visa (as those terms are defined in section 214A) who receive an adjustment of status to that of an alien lawfully admitted for permanent residence.''.

(2) NUMERICAL LIMITATIONS ON INDIVIDUAL FOREIGN STATES.—Section 202(a) of the Immigration and Nationality Act (8 U.S.C. 1152) is amended by adding at the end the following new paragraph:

''(6) SPECIAL RULE FOR Z–A NONIMMIGRANTS.—An immigrant visa may be made available to an alien issued a Z–A visa or a Z–A dependent visa (as those terms are defined in section 214A) without regard to the numerical limitations of this section.''.

(d) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 214 the following:

"Sec. 214A. Admission of agricultural worker.".

SEC. 623. AGRICULTURAL WORKER IMMIGRATION STATUS ADJUSTMENT ACCOUNT.

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

"(y) AGRICULTURAL WORKER IMMIGRATION STATUS ADJUSTMENT ACCOUNT.—

"(1) ESTABLISHMENT.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'Agricultural Worker Immigration Status Adjustment Account'. Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under section 214A.

"(2) USE OF FEES.—The fees deposited into the Agricultural Worker Immigration Status Adjustment Account shall be used by the Secretary of Homeland Security for processing applications made by aliens seeking nonimmigrant status under section 101(a)(15)(Z–A) or for processing applications made

by such an alien who is seeking an adjustment of status.

"(3) AVAILABILITY OF FUNDS.—All amounts deposited in the Agricultural Worker Immigration Status Adjustment Account under this subsection shall remain available until expended.".

SEC. 624. REGULATIONS, EFFECTIVE DATE, AUTHORIZATION OF APPROPRIATIONS.

(a) REGULATIONS.—The Secretary shall issue regulations to carry out the amendments made by this subtitle not later than the first day of the seventh month that begins after the date of enactment of this Act.

(b) EFFECTIVE DATE.—This subtitle shall take effect on the date that regulations required by subsection (a) are issued, regardless of whether such regulations are issued on an interim basis or on any other basis.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to implement this subtitle, including any sums needed for costs associated with the initiation of such implementation.

SEC. 625. LIMITATION ON CLAIMING EARNED INCOME TAX CREDIT.

Any alien who is unlawfully present in the United States, receives adjustment of status under section 601

of this Act (relating to aliens who were illegally present in the United States prior to January 1, 2007), or enters the United States to work on a Y visa under section 402 of this Act, shall not be eligible for the tax credit provided under section 32 of the Internal Revenue Code (relating to earned income) until such alien has his or her status adjusted to legal permanent resident status.

SEC. 626. EARNED INCOME TAX CREDIT.

Nothing in this Act, or the amendments made by this Act, may be construed to modify any provision of the Internal Revenue Code of 1986 which prohibits illegal aliens from qualifying for earned income tax credit under section 32 of such Code.

PART II—CORRECTION OF SOCIAL SECURITY RECORDS

SEC. 627. CORRECTION OF SOCIAL SECURITY RECORDS.

(a) IN GENERAL.—Section 208(e)(1) of the Social Security Act (42 U.S.C. 408(e)(1)) is amended—

(1) in subparagraph (B)(ii), by striking ''or'' at the end;

(2) in subparagraph (C), by inserting ''or'' at the end;

(3) by inserting after subparagraph (C) the following:

"(D) who is granted nonimmigrant status pursuant to section 101(a)(15)(Z–A) of the Immigration and Nationality Act,"; and

(4) by striking "1990." and inserting "1990, or in the case of an alien described in subparagraph (D), if such conduct is alleged to have occurred before the date on which the alien was granted such nonimmigrant status.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the seventh month that begins after the date of the enactment of this Act.

TITLE VII—MISCELLANEOUS

Subtitle A—Miscellaneous Immigration Reform

SEC. 701. WAIVER OF REQUIREMENT FOR FINGERPRINTS FOR MEMBERS OF THE ARMED FORCES.

Notwithstanding any other provision of law or any regulation, for aliens currently serving in the U.S. Armed Forces overseas and applying for naturalization from overseas, the Secretary of Defense shall provide in a form designated by the Secretary of Homeland Security, and the Secretary of Homeland Security shall use the fingerprints provided by the Secretary of Defense for such individuals, if the individual—

(a) may be naturalized pursuant to section 328 or 329 of the Immigration and Nationality Act (8 U.S.C. 1439 or 1440);

(b) was fingerprinted in accordance with the requirements of the Secretary of Defense at the time the individual enlisted in the Armed Forces; and

(c) submits the application to become a naturalized citizen of the United States not later than 12 months after the date the applicant is fingerprinted.

SEC. 702. ENGLISH AS NATIONAL LANGUAGE.

(a) SHORT TITLE.—This section may be cited as the ''S.I. Hayakawa National Language Amendment Act of 2007''.

(b) IN GENERAL.—Title 4, United States Code, is amended by adding at the end the following new chapter:

''CHAPTER 6—LANGUAGE OF THE GOVERNMENT

''Sec.
''161. Declaration of national language.
''162. Preserving and enhancing the role of the national language.
''163. Use of language other than English.

''SEC. 161. DECLARATION OF NATIONAL LANGUAGE.

''English shall be the national language of the Government of the United States.

"SEC. 162. PRESERVING AND ENHANCING THE ROLE OF THE NATIONAL LANGUAGE.

"(a) IN GENERAL.—The Government of the United States shall preserve and enhance the role of English as the national language of the United States of America.

"(b) EXCEPTION.—Unless specifically provided by statute, no person has a right, entitlement, or claim to have the Government of the United States or any of its officials or representatives act, communicate, perform or provide services, or provide materials in any language other than English. If an exception is made with respect to the use of a language other than English, the exception does not create a legal entitlement to additional services in that language or any language other than English.

"(c) FORMS.—If any form is issued by the Federal Government in a language other than English (or such form is completed in a language other than English), the English language version of the form is the sole authority for all legal purposes.

"SEC. 163. USE OF LANGUAGE OTHER THAN ENGLISH.

"Nothing in this chapter shall prohibit the use of a language other than English.".

(c) CONFORMING AMENDMENT.—The table of chapters for title 4, United States Code, is amended by adding at the end the following new item:

"6. Language of the Government ..... 161".

SEC. 703. DECLARATION OF ENGLISH AS LANGUAGE.

(a) IN GENERAL.—English is the common language of the United States.

(b) PRESERVING AND ENHANCING THE ROLE OF THE ENGLISH LANGUAGE.—The Government of the United States shall preserve and enhance the role of English as the language of the United States. Nothing in this Act shall diminish or expand any existing rights under the laws of the United States relative to services or materials provided by the Government of the United States in any language other than English.

(c) DEFINITION OF LAW.—For purposes of this section, the term ''laws of the United States'' includes the Constitution of the United States, any provision of Federal statute, or any rule or regulation issued under such statute, any judicial decisions interpreting such statute, or any Executive Order of the President.

SEC. 704. PILOT PROJECT REGARDING IMMIGRATION PRACTITIONER COMPLAINTS.

(a) Within 180 days of the enactment of this Act, the Secretary of Homeland Security, in consultation with the Attorney General, shall institute a three-year pilot project to—

(1) Encourage alien victims of immigration practitioner fraud, and related crimes, to come forward and file practitioner fraud complaints with the

Department of Homeland Security by utilizing existing statutory and administrative authority;

(2) Cooperate with Federal, State, and local law enforcement officials who are responsible for investigating and prosecuting such crimes; and

(3) Increase public awareness regarding the problem of immigration practitioner fraud.

(b) REPORTING.—Not later than 1 year after the end of the three-year pilot period, the Secretary of Homeland Security shall submit to Congress a report that includes information concerning—

(1) the number of individuals who file practitioner fraud complaints via the pilot program;

(2) the demographic characteristics, nationality, and immigration status of the complainants;

(3) the number of indictments that result from the pilot; and

(4) the number of successful fraud prosecutions that result from the pilot.

Subtitle B—Assimilation and Naturalization

SEC. 705. THE OFFICE OF CITIZENSHIP AND INTEGRATION.

Section 451(f) of the Homeland Security Act of 2002, Public Law 107–296 (6 U.S.C. 271(f)), is amended by—

(1) inserting ''and Integration'' after ''Office of Citizenship'' the two times that phrase appears; and

(2) in paragraph (f)(2), striking ''instruction and training on citizenship responsibilities'' and inserting ''civic integration, and instruction and training on citizenship responsibilities and requirements for citizenship''.

SEC. 706. SPECIAL PROVISIONS FOR ELDERLY IMMIGRANTS.

Section 312(b) of the Immigration and Nationality Act (8 U.S.C. 1423(b)) is amended by adding at the end the following: ''(4) The requirements of subsection (a) of this section shall not apply to a person who is over 75 years of age on the date of filing an application for naturalization; Provided that, the person expresses, in English or in the applicant's native language, at the time of examination for naturalization that the person understands and agrees to the elements of the oath required by section 337 of this Act.''.

SEC. 707. FUNDING FOR THE OFFICE OF CITIZENSHIP AND INTEGRATION.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Homeland Security the sum of [$100] million to carry out the mission and operations of the Office of Citizenship and

Integration in U.S. Citizenship and Immigration Services, including the patriotic integration of prospective citizens into—

(1) American common values and traditions, including an understanding of American history and the principles of the Constitution of the United States; and

(2) civic traditions of the United States, including the Pledge of Allegiance, respect for the flag of the United States, and voting in public elections.

SEC. 708. CITIZENSHIP AND INTEGRATION COUNCILS.

(a) GRANTS AUTHORIZED.—The Office of Citizenship and Immigrant Integration shall provide grants to States and municipalities for effective integration of immigrants into American society through the creation of New Americans Integrations Councils.

(b) USE OF FUNDS.—

(1) IN GENERAL.—Grants awarded under this section shall be used—

(A) To report on the status of new immigrants, lawful permanent residents, and citizens within the State or municipality;

(B) To conduct a needs assessment, including the availability of and demand for English language services and instruction class-

es, for new immigrants, lawful permanent residents, Z non-immigrants, and citizens;

(C) To convene public hearings and meetings to assist in the development of a comprehensive plan to integrate new immigrants, lawful permanent residents, Z non-immigrants, and citizens; and

(D) To develop a comprehensive plan to integrate new immigrants, lawful permanent residents, Z non-immigrants, and citizens into States and municipalities.

(2) MEMBERSHIP OF INTEGRATION COUNCILS.—New Americans Integration Councils established under this section shall consist of no less than ten and no more than fifteen individuals from the following sectors:

(A) State and local government;

(B) Business;

(C) Faith-based organizations;

(D) Civic organizations;

(E) Philanthropic leaders; and

(F) Nonprofit organizations with experience working with immigrant communities.

(c) REPORTING.—The Government Accountability Office, in coordination with the Office of Citizenship and

Immigrant Integration, shall conduct an annual evaluation of the grant program conducted under this section. Such evaluation shall be used by the Office of Citizenship and Immigrant Integration—

(1) To determine and improve upon the program's effectiveness;

(2) To develop recommended best practices for states and municipalities who receive grant awards; and

(3) To further define the program's goals and objectives.

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

SEC. 709. PRESIDENTIAL AWARD FOR BUSINESS LEADERSHIP IN PROMOTING AMERICAN CITIZENSHIP.

(a) ESTABLISHMENT.—There is established the Presidential Award for Business Leadership in Promoting American Citizenship, which shall be awarded to companies and other organizations that make extraordinary efforts in assisting their employees and members to learn

English and increase their understanding of American history and civics.

(b) SELECTION AND PRESENTATION OF AWARD.—

(1) SELECTION.—The President, upon recommendations from the Secretary, the Secretary of Labor, and the Secretary of Education, shall periodically award the Citizenship Education Award to large and small companies and other organizations described in subsection (a).

(2) PRESENTATION.—The presentation of the award shall be made by the President, or designee of the President, in conjunction with an appropriate ceremony.

SEC. 710. HISTORY AND GOVERNMENT TEST.

(a) HISTORY AND GOVERNMENT TEST.—The Secretary shall incorporate a knowledge and understanding of the meaning of the Oath of Allegiance provided by section 337 of the Immigration and Nationality Act (8 U.S.C. 1448) into the history and government test given to applicants for citizenship. Nothing in this Act, other than the amendment made by this subsection, shall be construed to influence the naturalization test redesign process currently underway under the direction of U.S. Citizenship and Immigration Services.

SEC. 711. ENGLISH LEARNING PROGRAM.

(a) The Secretary of Education shall develop an open source electronic program, useable on personal computers and through the Internet, that teaches the English language at various levels of proficiency, up to and including the ability to pass the Test of English as a Foreign Language, to individuals inside the United States whose primary language is a language other than English. The Secretary shall make the program available to the public for free, including by placing it on the Department of Education website, and shall ensure that it is readily accessible to public libraries throughout the United States. The program shall be fully accessible, at a minimum, to speakers of the top five foreign languages spoken inside the United States.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Education such sums as are necessary to carry out the purposes of this section.

SEC. 712. GAO STUDY ON THE APPELLATE PROCESS FOR IMMIGRATION APPEALS.

(a) IN GENERAL.—The Comptroller General of the United States shall, not later than 180 days after enactment of this Act, conduct a study on the appellate process for immigration appeals.

(b) REQUIREMENTS.—In conducting the study under subsection (a), the Comptroller General shall consider the possibility of consolidating all appeals from the Board of Immigration Appeals and habeas corpus petitions in immigration cases into 1 United States Court of Appeals, by—

(1) consolidating all such appeals into an existing circuit court, such as the United States Court of Appeals for the Federal Circuit;

(2) consolidating all such appeals into a centralized appellate court consisting of active circuit court judges temporarily assigned from the various circuits, in a manner similar to the Foreign Intelligence Surveillance Court or the Temporary Emergency Court of Appeals; or

(3) implementing a mechanism by which a panel of active circuit court judges shall have the authority to reassign such appeals from circuits with relatively high caseloads to circuits with relatively low caseloads.

(c) FACTORS TO CONSIDER.—In conducting the study under subsection (a), the Comptroller General, in consultation with the Attorney General, the Secretary, and the Judicial Conference of the United States, shall consider—

(1) the resources needed for each alternative, including judges, attorneys and other support staff, case management techniques including technological requirements, physical infrastructure, and other procedural and logistical issues as appropriate;

(2) the impact of each plan on various circuits, including their caseload in general and caseload per panel;

(3) the possibility of utilizing case management techniques to reduce the impact of any consolidation option, such as requiring certificates of reviewability, similar to procedures for habeas and existing summary dismissal procedures in local rules of the courts of appeals;

(4) the effect of reforms in this Act on the ability of the circuit courts to adjudicate such appeals;

(5) potential impact, if any, on litigants; and

(6) other reforms to improve adjudication of immigration matters, including appellate review of motions to reopen and reconsider, and attorney fee awards with respect to review of final orders of removal.

Subtitle C—American Competitiveness Scholarship Program

SEC. 713. AMERICAN COMPETITIVENESS SCHOLARSHIP PROGRAM.

(a) ESTABLISHMENT.—The Director of the National Science Foundation (referred to in this section as the ''Director'') shall award scholarships to eligible individuals to enable such individuals to pursue associate, undergraduate, or graduate level degrees in mathematics, engineering, health care, or computer science.

(b) ELIGIBILITY.—

(1) IN GENERAL.—To be eligible to receive a scholarship under this section, an individual shall—

(A) be a citizen of the United States, a national of the United States (as defined in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)), an alien admitted as a refugee under section 207 of such Act (8 U.S.C. 1157), or an alien lawfully admitted to the United States for permanent residence;

(B) prepare and submit to the Director an application at such time, in such manner, and containing such information as the Director may require; and

(C) certify to the Director that the individual intends to use amounts received under the scholarship to enroll or continue enrollment at an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)) in order to pursue an associate, undergraduate, or graduate level degree in mathematics, engineering, computer science, nursing, medicine, or other clinical medical program, or technology, or science program designated by the Director.

(2) ABILITY.—Awards of scholarships under this section shall be made by the Director solely on the basis of the ability of the applicant, except that in any case in which 2 or more applicants for scholarships are deemed by the Director to be possessed of substantially equal ability, and there are not sufficient scholarships available to grant one to each of such applicants, the available scholarship or scholarships shall be awarded to the applicants in a manner that will tend to result in a geographically wide distribution throughout the United States of recipients' places of permanent residence.

(c) AMOUNT OF SCHOLARSHIP; RENEWAL.—

(1) AMOUNT OF SCHOLARSHIP.—The amount of a scholarship awarded under this section shall be $15,000 per year, except that no scholarship shall be greater than the annual cost of tuition and fees at the institution of higher education in which the scholarship recipient is enrolled or will enroll.

(2) RENEWAL.—The Director may renew a scholarship under this section for an eligible individual for not more than 4 years.

(d) FUNDING.—The Director shall carry out this section only with funds made available under section 286(x) of the Immigration and Nationality Act (as added by section 712) (8 U.S.C. 1356).

(e) FEDERAL REGISTER.—Not later than 60 days after the date of enactment of this Act, the Director shall publish in the Federal Register a list of eligible programs of study for a scholarship under this section.

SEC. 714. SUPPLEMENTAL H–1B NONIMMIGRANT PETITIONER ACCOUNT.

Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) (as amended by this Act) is further amended by inserting after subsection (w) the following:

"(x) SUPPLEMENTAL H–1B NONIMMIGRANT PETITIONER ACCOUNT.—

"(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'Supplemental H–1B Nonimmigrant Petitioner Account'. Notwithstanding any other section of this Act, there shall be deposited as offsetting receipts into the account all fees collected under section 214(c)(15).

"(2) USE OF FEES FOR AMERICAN COMPETITIVENESS SCHOLARSHIP PROGRAM.—The amounts deposited into the Supplemental H–1B Nonimmigrant Petitioner Account shall remain available to the Director of the National Science Foundation until expended for scholarships described in section 711 of the Secure Borders, Economic Opportunity and Immigration Reform Act of 2007 for students enrolled in a program of study leading to a degree in mathematics, engineering, health care, or computer science.".

SEC. 715. SUPPLEMENTAL FEES.

Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) is amended by adding at the end the following:

"(15)(A) In each instance where the Attorney General, the Secretary of Homeland Security, or the Secretary of State is required to impose a fee pursu-

ant to paragraph (9) or (11), the Attorney General, the Secretary of Homeland Security, or the Secretary of State, as appropriate, shall impose a supplemental fee on the employer in addition to any other fee required by such paragraph or any other provision of law, in the amount determined under subparagraph (B).

"(B) The amount of the supplemental fee shall be $3,500, except that the fee shall be ½ that amount for any employer with not more than 25 full-time equivalent employees who are employed in the United States (determined by including any affiliate or subsidiary of such employer).

"(C) Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 286(x).".

TITLE VIII—MISCELLANEOUS

Subtitle A—Unaccompanied Alien Child Protection Act of 2007

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Unaccompanied Alien Child Protection Act of 2007".

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

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND DETENTION

Sec. 101. Procedures when encountering unaccompanied alien children.
Sec. 102. Family reunification for unaccompanied alien children with relatives in the United States.
Sec. 103. Appropriate conditions for detention of unaccompanied alien children.
Sec. 104. Repatriated unaccompanied alien children.
Sec. 105. Establishing the age of an unaccompanied alien child.
Sec. 106. Effective date.

TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO CHILD ADVOCATES AND COUNSEL

Sec. 201. Child advocates.
Sec. 202. Counsel.
Sec. 203. Effective date; applicability.

TITLE III—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN

Sec. 301. Special immigrant juvenile classification.
Sec. 302. Training for officials and certain private parties who come into contact with unaccompanied alien children.
Sec. 303. Report.

TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS

Sec. 401. Guidelines for children's asylum claims.
Sec. 402. Unaccompanied refugee children.
Sec. 403. Exceptions for unaccompanied alien children in asylum and refugee-like circumstances.

TITLE V—AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002

Sec. 501. Additional responsibilities and powers of the Office of Refugee Resettlement with respect to unaccompanied alien children.
Sec. 502. Technical corrections.
Sec. 503. Effective date.

TITLE VI—AUTHORIZATION OF APPROPRIATIONS

Sec. 601. Authorization of appropriations.

1 **SEC. 2. DEFINITIONS.**

2 (a) IN GENERAL.—In this Act:

3 (1) COMPETENT.—The term ''competent'', in
4 reference to counsel, means an attorney, or a rep-
5 resentative authorized to represent unaccompanied

alien children in immigration proceedings or matters, who—

(A) complies with the duties set forth in this Act;

(B) is—

(i) properly qualified to handle matters involving unaccompanied alien children; or

(ii) working under the auspices of a qualified nonprofit organization that is experienced in handling such matters; and

(C) if an attorney—

(i) is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia; and

(ii) is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting the attorney in the practice of law.

(2) DEPARTMENT.—The term ''Department'' means the Department of Homeland Security.

(3) DIRECTOR.—The term ''Director'' means the Director of the Office.

(4) OFFICE.—The term ''Office'' means the Office of Refugee Resettlement established by section 411 of the Immigration and Nationality Act (8 U.S.C. 1521).

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(6) UNACCOMPANIED ALIEN CHILD.—The term ''unaccompanied alien child'' has the meaning given the term in 101(a)(51) of the Immigration and Nationality Act, as added by subsection (b).

(7) VOLUNTARY AGENCY.—The term ''voluntary agency'' means a private, nonprofit voluntary agency with expertise in meeting the cultural, developmental, or psychological needs of unaccompanied alien children, as certified by the Director.

(b) AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

''(51) The term 'unaccompanied alien child' means a child who—

''(A) has no lawful immigration status in the United States;

''(B) has not attained 18 years of age; and

''(C) with respect to whom—

"(i) there is no parent or legal guardian in the United States; or

"(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

"(52) The term 'unaccompanied refugee children' means persons described in paragraph (42) who—

"(A) have not attained 18 years of age; and

"(B) with respect to whom there are no parents or legal guardians available to provide care and physical custody.".

(c) RULE OF CONSTRUCTION.—

"(1) STATE COURTS ACTING IN LOCO PARENTIS.—A department or agency of a State, or an individual or entity appointed by a State court or a juvenile court located in the United States, acting in loco parentis, shall not be considered a legal guardian for purposes of section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

(2) CLARIFICATION OF THE DEFINITION OF UNACCOMPANIED ALIEN CHILD.—For the purposes of section 462(g)(2) of the Homeland Security Act of

2002 (6 U.S.C. 279(g)(2)) and this Act, a parent or legal guardian shall not be considered to be available to provide care and physical custody of an alien child unless such parent is in the physical presence of, and able to exercise parental responsibilities over, such child at the time of such child's apprehension and during the child's detention.

TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND DETENTION

SEC. 101. PROCEDURES WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.

(a) UNACCOMPANIED CHILDREN FOUND ALONG THE UNITED STATES BORDER OR AT UNITED STATES PORTS OF ENTRY.—

(1) IN GENERAL.—Subject to paragraph (2), an immigration officer who finds an unaccompanied alien child described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) shall—

(A) permit such child to withdraw the child's application for admission pursuant to

section 235(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1225(a)(4)); and

(B) return such child to the child's country of nationality or country of last habitual residence.

(2) SPECIAL RULE FOR CONTIGUOUS COUNTRIES.—

(A) IN GENERAL.—Any child who is a national or habitual resident of a country, which is contiguous with the United States and has an agreement in writing with the United States that provides for the safe return and orderly repatriation of unaccompanied alien children who are nationals or habitual residents of such country, shall be treated in accordance with paragraph (1) if the Secretary determines, on a case-by-case basis, that—

(i) such child is a national or habitual resident of a country described in this subparagraph;

(ii) such child does not have a fear of returning to the child's country of nationality or country of last habitual residence owing to a fear of persecution;

(iii) the return of such child to the child's country of nationality or country of last habitual residence would not endanger the life or safety of such child; and

(iv) the child is able to make an independent decision to withdraw the child's application for admission due to age or other lack of capacity.

(B) RIGHT OF CONSULTATION.—Any child described in subparagraph (A) shall have the right, and shall be informed of that right in the child's native language—

(i) to consult with a consular officer from the child's country of nationality or country of last habitual residence prior to repatriation; and

(ii) to consult, telephonically, with the Office.

(3) RULE FOR APPREHENSIONS AT THE BORDER.—The custody of unaccompanied alien children not described in paragraph (2) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with subsection (b).

(b) CARE AND CUSTODY OF UNACCOMPANIED ALIEN CHILDREN FOUND IN THE INTERIOR OF THE UNITED STATES.—

(1) ESTABLISHMENT OF JURISDICTION.—

(A) IN GENERAL.—Except as otherwise provided under subparagraphs (B) and (C) and subsection (a), the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be under the jurisdiction of the Office.

(B) EXCEPTION FOR CHILDREN WHO HAVE COMMITTED CRIMES.—Notwithstanding subparagraph (A), the Department of Justice shall retain or assume the custody and care of any unaccompanied alien who is—

(i) in the custody of the Department of Justice pending prosecution for a Federal crime other than a violation of the Immigration and Nationality Act; or

(ii) serving a sentence pursuant to a conviction for a Federal crime.

(C) EXCEPTION FOR CHILDREN WHO THREATEN NATIONAL SECURITY.—Notwithstanding subparagraph (A), the Department shall retain or assume the custody and care of

1 an unaccompanied alien child if the Secretary
2 has substantial evidence, based on an individ-
3 ualized determination, that such child could
4 personally endanger the national security of the
5 United States.
6 (2) NOTIFICATION.—
7 (A) IN GENERAL.—Each department or
8 agency of the Federal Government shall
9 promptly notify the Office upon—
10 (i) the apprehension of an unaccom-
11 panied alien child;
12 (ii) the discovery that an alien in the
13 custody of such department or agency is
14 an unaccompanied alien child;
15 (iii) any claim by an alien in the cus-
16 tody of such department or agency that
17 such alien is younger than 18 years of age;
18 or
19 (iv) any suspicion that an alien in the
20 custody of such department or agency who
21 has claimed to be at least 18 years of age
22 is actually younger than 18 years of age.
23 (B) SPECIAL RULE.—The Director shall—
24 (i) make an age determination for an
25 alien described in clause (iii) or (iv) of sub-

paragraph (A) in accordance with section 105; and

(ii) take whatever other steps are necessary to determine whether such alien is eligible for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or under this Act.

(3) TRANSFER OF UNACCOMPANIED ALIEN CHILDREN.—

(A) TRANSFER TO THE OFFICE.—Any Federal department or agency that has an unaccompanied alien child in its custody shall transfer the custody of such child to the Office—

(i) not later than 72 hours after a determination is made that such child is an unaccompanied alien, if the child is not described in subparagraph (B) or (C) of paragraph (1);

(ii) if the custody and care of the child has been retained or assumed by the Attorney General under paragraph (1)(B) or by the Department under paragraph (1)(C), following a determination that the

child no longer meets the description set forth in such subparagraphs; or

(iii) if the child was previously released to an individual or entity described in section 102(a)(1), upon a determination by the Director that such individual or entity is no longer able to care for the child.

(B) TRANSFER TO THE DEPARTMENT.—The Director shall transfer the care and custody of an unaccompanied alien child in the custody of the Office or the Department of Justice to the Department upon determining that the child is described in subparagraph (B) or (C) of paragraph (1).

(C) PROMPTNESS OF TRANSFER.—If a child needs to be transferred under this paragraph, the sending office shall make prompt arrangements to transfer such child and the receiving office shall make prompt arrangements to receive such child.

(c) AGE DETERMINATIONS.—If the age of an alien is in question and the resolution of questions about the age of such alien would affect the alien's eligibility for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act, a determination

of whether or not such alien meets such age requirements shall be made in accordance with section 105, unless otherwise specified in subsection (b)(2)(B).

(d) ACCESS TO ALIEN.—The Secretary and the Attorney General shall permit the Office to have reasonable access to aliens in the custody of the Secretary or the Attorney General to ensure a prompt determination of the age of such alien, if necessary under subsection (b)(2)(B).

SEC. 102. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.

(a) PLACEMENT OF RELEASED CHILDREN.—

(1) ORDER OF PREFERENCE.—Subject to the discretion of the Director under paragraph (4), section 103(a)(2), and section 462(b)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(2)), an unaccompanied alien child in the custody of the Office shall be promptly placed with 1 of the following individuals or entities in the following order of preference:

(A) A parent who seeks to establish custody under paragraph (3)(A).

(B) A legal guardian who seeks to establish custody under paragraph (3)(A).

(C) An adult relative.

(D) An individual or entity designated by the parent or legal guardian that is capable and willing to care for the well being of the child.

(E) A State-licensed family foster home, small group home, or juvenile shelter willing to accept custody of the child.

(F) A qualified adult or entity, as determined by the Director by regulation, seeking custody of the child if the Director determines that no other likely alternative to long-term detention exists and family reunification does not appear to be a reasonable alternative.

(2) SUITABILITY ASSESSMENT.—

(A) GENERAL REQUIREMENTS.—Notwithstanding paragraph (1), and subject to the requirements of subparagraph (B), an unaccompanied alien child may not be placed with a person or entity described in any of subparagraphs (A) through (F) of paragraph (1) unless the Director provides written certification that the proposed custodian is capable of providing for the child's physical and mental well-being, based on—

(i) with respect to an individual custodian—

(I) verification of such individual's identity and employment;

(II) a finding that such individual has not engaged in any activity that would indicate a potential risk to the child, including the people and activities described in paragraph (4)(A)(i);

(III) a finding that such individual is not the subject of an open investigation by a State or local child protective services authority due to suspected child abuse or neglect;

(IV) verification that such individual has a plan for the provision of care for the child;

(V) verification of familial relationship of such individual, if any relationship is claimed; and

(VI) verification of nature and extent of previous relationship;

(ii) with respect to a custodial entity, verification of such entity's appropriate licensure by the State, county, or other applicable unit of government; and

(iii) such other information as the Director determines appropriate.

(B) HOME STUDY.—

(i) IN GENERAL.—The Director shall place a child with any custodian described in any of subparagraphs (A) through (F) of paragraph (1) unless the Director determines that a home study with respect to such custodian is necessary.

(ii) SPECIAL NEEDS CHILDREN.—A home study shall be conducted to determine if the custodian can properly meet the needs of—

(I) a special needs child with a disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)); or

(II) a child who has been the object of physical or mental injury, sexual abuse, negligent treatment, or maltreatment under circumstances which indicate that the child's health or welfare has been harmed or threatened.

(iii) FOLLOW-UP SERVICES.—The Director shall conduct follow-up services for at least 90 days on custodians for whom a home study was conducted under this subparagraph.

(C) CONTRACT AUTHORITY.—The Director may, by grant or contract, arrange for some or all of the activities under this section to be carried out by—

(i) an agency of the State of the child's proposed residence;

(ii) an agency authorized by such State to conduct such activities; or

(iii) an appropriate voluntary or nonprofit agency.

(D) DATABASE ACCESS.—In conducting suitability assessments, the Director shall have access to all relevant information in the appropriate Federal, State, and local law enforcement and immigration databases.

(3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

(A) PLACEMENT WITH PARENT OR LEGAL GUARDIAN.—If an unaccompanied alien child is placed with any person or entity other than a

parent or legal guardian, and subsequent to that placement a parent or legal guardian seeks to establish custody, the Director shall—

(i) assess the suitability of placing the child with the parent or legal guardian; and

(ii) make a written determination regarding the child's placement within 30 days.

(B) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to—

(i) supersede obligations under any treaty or other international agreement to which the United States is a party, including—

(I) the Convention on the Civil Aspects of International Child Abduction, done at The Hague, October 25, 1980 (TIAS 11670);

(II) the Vienna Declaration and Program of Action, adopted at Vienna, June 25, 1993; and

(III) the Declaration of the Rights of the Child, adopted at New York, November 20, 1959; or

(ii) limit any right or remedy under such international agreement.

(4) PROTECTION FROM SMUGGLERS AND TRAFFICKERS.—

(A) POLICIES AND PROGRAMS.—

(i) IN GENERAL.—The Director shall establish policies and programs to ensure that unaccompanied alien children are protected from smugglers, traffickers, or other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity.

(ii) WITNESS PROTECTION PROGRAMS INCLUDED.—Programs established pursuant to clause (i) may include witness protection programs.

(B) CRIMINAL INVESTIGATIONS AND PROSECUTIONS.—Any officer or employee of the Office or of the Department, and any grantee or contractor of the Office or of the Department, who suspects any individual of involvement in any activity described in subparagraph (A) shall report such individual to Federal or State prosecutors for criminal investigation and prosecution.

(C) DISCIPLINARY ACTION.—Any officer or employee of the Office or the Department, and any grantee or contractor of the Office, who believes that a competent attorney or representative has been a participant in any activity described in subparagraph (A), shall report the attorney to the State bar association of which the attorney is a member, or to other appropriate disciplinary authorities, for appropriate disciplinary action, including private or public admonition or censure, suspension, or disbarment of the attorney from the practice of law.

(5) GRANTS AND CONTRACTS.—The Director may award grants to, and enter into contracts with, voluntary agencies to carry out this section or section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279).

(b) CONFIDENTIALITY.—

(1) IN GENERAL.—All information obtained by the Office relating to the immigration status of a person described in subparagraphs (A), (B), and (C) of subsection (a)(1) shall remain confidential and may only be used to determine such person's qualifications under subsection (a)(1).

(2) NONDISCLOSURE OF INFORMATION.—In consideration of the needs and privacy of unaccompanied alien children in the custody of the Office or its agents, and the necessity to guarantee the confidentiality of such children's information in order to facilitate their trust and truthfulness with the Office, its agents, and clinicians, the Office shall maintain the privacy and confidentiality of all information gathered in the course of the care, custody, and placement of unaccompanied alien children, consistent with its role and responsibilities under the Homeland Security Act to act as guardian in loco parentis in the best interest of the unaccompanied alien child, by not disclosing such information to other government agencies or nonparental third parties.

(c) REQUIRED DISCLOSURE.—The Secretary or the Secretary of Health and Human Services shall provide the information furnished under this section, and any other information derived from such furnished information, to—

(1) a duly recognized law enforcement entity in connection with an investigation or prosecution of an offense described in paragraph (2) or (3) of section 212(a) of the Immigration and Nationality Act (8

U.S.C. 1182(a)), when such information is requested in writing by such entity; or

(2) an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(d) PENALTY.—Any person who knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than $10,000.

SEC. 103. APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN CHILDREN.

(a) STANDARDS FOR PLACEMENT.—

(1) ORDER OF PREFERENCE.—An unaccompanied alien child who is not released pursuant to section 102(a)(1) shall be placed in the least restrictive setting possible in the following order of preference:

(A) Licensed family foster home.

(B) Small group home.

(C) Juvenile shelter.

(D) Residential treatment center.

(E) Secure detention.

(2) PROHIBITION OF DETENTION IN CERTAIN FACILITIES.—Except as provided under paragraph (3), an unaccompanied alien child shall not be

placed in an adult detention facility or a facility housing delinquent children.

(3) DETENTION IN APPROPRIATE FACILITIES.—An unaccompanied alien child who has exhibited violent or criminal behavior that endangers others may be detained in conditions appropriate to such behavior in a facility appropriate for delinquent children.

(4) STATE LICENSURE.—A child shall not be placed with an entity described in section 102(a)(1)(E), unless the entity is licensed by an appropriate State agency to provide residential, group, child welfare, or foster care services for dependent children.

(5) CONDITIONS OF DETENTION.—

(A) IN GENERAL.—The Director and the Secretary shall promulgate regulations incorporating standards for conditions of detention in placements described in paragraph (1) that provide for—

(i) educational services appropriate to the child;

(ii) medical care;

(iii) mental health care, including treatment of trauma, physical and sexual violence, and abuse;

(iv) access to telephones;

(v) access to legal services;

(vi) access to interpreters;

(vii) supervision by professionals trained in the care of children, taking into account the special cultural, linguistic, and experiential needs of children in immigration proceedings;

(viii) recreational programs and activities;

(ix) spiritual and religious needs; and

(x) dietary needs.

(B) NOTIFICATION OF CHILDREN.—Regulations promulgated under subparagraph (A) shall provide that all children in such placements are notified of such standards orally and in writing in the child's native language.

(b) PROHIBITION OF CERTAIN PRACTICES.—The Director and the Secretary shall develop procedures prohibiting the unreasonable use of—

(1) shackling, handcuffing, or other restraints on children;

(2) solitary confinement; or

(3) pat or strip searches.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities or placement in the least secure setting possible, as described in paragraph 23 of the Stipulated Settlement Agreement under Flores v. Reno.

SEC. 104. REPATRIATED UNACCOMPANIED ALIEN CHILDREN.

(a) COUNTRY CONDITIONS.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that, to the extent consistent with the treaties and other international agreements to which the United States is a party, and to the extent practicable, the United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

(2) ASSESSMENT OF CONDITIONS.—

(A) IN GENERAL.—The Secretary of State shall include, in the annual Country Reports on Human Rights Practices, an assessment of the degree to which each country protects children from smugglers and traffickers.

(B) FACTORS FOR ASSESSMENT.—The Secretary shall consult the Country Reports on

Human Rights Practices and the Trafficking in Persons Report in assessing whether to repatriate an unaccompanied alien child to a particular country.

(b) REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.—

(1) IN GENERAL.—Not later than 18 months after the date of the enactment of this Act, and annually thereafter, the Secretary shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on efforts to repatriate unaccompanied alien children.

(2) CONTENTS.—The report submitted under paragraph (1) shall include—

(A) the number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States;

(B) a description of the type of immigration relief sought and denied to such children;

(C) a statement of the nationalities, ages, and gender of such children;

(D) a description of the procedures used to effect the removal of such children from the United States;

(E) a description of steps taken to ensure that such children were safely and humanely repatriated to their country of origin; and

(F) any information gathered in assessments of country and local conditions pursuant to subsection (a)(2).

SEC. 105. ESTABLISHING THE AGE OF AN UNACCOMPANIED ALIEN CHILD.

(a) PROCEDURES.—

(1) IN GENERAL.—The Director, in consultation with the Secretary, shall develop procedures to make a prompt determination of the age of an alien, which procedures shall be used—

(A) by the Secretary, with respect to aliens in the custody of the Department;

(B) by the Director, with respect to aliens in the custody of the Office; and

(C) by the Attorney General, with respect to aliens in the custody of the Department of Justice.

(2) EVIDENCE.—The procedures developed under paragraph (1) shall—

(A) permit the presentation of multiple forms of evidence, including testimony of the alien, to determine the age of the unaccompanied alien for purposes of placement, custody, parole, and detention; and

(B) allow the appeal of a determination to an immigration judge.

(b) PROHIBITION ON SOLE MEANS OF DETERMINING AGE.—Radiographs or the attestation of an alien may not be used as the sole means of determining age for the purposes of determining an alien's eligibility for treatment under this Act or section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279).

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to place the burden of proof in determining the age of an alien on the Government.

SEC. 106. EFFECTIVE DATE.

This title shall take effect on the date which is 90 days after the date of the enactment of this Act.

TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO CHILD ADVOCATES AND COUNSEL

SEC. 201. CHILD ADVOCATES.

(a) ESTABLISHMENT OF CHILD ADVOCATE PROGRAM.—

(1) APPOINTMENT.—The Director may appoint a child advocate, who meets the qualifications described in paragraph (2), for an unaccompanied alien child. The Director is encouraged, if practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a child advocate under this paragraph.

(2) QUALIFICATIONS OF CHILD ADVOCATE.—

(A) IN GENERAL.—A person may not serve as a child advocate unless such person—

(i) is a child welfare professional or other individual who has received training in child welfare matters;

(ii) possesses special training on the nature of problems encountered by unaccompanied alien children; and

(iii) is not an employee of the Department, the Department of Justice, or the

Department of Health and Human Services.

(B) INDEPENDENCE OF CHILD ADVOCATE.—

(i) INDEPENDENCE FROM AGENCIES OF GOVERNMENT.—The child advocate shall act independently of any agency of government in making and reporting findings or making recommendations with respect to the best interests of the child. No agency shall terminate, reprimand, defund, intimidate, or retaliate against any person or entity appointed under paragraph (1) because of the findings and recommendations made by such person relating to any child.

(ii) PROHIBITION OF CONFLICT OF INTEREST.—No person shall serve as a child advocate for a child if such person is providing legal services to such child.

(3) DUTIES.—The child advocate of a child shall—

(A) conduct interviews with the child in a manner that is appropriate, taking into account the child's age;

(B) investigate the facts and circumstances relevant to the child's presence in the United States, including facts and circumstances—

(i) arising in the country of the child's nationality or last habitual residence; and

(ii) arising subsequent to the child's departure from such country;

(C) work with counsel to identify the child's eligibility for relief from removal or voluntary departure by sharing with counsel relevant information collected under subparagraph (B);

(D) develop recommendations on issues relative to the child's custody, detention, release, and repatriation;

(E) take reasonable steps to ensure that—

(i) the best interests of the child are promoted while the child participates in, or is subject to, proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.);

(ii) the child understands the nature of the legal proceedings or matters and determinations made by the court, and that

all information is conveyed to the child in an age-appropriate manner;

(F) report factual findings and recommendations consistent with the child's best interests relating to the custody, detention, and release of the child during the pendency of the proceedings or matters, to the Director and the child's counsel;

(G) in any proceeding involving an alien child in which a complaint has been filed with any appropriate disciplinary authority against an attorney or representative for criminal, unethical, or unprofessional conduct in connection with the representation of the alien child, provide the immigration judge with written recommendations or testimony on any information the child advocate may have regarding the conduct of the attorney; and

(H) in any proceeding involving an alien child in which the safety of the child upon repatriation is at issue, and after the immigration judge has considered and denied all applications for relief other than voluntary departure, provide the immigration judge with written recommendations or testimony on any information

the child advocate may have regarding the child's safety upon repatriation.

(4) TERMINATION OF APPOINTMENT.—The child advocate shall carry out the duties described in paragraph (3) until the earliest of the date on which—

(A) those duties are completed;

(B) the child departs from the United States;

(C) the child is granted permanent resident status in the United States;

(D) the child reaches 18 years of age; or

(E) the child is placed in the custody of a parent or legal guardian.

(5) POWERS.—The child advocate—

(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

(B) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

(C) may seek independent evaluations of the child;

(D) shall be notified in advance of all hearings or interviews involving the child that are held in connection with proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), and shall be given a reasonable opportunity to be present at such hearings or interviews;

(E) shall be permitted to accompany and consult with the child during any hearing or interview involving such child; and

(F) shall be provided at least 24 hours advance notice of a transfer of that child to a different placement, absent compelling and unusual circumstances warranting the transfer of such child before such notification.

(b) TRAINING.—

(1) IN GENERAL.—The Director shall provide professional training for all persons serving as child advocates under this section.

(2) TRAINING TOPICS.—The training provided under paragraph (1) shall include training in—

(A) the circumstances and conditions faced by unaccompanied alien children; and

(B) various immigration benefits for which such alien child might be eligible.

(c) PILOT PROGRAM.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Director shall establish and begin to carry out a pilot program to test the implementation of subsection (a). Any pilot program existing before the date of the enactment of this Act shall be deemed insufficient to satisfy the requirements of this subsection.

(2) PURPOSE.—The purpose of the pilot program established pursuant to paragraph (1) is to—

(A) study and assess the benefits of providing child advocates to assist unaccompanied alien children involved in immigration proceedings or matters;

(B) assess the most efficient and cost-effective means of implementing the child advocate provisions under this section; and

(C) assess the feasibility of implementing such provisions on a nationwide basis for all unaccompanied alien children in the care of the Office.

(3) SCOPE OF PROGRAM.—

(A) SELECTION OF SITE.—The Director shall select 3 sites at which to operate the pilot program established under paragraph (1).

(B) NUMBER OF CHILDREN.—Each site selected under subparagraph (A) should have not less than 25 children held in immigration custody at any given time, to the greatest extent possible.

(4) REPORT TO CONGRESS.—Not later than 1 year after the date on which the first pilot program site is established under paragraph (1), the Director shall submit a report on the achievement of the purposes described in paragraph (2) to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

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

SEC. 202. COUNSEL.

(a) ACCESS TO COUNSEL.—

(1) IN GENERAL.—The Director shall ensure, to the greatest extent practicable, that all unaccompanied alien children in the custody of the Office or the Department, who are not described in section 101(a)(2), have competent counsel to represent them in immigration proceedings or matters.

(2) PRO BONO REPRESENTATION.—To the greatest extent practicable, the Director shall—

(A) make every effort to utilize the services of competent pro bono counsel who agree to provide representation to such children without charge; and

(B) ensure that placements made under subparagraphs (D), (E), and (F) of section 102(a)(1) are in cities in which there is a demonstrated capacity for competent pro bono representation.

(3) DEVELOPMENT OF NECESSARY INFRASTRUCTURES AND SYSTEMS.—The Director shall develop the necessary mechanisms to identify and recruit entities that are available to provide legal assistance and representation under this subsection.

(4) CONTRACTING AND GRANT MAKING AUTHORITY.—

(A) IN GENERAL.—The Director shall enter into contracts with, or award grants to, nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out the responsibilities of this Act, including providing legal orientation, screening cases for referral, recruiting, training, and overseeing pro bono attorneys.

(B) SUBCONTRACTING.—Nonprofit agencies may enter into subcontracts with, or award grants to, private voluntary agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

(C) CONSIDERATIONS REGARDING GRANTS AND CONTRACTS.—In awarding grants and entering into contracts with agencies under this paragraph, the Director shall take into consideration the capacity of the agencies in question to properly administer the services covered by such grants or contracts without an undue conflict of interest.

(5) MODEL GUIDELINES ON LEGAL REPRESENTATION OF CHILDREN.—

(A) DEVELOPMENT OF GUIDELINES.—The Director of the Executive Office for Immigration Review of the Department of Justice, in consultation with voluntary agencies and national experts, shall develop model guidelines for the legal representation of alien children in immigration proceedings. Such guidelines shall be based on the children's asylum guidelines, the American Bar Association Model Rules of

Professional Conduct, and other relevant domestic or international sources.

(B) PURPOSE OF GUIDELINES.—The guidelines developed under subparagraph (A) shall be designed to help protect each child from any individual suspected of involvement in any criminal, harmful, or exploitative activity associated with the smuggling or trafficking of children, while ensuring the fairness of the removal proceeding in which the child is involved.

(C) IMPLEMENTATION.—Not later than 180 days after the date of the enactment of this Act, the Director of the Executive Office for Immigration Review shall—

(i) adopt the guidelines developed under subparagraph (A); and

(ii) submit the guidelines for adoption by national, State, and local bar associations.

(b) DUTIES.—Counsel under this section shall—

(1) represent the unaccompanied alien child in all proceedings and matters relating to the immigration status of the child or other actions involving the Department;

(2) appear in person for all individual merits hearings before the Executive Office for Immigration Review and interviews involving the Department; and

(3) owe the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due to an adult client.

(c) ACCESS TO CHILD.—

(1) IN GENERAL.—Counsel under this section shall have reasonable access to the unaccompanied alien child, including access while the child is—

(A) held in detention;

(B) in the care of a foster family; or

(C) in any other setting that has been determined by the Office.

(2) RESTRICTION ON TRANSFERS.—Absent compelling and unusual circumstances, a child who is represented by counsel may not be transferred from the child's placement to another placement unless advance notice of at least 24 hours is made to counsel of such transfer.

(d) NOTICE TO COUNSEL DURING IMMIGRATION PROCEEDINGS.—

(1) IN GENERAL.—Except when otherwise required in an emergency situation involving the phys-

ical safety of the child, counsel shall be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

(2) OPPORTUNITY TO CONSULT WITH COUNSEL.—An unaccompanied alien child in the custody of the Office may not give consent to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

(e) ACCESS TO RECOMMENDATIONS OF CHILD ADVOCATE.—Counsel shall be given an opportunity to review the recommendations of the child advocate affecting or involving a client who is an unaccompanied alien child.

(f) COUNSEL FOR UNACCOMPANIED ALIEN CHILDREN.—Nothing in this Act may be construed to require the Government of the United States to pay for counsel to any unaccompanied alien child.

SEC. 203. EFFECTIVE DATE; APPLICABILITY.

(a) EFFECTIVE DATE.—This title shall take effect on the date which is 180 days after the date of the enactment of this Act.

(b) APPLICABILITY.—The provisions of this title shall apply to all unaccompanied alien children in Federal custody before, on, or after the effective date of this title.

TITLE III—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN

SEC. 301. SPECIAL IMMIGRANT JUVENILE CLASSIFICATION.

(a) J CLASSIFICATION.—

(1) IN GENERAL.—Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

"(J) an immigrant, who is 18 years of age or younger on the date of application for classification as a special immigrant and present in the United States—

"(i) who, by a court order supported by written findings of fact, which shall be binding on the Secretary of Homeland Security for purposes of adjudications under this subparagraph—

"(I) was declared dependent on a juvenile court located in the United States or has been legally committed to, or placed under the custody of, a

department or agency of a State, or an individual or entity appointed by a State or juvenile court located in the United States; and

"(II) should not be reunified with his or her parents due to abuse, neglect, abandonment, or a similar basis found under State law;

"(ii) for whom it has been determined by written findings of fact in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

"(iii) with respect to a child in Federal custody, for whom the Office of Refugee Resettlement of the Department of Health and Human Services has certified to the Director of U.S. Citizenship and Immigration Services that the classification of an alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien.".

(2) RULE OF CONSTRUCTION.—Nothing in subparagraph (J) of section 101(a)(27) of the Immigration and Nationality Act, as amended by paragraph (1), shall be construed to grant, to any natural parent or prior adoptive parent of any alien provided special immigrant status under such subparagraph, by virtue of such parentage, any right, privilege, or status under such Act.

(b) ADJUSTMENT OF STATUS.—Section 245(h)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1255(h)(2)(A)) is amended to read as follows:

"(A) paragraphs (4), (5)(A), (6)(A), (7)(A), 9(B), and 9(C)(i)(I) of section 212(a) shall not apply; and'.

(c) ELIGIBILITY FOR ASSISTANCE.—

(1) IN GENERAL.—A child who has been certified under section 101(a)(27)(J) of the Immigration and Nationality Act, as amended by subsection (a)(1), and who was in the custody of the Office at the time a dependency order was granted for such child, shall be eligible for placement and services under section 412(d) of such Act (8 U.S.C. 1522(d)) until the earlier of—

(A) the date on which the child reaches the age designated in section 412(d)(2)(B) of such Act (8 U.S.C. 1522(d)(2)(B)); or

(B) the date on which the child is placed in a permanent adoptive home.

(2) STATE REIMBURSEMENT.—If foster care funds are expended on behalf of a child who is not described in paragraph (1) and has been granted relief under section 101(a)(27)(J) of the Immigration and Nationality Act, the Federal Government shall reimburse the State in which the child resides for such expenditures by the State.

(d) TRANSITION RULE.—Notwithstanding any other provision of law, a child described in section 101(a)(27)(J) of the Immigration and Nationality Act, as amended by subsection (a)(1), may not be denied such special immigrant juvenile classification after the date of the enactment of this Act based on age if the child—

(1) filed an application for special immigrant juvenile classification before the date of the enactment of this Act and was 21 years of age or younger on the date such application was filed; or

(2) was younger than 21 years of age on the date on which the child applied for classification as

a special immigrant juvenile and can demonstrate exceptional circumstances warranting relief.

(e) RULEMAKING.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall promulgate rules to carry out this section.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to all aliens who were in the United States before, on, or after the date of enactment of this Act.

SEC. 302. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE PARTIES WHO COME INTO CONTACT WITH UNACCOMPANIED ALIEN CHILDREN.

(a) TRAINING OF STATE AND LOCAL OFFICIALS AND CERTAIN PRIVATE PARTIES.—

(1) IN GENERAL.—The Secretary of Health and Human Services, acting jointly with the Secretary, shall provide appropriate training materials, and upon request, direct training, to State and county officials, child welfare specialists, teachers, public counsel, and juvenile judges who come into contact with unaccompanied alien children.

(2) CURRICULUM.—The training required under paragraph (1) shall include education on the processes pertaining to unaccompanied alien children with pending immigration status and on the forms

of relief potentially available. The Director shall establish a core curriculum that can be incorporated into education, training, or orientation modules or formats that are currently used by these professionals.

(3) VIDEO CONFERENCING.—Direct training requested under paragraph (1) may be conducted through video conferencing.

(b) TRAINING OF DEPARTMENT PERSONNEL.—The Secretary, acting jointly with the Secretary of Health and Human Services, shall provide specialized training to all personnel of the Department who come into contact with unaccompanied alien children. Training for agents of the Border Patrol and immigration inspectors shall include specific training on identifying—

(1) children at the international borders of the United States or at United States ports of entry who have been victimized by smugglers or traffickers; and

(2) children for whom asylum or special immigrant relief may be appropriate, including children described in section 101(a)(2)(A).

SEC. 303. REPORT.

Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary of

Health and Human Services shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that contains, for the most recently concluded fiscal year—

(1) data related to the implementation of section 462 of the Homeland Security Act (6 U.S.C. 279);

(2) data regarding the care and placement of children under this Act;

(3) data regarding the provision of child advocate and counsel services under this Act; and

(4) any other information that the Director or the Secretary of Health and Human Services determines to be appropriate.

TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS

SEC. 401. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.

(a) SENSE OF CONGRESS.—Congress—

(1) commends the former Immigration and Naturalization Service for its ''Guidelines for Children's Asylum Claims'', issued in December 1998;

(2) encourages and supports the Department to implement such guidelines to facilitate the handling of children's affirmative asylum claims;

(3) commends the Executive Office for Immigration Review of the Department of Justice for its ''Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children'', issued in September 2004;

(4) encourages and supports the continued implementation of such guidelines by the Executive Office for Immigration Review in its handling of children's asylum claims before immigration judges; and

(5) understands that the guidelines described in paragraph (3)—

(A) do not specifically address the issue of asylum claims; and

(B) address the broader issue of unaccompanied alien children.

(b) TRAINING.—

(1) IMMIGRATION OFFICERS.—The Secretary shall provide periodic comprehensive training under the ''Guidelines for Children's Asylum Claims'' to asylum officers and immigration officers who have contact with children in order to familiarize and sensitize such officers to the needs of children asylum seekers.

(2) IMMIGRATION JUDGES.—The Director of the Executive Office for Immigration Review shall—

(A) provide periodic comprehensive training under the ''Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children'' and the ''Guidelines for Children's Asylum Claims'' to immigration judges and members of the Board of Immigration Appeals; and

(B) redistribute the ''Guidelines for Children's Asylum Claims'' to all immigration courts as part of its training of immigration judges.

(3) USE OF VOLUNTARY AGENCIES.—Voluntary agencies shall be allowed to assist in the training described in this subsection.

(c) STATISTICS AND REPORTING.—

(1) STATISTICS.—

(A) DEPARTMENT OF JUSTICE.—The Attorney General shall compile and maintain statistics on the number of cases in immigration court involving unaccompanied alien children, which shall include, with respect to each such child, information about—

(i) the age;

(ii) the gender;

(iii) the country of nationality;

(iv) representation by counsel;

(v) the relief sought; and

(vi) the outcome of such cases.

(B) DEPARTMENT OF HOMELAND SECURITY.—The Secretary shall compile and maintain statistics on the instances of unaccompanied alien children in the custody of the Department, which shall include, with respect to each such child, information about—

(i) the age;

(ii) the gender;

(iii) the country of nationality; and

(iv) the length of detention.

(2) REPORTS TO CONGRESS.—Not later than 90 days after the date of the enactment of this Act and annually, thereafter, the Attorney General, in consultation with the Secretary, Secretary of Health and Human Services, and any other necessary government official, shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary House of Representatives on the number of alien children in Federal custody during the most recently concluded fiscal year. Information contained in the report, with respect to such children, shall be categorized by—

(A) age;

(B) gender;

(C) country of nationality;

(D) length of time in custody;

(E) the department or agency with custody; and

(F) treatment as an unaccompanied alien child.

SEC. 402. UNACCOMPANIED REFUGEE CHILDREN.

(a) IDENTIFYING UNACCOMPANIED REFUGEE CHILDREN.—Section 207(e) of the Immigration and Nationality Act (8 U.S.C. 1157(e)) is amended—

(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and

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

''(3) An analysis of the worldwide situation faced by unaccompanied refugee children, categorized by region, which shall include an assessment of—

''(A) the number of unaccompanied refugee children;

''(B) the capacity of the Department of State to identify such refugees;

"(C) the capacity of the international community to care for and protect such refugees;

"(D) the capacity of the voluntary agency community to resettle such refugees in the United States;

"(E) the degree to which the United States plans to resettle such refugees in the United States in the following fiscal year; and

"(F) the fate that will befall such unaccompanied refugee children for whom resettlement in the United States is not possible.".

(b) TRAINING ON THE NEEDS OF UNACCOMPANIED REFUGEE CHILDREN.—Section 207(f)(2) of the Immigration and Nationality Act (8 U.S.C. 1157(f)(2)) is amended—

(1) by striking "and" after "countries,"; and

(2) by inserting ", and instruction on the needs of unaccompanied refugee children" before the period at the end.

SEC. 403. EXCEPTIONS FOR UNACCOMPANIED ALIEN CHILDREN IN ASYLUM AND REFUGEE-LIKE CIRCUMSTANCES.

(a) PLACEMENT IN REMOVAL PROCEEDINGS.—Any unaccompanied alien child apprehended by the Department, except for an unaccompanied alien child subject to

exceptions under paragraph (1)(A) or (2) of section (101)(a), shall be placed in removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a).

(b) EXCEPTION FROM TIME LIMIT FOR FILING ASYLUM APPLICATION.—Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158(a)(2)) is amended—

(1) in subsection (a)(2), by adding at the end the following:

"(E) APPLICABILITY.—Subparagraphs (A) and (B) shall not apply to an unaccompanied alien child."; and

(2) in subsection (b)(3), by adding at the end the following:

"(C) INITIAL JURISDICTION.—United States Citizenship and Immigration Services shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child.".

TITLE V—AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002

SEC. 501. ADDITIONAL RESPONSIBILITIES AND POWERS OF THE OFFICE OF REFUGEE RESETTLEMENT WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.

(a) ADDITIONAL RESPONSIBILITIES OF THE DIRECTOR.—Section 462(b)(1) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(1)) is amended—

(1) in subparagraph (K), by striking ''and'' at the end;

(2) in subparagraph (L), by striking the period at the end and inserting '', including regular follow-up visits to such facilities, placements, and other entities, to assess the continued suitability of such placements; and''; and

(3) by adding at the end the following:

''(M) ensuring minimum standards of care for all unaccompanied alien children—

''(i) for whom detention is necessary; and

''(ii) who reside in settings that are alternative to detention.''.

(b) ADDITIONAL AUTHORITY OF THE DIRECTOR.—Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)) is amended by adding at the end the following:

"(4) AUTHORITY.—In carrying out the duties under paragraph (3), the Director may—

"(A) contract with service providers to perform the services described in sections 102, 103, 201, and 202 of the Unaccompanied Alien Child Protection Act of 2007; and

"(B) compel compliance with the terms and conditions set forth in section 103 of such Act, by—

"(i) declaring providers to be in breach and seek damages for noncompliance;

"(ii) terminating the contracts of providers that are not in compliance with such conditions; or

"(iii) reassigning any unaccompanied alien child to a similar facility that is in compliance with such section.".

SEC. 502. TECHNICAL CORRECTIONS.

Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)), as amended by section 501, is further amended—

(1) in paragraph (3), by striking ''paragraph (1)(G)'' and inserting ''paragraph (1)''; and

(2) by adding at the end the following:

''(5) RULE OF CONSTRUCTION.—Nothing in paragraph (2)(B) may be construed to require that a bond be posted for unaccompanied alien children who are released to a qualified sponsor.''.

SEC. 503. EFFECTIVE DATE.

The amendments made by this title shall take effect as if included in the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.).

TITLE VI—AUTHORIZATION OF APPROPRIATIONS

SEC. 601. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to the Department, the Department of Justice, and the Department of Health and Human Services, such sums as may be necessary to carry out—

(1) the provisions of section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279); and

(2) the provisions of this Act.

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

TITLE IX—STUDY OF WARTIME TREATMENT OF CERTAIN PEOPLE

SEC. 901. SHORT TITLE.

This title may be cited as the ''Wartime Treatment Study Act''.

SEC. 902. FINDINGS.

Congress makes the following findings:

(1) During World War II, the United States Government deemed as ''enemy aliens'' more than 600,000 Italian-born and 300,000 German-born United States resident aliens and their families and required them to carry Certificates of Identification and limited their travel and personal property rights. At that time, these groups were the 2 largest foreign-born groups in the United States.

(2) During World War II, the United States Government arrested, interned, or otherwise detained thousands of European Americans, some remaining in custody for years after cessation of World War II hostilities, and repatriated, exchanged, or deported European Americans, including Amer-

ican-born children, to European Axis nations, many to be exchanged for Americans held in those nations.

(3) Pursuant to a policy coordinated by the United States with Latin American nations, many European Latin Americans, including German and Austrian Jews, were arrested, brought to the United States, and interned. Many were later expatriated, repatriated, or deported to European Axis nations during World War II, many to be exchanged for Americans and Latin Americans held in those nations.

(4) Millions of European Americans served in the armed forces and thousands sacrificed their lives in defense of the United States.

(5) The wartime policies of the United States Government were devastating to the Italian American and German American communities, individuals, and their families. The detrimental effects are still being experienced.

(6) Prior to and during World War II, the United States restricted the entry of Jewish refugees who were fleeing persecution or genocide and sought safety in the United States. During the 1930s and 1940s, the quota system, immigration regulations, visa requirements, and the time required to process

visa applications affected the number of Jewish refugees, particularly those from Germany and Austria, who could gain admittance to the United States.

(7) The United States Government should conduct an independent review to fully assess and acknowledge these actions. Congress has previously reviewed the United States Government's wartime treatment of Japanese Americans through the Commission on Wartime Relocation and Internment of Civilians. An independent review of the treatment of German Americans and Italian Americans and of Jewish refugees fleeing persecution and genocide has not yet been undertaken.

(8) Time is of the essence for the establishment of commissions, because of the increasing danger of destruction and loss of relevant documents, the advanced age of potential witnesses and, most importantly, the advanced age of those affected by the United States Government's policies. Many who suffered have already passed away and will never know of this effort.

SEC. 903. DEFINITIONS.

In this title:

(1) DURING WORLD WAR II.—The term ''during World War II'' refers to the period between September 1, 1939, through December 31, 1948.

(2) EUROPEAN AMERICANS.—

(A) IN GENERAL.—The term ''European Americans'' refers to United States citizens and resident aliens of European ancestry, including Italian Americans, German Americans, Hungarian Americans, Romanian Americans, and Bulgarian Americans.

(B) ITALIAN AMERICANS.—The term ''Italian Americans'' refers to United States citizens and resident aliens of Italian ancestry.

(C) GERMAN AMERICANS.—The term ''German Americans'' refers to United States citizens and resident aliens of German ancestry.

(3) EUROPEAN LATIN AMERICANS.—The term ''European Latin Americans'' refers to persons of European ancestry, including Italian or German ancestry, residing in a Latin American nation during World War II.

(4) LATIN AMERICAN NATION.—The term ''Latin American nation'' refers to any nation in Central America, South America, or the Carribean.

Subtitle A—Commission on Wartime Treatment of European Americans

SEC. 911. ESTABLISHMENT OF COMMISSION ON WARTIME TREATMENT OF EUROPEAN AMERICANS.

(a) IN GENERAL.—There is established the Commission on Wartime Treatment of European Americans (referred to in this subtitle as the ''European American Commission'').

(b) MEMBERSHIP.—The European American Commission shall be composed of 7 members, who shall be appointed not later than 90 days after the date of enactment of this Act as follows:

(1) Three members shall be appointed by the President.

(2) Two members shall be appointed by the Speaker of the House of Representatives, in consultation with the minority leader.

(3) Two members shall be appointed by the majority leader of the Senate, in consultation with the minority leader.

(c) TERMS.—The term of office for members shall be for the life of the European American Commission. A vacancy in the European American Commission shall not affect its powers, and shall be filled in the same manner in which the original appointment was made.

(d) REPRESENTATION.—The European American Commission shall include 2 members representing the interests of Italian Americans and 2 members representing the interests of German Americans.

(e) MEETINGS.—The President shall call the first meeting of the European American Commission not later than 120 days after the date of enactment of this Act.

(f) QUORUM.—Four members of the European American Commission shall constitute a quorum, but a lesser number may hold hearings.

(g) CHAIRMAN.—The European American Commission shall elect a Chairman and Vice Chairman from among its members. The term of office of each shall be for the life of the European American Commission.

(h) COMPENSATION.—

(1) IN GENERAL.—Members of the European American Commission shall serve without pay.

(2) REIMBURSEMENT OF EXPENSES.—All members of the European American Commission shall be reimbursed for reasonable travel and subsistence, and other reasonable and necessary expenses incurred by them in the performance of their duties.

SEC. 912. DUTIES OF THE EUROPEAN AMERICAN COMMISSION.

(a) IN GENERAL.—It shall be the duty of the European American Commission to review the United States Government's wartime treatment of European Americans and European Latin Americans as provided in subsection (b).

(b) SCOPE OF REVIEW.—The European American Commission's review shall include the following:

(1) A comprehensive review of the facts and circumstances surrounding United States Government actions during World War II with respect to European Americans and European Latin Americans pursuant to the Alien Enemies Acts (50 U.S.C. 21 et seq.), Presidential Proclamations 2526, 2527, 2655, 2662, and 2685, Executive Orders 9066 and 9095, and any directive of the United States Government pursuant to such law, proclamations, or executive orders respecting the registration, arrest, exclusion, internment, exchange, or deportation of European Americans and European Latin Americans. This review shall include an assessment of the underlying rationale of the United States Government's decision to develop related programs and policies, the information the United States Government received or acquired suggesting the related programs

and policies were necessary, the perceived benefit of enacting such programs and policies, and the immediate and long-term impact of such programs and policies on European Americans and European Latin Americans and their communities.

(2) A comprehensive review of United States Government action during World War II with respect to European Americans and European Latin Americans pursuant to the Alien Enemies Acts (50 U.S.C. 21 et seq.), Presidential Proclamations 2526, 2527, 2655, 2662, and 2685, Executive Orders 9066 and 9095, and any directive of the United States Government pursuant to such law, proclamations, or executive orders, including registration requirements, travel and property restrictions, establishment of restricted areas, raids, arrests, internment, exclusion, policies relating to the families and property that excludees and internees were forced to abandon, internee employment by American companies (including a list of such companies and the terms and type of employment), exchange, repatriation, and deportation, and the immediate and long-term effect of such actions, particularly internment, on the lives of those affected. This review shall include a list of—

(A) all temporary detention and long-term internment facilities in the United States and Latin American nations that were used to detain or intern European Americans and European Latin Americans during World War II (in this paragraph referred to as ''World War II detention facilities'');

(B) the names of European Americans and European Latin Americans who died while in World War II detention facilities and where they were buried;

(C) the names of children of European Americans and European Latin Americans who were born in World War II detention facilities and where they were born; and

(D) the nations from which European Latin Americans were brought to the United States, the ships that transported them to the United States and their departure and disembarkation ports, the locations where European Americans and European Latin Americans were exchanged for persons held in European Axis nations, and the ships that transported them to Europe and their departure and disembarkation ports.

(3) A brief review of the participation by European Americans in the United States Armed Forces including the participation of European Americans whose families were excluded, interned, repatriated, or exchanged.

(4) A recommendation of appropriate remedies, including how civil liberties can be protected during war, or an actual, attempted, or threatened invasion or incursion, an assessment of the continued viability of the Alien Enemies Acts (50 U.S.C. 21 et seq.), and public education programs related to the United States Government's wartime treatment of European Americans and European Latin Americans during World War II.

(c) FIELD HEARINGS.—The European American Commission shall hold public hearings in such cities of the United States as it deems appropriate.

(d) REPORT.—The European American Commission shall submit a written report of its findings and recommendations to Congress not later than 18 months after the date of the first meeting called pursuant to section —011(e).

SEC. 913. POWERS OF THE EUROPEAN AMERICAN COMMISSION.

(a) IN GENERAL.—The European American Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this subtitle, hold such hearings and sit and act at such times and places, and request the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandum, papers, and documents as the Commission or such subcommittee or member may deem advisable. The European American Commission may request the Attorney General to invoke the aid of an appropriate United States district court to require, by subpoena or otherwise, such attendance, testimony, or production.

(b) GOVERNMENT INFORMATION AND COOPERATION.—The European American Commission may acquire directly from the head of any department, agency, independent instrumentality, or other authority of the executive branch of the Government, available information that the European American Commission considers useful in the discharge of its duties. All departments, agencies, and independent instrumentalities, or other authorities of the executive branch of the Government shall cooperate with the European American Commission and furnish all information requested by the European American Commission

to the extent permitted by law, including information collected under the Commission on Wartime and Internment of Civilians Act (Public Law 96–317; 50 U.S.C. App. 1981 note) and the Wartime Violation of Italian Americans Civil Liberties Act (Public Law 106–451; 50 U.S.C. App. 1981 note). For purposes of section 552a(b)(9) of title 5, United States Code (commonly known as the ''Privacy Act of 1974''), the European American Commission shall be deemed to be a committee of jurisdiction.

SEC. 914. ADMINISTRATIVE PROVISIONS.

The European American Commission is authorized to—

(1) appoint and fix the compensation of such personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that the compensation of any employee of the Commission may not exceed a rate equivalent to the rate payable under GS–15 of the General Schedule under section 5332 of such title;

(2) obtain the services of experts and consultants in accordance with the provisions of section 3109 of such title;

(3) obtain the detail of any Federal Government employee, and such detail shall be without reimbursement or interruption or loss of civil service status or privilege;

(4) enter into agreements with the Administrator of General Services for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman of the Commission and the Administrator;

(5) procure supplies, services, and property by contract in accordance with applicable laws and regulations and to the extent or in such amounts as are provided in appropriation Acts; and

(6) enter into contracts with Federal or State agencies, private firms, institutions, and agencies for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of the duties of the Commission, to the extent or in such amounts as are provided in appropriation Acts.

SEC. 915. FUNDING.

Of the amounts authorized to be appropriated to the Department of Justice, $600,000 shall be available to carry out this subtitle.

SEC. 916. SUNSET.

The European American Commission shall terminate 60 days after it submits its report to Congress.

Subtitle B—Commission on Wartime Treatment of Jewish Refugees

SEC. 921. ESTABLISHMENT OF COMMISSION ON WARTIME TREATMENT OF JEWISH REFUGEES.

(a) IN GENERAL.—There is established the Commission on Wartime Treatment of Jewish Refugees (referred to in this subtitle as the ''Jewish Refugee Commission'').

(b) MEMBERSHIP.—The Jewish Refugee Commission shall be composed of 7 members, who shall be appointed not later than 90 days after the date of enactment of this Act as follows:

(1) Three members shall be appointed by the President.

(2) Two members shall be appointed by the Speaker of the House of Representatives, in consultation with the minority leader.

(3) Two members shall be appointed by the majority leader of the Senate, in consultation with the minority leader.

(c) TERMS.—The term of office for members shall be for the life of the Jewish Refugee Commission. A vacancy in the Jewish Refugee Commission shall not affect its powers, and shall be filled in the same manner in which the original appointment was made.

(d) REPRESENTATION.—The Jewish Refugee Commission shall include 2 members representing the interests of Jewish refugees.

(e) MEETINGS.—The President shall call the first meeting of the Jewish Refugee Commission not later than 120 days after the date of enactment of this Act.

(f) QUORUM.—Four members of the Jewish Refugee Commission shall constitute a quorum, but a lesser number may hold hearings.

(g) CHAIRMAN.—The Jewish Refugee Commission shall elect a Chairman and Vice Chairman from among its members. The term of office of each shall be for the life of the Jewish Refugee Commission.

(h) COMPENSATION.—

(1) IN GENERAL.—Members of the Jewish Refugee Commission shall serve without pay.

(2) REIMBURSEMENT OF EXPENSES.—All members of the Jewish Refugee Commission shall be reimbursed for reasonable travel and subsistence, and other reasonable and necessary expenses incurred by them in the performance of their duties.

SEC. 922. DUTIES OF THE JEWISH REFUGEE COMMISSION.

(a) IN GENERAL.—It shall be the duty of the Jewish Refugee Commission to review the United States Government's refusal to allow Jewish and other refugees fleeing persecution or genocide in Europe entry to the United States as provided in subsection (b).

(b) SCOPE OF REVIEW.—The Jewish Refugee Commission's review shall cover the period between January 1, 1933, through December 31, 1945, and shall include, to the greatest extent practicable, the following:

(1) A review of the United States Government's decision to deny Jewish and other refugees fleeing persecution or genocide entry to the United States, including a review of the underlying rationale of the United States Government's decision to refuse the Jewish and other refugees entry, the information the United States Government received or acquired suggesting such refusal was necessary, the perceived benefit of such refusal, and the impact of such refusal on the refugees.

(2) A review of Federal refugee law and policy relating to those fleeing persecution or genocide, including recommendations for making it easier in the future for victims of persecution or genocide to obtain refuge in the United States.

(c) FIELD HEARINGS.—The Jewish Refugee Commission shall hold public hearings in such cities of the United States as it deems appropriate.

(d) REPORT.—The Jewish Refugee Commission shall submit a written report of its findings and recommendations to Congress not later than 18 months after the date of the first meeting called pursuant to section __021(e).

SEC. 923. POWERS OF THE JEWISH REFUGEE COMMISSION.

(a) IN GENERAL.—The Jewish Refugee Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this subtitle, hold such hearings and sit and act at such times and places, and request the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandum, papers, and documents as the Commission or such subcommittee or member may deem advisable. The Jewish Refugee Commission may request the Attorney General to invoke the aid of an appropriate United States

district court to require, by subpoena or otherwise, such attendance, testimony, or production.

(b) GOVERNMENT INFORMATION AND COOPERATION.—The Jewish Refugee Commission may acquire directly from the head of any department, agency, independent instrumentality, or other authority of the executive branch of the Government, available information that the Jewish Refugee Commission considers useful in the discharge of its duties. All departments, agencies, and independent instrumentalities, or other authorities of the executive branch of the Government shall cooperate with the Jewish Refugee Commission and furnish all information requested by the Jewish Refugee Commission to the extent permitted by law, including information collected as a result of the Commission on Wartime and Internment of Civilians Act (Public Law 96–317; 50 U.S.C. App. 1981 note) and the Wartime Violation of Italian Americans Civil Liberties Act (Public Law 106–451; 50 U.S.C. App. 1981 note). For purposes of section 552a(b)(9) of title 5, United States Code (commonly known as the ''Privacy Act of 1974''), the Jewish Refugee Commission shall be deemed to be a committee of jurisdiction.

SEC. 924. ADMINISTRATIVE PROVISIONS.

The Jewish Refugee Commission is authorized to—

(1) appoint and fix the compensation of such personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that the compensation of any employee of the Commission may not exceed a rate equivalent to the rate payable under GS–15 of the General Schedule under section 5332 of such title;

(2) obtain the services of experts and consultants in accordance with the provisions of section 3109 of such title;

(3) obtain the detail of any Federal Government employee, and such detail shall be without reimbursement or interruption or loss of civil service status or privilege;

(4) enter into agreements with the Administrator of General Services for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman of the Commission and the Administrator;

(5) procure supplies, services, and property by contract in accordance with applicable laws and regulations and to the extent or in such amounts as are provided in appropriation Acts; and

(6) enter into contracts with Federal or State agencies, private firms, institutions, and agencies for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of the duties of the Commission, to the extent or in such amounts as are provided in appropriation Acts.

SEC. 925. FUNDING.

Of the amounts authorized to be appropriated to the Department of Justice, $600,000 shall be available to carry out this subtitle.

SEC. 926. SUNSET.

The Jewish Refugee Commission shall terminate 60 days after it submits its report to Congress

Calendar No. 208

110th CONGRESS
1st Session

S. 1639

A BILL

To provide for comprehensive immigration reform and for other purposes.

June 19, 2007

Read the second time and placed on the calendar