

111TH CONGRESS
2D SESSION

S. 3932

To provide for comprehensive immigration reform, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2010

Mr. MENENDEZ (for himself and Mr. LEAHY) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for comprehensive immigration reform, and for
other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Comprehensive Immigration Reform Act of 2010” or the
6 “CIR Act of 2010”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. References to Immigration and Nationality Act.
- Sec. 3. Definitions.

TITLE I—BORDER ENFORCEMENT

Subtitle A—Additional Assets and Resources

- Sec. 101. Effective date triggers.
- Sec. 102. Customs and border protection personnel.
- Sec. 103. Secure communication; equipment; and grants for border personnel.
- Sec. 104. Infrastructure improvements and expansion of land ports of entry.
- Sec. 105. Additional authorities for port of entry construction.
- Sec. 106. Additional increases in immigration enforcement personnel.
- Sec. 107. Additional immigration court personnel.
- Sec. 108. Improved training for border security and immigration enforcement officers.
- Sec. 109. Standards of professional conduct.
- Sec. 110. Inventory of assets and personnel.
- Sec. 111. Customs border patrol and border protection assets.
- Sec. 112. Technological assets.
- Sec. 113. Surveillance technologies programs.

Subtitle B—Enhanced Coordination and Planning for Border Security

- Sec. 121. Annual report on improving North American security information exchange.
- Sec. 122. Cooperation with the Government of Mexico.
- Sec. 123. Enhanced international cooperation.
- Sec. 124. Expansion of commerce security programs.
- Sec. 125. Northern and Southern Border Drug Prosecution Initiative.
- Sec. 126. Project Gunrunner Initiative.
- Sec. 127. Operation Streamline Prosecution Initiative.
- Sec. 128. Border Relief Grant Program.
- Sec. 129. Report on deaths and strategy study.
- Sec. 130. Immigration and United States-Mexico Border Enforcement Commission.
- Sec. 131. Preemption.
- Sec. 132. Inherent authority.
- Sec. 133. Border protection strategy.
- Sec. 134. Border communities liaison office.
- Sec. 135. Authorization of appropriations.

TITLE II—INTERIOR ENFORCEMENT

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- Sec. 213. Biometric screening.
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- Sec. 218. Sanctions for countries that delay or prevent repatriation of their citizens and nationals.
- Sec. 219. State criminal alien assistance program.
- Sec. 220. Procedures regarding aliens apprehended by State and local law enforcement officers.
- Sec. 221. Reform of passport, visa, and immigration fraud offenses.
- Sec. 222. Directives related to passport and document fraud.
- Sec. 223. Expanding the definition of conveyances subject to forfeiture.
- Sec. 224. Prohibition of the sale of firearms to, or the possession of firearms by, certain aliens.
- Sec. 225. Criminal forfeiture.
- Sec. 226. Advance delivery of information including passenger manifests.
- Sec. 227. Unlawful flight from immigration or customs controls and disobedience of lawful orders.
- Sec. 228. Reducing illegal immigration and alien smuggling on tribal lands.
- Sec. 229. Diplomatic security service.
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- Sec. 455. Additional department of labor employees.

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- Sec. 504. Confidentiality of information.
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1 **SEC. 2. REFERENCES TO IMMIGRATION AND NATIONALITY**
2 **ACT.**

3 Except as otherwise expressly provided, whenever in
4 this Act an amendment or repeal is expressed in terms
5 as an amendment to, or repeal of, a section or other provi-
6 sion, the reference shall be considered to be made to a
7 section or other provision of the Immigration and Nation-
8 ality Act.

9 **SEC. 3. DEFINITIONS.**

10 In this Act:

11 (1) **DEPARTMENT.**—The term “Department”
12 means the Department of Homeland Security.

13 (2) **NORTHERN BORDER.**—The term “Northern
14 border” means the international land border between
15 the United States and Canada.

16 (3) **SECRETARY.**—The term “Secretary” means
17 the Secretary of Homeland Security.

18 (4) **SOUTHERN BORDER.**—The term “Southern
19 border” means the international land border between
20 the United States and Mexico.

1 **TITLE I—BORDER**
2 **ENFORCEMENT**
3 **Subtitle A—Additional Assets and**
4 **Resources**

5 **SEC. 101. EFFECTIVE DATE TRIGGERS.**

6 (a) **IN GENERAL.**—Notwithstanding any effective
7 date provision or any other law, an alien in lawful prospec-
8 tive immigrant status may not adjust status to the status
9 of an alien lawfully admitted for permanent residence
10 under section 502 until—

11 (1) the Secretary submits a written certification
12 to the President and Congress that the measures de-
13 scribed in subsection (b) are established, funded,
14 and operational; and

15 (2) the Attorney General submits a written cer-
16 tification to the President and Congress that each of
17 the measures described in subsection (c) are estab-
18 lished, funded, and operational.

19 (b) **MEASURES BY DEPARTMENT OF HOMELAND SE-**
20 **CURITY.**—The measures described in this subsection are
21 established, funded, and operational if—

22 (1) United States Immigration and Customs
23 Enforcement (ICE) has—

24 (A) a total force of 6,410 agents to inves-
25 tigate violations of criminal law, including docu-

1 ment and benefit fraud and the cross-border
2 smuggling of aliens, firearms, narcotics, and
3 other contraband;

4 (B) a total force of 185 worksite enforce-
5 ment auditors to support a worksite enforce-
6 ment strategy that prioritizes developing cases
7 against employers committing serious violations;

8 (C) created and staffed an Immigration
9 Benefit and Document Fraud Task Force in
10 each field office headed by a Special Agent in
11 Charge;

12 (D) a nationwide plan with benchmarks to
13 dramatically increase the nationwide enrollment
14 of an alternatives to detention program that
15 utilizes community-based nonprofit organiza-
16 tions; and

17 (E) implemented civil detention standards
18 with which each facility detaining immigrants is
19 required to comply;

20 (2) United States Customs and Border Protec-
21 tion (CBP) has—

22 (A) a total force of 21,000 United States
23 Border Patrol agents who have been hired,
24 trained, and have reported for duty, including
25 increased numbers of personnel who conduct in-

1 specifications for drugs, contraband, and immi-
2 grants who are unlawfully present at ports of
3 entry in the United States;

4 (B) a total force of 21,500 officers who
5 have been hired, trained, and have reported for
6 duty at the Office of Field Operations;

7 (C) 7 unmanned aircraft systems deployed
8 and operational;

9 (D) remote video surveillance systems de-
10 ployed and operational at 300 sites;

11 (E) 200 scope trucks; and

12 (F) 56 mobile surveillance systems.

13 (3) the employment verification system estab-
14 lished under title III is fully operational and manda-
15 tory for all employers; and

16 (4) the Secretary has received, and is proc-
17 essing and adjudicating in a timely manner, applica-
18 tions under title 5, including conducting all nec-
19 essary background and security checks required
20 under such title.

21 (c) MEASURES BY DEPARTMENT OF JUSTICE.—The
22 measures described in this subsection are established,
23 funded, and operational if the Department of Justice
24 has—

1 (1) 300 Assistant United States Attorneys in
2 place who prosecute criminal violations at the bor-
3 der; and

4 (2) 275 Immigration Judges in place with ap-
5 propriate support staff.

6 **SEC. 102. CUSTOMS AND BORDER PROTECTION PER-**
7 **SONNEL.**

8 (a) STAFF ENHANCEMENTS.—

9 (1) REVISIONS TO FISCAL YEAR ALLOCATIONS
10 AND FUNDING.—Title II of the Department of
11 Homeland Security Appropriations Act, 2010 (Pub-
12 lic Law 111–83), is amended by inserting “*Provided*
13 *further,* That of the total amount provided,
14 \$40,000,000 shall be used to pay the salaries and
15 related compensation for 250 additional Customs
16 and Border Protection officers and 25 associated
17 support staff personnel, who shall be devoted to new
18 inspection lanes at new land ports of entry on the
19 Southwest border” before the period at the end of
20 the first paragraph.

21 (2) NEW PERSONNEL.—In addition to positions
22 authorized before the date of the enactment of this
23 Act and any officer vacancies within United States
24 Customs and Border Protection on such date, the

1 Secretary shall hire, train, and assign to duty, not
2 later than September 30, 2013—

3 (A) 2,500 full-time Customs and Border
4 Protection officers to serve on all primary, sec-
5 ondary, incoming, and outgoing inspection lanes
6 and enforcement teams at United States land
7 ports of entry on the Northern border;

8 (B) 2,500 full-time Customs and Border
9 Protection officers to serve on all primary, sec-
10 ondary, incoming, and outgoing inspection lanes
11 and enforcement teams at United States land
12 ports of entry on the Southern border; and

13 (C) 350 full-time support staff for all
14 United States ports of entry.

15 (b) WAIVER OF FTE LIMITATION.—The Secretary
16 may waive any limitation on the number of full-time equiv-
17 alent personnel assigned to the Department in order to
18 fulfill the requirements under subsection (a).

19 (c) REPORT TO CONGRESS.—

20 (1) OUTBOUND INSPECTIONS.—Not later than
21 90 days after the date of the enactment of this Act,
22 the Secretary shall submit a report containing the
23 Department's plans for ensuring the placement of
24 sufficient United States Customs and Border Pro-

1 tection officers on outbound inspections at all South-
2 ern border land ports of entry to—

3 (A) the Committee on the Judiciary of the
4 Senate;

5 (B) the Committee on the Judiciary of the
6 House of Representatives;

7 (C) the Committee on Homeland Security
8 and Governmental Affairs of the Senate; and

9 (D) the Committee on Homeland Security
10 of the House of Representatives.

11 (2) AGRICULTURAL SPECIALISTS.—Not later
12 than 90 days after the date of the enactment of this
13 Act, the Secretary, in consultation with the Sec-
14 retary of Agriculture, shall submit a report to the
15 committees set forth in paragraph (1) that contains
16 plans for ensuring the placement of sufficient agri-
17 culture specialists at all Southern border land ports
18 of entry.

19 (d) RETENTION INCENTIVES AND SALARIES.—

20 (1) RETENTION PAYMENTS.—During the 6-year
21 period beginning on October 1, 2010, the Secretary
22 may make incentive payments in an amount equal to
23 between \$5,000 and \$10,000 to qualified United
24 States Customs and Border Protection port of entry
25 officers, to the extent necessary to retain such offi-

1 cers. Not more than \$55,000,000 in retention pay-
2 ments may be paid under this paragraph.

3 (2) SPECIAL RULES FOR INCENTIVE PAY-
4 MENTS.—

5 (A) RETENTION INCENTIVES.—Each pay-
6 ment made under paragraph (1)—

7 (i) shall be paid to each qualified em-
8 ployee, in a lump sum, at the end of the
9 fiscal year in which the employee is se-
10 lected by the Secretary, or a delegate of
11 the Secretary, to receive such payment;

12 (ii) may not be limited solely to work
13 performance, but may be based on criteria
14 such as—

15 (I) comparative salaries for law
16 enforcement officers in other Federal
17 agencies;

18 (II) costs for replacement and
19 training of a new employee; and

20 (III) volume of work at the port
21 of entry;

22 (iii) shall be contingent upon the se-
23 lected employee signing an agreement,
24 under penalty of perjury, to continue serv-
25 ing as a United States Customs and Bor-

1 der Protection officer at a land port of
2 entry for at least 3 additional years; and

3 (iv) shall be subject to reimbursement
4 if the employee fails to complete the 3-year
5 service requirement described in clause (iii)
6 due to voluntary or involuntary separation
7 from service.

8 (B) LIMITATIONS.—

9 (i) FISCAL YEARS 2011 THROUGH
10 2015.—In each of the fiscal years 2011
11 through 2015, the Secretary may not make
12 more than 500 incentive payments under
13 this subsection.

14 (ii) ELIGIBILITY.—Any employee who
15 receives a retention incentive payment
16 under this subsection in a fiscal year shall
17 not be eligible to receive another such pay-
18 ment until the employee completes at least
19 2 years of service with the Department
20 after receiving such payment.

21 **SEC. 103. SECURE COMMUNICATION; EQUIPMENT; AND**
22 **GRANTS FOR BORDER PERSONNEL.**

23 (a) SECURE COMMUNICATION.—The Secretary shall
24 ensure that each United States Customs and Border Pro-
25 tection officer is equipped with a secure 2-way communica-

1 tion and satellite-enabled device, supported by system
2 interoperability, which allows such officers to commu-
3 nicate—

4 (1) between ports of entry and inspection sta-
5 tions; and

6 (2) with other Federal, State, local, and tribal
7 law enforcement entities.

8 (b) BORDER AREA SECURITY INITIATIVE GRANT
9 PROGRAM.—

10 (1) IN GENERAL.—The Secretary shall establish
11 a program for awarding grants for the purchase of
12 detection equipment at land ports of entry and mo-
13 bile, hand-held, 2-way communication devices for
14 State and local law enforcement officers serving on
15 the Southern border.

16 (2) AUTHORIZATION OF APPROPRIATIONS.—
17 There is authorized to be appropriated, for the 6-
18 year period beginning on October 1, 2011,
19 \$30,000,000, which shall be used for grants author-
20 ized under paragraph (1).

21 **SEC. 104. INFRASTRUCTURE IMPROVEMENTS AND EXPAN-**
22 **SION OF LAND PORTS OF ENTRY.**

23 (a) AMENDMENTS TO AMERICAN RECOVERY AND RE-
24 INVESTMENT ACT OF 2009.—Title VI of the American
25 Recovery and Reinvestment Act of 2009 (Public Law 111–

1 5), under the heading entitled “Construction” is amend-
2 ed—

3 (1) by striking “U.S. Customs and Border Pro-
4 tection owned”; and

5 (2) by inserting “*Provided further, That*
6 \$300,000,000 shall be used for infrastructure im-
7 provements, expansion, and new construction (or re-
8 imbursement for new construction costs incurred
9 during fiscal years 2007 through 2012) of high-vol-
10 ume ports of entry along the Northern border and
11 the Southern border, regardless of port ownership”
12 before the period at the end.

13 (b) EFFECTIVE DATE.—The amendments made
14 under subsection (a) shall take effect as if included in the
15 American Recovery and Reinvestment Act of 2009, as of
16 the date of the enactment of such Act.

17 **SEC. 105. ADDITIONAL AUTHORITIES FOR PORT OF ENTRY**
18 **CONSTRUCTION.**

19 (a) IN GENERAL.—In order to aid in the enforcement
20 of Federal customs, immigration, and agriculture laws, the
21 Commissioner of U.S. Customs and Border Protection
22 Commissioner may—

23 (1) design, construct, and modify land ports of
24 entry and other structures and facilities, including
25 living quarters for officers, agents, and personnel;

1 (2) acquire, by purchase, donation, exchange, or
2 otherwise, land or any interest in land determined to
3 be necessary to carry out the Commissioner's duties
4 under this section; and

5 (3) construct additional ports of entry along the
6 Southern border and the Northern border.

7 (b) CONSULTATION.—

8 (1) LOCATIONS FOR NEW PORTS OF ENTRY.—

9 The Secretary shall consult with the Secretary of the
10 Interior, the Secretary of Agriculture, the Secretary
11 of State, the International Boundary and Water
12 Commission, the International Joint Commission,
13 and appropriate representatives of States, local gov-
14 ernments, Indian tribes (as defined in section 4 of
15 the Indian Self-Determination and Education Assist-
16 ance Act (25 U.S.C. 450b)), and property owners
17 to—

18 (A) determine locations for new ports of
19 entry; and

20 (B) minimize adverse impacts from such
21 ports on the environment, historic and cultural
22 resources, commerce, and quality of life for the
23 communities and residents located near such
24 ports.

1 (2) SAVINGS PROVISION.—Nothing in this sub-
2 section may be construed—

3 (A) to create any right or liability of the
4 parties described in paragraph (1);

5 (B) to affect the legality and validity of
6 any determination under this Act by the Sec-
7 retary; or

8 (C) to affect any consultation requirement
9 under any other law.

10 **SEC. 106. ADDITIONAL INCREASES IN IMMIGRATION EN-**
11 **FORCEMENT PERSONNEL.**

12 (a) IMMIGRATION AND CUSTOMS ENFORCEMENT IN-
13 VESTIGATORS.—Section 5203 of the Intelligence Reform
14 and Terrorism Prevention Act of 2004 (Public Law 108–
15 458; 118 Stat. 3734) is amended by striking “800” and
16 inserting “1000”.

17 (b) ADDITIONAL PERSONNEL.—In addition to the po-
18 sitions authorized under section 5203 of the Intelligence
19 Reform and Terrorism Prevention Act of 2004, as amend-
20 ed by paragraph (1), during each of the fiscal years 2011
21 through 2015, the Secretary shall, subject to the avail-
22 ability of appropriations, increase by not less than 50 the
23 number of positions for personnel within the Department
24 assigned to investigate alien smuggling.

1 (c) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to the Secretary such
3 sums as may be necessary for each of the fiscal years 2011
4 through 2015 to carry out this section.

5 **SEC. 107. ADDITIONAL IMMIGRATION COURT PERSONNEL.**

6 (a) DEPARTMENT OF JUSTICE.—

7 (1) LITIGATION ATTORNEYS.—In each of fiscal
8 years 2011 through 2015, the Attorney General
9 shall, subject to the availability of appropriations for
10 such purpose, increase by not less than 50 the num-
11 ber of positions for attorneys in the Office of Immi-
12 gration Litigation of the Department of Justice.

13 (2) IMMIGRATION JUDGES.—In each of fiscal
14 years 2011 through 2015, the Attorney General
15 shall, subject to the availability of appropriations for
16 such purpose—

17 (A) increase by not less than 20 the num-
18 ber of full-time immigration judges compared to
19 the number of such positions for which funds
20 were made available during the preceding fiscal
21 year; and

22 (B) increase by not less than 80 the num-
23 ber of positions for personnel to support the im-
24 migration judges described in subparagraph (A)
25 compared to the number of such positions for

1 which funds were made available during the
2 preceding fiscal year.

3 (3) STAFF ATTORNEYS.—In each of fiscal years
4 2011 through 2015, the Attorney General shall, sub-
5 ject to the availability of appropriations for such
6 purpose—

7 (A) increase by not less than 10 the num-
8 ber of positions for full-time staff attorneys in
9 the Board of Immigration Appeals compared to
10 the number of such positions for which funds
11 were made available during the preceding fiscal
12 year; and

13 (B) increase by not less than 10 the num-
14 ber of positions for personnel to support the
15 staff attorneys described in subparagraph (A)
16 compared to the number of such positions for
17 which funds were made available during the
18 preceding fiscal year.

19 (4) AUTHORIZATION OF APPROPRIATIONS.—
20 There are authorized to be appropriated to the At-
21 torney General for each of the fiscal years 2011
22 through 2015 such sums as may be necessary to
23 carry out this subsection, including the hiring of
24 necessary support staff.

1 **SEC. 108. IMPROVED TRAINING FOR BORDER SECURITY**
2 **AND IMMIGRATION ENFORCEMENT OFFI-**
3 **CERS.**

4 The Secretary shall ensure that Customs and Border
5 Protection agents, U.S. Border Patrol agents, Immigra-
6 tion and Customs Enforcement agents, and Agricultural
7 Inspectors stationed within 100 miles of any land or ma-
8 rine border of the United States or at any United States
9 port of entry receive appropriate training, prepared in col-
10 laboration with the Office for Civil Rights and Civil Lib-
11 erties, in—

12 (1) identifying and detecting fraudulent travel
13 documents;

14 (2) civil, constitutional, and privacy rights of in-
15 dividuals;

16 (3) limitations on the use of force, including le-
17 thal force, against individuals apprehended or en-
18 countered while on duty; and

19 (4) screening, identifying, and addressing vul-
20 nerable populations, including children, victims of
21 crime and human trafficking, and individuals fleeing
22 persecution or torture.

23 **SEC. 109. STANDARDS OF PROFESSIONAL CONDUCT.**

24 (a) **ESTABLISHMENT OF STANDARDS.**—Not more
25 than 90 days after the date of the enactment of this Act,
26 the Secretary shall establish clear standards of profes-

1 sional conduct for interaction with the public, for all
2 United States Customs and Border Protection agents,
3 United States Border Patrol agents, United States Immi-
4 gration and Customs Enforcement agents, and Agricul-
5 tural Inspectors stationed within 100 miles of any land
6 or marine border of the United States or at a United
7 States port of entry.

8 (b) STANDARDS.—Agents of the Department who are
9 stationed within 100 miles of any land or marine border
10 of the United States or at a United States port of entry—

11 (1) may not violate any law or any agency pol-
12 icy, rule, or procedure;

13 (2) shall obey all lawful orders;

14 (3) may not engage in any on-duty or off-duty
15 conduct or activities that discredit on the agents,
16 bring the agency into disrepute, or impair its effi-
17 cient and effective operation;

18 (4) shall conduct themselves toward the public
19 in a civil and professional manner that demonstrates
20 a service orientation and fosters public respect and
21 cooperation;

22 (5) shall treat violators and perceived violators
23 with respect and courtesy;

1 (6) shall refrain from an officious or over-
2 bearing attitude or language that belittles, ridicules,
3 or intimidates individuals;

4 (7) may not unnecessarily delay the perform-
5 ance of their duty;

6 (8) shall respect the civil rights and protect the
7 well-being of those in their charge, while adhering to
8 their agency's use-of-force policy and recognizing the
9 need to demonstrate authority and control over sus-
10 pects and detainees;

11 (9) may not use their authority as Federal
12 agents to resolve personal grievances, including
13 those involving the officer, family members, rel-
14 atives, or friends; and

15 (10) shall summon other on-duty personnel and
16 a supervisor if the agent's personal involvement with
17 a member of the public would reasonably require law
18 enforcement intervention.

19 (c) OVERSIGHT AND EVALUATION.—The Secretary
20 shall develop and implement an officer evaluation and su-
21 pervisor evaluation plan that applies the standards de-
22 scribed in subsection (b), ensures agent responsibility, and
23 protects civil rights by—

24 (1) making adherence to the standards of pro-
25 fessional conduct a requirement for promotion from

1 probationary to journeyman status and as a central
2 criterion in periodic evaluations and further pro-
3 motions of officers;

4 (2) holding managers and senior officers re-
5 sponsible for—

6 (A) performance according to these stand-
7 ards;

8 (B) assessments of subordinates according
9 to these standards; and

10 (C) performance of their subordinates on
11 these standards, with meaningful penalties to
12 supervisors for failures of subordinates to ad-
13 here to such standards;

14 (3) establishing strong penalties for failures to
15 follow the standards of professional conduct; and

16 (4) not indemnifying agents that violate the
17 civil rights standards to which they are required to
18 comply.

19 (d) LIMITATION.—The standards of conduct set forth
20 in this section are not an exhaustive treatment of require-
21 ments, limitations, or prohibitions on agent conduct and
22 activities established by the Secretary.

23 (e) NOTICE.—The standards of conduct established
24 under this section shall be posted at all ports of entry in
25 locations easily viewed by members of the public.

1 (f) COMPLAINTS.—Not more than 180 days after the
2 date of the enactment of this Act, the Secretary, in con-
3 sultation with the Office for Civil Rights and Civil Lib-
4 erties, shall establish a uniform and standardized proce-
5 dure for the public regarding complaints against U.S. Cus-
6 toms and Border Protection agents, U.S. Border Patrol
7 agents, and Agricultural Inspectors for violations of stand-
8 ards of professional conduct that—

9 (1) requires such agents and inspectors to
10 quickly review, effectively investigate, and meaning-
11 fully resolve complaints;

12 (2) identifies patterns of abuse or malfeasance;

13 (3) is accessible, transparent, consistent, effec-
14 tive, and fair;

15 (4) is uniformly applied to all Border Patrol
16 Sectors and Ports of Entry;

17 (5) specifies to whom, how, and where com-
18 plaints are to be filed;

19 (6) is posted in a publicly visible place at all
20 ports of entry and interior checkpoints and is acces-
21 sible in multiple languages;

22 (7) allocates a sufficient percentage of the fund-
23 ing appropriated to the Department for enforcement
24 initiatives to provide staff and resources commensu-
25 rate with the quantity of complaints submitted;

1 (8) includes a publicly accessible national,
2 standardized database capable of tracking and ana-
3 lyzing complaints and their resolution; and

4 (9) makes copies of complaints and their resolu-
5 tions publicly accessible and permanently preserved
6 and available for inspection, while maintaining the
7 confidentiality of complainants' identities.

8 (g) COMPLAINANTS.—

9 (1) ELIGIBLE COMPLAINANTS.—Any interested
10 party or legal representative may file a complaint
11 against the Department for violation of standards of
12 professional conduct through the complaint proce-
13 dure established under subsection (f).

14 (2) RETALIATION.—Law enforcement officers
15 may not engage in any action against a complainant
16 in retaliation for filing a complaint under paragraph
17 (1).

18 (3) LIMITATION ON USE OF INFORMATION.—A
19 United States employee may not—

20 (A) use any information received from a
21 complaint filed under this section to initiate re-
22 moval proceedings or removals against any per-
23 son filing the complaint or identified in the
24 complaint; or

1 (B) remove any individual involved in a
2 complaint filed under this section while the
3 complaint is pending.

4 (4) PUBLICATION.—Information from the com-
5 plaint that relates to a specific individual involved in
6 a complaint may not be published if it would result
7 in the identification of the individual.

8 (5) DEPARTMENT ASSISTANCE.—The Depart-
9 ment shall provide assistance to complainants seek-
10 ing to file complaints under this subsection, includ-
11 ing language assistance, accommodations for disabili-
12 ties, and accurate and complete responses to their
13 questions.

14 (h) ANNUAL REPORT.—

15 (1) IN GENERAL.—The Secretary shall submit
16 an annual report to the congressional committees set
17 forth in paragraph (2) that describes—

18 (A) the number and type of complaints re-
19 ceived in each sector;

20 (B) demographic information about the
21 complainants;

22 (C) the results of the investigations con-
23 ducted to determine whether the alleged viola-
24 tions of professional standards occurred, includ-
25 ing—

1 (i) which standards were violations of
2 standards;

3 (ii) any disciplinary actions taken; and

4 (iii) any complaint patterns that could
5 be prevented or reduced by policy or prac-
6 tice changes.

7 (2) CONGRESSIONAL COMMITTEES.—The con-
8 gressional committees set forth in this paragraph
9 are—

10 (A) the Committee on Homeland Security
11 and Governmental Affairs of the Senate;

12 (B) the Committee on the Judiciary of the
13 Senate;

14 (C) the Committee on Homeland Security
15 of the House of Representatives;

16 (D) the Committee on the Judiciary of the
17 House of Representatives; and

18 (E) the Committee on Oversight and Gov-
19 ernment Reform of the House of Representa-
20 tives.

21 **SEC. 110. INVENTORY OF ASSETS AND PERSONNEL.**

22 (a) INVENTORY.—The Secretary shall identify and
23 inventory—

24 (1) the assets, equipment, supplies, and other
25 physical resources dedicated to border security and

1 enforcement before any of the increases authorized
2 under this Act; and

3 (2) the personnel and other human resources
4 dedicated to border security and enforcement before
5 any of the increases in personnel and other human
6 resources authorized under this Act.

7 (b) REPORT.—Not later than 90 days after the date
8 of the enactment of this Act, the Secretary shall submit
9 the inventory required under subsection (a) to the congress-
10 sional committees set forth in section 108(h)(2).

11 **SEC. 111. CUSTOMS BORDER PATROL AND BORDER PRO-**
12 **TECTION ASSETS.**

13 (a) PERSONAL EQUIPMENT.—

14 (1) BODY ARMOR.—The Secretary shall ensure
15 that each border patrol agent—

16 (A) is issued high-quality body armor that
17 is appropriate for the climate and risks faced by
18 the agent;

19 (B) is permitted to select body armor from
20 among a variety of approved brands and styles;

21 (C) is strongly encouraged, but not re-
22 quired, to wear such body armor whenever
23 practicable; and

24 (D) is issued replacement body armor not
25 less frequently than once every 5 years.

1 (2) WEAPONS.—The Secretary shall ensure
2 that—

3 (A) border patrol agents are equipped with
4 weapons that are reliable and effective to pro-
5 tect themselves, their fellow agents, and inno-
6 cent third parties from the threats posed by
7 armed criminals; and

8 (B) ensure that the policies of the Depart-
9 ment authorize all agents to carry weapons that
10 are suited to the potential threats that they
11 face.

12 (3) UNIFORMS.—The Secretary shall ensure
13 that all agents are provided, at no cost to such
14 agents—

15 (A) all necessary uniform items, including
16 outerwear suited to the climate, footwear, belts,
17 holsters, and personal protective equipment;
18 and

19 (B) replacement uniform items as such
20 items become worn or unserviceable or no
21 longer fit properly.

22 (b) HELICOPTERS AND POWER BOATS.—

23 (1) HELICOPTERS.—The Secretary shall—

24 (A) conduct a review of the helicopters
25 needed by the Border Patrol;

1 (B) if the Secretary determines that the
2 number of helicopters is insufficient, increase
3 the number of helicopters under the control of
4 the Border Patrol; and

5 (C) ensure that appropriate types of heli-
6 copters are procured for the various missions
7 being performed.

8 (2) POWER BOATS.—The Secretary shall—

9 (A) conduct a review of the power boats
10 needed by the Border Patrol;

11 (B) if the Secretary determines that the
12 number of power boats is insufficient, increase
13 the number of power boats under the control of
14 the Border Patrol; and

15 (C) ensure that the types of power boats
16 that are procured are appropriate for the water-
17 ways in which they are used and the mission re-
18 quirements.

19 (3) USE AND TRAINING.—The Secretary shall—

20 (A) establish a standard policy on the use
21 of the helicopters and power boats procured
22 under this subsection; and

23 (B) implement training programs for the
24 Border Patrol agents who use such assets, in-

1 including safe operating procedures and rescue
2 operations.

3 (c) MOTOR VEHICLES.—

4 (1) QUANTITY.—The Secretary shall—

5 (A) conduct a review of the motor vehicles
6 needed by the Border Patrol;

7 (B) if the Secretary determines that the
8 number of motor vehicles is insufficient, estab-
9 lish a fleet of motor vehicles appropriate for use
10 by the Border Patrol; and

11 (C) ensure that there are sufficient num-
12 bers and types of other motor vehicles to sup-
13 port the mission of the Border Patrol.

14 (2) FEATURES.—All motor vehicles purchased
15 for the Border Patrol shall—

16 (A) be appropriate for the mission of the
17 Border Patrol; and

18 (B) have a panic button and a global posi-
19 tioning system device that is activated solely in
20 emergency situations to track the location of
21 agents in distress.

22 (d) ELECTRONIC EQUIPMENT.—

23 (1) PORTABLE COMPUTERS.—The Secretary
24 shall ensure that each police-type motor vehicle in
25 the fleet of the Border Patrol—

1 (A) is equipped with a portable computer
2 with access to all necessary law enforcement
3 databases; and

4 (B) is otherwise suited to the unique oper-
5 ational requirements of the Border Patrol.

6 (2) RADIO EQUIPMENT.—The Secretary shall
7 augment the radio communications system of the
8 Border Patrol so that—

9 (A) all law enforcement personnel working
10 in each area where Border Patrol operations
11 are conducted have clear and encrypted 2-way
12 radio communication capabilities at all times;
13 and

14 (B) each portable communications device is
15 equipped with a panic button and a global posi-
16 tioning system device that is activated solely in
17 emergency situations to track the location of
18 agents in distress.

19 (3) HANDHELD GLOBAL POSITIONING SYSTEM
20 DEVICES.—If the Secretary determines that a class
21 of Border Patrol agents each need a handheld global
22 positioning system device to effectively and safely
23 carry out his or her duties, the Secretary shall en-
24 sure that each such agent is issued a state-of-the-art

1 handheld global positioning system device for naviga-
2 tional purposes.

3 (4) NIGHT VISION EQUIPMENT.—The Secretary
4 shall ensure that sufficient quantities of state-of-the-
5 art night vision equipment are procured and main-
6 tained to enable each Border Patrol agent working
7 during the hours of darkness to be equipped with a
8 portable night vision device.

9 (e) APPROPRIATIONS.—There are authorized to be
10 appropriated to the Secretary such sums as may be nec-
11 essary for each of fiscal years 2011 through 2015 to carry
12 out this section.

13 **SEC. 112. TECHNOLOGICAL ASSETS.**

14 (a) ACQUISITION.—Subject to the availability of ap-
15 propriations for such purpose, the Secretary shall procure
16 additional unmanned aerial systems, aircrafts, cameras,
17 poles, ground sensors, and other technologies necessary to
18 achieve effective control of the land and maritime borders
19 of the United States.

20 (b) UNMANNED AIRCRAFT AND ASSOCIATED INFRA-
21 STRUCTURE.—The Secretary shall acquire and maintain
22 unmanned aerial systems for use on the border, including
23 related equipment such as—

24 (1) additional sensors;

25 (2) critical spares;

1 (3) satellite command and control; and

2 (4) other necessary equipment for operational
3 support.

4 (c) PRIVACY AND CIVIL LIBERTIES ASSESSMENTS.—

5 The Secretary, in consultation with the Attorney General,
6 shall conduct a privacy impact assessment and a civil lib-
7 erties impact assessment before the deployment of new
8 technologies under this section.

9 (d) AUTHORIZATION OF APPROPRIATIONS.—

10 (1) There are authorized to be appropriated to
11 the Secretary such sums as may be necessary for
12 each of the fiscal years 2011 through 2015 to carry
13 out subsections (a) and (b).

14 (2) AVAILABILITY OF FUNDS.—Amounts appro-
15 priated pursuant to paragraph (1) shall remain
16 available until expended.

17 **SEC. 113. SURVEILLANCE TECHNOLOGIES PROGRAMS.**

18 (a) AERIAL SURVEILLANCE PROGRAM.—

19 (1) IN GENERAL.—In conjunction with the bor-
20 der surveillance plan developed under section 5201
21 of the Intelligence Reform and Terrorism Prevention
22 Act of 2004 (8 U.S.C. 1701 note) and subject to the
23 availability of appropriations for such purpose, the
24 Secretary shall continue to fully integrate and utilize
25 aerial surveillance technologies, including unmanned

1 aerial systems, that the Secretary determines to be
2 necessary to enhance the security of the border be-
3 tween the United States and Canada and the border
4 between the United States and Mexico.

5 (2) ASSESSMENT AND CONSULTATION REQUIRE-
6 MENTS.—The Secretary shall—

7 (A) consider current and proposed aerial
8 surveillance technologies;

9 (B) assess the feasibility and advisability
10 of utilizing such technologies to address border
11 threats, including an assessment of the tech-
12 nologies considered best suited to address re-
13 spective threats;

14 (C) consult with the Secretary of Defense
15 regarding any technologies or equipment which
16 the Secretary may deploy along a border of the
17 United States;

18 (D) consult with the Administrator of the
19 Federal Aviation Administration regarding safe-
20 ty, airspace coordination and regulation, and
21 any other issues necessary for implementation
22 of the program;

23 (E) consult with the Secretary of State
24 with respect to any foreign policy or inter-

1 national law implications relating to the imple-
2 mentation or conduct of the program; and

3 (F) conduct a privacy impact assessment
4 and civil liberties impact assessment before the
5 deployment of the new technologies under this
6 subsection.

7 (3) EVALUATION OF TECHNOLOGIES.—The aer-
8 ial surveillance program authorized under this sub-
9 section shall include the use of a variety of aerial
10 surveillance technologies in a variety of topographies
11 and areas, including populated and unpopulated
12 areas located on or near the international border of
13 the United States, to evaluate, for a range of cir-
14 cumstances—

15 (A) the significance of previous experiences
16 with such technologies in border security or
17 critical infrastructure protection;

18 (B) the cost and effectiveness of various
19 technologies for border security, including vary-
20 ing levels of technical complexity; and

21 (C) liability, safety, civil liberties, and pri-
22 vacy concerns relating to the utilization of such
23 technologies for border security.

24 (4) ADDITIONAL REVIEWS.—In accordance with
25 sections 222 and 705 of the Homeland Security Act

1 of 2002 (6 U.S.C. 142 and 345), the Chief Privacy
2 Officer and the Officer for Civil Rights and Civil
3 Liberties shall conduct additional reviews, as nec-
4 essary.

5 (5) CONTINUED USE OF AERIAL SURVEILLANCE
6 TECHNOLOGIES.—The Secretary may continue the
7 operation of aerial surveillance technologies in use as
8 of the date of the enactment of this Act while as-
9 sassing the effectiveness of the utilization of such
10 technologies.

11 (6) AUTHORIZATION OF APPROPRIATIONS.—
12 There are authorized to be appropriated such sums
13 as may be necessary for each of the fiscal years
14 2011 through 2015 to carry out this subsection.

15 (b) INTEGRATED AND AUTOMATED SURVEILLANCE
16 PROGRAM.—

17 (1) REQUIREMENT FOR PROGRAM.—Subject to
18 the availability of appropriations, the Secretary shall
19 establish a program to procure additional unmanned
20 aerial systems, cameras, poles, sensors, satellites,
21 radar coverage, and other technologies necessary—

22 (A) to achieve effective control of the
23 Northern border and the Southern border; and

24 (B) to establish a security perimeter
25 known as a “virtual fence” along such inter-

1 national borders to provide a barrier to unau-
2 thorized immigration.

3 (2) PROGRAM COMPONENTS.—In carrying out
4 the program under this subsection, the Secretary, to
5 the maximum extent feasible, shall—

6 (A) utilize integrated technologies that
7 function cohesively in an automated fashion;

8 (B) use a standard process to collect, cata-
9 log, and report intrusion and response data col-
10 lected under the program;

11 (C) ensure that future surveillance tech-
12 nology investments and upgrades for the pro-
13 gram can be integrated with existing systems;

14 (D) develop and apply performance meas-
15 ures to evaluate whether the program is pro-
16 viding desired results by increasing response ef-
17 fectiveness in monitoring and detecting unau-
18 thorized intrusions along the Northern border
19 and the Southern border;

20 (E) develop plans, in accordance with rel-
21 evant environmental laws, to streamline site se-
22 lection, site validation, and environmental as-
23 sessment processes to minimize delays of in-
24 stalling surveillance technology infrastructure;

1 (F) develop standards to expand the
2 shared use of existing private and governmental
3 structures to install remote surveillance tech-
4 nology infrastructure to the extent possible; and

5 (G) develop standards to identify and de-
6 ploy the use of nonpermanent or mobile surveil-
7 lance platforms that will increase the Sec-
8 retary's mobility and ability to identify unau-
9 thorized border intrusions.

10 (3) AUTHORIZATION OF APPROPRIATIONS.—

11 There are authorized to be appropriated such sums
12 as may be necessary for each of the fiscal years
13 2011 through 2015 to carry out this subsection.

14 **Subtitle B—Enhanced Coordina-**
15 **tion and Planning for Border**
16 **Security**

17 **SEC. 121. ANNUAL REPORT ON IMPROVING NORTH AMER-**
18 **ICAN SECURITY INFORMATION EXCHANGE.**

19 (a) REQUIREMENT FOR REPORTS.—Not later than 1
20 year after the date of the enactment of this Act, and annu-
21 ally thereafter, the Secretary of State, in coordination with
22 the Secretary and the heads of other appropriate Federal
23 agencies, shall submit a report to Congress that describes
24 the progress made during the most recent 12-month pe-
25 riod in improving the effectiveness with which information

1 relating to North American security is exchanged between
2 the Governments of the United States, of Canada, and of
3 Mexico.

4 (b) CONTENTS.—

5 (1) SECURITY CLEARANCES AND DOCUMENT IN-
6 TEGRITY.—Each report submitted under subsection
7 (a) shall describe the development of common enroll-
8 ment, security, technical, and biometric standards
9 for the issuance, authentication, validation, and re-
10 pudiation of secure documents, including—

11 (A) technical and biometric standards
12 based on best practices and consistent with
13 international standards for the issuance, au-
14 thentication, validation, and repudiation of trav-
15 el documents, including—

16 (i) passports;

17 (ii) visas; and

18 (iii) permanent resident cards;

19 (B) the joint efforts of the United States,
20 Canada, and Mexico to encourage foreign gov-
21 ernments to enact laws that—

22 (i) combat alien smuggling and traf-
23 ficking; and

24 (ii) forbid the use and manufacture of
25 fraudulent travel documents; and

1 (C) efforts made to ensure that other
2 countries meet proper travel document stand-
3 ards and are committed to travel document
4 verification before the nationals of such coun-
5 tries travel internationally, including travel to
6 the United States.

7 (2) IMMIGRATION AND VISA MANAGEMENT.—
8 Each report submitted under subsection (a) shall de-
9 scribe the progress made in sharing information re-
10 garding high-risk individuals who attempt to enter
11 Canada, Mexico, or the United States, including—

12 (A) implementing the Statement of Mutual
13 Understanding on Information Sharing, signed
14 by Canada and the United States in February
15 2003; and

16 (B) identifying and analyzing trends re-
17 lated to immigration fraud, including asylum
18 and document fraud.

19 (3) VISA POLICY COORDINATION AND IMMIGRA-
20 TION SECURITY.—Each report submitted under sub-
21 section (a) shall describe the progress made by Can-
22 ada, Mexico, and the United States to enhance
23 North American security by cooperating on visa pol-
24 icy and identifying best practices regarding immigra-
25 tion security, including—

1 (A) enhancing consultation among officials
2 who issue visas at the consulates or embassies
3 of Canada, Mexico, or the United States
4 throughout the world to share information,
5 trends, and best practices on visa flows;

6 (B) comparing the procedures and policies
7 of Canada and the United States related to vis-
8 itor visa processing, including—

- 9 (i) application process;
10 (ii) interview policy;
11 (iii) general screening procedures;
12 (iv) visa validity;
13 (v) quality control measures; and
14 (vi) access to appeal or review;

15 (C) exploring methods for Canada, Mexico,
16 and the United States to waive visa require-
17 ments for nationals and citizens of the same
18 foreign countries;

19 (D) developing and implementing an immi-
20 gration security strategy for North America
21 that utilizes a common security perimeter by
22 enhancing technical assistance for programs
23 and systems to support advance automated re-
24 porting and risk targeting of international pas-
25 sengers;

1 (E) real-time sharing of information on
2 lost and stolen passports among immigration or
3 law enforcement officials of Canada, Mexico,
4 and the United States; and

5 (F) collecting 10 fingerprints from each in-
6 dividual who applies for a visa.

7 (4) NORTH AMERICAN VISITOR OVERSTAY PRO-
8 GRAM.—Each report submitted under subsection (a)
9 shall describe the progress made by Canada and the
10 United States in implementing parallel entry-exit
11 tracking systems that—

12 (A) respect the privacy laws of both coun-
13 tries; and

14 (B) share information regarding third
15 country nationals who have overstayed their pe-
16 riod of authorized admission in Canada or the
17 United States.

18 (5) TERRORIST WATCH LISTS.—Each report
19 submitted under subsection (a) shall describe the ca-
20 pacity of the United States to combat terrorism
21 through the coordination of counterterrorism efforts,
22 including—

23 (A) developing and implementing bilateral
24 agreements between Canada and the United

1 States and between Mexico and the United
2 States—

3 (i) to govern the sharing of terrorist
4 watch list data; and

5 (ii) to comprehensively enumerate the
6 uses of such data by the governments of
7 each country;

8 (B) establishing appropriate linkages
9 among Canada, Mexico, and the United States
10 Terrorist Screening Center;

11 (C) establishing a multilateral watch list
12 mechanism that would facilitate direct coordina-
13 tion between the country that identifies individ-
14 uals on a watch list and the country that owns
15 such list, including procedures that satisfy secu-
16 rity concerns, comply with privacy laws, and are
17 consistent with the other laws of each partici-
18 pating country; and

19 (D) establishing transparent standards and
20 processes that enable innocent individuals to re-
21 move their names from a watch list.

22 (6) MONEY LAUNDERING, CURRENCY SMUG-
23 GLING, AND ALIEN SMUGGLING.—Each report sub-
24 mitted under subsection (a) shall describe improve-
25 ments made in information sharing and law enforce-

1 ment cooperation in combating organized crime, in-
2 cluding—

3 (A) combating currency smuggling, money
4 laundering, alien smuggling, and trafficking in
5 alcohol, firearms, and explosives;

6 (B) determining the feasibility of formu-
7 lating a firearms trafficking action plan be-
8 tween Mexico and the United States;

9 (C) developing a joint threat assessment on
10 organized crime between Canada and the
11 United States;

12 (D) determining the feasibility of formu-
13 lating a joint threat assessment on organized
14 crime between Mexico and the United States;

15 (E) developing mechanisms to exchange in-
16 formation on findings, seizures, and capture of
17 individuals transporting undeclared currency;
18 and

19 (F) developing and implementing a plan to
20 combat the transnational threat of illegal drug
21 trafficking.

22 (7) LAW ENFORCEMENT COOPERATION.—Each
23 report submitted under subsection (a) shall describe
24 enhancements in law enforcement cooperation among
25 Canada, Mexico, and the United States, including—

1 (A) enhanced technical assistance for the
2 development and maintenance of a national
3 database built upon identified best practices to
4 identify suspected criminals or terrorists;

5 (B) the feasibility of establishing law en-
6 forcement teams that include personnel from
7 the United States and Mexico; and

8 (C) the appropriate procedures for such
9 multinational teams.

10 **SEC. 122. COOPERATION WITH THE GOVERNMENT OF MEX-**
11 **ICO.**

12 (a) COOPERATION REGARDING BORDER SECU-
13 RITY.—The Secretary of State, in cooperation with the
14 Secretary and representatives of Federal, State, and local
15 law enforcement agencies that are involved in border secu-
16 rity and immigration enforcement efforts, shall work with
17 appropriate officials of the Government of Mexico to im-
18 prove coordination between the United States and Mexico
19 to—

20 (1) improve border security along the inter-
21 national border between the United States and Mex-
22 ico;

23 (2) reduce human trafficking and smuggling be-
24 tween the United States and Mexico;

1 (3) reduce drug trafficking and smuggling be-
2 tween the United States and Mexico;

3 (4) reduce gang membership in the United
4 States and Mexico;

5 (5) reduce violence against women in the
6 United States and Mexico; and

7 (6) reduce other violence and criminal activity.

8 (b) COOPERATION REGARDING EDUCATION ON IMMI-
9 GRATION LAWS.—The Secretary of State, in cooperation
10 with other appropriate Federal officials, shall work with
11 appropriate officials of the Government of Mexico to edu-
12 cate citizens and nationals of Mexico regarding their eligi-
13 bility for nonimmigrant status in the United States to en-
14 sure that such citizens and nationals are not exploited
15 while working in the United States.

16 (c) COOPERATION REGARDING CIRCULAR MIGRA-
17 TION.—The Secretary of State, in cooperation with the
18 Secretary of Labor and other appropriate Federal offi-
19 cials, shall work with appropriate officials of the Govern-
20 ment of Mexico to encourage circular migration of citizens
21 and nationals of Mexico, including assisting in the develop-
22 ment of economic opportunities and the provision of job
23 training for such citizens and nationals.

24 (d) CONSULTATION REQUIREMENT.—The Secretary,
25 in cooperation with State and local government officials

1 in the United States, shall cooperate with their counter-
2 parts in Mexico to enhance border security structures
3 along the international border between the United States
4 and Mexico, as authorized by this title, by—

5 (1) soliciting the views of affected communities;

6 (2) lessening tensions; and

7 (3) fostering greater understanding and strong-
8 er cooperation on border security structures and
9 other important security issues of mutual concern.

10 (e) ANNUAL REPORT.—Not later than 180 days after
11 the date of the enactment of this Act, and annually there-
12 after, the Secretary of State shall submit a report to Con-
13 gress that describes the actions taken by the United States
14 and Mexico under this section.

15 **SEC. 123. ENHANCED INTERNATIONAL COOPERATION.**

16 The Attorney General, in cooperation with the Sec-
17 retary of State, shall—

18 (1) assign agents of the Bureau of Alcohol, To-
19 bacco, Firearms, and Explosives to the United
20 States mission in Mexico to work with Mexican law
21 enforcement agencies in conducting investigations
22 relating to firearms trafficking and other criminal
23 enterprises;

1 (2) provide the equipment and technological re-
2 sources necessary to support such investigations and
3 to trace firearms recovered in Mexico; and

4 (3) support the training of Mexican law en-
5 forcement officers in serial number restoration tech-
6 niques, canine explosive detection, and anti-traf-
7 ficking tactics.

8 **SEC. 124. EXPANSION OF COMMERCE SECURITY PRO-**
9 **GRAMS.**

10 (a) CUSTOMS-TRADE PARTNERSHIP AGAINST TER-
11 RORISM.—

12 (1) IN GENERAL.—Not later than 180 days
13 after the date of enactment of this Act, the Commis-
14 sioner, in consultation with the Secretary, shall de-
15 velop a plan to expand the programs of the Cus-
16 toms-Trade Partnership Against Terrorism estab-
17 lished pursuant to section 211 of the SAFE Port
18 Act (6 U.S.C. 961), including adding additional per-
19 sonnel for such programs along the Northern border
20 and the Southern border.

21 (2) C-TPAT PROGRAMS.—The programs re-
22 ferred to in paragraph (1) include—

23 (A) the Business Anti-Smuggling Coali-
24 tion;

25 (B) the Carrier Initiative Program;

1 (C) the Americas Counter Smuggling Ini-
2 tiative;

3 (D) the Container Security Initiative estab-
4 lished pursuant to section 205 of the SAFE
5 Port Act (6 U.S.C. 945);

6 (E) the Free and Secure Trade Initiative;
7 and

8 (F) other industry partnership programs
9 administered by the Commissioner.

10 (b) DEMONSTRATION PROGRAMS.—Not later than
11 180 days after the date of enactment of this Act, the Com-
12 missioner shall—

13 (1) implement, on a demonstration basis, a
14 Customs-Trade Partnership Against Terrorism pro-
15 gram, which has been successfully implemented
16 along the Northern border and along the Southern
17 border; and

18 (2) establish a demonstration program to de-
19 velop a cooperative trade security system to improve
20 supply chain security.

21 **SEC. 125. NORTHERN AND SOUTHERN BORDER DRUG PROS-**
22 **ECUTION INITIATIVE.**

23 (a) REIMBURSEMENT TO STATE AND LOCAL PROS-
24 ECUTORS FOR PROSECUTING FEDERALLY INITIATED
25 DRUG CASES.—Subject to the availability of appropria-

1 tions, the Attorney General shall reimburse State and
2 county prosecutors located in States along the Northern
3 border or the Southern border of the United States for
4 prosecuting federally initiated and referred drug cases.

5 (b) AUTHORIZATION OF APPROPRIATIONS.—There
6 are authorized to be appropriated such sums as may be
7 necessary for each of the fiscal years 2011 through 2015
8 to carry out subsection (a).

9 **SEC. 126. PROJECT GUNRUNNER INITIATIVE.**

10 (a) IN GENERAL.—The Attorney General shall dedi-
11 cate and expand the resources provided for the Project
12 Gunrunner Initiative of the Bureau of Alcohol, Tobacco,
13 Firearms, and Explosives (referred to in this section as
14 “ATF”) to identify, investigate, and prosecute individuals
15 involved in the trafficking of firearms across the Southern
16 border.

17 (b) ACTIVITIES.—In carrying out this section, the At-
18 torney General shall—

19 (1) assign additional ATF agents to the area of
20 the United States adjacent to the Southern border
21 to support the expansion of Project Gunrunner
22 teams;

23 (2) establish not fewer than 1 Project Gun-
24 runner team in each State along the Southern bor-
25 der; and

1 (3) coordinate with the heads of other relevant
2 Federal law enforcement agencies and State and
3 local law enforcement agencies to address firearms
4 trafficking in a comprehensive manner.

5 (c) **ADDITIONAL STAFF.**—The Attorney General
6 may—

7 (1) hire additional ATF agents for Project
8 Gunrunner; and

9 (2) utilize whatever additional resources are
10 needed to adequately support Project Gunrunner.

11 (d) **AUTHORIZATION OF APPROPRIATIONS.**—There
12 are authorized to be appropriated \$15,000,000 for each
13 of the fiscal years 2011 and 2012 to carry out this section.

14 **SEC. 127. OPERATION STREAMLINE PROSECUTION INITIA-**
15 **TIVE.**

16 (a) **REPORTING REQUIREMENT.**—Not later than 180
17 days after the date of the enactment of this Act, the Sec-
18 retary, in coordination with the Attorney General, shall
19 submit a report to the congressional committees set forth
20 in subsection (b) that describes—

21 (1) the operational goals and oversight mecha-
22 nisms of Operation Streamline and similar pro-
23 grams;

1 (2) the estimated costs of seeking Federal court
2 prosecution and jail time for all unauthorized en-
3 trants—

4 (A) before their referral to immigration
5 court removal proceedings; and

6 (B) who are initially referred to immigra-
7 tion courts upon apprehension;

8 (3) the estimated costs for Federal resources to
9 effectively implement Operation Streamline in each
10 Border Patrol sector, including—

11 (A) sufficient judicial resources;

12 (B) Federal Public Defenders;

13 (C) United States Marshals;

14 (D) detention facilities;

15 (E) United States Attorneys; and

16 (F) other costs incurred in active areas;

17 (4) the impact of Operation Streamline on Fed-
18 eral prosecutorial initiatives focused on curbing bor-
19 der violence, including enhanced use of investiga-
20 tions and prosecutions for money laundering or
21 other financial offenses to disrupt—

22 (A) the illicit firearms trade;

23 (B) human smuggling; and

24 (C) cross-border drug and currency traf-
25 ficking;

1 (5) the impact of Operation Streamline on dis-
2 cretionary prosecutorial decisions;

3 (6) during the 3-year period ending on the date
4 of the enactment of this Act—

5 (A) the costs incurred for detentions, pros-
6 ecutions, and incarcerations for immigrant of-
7 fenses under Operation Streamline;

8 (B) the number of Federal prosecutions for
9 drug trafficking, human smuggling, white-collar
10 crimes, civil rights violations, environmental
11 crimes, and other criminal cases in areas uti-
12 lizing Operation Streamline initiatives; and

13 (C) the length of imprisonment, names,
14 convictions, and locations of prisons used to in-
15 carcerate individuals arrested under Operation
16 Streamline;

17 (7) the number of Federal convictions obtained
18 under Operation Streamline, including the number
19 of convictions for nonviolent immigration offenses;

20 (8) the rates of Federal prosecutions and con-
21 victions in districts along the Southern border com-
22 pared to such rates in other districts; and

23 (9) interviews with criminal defense attorneys
24 who have represented defendants charged under Op-
25 eration Streamline, including—

1 (A) a review of the opportunity for
2 arrestees to consult with immigration attorneys
3 before they are convicted for immigration of-
4 fenses; and

5 (B) the ratio of defendants to defense at-
6 torneys.

7 (b) CONGRESSIONAL COMMITTEES.—The congres-
8 sional committees set forth in the subsection are—

9 (1) the Committee on Appropriations of the
10 Senate;

11 (2) the Committee on the Judiciary of the Sen-
12 ate;

13 (3) the Committee on Homeland Security and
14 Governmental Affairs of the Senate;

15 (4) the Committee on Appropriations of the
16 House of Representatives;

17 (5) the Committee on the Judiciary of the
18 House of Representatives; and

19 (6) the Committee on Homeland Security of the
20 House of Representatives.

21 (c) EVALUATION.—Not later than 180 days after the
22 submission of the report under subsection (a), the Sec-
23 retary, in coordination with the Attorney General, shall—

24 (1) evaluate the future viability of Operation
25 Streamline; and

1 (2) determine whether to continue or terminate
2 Operation Streamline.

3 **SEC. 128. BORDER RELIEF GRANT PROGRAM.**

4 (a) GRANTS AUTHORIZED.—

5 (1) IN GENERAL.—The Attorney General may
6 award grants, on a competitive basis, to—

7 (A) eligible law enforcement agencies or a
8 coalition of such agencies, including sheriff's of-
9 fices, police departments, and tribal police de-
10 partments; and

11 (B) institutions of higher education that
12 provide assistance to law enforcement agencies
13 in counties described in subparagraph (A) or
14 (B) of subsection (e)(1) to provide the resources
15 described in subsection (b)(4).

16 (2) PRIORITY.—In awarding grants for the uses
17 described in paragraphs (1) through (3) of sub-
18 section (b), the Attorney General shall give priority
19 to law enforcement agencies—

20 (A) located in a county that is within 100
21 miles from the Northern border or the Southern
22 border; and

23 (B) that are in compliance with Federal
24 and State racial profiling laws and guidelines.

1 (3) DURATION.—Grants awarded under this
2 section may not exceed 2 years.

3 (4) SUBSEQUENT GRANTS.—A grantee desiring
4 continued grant funding after the expiration of the
5 initial grant shall reapply for such funding.

6 (5) PROHIBITION.—The Attorney General may
7 not award a grant under this section to any appli-
8 cant that is under investigation for a violation of
9 Federal or State racial profiling laws or guidelines.

10 (b) USE OF FUNDS.—Grants awarded under this sec-
11 tion may only be used to provide—

12 (1) additional resources for eligible law enforce-
13 ment agencies to address drug-related criminal activ-
14 ity;

15 (2) training and technical assistance related
16 to—

17 (A) narcotics-related kidnaping negotiation
18 and rescue tactics;

19 (B) intelligence and information sharing on
20 drug trafficking organizations; and

21 (C) the interdiction of narcotics, weapons,
22 and illegal drug proceeds;

23 (3) resources to combat criminal activities along
24 the Northern border and the Southern border by—

1 (A) obtaining, upgrading, or maintaining
2 equipment;

3 (B) hiring additional personnel;

4 (C) reimbursing operational expenditures,
5 including overtime and transportation costs;
6 and

7 (D) providing other assistance necessary to
8 address drug-related criminal activity;

9 (4) resources to facilitate information sharing
10 and collaboration by—

11 (A) establishing, maintaining, or enhancing
12 multi-jurisdictional intelligence gathering and
13 sharing activities;

14 (B) facilitating regional crime prevention
15 and reduction efforts; and

16 (C) strengthening partnerships between
17 Federal, State, tribal, and local law enforce-
18 ment agencies; and

19 (5) resources to enhance jails, community cor-
20 rections, and detention operations by—

21 (A) improving the administration and oper-
22 ations of correction functions related to reduc-
23 ing and preventing criminal narcotics activity;

1 (B) improving access to intelligence and
2 collaboration between law enforcement and cor-
3 rectional system personnel;

4 (C) reducing the recidivism rates of drug
5 offenders; and

6 (D) hiring detention, probation, parole,
7 and other corrections personnel for implementa-
8 tion of the efforts described in this paragraph.

9 (c) APPLICATION.—

10 (1) IN GENERAL.—Each eligible law enforce-
11 ment agency or coalition of such agencies seeking a
12 grant under this section shall submit an application
13 to the Attorney General at such time, in such man-
14 ner, and accompanied by such information as the
15 Attorney General may reasonably require.

16 (2) CONTENTS.—Each application submitted
17 under paragraph (1) shall—

18 (A) describe the activities for which assist-
19 ance under this section is sought;

20 (B) disclose whether the applicant has
21 been investigated for, or convicted of, a viola-
22 tion of Federal or State racial profiling laws;
23 and

24 (C) provide such additional assurances as
25 the Attorney General determines to be essential

1 to ensure compliance with the requirements
2 under this section.

3 (d) MONITORING AND OVERSIGHT.—

4 (1) IN GENERAL.—Each grantee under this sec-
5 tion shall submit a report to the Attorney General
6 that documents the use of grant funds received
7 under this section, including an assessment of their
8 utility in—

9 (A) protecting border community safety;

10 (B) preventing smuggling activities; and

11 (C) apprehending persons involved in vio-
12 lence and organized crime.

13 (2) USE OF INFORMATION.—The Attorney Gen-
14 eral shall analyze the information contained in the
15 reports submitted under paragraph (1) to determine
16 whether the grantee—

17 (A) used grant funds appropriately; and

18 (B) should be considered for a renewal
19 grant.

20 (e) DEFINITIONS.—In this section:

21 (1) ELIGIBLE LAW ENFORCEMENT AGENCY.—

22 The term “eligible law enforcement agency” means
23 a State, tribal, or local law enforcement agency, in-
24 cluding a community corrections agency and any
25 agency that employs prosecutors, probation officers,

1 or parole officers, which is located or performs du-
2 ties in—

3 (A) a county that is not more than 100
4 miles from a United States border with Mexico;

5 (B) a county that is not more than 100
6 miles from a United States border with Canada;

7 or

8 (C) a jurisdiction that has been designated
9 by the Director of the Office of Drug Control
10 Policy as a High Intensity Drug Trafficking
11 Area.

12 (2) HIGH INTENSITY DRUG TRAFFICKING
13 AREA.—The term “High Intensity Drug Trafficking
14 Area” means any jurisdiction designated as a “High
15 Intensity Drug Trafficking Area” by the National
16 Drug Control Program under section 707 of the Of-
17 fice of National Drug Control Policy Reauthorization
18 Act of 1998 (21 U.S.C. 1706).

19 (f) ASSESSMENT AND REPORT.—The Attorney Gen-
20 eral shall submit a biannual report to the Committee on
21 the Judiciary of the Senate and the Committee on the Ju-
22 diciary of the House of Representatives that assesses—

23 (1) the success of the Border Relief Grant Pro-
24 gram in combating and reducing drug-trafficking
25 and drug-related criminal activity;

- 1 (2) the cost-effectiveness of the Program; and
2 (3) the future value and viability of the Pro-
3 gram.

4 (g) AUTHORIZATION OF APPROPRIATIONS.—

5 (1) IN GENERAL.—There are authorized to be
6 appropriated \$100,000,000 for each of the fiscal
7 years 2011 through 2015 to carry out this section.

8 (2) ALLOCATION OF AUTHORIZED FUNDS.—Of
9 the amounts appropriated pursuant to paragraph
10 (1)—

11 (A) not more than 33 percent may be set
12 aside for High Intensity Drug Trafficking
13 Areas; and

14 (B) not more than 30 percent may be used
15 for activities described in paragraphs (2) and
16 (5) of subsection (b).

17 (3) SUPPLEMENT NOT SUPPLANT.—Amounts
18 appropriated for grants pursuant to paragraph (1)
19 shall be used to supplement and not to supplant
20 other State, tribal, and local public funds obligated
21 for the purposes described in subsection (b).

22 **SEC. 129. REPORT ON DEATHS AND STRATEGY STUDY.**

23 (a) IN GENERAL.—The Commissioner of the United
24 States Customs and Border Protection shall—

1 (1) collect statistics relating to deaths occurring
2 at the border between the United States and Mexico,
3 including—

4 (A) the causes of the deaths; and

5 (B) the total number of deaths;

6 (2) publish the statistics collected under para-
7 graph (1) on a quarterly basis; and

8 (3) not later than 1 year after the date of the
9 enactment of this Act, and annually thereafter, sub-
10 mit a report to the Secretary that—

11 (A) analyzes trends with respect to the sta-
12 tistics collected under paragraph (1) during the
13 preceding year; and

14 (B) recommends actions to reduce and pre-
15 vent the deaths described in paragraph (1)(B).

16 (b) SOUTHWEST BORDER STRATEGY STUDY AND
17 ANALYSIS.—

18 (1) IN GENERAL.—The Secretary shall conduct
19 a study of Southwest Border Enforcement oper-
20 ations since 1994 and its relationship to death rates
21 on the border between the United States and Mex-
22 ico, including—

23 (A) an analysis of the relationship of bor-
24 der enforcement and deaths on the border;

1 (B) an analysis of whether physical bar-
2 riers, technology, and enforcement programs
3 have contributed to the rate of migrant deaths;

4 (C) an analysis of the effectiveness of geo-
5 graphical terrain as a natural barrier for entry
6 into the United States in achieving Department
7 goals and its role in contributing to rates of mi-
8 grant deaths;

9 (D) consultation with nongovernmental or-
10 ganizations and other community stakeholders
11 involved in recovering and identifying migrant
12 deaths; and

13 (E) an assessment of existing protocol re-
14 lated to reporting, tracking, and inter-agency
15 communications between United States Cus-
16 toms and Border Protection and local first re-
17 sponders and consular services.

18 (2) REPORT.—The study conducted under
19 paragraph (1) shall be submitted to—

20 (A) the United States-Mexico Border En-
21 forcement Commission established under section
22 129;

23 (B) the Committee on Homeland Security
24 and Governmental Affairs of the Senate;

1 (C) the Committee on the Judiciary of the
2 Senate;

3 (D) the Committee on Homeland Security
4 of the House of Representatives;

5 (E) the Committee on the Judiciary of the
6 House of Representatives; and

7 (F) the Committee on Oversight and Gov-
8 ernment Reform of the House of Representa-
9 tives.

10 (c) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated such sums as may be
12 necessary for each of the fiscal years 2011 through 2015
13 to carry out this section.

14 **SEC. 130. IMMIGRATION AND UNITED STATES-MEXICO BOR-**
15 **DER ENFORCEMENT COMMISSION.**

16 (a) ESTABLISHMENT OF COMMISSION.—

17 (1) IN GENERAL.—There is established an inde-
18 pendent commission to be known as the Immigration
19 and United States-Mexico Border Enforcement
20 Commission (referred to in this section as the “Com-
21 mission”).

22 (2) PURPOSES.—The purposes of the Commis-
23 sion are—

24 (A) to study the overall enforcement strat-
25 egies, programs, and policies of Federal agen-

1 cies along the Southern border, including the
2 Department, the Department of Justice, and
3 other relevant agencies;

4 (B) to strengthen relations and collabora-
5 tion between communities in the border regions
6 and the Department, the Department of Jus-
7 tice, and other Federal agencies that carry out
8 such strategies, programs, and policies;

9 (C) to ensure that the strategies, pro-
10 grams, and policies of Federal agencies along
11 the Southern border and the agents and em-
12 ployees charged to implement such strategies,
13 programs, and policies protect the due process,
14 civil, and human rights of all individuals and
15 communities at and near the Southern border;
16 and

17 (D) to make recommendations to the
18 President and Congress with respect to such
19 strategies, programs, and policies.

20 (3) MEMBERSHIP.—

21 (A) IN GENERAL.—The Commission shall
22 be composed of 16 voting members and 2 non-
23 voting members.

24 (B) APPOINTMENT OF VOTING MEM-
25 BERS.—The Governors of the States of Cali-

1 California, New Mexico, Arizona, and Texas shall
2 each appoint 4 voting members to the Commis-
3 sion, of whom—

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

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

8 (iii) 2 shall be from the State's com-
9 munities of academia, religious leaders,
10 civic leaders or community leaders.

11 (C) APPOINTMENT OF NONVOTING MEM-
12 BERS.—The Secretary and the Attorney Gen-
13 eral shall each appoint 1 nonvoting member to
14 the Commission.

15 (4) QUALIFICATIONS.—

16 (A) IN GENERAL.—Members of the Com-
17 mission shall be—

18 (i) individuals with expertise in migra-
19 tion, border enforcement and protection,
20 civil and human rights, community rela-
21 tions, cross-border trade and commerce, or
22 other pertinent qualifications or experience;
23 and

1 (ii) representative of a broad cross
2 section of perspectives from the region
3 along the Southern border.

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

8 (C) NONGOVERNMENTAL APPOINTEES.—
9 An individual appointed as a voting member to
10 the Commission may not be an officer or em-
11 ployee of the Federal Government.

12 (5) DEADLINE FOR APPOINTMENT.—All mem-
13 bers of the Commission shall be appointed not later
14 than 6 months after the date of the enactment of
15 this Act. If any member of the Commission de-
16 scribed in paragraph (3)(A) is not appointed by such
17 date, the Commission shall carry out its duties
18 under this section without the participation of such
19 member.

20 (6) TERM OF SERVICE.—Members of the Com-
21 mission shall be appointed for 3-year terms or for
22 the life of the Commission, whichever is shorter.

23 (7) VACANCIES.—Any vacancy in the Commis-
24 sion shall not affect its powers, but shall be filled in

1 the same manner in which the original appointment
2 was made.

3 (8) MEETINGS.—

4 (A) INITIAL MEETING.—The Commission
5 shall meet and begin the operations of the Com-
6 mission as soon as practicable.

7 (B) SUBSEQUENT MEETINGS.—After its
8 initial meeting, the Commission shall meet upon
9 the call of the Chairman or a majority of its
10 members.

11 (C) OUTREACH.—The Commission shall
12 formulate and implement an effective outreach
13 strategy to border communities.

14 (9) QUORUM.—Nine members of the Commis-
15 sion shall constitute a quorum.

16 (10) CHAIR AND VICE CHAIR.—The voting
17 members of the Commission shall elect a Chairman
18 and Vice Chairman from among its members, who
19 shall serve in such capacities for the life of the Com-
20 mission or until removed by the majority vote of a
21 quorum.

22 (11) STRUCTURE.—The Commission shall have
23 a Federal, regional, and local review structure, di-
24 vided into 2 subcommittees, of which—

1 (A) 1 shall focus on border technology,
2 equipment, and infrastructure; and

3 (B) 1 shall focus on border and immigra-
4 tion enforcement policies and programs.

5 (b) DUTIES.—The Commission shall review, examine,
6 and make recommendations regarding immigration and
7 border enforcement policies, strategies, and programs, in-
8 cluding recommendations regarding—

9 (1) the compliance of the Department and other
10 immigration and border-related agencies with exist-
11 ing laws and regulations;

12 (2) the extent to which agency policies and
13 practices protect the civil rights of migrants and
14 border community residents, including policies and
15 practices in the contexts of engagement, detention,
16 apprehension, use of force, definition and use of rea-
17 sonable suspicion and probable cause, and racial
18 profiling;

19 (3) the frequency, adequacy, and effectiveness
20 of human and civil rights training of border enforce-
21 ment personnel and others from Federal agencies
22 who have contact with the public near the Southern
23 border;

24 (4) the extent to which—

1 (A) the complaint process is transparent
2 and accessible to the public;

3 (B) investigations are opened as necessary
4 and are effectively pursued; and

5 (C) complaints are resolved in a timely and
6 transparent manner;

7 (5) the effectiveness and capacity of agency
8 oversight, accountability, and management, including
9 prevention and disciplinary policies involving use of
10 force, abuse, malfeasance, corruption, and illegal ac-
11 tivity;

12 (6) the effect of operations, technology, and en-
13 forcement infrastructure along the Southern border
14 on the—

15 (A) environment;

16 (B) cross border traffic and commerce;

17 (C) privacy rights and other civil liberties;

18 and

19 (D) the quality of life of border commu-
20 nities;

21 (7) the extent to which State and local law en-
22 forcement engage in the enforcement of Federal im-
23 migration law;

24 (8) the extent of compliance with due process
25 standards and equal protection of the law for immi-

1 grants and other individuals at and near the South-
2 ern border;

3 (9) whether border policies and agencies are ac-
4 complishing their stated goals; and

5 (10) any other matters regarding immigration
6 and border enforcement policies, strategies, and pro-
7 grams that the Commission determines to be appro-
8 priate.

9 (c) POWERS OF COMMISSION.—

10 (1) IN GENERAL.—

11 (A) HEARINGS AND EVIDENCE.—The
12 Commission and any subcommittee or member
13 of the Commission authorized by the Commis-
14 sion may, for the purpose of carrying out this
15 title—

16 (i) hold hearings, sit and act, take tes-
17 timony, receive evidence, and administer
18 oaths; and

19 (ii) subject to subparagraph (B), re-
20 quire, by subpoena or otherwise, the at-
21 tendance and testimony of such witnesses
22 and the production of such books, records,
23 correspondence, memoranda, papers, and
24 documents, as the Commission or such au-

1 thorized subcommittee or member deter-
2 mines to be advisable.

3 (B) SUBPOENAS.—

4 (i) ISSUANCE.—A subpoena may be
5 issued under this subsection only—

6 (I) by the agreement of the
7 Chairman and the Vice Chairman; or

8 (II) by the affirmative vote of 6
9 members of the Commission.

10 (ii) SIGNATURE.—Subpoenas issued
11 under this subparagraph may be—

12 (I) issued under the signature of
13 the Chairman or any member des-
14 ignated by a majority of the Commis-
15 sion; and

16 (II) served by any person des-
17 ignated by the Chairman or by a
18 member designated by a majority of
19 the Commission.

20 (iii) ENFORCEMENT.—In the case of
21 contumacy or failure to obey a subpoena
22 issued under this subparagraph, the
23 United States district court for the judicial
24 district in which the subpoenaed person re-
25 sides, is served, or may be found, or where

1 the subpoena is returnable, may issue an
2 order requiring such person to appear at
3 any designated place to testify or to
4 produce documentary or other evidence.
5 Any failure to obey the order of the court
6 may be punished by the court as a con-
7 tempt of that court.

8 (2) RECOMMENDATIONS.—

9 (A) IN GENERAL.—The Commission may
10 make recommendations to the Secretary on the
11 disposition of cases and the discipline of per-
12 sonnel under the Immigration and Nationality
13 Act (8 U.S.C. 1101 et seq.).

14 (B) RESPONSE.—Not later than 180 days
15 after receipt a report from the Commission, the
16 Secretary shall issue a response that describes
17 how the Department, the Department of Jus-
18 tice, and the Department of Defense have ad-
19 dressed the recommendations included in such
20 report.

21 (3) CONTRACTING.—The Commission may
22 enter into contracts to enable the Commission to dis-
23 charge its duties under this title.

24 (4) INFORMATION FROM FEDERAL AGENCIES.—

1 (A) IN GENERAL.—Upon request made by
2 the Chairman, the chairman of any sub-
3 committee created by a majority of the Com-
4 mission, or any member designated by a major-
5 ity of the Commission, the Commission may se-
6 cure information, suggestions, estimates, and
7 statistics for the purposes of this title directly
8 from any executive department, bureau, agency,
9 board, commission, office, independent estab-
10 lishment, or instrumentality of the Federal Gov-
11 ernment, which shall, to the extent authorized
12 by law, furnish such information, suggestions,
13 estimates, and statistics directly to the Commis-
14 sion.

15 (B) RECEIPT, HANDLING, STORAGE, AND
16 DISSEMINATION.—Information may only be re-
17 ceived, handled, stored, and disseminated by
18 members of the Commission and its staff con-
19 sistent with all applicable statutes, regulations,
20 and Executive orders.

21 (5) ASSISTANCE FROM FEDERAL AGENCIES.—

22 (A) GENERAL SERVICES ADMINISTRA-
23 TION.—The Administrator of General Services
24 shall provide, on a reimbursable basis, adminis-
25 trative support to the Commission and other

1 services required for the performance of the
2 Commission's functions.

3 (B) OTHER DEPARTMENTS AND AGEN-
4 CIES.—In addition to the assistance described
5 in paragraph (1), Federal departments and
6 agencies may provide the Commission with such
7 services, funds, facilities, staff, and other sup-
8 port services as may be authorized by law.

9 (6) POSTAL SERVICES.—The Commission may
10 use the United States mails in the same manner and
11 under the same conditions as departments and agen-
12 cies of the United States.

13 (d) COMPENSATION.—

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

16 (2) REIMBURSEMENT OF EXPENSES.—All mem-
17 bers of the Commission shall be reimbursed for rea-
18 sonable travel expenses and subsistence, and other
19 reasonable and necessary expenses incurred by them
20 in the performance of their duties.

21 (e) TRAINING.—The Commission shall establish a
22 process and criteria by which Commission members re-
23 ceive orientation and training on human, constitutional,
24 and civil rights.

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

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

7 (2) recommendations regarding border and im-
8 migration enforcement policies, strategies, and pro-
9 grams;

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

12 (4) a recommendation as to whether the Com-
13 mission should continue to operate after the date of
14 termination described in subsection (h); and

15 (5) if continued operations are recommended
16 under paragraph (4), a description of the purposes
17 and duties recommended to be carried out by the
18 Commission after the date of termination described
19 in subsection (h).

20 (g) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated such sums as may be
22 necessary for each of the fiscal years 2011 through 2013
23 to carry out this section.

24 (h) SUNSET.—Unless the Commission is authorized
25 by Congress to continue operations after such date, the

1 Commission shall terminate on the date that is 60 days
2 after the date on which the Commission submits the report
3 described in subsection (f).

4 **SEC. 131. PREEMPTION.**

5 (a) IN GENERAL.—Except as provided in subsections
6 (b) and (c), this Act preempts any State or local law, li-
7 censing requirement, or other standard, requirement, ac-
8 tion or instrument that—

9 (1) discriminates among persons on the basis of
10 immigration status; or

11 (2) imposes any sanction or liability—

12 (A) on any person based on his or her im-
13 migration status;

14 (B) on any person or entity based on the
15 immigration status of its clients, employees,
16 tenants, or other associates; or

17 (C) based on a violation or alleged viola-
18 tion of immigration law.

19 (b) EFFECT OF CONVICTION.—Notwithstanding sub-
20 section (a)(2)(C), a State or political subdivision of a State
21 may take account of a Federal conviction for an immigra-
22 tion-related crime in the same manner as any other Fed-
23 eral criminal conviction.

24 (c) LIMITATION.—Nothing in this Act may be con-
25 strued to preempt—

1 (1) State or local discrimination based on immi-
2 gration status if such discrimination is explicitly au-
3 thorized by Federal law; or

4 (2) State or local citizenship requirements for
5 voting, jury service, elective office, or other impor-
6 tant governmental positions, to the extent such re-
7 quirements comply with the Constitution of the
8 United States.

9 (d) DEFINED TERM.—In this section, the term “im-
10 migration status” refers to a person’s present or previous
11 visa classification, refugee status, temporary protected
12 status, status as an immigrant lawfully admitted for per-
13 manent residence, lawful presence, work authorization, or
14 other classification or category authorized under this Act.

15 **SEC. 132. INHERENT AUTHORITY.**

16 Section 287(g)(10) (8 U.S.C. 1357(g)(10)) is amend-
17 ed to read as follows:

18 “(10) Except as provided in sections 103(a)(10),
19 103(a)(11), 242(c), and 274(e), or an agreement under
20 this subsection, the authority to investigate, identify, ap-
21 prehend, arrest, or detain persons for any violation of this
22 Act or any regulation issued pursuant to this Act—

23 “(A) is restricted to immigration officers and
24 employees of the Department; and

1 “(B) is subject to the specific limitations set
2 forth in this Act.”.

3 **SEC. 133. BORDER PROTECTION STRATEGY.**

4 (a) IN GENERAL.—Not later than September 30,
5 2011, the Secretary, the Secretary of the Interior, the Sec-
6 retary of Agriculture, the Secretary of Defense, and the
7 Secretary of Commerce, in consultation with State, tribal,
8 and local government officials, shall jointly develop and
9 submit to Congress a border protection strategy for the
10 international land borders of the United States.

11 (b) ELEMENTS OF THE STRATEGY.—The strategy
12 developed under subsection (a) shall include—

13 (1) a comparative analysis of the levels of oper-
14 ational control, based on auditable and verifiable
15 data, achievable through alternative tactical infra-
16 structure and other security measures, including an
17 assessment of—

18 (A) pedestrian fencing;

19 (B) vehicle barriers, especially in the vicin-
20 ity of existing or planned roads;

21 (C) additional Border Patrol agents;

22 (D) efficacy of natural barriers and open
23 space in response to unauthorized or unlawful
24 border crossing;

- 1 (E) fielding of advanced remote sensing
2 and information integration technology, includ-
3 ing the use of—
- 4 (i) unmanned aerial vehicles;
5 (ii) other advanced technologies and
6 systems developed and employed, or under
7 development, for tactical surveillance,
8 multisource information integration, and
9 response analysis in difficult terrain and
10 under adverse environmental conditions;
- 11 (F) regional, urban, and rural variation in
12 border security methodologies, including the in-
13 corporation of natural barriers;
- 14 (G) enhanced cooperation with, and assist-
15 ance to, intelligence, security, and law enforce-
16 ment agencies in Mexico and Canada in detect-
17 ing, reporting, analyzing, and successfully re-
18 sponding to unauthorized or unlawful border
19 crossings from or into Mexico or Canada; and
- 20 (H) removal of obstructive nonnative vege-
21 tation;
- 22 (2) a comprehensive analysis of cost and other
23 impacts of security measures assessed in paragraph
24 (1), including an assessment of—

- 1 (A) land acquisition costs, including re-
2 lated litigation and other costs;
- 3 (B) construction costs, including labor and
4 material costs;
- 5 (C) maintenance costs for the next 25
6 years;
- 7 (D) contractor costs;
- 8 (E) management and overhead costs;
- 9 (F) the impacts on wildlife, wildlife habi-
10 tat, natural communities, and functioning cross-
11 border wildlife migration corridors and hydrolog-
12 y (including water quantity, quality, and nat-
13 ural hydrologic flows) on Federal, State, tribal,
14 local government, and private lands along the
15 Northern border and the Southern border; and
- 16 (G) the costs of fully mitigating the ad-
17 verse impacts to Federal, State, tribal, local,
18 and private lands, waters (including water qual-
19 ity, quantity, and hydrological flows), wildlife,
20 and wildlife habitats, including, if such action is
21 possible, the full costs of the replacement or
22 restoration of severed wildlife migration cor-
23 ridors with protected corridors of equivalent bi-
24 ological functionality, as determined by each
25 Secretary concerned, in consultation with ap-

1 appropriate authorities of State, tribal, and local
2 governments and appropriate authorities of the
3 Government of Mexico and the Government of
4 Canada;

5 (3) a comprehensive compilation of the fiscal in-
6 vestments in acquiring or managing Federal, State,
7 tribal, local, and private lands and waters in the vi-
8 cinity of, or ecologically related to, the land borders
9 of the United States that have been acquired or
10 managed in whole or in part for conservation pur-
11 poses (including the creation or management of pro-
12 tected wildlife migration corridors) in—

13 (A) units of the National Park System;

14 (B) National Forest System land;

15 (C) land under the jurisdiction of the Bu-
16 reau of Land Management;

17 (D) land under the jurisdiction of the
18 United States Fish and Wildlife Service;

19 (E) other relevant land under the jurisdic-
20 tion of the Department of the Interior or the
21 Department of Agriculture;

22 (F) land under the jurisdiction of the De-
23 partment of Defense or any military depart-
24 ment;

1 (G) land under the jurisdiction of the De-
2 partment of Commerce;

3 (H) tribal lands;

4 (I) State and private lands; and

5 (J) lands within Mexico or Canada; and

6 (4) recommendations for strategic border secu-
7 rity management based on—

8 (A) comparative security described in para-
9 graph (1);

10 (B) the cost-benefit analysis described in
11 paragraph (2); and

12 (C) the protection of investments in the
13 lands specified in paragraph (3).

14 (c) TRAINING.—

15 (1) REQUIRED TRAINING.—The Secretary, in
16 cooperation with the Secretary concerned, shall pro-
17 vide—

18 (A) natural resource protection training for
19 Customs and Border Protection agents or other
20 Federal personnel assigned to plan or oversee
21 the construction or operation of border security
22 tactical infrastructure or to patrol land along or
23 in the vicinity of a land border of the United
24 States; and

1 (B) cultural resource training for Customs
2 and Border Protection agents and other Fed-
3 eral personnel assigned to plan or oversee the
4 construction or operation of border security tac-
5 tical infrastructure or to patrol tribal lands.

6 (2) *ADDITIONAL CONSIDERATIONS.*—In devel-
7 oping and providing training under subparagraph
8 (A) of paragraph (1), the Secretary shall coordinate
9 with the Secretary concerned and the relevant tribal
10 government to ensure that such training is appro-
11 priate to the mission of the relevant agency and is
12 focused on achieving border security objectives while
13 avoiding or minimizing the adverse impact on nat-
14 ural and cultural resources resulting from border se-
15 curity tactical infrastructure, operations, or other
16 activities.

17 (d) *DEFINED TERM.*—In this section, the term “Sec-
18 retary concerned” means—

19 (1) the Secretary of Agriculture, with respect to
20 land under the jurisdiction of the Secretary of Agri-
21 culture;

22 (2) the Secretary of the Interior, with respect
23 to land under the jurisdiction of the Secretary of the
24 Interior;

1 (3) the Secretary of Defense, with respect to
2 land under the jurisdiction of the Secretary of De-
3 fense or the secretary of a military department; and

4 (4) the Secretary of Commerce, with respect to
5 land under the jurisdiction of the Secretary of Com-
6 merce.

7 **SEC. 134. BORDER COMMUNITIES LIAISON OFFICE.**

8 (a) ESTABLISHMENT.—The Secretary shall establish,
9 in consultation with the Office of Civil Rights and Civil
10 Liberties, a Border Communities Liaison Office in every
11 Border Patrol sector on the Southern border or the North-
12 ern border.

13 (b) PURPOSE.—The purpose of the Border Commu-
14 nities Liaison Office shall be—

15 (1) to foster and institutionalize consultation
16 with border communities;

17 (2) to consult with border communities on
18 agency policies, directives, and laws;

19 (3) to consult with border communities on
20 agency strategies and strategy development;

21 (4) to consult with border communities on
22 agency services and operational issues;

23 (5) to receive assessments on agency perform-
24 ance from border communities; and

1 (6) to receive complaints regarding agency per-
2 formance and agent conduct.

3 (c) **AUTHORIZATION OF APPROPRIATIONS.**—There
4 are authorized to be appropriated such sums as may be
5 necessary in each of the fiscal years 2011 through 2015
6 to carry out this section.

7 **SEC. 135. AUTHORIZATION OF APPROPRIATIONS.**

8 (a) **IN GENERAL.**—In addition to any funds other-
9 wise available, there are authorized to be appropriated
10 such sums as may be necessary for the fiscal years 2011
11 through 2015 to carry out this subtitle.

12 (b) **INTERNATIONAL AGREEMENTS.**—Amounts ap-
13 propriated pursuant to subsection (a) may be used to im-
14 plement projects that are authorized under this subtitle
15 and are described in—

16 (1) the Declaration on Embracing Technology
17 and Cooperation to Promote the Secure and Effi-
18 cient Flow of People and Commerce across our
19 Shared Border between the United States and Mex-
20 ico, agreed to March 22, 2002, Monterrey, Mexico;
21 or

22 (2) the Smart Border Declaration between the
23 United States and Canada, agreed to December 12,
24 2001, Ottawa, Canada.

1 **TITLE II—INTERIOR**
2 **ENFORCEMENT**
3 **Subtitle A—Prevention of**
4 **Unauthorized Entries and Removal**
5 **CHAPTER 1—STRENGTHENING THE VISA**
6 **WAIVER PROGRAM TO SECURE AMER-**
7 **ICA AND ENFORCING ENTRY AND EXIT**
8 **REQUIREMENTS**

9 **SEC. 201. ENFORCEMENT OF REQUIREMENT TO REPORT**
10 **LOST OR STOLEN PASSPORTS.**

11 If any country designated as a Visa Waiver Program
12 under paragraph (1) of section 217(c) of the Immigration
13 and Nationality Act (8 U.S.C. 1187(c)) does not have in
14 effect an agreement with the United States in compliance
15 with paragraph (2)(C) of such section on or after the date
16 that is 180 days after the date of the enactment of this
17 Act, the Secretary, in consultation with the Secretary of
18 State, shall immediately suspend such country's participa-
19 tion in the Visa Waiver Program until the country is in
20 compliance with such paragraph.

21 **SEC. 202. ENFORCEMENT OF REQUIREMENT FOR PERIODIC**
22 **EVALUATIONS OF PROGRAM COUNTRIES.**

23 (a) REEVALUATIONS.—The Secretary, in consulta-
24 tion with the Secretary of State, shall reevaluate all coun-

1 tries designated as Visa Waiver Program before November
2 17, 2008 to determine—

3 (1) whether such countries are in compliance
4 with the requirements set forth in section 217(e) of
5 the Immigration and Nationality Act (8 U.S.C.
6 1187(e)); and

7 (2) the current number of overstays in the
8 United States for each country.

9 (b) REPORT.—Not later than 1 year after the date
10 of the enactment of this Act, the Secretary shall submit
11 a report to the appropriate congressional committees that
12 contains the results of the reevaluation conducted under
13 subsection (a).

14 **SEC. 203. ARRIVAL AND DEPARTURE VERIFICATION.**

15 (a) IN GENERAL.—The Secretary shall compare for-
16 eign national arrival data to available immigration and law
17 enforcement records and databases and exit data to deter-
18 mine whether these foreign nationals are still in the
19 United States.

20 (b) EFFECT OF FAILURE TO TRACK.—If, 6 months
21 after the date of the enactment of this Act, the Secretary
22 is not tracking at least 97 percent of the foreign nationals
23 exiting the United States, the Secretary may not designate
24 any new countries as Visa Waiver Program countries.

1 (c) AUDIT.—The Secretary shall conduct an audit of
2 the data collected by the electronic travel system, includ-
3 ing—

4 (1) the number of individuals in each country
5 that the system has discovered to have overstayed
6 their visas;

7 (2) any implementation problems encountered
8 during the early stages to better identify the high-
9 risk travelers and their countries of origin.

10 (d) REPORT.—Not later than 6 months after the date
11 of the enactment of this Act, the Secretary shall submit
12 a report to Congress that contains—

13 (1) the visa overstay rates of each country; and

14 (2) an explanation of the implementation prob-
15 lems identified pursuant to subsection (c)(2).

16 **SEC. 204. VISA OVERSTAY RATES.**

17 (a) MAXIMUM VISA OVERSTAY RATE.—Section
18 217(e)(8)(C) (8 U.S.C. 1187(e)(8)(C)) is amended—

19 (1) by redesignating clauses (ii) and (iii) as
20 clauses (iii) and (iv), respectively; and

21 (2) by striking clause (i) and inserting the fol-
22 lowing:

23 “(i) ESTABLISHMENT.—The max-
24 imum visa overstay rate for countries par-

1 participating in the program shall be 2 per-
2 cent.

3 “(ii) EFFECT OF FAILURE TO COM-
4 PLY.—If the visa overstay rate of a coun-
5 try is more than 2 percent, the Secretary
6 shall temporarily suspend such country’s
7 participation in the Visa Waiver Program
8 until the country can demonstrate that the
9 overstay rate for that country is below 2
10 percent.”.

11 (b) DATA SHARING.—If, 3 months after the date of
12 the enactment of this Act, a country designated as a Visa
13 Waiver Program under section 217(c) of the Immigration
14 and Nationality Act (8 U.S.C. 1187(c)) has not entered
15 into a data sharing agreement in accordance with para-
16 graph (2)(F) of such section, the Secretary shall tempo-
17 rarily suspend such country’s participation in the Visa
18 Waiver Program until the country is in compliance with
19 such paragraph.

20 **SEC. 205. US-VISIT SYSTEM.**

21 (a) IN GENERAL.—Not later than 6 months after the
22 date of the enactment of this Act, the Secretary, in con-
23 sultation with the heads of other appropriate Federal
24 agencies, shall submit to Congress a schedule for—

1 (1) equipping all ports of entry of the United
2 States with the United States-Visitor and Immigrant
3 Status Indicator Technology system (referred to in
4 this section as “US–VISIT”) implemented under
5 section 110 of the Illegal Immigration Reform and
6 Immigrant Responsibility Act of 1996 (8 U.S.C.
7 1365a), including all necessary changes to infra-
8 structure at the ports of entry to fully deploy US–
9 VISIT;

10 (2) developing and deploying the exit compo-
11 nent of US–VISIT at such ports of entry; and

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

14 (b) VISA EXIT TRACKING SYSTEM.—Not later than
15 18 months after the date of the enactment of this Act,
16 the Secretary shall establish and deploy a system capable
17 of recording the departure of aliens admitted on tem-
18 porary nonimmigrant visas under the Immigration and
19 Nationality Act (8 U.S.C. 1101 et seq.)—

20 (1) at designated ports of entry; and

21 (2) in coordination with the Secretary of State,
22 at designated United States consulates.

1 **CHAPTER 2—PREVENTING UNAUTHOR-**
2 **IZED ENTRIES AND ENSURING RE-**
3 **MOVAL**

4 **SEC. 211. ILLEGAL ENTRY AND REENTRY.**

5 (a) **ILLEGAL ENTRY.**—Section 275(b) (8 U.S.C.
6 1325(b)) is amended to read as follows:

7 “(b) **IMPROPER TIME OR PLACE; CIVIL PEN-**
8 **ALTIES.**—Any alien older than 18 years of age who is ap-
9 prehended while entering or attempting to enter, or know-
10 ingly crossing or attempting to cross the border to, the
11 United States at a time or place that has not been des-
12 ignated as a lawful entry by immigration officers shall be
13 subject to a civil penalty, in addition to any criminal or
14 other civil penalties that may be imposed under any other
15 provision of law, in an amount equal to—

16 “(1) not less than \$250 or more than \$500 for
17 each such entry or attempted entry; 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 (b) **ILLEGAL REENTRY.**—Section 276 (8 U.S.C.
22 1326) is amended to read as follows:

23 **“SEC. 276. REENTRY OF REMOVED ALIENS.**

24 “(a) **REENTRY AFTER REMOVAL.**—Any alien who
25 has been denied admission, excluded, deported, or re-

1 moved, or who has departed the United States while an
2 order of exclusion, deportation, or removal is outstanding,
3 and subsequently enters, attempts to enter, crosses the
4 border to, attempts to cross the border to, or is at any
5 time found in the United States, shall be fined under title
6 18, United States Code, imprisoned not more than 2
7 years, or both.

8 “(b) REENTRY OF CRIMINAL OFFENDERS.—In addi-
9 tion to the penalty provided in subsection (a), any alien
10 described in that subsection—

11 “(1) whose removal was subsequent to a convic-
12 tion for 3 or more misdemeanors involving drugs or
13 crimes against the person, or a felony for which the
14 alien was sentenced to a term of imprisonment of
15 more than 12 months before such removal or depart-
16 ure, shall be fined under title 18, United States
17 Code, imprisoned not more than 10 years, or both;

18 “(2) whose removal was subsequent to a convic-
19 tion for a felony involving drugs or crimes against
20 the person before such removal or departure for
21 which the alien was sentenced to a term of imprison-
22 ment of not less than 30 months, shall be fined
23 under such title 18, imprisoned not more than 10
24 years, or both;

1 “(3) who has been excluded from the United
2 States pursuant to section 235(c) because the alien
3 was excludable under section 212(a)(3)(B) or has
4 been removed from the United States pursuant to
5 title V of the CIR Act of 2010, and who thereafter,
6 without the permission of the Attorney General, en-
7 ters the United States, or attempts to do so, shall
8 be fined under title 18, United States Code, and im-
9 prisoned for a period of 10 years, which sentence
10 shall not run concurrently with any other sentence;

11 “(4) who was removed from the United States
12 pursuant to section 241(a)(4)(B) and who there-
13 after, without the permission of the Attorney Gen-
14 eral, enters, attempts to enter, or is at any time
15 found in, the United States (unless the Attorney
16 General has expressly consented to such alien’s re-
17 entry) shall be fined under title 18, United States
18 Code, imprisoned for not more than 10 years, or
19 both;

20 “(5) whose removal was subsequent to a convic-
21 tion for an aggravated felony before such removal or
22 departure for which the alien was sentenced to a
23 term of imprisonment of not less than 60 months,
24 shall be fined under such title 18, imprisoned not
25 more than 20 years, or both; or

1 “(6) was convicted for 3 felonies before such re-
2 moval or departure, shall be fined under such title
3 18, imprisoned not more than 25 years, or both.

4 “(c) PROOF OF PRIOR CONVICTIONS.—The prior con-
5 victions described in subsection (b) are elements of the
6 crimes described in that subsection, and the penalties set
7 forth in subsection (b) shall apply only in cases in which
8 the conviction or convictions that form the basis for the
9 additional penalty are—

10 “(1) alleged in the indictment or information;
11 and

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

14 “(d) AFFIRMATIVE DEFENSES.—It shall be an af-
15 firmative defense to a violation of this section if—

16 “(1) the alien sought and received the express
17 consent of the Secretary of Homeland Security to re-
18 apply for admission into the United States before
19 the alleged violation occurred;

20 “(2) with respect to an alien previously denied
21 admission and removed, the alien—

22 “(A) was not required to obtain such ad-
23 vance consent under this Act or any prior Act;
24 and

1 “(B) had complied with all other laws and
2 regulations governing the alien’s admission into
3 the United States; or

4 “(3) the prior order of removal was based on
5 charges filed against the alien before the alien
6 reached 18 years of age.

7 “(e) LIMITATION ON COLLATERAL ATTACK ON UN-
8 DERLYING REMOVAL ORDER.—In a criminal proceeding
9 under this section, an alien may not challenge the validity
10 of the order described in subsection (a)(1) or (b) unless
11 the alien demonstrates that—

12 “(1) the alien exhausted any administrative
13 remedies that may have been available to seek relief
14 against the order;

15 “(2) the removal proceedings at which the order
16 was issued improperly deprived the alien of the op-
17 portunity for judicial review; and

18 “(3) the entry of the order was fundamentally
19 unfair.

20 “(f) REENTRY OF ALIEN REMOVED PRIOR TO COM-
21 PLETION OF TERM OF IMPRISONMENT.—Any alien re-
22 moved pursuant to section 241(a)(4) who enters, attempts
23 to enter, crosses the border to, attempts to cross the bor-
24 der to, or is at any time found in, the United States—

1 “(1) shall be incarcerated for the remainder of
2 the sentence of imprisonment which was pending at
3 the time of deportation without any reduction for
4 parole or supervised release unless the alien affirma-
5 tively demonstrates that the Secretary of Homeland
6 Security has expressly consented to the alien’s re-
7 entry or the alien is prima facie eligible for protec-
8 tion from removal; and

9 “(2) shall be subject to such other penalties re-
10 lating to the reentry of removed aliens as may be
11 available under this section or any other provision of
12 law.

13 “(g) LIMITATION.—An individual, acting without
14 compensation or the expectation of compensation, is not
15 aiding and abetting a violation of this section by—

16 “(1) providing, or attempting to provide, an
17 alien with humanitarian assistance, including emer-
18 gency medical care or food; or

19 “(2) transporting the alien to a location where
20 such humanitarian assistance can be rendered with-
21 out compensation or the expectation of compensa-
22 tion.”.

1 **SEC. 212. DETERRING ALIENS ORDERED REMOVED FROM**
2 **REMAINING IN THE UNITED STATES UNLAW-**
3 **FULLY.**

4 Section 212(a)(9)(A) (8 U.S.C. 1182(a)(9)(A)) is
5 amended—

6 (1) in clause (i), by striking “seeks admission
7 within 5 years of the date of such removal (or within
8 20 years” and inserting “seeks admission not later
9 than 5 years after the date of the alien’s removal (or
10 not later than 20 years after the alien’s removal”;
11 and

12 (2) in clause (ii), by striking “seeks admission
13 within 10 years of the date of such alien’s departure
14 or removal (or within 20 years of” and inserting
15 “seeks admission not later than 10 years after the
16 date of the alien’s departure or removal (or not later
17 than 20 years after”.

18 **SEC. 213. BIOMETRIC SCREENING.**

19 Section 212 (8 U.S.C. 1182) is amended—

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

22 “(C) WITHHOLDING INFORMATION.—Ex-
23 cept as provided in subsection (d)(2), any alien
24 who, through his or her own fault, fails or has
25 failed to comply with a lawful request for bio-
26 metric information is inadmissible.”; and

1 (2) in subsection (d), by inserting after para-
2 graph (1) the following:

3 “(2) The Secretary may waive the application of sub-
4 section (a)(7)(C) for an individual alien or a class of
5 aliens. A decision by the Secretary to grant or deny a
6 waiver under this paragraph shall not be subject to re-
7 view.”.

8 **SEC. 214. ENCOURAGING ALIENS TO DEPART VOLUN-**
9 **TARILY.**

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

12 (1) in subsection (a)—

13 (A) by amending paragraph (1) to read as
14 follows:

15 “(1) IN GENERAL.—If an alien is not removable
16 under paragraph (2)(A)(iii) or (4) of section
17 237(a)—

18 “(A) the Secretary of Homeland Security
19 may permit the alien to voluntarily depart the
20 United States at the alien’s own expense under
21 this subsection instead of being subject to pro-
22 ceedings under section 240; or

23 “(B) the Attorney General may permit the
24 alien to voluntarily depart the United States at
25 the alien’s own expense under this subsection

1 after the initiation of removal proceedings
2 under section 240 and before the conclusion of
3 such proceedings before an immigration
4 judge.”;

5 (B) in paragraph (2), by amending sub-
6 paragraph (A) to read as follows:

7 “(A) IN GENERAL.—

8 “(i) INSTEAD OF REMOVAL.—Subject
9 to subparagraph (B), the Secretary of
10 Homeland Security—

11 “(I) may not grant an alien per-
12 mission to voluntarily depart under
13 paragraph (1)(A) for a period longer
14 than 180 days; and

15 “(II) may require such alien to
16 post a voluntary departure bond,
17 which will be surrendered upon proof
18 that the alien has departed the United
19 States within the time specified in
20 such bond.

21 “(ii) BEFORE THE CONCLUSION OF
22 REMOVAL PROCEEDINGS.—

23 “(I) LIMITATION.—The Attorney
24 General—

1 “(aa) may not grant an
2 alien permission to voluntarily
3 depart under paragraph (1)(B)
4 for a period longer than 90 days;
5 and

6 “(bb) may only grant such
7 permission after determining that
8 the alien has the means to depart
9 the United States and intends to
10 do so.

11 “(II) VOLUNTARY DEPARTURE
12 BOND.—An immigration judge may—

13 “(aa) require an alien per-
14 mitted to voluntarily depart
15 under paragraph (1)(B) to post a
16 voluntary departure bond, in an
17 amount necessary to ensure that
18 the alien will depart, which will
19 be surrendered upon proof that
20 the alien has departed the United
21 States within the time specified
22 in such bond; and

23 “(bb) may waive the require-
24 ment to post a voluntary depart-
25 ure bond in individual cases

1 after determining that the alien
2 has presented compelling evi-
3 dence that the posting of a bond
4 will pose a serious financial hard-
5 ship and the alien has presented
6 credible evidence that such a
7 bond is unnecessary to guarantee
8 timely departure.”;

9 (C) by striking paragraph (3); and

10 (D) by redesignating paragraph (4) as
11 paragraph (3);

12 (2) by amending subsection (c) to read as fol-
13 lows:

14 “(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

15 “(1) VOLUNTARY DEPARTURE AGREEMENT.—

16 Voluntary departure under this section may only be
17 granted as part of an affirmative agreement by the
18 alien.

19 “(2) CONCESSIONS BY THE SECRETARY.—In
20 connection with the alien’s agreement to depart vol-
21 untarily under paragraph (1)(A), the Secretary of
22 Homeland Security may reduce the period of inad-
23 missibility under subparagraph (A) or (B)(i) of sec-
24 tion 212(a)(9).

1 “(3) ADVISALS.—Agreements relating to vol-
2 untary departure granted during removal pro-
3 ceedings under section 240, or at the conclusion of
4 such proceedings, shall be presented on the record
5 before the immigration judge, who shall advise the
6 alien of the consequences of a voluntary departure
7 agreement, including the consequences of failing to
8 comply with the agreement, before accepting such
9 agreement.

10 “(4) FAILURE TO COMPLY WITH AGREE-
11 MENT.—If an alien agrees to voluntary departure
12 under this section and fails to depart the United
13 States within the time allowed for voluntary depar-
14 ture or fails to comply with any other terms of the
15 agreement (including failure to timely post any re-
16 quired bond), unless such noncompliance is through
17 no fault of the alien, the alien is—

18 “(A) ineligible for the benefits of the
19 agreement;

20 “(B) subject to the penalties described in
21 subsection (d); and

22 “(C) subject to an alternate order of re-
23 moval if voluntary departure was granted under
24 subsection (a)(1)(B) or (b).

1 “(5) VOLUNTARY DEPARTURE PERIOD NOT AF-
2 FECTED.—Except as expressly agreed to by the Sec-
3 retary of Homeland Security in writing before the
4 expiration of the period allowed for voluntary depar-
5 ture, no motion, appeal, application, petition, or pe-
6 tition for review shall affect, reinstate, enjoin, delay,
7 stay, or toll the alien’s obligation to depart from the
8 United States during the period agreed to by the
9 alien and the Secretary.”;

10 (3) by amending subsection (d) to read as fol-
11 lows:

12 “(d) PENALTIES FOR FAILURE TO DEPART.—

13 “(1) CIVIL PENALTY.—An alien who is per-
14 mitted to voluntarily depart under this section and
15 fails to leave the United States during the period
16 specified in the voluntary departure agreement or
17 otherwise violates the terms of such agreement shall
18 be liable for a civil penalty of \$1,000. The voluntary
19 departure order shall specify the amount of the pen-
20 alty, which shall be acknowledged by the alien on the
21 record.

22 “(2) COLLECTION OF PENALTY.—If the Sec-
23 retary of Homeland Security establishes, by clear
24 and convincing evidence, that the alien failed to

1 leave the United States during the period specified
2 in the voluntary departure agreement—

3 “(A) no further procedure will be nec-
4 essary to establish the amount of the penalty;

5 “(B) the Secretary may collect the civil
6 penalty at any time thereafter and by whatever
7 means provided by law; and

8 “(C) the alien shall be ineligible for any
9 benefits under this chapter until this civil pen-
10 alty is paid.”; and

11 (4) by amending subsection (e) to read as fol-
12 lows:

13 “(e) ELIGIBILITY.—

14 “(1) PRIOR GRANT OF VOLUNTARY DEPAR-
15 TURE.—An alien may not be permitted to volun-
16 tarily depart under this section if the Secretary of
17 Homeland Security or the Attorney General pre-
18 viously permitted the alien to depart voluntarily
19 under this section on or after the date of enactment
20 of the CIR Act of 2010.

21 “(2) RULEMAKING.—The Secretary may pro-
22 mulgate regulations to limit eligibility or impose ad-
23 ditional conditions for voluntary departure under
24 subsection (a)(1)(A) for any class of aliens.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply with respect to all orders granting
3 voluntary departure under section 240B of the Immigra-
4 tion and Nationality Act (8 U.S.C. 1229c) made on or
5 after the date that is 180 days after the date of the enact-
6 ment of this Act.

7 **SEC. 215. CANCELLATION OF VISAS.**

8 Section 222(g) (8 U.S.C. 1202(g)) is amended—

9 (1) in paragraph (1), by striking “Attorney
10 General, such visa” and inserting “Secretary of
11 Homeland Security, such visa and any other non-
12 immigrant visa issued by the United States that is
13 in the possession of the alien”; and

14 (2) in paragraph (2)(A), by striking “(other
15 than the visa described in paragraph (1)) issued in
16 a consular office located in the country of the alien’s
17 nationality” and inserting “(other than a visa de-
18 scribed in paragraph (1)) issued in a consular office
19 located in the country of the alien’s nationality or
20 foreign residence”.

21 **SEC. 216. MANDATORY ADDRESS REPORTING REQUIRE-**
22 **MENTS.**

23 (a) CLARIFYING ADDRESS REPORTING REQUIRE-
24 MENTS.—Section 265 (8 U.S.C. 1305) is amended—

25 (1) in subsection (a)—

1 (A) by striking “notify the Attorney Gen-
2 eral in writing” and inserting “submit written
3 or electronic notification to the Secretary of
4 Homeland Security, in a manner approved by
5 the Secretary,”;

6 (B) by striking “the Attorney General may
7 require” and inserting “the Secretary may re-
8 quire”; and

9 (C) by adding at the end the following: “If
10 the alien is involved in proceedings before an
11 immigration judge or in an administrative ap-
12 peal of such proceedings, the alien shall provide
13 the Attorney General with the alien’s current
14 address and a telephone number, if any, at
15 which the alien may be contacted.”;

16 (2) in subsection (b)—

17 (A) by striking “Attorney General” the
18 first place such term appears and inserting
19 “Secretary of Homeland Security”; and

20 (B) by striking “Attorney General” each
21 additional place such term appears and insert-
22 ing “Secretary”;

23 (3) in subsection (e), by striking “given to such
24 parent” and inserting “provided by such parent”;
25 and

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

2 “(d) ADDRESS TO BE PROVIDED.—

3 “(1) IN GENERAL.—Except as otherwise pro-
4 vided by the Secretary under paragraph (2), an ad-
5 dress provided by an alien under this section—

6 “(A) shall be the mailing address of the
7 alien’s residence at the time such address is
8 provided; and

9 “(B) may not be—

10 “(i) a post office box;

11 “(ii) another nonresidential mailing
12 address; or

13 “(iii) the address of an attorney, rep-
14 resentative, labor organization, or em-
15 ployer.

16 “(2) SPECIFIC REQUIREMENTS.—The Secretary
17 of Homeland Security may provide specific require-
18 ments with respect to—

19 “(A) designated classes of aliens and spe-
20 cial circumstances, including aliens who are em-
21 ployed at a remote location; and

22 “(B) the reporting of address information
23 by aliens who are incarcerated in a Federal,
24 State, or local correctional facility.

1 “(3) DETENTION.—An alien who is being de-
2 tained by the Secretary under this Act—

3 “(A) is not required to report the alien’s
4 current address under this section during the
5 time the alien remains in detention; and

6 “(B) shall notify the Secretary of the
7 alien’s address under this section at the time of
8 the alien’s release from such detention.

9 “(e) USE OF MOST RECENT ADDRESS PROVIDED BY
10 THE ALIEN.—

11 “(1) IN GENERAL.—Notwithstanding any other
12 provision of law, the Secretary of Homeland Security
13 may provide for the appropriate coordination and
14 cross referencing of address information provided by
15 an alien under this section with other information
16 relating to the alien’s address under other Federal
17 programs, including—

18 “(A) any information pertaining to the
19 alien, which was submitted in any application,
20 petition, or motion filed under this Act with the
21 Secretary of Homeland Security, the Secretary
22 of State, or the Secretary of Labor;

23 “(B) any information available to the At-
24 torney General with respect to an alien in a
25 proceeding before an immigration judge or an

1 administrative appeal or judicial review of such
2 proceeding;

3 “(C) any information collected with respect
4 to nonimmigrant foreign students or exchange
5 program participants under section 641 of the
6 Illegal Immigration Reform and Immigrant Re-
7 sponsibility Act of 1996 (8 U.S.C. 1372); and

8 “(D) any information collected from State
9 or local correctional agencies pursuant to the
10 State Criminal Alien Assistance Program.

11 “(2) RELIANCE.—The Secretary may rely on
12 the most recent address provided by the alien under
13 this section or under section 264 to send the alien
14 any notice, form, document, or other matter per-
15 taining to Federal immigration laws, including serv-
16 ice of a notice to appear. The Attorney General and
17 the Secretary may rely on the most recent address
18 provided by the alien under section 239(a)(1)(F) to
19 contact the alien about pending removal proceedings.

20 “(3) OBLIGATION.—The alien’s provision of an
21 address for any other purpose under this Act shall
22 not excuse the alien’s obligation to submit timely no-
23 tice of the alien’s address to the Secretary under
24 this section (or to the Attorney General under sec-
25 tion 239(a)(1)(F) with respect to an alien in a pro-

1 ceeding before an immigration judge or an adminis-
2 trative appeal of such proceeding).

3 “(f) REQUIREMENT FOR DATABASE.—The Secretary
4 of Homeland Security shall establish an electronic data-
5 base to timely record and preserve addresses provided
6 under this section.”.

7 (b) CONFORMING CHANGES WITH RESPECT TO REG-
8 ISTRATION REQUIREMENTS.—Chapter 7 of title II (8
9 U.S.C. 1301 et seq.) is amended—

10 (1) in section 262(c), by striking “Attorney
11 General” and inserting “Secretary of Homeland Se-
12 curity”;

13 (2) in section 263(a), by striking “Attorney
14 General” and inserting “Secretary of Homeland Se-
15 curity”; and

16 (3) in section 264—

17 (A) in subsections (a), (b), (c), and (d), by
18 striking “Attorney General” each place it ap-
19 pears and inserting “Secretary of Homeland
20 Security”; and

21 (B) in subsection (f)—

22 (i) by striking “Attorney General is
23 authorized” and inserting “Secretary of
24 Homeland Security and the Attorney Gen-
25 eral are authorized”; and

1 (ii) by striking “Attorney General or
2 the Service” and inserting “Secretary or
3 the Attorney General”.

4 (c) EFFECT ON ELIGIBILITY FOR IMMIGRATION BEN-
5 EFITS.—If an alien fails to comply with any provision
6 under section 262, 263, or 265 of the Immigration and
7 Nationality Act (8 U.S.C. 1302, 1303, and 1305) or sec-
8 tion 264.1 of title 8, Code of Federal Regulations, or re-
9 moval orders or voluntary departure agreements based on
10 any such section for acts committed before the date of the
11 enactment of this Act, such noncompliance shall not affect
12 the eligibility of the alien to apply for a benefit under the
13 Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

14 (d) TECHNICAL AMENDMENTS.—Section 266 (8
15 U.S.C. 1306) is amended—

16 (1) by striking “Attorney General” the first
17 place such term appears and inserting “Secretary of
18 Homeland Security”; and

19 (2) by striking “Attorney General” each addi-
20 tional place such term appears and inserting “Sec-
21 retary”.

22 **SEC. 217. PENALTIES RELATING TO VESSELS AND AIR-**
23 **CRAFT.**

24 Section 243(c) (8 U.S.C. 1253(c)) is amended—

1 (1) by striking “Attorney General” each place
2 such term appears and inserting “Secretary of
3 Homeland Security”; and

4 (2) by striking “Commissioner” each place such
5 term appears and inserting “Secretary”; and

6 (3) in paragraph (1)—

7 (A) in subparagraph (A), by striking
8 “\$2,000” and inserting “\$5,000”;

9 (B) in subparagraph (B), by striking
10 “\$5,000” and inserting “\$10,000”; and

11 (C) by amending paragraph (1)(C) to read
12 as follows:

13 “(C) COMPROMISE.—The Secretary of
14 Homeland Security, in the Secretary’s
15 unreviewable discretion and upon the receipt of
16 a written request, may mitigate the monetary
17 penalties required under this subsection for
18 each alien stowaway to an amount equal to not
19 less than \$500, upon such terms that the Sec-
20 retary determines to be appropriate.”.

21 **SEC. 218. SANCTIONS FOR COUNTRIES THAT DELAY OR**
22 **PREVENT REPATRIATION OF THEIR CITIZENS**
23 **AND NATIONALS.**

24 Sec. 243(d) (8 U.S.C. 1253(d)) is amended—

1 (1) by striking “Attorney General” each place
2 such term appears and inserting “Secretary of
3 Homeland Security” ;

4 (2) by inserting “or subsets of such visas” after
5 “both,”; and

6 (3) by inserting “of State” after “Secretary”
7 the last place such term appears.

8 **SEC. 219. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM.**

9 (a) AUTHORIZATION OF APPROPRIATIONS.—Section
10 241(i)(5)(C) (8 U.S.C. 1231(i)(5)(C)) is amended by
11 striking “to carry out this subsection” and all that follows
12 and inserting “\$950,000,000 for each of the fiscal years
13 2011 through 2015 to carry out this subsection.”.

14 (b) REIMBURSEMENT OF STATES FOR INDIRECT
15 COSTS RELATING TO THE INCARCERATION OF UNAU-
16 THORIZED ALIENS.—Section 501 of the Immigration Re-
17 form and Control Act of 1986 (8 U.S.C. 1365) is amend-
18 ed—

19 (1) by amending subsection (a) to read as fol-
20 lows:

21 “(a) REIMBURSEMENT OF STATES.—Subject to the
22 amounts provided in advance in appropriation Acts, the
23 Attorney General shall reimburse a State for—

1 “(1) the costs incurred by the State for the im-
2 prisonment of all unauthorized aliens convicted of a
3 felony by such State; and

4 “(2) the indirect costs related to the
5 imprisonments described in paragraph (1).”; and

6 (2) by amending subsections (c) through (e) to
7 read as follows:

8 “(c) ALLOCATION OF REIMBURSEMENTS.—Reim-
9 bursements under this section shall be allocated in a man-
10 ner that gives special consideration for any State that
11 shares a border with Mexico or with Canada.

12 “(d) DEFINITIONS.—In this section:

13 “(1) INDIRECT COSTS.—The term ‘indirect
14 costs’ includes—

15 “(A) court costs, county attorney costs, de-
16 tention costs, and criminal proceedings expendi-
17 tures that do not involve going to trial;

18 “(B) indigent defense costs; and

19 “(C) unsupervised probation costs.

20 “(2) STATE.—The term ‘State’ has the mean-
21 ing given such term in section 101(a)(36) of the Im-
22 migration and Nationality Act (8 U.S.C.
23 1101(a)(36)).

24 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
25 are authorized to be appropriated \$200,000,000 for each

1 of the fiscal years 2008 through 2012 to carry out sub-
2 section (a)(2).”.

3 **SEC. 220. PROCEDURES REGARDING ALIENS APPRE-**
4 **HENDED BY STATE AND LOCAL LAW EN-**
5 **FORCEMENT OFFICERS.**

6 (a) ISSUANCE OF DETAINERS.—Section 287(d) (8
7 U.S.C. 1357(d)) is amended to read as follows:

8 (b)(1) An authorized officer or employee of the De-
9 partment of Homeland Security shall promptly determine
10 whether or not to issue a detainer to detain an alien who
11 is arrested by a Federal, State, or local law enforcement
12 official for a violation of any law relating to controlled sub-
13 stances if the law enforcement official—

14 (A) has reason to believe that the alien has not
15 been lawfully admitted to the United States or is
16 otherwise not lawfully present in the United States;

17 (B) expeditiously informs such officer or em-
18 ployee of the arrest and of facts concerning the sta-
19 tus of the alien; and

20 (C) requests the Department of Homeland Se-
21 curity to determine whether or not to issue such de-
22 tainer.

23 (2) If a detainer is issued pursuant to paragraph (1)
24 and the alien is not otherwise detained by Federal, State,

1 or local officials, the Secretary shall effectively and expedi-
2 tiously take custody of the alien.

3 (3) The Secretary of Homeland Security shall collect
4 data regarding detainers issued under this subsection, in-
5 cluding—

6 (4) the criminal charge for which the individual
7 was arrested or convicted;

8 (5) the date on which the detainer was issued;

9 (6) the basis for the issuance of the detainer;

10 (7) the date on which the detainer was lifted;

11 (8) the date on which a Federal or State crimi-
12 nal court or other government entity ordered the re-
13 lease of the individual;

14 (9) the date on which the Department of Home-
15 land Security took custody of the individual;

16 (10) the race, ethnicity, and country of origin
17 of the individual against whom the detainer was
18 issued;

19 (11) the disposition of criminal case against the
20 individual;

21 (12) the ultimate disposition of immigration
22 case, including whether the individual was deter-
23 mined to be a United States citizen;

24 (13) the grounds of removal, if applicable, and
25 any charges brought by the Secretary; and

1 (14) the number of individuals removed after
2 the Secretary took custody while any criminal matter
3 was pending.

4 (c) RULEMAKING.—The Secretary shall issue regula-
5 tions that require officers and employees of the Depart-
6 ment of Homeland Security to confirm, before issuing a
7 detainer—

8 (1) the alienage of the individual to be made
9 subject to such detainer through lawfully obtained
10 information, including—

11 (A) the name of the individual;

12 (B) the date of birth of the individual; or

13 (C) the fingerprints of the individual and

14 (2) whether the individual is removable from
15 the United States.

16 **SEC. 221. REFORM OF PASSPORT, VISA, AND IMMIGRATION**
17 **FRAUD OFFENSES.**

18 (a) TRAFFICKING IN PASSPORTS.—Section 1541 of
19 title 18, United States Code, is amended to read as fol-
20 lows:

21 **“§ 1541. Trafficking in passports**

22 “(a) MULTIPLE PASSPORTS.—Any person who, dur-
23 ing any period of 3 years or less, knowingly—

24 “(1) and without lawful authority produces,
25 issues, or transfers 10 or more passports;

1 “(2) forges, counterfeits, alters, or falsely
2 makes 10 or more passports;

3 “(3) secures, possesses, uses, receives, buys,
4 sells, or distributes 10 or more passports, knowing
5 the passports to be forged, counterfeited, altered,
6 falsely made, stolen, procured by fraud, or produced
7 or issued without lawful authority; or

8 “(4) completes, mails, prepares, presents, signs,
9 or submits 10 or more applications for a United
10 States passport, knowing the applications to contain
11 any false statement or representation,

12 shall be fined under this title, imprisoned not more than
13 20 years, or both.

14 “(b) PASSPORT MATERIALS.—Any person who know-
15 ingly and without lawful authority produces, buys, sells,
16 possesses, or uses any official material (or counterfeit of
17 any official material) used to make a passport, including
18 any distinctive paper, seal, hologram, image, text, symbol,
19 stamp, engraving, or plate, shall be fined under this title,
20 imprisoned not more than 20 years, or both.”.

21 (b) FALSE STATEMENT IN AN APPLICATION FOR A
22 PASSPORT.—Section 1542 of title 18, United States Code,
23 is amended to read as follows:

1 **“§ 1542. False statement in an application for a pass-**
2 **port**

3 “(a) IN GENERAL.—Any person who knowingly—

4 “(1) makes any false statement or representa-
5 tion in an application for a United States passport;
6 or

7 “(2) mails, prepares, presents, or signs an ap-
8 plication for a United States passport knowing the
9 application to contain any false statement or rep-
10 resentation,

11 shall be fined under this title, imprisoned not more than
12 15 years, or both.

13 “(b) VENUE.—

14 “(1) IN GENERAL.—An offense under sub-
15 section (a) may be prosecuted in any district—

16 “(A) in which the false statement or rep-
17 resentation was made or the application for a
18 United States passport was prepared or signed;
19 or

20 “(B) in which or to which the application
21 was mailed or presented.

22 “(2) ACTS OCCURRING OUTSIDE THE UNITED
23 STATES.—An offense under subsection (a) involving
24 an application for a United States passport prepared
25 and adjudicated outside the United States may be

1 prosecuted in the district in which the resultant
2 passport was or would have been produced.

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

6 (c) FORGERY AND UNLAWFUL PRODUCTION OF A
7 PASSPORT.—Section 1543 of title 18, United States Code,
8 is amended to read as follows:

9 **“§ 1543. Forgery and unlawful production of a pass-**
10 **port**

11 “(a) FORGERY.—Any person who knowingly—

12 “(1) forges, counterfeits, alters, or falsely
13 makes any passport; or

14 “(2) transfers any passport knowing it to be
15 forged, counterfeited, altered, falsely made, stolen,
16 or to have been produced or issued without lawful
17 authority,

18 shall be fined under this title, imprisoned not more than
19 15 years, or both.

20 “(b) UNLAWFUL PRODUCTION.—Any person who
21 knowingly and without lawful authority—

22 “(1) produces, issues, authorizes, or verifies a
23 passport in violation of the laws, regulations, or
24 rules governing the issuance of the passport;

1 “(2) produces, issues, authorizes, or verifies a
2 United States passport for or to any person knowing
3 or in reckless disregard of the fact that such person
4 is not entitled to receive a passport; or

5 “(3) transfers or furnishes a passport to any
6 person for use by any person other than the person
7 for whom the passport was issued or designed,
8 shall be fined under this title, imprisoned not more than
9 15 years, or both.”.

10 (d) MISUSE OF A PASSPORT.—Section 1544 of title
11 18, United States Code, is amended to read as follows:

12 **“§ 1544. Misuse of a passport**

13 “Any person who knowingly—

14 “(1) uses any passport issued or designed for
15 the use of another person;

16 “(2) uses any passport in violation of the condi-
17 tions or restrictions contained in the passport, or in
18 violation of the laws, regulations, or rules governing
19 the issuance and use of the passport;

20 “(3) secures, possesses, uses, receives, buys,
21 sells, or distributes any passport knowing it to be
22 forged, counterfeited, altered, falsely made, procured
23 by fraud, or produced or issued without lawful au-
24 thority; or

1 “(4) violates the terms and conditions of any
2 safe conduct duly obtained and issued under the au-
3 thority of the United States,
4 shall be fined under this title, imprisoned not more than
5 15 years, or both.”.

6 (e) SCHEMES TO DEFRAUD ALIENS.—Section 1545
7 of title 18, United States Code, is amended to read as
8 follows:

9 **“SEC. 1545. SCHEMES TO DEFRAUD ALIENS.**

10 “(a) IN GENERAL.—Any person who knowingly exe-
11 cutes a scheme or artifice, in connection with any matter
12 that is authorized by or arises under any Federal immigra-
13 tion law or any matter the offender claims or represents
14 is authorized by or arises under any Federal immigration
15 law, to—

16 “(1) defraud any person; or

17 “(2) obtain or receive money or anything else of
18 value from any person by means of false or fraudu-
19 lent pretenses, representations, or promises,

20 shall be fined under this title, imprisoned not more than
21 15 years, or both.

22 “(b) MISREPRESENTATION.—Any person who know-
23 ingly and falsely represents that such person is an attor-
24 ney or an accredited representative (as that term is de-
25 fined in section 1292.1 of title 8, Code of Federal Regula-

1 tions (or any successor regulation)) in any matter arising
2 under any Federal immigration law shall be fined under
3 this title, imprisoned not more than 15 years, or both.”.

4 (f) IMMIGRATION AND VISA FRAUD.—Section 1546
5 of title 18, United States Code, is amended—

6 (1) by amending the section heading to read as
7 follows:

8 **“§ 1546. Immigration and visa fraud”;**

9 (2) by striking subsections (b) and (c) and in-
10 sserting the following:

11 “(b) TRAFFICKING.—Any person who, during any pe-
12 riod of 3 years or less, knowingly—

13 “(1) and without lawful authority produces,
14 issues, or transfers 10 or more immigration docu-
15 ments;

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

18 “(3) secures, possesses, uses, buys, sells, or dis-
19 tributes 10 or more immigration documents, know-
20 ing the immigration documents to be forged, coun-
21 terfeited, altered, stolen, falsely made, procured by
22 fraud, or produced or issued without lawful author-
23 ity; or

24 “(4) completes, mails, prepares, presents, signs,
25 or submits 10 or more immigration documents

1 knowing the documents to contain any materially
2 false statement or representation,
3 shall be fined under this title, imprisoned not more than
4 20 years, or both.

5 “(c) IMMIGRATION DOCUMENT MATERIALS.—Any
6 person who knowingly and without lawful authority pro-
7 duces, buys, sells, possesses, or uses any official material
8 (or counterfeit of any official material) used to make im-
9 migration documents, including any distinctive paper, seal,
10 hologram, image, text, symbol, stamp, engraving, or plate,
11 shall be fined under this title, imprisoned not more than
12 20 years, or both.

13 “(d) EMPLOYMENT DOCUMENTS.—Any person who
14 uses—

15 “(1) an identification document, knowing or
16 having reason to know that the document is false or
17 was not issued lawfully for the use of the possessor;
18 or

19 “(2) a false attestation, for the purpose of sat-
20 isfying a requirement under section 274A(b) of the
21 Immigration and Nationality Act (8 U.S.C.
22 1324a(b)), shall be fined under this title, imprisoned
23 not more than 1 year, or both.”.

1 (g) ALTERNATIVE IMPRISONMENT MAXIMUM FOR
2 CERTAIN OFFENSES.—Section 1547 of title 18, United
3 States Code, is amended—

4 (1) in the matter preceding paragraph (1), by
5 striking “(other than an offense under section
6 1545)”;

7 (2) in paragraph (1), by striking “15” and in-
8 serting “20”; and

9 (3) in paragraph (2), by striking “20” and in-
10 serting “25”.

11 (h) ATTEMPTS, CONSPIRACIES, JURISDICTION, AND
12 DEFINITIONS.—Chapter 75 of title 18, United States
13 Code, is amended by adding after section 1547 the fol-
14 lowing:

15 **“§ 1548. Attempts and conspiracies**

16 “Any person who attempts or conspires to violate any
17 section of this chapter shall be punished in the same man-
18 ner as a person who completed a violation of such section.

19 **“§ 1549. Additional jurisdiction**

20 “(a) IN GENERAL.—Any person who commits an of-
21 fense under this chapter within the special maritime and
22 territorial jurisdiction of the United States shall be pun-
23 ished as provided under this chapter.

24 “(b) EXTRATERRITORIAL JURISDICTION.—Any per-
25 son who commits an offense under this chapter outside

1 the United States shall be punished as provided under this
2 chapter if—

3 “(1) the offense involves a United States pass-
4 port or immigration document (or any document
5 purporting to be such a document) or any matter,
6 right, or benefit arising under or authorized by any
7 Federal immigration law;

8 “(2) the offense is in or affects foreign com-
9 merce;

10 “(3) the offense affects, jeopardizes, or poses a
11 significant risk to the lawful administration of Fed-
12 eral immigration laws, or the national security of the
13 United States;

14 “(4) the offense is committed to facilitate an
15 act of international terrorism (as defined in section
16 2331) or a drug trafficking crime (as defined in sec-
17 tion 929(a)(2)) that affects or would affect the na-
18 tional security of the United States;

19 “(5) the offender is a national of the United
20 States or an alien lawfully admitted for permanent
21 residence (as those terms are defined in section
22 101(a) of the Immigration and Nationality Act (8
23 U.S.C. 1101(a))); or

24 “(6) the offender is a stateless person whose
25 habitual residence is in the United States.

1 **“§ 1550. Authorized law enforcement activities**

2 “Nothing in this chapter may be construed to pro-
3 hibit—

4 “(1) any lawfully authorized investigative, pro-
5 tective, or intelligence activity of a law enforcement
6 agency of the United States, a State, or a political
7 subdivision of a State, or an intelligence agency of
8 the United States; or

9 “(2) any activity authorized under title V of the
10 Organized Crime Control Act of 1970 (Public Law
11 91–452; 84 Stat. 933).”.

12 (i) CLERICAL AMENDMENT.—The table of sections
13 for chapter 75 of title 18, United States Code, is amended
14 to read as follows:

“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. Alternative imprisonment maximum for certain offenses.

“1548. Attempts and conspiracies.

“1549. Additional jurisdiction.

“1550. Authorized law enforcement activities.”.

15 (j) UNIFORM STATUTE OF LIMITATIONS FOR CER-
16 TAIN IMMIGRATION, NATURALIZATION, AND PEONAGE
17 OFFENSES.—

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

1 **“§ 3291. Immigration, naturalization, and peonage of-**
 2 **fenses**

3 “A person may not be prosecuted, tried, or punished
 4 for any violation under chapter 69 (relating to nationality
 5 and citizenship offenses), 75 (relating to passport, visa,
 6 and immigration offenses), or 77 (relating to peonage,
 7 slavery, and trafficking in persons), for an attempt or con-
 8 spiracy to commit such a violation, for a violation of any
 9 criminal provision under section 243, 266, 274, 275, 276,
 10 277, or 278 of the Immigration and Nationality Act (8
 11 U.S.C. 1253, 1306, 1324, 1325, 1326, 1327, and 1328),
 12 or for an attempt or conspiracy to commit any such viola-
 13 tion, unless the indictment is returned or the information
 14 filed not later than 10 years after the commission of the
 15 offense.”.

16 (2) CLERICAL AMENDMENT.—The table of sec-
 17 tions for chapter 213 of title 18, United States
 18 Code, is amended by striking the item relating to
 19 section 3291 and inserting the following:

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

20 **SEC. 222. DIRECTIVES RELATED TO PASSPORT AND DOCU-**
 21 **MENT FRAUD.**

22 (a) DIRECTIVE TO THE UNITED STATES SEN-
 23 TENCING COMMISSION.—

24 (1) IN GENERAL.—Pursuant to the authority
 25 under section 994 of title 28, United States Code,

1 the United States Sentencing Commission shall pro-
2 mulgate or amend the sentencing guidelines, policy
3 statements, and official commentaries related to
4 passport fraud offenses, including the offenses de-
5 scribed in chapter 75 of title 18, United States
6 Code, as amended by section 209, to reflect the seri-
7 ous nature of such offenses.

8 (2) REPORT.—Not later than 1 year after the
9 date of the enactment of this Act, the United States
10 Sentencing Commission shall submit a report on the
11 implementation of this subsection to—

12 (A) the Committee on the Judiciary of the
13 Senate; and

14 (B) the Committee on the Judiciary of the
15 House of Representatives.

16 (b) PROTECTION FOR LEGITIMATE REFUGEES AND
17 ASYLUM SEEKERS.—

18 (1) IN GENERAL.—

19 (A) REQUIREMENT FOR GUIDELINES.—

20 The Attorney General, in consultation with the
21 Secretary, shall develop binding prosecution
22 guidelines for Federal prosecutors to ensure
23 that each prosecution of an alien seeking entry
24 into the United States by fraud is consistent
25 with the United States treaty obligations under

1 Article 31(1) of the Convention Relating to the
2 Status of Refugees, done at Geneva July 28,
3 1951 (as made applicable by the Protocol Relat-
4 ing to the Status of Refugees, done at New
5 York January 31, 1967 (19 UST 6223)).

6 (B) NO PRIVATE RIGHT OF ACTION.—The
7 guidelines developed pursuant to subparagraph
8 (A), and any internal office procedures related
9 to such guidelines—

10 (i) are intended solely for the guid-
11 ance of attorneys of the United States; and

12 (ii) are not intended to, do not, and
13 may not be relied upon to, create any right
14 or benefit, substantive or procedural, en-
15 forceable at law by any party in any ad-
16 ministrative, civil, or criminal matter.

17 (2) PROTECTION OF VULNERABLE PERSONS.—

18 A person described in paragraph (3) may not be
19 prosecuted under chapter 75 of title 18, United
20 States Code, or under section 275 or 276 of the Im-
21 migration and Nationality Act (8 U.S.C. 1325 and
22 1326), in connection with the person's entry or at-
23 tempted entry into the United States until after the
24 date on which the person's application for such pro-
25 tection, classification, or status has been adjudicated

1 and denied in accordance with the Immigration and
2 Nationality Act (8 U.S.C. 1101 et seq.).

3 (3) PERSONS SEEKING PROTECTION, CLASSI-
4 FICATION, OR STATUS.—A person described in this
5 paragraph is a person who—

6 (A) is seeking protection, classification, or
7 status; and

8 (B)(i) has filed an application for asylum
9 under section 208 of the Immigration and Na-
10 tionality Act (8 U.S.C. 1158), withholding of
11 removal under section 241(b)(3) of such Act (8
12 U.S.C. 1231), or relief under the Convention
13 against Torture and Other Cruel, Inhuman or
14 Degrading Treatment or Punishment, done at
15 New York, December 10, 1994, pursuant to
16 title 8, Code of Federal Regulations;

17 (ii) indicates immediately after apprehen-
18 sion, that he or she intends to apply for such
19 asylum, withholding of removal, or relief and
20 promptly files the appropriate application;

21 (iii) has been referred for a credible fear
22 interview, a reasonable fear interview, or an
23 asylum-only hearing under section 235 of the
24 Immigration and Nationality Act (8 U.S.C.

1 1225) or title 8, Code of Federal Regulations;

2 or

3 (iv) has filed an application for classifica-

4 tion or status under—

5 (I) paragraph (15)(T), (15) (U),

6 (27)(J), or (51) of section 101(a) of the

7 Immigration and Nationality Act (8 U.S.C.

8 1101(a)); or

9 (II) section 216(c)(4)(C), 240A(b)(2),

10 or 244(a)(3) of such Act (8 U.S.C.

11 1186a(c)(4)(C), 1229b(b)(2), and

12 1254a(a)(3)).

13 **SEC. 223. EXPANDING THE DEFINITION OF CONVEYANCES**

14 **SUBJECT TO FORFEITURE.**

15 (a) IN GENERAL.—Section 1703 of title 19, United

16 States Code, is amended—

17 (1) by amending the section heading to read as

18 follows:

19 **“§ 1703. Seizure and forfeiture of vessels, vehicles,**

20 **other conveyances, and instruments of**

21 **international traffic”;**

22 (2) in subsection (a), by amending the sub-

23 section heading to read as follows:

1 “(a) VESSELS, VEHICLES, OTHER CONVEYANCES,
2 AND INSTRUMENTS OF INTERNATIONAL TRAFFIC SUB-
3 JECT TO SEIZURE AND FORFEITURE.—”;

4 (3) in subsection (b), by amending the sub-
5 section heading to read as follows:

6 “(b) VESSELS, VEHICLES, OTHER CONVEYANCES,
7 AND INSTRUMENTS OF INTERNATIONAL TRAFFIC DE-
8 FINED.—”;

9 (4) in subsections (a) and (b), by inserting “,
10 vehicle, other conveyance, or instrument of inter-
11 national traffic” after “vessel” each place such term
12 appears; and

13 (5) by amending subsection (c) to read as fol-
14 lows:

15 “(c) ACTS CONSTITUTING PRIMA FACIE EVIDENCE
16 OF SMUGGLING.—For purposes of this section, prima
17 facie evidence that a conveyance is being, has been, or is
18 attempting to be employed in smuggling or to defraud the
19 revenue of the United States shall be—

20 “(1) in the case of a vessel, the vessel—

21 “(A) has become subject to pursuit, as de-
22 scribed in section 1581;

23 “(B) is a hovering vessel; or

24 “(C) fails, at any place within the customs
25 waters of the United States or within a cus-

1 toms-enforcement area, to display lights as re-
2 quired by law;

3 “(2) in the case of a vehicle, other conveyance,
4 or instrument of international traffic, the vehicle,
5 other conveyance, or instrument of international
6 traffic has any compartment or equipment that is
7 built or fitted out for smuggling.”.

8 (b) CLERICAL AMENDMENT.—The table of sections
9 for chapter 5 of title 19, United States Code, is amended
10 by striking the item relating to section 1703 and inserting
11 the following:

 “1703. Seizure and forfeiture of vessels, vehicles, other conveyances, or instru-
 ments of international traffic.”.

12 **SEC. 224. PROHIBITION OF THE SALE OF FIREARMS TO, OR**
13 **THE POSSESSION OF FIREARMS BY, CERTAIN**
14 **ALIENS.**

15 Section 922 of title 18, United States Code, is
16 amended—

17 (1) in subsection (d)(5), by amending subpara-
18 graph (B) to read as follows:

19 “(B) except as provided in subsection (y),
20 is in the United States and has not been law-
21 fully admitted for permanent residence;”;

22 (2) in subsection (g)(5), by amending subpara-
23 graph (B) to read as follows:

1 “(B) except as provided in subsection (y),
2 is in the United States and has not been law-
3 fully admitted for permanent residence;”; and
4 (3) in subsection (y)—

5 (A) in the subsection heading, by striking
6 “ADMITTED UNDER NONIMMIGRANT VISAS”
7 and inserting “NOT LAWFULLY ADMITTED FOR
8 PERMANENT RESIDENCE”;

9 (B) by amending paragraph (1)(B) to read
10 as follows:

11 “(B) the term ‘lawfully admitted for per-
12 manent residence’ has the same meaning as in
13 section 101(a)(20) of the Immigration and Na-
14 tionality Act (8 U.S.C. 1101(a)(20)).”;

15 (C) in paragraph (2), by striking “under a
16 nonimmigrant visa” and inserting “and has not
17 been lawfully admitted for permanent resi-
18 dence”; and

19 (D) in paragraph (3)(A), by striking “ad-
20 mitted to the United States under a non-
21 immigrant visa” and inserting “lawfully admit-
22 ted to the United States and has not been law-
23 fully admitted for permanent residence”.

1 **SEC. 225. CRIMINAL FORFEITURE.**

2 Section 982 of title 18, United States Code, is
3 amended—

4 (1) in subsection (a)(2)(B) by inserting
5 “1028A” between “1028” and “1029;”

6 (2) in subsection (a)(6)(A)—

7 (A) by striking “ or 274A(a)(2)” and in-
8 serting “274A(a)(2) or 274A(i)”; and

9 (B) by inserting “and 1028A” after
10 “1028” and

11 (3) in subsection (a)(8) by inserting “and
12 1028A” after “1028”.

13 **SEC. 226. ADVANCE DELIVERY OF INFORMATION INCLUD-**
14 **ING PASSENGER MANIFESTS.**

15 (a) IN GENERAL.—Section 231 (8 U.S.C. 1221) is
16 amended as follows:

17 (1) by striking “commercial vessel or aircraft”
18 each place it appears and inserting “commercial ves-
19 sel, commercial vehicle, or aircraft”;

20 (2) in subsection (a), by striking “such vessel
21 or aircraft” and inserting “such vessel, vehicle, or
22 aircraft”;

23 (3) in subsection (g), by striking “\$1,000” and
24 inserting “\$5,000”;

25 (4) in subsection (j), by striking “The Attorney
26 General” and inserting the following:

1 “(j) INFORMATION TO BE RECORDED.—The Sec-
2 retary of Homeland Security”; and

3 (5) by inserting at the end the following:

4 “(k) SHARING OF MANIFEST AND PASSENGER NAME
5 RECORD INFORMATION WITH OTHER GOVERNMENT
6 AGENCIES.—The Secretary of Homeland Security may
7 provide information contained in passenger and crew
8 manifests and passenger name record information received
9 under this section to other Federal, State, tribal, local,
10 and foreign government authorities in order to protect the
11 national security of the United States or as otherwise au-
12 thorized by law.

13 “(l) SAVINGS PROVISION.—Nothing in this section
14 may be construed to abrogate, diminish, or weaken the
15 provisions of any Federal law that prevents or protects
16 against unauthorized collection or release of personal
17 records.”.

18 (b) ASSESSMENTS.—Not later than 1 year after the
19 date of the enactment of this Act, the Secretary shall as-
20 sess the privacy and civil liberties impacts of the amend-
21 ments made by subsection (a).

1 **SEC. 227. UNLAWFUL FLIGHT FROM IMMIGRATION OR CUS-**
2 **TOMS CONTROLS AND DISOBEYANCE OF LAW-**
3 **FUL ORDERS.**

4 Section 758 of title 18, United States Code, is
5 amended to read as follows:

6 **“§ 758. Unlawful flight from Federal checkpoints and**
7 **disobeyance of lawful orders**

8 “(a) EVADING A CHECKPOINT.—Any person who,
9 while operating a motor vehicle or vessel—

10 “(1) knowingly flees or evades a checkpoint op-
11 erated by the Department of Homeland Security or
12 any other Federal law enforcement agency; and

13 “(2) knowingly or recklessly disregards or dis-
14 obeys the lawful command of a Federal law enforce-
15 ment officer engaged in the enforcement of Federal
16 law, or the lawful command of any law enforcement
17 officer assisting such Federal officer,

18 shall be fined under this title, imprisoned not more than
19 5 years, or both.

20 “(b) FAILURE TO STOP.—Any person who, while op-
21 erating a motor vehicle, aircraft, or vessel, knowingly or
22 recklessly disregards or disobeys the lawful command of
23 a Federal law enforcement officer engaged in the enforce-
24 ment of Federal law, or the lawful command of any law
25 enforcement officer assisting such Federal officer, shall be

1 fined under this title, imprisoned not more than 2 years,
2 or both.”.

3 **SEC. 228. REDUCING ILLEGAL IMMIGRATION AND ALIEN**
4 **SMUGGLING ON TRIBAL LANDS.**

5 (a) GRANTS AUTHORIZED.—The Secretary may
6 award grants to any Indian tribe that—

7 (1) owns land that is adjacent to an inter-
8 national border of the United States; and

9 (2) has been adversely affected by illegal immi-
10 gration.

11 (b) USE OF FUNDS.—Grants awarded under sub-
12 section (a) may be used for—

13 (1) law enforcement activities;

14 (2) health care services;

15 (3) environmental restoration; and

16 (4) the preservation of cultural resources.

17 (c) REPORT.—Not later than 180 days after the date
18 of the enactment of this Act, the Secretary shall submit
19 a report to the Committee on the Judiciary of the Senate
20 and the Committee on the Judiciary of the House of Rep-
21 resentatives that—

22 (1) describes the level of access that Border Pa-
23 trol agents have on tribal lands;

24 (2) describes the extent to which the enforce-
25 ment of Federal immigration laws and rescue oper-

1 ations by Border Patrol officers may be improved by
2 enhanced access to tribal lands;

3 (3) contains a strategy for improving access to
4 tribal lands through increased cooperation with trib-
5 al authorities; and

6 (4) identifies grants provided by the Depart-
7 ment to Indian tribes, either directly or through
8 grants provided to State or local governments, for
9 border security expenses.

10 (d) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated such sums as may be
12 necessary for each of the fiscal years 2011 through 2015
13 to carry out this section.

14 **SEC. 229. DIPLOMATIC SECURITY SERVICE.**

15 (a) Section 37(a)(1) of the State Department Basic
16 Authorities Act of 1956 (22 U.S.C. 2709(a)(1)) is amend-
17 ed to read as follows:

18 “(1) conduct investigations concerning—

19 “(A) illegal passport or visa issuance or
20 use;

21 “(B) identity theft or document fraud af-
22 fecting or relating to the programs, functions,
23 or authorities of the Department of State;

24 “(C) violations of chapter 77 of title 18,
25 United States Code; and

1 “(D) Federal offenses committed within
2 the special maritime and territorial jurisdiction
3 defined in section 7(9) of title 18, United
4 States Code, except as that jurisdiction relates
5 to the premises of United States military mis-
6 sions and related residences;”.

7 (b) **RULE OF CONSTRUCTION.**—Nothing in this sec-
8 tion may be construed to limit the investigative authority
9 of any Federal department or agency.

10 **SEC. 230. INCREASED PENALTIES BARRING THE ADMIS-**
11 **SION OF CONVICTED SEX OFFENDERS FAIL-**
12 **ING TO REGISTER AND REQUIRING DEPORTA-**
13 **TION OF SEX OFFENDERS FAILING TO REG-**
14 **ISTER.**

15 (a) **INADMISSIBILITY.**—Section 212(a)(2)(A)(i) (8
16 U.S.C. 1182(a)(2)(A)(i)) is amended—

17 (1) in subclause (I), by striking “or” at the
18 end;

19 (2) in subclause (II), by striking the comma at
20 the end and inserting a semicolon; and

21 (3) by inserting after subclause (II) the fol-
22 lowing:

23 “(III) a conviction under section
24 2250 of title 18, United States Code

1 (relating to failure to register as a sex
2 offender),”.

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

5 (1) in subclause (I), by striking “, and” and in-
6 serting a semicolon;

7 (2) in subclause (II), by striking the comma at
8 the end and inserting “; or”; and

9 (3) by inserting after subclause (II) the fol-
10 lowing:

11 “(III) a conviction under section
12 2250 of title 18, United States Code
13 (relating to failure to register as a sex
14 offender),”.

15 **SEC. 231. AGGRAVATED FELONY.**

16 (a) DEFINITION OF AGGRAVATED FELONY.—Section
17 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended—

18 (1) in the matter preceding subparagraph (A),
19 by striking “The term ‘aggravated felony’ means—
20 ” and inserting “Notwithstanding any other provi-
21 sion of law, the term ‘aggravated felony’ applies to
22 any offense which is a felony described in this para-
23 graph, whether in violation of Federal or State law,
24 for which the individual served at least 1 year of im-
25 prisonment and to such a felony offense in violation

1 of the law of a foreign country, for which the term
2 of imprisonment was completed during the previous
3 15 years, regardless of whether the conviction was
4 entered before, on, or after September 30, 1996, and
5 means—”;

6 (2) in subparagraph (N), by striking “para-
7 graph (1)(A) or (2) of” and inserting “paragraph
8 (1)(A), (2), or (4) of”; and

9 (3) by striking the undesignated matter fol-
10 lowing subparagraph (U).

11 (b) EFFECTIVE DATE AND APPLICATION.—

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

14 (A) take effect on the date of the enact-
15 ment of this Act; and

16 (B) apply to any act that occurred on or
17 after such date.

18 (2) APPLICATION OF AMENDMENTS.—The
19 amendments to section 101(a)(43) of the Immigra-
20 tion and Nationality Act made by section 321 of the
21 Illegal Immigration Reform and Immigrant Respon-
22 sibility Act of 1996 (division C of Public Law 104–
23 208; 110 Stat. 3009–627) shall continue to apply to
24 actions taken on or after September 30, 1996, re-

1 regardless of when the conviction for such actions oc-
2 curred.

3 **SEC. 232. INCREASED CRIMINAL PENALTIES RELATED TO**
4 **GANG VIOLENCE.**

5 (a) CRIMINAL STREET GANGS.—

6 (1) INADMISSIBILITY.—Section 212(a)(2) (8
7 U.S.C. 1182(a)(2)) is amended by adding at the end
8 the following:

9 “(J) MEMBERS OF CRIMINAL STREET
10 GANGS.—Unless the Secretary of Homeland Se-
11 curity or the Attorney General waives the appli-
12 cation of this subparagraph, any alien who has
13 been convicted of a crime under section 521 of
14 title 18, United States Code, is inadmissible.”.

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

18 “(F) MEMBERS OF CRIMINAL STREET
19 GANGS.—Unless the Secretary of Homeland Se-
20 curity or the Attorney General waives the appli-
21 cation of this subparagraph, any alien who has
22 been convicted of a crime under section 521 of
23 title 18, United States Code, is deportable.”.

24 (3) TEMPORARY PROTECTED STATUS.—Section
25 244 (8 U.S.C. 1254a) is amended—

1 (A) by striking “Attorney General” each
2 place it appears and inserting “Secretary of
3 Homeland Security”;

4 (B) in subsection (c)(2)(B)—

5 (i) in clause (i), by striking “, or” at
6 the end and inserting a semicolon;

7 (ii) in clause (ii), by striking the pe-
8 riod at the end and inserting “; or”; and

9 (iii) by adding at the end the fol-
10 lowing:

11 “(iii) the alien has been convicted of
12 a crime under section 521 of title 18,
13 United States Code.”.

14 (C) in subsection (d)—

15 (i) by striking paragraph (3);

16 (ii) by redesignating paragraph (4) as
17 paragraph (3); and

18 (iii) in paragraph (3), as redesignated,
19 by adding at the end the following: “The
20 Secretary of Homeland Security shall de-
21 tain an alien provided temporary protected
22 status under this section if the alien has
23 been found by an immigration judge to be
24 subject to detention under section
25 236(c)(1).”.

1 (b) PENALTIES RELATED TO REMOVAL.—Section
2 243 (8 U.S.C. 1253) is amended—

3 (1) in subsection (a)(1), in the matter following
4 subparagraph (D)—

5 (A) by striking “or imprisoned not more
6 than four years” and inserting “and imprisoned
7 for not more than 5 years”; and

8 (B) by striking “, or both”; and

9 (2) in subsection (b), by striking “not more
10 than \$1,000 or imprisoned for not more than one
11 year, or both” and inserting “under title 18, United
12 States Code, and imprisoned for not more than 3
13 years (or for not more than 10 years if the alien is
14 removable under paragraph (1)(E), (2), or (4) of
15 section 237(a)).”.

16 **Subtitle B—Detention Reform**

17 **SEC. 241. DEFINITIONS.**

18 In this subtitle:

19 (1) APPREHENSION.—The term “apprehension”
20 means the detention, arrest, or custody, or any sig-
21 nificant deprivation of an individual’s freedom of ac-
22 tion by government officials or entities acting under
23 agreement with the Department for suspicion of vio-
24 lations under the Immigration and Nationality Act
25 (8 U.S.C. 1101 et seq.).

1 (2) CHILD.—The term “child” has the meaning
2 given to the term in section 101(b)(1) of the Immi-
3 gration and Nationality Act (8 U.S.C. 1101(b)(1)).

4 (3) CHILD WELFARE AGENCY.—The term
5 “child welfare agency” means the State or local
6 agency responsible for child welfare services under
7 subtitles B and E of title IV of the Social Security
8 Act (42 U.S.C. 601 et seq.).

9 (4) COOPERATING ENTITY.—The term “cooper-
10 ating entity” means a State or local entity acting
11 under agreement with, or at the request of, the De-
12 partment.

13 (5) DETAINEE.—The term “detainee” means
14 an individual who is subject to detention under the
15 Immigration and Nationality Act.

16 (6) DETENTION.—The term “detention” means
17 government custody or any other deprivation of an
18 individual’s freedom of movement by government
19 agents.

20 (7) DETENTION FACILITY.—The term “deten-
21 tion facility” means a Federal, State, or local gov-
22 ernment facility, or a privately owned and operated
23 facility, that is used to hold individuals suspected or
24 found to be in violation of the Immigration and Na-

1 tionality Act (8 U.S.C. 1101 et seq.) for more than
2 72 hours.

3 (8) FAMILIES WITH CHILDREN.—The term
4 “family with children” means any parent or legal
5 guardian who is apprehended with 1 or more of their
6 children.

7 (9) GROUP LEGAL ORIENTATION PRESEN-
8 TATIONS.—The term “group legal orientation pres-
9 entations” means live group presentations, supple-
10 mented by individual orientations, pro se workshops,
11 and pro bono referrals, that—

12 (A) are carried out by private nongovern-
13 mental organizations;

14 (B) are presented to detainees;

15 (C) inform detainees about Federal immi-
16 gration law and procedures; and

17 (D) enable detainees to determine their eli-
18 gibility for relief.

19 (10) IMMIGRATION ENFORCEMENT ACTION.—
20 The term “immigration enforcement action” means
21 the apprehension of, detention of, or request for or
22 issuance of a detainer for, 1 or more individuals for
23 suspected or confirmed violations of the Immigration
24 and Nationality Act (8 U.S.C. 1101 et seq.) by the
25 Department or cooperating entities.

1 (11) LOCAL EDUCATION AGENCY.—The term
2 “local education agency” has the meaning given to
3 the term in section 9101 of the Elementary and Sec-
4 ondary Education Act of 1965 (20 U.S.C. 7801).

5 (12) NGO.—The term “NGO” means a non-
6 governmental organization that provides social serv-
7 ices or humanitarian assistance to the immigrant
8 community.

9 (13) SECURE ALTERNATIVES.—The term “se-
10 cure alternatives” means custodial or noncustodial
11 programs under which aliens are screened and pro-
12 vided with appearance assistance services or placed
13 in supervision programs as needed to ensure they
14 appear at all immigration interviews, appointments
15 and hearings.

16 (14) SHORT-TERM DETENTION FACILITY.—The
17 term “detention facility” means a Federal, State, or
18 local government facility, or a privately owned and
19 operated facility, that is used to hold individuals sus-
20 pected or found to be in violation of the Immigration
21 and Nationality Act (8 U.S.C. 1101 et seq.) for 72
22 hours or less.

23 (15) UNACCOMPANIED ALIEN CHILDREN.—The
24 term “unaccompanied alien children” has the mean-

1 ing given the term in section 462(g) of the Home-
2 land Security Act of 2002 (6 U.S.C. 279(g)).

3 **SEC. 242. PROTECTIONS FOR VULNERABLE POPULATIONS.**

4 (a) PROTECTION OF VULNERABLE POPULATIONS.—

5 (1) IN GENERAL.—Not later than 72 hours
6 after the commencement of an immigration-related
7 enforcement activity, the Department shall screen
8 each detainee to determine if the individual is a
9 member of a vulnerable population.

10 (2) ELIGIBILITY FOR RELEASE.—An individual
11 is a member of a vulnerable population and eligible
12 for release under paragraph (3) if the Department
13 determines that he or she—

14 (A) has a nonfrivolous claim to United
15 States citizenship;

16 (B) has been deemed by a medically
17 trained professional to have medical or mental
18 health needs, or a disability;

19 (C) is pregnant or nursing;

20 (D) is being detained with 1 or more of his
21 or her children, or is 1 of such children;

22 (E) provides financial, physical, and other
23 direct support to his or her minor children, par-
24 ents, or other dependents;

25 (F) is older than 65 years of age;

1 (G) is a child (as defined in section 101(b)
2 of the Immigration and Nationality Act (8
3 U.S.C. 1101(b));

4 (H) is a victim of abuse, violence, crime, or
5 human trafficking;

6 (I) has been referred for a credible fear
7 interview, a reasonable fear interview, or an
8 asylum hearing, or is a stateless individual;

9 (J) has applied or intends to apply for asy-
10 lum, withholding of removal, or protection
11 under the Convention Against Torture and
12 Other Cruel, Inhuman or Degrading Treatment
13 or Punishment, done at New York December
14 10, 1984;

15 (K) is prima facie eligible for relief under
16 any provision of the Immigration and Nation-
17 ality Act (8 U.S.C. 1101 et seq.) including re-
18 turning lawful permanent residents; or

19 (L) is a member of any other group that
20 has been designated as a vulnerable population
21 in regulations or guidance promulgated by the
22 Secretary.

23 (b) OPTIONS REGARDING DETENTION DECISIONS
24 FOR VULNERABLE POPULATIONS.—Section 236 (8 U.S.C.
25 1226), as amended by this Act, is further amended—

1 (1) in subsection (a)—

2 (A) in the matter preceding paragraph (1)
3 by striking “(c)” and inserting “(g)”; and

4 (B) in paragraph (2)—

5 (i) in subparagraph (A), by striking
6 “or” at the end;

7 (ii) in subparagraph (B), by striking
8 “but” at the end; and

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

11 “(C) the alien’s own recognizance;” and.

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

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

16 “(3) may enroll the alien in a secure alter-
17 natives program; and”;

18 (2) by inserting after subsection (a) the fol-
19 lowing:

20 “(b) CUSTODY DECISIONS.—

21 “(1) CRITERIA TO BE CONSIDERED.—For any
22 alien who is not charged with inadmissibility or re-
23 movability under a ground specified in subsection (g)
24 or section 236A, the criteria that the Secretary of

1 Homeland Security or the Attorney General shall
2 use to demonstrate that detention is necessary are—

3 “(A) whether the alien poses a risk to pub-
4 lic safety, including a risk to national security;
5 and

6 “(B) whether alien poses a flight risk and
7 there are no conditions of release that will rea-
8 sonably ensure that the alien will appear for im-
9 migration proceedings, including bond or other
10 conditions that reduce the risk of flight.

11 “(2) EXCEPTION.—A decision to detain an
12 alien shall not be subject to the criteria under para-
13 graph (1) if the Secretary demonstrates, by a pre-
14 ponderance of the evidence, that the alien falls is de-
15 scribed in subsection (g)(1).

16 “(3) REVIEW.—Decisions by the Secretary or
17 the Attorney General under this section shall be sub-
18 ject to review.

19 “(c) CUSTODY DECISIONS FOR VULNERABLE POPU-
20 LATIONS.—

21 “(1) IN GENERAL.—Not later than 72 hours
22 after an individual is detained under this section
23 (unless the 72-hour requirement is waived in writing
24 by the individual), an individual who is a member of
25 a vulnerable population (as defined by subsection

1 (a)) shall be released from the custody of the De-
2 partment of Homeland Security and shall not be
3 subject to electronic monitoring unless the Depart-
4 ment demonstrates by a preponderance of evidence
5 that the individual—

6 “(A) is subject to mandatory detention
7 under subsection (g) or section 236A;

8 “(B) poses a risk to public safety, includ-
9 ing a risk to national security; or

10 “(C) is a flight risk and the risk cannot be
11 mitigated through other conditions of release,
12 such as bond or secure alternatives, which will
13 reasonably ensure the alien will appear for im-
14 migration proceedings.

15 “(2) RELEASE.—An individual shall be released
16 from custody under this subsection—

17 “(A) on the individual’s own recognizance;

18 “(B) by posting a minimum bond under
19 subsection (a)(2)(a);

20 “(C) on parole, in accordance with section
21 212(d)(5)(A); or

22 “(D) into a noncustodial secure alter-
23 natives program.

24 “(d) DECISION TO REMOVE OR RELEASE AN
25 ALIEN.—

1 “(1) IN GENERAL.—All decisions to detain an
2 individual under this Act—

3 “(A) shall be made in writing by the De-
4 partment of Homeland Security or the Attorney
5 General;

6 “(B) shall specify the reasons for such de-
7 cision if the decision is made to continue deten-
8 tion without bond, parole, release on recog-
9 nizance, or release into a noncustodial secure
10 alternatives program; and

11 “(C) shall be served upon the individual in
12 the language spoken by the individual—

13 “(i) not later than 72 hours after the
14 commencement of the alien’s detention; or

15 “(ii) in the case of an alien subject to
16 section 235 or 241(a)(5) who must estab-
17 lish a credible fear of persecution or tor-
18 ture, not later than 72 hours after a posi-
19 tive credible fear of persecution or reason-
20 able fear of persecution or torture deter-
21 mination.

22 “(2) REDETERMINATION.—

23 “(A) IN GENERAL.—Any alien detained by
24 the Department of Homeland Security under
25 this Act may, at any time after being served

1 with the Secretary's decision under paragraph
2 (1), request a redetermination of that decision
3 by an immigration judge.

4 “(B) OTHER DECISIONS.—The Attorney
5 General may review and conduct custody rede-
6 terminations for any custody decision by the
7 Secretary.

8 “(C) SAVINGS PROVISION.—Nothing in
9 this subparagraph may be construed to prevent
10 an individual from requesting a bond redeter-
11 mination.

12 “(e) TIMELY NOTICE UPON APPREHENSION AND
13 SERVICE OF CHARGING DOCUMENTS.—

14 “(1) NOTICE.—The Secretary, for each indi-
15 vidual detained by the Department under this sec-
16 tion, shall file the notice to appear or other relevant
17 charging document with the closest immigration
18 court to where the individual was apprehended and
19 serve such notice on the individual not later than 48
20 hours after the commencement of the individual's
21 detention.

22 “(2) CUSTODY DETERMINATION.—Any indi-
23 vidual who is detained under this section for more
24 than 48 hours shall be brought before an immigra-
25 tion judge for a custody determination not later than

1 72 hours after the commencement of such detention
2 unless the individual waives such right in accordance
3 with paragraph (3).

4 “(3) WAIVER.—The requirements under this
5 subsection may be waived for 7 days if the indi-
6 vidual—

7 “(A) enters into a written agreement with
8 the Department of Homeland Security to waive
9 such requirement; and

10 “(B) is eligible for immigration benefits or
11 demonstrates eligibility for a defense against re-
12 moval.

13 “(4) APPLICABILITY OF OTHER LAW.—Nothing
14 in this section may be construed to repeal section
15 236A.”;

16 (3) in subsection (e)(2), as redesignated, by in-
17 serting “or for humanitarian reasons,” after “such
18 an investigation,”; and

19 (4) by redesignating subsections (b), (c), and
20 (d), as subsections (f), (g), and (h), respectively.

21 **SEC. 243. APPREHENSION PROCEDURES FOR IMMIGRATION**
22 **ENFORCEMENT-RELATED ACTIVITIES RELAT-**
23 **ING TO CHILDREN.**

24 (a) NOTIFICATION.—

1 (1) ADVANCE NOTIFICATION.—Subject to para-
2 graph (2), when conducting any immigration en-
3 forcement action, the Department and cooperating
4 entities shall notify the Governor of the State, the
5 local child welfare agency, and relevant State and
6 local law enforcement before commencing the action,
7 or, if advance notification is not possible, imme-
8 diately after commencing such action, of—

9 (A) the approximate number of individuals
10 to be targeted in the immigration enforcement
11 action; and

12 (B) the primary language or languages be-
13 lieved to be spoken by individuals at the tar-
14 geted site.

15 (2) HOURS OF NOTIFICATION.—To the extent
16 possible, advance notification should occur during
17 business hours and allow the notified entities suffi-
18 cient time to identify resources to conduct the inter-
19 views described in subsection (b)(1).

20 (3) OTHER NOTIFICATION.—When conducting
21 any immigration action, the Department and cooper-
22 ating entities shall notify the relevant local education
23 agency and local NGOs of the information described
24 in paragraph (1) immediately after commencing the
25 action.

1 (b) APPREHENSION PROCEDURES.—In any immigra-
2 tion enforcement action, the Department and cooperating
3 entities shall—

4 (1) as soon as possible and not later than 6
5 hours after an immigration enforcement action, pro-
6 vide licensed social workers or case managers em-
7 ployed or contracted by the child welfare agency or
8 local NGOs with confidential access to screen and
9 interview individuals apprehended in such immigra-
10 tion enforcement action to assist the Department or
11 cooperating entity in determining if such individuals
12 are parents, legal guardians, or primary caregivers
13 of a child in the United States;

14 (2) as soon as possible and not later than 8
15 hours after an immigration enforcement action, pro-
16 vide any apprehended individual believed to be a
17 parent, legal guardian, or primary caregiver of a
18 child in the United States with—

19 (A) free, confidential telephone calls, in-
20 cluding calls to child welfare agencies, attor-
21 neys, and legal services providers, to arrange
22 for the care of children or wards, unless the De-
23 partment has reasonable grounds to believe that
24 providing confidential phone calls to the indi-

1 vidual would endanger public safety or national
2 security; and

3 (B) contact information for—

4 (i) child welfare agencies in all 50
5 States, the District of Columbia, all United
6 States territories, counties, and local juris-
7 dictions; and

8 (ii) attorneys and legal service pro-
9 viders capable of providing free legal advice
10 or free legal representation regarding child
11 welfare, child custody determinations, and
12 immigration matters;

13 (3) ensure that personnel of the Department
14 and cooperating entities do not—

15 (A) interview individuals in the immediate
16 presence of children; or

17 (B) compel or request children to translate
18 for interviews of other individuals who are en-
19 countered as part of an immigration enforce-
20 ment action; and

21 (4) ensure that any parent, legal guardian, or
22 primary caregiver of a child in the United States—

23 (A) receives due consideration of the best
24 interests of his or her children or wards in any
25 decision or action relating to his or her deten-

1 tion, release, or transfer between detention fa-
2 cilities; and

3 (B) is not transferred from his or her ini-
4 tial detention facility or to the custody of the
5 Department until the individual—

6 (i) has made arrangements for the
7 care of his or her children or wards; or

8 (ii) if such arrangements are impos-
9 sible, is informed of the care arrangements
10 made for the children and of a means to
11 maintain communication with the children.

12 (c) NONDISCLOSURE AND RETENTION OF INFORMA-
13 TION ABOUT APPREHENDED INDIVIDUALS AND THEIR
14 CHILDREN.—

15 (1) IN GENERAL.—Information collected by
16 child welfare agencies and NGOs in the course of
17 the screenings and interviews described in subsection
18 (b)(1) about an individual apprehended in an immi-
19 gration enforcement action may not be disclosed to
20 Federal, State, or local government entities or to
21 any person, except pursuant to written authorization
22 from the individual or his or her legal counsel.

23 (2) CHILD WELFARE AGENCY OR NGO REC-
24 COMMENDATION.—Notwithstanding paragraph (1), a
25 child welfare agency or NGO may—

1 (A) submit a recommendation to the De-
2 partment of Homeland Security or cooperating
3 entities regarding whether an apprehended indi-
4 vidual is a parent, legal guardian, or primary
5 caregiver who is eligible for the protections pro-
6 vided under this Act; and

7 (B) disclose information that is necessary
8 to protect the safety of the child, to allow for
9 the application of subsection (b)(4)(A), or to
10 prevent reasonably certain death or substantial
11 bodily harm.

12 **SEC. 244. DETENTION OF FAMILIES.**

13 (a) **PLACEMENT IN REMOVAL PROCEEDINGS.**—Any
14 family with children sought to be removed by the Depart-
15 ment shall be placed in removal proceedings under section
16 240 of the Immigration and Nationality Act (8 U.S.C.
17 1229a).

18 (b) **CUSTODY OF FAMILIES WITH CHILDREN.**—

19 (1) **SEPARATION.**—Families with children shall
20 not be separated or taken into custody except when
21 justified by exceptional circumstances, or when re-
22 quired by law.

23 (2) **EXCEPTIONAL CIRCUMSTANCES.**—In excep-
24 tional circumstances, if release or a secure alter-

1 natives program is not an option for families with
2 children, the Secretary shall ensure that—

3 (A) special nonpenal, residential, home-like
4 facilities that enable families to live as a family
5 unit are designed to house families with chil-
6 dren, taking into account the particular needs
7 and vulnerabilities of the children;

8 (B) procedures and conditions of custody
9 are appropriate for families with children;

10 (C) entities with demonstrated experience
11 and expertise in child welfare staff and are re-
12 sponsible for the management of facilities hous-
13 ing families with children;

14 (D) unless such restrictions are necessary
15 to prevent flight or to ensure the safety of resi-
16 dents, families with children are are not subject
17 restrictions—

18 (i) on freedom of movement;

19 (ii) involving access to visitations,
20 telephones, internet, a library, and a law li-
21 brary;

22 (iii) regarding possession of personal
23 property, including personal clothing;

24 (iv) on the availability of age appro-
25 priate education; or

1 (v) religious practices;

2 (E) individualized reviews by an immigra-
3 tion judge of each family’s well being, custody
4 status and the need for continued detention are
5 conducted every 30 days for any family held in
6 such a facility for more than 3 weeks;

7 (F) all families are notified in writing of
8 the decisions resulting from such reviews and of
9 the individualized reasons for the decision; and

10 (G) parents retain fundamental parental
11 rights and responsibilities, including the dis-
12 cipline of children, in accordance with applica-
13 ble State laws.

14 (c) DISCRETIONARY WAIVER AUTHORITY FOR FAMI-
15 LIES WITH CHILDREN.—Section 235(b)(1)(B)(iii) (8
16 U.S.C. 1225(b)(1)(B)(iii)) is amended—

17 (1) in subclause (IV), by striking “Any alien”
18 and inserting “Except as provided in subclause (V),
19 any alien”; and

20 (2) by adding at the end the following:

21 “(V) DISCRETIONARY WAIVER
22 AUTHORITY FOR FAMILIES WITH
23 CHILDREN.—The Secretary of Home-
24 land Security may decide for humani-
25 tarian reasons or significant public

1 benefit not to detain families with
2 children who are otherwise subject to
3 mandatory detention under subclause
4 (IV).”.

5 **SEC. 245. ACCESS TO CHILDREN, LOCAL AND STATE**
6 **COURTS, CHILD WELFARE AGENCIES, AND**
7 **CONSULAR OFFICIALS.**

8 (a) IN GENERAL.—The Secretary shall ensure that
9 all detention facilities operated by or under agreement
10 with the Department implement procedures to ensure that
11 the best interest of the child, including the best outcome
12 for the family of the child, is considered in any decision
13 or action relating to the custody of children whose parent,
14 legal guardian, or primary caregiver is detained as the re-
15 sult of an immigration enforcement action.

16 (b) ACCESS TO CHILDREN, STATE AND LOCAL
17 COURTS, CHILD WELFARE AGENCIES, AND CONSULAR
18 OFFICIALS.—At all detention facilities operated by, or
19 under agreement with, the Department, the Secretary
20 shall—

21 (1) ensure that individuals who are detained by
22 reason of their immigration status may receive the
23 screenings and interviews described in section
24 243(b)(1) not later than 6 hours after their arrival
25 at the detention facility;

1 (2) ensure that individuals who are detained by
2 reason of their immigration status and are believed
3 to be parents, legal guardians, or primary caregivers
4 of children in the United States are—

5 (A) permitted daily phone calls and regular
6 contact visits with their children or wards;

7 (B) able to participate fully, and to the ex-
8 tent possible in-person, in all family court pro-
9 ceedings and any other proceeding impacting
10 upon custody of their children or wards;

11 (C) able to fully comply with all family
12 court or child welfare agency orders impacting
13 upon custody of their children or wards;

14 (D) provided with contact information for
15 family courts in all 50 States, the District of
16 Columbia, all United States territories, coun-
17 ties, and local jurisdictions;

18 (E) granted free and confidential telephone
19 calls to child welfare agencies and family
20 courts;

21 (F) granted free and confidential telephone
22 calls and confidential in-person visits with at-
23 torneys, legal representatives, and consular offi-
24 cials;

1 (G) provided United States passport appli-
2 cations for the purpose of obtaining travel docu-
3 ments for their children or wards;

4 (H) granted adequate time before removal
5 to obtain passports and other necessary travel
6 documents on behalf of their children or wards
7 if such children or wards will accompany them
8 on their return to their country of origin or join
9 them in their country of origin; and

10 (I) provided with the access necessary to
11 obtain birth records or other documents re-
12 quired to obtain passports for their children or
13 wards; and

14 (3) facilitate the ability of detained parents,
15 legal guardians, and primary caregivers to share in-
16 formation regarding travel arrangements with their
17 children or wards, child welfare agencies, or other
18 caregivers well in advance of the detained individ-
19 ual's departure from the United States.

20 **SEC. 246. MEMORANDA OF UNDERSTANDING.**

21 The Secretary shall develop and implement memo-
22 randa of understanding or protocols with child welfare
23 agencies and NGOs regarding the best ways to cooperate
24 and facilitate ongoing communication between all relevant
25 entities in cases involving a child whose parent, legal

1 guardian, or primary caregiver has been apprehended or
2 detained in an immigration enforcement action to protect
3 the best interests of the child and the best outcome for
4 the family of the child.

5 **SEC. 247. MANDATORY TRAINING.**

6 The Secretary, in consultation with the Secretary of
7 Health and Human Services and independent child welfare
8 experts, shall require and provide in-person training on
9 the protections required to all personnel of the Depart-
10 ment and of States and local entities acting under agree-
11 ment with the Department who regularly come into con-
12 tact with children or parents in the course of conducting
13 immigration enforcement actions.

14 **SEC. 248. ALTERNATIVES TO DETENTION.**

15 (a) **SECURE ALTERNATIVES.**—The Secretary shall
16 establish secure alternatives programs to ensure public
17 safety and appearances at immigration proceedings. The
18 Secretary shall contract with nongovernmental organiza-
19 tions to conduct screening of detainees, provide appear-
20 ance assistance services, and operate community-based su-
21 pervision programs. If an individual is not eligible for re-
22 lease from custody, the Secretary shall consider the alien
23 for placement in secure alternatives that maintain custody
24 over the alien, including but not limited to the use of elec-
25 tronic ankle devices. When deciding whether to use custo-

1 dial secure alternatives, the Secretary shall make an indi-
2 vidualized determination and review each case on a month-
3 ly basis. The Secretary may use secure alternatives pro-
4 grams to maintain custody over any alien detained under
5 the Immigration and Nationality Act, except aliens de-
6 tained under section 236A of such Act (8 U.S.C. 1226a).

7 **SEC. 249. DETENTION CONDITIONS.**

8 (a) **DETENTION REQUIREMENTS.**—The Secretary
9 shall ensure that all persons detained pursuant to the Im-
10 migration and Nationality Act are treated humanely and
11 granted the protections set forth in this section. The Sec-
12 retary shall comply with and enforce the following min-
13 imum requirements:

14 (1) **QUALITY OF MEDICAL CARE.**—Each de-
15 tainee has the right to prompt and adequate medical
16 care, designed to ensure continuity of care, at no
17 cost to the detainee, including care to address med-
18 ical needs that existed prior to detention. Such care
19 shall include primary care, emergency care, chronic
20 care, reproductive health care, prenatal care, dental
21 care, eye care, mental health care, medical dietary
22 needs, and other medically necessary specialized
23 care. The Secretary shall cease use of any short
24 term facility or detention facility that fails to main-
25 tain accreditation for more than 1 year.

1 (A) Each detainee shall receive a com-
2 prehensive medical, dental, and mental health
3 intake screening by a licensed health care pro-
4 fessional upon arrival at the detention facility
5 and each detainee shall receive a comprehensive
6 medical and mental health examination by a li-
7 censed health care professional not later than
8 14 days after arrival.

9 (B) All prescribed medications and medi-
10 cally necessary treatment shall be provided to
11 detainees on schedule and without interruption.
12 Medically necessary treatment shall include pre-
13 natal care, prenatal vitamins, and hormonal
14 therapies including birth control. Female de-
15 tainees shall be provided with adequate access
16 to sanitary products. Each detainee taking pre-
17 scribed medications prior to detention shall be
18 allowed to continue taking such medications, on
19 schedule and without interruption, until and
20 unless a licensed health care professional exam-
21 ines the immigration detainee and decides upon
22 an alternative course of treatment. Detainees
23 who arrive at a detention facility with prescrip-
24 tion medications shall be permitted to continue
25 taking their medications, on schedule and with-

1 out interruption, until such time as a qualified
2 health care professional examines the detainee
3 and decides upon an alternative course of treat-
4 ment. Detainees who arrive at a detention facil-
5 ity without prescription medications but who re-
6 port being on such medications shall be evalu-
7 ated by a qualified health care professional as
8 soon as possible, but not later than 24 hours
9 after arrival. All decisions to discontinue or
10 modify a detainee's reported prescription medi-
11 cation regimen shall be conveyed to the detainee
12 in a language that the detainee understands
13 and shall be recorded in writing in the detain-
14 ee's medical records.

15 (C) Involuntary psychotropic medication
16 may be used only if allowed by applicable law
17 and then only in emergency situations when a
18 physician has determined, after personally ex-
19 amining the patient, that a detainee is immi-
20 nently dangerous to self or others due to a
21 mental illness and that involuntary psychotropic
22 medication is medically appropriate to treat the
23 mental illness and necessary to prevent harm.
24 Medication shall not be forcibly administered to

1 a detainee to facilitate transport, removal or
2 otherwise to control the detainee's behavior.

3 (D) On-Site Medical Providers. Detention
4 facilities, in conjunction with the Department,
5 shall provide for an administrative process for
6 handling appeals of denials of medical or men-
7 tal health treatment or care. Any decision re-
8 garding requested medical care for a detainee
9 shall be made in writing by an on-site licensed
10 health care professional within 72 hours. The
11 decision of the on-site provider shall be commu-
12 nicated without delay to the detainee.

13 (E) Administrative Appeals Process. De-
14 tention facilities, in conjunction with the De-
15 partment, shall ensure that detainees, medical
16 providers, and legally-appointed advocates have
17 the opportunity to appeal a denial of requested
18 health care services by an on-site provider to an
19 independent appeals board. The appeals board
20 shall include health care professionals in the
21 fields relevant to the request for medical or
22 mental health care. Any such appeal shall be re-
23 solved in writing within 7 days by the appeals
24 board or earlier if medically necessary.

1 (F) Review of on-site medical provider re-
2 quests. The Secretary shall respond within 72
3 hours to any request by an on-site medical pro-
4 vider for authorization to provide medical or
5 mental health care to an immigration detainee.
6 In each case in which the Secretary denies or
7 fails to grant such a request by the onsite med-
8 ical provider, a written explanation of the rea-
9 sons for the decision shall be conveyed without
10 delay to the on-site medical provider and the
11 immigration detainee. The on-site medical pro-
12 vider and immigration detainee (or legally ap-
13 pointed advocate) shall be permitted to appeal
14 the denial of or failure to grant the requested
15 health care service. Such appeal shall be re-
16 solved in writing within 7 days by an impartial
17 appeals board or earlier if medically necessary
18 and communicated without delay to the on-site
19 medical provider and the immigration detainee.

20 (G) Any detainee deemed by a licensed
21 health care professional to have a medical or
22 mental health care condition shall be considered
23 for release on parole, on bond, or into a secure
24 alternatives program, with periodic reevalua-
25 tions for such detainees not initially released.

1 (H) Upon removal or release, all detainees
2 with medical or mental health conditions and
3 women who are pregnant, post-natal, and nurs-
4 ing mothers shall receive discharge planning to
5 ensure continuity of care for a reasonable pe-
6 riod of time.

7 (I) The Department shall maintain com-
8 plete, confidential medical records for every de-
9 tainee, which shall be made available within 72
10 hours upon request to a detainee or individuals
11 authorized by the detainee. Immediately upon
12 an immigration detainee's transfer from one de-
13 tention facility to another, the immigration de-
14 tainee's complete medical records, including any
15 transfer summary, shall be provided to the re-
16 ceiving facility.

17 (2) TRANSFERS OF DETAINEES.—

18 (A) NOTICE.—Absent exigent cir-
19 cumstances, such as a natural disaster or com-
20 parable emergency, the Secretary shall provide
21 not less than 72 hours written notice to any de-
22 tainee before such detainee is transferred to an-
23 other detention facility. Not later than 24 hours
24 after transfer, the Secretary shall notify by tele-
25 phone and in writing the detainee's legal rep-

1 representative or other person designated by the
2 detainee of the transfer.

3 (B) PROCEDURES.—Absent exigent cir-
4 cumstances, such as a natural disaster or com-
5 parable emergency, the Secretary shall not
6 transfer a detainee to another detention facility
7 if such transfer would impair an existing attor-
8 ney-client relationship; prejudice the rights of
9 the detainee in any legal proceeding, including
10 any federal, state or administrative proceeding;
11 or negatively affect the detainee’s health includ-
12 ing by interrupting the continuity of medical
13 care or provision of prescription medication.

14 (C) TRANSPORTATION.—The Secretary
15 shall ensure the safe transport and deportation
16 of each individual detained under the Immigra-
17 tion and Nationality Act, including appropriate
18 use of safety harnesses and occupancy limita-
19 tions of vehicles.

20 (3) ACCESS TO TELEPHONES.—Detention facili-
21 ties shall provide detainees with reasonable access to
22 telephones not later than 6 hours after the com-
23 mencement of a detention of an individual that shall
24 include at a minimum one working phone for every
25 25 detainees. Each detainee has the right to contact,

1 free of charge, legal representatives, designated non-
2 governmental organizations, consular officials, Fed-
3 eral and State courts where the detainee is or may
4 become involved in a legal proceeding, and all gov-
5 ernment immigration agencies and adjudicatory bod-
6 ies including the DHS Office of the Inspector Gen-
7 eral and the DHS Office for Civil Rights and Civil
8 Liberties through confidential toll-free numbers.
9 Confidential calls at no charge shall be provided to
10 detainees who are subject to expedited removal or
11 who are experiencing personal or family emergencies,
12 including the need to arrange care for dependents.
13 Each detainee has the right to privacy of telephone
14 conversations made for the purpose of obtaining
15 legal representation or related to legal matters. The
16 Secretary shall ensure that rates charged in deten-
17 tion facilities for telephone calls are reasonable and
18 do not significantly impair the detainee's right to ac-
19 cess telephones.

20 (4) PHYSICAL AND SEXUAL ABUSE.—No de-
21 tainee, whether in a detention facility or short term
22 detention facility, shall be subject to degrading or in-
23 humane treatment such as physical abuse, sexual
24 abuse or harassment, or arbitrary punishment. De-
25 tention facilities shall take all necessary measures to

1 prevent sexual abuse and sexual assaults of detain-
2 ees, to provide medical and mental health treatment
3 to victims of sexual abuse and sexual assaults and
4 shall comply fully with the standards under the Pris-
5 on Rape Elimination Act of 2003 (42 U.S.C. 15601
6 et seq.)

7 (5) LIMITATIONS ON SOLITARY CONFINEMENT
8 AND STRIP SEARCHES.—The use of solitary confine-
9 ment, shackling, and strip searches of detainees
10 shall be limited to situations where the use of such
11 techniques is necessitated by extraordinary cir-
12 cumstances when the safety of other persons is at
13 imminent risk. These techniques shall in no event be
14 used for the purpose of humiliating detainees either
15 within or outside the detention facility. Detention fa-
16 cilities shall adopt written policies pertaining to the
17 use of force and the use of restraints and shall train
18 all staff on the proper use of such devices. Solitary
19 confinement, shackling and strip searches shall not
20 be used on pregnant women, nursing mothers,
21 women in labor or delivery or children who are
22 younger than 18 years of age. Strip searches shall
23 not be conducted in front of children who are young-
24 er than 21 years of age.

1 (6) LOCATION OF DETENTION FACILITIES.—All
2 new detention facilities used by the Department
3 shall be located within 50 miles of a city or munici-
4 pality in which there is a demonstrated capacity to
5 provide free or low-cost legal representation by non-
6 profit legal aid organizations or pro bono attorneys
7 with expertise in asylum or immigration law. By
8 January 1, 2012, all detention facilities used by the
9 Department shall meet this requirement, and if the
10 Secretary is unable to comply, the Secretary shall
11 submit a report to Congress on that date and annu-
12 ally each year thereafter, explaining the reasons for
13 the failure and the specific plans to meet the re-
14 quirement.

15 (7) TRANSLATION CAPABILITIES.—Detention
16 facilities and short term detention facilities shall em-
17 ploy facility staff who are professionally qualified in
18 any language spoken by more than 10 percent of its
19 immigration detainee population. All short term de-
20 tention facilities and detention facilities shall provide
21 alternative translation services in the exceptional cir-
22 cumstances when trained bilingual staff members
23 are unavailable to translate. All such facilities shall
24 provide notices and written materials to detainees

1 translated in any language spoken by more than 5
2 percent of its immigration detainee population.

3 (8) LEGAL ACCESS.—Detainees in detention fa-
4 cilities have the right to access legal information, in-
5 cluding an on-site law library with up-to-date legal
6 materials and law databases. Each detainee has the
7 right to access free of charge the necessary equip-
8 ment and materials for legal research and cor-
9 respondence, such as computers, printers, copiers,
10 and typewriters. The Secretary shall ensure each de-
11 tainee is provided with information regarding the
12 availability of legal information and services to assist
13 those with limited English proficiency or disabilities.
14 Detention facilities shall also provide access for each
15 detainee to meet confidentially with legal counsel
16 and shall provide services to send confidential legal
17 documents to legal counsel, government offices and
18 legal organizations.

19 (9) VISITATIONS.—Detainees in detention facili-
20 ties have the right to meet privately with his or her
21 current or prospective legal representative, inter-
22 preters, and other legal support staff a minimum of
23 8 hours per day on regular business days and 4
24 hours per day on weekends and holidays, subject to
25 appropriate security procedures. Legal visits shall

1 not be restricted absent narrowly defined exceptional
2 circumstances, such as a natural disaster or com-
3 parable emergency. Detention facilities shall promi-
4 nently post official lists, updated semi-annually by
5 the Secretary of Homeland Security, of pro bono
6 legal organizations and their contact information in
7 detainee housing units and other appropriate areas.
8 Each detainee has the right to reasonable access to
9 religious or other qualified individuals to address re-
10 ligious, cultural, or spiritual considerations. Detain-
11 ees have the right to regular, private contact visits
12 with children who are younger 18 years of age.

13 (10) RECREATIONAL PROGRAMS AND ACTIVI-
14 TIES.—Detainees in detention facilities shall be af-
15 farded access to at least one hour each day of indoor
16 and outdoor recreational programs and activities for
17 detainees.

18 (11) TRAINING OF PERSONNEL.—All personnel
19 in detention facilities and short term detention facili-
20 ties shall be given a comprehensive specialized train-
21 ing and regular, periodic updates that shall include
22 at a minimum an overview of immigration detention
23 and all detention standards; the characteristics of
24 the non-citizen detainee population including special
25 characteristics of vulnerable groups; and the due

1 process and grievance procedures to protect the
2 rights of detainees.

3 (12) SPECIFIC DETENTION REQUIREMENTS FOR
4 SHORT TERM DETENTION FACILITIES.—All detainees
5 in short term detention facilities shall receive potable
6 water; food if detained for more than 5 hours; basic
7 toiletries, diapers, sanitary products and blankets;
8 and access to bathroom facilities and telephones.
9 The Secretary or his designates shall provide con-
10 sular officials with access to detainees held at such
11 facilities. Detainees shall be afforded reasonable ac-
12 cess to a licensed health care professional. The Sec-
13 retary shall ensure that nursing mothers in such fa-
14 cilities have access to their children. Any property
15 the Department confiscates from detainees shall be
16 returned upon repatriation or transfer.

17 (A) PROTECTIONS FOR CHILDREN IN
18 SHORT-TERM FACILITIES.—For purposes of this
19 section, the Secretary shall provide adequately
20 trained and qualified staff resources at each
21 major port of entry (as defined by the U.S.
22 Customs and Border Protection station as-
23 signed to that port having in its custody over
24 the past two fiscal years an average per year of
25 50 or more unaccompanied alien children (as

1 defined in section 462 of the Homeland Secu-
2 rity Act of 2002 (6 U.S.C. 279))), including
3 U.S. Customs and Border Protection agents
4 charged primarily with the safe, swift, and hu-
5 mane transportation of unaccompanied alien
6 children to Office of Refugee Resettlement cus-
7 tody and independent licensed social workers
8 dedicated to ensuring the proper temporary
9 care for the children while in Department cus-
10 tody prior to their transfer to the Office of Ref-
11 ugee Resettlement, who will ensure that each
12 child—

13 (i) receives emergency medical care;

14 (ii) receives mental health care in case
15 of trauma and has access to psychosocial
16 health services;

17 (iii) is provided with a pillow, linens,
18 and sufficient blankets to rest at a com-
19 fortable temperature, a bed, and a mat-
20 tress placed in an area specifically des-
21 ignated for residential use;

22 (iv) receives adequate nutrition;

23 (v) enjoys a safe and sanitary living
24 environment;

1 (vi) receives educational materials;

2 and

3 (vii) has access to at least three hours
4 per day of indoor and outdoor recreational
5 programs and activities.

6 (B) CONFIDENTIALITY.—The Secretary of
7 Health and Human Services shall maintain the
8 privacy and confidentiality of all information
9 gathered in the course of providing care, cus-
10 tody, placement and follow-up services to unac-
11 companied alien children, consistent with the
12 best interest of the unaccompanied alien child,
13 by not disclosing such information to other gov-
14 ernment agencies or nonparental third parties.
15 The Secretary may share information when au-
16 thorized to do so by the child and when con-
17 sistent with the child's best interest. The Sec-
18 retary may provide information to a duly recog-
19 nized law enforcement entity, if such disclosure
20 would prevent imminent and serious harm to
21 another individual. All disclosures shall be duly
22 recorded in writing and placed in the child's
23 files.

24 (13) VULNERABLE POPULATIONS.—Detention
25 facility conditions and minimum requirements for

1 detention facilities shall recognize and accommodate
2 the unique needs of vulnerable populations as de-
3 fined by this Act.

4 (14) CHILDREN.—The Secretary shall ensure
5 that unaccompanied alien children (as defined in
6 section 462 of the Homeland Security Act of 2002
7 (6 U.S.C. 279)) are physically separated from any
8 adult who is not an immediate family member and
9 are separated by sight and sound from immigration
10 detainees and inmates with criminal convictions, pre-
11 trial inmates facing criminal prosecution, children
12 who have been adjudicated delinquents or convicted
13 of adult offenses or are pending delinquency or
14 criminal proceedings, and those inmates exhibiting
15 violent behavior while in detention as is consistent
16 with the Juvenile Justice and Delinquency Preven-
17 tion Act of 1974 (42 U.S.C. 5601 et seq.)

18 (b) RULEMAKING AND ENFORCEMENT.—

19 (1) IN GENERAL.—

20 (A) NOTICE OF PROPOSED RULE-
21 MAKING.—Not later than 60 days after the date
22 of the enactment of this Act, the Secretary shall
23 issue a notice of proposed rulemaking regarding
24 the enforcement of this section.

1 (B) FINAL REGULATIONS.—Not later than
2 180 days after the date of the enactment of this
3 Act, the Secretary shall promulgate regulations,
4 binding upon all short term detention facilities
5 and detention facilities, to ensure that the de-
6 tention requirements under subsection (a) are
7 fully implemented and enforced, and that all fa-
8 cilities comply with the regulations.

9 (2) ENFORCEMENT.—The Secretary shall en-
10 force all regulations promulgated under paragraph
11 (1). Not later than 180 days after the date of the
12 enactment of this Act, the Secretary shall issue
13 guidance for ensuring compliance with all detention
14 requirements, and all regulations and standards pro-
15 mulgated under paragraph (1), by short term deten-
16 tion facilities and detention facilities. Such mecha-
17 nisms may include the imposition of financial pen-
18 alties upon noncompliant facilities and, in cases of
19 persistent noncompliance, may include the termi-
20 nation of facilities contract with the Department.

21 (A) Such procedures shall include mecha-
22 nisms for review by the Secretary of any evi-
23 dence of non-compliance with the provisions of
24 this section. Evidence pertaining to violations of
25 these provisions, including detainee complaints,

1 shall be investigated and determined by the
2 Secretary within 30 days and, if a violation is
3 found, such violations shall be remedied within
4 an additional 30 days. A decision by the Sec-
5 retary not to pursue such an enforcement ac-
6 tion shall constitute final agency action.

7 (B) Each detainee has the right to file
8 grievances with the staff of short term deten-
9 tion facilities, detention facilities, and the De-
10 partment and shall be protected from retali-
11 ation.

12 (C) Each short term detention facility and
13 detention facility shall designate an officer to
14 ensure compliance with the provisions of this
15 section. Such officer shall investigate all evi-
16 dence pertaining to a violation of this section
17 and, if a violation is identified, shall remedy the
18 violation within 30 days. A detainee may not
19 seek review in district court until after the pas-
20 sage of the afore-described 30-day period.

21 (D) Nothing in the Act may be construed
22 to preclude review of noncompliance with this
23 section under section 1983 of title 42, United
24 States Code.

1 (E) No individual shall seek remedy in dis-
2 trict court without first having complied with
3 the procedures promulgated under paragraph 1
4 or paragraph 2 of this subsection. No individual
5 may seek punitive damages for violations under
6 this section.

7 (c) DETENTION COMMISSION.—

8 (1) APPOINTMENT.—The Secretary shall ap-
9 point and convene a detention commission comprised
10 of experts from U.S. Immigration and Customs En-
11 forcement, U.S. Customs and Border Protection, the
12 Office of Refugee Resettlement, and Division of Im-
13 migration Health Services in the Department of
14 Health and Human Services, and an equal number
15 of independent experts from nongovernmental orga-
16 nizations and intergovernmental organizations with
17 expertise in working on behalf of aliens detained
18 under immigration laws and vulnerable populations.

19 (2) DUTIES.—The commission shall conduct
20 independent investigations, evaluate, and report on
21 the compliance of short term detention facilities, de-
22 tention facilities and the Department with the re-
23 quirements set forth in this Act.

24 (3) REPORT.—Not later than 60 days after the
25 first September 30 after the date of the enactment

1 of this Act, and biennially thereafter, the commis-
2 sion shall submit a report on the duties set forth in
3 paragraph (2) to—

4 (A) the Committee on the Judiciary of the
5 Senate;

6 (B) the Committee on Homeland Security
7 and Governmental Affairs of the Senate;

8 (C) the Committee on the Judiciary of the
9 House of Representatives; and

10 (D) the Committee on Homeland Security
11 of the House of Representatives.

12 (d) DEATH IN CUSTODY REPORTING REQUIRE-
13 MENT.—

14 (1) IN GENERAL.—If an individual dies while in
15 the custody of the Department or en route to or
16 from custody, the supervising official at a short term
17 detention facility or detention facility shall imme-
18 diately report such death to the Secretary. Not later
19 than 48 hours after receiving the report of such
20 death, the Secretary shall report the death to the
21 Office of the Inspector General of the Department
22 and the Department of Justice.

23 (2) INVESTIGATIONS.—The Department shall
24 complete an investigation of each detainee death
25 that shall be conducted consistent with established

1 medical practice for morbidity and mortality reviews
2 and examine both individual and systemic contribu-
3 tors to the death. The investigation shall be con-
4 ducted by a panel of physicians with experience in
5 morbidity and mortality reviews and shall include
6 the medical staff of the facility or facilities that
7 cared for the deceased detainee, physicians from
8 within the Department, and independent physicians
9 not affiliated with the Department or facility. The
10 panel shall complete a report and corrective action
11 plan in each case.

12 (3) REPORTS.—

13 (A) IN GENERAL.—Not later than 60 days
14 after the end of each fiscal year, the Secretary
15 shall submit to the Committee on the Judiciary
16 and the Committee on Homeland Security and
17 Governmental Affairs of the Senate and the
18 Committee on the Judiciary and the Committee
19 on Homeland Security of the House of Rep-
20 resentatives a report containing detailed infor-
21 mation regarding all such deaths during the
22 preceding fiscal year, including each mortality
23 and morbidity report, corrective action plan,
24 and corrective actions taken.

1 (B) CONTENTS.—The reports to the Office
2 of the Inspector General and to Congress ref-
3 erenced in paragraph (1) shall, at a minimum,
4 include the name, gender, race, ethnicity, and
5 age of the deceased; the date, time, and location
6 of death; the law enforcement agency that de-
7 tained, arrested, or was in the process of arrest-
8 ing the deceased; a description of the cir-
9 cumstances surrounding the death; the status
10 and results of any investigation that has been
11 conducted into the circumstances surrounding
12 the death; and all medical records of the de-
13 ceased.

14 **SEC. 250. ACCESS TO COUNSEL.**

15 Section 240(b)(4) (8 U.S.C. 1229a(b)(4)) is amend-
16 ed—

17 (1) in the matter preceding subparagraph (A),
18 by striking “In proceedings under this section, under
19 regulations of the Attorney General” and inserting
20 “The Attorney General shall promulgate regulations
21 for proceedings under this section, under which—”

22 (2) in subparagraph (B), by striking “, and” at
23 the end and inserting a semicolon;

24 (3) by redesignating subparagraph (C) as sub-
25 paragraph (D); and

1 (4) by inserting after subparagraph (B) the fol-
2 lowing:

3 “(C) the Attorney General, or the designee
4 of the Attorney General, may appoint counsel to
5 represent an alien if the fair resolution or effec-
6 tive adjudication of the proceedings would be
7 served by appointment of counsel; and”.

8 **SEC. 251. GROUP LEGAL ORIENTATION PRESENTATIONS.**

9 (a) ESTABLISHMENT OF A NATIONAL LEGAL ORI-
10 ENTATION SUPPORT AND TRAINING CENTER.—The At-
11 torney General, in consultation with the Secretary, shall
12 establish a National Legal Orientation Support and Train-
13 ing Center (referred to in this section as the “Center”)
14 to ensure quality and consistent implementation of group
15 legal orientation programs nationwide.

16 (b) DUTIES.—The Center shall—

17 (1) offer training to nonprofit agencies that will
18 offer group legal orientation programs;

19 (2) consult with nonprofit agencies offering
20 group legal orientation programs regarding program
21 development and substantive legal issues;

22 (3) develop standards for group legal orienta-
23 tion programs; and

24 (4) ensure that all detained aliens in immigra-
25 tion and asylum proceedings under sections 235,

1 238, 240, and 241(b)(5) of the Immigration and
2 Nationality Act (8 U.S.C. 1225, 1228, 1229a, and
3 1231(b)(5)) receive group legal orientation pro-
4 grams.

5 (c) PROCEDURES.—The Secretary shall establish pro-
6 cedures for regularly scheduled, group legal orientation
7 presentations.

8 (d) GRANTS AUTHORIZED.—The Attorney General
9 shall establish a program to award grants to nongovern-
10 mental agencies to develop, implement, or expand legal
11 orientation programs for all detainees at a detention facil-
12 ity that offers such programs.

13 **SEC. 252. PROTECTIONS FOR REFUGEES.**

14 (a) PROTECTION OF REFUGEES PRIOR TO ADJUST-
15 MENT.—Section 209 (8 U.S.C. 1159) is amended—

16 (1) in subsection (a)(1), by striking “return or
17 be returned to the custody of the Department of
18 Homeland Security for inspection and examination
19 for admission to the United States as an immigrant
20 in accordance with the provisions of sections 235,
21 240, and 241” and inserting “be eligible for adjust-
22 ment of status as an immigrant to the United
23 States”;

24 (2) in subsection (a)(2), by striking “upon in-
25 spection and examination”; and

1 (3) in subsection (c), by adding at the end the
2 following: “An application for adjustment under this
3 section may be filed up to 3 months before the date
4 the applicant would first otherwise be eligible for ad-
5 justment under this section.”.

6 (b) PROCEDURES FOR ENSURING ACCURACY AND
7 VERIFIABILITY OF SWORN STATEMENTS TAKEN PURSU-
8 ANT TO EXPEDITED REMOVAL AUTHORITY.—

9 (1) IN GENERAL.—The Secretary shall establish
10 quality assurance procedures to ensure the accuracy
11 and verifiability of signed or sworn statements taken
12 by employees of the Department exercising expedited
13 removal authority under section 235(b) of the Immi-
14 gration and Nationality Act (8 U.S.C. 1225(b)).

15 (2) RECORDING OF INTERVIEWS.—Any sworn
16 or signed written statement taken of an alien as part
17 of the record of a proceeding under section
18 235(b)(1)(A) of the Immigration and Nationality
19 Act (8 U.S.C. 1225(b)(1)(A)) shall be accompanied
20 by a recording of the interview which served as the
21 basis for that sworn statement.

22 (3) RECORDINGS.—

23 (A) IN GENERAL.—The recording of the
24 interview shall include the written statement, in
25 its entirety, being read back to the alien in a

1 language that the alien claims to understand,
2 and the alien affirming the accuracy of the
3 statement or making any corrections thereto.

4 (B) FORMAT.—The recording shall be
5 made in video, audio, or other equally reliable
6 format.

7 (4) EXEMPTION AUTHORITY.—

8 (A) Subsections (b) and (c) shall not apply
9 to interviews that occur at facilities exempted
10 by the Secretary pursuant to this subsection.

11 (B) The Secretary or the Secretary's des-
12 ignee may exempt any facility based on a deter-
13 mination by the Secretary or the Secretary's
14 designee that compliance with subsections (b)
15 and (c) at that facility would impair operations
16 or impose undue burdens or costs.

17 (C) The Secretary or the Secretary's des-
18 ignee shall report annually to Congress on the
19 facilities that have been exempted pursuant to
20 this subsection.

21 (D) The exercise of the exemption author-
22 ity shall not give rise to a private cause of ac-
23 tion.

24 (e) INTERPRETERS.—The Secretary shall ensure that
25 a professional fluent interpreter is used when the inter-

1 viewing officer does not speak a language understood by
2 the alien and there is no other Federal, State or local gov-
3 ernment employee available who is able to interpret effec-
4 tively, accurately and impartially.

5 (d) RECORDINGS IN IMMIGRATION PROCEEDINGS.—
6 Recordings of interviews of aliens described in section (b)
7 shall be included in the record of a proceeding and may
8 be considered as evidence in any further proceedings in-
9 volving the alien.

10 (e) STUDY ON THE EFFECT OF EXPEDITED RE-
11 MOVAL PROVISIONS, PRACTICES AND PROCEDURES ON
12 ASYLUM CLAIMS.—

13 (1) IN GENERAL.—The United States Commis-
14 sion on International Religious Freedom (referred to
15 in this section as the “Commission”) is authorized
16 to conduct a study to determine whether immigra-
17 tion officers described in paragraph (2) are engaging
18 in conduct described in paragraph (3).

19 (2) IMMIGRATION OFFICERS DESCRIBED.—An
20 immigration officer described in this paragraph is an
21 immigration officer performing duties under section
22 235(b) of the Immigration and Nationality Act (8
23 U.S.C. 1225(b)) with respect to aliens who are ap-
24 prehended after entering the United States and who

1 may be eligible to apply for asylum under such sec-
2 tion or section 208 of such Act (8 U.S.C. 1158).

3 (3) CONDUCT DESCRIBED.—Conduct described
4 in this paragraph is the following:

5 (A) Improperly encouraging an alien re-
6 ferred to in paragraph (2) to withdraw or re-
7 tract claims for asylum.

8 (B) Incorrectly failing to refer such an
9 alien for an interview by an asylum officer for
10 a determination of whether the alien has a cred-
11 ible fear of persecution (within the meaning of
12 section 235(b)(1)(B)(v) of the Immigration and
13 Nationality Act (8 U.S.C. 1225(b)(1)(B)(v))).

14 (C) Incorrectly removing such an alien to
15 a country where the alien may be persecuted.

16 (D) Detaining such an alien improperly or
17 in inappropriate conditions.

18 (f) REPORT.—Not later than 24 months after the
19 date on which the Commission initiates the study con-
20 ducted under subsection (a), the Commission shall submit
21 a report containing the results of the study to—

22 (1) the Committee on Homeland Security and
23 Governmental Affairs of the Senate;

24 (2) the Committee on the Judiciary of the Sen-
25 ate;

1 (3) the Committee on Foreign Relations of the
2 Senate;

3 (4) the Committee on Homeland Security of the
4 House of Representatives;

5 (5) the Committee on the Judiciary of the
6 House of Representatives; and

7 (6) the Committee on Foreign Affairs of the
8 House of Representatives.

9 (g) STAFF.—

10 (1) FROM OTHER AGENCIES.—At the request of
11 the Commission, the Secretary, the Attorney Gen-
12 eral, and the Comptroller General of the United
13 States shall authorize staff designated by the Com-
14 mission who are recognized for their expertise and
15 knowledge of refugee and asylum issues to assist the
16 Commission in conducting the study under sub-
17 section (a).

18 (2) HIRING OF STAFF.—The Commission may
19 hire additional staff and consultants to conduct the
20 study under subsection (a).

21 (3) ACCESS TO PROCEEDINGS.—

22 (A) IN GENERAL.—Except as provided in
23 subparagraph (B), the Secretary and the Attor-
24 ney General shall permit staff designated under
25 paragraph (1) or hired under paragraph (2) to

1 have unrestricted access to all stages of all pro-
 2 ceedings conducted under section 235(b) of the
 3 Immigration and Nationality Act (8 U.S.C.
 4 1225(b)).

5 (B) EXCEPTIONS.—The Secretary and the
 6 Attorney General shall not permit unrestricted
 7 access pursuant to subparagraph (A) in any
 8 case in which—

9 (i) an alien that is subject to a pro-
 10 ceeding conducted under section 235(b) of
 11 the Immigration and Nationality Act ob-
 12 jects to such access; or

13 (ii) the Secretary or Attorney General
 14 determines that the security of a particular
 15 proceeding would be threatened by such
 16 access.

17 **SEC. 253. IMMIGRATION AND CUSTOMS ENFORCEMENT OM-**
 18 **BUDSMAN.**

19 (a) ESTABLISHMENT.—Subtitle D of title III of the
 20 Homeland Security Act of 2002 (6 U.S.C. 251 et seq.)
 21 is amended by adding at the end the following:

22 **“SEC. 447. IMMIGRATION AND CUSTOMS ENFORCEMENT**
 23 **OMBUDSMAN.**

24 “(a) IN GENERAL.—There established in the Depart-
 25 ment of Homeland Security a position of Immigration and

1 Customs Enforcement Ombudsman (referred to in this
2 section as the ‘Ombudsman’).

3 “(b) REQUIREMENTS.—The Ombudsman shall—

4 “(1) report directly to the Assistant Secretary
5 for Immigration and Customs Enforcement (referred
6 to in this section as the ‘Assistant Secretary’); and

7 “(2) have a background in immigration law.

8 “(c) FUNCTIONS.—The Ombudsman shall—

9 “(1) undertake regular and unannounced in-
10 spections of detention facilities and local offices of
11 United States Immigration and Customs Enforce-
12 ment to determine whether the facilities and offices
13 comply with relevant policies, procedures, standards,
14 laws, and regulations;

15 “(2) report all findings of compliance or non-
16 compliance of the facilities and local offices de-
17 scribed in paragraph (1) to the Secretary and the
18 Assistant Secretary;

19 “(3) develop procedures for detainees or their
20 representatives to submit confidential written com-
21 plaints directly to the Ombudsman;

22 “(4) investigate and resolve all complaints, in-
23 cluding confidential and anonymous complaints, re-
24 lated to decisions, recommendations, acts, or omis-
25 sions made by the Assistant Secretary or the Com-

1 missioner of United States Customs and Border
2 Protection in the course of custody and detention
3 operations;

4 “(5) initiate investigations into allegations of
5 systemic problems at detention facilities;

6 “(6) conduct any review or audit relating to de-
7 tention, as directed by the Secretary or Assistant
8 Secretary;

9 “(7) refer matters, as appropriate, to the Office
10 of Inspector General of the Department of Justice,
11 the Office of Civil Rights and Civil Liberties of the
12 Department, or any other relevant office or agency;

13 “(8) propose changes in the policies or practices
14 of United States Immigration and Customs Enforce-
15 ment to improve the treatment of United States citi-
16 zens and residents, immigrants, detainees, and oth-
17 ers subject to immigration-related enforcement oper-
18 ations;

19 “(9) establish a public advisory group con-
20 sisting of nongovernmental organization representa-
21 tives and Federal, State, and local government offi-
22 cials with expertise in detention and vulnerable pop-
23 ulations to provide the Ombudsman with input on—

24 “(A) the priorities of the Ombudsman; and

1 “(B) current practices of United States
2 Immigration and Customs Enforcement; and

3 “(10) recommend to the Assistant Secretary
4 personnel action based on any finding of noncompli-
5 ance.

6 “(d) ANNUAL REPORT.—

7 “(1) OBJECTIVES.—Not later than June 30 of
8 each year, the Ombudsman shall prepare and submit
9 a report to the Committee on the Judiciary of the
10 Senate and the Committee on the Judiciary of the
11 House of Representatives on the objectives of the
12 Office of the Ombudsman for the next fiscal year.

13 “(2) CONTENTS.—Each report submitted under
14 paragraph (1) shall include—

15 “(A) full and substantive analysis of the
16 objectives of the Office of the Ombudsman;

17 “(B) statistical information regarding such
18 objectives;

19 “(C) a description of each detention facil-
20 ity found to be in noncompliance with the de-
21 tention standards of the Department of Home-
22 land Security or other applicable regulations;

23 “(D) a description of the actions taken by
24 the Department of Homeland Security to rem-

1 edy any findings of noncompliance or other
2 identified problems;

3 “(E) information regarding whether the
4 actions described in subparagraph (D) resulted
5 in compliance with detention standards;

6 “(F) a summary of the most pervasive and
7 serious problems encountered by individuals
8 subject to the enforcement operations of the
9 Department of Homeland Security, including a
10 description of the nature of such problems; and

11 “(G) such other information as the Om-
12 budsman may consider advisable.”.

13 (b) AMENDMENT.—The table of contents in section
14 1(b) of the Homeland Security Act of 2002 (6 U.S.C. 101
15 et seq.) is amended by inserting after the item relating
16 to section 446 the following:

“Sec. 447. Immigration and Customs Enforcement Ombudsman.”

17 **SEC. 254. LAWFUL PERMANENT RESIDENT STATUS OF REF-**
18 **UGEES AND ASYLUM SEEKERS GRANTED ASY-**
19 **LUM.**

20 (a) ADMISSION OF EMERGENCY SITUATION REFU-
21 GEES.—Section 207(c) (8 U.S.C. 1157(c)) is amended—

22 (1) in paragraph (1)—

23 (A) by striking “Attorney General the first
24 time it appears and inserting ‘Secretary of
25 Homeland Security’;

1 (B) by striking “Attorney General” each
2 additional place it appears and inserting “Sec-
3 retary”; and

4 (C) by striking “(except as otherwise pro-
5 vided under paragraph (3)) as an immigrant
6 under this Act.” and inserting “(except as pro-
7 vided under subsection (b) and (c) of section
8 209) as an immigrant under this Act. Notwith-
9 standing any numerical limitations specified in
10 this Act, any alien admitted under this para-
11 graph shall be regarded as lawfully admitted to
12 the United States for permanent residence as of
13 the date of such alien’s admission to the United
14 States.”;

15 (2) in paragraph (2)(A)—

16 (A) by striking “(except as otherwise pro-
17 vided under paragraph (3))” and inserting
18 “(except as provided under subsection (b) and
19 (c) of section 209)”; and

20 (B) by striking the last sentence and in-
21 serting the following: “An alien admitted to the
22 United States as a refugee may petition for his
23 or her spouse or child to follow to join him or
24 her in the United States at any time after such
25 alien’s admission, notwithstanding his or her

1 treatment as a lawful permanent resident as of
2 the date of his or her admission to the United
3 States.”;

4 (3) by striking paragraph (3);

5 (4) by redesignating paragraph (4) as para-
6 graph (3); and

7 (5) in paragraph (3), as redesignated—

8 (A) by striking “Attorney General” the
9 first time it appears and inserting “Secretary of
10 Homeland Security”; and

11 (B) by striking “Attorney General” each
12 additional place it appears and inserting “Sec-
13 retary”.

14 (b) TREATMENT OF SPOUSE AND CHILDREN.—Sec-
15 tion 208(b)(3) (8 U.S.C. 1158(b)(3)) is amended—

16 (1) by redesignating subparagraph (B) as sub-
17 paragraph (E); and

18 (2) by inserting after subparagraph (A) the fol-
19 lowing:

20 “(B) PETITION.—An alien granted asylum
21 under this subsection may petition for the same
22 status to be conferred on his or her spouse or
23 child at any time after such alien is granted
24 asylum whether or not such alien has applied

1 for, or been granted, adjustment to permanent
2 resident status under section 209.

3 “(C) PERMANENT RESIDENT STATUS.—
4 Notwithstanding any numerical limitations
5 specified in this Act, a spouse or child admitted
6 to the United States as an asylee following to
7 join a spouse or parent previously granted asy-
8 lum shall be regarded as lawfully admitted to
9 the United States for permanent residence as of
10 the date of such spouse’s or child’s admission to
11 the United States.

12 “(D) APPLICATION FOR ADJUSTMENT OF
13 STATUS.—A spouse or child who was not admit-
14 ted to the United States pursuant to a grant of
15 asylum, but who was granted asylum under this
16 subparagraph after his or her arrival as the
17 spouse or child of an alien granted asylum
18 under section 208, may apply for adjustment of
19 status to that of lawful permanent resident
20 under section 209 at any time after being
21 granted asylum.”.

22 (c) REFUGEES.—

23 (1) IN GENERAL.—Section 209 (8 U.S.C. 1159)
24 is amended to read as follows:

1 **“SEC. 209. TREATMENT OF ALIENS ADMITTED AS REFUG-**
2 **GEES AND OF ALIENS GRANTED ASYLUM.**

3 “(a) IN GENERAL.—

4 “(1) TREATMENT OF REFUGEES.—Notwith-
5 standing any numerical limitations specified in this
6 Act, any alien who has been admitted to the United
7 States under section 207 shall be regarded as law-
8 fully admitted to the United States for permanent
9 residence as of the date of such admission.

10 “(2) TREATMENT OF SPOUSE AND CHIL-
11 DREN.—Notwithstanding any numerical limitations
12 specified in this Act, any alien admitted to the
13 United States under section 208(b)(3) as the spouse
14 or child of an alien granted asylum under section
15 208(b)(1) shall be regarded as lawfully admitted to
16 the United States for permanent residence as of the
17 date of such admission.

18 “(3) ADJUSTMENT OF STATUS.—The Secretary
19 of Homeland Security or the Attorney General, in
20 the discretion of the Secretary or the Attorney Gen-
21 eral, and under such regulations as the Secretary or
22 the Attorney General may prescribe, may adjust, to
23 the status of an alien lawfully admitted to the
24 United States for permanent residence, the status of
25 any alien who, while in the United States—

26 “(A) is granted—

1 “(i) asylum under section 208(b) (as
2 a principal alien or as the spouse or child
3 of an alien granted asylum); or

4 “(ii) refugee status under section 207
5 as the spouse or child of a refugee;

6 “(B) applies for such adjustment of status
7 at any time after being granted asylum or ref-
8 ugee status;

9 “(C) is not firmly resettled in any foreign
10 country; and

11 “(D) is admissible (except as otherwise
12 provided under subsections (b) and (c)) as an
13 immigrant under this Act at the time of exam-
14 ination for adjustment of such alien.

15 “(4) RECORD.—Upon approval of an applica-
16 tion under this subsection, the Secretary of Home-
17 land Security or the Attorney General shall establish
18 a record of the alien’s admission for lawful perma-
19 nent residence as of the date such alien was granted
20 asylum or refugee status.

21 “(5) DOCUMENT ISSUANCE.—An alien who has
22 been admitted to the United States under section
23 207 or 208 or who adjusts to the status of a lawful
24 permanent resident as a refugee or asylee under this
25 section shall be issued documentation indicating that

1 such alien is a lawful permanent resident pursuant
2 to a grant of refugee or asylum status.

3 “(b) INAPPLICABILITY OF CERTAIN INADMISSIBILITY
4 GROUNDS TO REFUGEES, ALIENS GRANTED ASYLUM,
5 AND SUCH ALIENS SEEKING ADJUSTMENT OF STATUS TO
6 LAWFUL PERMANENT RESIDENT.—Paragraphs (4), (5),
7 and (7)(A) of section 212(a) shall not apply to—

8 “(1) any refugee under section 207;

9 “(2) any alien granted asylum under section
10 208; or

11 “(3) any alien seeking admission as a lawful
12 permanent resident pursuant to a grant of refugee
13 or asylum status.

14 “(c) WAIVER OF INADMISSIBILITY OR DEPORT-
15 ABILITY FOR REFUGEES, ALIENS GRANTED ASYLUM, AND
16 SUCH ALIENS SEEKING ADJUSTMENT OF STATUS TO
17 LAWFUL PERMANENT RESIDENT.—

18 “(1) IN GENERAL.—Except as provided in para-
19 graph (2), the Secretary of Homeland Security or
20 the Attorney General may waive any ground of inad-
21 missibility under section 212 or any ground of de-
22 portability under section 237 for a refugee admitted
23 under section 207, an alien granted asylum under
24 section 208, or an alien seeking admission as a law-
25 ful permanent resident pursuant to a grant of ref-

1 ugee or asylum status if the Secretary or the Attor-
2 ney General determines that such waiver is justified
3 by humanitarian purposes, to ensure family unity, or
4 is otherwise in the public interest.

5 “(2) INELIGIBILITY.—A refugee under section
6 207, an alien granted asylum under section 208, or
7 an alien seeking admission as a lawful permanent
8 resident pursuant to a grant of refugee or asylum
9 status shall be ineligible for a waiver under para-
10 graph (1) if it has been established that the alien
11 is—

12 “(A) inadmissible under section
13 212(a)(2)(C) or subparagraph (A), (B), (C), or
14 (E) of section 212(a)(3);

15 “(B) deportable under section
16 237(a)(2)(A)(iii) for an offense described in
17 section 101(a)(43)(B); or

18 “(C) deportable under subparagraph (A),
19 (B), (C), or (D) of section 237(a)(4).”.

20 (d) TECHNICAL AMENDMENTS.—

21 (1) ALIENS NOT SUBJECT TO DIRECT NUMER-
22 ICAL LIMITATIONS.—Section 201(b)(1)(B) (8 U.S.C.
23 1151(b)(1)(B)) is amended to read as follows:

24 “(B) Aliens who are admitted to the
25 United States as permanent residents under

1 section 207 or 208 or whose status is adjusted
2 under section 209.”.

3 (2) TRAINING.—Section 207(f)(1) (8 U.S.C.
4 1157(f)(1)) is amended by striking “Attorney Gen-
5 eral” and inserting “Secretary of Homeland Secu-
6 rity”.

7 (3) TABLE OF CONTENTS.—The table of con-
8 tents is amended by striking the item relating to sec-
9 tion 209 and inserting the following:

“Sec. 209. Treatment of aliens admitted as refugees and of aliens granted asy-
lum.”.

10 (e) SAVINGS PROVISIONS.—

11 (1) IN GENERAL.—Nothing in the amendments
12 made by this section may be construed to limit ac-
13 cess to the benefits described at chapter 2 of title IV
14 of the Immigration and Nationality Act (8 U.S.C.
15 1521 et seq.).

16 (2) CLARIFICATION.—Aliens admitted for law-
17 ful permanent residence under section 207 or 208 of
18 the Immigration and Nationality Act (8 U.S.C. 1157
19 and 1158) or who adjust status to lawful permanent
20 resident under section 209 of such Act (8 U.S.C.
21 1159) shall be considered to be refugees and aliens
22 granted asylum in accordance with sections 402,
23 403, 412, and 431 of the Personal Responsibility

1 and Work Opportunity Reconciliation Act of 1996 (8
2 U.S.C. 1612, 1613, 1622, and 1641).

3 (f) **EFFECTIVE DATE.**—This section, and the amend-
4 ments made by this section, shall become effective on the
5 earlier of—

6 (1) the date that is 180 days after the date of
7 the enactment of this Act; or

8 (2) the date on which a final rule is promul-
9 gated to implement this section.

10 **SEC. 255. ELIMINATION OF TIME LIMITS ON ASYLUM APPLI-**
11 **CATIONS.**

12 Section 208(a)(2) (8 U.S.C. 1158(a)(2)) is amend-
13 ed—

14 (1) in subparagraph (A), by striking “Attorney
15 General” each place it appears and inserting “Attor-
16 ney General or the Secretary of Homeland Secu-
17 rity”;

18 (2) by striking subparagraph (B);

19 (3) by redesignating subparagraphs (C) and
20 (D) as subparagraphs (B) and (C), respectively;

21 (4) in subparagraph (B), as redesignated, by
22 striking “subparagraph (D)” and inserting “sub-
23 paragraphs (C) and (D)”;

24 (5) by striking subparagraph (C), as redesign-
25 ated, and inserting the following:

1 “(C) CHANGED CIRCUMSTANCES.—Not-
2 withstanding subparagraph (B), an application
3 for asylum of an alien may be considered if the
4 alien demonstrates, to the satisfaction of the
5 Attorney General or the Secretary of Homeland
6 Security, the existence of changed cir-
7 cumstances that materially affect the appli-
8 cant’s eligibility for asylum.

9 “(D) MOTION TO REOPEN DENIED ASYLUM
10 CLAIM.—Notwithstanding subparagraph (B) or
11 section 240(c)(7), an alien may file a motion to
12 reopen an asylum claim during the 2-year pe-
13 riod beginning on the date of enactment of this
14 subparagraph if the alien—

15 “(i) was denied asylum based solely
16 upon a failure to meet the 1-year applica-
17 tion filing deadline in effect on the date on
18 which the application was filed;

19 “(ii) was granted withholding of re-
20 moval to the alien’s country of nationality
21 (or, if stateless, to the country of last ha-
22 bitual residence under section 241(b)(3));

23 “(iii) has not obtained lawful perma-
24 nent residence in the United States pursu-
25 ant to any other provision of law;

1 “(iv) is not subject to the safe third
2 country exception in section 208(a)(2)(A)
3 or a bar to asylum under section 208(b)(2)
4 and should not be denied asylum as a mat-
5 ter of discretion; and

6 “(v) is physically present in the
7 United States when the motion is filed.”;
8 and

9 (6) in subparagraph (E), by striking “subpara-
10 graphs (A) and (B)” and inserting “subparagraph
11 (A).”

12 **SEC. 256. EFFICIENT ASYLUM DETERMINATION PROCESS**
13 **AND DETENTION OF ASYLUM SEEKERS.**

14 Section 235(b)(1)(B) (8 U.S.C. 1225(b)(1)(B)) is
15 amended—

16 (1) in clause (ii), by striking “shall be detained
17 for further consideration of the application for asy-
18 lum” and inserting “may, in the Secretary’s discre-
19 tion, be detained for further consideration of the ap-
20 plication for asylum by an asylum officer designated
21 by the Director of United States Citizenship and Im-
22 migration Services. The asylum officer, after con-
23 ducting a nonadversarial asylum interview, may
24 grant asylum to the alien under section 208 or refer
25 the case to a designee of the Attorney General, for

1 a de novo asylum determination, for relief under the
 2 Convention Against Torture and Other Cruel, Inhu-
 3 man or Degrading Treatment or Punishment, done
 4 at New York December 10, 1984, or for withholding
 5 of removal under section 241(b)(3).”; and

6 (2) in clause (iii)(IV)—

7 (A) by amending the subclause heading to
 8 read as follows:

9 “(IV) DETENTION.—”; and

10 (B) by striking “shall” and inserting
 11 “may, in the Secretary’s discretion,”.

12 **SEC. 257. PROTECTION OF STATELESS PERSONS IN THE**
 13 **UNITED STATES.**

14 (a) **IN GENERAL.**—Chapter 1 of title II (8 U.S.C.
 15 1151 et seq.) is amended by adding at the end the fol-
 16 lowing:

17 **“SEC. 210A. PROTECTION OF STATELESS PERSONS IN THE**
 18 **UNITED STATES.**

19 “(a) **DEFINED TERM.**—

20 “(1) **IN GENERAL.**—In this section, the term
 21 ‘de jure stateless person’ means an individual who is
 22 not considered a national under the laws of any
 23 country. Individuals who have lost their nationality
 24 as a result of their voluntary action or knowing inac-

1 tion after arrival in the United States shall not be
2 considered de jure stateless persons.

3 “(2) DESIGNATION OF SPECIFIC DE JURE
4 GROUPS.—The Secretary of Homeland Security, in
5 consultation with the Secretary of State, may, in the
6 discretion of the Secretary, designate specific groups
7 of individuals who are considered de jure stateless
8 persons, for purposes of this section.

9 “(b) MECHANISMS FOR REGULARIZING THE STATUS
10 OF STATELESS PERSONS.—

11 “(1) RELIEF FOR INDIVIDUALS DETERMINED
12 TO BE DE JURE STATELESS PERSONS.—The Sec-
13 retary of Homeland Security or the Attorney Gen-
14 eral may, in his or her discretion, provide conditional
15 lawful status to an alien who is otherwise inadmis-
16 sible or deportable from the United States if the
17 alien—

18 “(A) is a de jure stateless person;

19 “(B) applies for such relief;

20 “(C) is not inadmissible under paragraph
21 (2) or (3) of section 212(a); and

22 “(D) is not described in section
23 241(b)(3)(B)(i).

24 “(2) WAIVERS.—The provisions of paragraphs
25 (4), (5), (6)(A), (7)(A), and (9) of section 212(a)

1 shall not be applicable to any alien seeking relief
2 under paragraph (1), and the Secretary of Home-
3 land Security or the Attorney General may waive
4 any other provision of such section (other than para-
5 graph (2)(C) or subparagraph (A), (B), (C), or (E)
6 of paragraph (3)) with respect to such an alien for
7 humanitarian purposes, to assure family unity, or
8 when it is otherwise in the public interest.

9 “(3) SUBMISSION OF PASSPORT OR TRAVEL
10 DOCUMENT.—Any alien who seeks benefits under
11 this section must submit to the Secretary or the At-
12 torney General—

13 “(A) any passport or travel document
14 issued at any time to the alien (whether or not
15 the passport or document has expired or been
16 cancelled, rescinded, or revoked); or

17 “(B) an affidavit sworn under penalty of
18 perjury stating that the alien has never been
19 issued a passport or travel document, or identi-
20 fying with particularity any such passport or
21 travel document and explaining why the alien
22 cannot submit it.

23 “(4) WORK AUTHORIZATION.—The Secretary
24 may—

1 “(A) authorize an alien who has applied
2 for relief under paragraph (1) to engage in em-
3 ployment in the United States while such appli-
4 cation is being considered; and

5 “(B) provide such applicant with an em-
6 ployment authorized endorsement or other ap-
7 propriate document signifying authorization of
8 employment.

9 “(5) TREATMENT OF SPOUSES AND CHIL-
10 DREN.—The spouse or child of an alien who has
11 been granted conditional lawful status under para-
12 graph (1) shall, if not otherwise eligible for admis-
13 sion under paragraph (1), be granted conditional
14 lawful status under this section if accompanying, or
15 following to join, such alien, provided that the
16 spouse or child is admissible (except as otherwise
17 provided in paragraph (2)), and provided further
18 that the qualifying relationship to the principal bene-
19 ficiary existed on the date on which such alien was
20 granted conditional lawful status.

21 “(c) ADJUSTMENT OF STATUS.—

22 “(1) INSPECTION AND EXAMINATION.—At the
23 end of the 5-year period beginning on the date on
24 which an alien has been granted conditional lawful

1 status under subsection (b), the alien may apply for
2 lawful permanent residence in the United States if—

3 “(A) the alien has been physically present
4 in the United States for at least 5 years;

5 “(B) the alien’s conditional lawful status
6 has not been terminated by the Secretary of
7 Homeland Security or the Attorney General,
8 pursuant to such regulations as the Secretary
9 or the Attorney General may prescribe; and

10 “(C) the alien has not otherwise acquired
11 permanent resident status.

12 “(2) REQUIREMENTS FOR ADJUSTMENT.—The
13 Secretary or the Attorney General, under such regu-
14 lations as the Secretary or the Attorney General
15 may prescribe, may adjust the status of an alien
16 granted conditional lawful status under subsection
17 (b) to that of an alien lawfully admitted for perma-
18 nent residence if such alien—

19 “(A) is a de jure stateless person;

20 “(B) properly applies for such adjustment
21 of status;

22 “(C) has been physically present in the
23 United States for at least 5 years after being
24 granted conditional lawful status under sub-
25 section (b);

1 “(D) is not firmly resettled in any foreign
2 country; and

3 “(E) is admissible (except as otherwise
4 provided under subsection (b)(2)) as an immi-
5 grant under this chapter at the time of exam-
6 ination of such alien for adjustment of status.

7 “(3) RECORD.—Upon approval of an applica-
8 tion under this subsection, the Secretary or the At-
9 torney General shall establish a record of the alien’s
10 admission for lawful permanent residence as of the
11 date that is 5 years before the date of such approval.

12 “(d) PROVING THE CLAIM.—In determining an
13 alien’s eligibility for lawful conditional status or adjust-
14 ment of status under this subsection, the Secretary or the
15 Attorney General shall consider any credible evidence rel-
16 evant to the application. The determination of what evi-
17 dence is credible and the weight to be given that evidence
18 shall be within the sole discretion of the Secretary or the
19 Attorney General.

20 “(e) REVIEW.—

21 “(1) ADMINISTRATIVE REVIEW.—No appeal
22 shall lie from the denial of an application by the
23 Secretary, but such denial will be without prejudice
24 to the alien’s right to renew the application in pro-
25 ceedings under section 240 of this title.

1 “(2) MOTIONS TO REOPEN.—Notwithstanding
2 any limitation imposed by law on motions to reopen
3 removal, deportation, or exclusion proceedings, any
4 individual who is eligible for relief under this section
5 may file 1 motion to reopen removal or deportation
6 proceedings in order to apply for relief under this
7 section, except that any such motion must be filed
8 within one year of the date of enactment of this sec-
9 tion, or within 90 days of the date of entry of a final
10 administrative order of removal, deportation, or ex-
11 clusion, whichever is later.

12 “(f) LIMITATION.—The provisions of this section
13 shall apply only to aliens present in the United States.
14 Nothing in this section shall be construed to authorize or
15 require (i) the admission of any alien to the United States,
16 (ii) the parole of any alien into the United States, or (iii)
17 the grant of any motion to reopen or reconsider filed by
18 an alien after departure or removal from the United
19 States.”.

20 (b) JUDICIAL REVIEW.—Section 242(a)(2)(B)(ii) of
21 the Immigration and Nationality Act (8 U.S.C.
22 1252(a)(2)(B)(ii)) is amended by inserting “or 210A”
23 after “208(a)”.

24 (c) CLERICAL AMENDMENT.—The table of contents
25 for the Immigration and Nationality Act is amended by

1 inserting after the item relating to section 210 the fol-
2 lowing:

“210A. Protection of stateless persons in the United States.”.

3 **SEC. 258. AUTHORITY TO DESIGNATE CERTAIN GROUPS OF**
4 **REFUGEES FOR CONSIDERATION.**

5 (a) IN GENERAL.—Section 207(c)(1) (8 U.S.C.
6 1157(c)(1)) is amended—

7 (1) by inserting “(A)” before “Subject to the
8 numerical limitations”; and

9 (2) by adding at the end the following:

10 “(B)(i) The President, upon a recommendation
11 of the Secretary of State made in consultation with
12 the Secretary of Homeland Security, and after ap-
13 propriate consultation (as defined in paragraph (e)),
14 may designate specifically defined groups of aliens
15 whose resettlement in the United States is justified
16 by humanitarian concerns or is otherwise in the na-
17 tional interest and who share common characteris-
18 tics that identify them as targets of persecution on
19 account of race, religion, nationality, membership in
20 a particular social group, or political opinion or of
21 other serious harm, or who, having been identified
22 as targets of persecution on account of race, reli-
23 gion, nationality, membership in a particular social
24 group, or political opinion or of other serious harm,

1 share a common need for resettlement due to a spe-
2 cific vulnerability.

3 “(ii) An alien who establishes membership in a
4 group designated under clause (i) to the satisfaction
5 of the Secretary of Homeland Security shall be con-
6 sidered a refugee for purposes of admission as a ref-
7 ugee under this section, unless the Secretary deter-
8 mines that such alien ordered, incited, assisted or
9 otherwise participated in the persecution of any per-
10 son on account of race, religion, nationality, mem-
11 bership in a particular social group, or political opin-
12 ion.

13 “(iii) A designation under clause (i)—

14 “(I) may be revoked by the President at
15 any time after notification to Congress; ‘(II) if
16 not revoked, shall expire at the end of each fis-
17 cal year; and

18 “(II) may be renewed by the President
19 after appropriate consultation (as defined in
20 paragraph (e)).

21 “(iv) Categories of aliens established under sec-
22 tion 599D of title V of Public Law 101-167 (8
23 U.S.C. 1157 note) shall be designated under clause
24 (i) until the end of the first fiscal year commencing
25 after the date of enactment of this subparagraph,

1 and thereafter shall be eligible for designation at the
2 discretion of the President.

3 “(v) An alien’s admission under this subpara-
4 graph shall count against the refugee admissions
5 goal under subsection (a).

6 “(vi) A designation under clause (i) shall not
7 influence decisions to grant, to any alien, asylum
8 under section 208, protection under section
9 241(b)(3), or protection under Article 3 of the Con-
10 vention Against Torture and Other Cruel, Inhuman
11 or Degrading Treatment or Punishment, done at
12 New York December 10, 1984.”.

13 (b) WRITTEN REASONS FOR DENIALS OF REFUGEE
14 STATUS.—Each decision to deny an application for ref-
15 ugee status of an alien who is within a category estab-
16 lished under this section shall be in writing and shall state,
17 to the maximum extent feasible, the reason for the denial.

18 (c) EFFECTIVE DATE.—The amendments made by
19 subsection (a) shall take effect on the first day of the first
20 fiscal year that begins after the date of the enactment of
21 this Act.

22 **SEC. 259. ADMISSION OF REFUGEES IN THE ABSENCE OF**
23 **THE ANNUAL PRESIDENTIAL DETERMINA-**
24 **TION.**

25 Section 207(a) (8 U.S.C. 1157(a)) is amended—

1 (1) by striking paragraph (1);

2 (2) by redesignating paragraphs (2), (3), (4),
3 and (5) as paragraphs (1), (2), (3), and (4), respec-
4 tively;

5 (3) in paragraph (1), as redesignated—

6 (A) by striking “after fiscal year 1982”;

7 and

8 (B) by adding at the end the following: “If
9 the President does not issue a determination
10 under this paragraph before the beginning of a
11 fiscal year, the number of refugees that may be
12 admitted under this section in each quarter be-
13 fore the issuance of such determination shall be
14 25 percent of the number of refugees admissible
15 under this section during the previous fiscal
16 year.”; and

17 (4) in paragraph (3), as redesignated, by strik-
18 ing “(beginning with fiscal year 1992)”.

19 **TITLE III—WORKSITE**
20 **ENFORCEMENT**

21 **SEC. 301. UNLAWFUL EMPLOYMENT OF ALIENS.**

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

1 **“SEC. 274A. UNLAWFUL EMPLOYMENT OF UNAUTHORIZED**
2 **ALIENS.**

3 “(a) IN GENERAL.—

4 “(1) IN GENERAL.—It is unlawful for an em-
5 ployer—

6 “(A) to hire an alien for employment in
7 the United States knowing or with reckless dis-
8 regard that the alien is an unauthorized alien
9 (as defined in subsection (b)(1)) with respect to
10 such employment; or

11 “(B) to hire for employment in the United
12 States an individual without complying with the
13 requirements of subsections (c) and (d).

14 “(2) CONTINUING EMPLOYMENT.—It is unlaw-
15 ful for an employer, after hiring an alien for employ-
16 ment, to continue to employ the alien in the United
17 States knowing or with reckless disregard that the
18 alien is (or has become) an unauthorized alien with
19 respect to such employment. Nothing in this section
20 shall prohibit or require employment of an author-
21 ized employee who was previously unauthorized.

22 “(3) USE OF LABOR THROUGH CONTRACT.—
23 For purposes of this section, any person or entity
24 who uses a contract, subcontract, or exchange to ob-
25 tain the labor of an alien in the United States know-
26 ing or with reckless disregard that the alien is an

1 unauthorized alien (as defined in subsection (b)(1))
2 with respect to performing such labor, shall be con-
3 sidered to have hired the alien for employment in
4 the United States in violation of subparagraph
5 (a)(1)(A).

6 “(A) For purposes of ensuring compliance
7 with the immigration laws, the Secretary may
8 require by regulation that a person or entity in-
9 clude in a written contract or subcontract an ef-
10 fective and enforceable requirement that the
11 contractor or subcontractor adhere to the immi-
12 gration laws, including the use of an employ-
13 ment verification system (referred to in this
14 section as the ‘System’).

15 “(B) The Secretary may establish proce-
16 dures by which a person or entity may obtain
17 confirmation from the Secretary that the con-
18 tractor or subcontractor has registered with the
19 System and is utilizing the System to verify its
20 employees.

21 “(C) The Secretary may establish such
22 other requirements for persons or entities using
23 contractors or subcontractors, including proce-
24 dures adapted to different employment sectors,

1 as the Secretary deems necessary to prevent
2 knowing violations of this paragraph.

3 “(4) DEFENSE.—An employer that establishes
4 that it has complied in good faith with the require-
5 ments of subsections (c)(1) through (c)(4), per-
6 taining to document verification requirements, and
7 subsection (d), pertaining to the use of the System,
8 has established an affirmative defense that the em-
9 ployer has not violated subsection (a)(1)(A) with re-
10 spect to such hiring; provided that—

11 “(A) until such time as the Secretary has
12 required an employer to participate in the Sys-
13 tem, or that employer is participating on a vol-
14 untary basis pursuant to subsection (d), a de-
15 fense is established without a showing of com-
16 pliance with subsection (d); and

17 “(B) to establish a defense, the employer
18 must also be in compliance with any additional
19 requirements that the Secretary may promul-
20 gate by regulation pursuant to subsections (c)
21 and (d).

22 “(5) PRESUMPTION.—An employer is presumed
23 to have acted with knowledge or reckless disregard
24 if the employer fails to comply with written stand-

1 ards, procedures, or instructions issued by the Sec-
2 retary.

3 “(b) DEFINITIONS.—In this section:

4 “(1) EMPLOYER.—The term ‘employer’—

5 “(A) means any person or entity hiring an
6 individual for employment in the United States,
7 including—

8 “(i) any person or entity who is an
9 agent acting on behalf of an employer; and

10 “(ii) entities in any branch of the
11 Federal Government; and

12 “(B) does not include a person or entity
13 with fewer than 5 full- or part-time employees,
14 for purposes of any requirement to participate
15 in the System under subsection (d), except as
16 it relates to subsection (d)(2)(H).

17 “(2) UNAUTHORIZED ALIEN.—The term ‘unau-
18 thorized alien’ means, with respect to the employ-
19 ment of an alien at a particular time, that the alien
20 is not—

21 “(A) an alien lawfully admitted for perma-
22 nent residence; or

23 “(B) authorized to be so employed by this
24 Act or by the Secretary.

1 “(c) DOCUMENT VERIFICATION REQUIREMENTS.—
2 Any employer hiring an individual for employment in the
3 United States shall take the following steps, and those
4 provided in subsection (d), to verify that the individual
5 is authorized to work in the United States:

6 “(1) ATTESTATION AFTER EXAMINATION OF
7 DOCUMENTATION.—

8 “(A) IN GENERAL.—The employer must
9 attest, under penalty of perjury and on a form
10 prescribed by the Secretary, that it has verified
11 the identity and employment authorization sta-
12 tus of the individual by examining—

13 “(i) a document described in subpara-
14 graph (B); or

15 “(ii) a document described in sub-
16 paragraph (C) and a document described
17 in subparagraph (D).

18 The form prescribed by the Secretary may be
19 electronic or on paper, and may be integrated
20 electronically with the requirements under sub-
21 section (d), if the Secretary determines that
22 combining the requirements in (c) and (d)
23 would improve efficiency of the verification re-
24 quirements. Such attestation may be manifested
25 by either a handwritten or digital signature. An

1 employer has complied with the requirements of
2 this paragraph with respect to examination of
3 documentation if the employer has followed ap-
4 plicable regulations and any written procedures
5 or instructions provided by the Secretary, and
6 if a reasonable person would conclude that the
7 documentation is genuine and relates to the in-
8 dividual presenting it, taking into account any
9 information provided to the employer by the
10 Secretary, including photographs and other bio-
11 metric information.

12 “(B) DOCUMENTS ESTABLISHING BOTH
13 EMPLOYMENT AUTHORIZATION AND IDEN-
14 TITY.—A document described in this subpara-
15 graph is an individual’s—

16 “(i) United States passport or pass-
17 port card issued pursuant to the Secretary
18 of State’s authority under section 211a of
19 title 22, United States Code;

20 “(ii) permanent resident card or other
21 document issued to aliens authorized to
22 work in the United States, as designated
23 by the Secretary, if the document—

24 “(I) contains a photograph of the
25 individual, other biometric data such

1 as fingerprints, or such other personal
2 identifying information relating to the
3 individual as the Secretary finds, by
4 regulation, sufficient for the purposes
5 of this subsection;

6 “(II) is evidence of authorization
7 for employment in the United States;
8 and

9 “(III) contains security features
10 to make it resistant to tampering,
11 counterfeiting, and fraudulent use;

12 “(iii) enhanced driver’s license, en-
13 hanced identification card, or enhanced
14 tribal card issued to a citizen of the United
15 States, provided that the Secretary has
16 certified by notice published in the Federal
17 Register that such enhanced document is
18 suitable for use under this subparagraph
19 based upon the accuracy and security of
20 the issuance process, security features on
21 the document, and such other factors as
22 the Secretary may determine; or

23 “(iv) a passport issued by the Fed-
24 erated States of Micronesia (FSM) or the
25 Republic of the Marshall Islands (RMI)

1 with evidence of nonimmigrant admission
2 to the United States under the Compact of
3 Free Association between the United
4 States and the FSM or the RMI.

5 “(C) DOCUMENTS ESTABLISHING IDEN-
6 TITY OF INDIVIDUAL.—A document described in
7 this subparagraph includes—

8 “(i) an individual’s driver’s license or
9 identity card issued by a State or an out-
10 lying possession of the United States, a
11 Federally recognized Indian tribe, or an
12 agency (including military) of the Federal
13 government if the driver’s license or iden-
14 tity card includes, at a minimum,—

15 “(I) the individual’s photograph,
16 name, date of birth, gender, and driv-
17 er’s license or identification card num-
18 ber, and

19 “(II) security features to make it
20 resistant to tampering, counterfeiting,
21 and fraudulent use, or

22 “(ii) for individuals under 18 years of
23 age who are unable to present a document
24 listed in clause (i), documentation of per-
25 sonal identity of such other type as the

1 Secretary finds provides a reliable means
2 of identification, which may include an at-
3 testation as to the individual's identity by
4 a person 21 years of age or older under
5 penalty of perjury.

6 “(D) DOCUMENTS EVIDENCING EMPLOY-
7 MENT AUTHORIZATION.—All documents must
8 be unexpired. The following documents may be
9 accepted as evidence of employment authoriza-
10 tion—

11 “(i) a Social Security account number
12 card issued by the Commissioner of Social
13 Security (referred to in this section as the
14 ‘Commissioner’) other than a card which
15 specifies on its face that the card is not
16 valid for employment in the United States
17 or has other similar words of limitation.
18 The Secretary, in consultation with the
19 Commissioner, may require by publication
20 of a notice in the Federal Register that
21 only a social security account number card
22 described in section 304 of the CIR Act of
23 2010 be accepted for this purpose; or

24 “(ii) any other documentation evidenc-
25 ing authorization of employment in the

1 United States which the Secretary deter-
2 mines, by notice published in the Federal
3 Register, to be acceptable for purposes of
4 this section, provided that the document,
5 including any electronic security measures
6 linked to the document, contains security
7 features to make it resistant to tampering,
8 counterfeiting, and fraudulent use.

9 “(E) AUTHORITY TO PROHIBIT USE OF
10 CERTAIN DOCUMENTS.—If the Secretary finds
11 that any document or class of documents de-
12 scribed in subparagraph (B), (C), or (D) does
13 not reliably establish employment authorization
14 or identity or is being used fraudulently to an
15 unacceptable degree, the Secretary may prohibit
16 or restrict the use of that document or class of
17 documents for purposes of this subsection.

18 “(2) INDIVIDUAL ATTESTATION OF EMPLOY-
19 MENT AUTHORIZATION.—The individual must attest,
20 under penalty of perjury in the form prescribed by
21 the Secretary, that the individual is a citizen or na-
22 tional of the United States, an alien lawfully admit-
23 ted for permanent residence, or an alien who is au-
24 thorized under this Act or by the Secretary to be
25 hired for such employment. Such attestation may be

1 manifested by either a hand-written or digital signa-
2 ture. The individual must also provide any Social
3 Security Account Number issued to the individual on
4 such form.

5 “(3) RETENTION OF VERIFICATION RECORD.—
6 After completion of such form in accordance with
7 paragraphs (1) and (2), the employer must retain a
8 paper, microfiche, microfilm, or electronic version of
9 the form, according to such standards as the Sec-
10 retary may provide, and make it available for inspec-
11 tion by officers or employees of the Department of
12 Homeland Security (or persons designated by the
13 Secretary), the Special Counsel for Immigration-Rel-
14 ated Unfair Employment Practices, or the Depart-
15 ment of Labor during a period beginning on the date
16 of the hiring of the individual and ending 7 years
17 after such date of hiring, or 2 years after the date
18 the individual’s employment is terminated, whichever
19 is later.

20 “(4) COPYING OF DOCUMENTATION AND REC-
21 ORDKEEPING REQUIRED.—

22 “(A) Notwithstanding any other provision
23 of law, the employer shall copy all documents
24 presented by an individual pursuant to this sub-
25 section and shall retain a paper, microfiche,

1 microfilm, or electronic copy, but only (except
2 as otherwise permitted under law) for the pur-
3 poses of complying with the requirements of
4 this section and section 274B. Such copies may
5 be required to reflect the signatures of the em-
6 ployer and the employee, as well as the date of
7 receipt. The Secretary may authorize or require
8 an alternative method of storing and authen-
9 ticating the employee's documentation informa-
10 tion if the Secretary determines that such alter-
11 native method is more secure or efficient.

12 “(B) The employer shall maintain records
13 of all actions and copies of any correspondence
14 or action taken by the employer to clarify or re-
15 solve any issue as to the validity of the individ-
16 ual's identity or employment authorization.

17 “(C) The employer shall maintain the
18 records described in this paragraph for any em-
19 ployee for the period of time required by para-
20 graph (3) for retention of that employee's
21 verification form. The Secretary may prescribe
22 the manner of recordkeeping and may require
23 that additional records be kept or that addi-
24 tional documents be copied and maintained.
25 The Secretary in furtherance of an investigation

1 based on reasonable suspicion of a violation of
2 this act, may require that these documents be
3 transmitted electronically for purposes of au-
4 thorized inspections or other enforcement ac-
5 tions, and may develop automated capabilities
6 to request such documents.

7 “(D) An employer shall safeguard any in-
8 formation retained under this paragraph and
9 paragraph (3) and protect any means of access
10 to such information to ensure that such infor-
11 mation is not used for any purpose other than
12 as authorized in this paragraph or paragraph
13 (3) or to determine the identity and employ-
14 ment eligibility of the individual, and to protect
15 the confidentiality of such information, includ-
16 ing ensuring that such information is not pro-
17 vided to any person other than a person who
18 carries out the employer’s responsibilities under
19 this subsection, except as provided in paragraph
20 (3).

21 “(5) PENALTIES.—An employer that fails to
22 comply with any requirement of this subsection shall
23 be penalized under subsection (e)(4)(B).

24 “(6) PROTECTION OF CIVIL RIGHTS.—

1 “(A) Nothing in this section shall be con-
2 strued to prohibit any reasonable accommoda-
3 tion necessary to protect the religious freedom
4 of any individual, or to ensure access to employ-
5 ment opportunities of any disabled individual.

6 “(B) The employer shall use the proce-
7 dures for document verification set forth in this
8 paragraph for all employees without regard to
9 race, sex, national origin, or, unless specifically
10 permitted in this section, to citizenship status.

11 “(7) RECEIPTS.—The Secretary must provide
12 for the use of receipts for replacement documents,
13 and temporary evidence of employment authorization
14 by an individual to meet a documentation require-
15 ment of this subsection on a temporary basis not to
16 exceed 1 year, pending satisfaction by the individual
17 of such requirement.

18 “(d) THE EMPLOYMENT VERIFICATION SYSTEM.—

19 “(1) IN GENERAL.—

20 “(A) The Secretary, in consultation with
21 the Commissioner, shall implement and specify
22 the procedures for the System. The partici-
23 pating employers shall timely register with the
24 System and shall use the System as described
25 in subsection (d)(5).

1 “(B) The Secretary shall create the nec-
2 essary processes to monitor the functioning of
3 the System, including the volume of the
4 workflow, the speed of processing of queries,
5 the speed and accuracy of responses, misuse of
6 the System, fraud or identity theft, whether use
7 of the System results in wrongful adverse ac-
8 tions or discrimination based upon a prohibited
9 factor against U.S. citizens or employment au-
10 thorized aliens, and the security, integrity and
11 privacy of the program.

12 “(2) IMPLEMENTATION SCHEDULE.—

13 “(A) FEDERAL GOVERNMENT.—All em-
14 ployers within the Executive, Legislative, or Ju-
15 dicial Branches of the Federal Government
16 shall participate in the System on or after the
17 date of enactment of this subsection as fol-
18 lows—

19 “(i) as of the date of enactment, to
20 the extent required by section 402(e)(1) of
21 the Illegal Immigration Reform and Immig-
22 grant Responsibility Act of 1996 as al-
23 ready implemented by each Branch; or

1 “(ii) on or after the date that is 60
2 days after the date of enactment of this
3 subsection;

4 whichever is earlier, with respect to all newly
5 hired employees and employees with expiring
6 employment authorization.

7 “(B) FEDERAL CONTRACTORS.—Federal
8 contractors shall participate in the System as
9 provided in the final rule published at 73 Fed-
10 eral Register 67,651 (Nov. 14, 2008), or any
11 subsequent amendments to such rule, for which
12 purpose references to E-Verify in the final rule
13 shall be construed to apply to the System.

14 “(C) CRITICAL INFRASTRUCTURE.—As of
15 the date that is 1 year after the date of enact-
16 ment of this subsection, the Secretary, in the
17 Secretary’s discretion, with notice to the public
18 provided in the Federal Register, may require
19 any employer or industry which the Secretary
20 determines to be part of the critical infrastruc-
21 ture or directly related to the national security
22 or homeland security of the United States to
23 participate in the System with respect to all
24 newly hired employees and employees with ex-
25 piring employment authorization. The Secretary

1 shall notify employers subject to this subpara-
2 graph no less than 60 days prior to such re-
3 quired participation.

4 “(D) EMPLOYERS WITH MORE THAN 1,000
5 EMPLOYEES.—Not later than 2 years after the
6 date of enactment of this subsection, all em-
7 ployers with more than 1,000 employees shall
8 participate in the System with respect to all
9 newly hired employees and employees with ex-
10 piring employment authorization.

11 “(E) EMPLOYERS WITH MORE THAN 500
12 EMPLOYEES.—Not later than 3 years after the
13 date of enactment of this subsection, all em-
14 ployers with more than 500 employees shall
15 participate in the System with respect to all
16 newly hired employees and employees with ex-
17 piring employment authorization.

18 “(F) EMPLOYERS WITH MORE THAN 100
19 EMPLOYEES.—Not later than 4 years after the
20 date of enactment of this subsection, all em-
21 ployers with more than 100 employees shall
22 participate in the System with respect to all
23 newly hired employees and employees with ex-
24 piring employment authorization.

1 “(G) ALL EMPLOYERS.—Not later than 5
2 years after the date of enactment of this sub-
3 section, all employers shall participate in the
4 System with respect to all newly hired employ-
5 ees and employees with expiring employment
6 authorization.

7 “(H) IMMIGRATION LAW VIOLATORS.—An
8 order finding any employer to have violated sec-
9 tion 274A, 274B, or 274C shall require the em-
10 ployer to participate in the System with respect
11 to newly hired employees and employees with
12 expiring employment authorization, if such em-
13 ployer is not otherwise required to participate
14 in the System by this section. The Secretary
15 shall monitor such employer’s compliance with
16 System procedures.

17 “(3) PARTICIPATION IN THE SYSTEM.—The
18 Secretary may—

19 “(A) permit any employer that is not re-
20 quired under this section to participate in the
21 System to do so on a voluntary basis; and

22 “(B) require any employer that is required
23 to participate in the System with respect to its
24 newly hired employees also to do so with respect
25 to its current workforce if the employer is de-

1 terminated by the Secretary or other appropriate
2 authority to have engaged in any violation of
3 the immigration laws.

4 “(4) CONSEQUENCE OF FAILURE TO PARTICI-
5 PATE.—If an employer is required under this sub-
6 section to participate in the System and fails to
7 comply with the requirements of such program with
8 respect to an individual—

9 “(A) such failure shall be treated as a vio-
10 lation of subsection (a)(1)(B) of this section
11 with respect to that individual, and

12 “(B) a rebuttable presumption is created
13 that the employer has violated subsection
14 (a)(1)(A) or (a)(2) of this section, except in the
15 case of any criminal prosecution.

16 “(5) PROCEDURES FOR PARTICIPANTS IN THE
17 SYSTEM.—

18 “(A) IN GENERAL.—An employer partici-
19 pating in the System must register such partici-
20 pation with the Secretary and conform to the
21 following procedures in the event of hiring any
22 individual for employment in the United
23 States—

24 “(i) REGISTRATION OF EMPLOYERS.—

25 The Secretary, through notice in the Fed-

1 eral Register, shall prescribe procedures
2 that employers must follow to register with
3 the System. In prescribing these proce-
4 dures, the Secretary shall have authority to
5 require employers to provide—

6 “(I) employer’s name;

7 “(II) employer’s Employment
8 Identification Number (EIN) and
9 such other employer identification in-
10 formation as the Secretary may des-
11 ignate;

12 “(III) company address;

13 “(IV) name, date of birth, and
14 position of the employer’s employees
15 accessing the System;

16 “(V) the information described in
17 subclauses (I) through (IV) of this
18 clause with respect to any agent, con-
19 tractor, or other service provider ac-
20 cessing the System on the employer’s
21 behalf; and

22 “(VI) such other information as
23 the Secretary deems necessary to en-
24 sure proper use and security of the
25 System.

1 “(ii) UPDATING INFORMATION.—The
2 employer is responsible for providing notice
3 of any change to the information required
4 under subclauses (I) through (V) of clause
5 (i) before conducting any further inquiries
6 within the System, or on such other sched-
7 ule as the Secretary may provide.

8 “(iii) TRAINING.—The Secretary shall
9 require employers to undergo such training
10 to ensure proper use, protection of civil
11 rights and civil liberties, privacy, integrity
12 and security of the System. To the extent
13 practicable, such training shall be made
14 available electronically.

15 “(iv) NOTIFICATION TO EMPLOY-
16 EES.—The employer shall post notice or
17 otherwise inform individuals hired for em-
18 ployment of the use of the System, that
19 the System may be used for immigration
20 enforcement purposes, and that the System
21 cannot be used to discriminate or to take
22 adverse action against U.S. citizens or em-
23 ployment authorized aliens.

24 “(v) PROVISION OF ADDITIONAL IN-
25 FORMATION.—The employer shall obtain

1 from the individual (and the individual
2 shall provide) and shall record in such
3 manner as the Secretary may specify—

4 “(I) the individual’s social secu-
5 rity account number, or any other in-
6 formation relevant to determining citi-
7 zenship as the Secretary of Homeland
8 Security may specify,

9 “(II) if the individual does not
10 attest to United States nationality
11 under subsection (c)(2) of this section,
12 such identification or authorization
13 number established by the Depart-
14 ment of Homeland Security as the
15 Secretary of Homeland Security shall
16 specify, and

17 “(III) such other information as
18 the Secretary may require to deter-
19 mine the identity and employment au-
20 thorization of an employee.

21 “(vi) PRESENTATION OF DOCUMENTA-
22 TION.—The employer, and the individual
23 whose identity and employment eligibility
24 are being confirmed, shall fulfill the re-

1 requirements of subsection (c) of this sec-
2 tion.

3 “(B) SEEKING CONFIRMATION.—

4 “(i) The employer shall use the Sys-
5 tem to provide to the Secretary all required
6 information in order to initiate confirma-
7 tion of the identity and employment eligi-
8 bility of any individual no earlier than the
9 date upon which the individual has accept-
10 ed an offer of employment, and no later
11 than 3 business days, or such other rea-
12 sonable period as the Secretary may pro-
13 vide, after the date when employment be-
14 gins. An employer may not, however, make
15 the starting date of an individual’s employ-
16 ment or training or any other term and
17 condition of employment dependent on the
18 receipt of a confirmation of identity and
19 employment eligibility.

20 “(ii) For reverification of an indi-
21 vidual with a limited period of employment
22 authorization, all required System proce-
23 dures must be initiated no later than 3
24 business days after the date the individ-
25 ual’s employment authorization expires.

1 “(iii) For those employers required by
2 the Secretary to verify their entire work-
3 force, the System can be used for initial
4 verification of an individual hired before
5 the employer is subject to the System, and
6 the employer must initiate all required pro-
7 cedures on or before such date as the Sec-
8 retary shall specify.

9 “(iv) The Secretary shall provide, and
10 the employer shall utilize, as part of the
11 System, a method of notifying employers of
12 a confirmation or nonconfirmation of an
13 individual’s identity and employment eligi-
14 bility, or a notice that further action is re-
15 quired to verify such identity or employ-
16 ment eligibility (‘further action notice’).
17 The Secretary and the Commissioner shall
18 establish procedures to directly notify the
19 individual, as well as the employer, of a
20 confirmation, nonconfirmation, or further
21 action notice, and provide information
22 about filing an administrative appeal pur-
23 suant to paragraph (7). The Secretary and
24 the Commissioner may provide for a
25 phased-in implementation of the notifica-

1 tion requirements of this clause as appro-
2 priate, but the notification system shall
3 cover all inquiries not later than 5 years
4 after the date of the enactment of the CIR
5 Act of 2010.

6 “(C) CONFIRMATION OR NONCONFIRMA-
7 TION.—

8 “(i) INITIAL RESPONSE.—The System
9 shall provide a confirmation of an individ-
10 ual’s identity and employment eligibility or
11 a further action notice at the time of the
12 inquiry, unless for technological reasons or
13 due to unforeseen circumstances, the Sys-
14 tem is unable to provide such confirmation
15 or further action notice. In such situations,
16 the System shall provide a confirmation or
17 further action notice within 3 business
18 days of the initial inquiry. If providing a
19 confirmation or further action notice, the
20 System shall provide an appropriate code
21 indicating such confirmation or such fur-
22 ther action notice.

23 “(ii) CONFIRMATION UPON INITIAL
24 INQUIRY.—When the employer receives an
25 appropriate confirmation of an individual’s

1 identity and employment eligibility under
2 the System, the employer shall record the
3 confirmation in such manner as the Sec-
4 retary may specify.

5 “(iii) FURTHER ACTION NOTICE AND
6 LATER CONFIRMATION OR NONCONFIRMA-
7 TION.—

8 “(I) NOTIFICATION AND AC-
9 KNOWLEDGMENT THAT FURTHER AC-
10 TION IS REQUIRED.—Within 3 busi-
11 ness days of an employer’s receipt of
12 a further action notice of an individ-
13 ual’s identity or employment eligibility
14 under the System, the employer shall
15 notify the individual for whom the
16 confirmation is sought of the further
17 action notice and any procedures spec-
18 ified by the Secretary for addressing
19 such notice. The further action notice
20 must be given to the individual in
21 writing. The individual must affirma-
22 tively acknowledge in writing, or in
23 such other manner as the Secretary
24 may specify, the receipt of the further
25 action notice from the employer. If

1 the individual refuses to acknowledge
2 the receipt of the further action no-
3 tice, or acknowledges in writing that
4 he or she will not contest the further
5 action notice under subclause (II), the
6 employer shall notify the Secretary in
7 such manner as the Secretary may
8 specify.

9 “(II) CONTEST.—Within 10 busi-
10 ness days of receiving notification of a
11 further action notice under subclause
12 (I), the individual must contact the
13 appropriate Federal agency and, if the
14 Secretary so requires, appear in per-
15 son for purposes of verifying the indi-
16 vidual’s identity and employment eligi-
17 bility. The employer shall provide the
18 individual with time as needed during
19 daytime hours to contest the further
20 action notice. The Secretary, in con-
21 sultation with the Commissioner and
22 other appropriate Federal agencies,
23 shall specify an available secondary
24 verification procedure to confirm the
25 validity of information provided and

1 to provide a confirmation or noncon-
2 firmation.

3 “(III) NO CONTEST.—If the indi-
4 vidual refuses to acknowledge receipt
5 of the further action notice, acknowl-
6 edges that he or she will not contest
7 the further action notice as provided
8 in subclause (I), or does not contact
9 the appropriate Federal agency within
10 the period specified in subclause (II),
11 a nonconfirmation shall issue. The
12 employer shall record the noncon-
13 firmation in such manner as the Sec-
14 retary may specify and terminate the
15 individual’s employment. An individ-
16 ual’s failure to contest a further ac-
17 tion notice shall not be considered an
18 admission of guilt with respect to any
19 violation of this section or any provi-
20 sion of law.

21 “(IV) CONFIRMATION OR NON-
22 CONFIRMATION.—Unless the period is
23 extended in accordance with this sub-
24 clause, the System shall provide a
25 confirmation or nonconfirmation with-

1 in 15 business days from the date
2 that the individual contests the fur-
3 ther action notice under subclause
4 (II). If the Secretary determines that
5 good cause exists, including to permit
6 the individual to obtain and provide
7 needed evidence of identity or employ-
8 ment eligibility, the Secretary shall ex-
9 tend the period for providing con-
10 firmation or nonconfirmation for stat-
11 ed periods beyond 15 business days.
12 When confirmation or nonconfirma-
13 tion is provided, the confirmation sys-
14 tem shall provide an appropriate code
15 indicating such confirmation or non-
16 confirmation.

17 “(V) RE-EXAMINATION.—Noth-
18 ing in this section shall prevent the
19 Secretary from establishing proce-
20 dures to reexamine a case where a
21 confirmation or nonconfirmation has
22 been provided if subsequently received
23 information indicates that the con-
24 firmation or nonconfirmation may not
25 have been correct.

1 “(VI) EMPLOYEE PROTEC-
2 TIONS.—In no case shall an employer
3 terminate employment or take any
4 other adverse action against an indi-
5 vidual solely because of a failure of
6 the individual to have identity and
7 employment eligibility confirmed
8 under this subsection until a noncon-
9 firmation has been issued, and if the
10 further action notice was contested,
11 the period to timely file an adminis-
12 trative appeal has expired without an
13 appeal, or in the case where an ad-
14 ministrative appeal has been filed, the
15 appeal has been denied or a stay of
16 the nonconfirmation has been termi-
17 nated.

18 “(iv) NOTICE OF NONCONFIRMA-
19 TION.—Within 3 business days of an em-
20 ployer’s receipt of a nonconfirmation, the
21 employer shall notify the individual who is
22 the subject of the nonconfirmation, and
23 provide information about filing an admin-
24 istrative appeal pursuant to paragraph (7).
25 The nonconfirmation notice must be given

1 to the individual in writing. The individual
2 must affirmatively acknowledge in writing,
3 or in such other manner as the Secretary
4 may specify, the receipt of the noncon-
5 firmation notice from the employer. If the
6 individual refuses or fails to acknowledge
7 the receipt of the nonconfirmation notice,
8 the employer shall notify the Secretary in
9 such manner as the Secretary may specify.

10 “(D) CONSEQUENCES OF NONCONFIRMA-
11 TION.—

12 “(i) TERMINATION OF CONTINUED
13 EMPLOYMENT.—Except as provided in
14 clause (iii), if the employer has received a
15 nonconfirmation regarding an individual
16 and has notified the individual as required
17 by subparagraph (C)(iv), the employer
18 shall terminate employment of the indi-
19 vidual upon the expiration of the time pe-
20 riod as specified in paragraph(7)(A) for fil-
21 ing an administrative appeal, or imme-
22 diately if the further action notice was not
23 contested.

24 “(ii) CONTINUED EMPLOYMENT
25 AFTER NONCONFIRMATION.—If the em-

1 employer, in violation of subclause (i), con-
2 tinues to employ an individual after receiv-
3 ing nonconfirmation, a rebuttable pre-
4 sumption is created that the employer has
5 violated subsections (a)(1)(A) and (a)(2) of
6 this section. The previous sentence shall
7 not apply in any prosecution under sub-
8 section (l)(1) of this section.

9 “(iii) EFFECT OF ADMINISTRATIVE
10 APPEAL.—If an individual files an adminis-
11 trative appeal of the nonconfirmation with-
12 in the time period specified in paragraph
13 (7)(A), and provides a copy of such appeal
14 to the employer, the employer shall not ter-
15 minate the individual’s employment under
16 this subparagraph prior to the resolution
17 of the administrative appeal unless the
18 Secretary or Commissioner terminates the
19 stay under paragraph (7)(B).

20 “(E) OBLIGATION TO RESPOND TO QUE-
21 RIES AND ADDITIONAL INFORMATION.—

22 “(i) Employers are required to comply
23 with requests for information from the
24 Secretary, including queries concerning
25 current and former employees (within the

1 time frame during which records are re-
2 quired to be maintained under this section
3 regarding such former employees) that re-
4 late to the functioning of the System, the
5 accuracy of the responses provided by the
6 System, and any suspected misuse, dis-
7 crimination, fraud, or identity theft in the
8 use of the System. Failure to comply with
9 such a request is a violation of section
10 (a)(1)(B).

11 “(ii) Individuals being verified
12 through the System may be required to
13 take further action to address irregularities
14 identified by the Secretary or the Commis-
15 sioner in the documents relied upon for
16 purposes of subsection (c). The employer
17 shall communicate to the individual within
18 3 business days any such requirement for
19 further actions and shall record the date
20 and manner of such communication. The
21 individual must acknowledge in writing, or
22 in such other manner as the Secretary may
23 specify, the receipt of this communication
24 from the employer. Failure to communicate

1 such a requirement is a violation of section
2 (a)(1)(B).

3 “(iii) The Secretary is authorized,
4 with notice to the public provided in the
5 Federal Register, to implement, clarify,
6 and supplement the requirements of this
7 paragraph in order to facilitate the func-
8 tioning, accuracy, and fairness of the Sys-
9 tem or to prevent misuse, discrimination,
10 fraud, or identity theft in the use of the
11 System.

12 “(F) The Secretary may establish a proc-
13 ess to certify, on an annual basis or such other
14 time frame as the Secretary may provide, des-
15 ignated agents and other System service pro-
16 viders seeking access to the System to perform
17 verification queries on behalf of employers,
18 based upon training, usage, and security stand-
19 ards designated by the Secretary.

20 “(G) No later than 3 months after the
21 date of enactment of this section, the Secretary
22 of Homeland Security, in consultation with the
23 Secretary of Labor, the Secretary of Agri-
24 culture, the Commissioner of Social Security,
25 the Attorney General, the Equal Employment

1 Opportunity Commission, Office of Special
2 Counsel for Unfair Immigration Related Em-
3 ployment Practices, and the Administrator of
4 the Small Business Administration, shall com-
5 mence a campaign to disseminate information
6 respecting the procedures, rights, and remedies
7 prescribed under this section. Such campaign
8 shall be aimed at increasing the knowledge of
9 employers, employees, and the general public
10 concerning employer and employee rights, re-
11 sponsibilities, and remedies under this section.
12 The Secretary shall assess the success of the
13 campaign in achieving its goals.

14 “(i) In order to carry out and assess
15 the campaign under this paragraph, the
16 Secretary of Homeland Security may, to
17 the extent deemed appropriate and subject
18 to the availability of appropriations, con-
19 tract with public and private organizations
20 for outreach and assessment activities
21 under the campaign.

22 “(ii) There are authorized to be ap-
23 propriated to carry out this paragraph
24 \$40,000,000 for each fiscal year 2011
25 through 2013.

1 “(H) Based on a regular review of the Sys-
2 tem and the document verification procedures
3 to identify misuse or fraudulent use and to as-
4 sess the security of the documents and proc-
5 esses being used to establish identity or employ-
6 ment authorization, the Secretary, in consulta-
7 tion with the Commissioner, may modify the
8 documents or information that must be pre-
9 sented to the employer, the information that
10 must be provided to the System by the em-
11 ployer, and the procedures that must be fol-
12 lowed by employers with respect to any aspect
13 of the System if the Secretary, in the Sec-
14 retary’s discretion, concludes that the modifica-
15 tion is necessary to ensure that the System ac-
16 curately and reliably determines the identity
17 and employment authorization of employees
18 while providing protection against misuse, dis-
19 crimination, fraud, and identity theft.

20 “(I) Subject to appropriate safeguards to
21 prevent misuse of the system, the Secretary, in
22 consultation with the Commissioner, shall es-
23 tablish a secure self-verification procedure to
24 permit an individual who seeks to verify the in-
25 dividual’s own employment eligibility prior to

1 obtaining or changing employment to contact
2 the appropriate agency and, in a timely man-
3 ner, correct or update the information used by
4 the System.

5 “(J) The Secretary may, upon notice pro-
6 vided in the Federal Register, adjust the time
7 periods described in this paragraph.

8 “(6) PROTECTION FROM LIABILITY FOR AC-
9 TIONS TAKEN ON THE BASIS OF INFORMATION PRO-
10 VIDED BY THE SYSTEM.—No employer participating
11 in the System who complies with all System proce-
12 dures as required in this Act shall be liable under
13 this Act for any employment-related action taken
14 with respect to the employee in good faith reliance
15 on information provided through the confirmation
16 system.

17 “(7) ADMINISTRATIVE REVIEW.—

18 “(A) IN GENERAL.—An individual who is
19 notified pursuant to paragraph (5)(C)(iv) of a
20 nonconfirmation by the employer may, not later
21 than 15 business days after the date that such
22 notice is received, file an administrative appeal
23 of such nonconfirmation. An individual subject
24 to a nonconfirmation may file an appeal thereof
25 after the 15-day period if the appeal is accom-

1 panied by evidence that the individual did not
2 receive timely notice of a nonconfirmation, or
3 that there was good cause for the failure to file
4 an appeal within the 15-day period. All admin-
5 istrative appeals shall be filed as follows:

6 “(i) CITIZENS OR NATIONALS OF THE
7 UNITED STATES.—An individual claiming
8 to be a citizen or national of the United
9 States shall file the administrative appeal
10 with the Commissioner.

11 “(ii) ALIENS.—An individual claiming
12 to be an alien authorized to work in the
13 United States shall file the administrative
14 appeal with the Secretary.

15 “(B) ADMINISTRATIVE STAY OF NONCON-
16 FIRMATION.—The nonconfirmation shall be
17 automatically stayed upon the timely filing of
18 an administrative appeal, and the stay shall re-
19 main in effect until the resolution of the appeal,
20 unless the Secretary or the Commissioner ter-
21 minates the stay based on a determination that
22 the administrative appeal is frivolous or filed
23 for purposes of delay.

24 “(C) REVIEW FOR ERROR.—The Secretary
25 and the Commissioner shall develop procedures

1 for resolving administrative appeals regarding
2 nonconfirmations based upon the information
3 that the individual has provided, including any
4 additional evidence or argument that was not
5 previously considered. Any such additional evi-
6 dence or argument shall be filed within 15 days
7 of the date the appeal was originally filed. Ap-
8 peals shall be resolved within 30 days after the
9 individual has submitted all evidence and argu-
10 ments he or she wishes to submit, or has stated
11 in writing that there is no additional evidence
12 that he or she wishes to submit. The Secretary
13 and the Commissioner may, on a case by case
14 basis for good cause, extend the filing and sub-
15 mission period in order to ensure accurate reso-
16 lution of an appeal before him or her. Adminis-
17 trative review under this paragraph shall be
18 limited to whether the nonconfirmation notice is
19 supported by the weight of the evidence.

20 “(D) COMPENSATION FOR ERROR.—If the
21 individual was denied a stay under subpara-
22 graph (B) and the Secretary makes a deter-
23 mination that the nonconfirmation issued for an
24 individual was not caused by an act or omission
25 of the individual or the employer, the Secretary

1 shall compensate the individual for lost wages
2 in an amount not exceeding \$75,000 and rea-
3 sonable costs and attorneys' fees incurred dur-
4 ing administrative and judicial review which
5 shall not exceed \$50,000. Amounts under this
6 clause may be adjusted to account for inflation
7 pursuant to the US Consumer Price Index - All
8 Urban Consumers (CPI-U) compiled by the Bu-
9 reau of Labor Statistics.

10 “(i) CALCULATION OF LOST WAGES.—

11 Lost wages shall be calculated based on
12 the wage rate and work schedule that pre-
13 vailed prior to termination. The individual
14 shall be compensated for wages lost begin-
15 ning on the first scheduled work day after
16 employment was terminated and ending
17 180 days after completion of the adminis-
18 trative review process described in this
19 paragraph, or judicial review if any, or the
20 day after the individual is reinstated or ob-
21 tains employment elsewhere, whichever oc-
22 curs first. If the individual obtains employ-
23 ment elsewhere at a lower wage rate, the
24 individual shall be compensated for the dif-
25 ference in wages for the period ending 180

1 days after completion of the administrative
2 review process or judicial review, if any.

3 “(ii) LIMITATION ON COMPENSA-
4 TION.—For purposes of determining an in-
5 dividual’s compensation for the loss of em-
6 ployment, such compensation shall not in-
7 clude any period in which the individual
8 was ineligible for employment in the
9 United States.

10 “(iii) SOURCE OF FUNDS.—Com-
11 pensation or reimbursement provided
12 under this paragraph shall not be provided
13 from funds appropriated in annual appro-
14 priations Acts to the Secretary for the De-
15 partment of Homeland Security.

16 “(8) JUDICIAL REVIEW.—

17 “(A) IN GENERAL.—After the Secretary or
18 the Commissioner makes a final determination
19 on an appeal filed by an individual under para-
20 graph (7), the individual may obtain judicial re-
21 view of such determination in a civil action
22 commenced not later than 90 days after notice
23 of such decision.

24 “(B) JURISDICTION.—A civil action for
25 such judicial review shall be brought in the dis-

1 trict court of the United States for the judicial
2 district in which the plaintiff resides or, if the
3 plaintiff does not reside within any such judicial
4 district, in the District Court of the United
5 States for the District of Columbia.

6 “(C) SERVICE.—The defendant is either
7 the Secretary or the Commissioner, but not
8 both, depending upon who issued the adminis-
9 trative order under paragraph (7). In addition
10 to serving the defendant, the plaintiff must also
11 serve the Attorney General.

12 “(D) ANSWER.—As part of the Secretary’s
13 or the Commissioner’s answer to a complaint
14 for such judicial review, the Secretary or the
15 Commissioner shall file a certified copy of the
16 administrative record compiled during the ad-
17 ministrative review under paragraph (7), includ-
18 ing the evidence upon which the findings and
19 decision complained of are based. The court
20 shall have power to enter, upon the pleadings
21 and the administrative record, a judgment af-
22 firming or reversing the result of that adminis-
23 trative review, with or without remanding the
24 cause for a rehearing.

25 “(E) STANDARD OF REVIEW.—

1 “(i) The burden shall be on the plain-
2 tiff to show that the administrative order
3 was erroneous. Administrative findings of
4 fact are conclusive unless any reasonable
5 adjudicator would be compelled to conclude
6 to the contrary. The court, upon good
7 cause shown, may in its discretion remand
8 to the Secretary or the Commissioner for
9 additional fact-finding or other pro-
10 ceedings.

11 “(ii) If the plaintiff meets his or her
12 burden to show that the administrative
13 order was erroneous, the court shall, upon
14 request of the plaintiff, determine whether
15 the plaintiff can establish by the prepon-
16 derance of the evidence that the error was
17 caused by the decision rules, processes, or
18 procedures utilized by the System or erro-
19 neous system information that was not the
20 result of acts or omissions of the indi-
21 vidual.

22 “(F) COMPENSATION FOR ERROR.—

23 “(i) IN GENERAL.—In cases in which
24 the judicial review reverses the final deter-
25 mination of the Secretary or the Commis-

1 sioner made under paragraph (7), and the
2 court finds that the final determination
3 was erroneous by reason of the decision
4 rules, processes, or procedures utilized by
5 the System or erroneous system informa-
6 tion that was not the result of acts or
7 omissions of the individual, the court may
8 award to the individual lost wages not ex-
9 ceeding \$75,000, reasonable costs and at-
10 torneys' fees incurred during administra-
11 tive and judicial review which shall not ex-
12 ceed \$50,000, and compensatory damages
13 in an amount deemed necessary by the
14 court. Amounts under this clause may be
15 adjusted to account for inflation pursuant
16 to the US Consumer Price Index - All
17 Urban Consumers (CPI-U) compiled by
18 the Bureau of Labor Statistics.

19 “(ii) CALCULATION OF LOST
20 WAGES.—Lost wages shall be calculated
21 based on the wage rate and work schedule
22 that prevailed prior to termination. The in-
23 dividual shall be compensated for wages
24 lost beginning on the first scheduled work
25 day after employment was terminated and

1 ending 180 days after completion of the ju-
2 dicial review described in this paragraph or
3 the day after the individual is reinstated or
4 obtains employment elsewhere, whichever
5 occurs first. If the individual obtains em-
6 ployment elsewhere at a lower wage rate,
7 the individual shall be compensated for the
8 difference in wages for the period ending
9 180 days after completion of the judicial
10 review process. No lost wages shall be
11 awarded for any period of time during
12 which the individual was not authorized to
13 be employed in the United States.

14 “(iii) PAYMENT OF COMPENSATION.—
15 Notwithstanding any other law, payment of
16 compensation for lost wages, costs and at-
17 torneys’ fees under this paragraph, or com-
18 promise settlements of the same, shall be
19 made as provided by section 1304 of title
20 31, United States Code. Appropriations
21 made available to the Secretary or the
22 Commissioner, accounts provided for under
23 section 286 of the Immigration and Na-
24 tionality Act (8 U.S.C. 1356), and funds
25 from the Federal Old-Age and Survivors

1 Insurance Trust Fund or the Federal Dis-
2 ability Insurance Trust Fund shall not be
3 available to pay such compensation.

4 “(iv) EXCLUSIVE REMEDY.—Awards
5 of compensation for lost wages, costs, and
6 attorneys’ fees under this paragraph shall
7 be the exclusive remedy for a finding under
8 clause (i) that a final determination of the
9 Secretary or the Commissioner made under
10 paragraph (7) was erroneous by reason of
11 the negligence or recklessness of the Sec-
12 retary or the Commissioner.

13 “(9) PRIVATE RIGHT OF ACTION.—If the non-
14 confirmation issued for an individual was caused by
15 negligence or other misconduct on the part of the
16 employer, the individual may seek recovery of dam-
17 ages, reinstatement, back pay, and other appropriate
18 remedies in a civil action against the employer. Such
19 action must be commenced not later than 90 days
20 after notice of the Secretary’s or the Commissioner’s
21 decision on an administrative appeal as described in
22 paragraph (7), or 90 days after termination of the
23 individual as a result of the final nonconfirmation if
24 no such administrative appeal is taken. The action
25 shall be brought in the district court of the United

1 States for the judicial district in which the plaintiff
2 resides or, if the plaintiff does not reside within any
3 such judicial district, in the District Court of the
4 United States for the District of Columbia. In such
5 action, no prior administrative or judicial finding re-
6 lating to the employer in any proceeding to which
7 the employer was not a party may be given any res
8 judicata or collateral estoppel effect against the em-
9 ployer.

10 “(10) LIMIT ON INJUNCTIVE RELIEF.—Regard-
11 less of the nature of the action or claim or of the
12 identity of the party or parties bringing the action,
13 no court (other than the Supreme Court) shall have
14 jurisdiction or authority to enjoin or restrain the op-
15 eration of the provisions in this section, other than
16 with respect to the application of such provisions to
17 an individual plaintiff.

18 “(11) ANNUAL STUDY AND REPORT.—

19 “(A) REQUIREMENT FOR STUDY.—The
20 Comptroller General of the United States shall
21 conduct an annual study of the System as de-
22 scribed in this paragraph.

23 “(B) PURPOSE OF THE STUDY.—The
24 Comptroller General shall, for each year, under-

1 take a study to determine whether the System
2 meets the following requirements:

3 “(i) DEMONSTRATED ACCURACY OF
4 THE DATABASES.—New information and
5 information changes submitted by an indi-
6 vidual to the System is updated in all of
7 the relevant databases not later than 3
8 working days after submission in at least
9 99 percent of all cases.

10 “(ii) LOW ERROR RATES AND DELAYS
11 IN VERIFICATION.—

12 “(I) RATES OF INCORRECT NON-
13 CONFIRMATION NOTICES.—

14 “(aa) That, during a year,
15 the number of incorrect noncon-
16 firmations provided through the
17 System for individuals who are
18 native-born U.S. citizens is not
19 more than 1 percent.

20 “(bb) That, during a year,
21 the number of incorrect noncon-
22 firmations provided through the
23 System for individuals who are
24 foreign-born, work-authorized in-

1 individuals is not more than 3 per-
2 cent.

3 “(II) STABILITY OR IMPROVE-
4 MENT IN ERROR RATES.—That, dur-
5 ing a year, the rate of incorrect non-
6 confirmations shall not have increased
7 by more than 3 percent over the pre-
8 vious year.

9 “(iii) MEASURABLE EMPLOYER COM-
10 PLIANCE WITH SYSTEM REQUIREMENTS.—

11 “(I) NO DISCRIMINATION BASED
12 ON SYSTEM OPERATIONS.—The Sys-
13 tem has not and will not result in in-
14 creased discrimination or cause rea-
15 sonable employers to conclude that in-
16 dividuals of certain races or ethnicities
17 are more likely to have difficulties
18 when offered employment caused by
19 the operation of the System.

20 “(II) REQUIREMENT FOR INDE-
21 PENDENT STUDY.—The determination
22 described in subclause (I) shall be
23 based on an independent study com-
24 missioned by the Comptroller General

1 in each phase of expansion of the Sys-
2 tem.

3 “(iv) PROTECTION OF WORKERS’ PRI-
4 VATE INFORMATION.—At least 97 percent
5 of employers who participate in the System
6 are in full compliance with the privacy re-
7 quirements described in this subsection.

8 “(v) ADEQUATE AGENCY STAFFING
9 AND FUNDING.—The Secretary and Com-
10 missioner of Social Security have sufficient
11 funding to meet all of the deadlines and re-
12 quirements of this subsection.

13 “(C) CONSULTATION.—In conducting a
14 study under this paragraph, the Comptroller
15 General shall consult with representatives of
16 business, labor, immigrant communities, State
17 governments, privacy advocates, and appro-
18 priate departments of the United States.

19 “(D) REQUIREMENT FOR REPORTS.—Not
20 later than 21 months after the date of the en-
21 actment of the Act, and annually thereafter, the
22 Comptroller General shall submit to the Sec-
23 retary and to Congress a report containing the
24 findings of the study carried out under this
25 paragraph and shall include the following:

1 “(i) An assessment of the accuracy of
2 the databases utilized by the System and
3 of the timeliness and accuracy of the re-
4 sponses provided through the System to
5 employers.

6 “(ii) An assessment of the privacy and
7 confidentiality of the System and of the
8 overall security of the System with respect
9 to cybertheft and theft or misuse of private
10 data.

11 “(iii) An assessment of whether the
12 System is being implemented in a non-
13 discriminatory and nonretaliatory manner.

14 “(iv) An assessment of the most com-
15 mon causes for the erroneous issuance of
16 nonconfirmations by the System and rec-
17 ommendations to correct such causes.

18 “(v) The recommendations of the
19 Comptroller General regarding whether or
20 not the System should be modified prior to
21 further expansion.

22 “(E) CERTIFICATION.—If the Comptroller
23 General determines that the System meets the
24 requirements set out in clauses (i) through (v)
25 of subparagraph (B) for a year, the Comptroller

1 shall certify such determination and submit
2 such certification to Congress with the report
3 required by subparagraph (D).

4 “(12) ANNUAL AUDIT AND REPORT.—

5 “(A) PURPOSE OF THE AUDIT AND RE-
6 PORT.—The Office for Civil Rights and Civil
7 Liberties shall conduct annual audits of E-
8 Verify described in section 403(a) of the Illegal
9 Immigration Reform and Responsibility Act of
10 1996, Public Law No. 104–208, Div. C, 110
11 Stat. 3009–546, to assess employer compliance
12 with System requirements, including civil rights
13 and civil liberties protections, and compliance
14 with the System rules and procedures set forth
15 in the Memorandum of Understanding between
16 employers and the Social Security Administra-
17 tion and the Department of Homeland Security.

18 “(B) REQUIREMENTS OF AUDIT.—Annual
19 audits shall include, but are not limited to, the
20 following activities:

21 “(i) Use of testers to check if employ-
22 ers’ are using E-Verify as outlined in the
23 Memorandum of Understanding between
24 employers and the Department of Home-
25 land Security and the Social Security Ad-

1 ministration, including if employers are
2 misusing of the system to prescreen job
3 applicants, if employers are giving proper
4 notification to employees' regarding non-
5 confirmations, and if employers are taking
6 adverse actions against workers based
7 upon nonconfirmations.

8 “(ii) Random audits of employers to
9 confirm that employers are using the sys-
10 tem as outlined in the Memorandum of
11 Understanding and in a manner consistent
12 with civil rights and civil liberties protec-
13 tions; and

14 “(iii) Periodic audits of employers for
15 which the Special Counsel has received in-
16 formation or complaints and/or actual
17 charges of citizenship/national origin dis-
18 crimination or document abuse.

19 “(C) AUTHORITY OF OFFICE FOR CIVIL
20 RIGHTS AND CIVIL LIBERTIES.—The Office
21 shall have the authority to obtain from users of
22 E-Verify relevant documents and testimony and
23 answers to written interrogatories. The Office
24 shall also have the authority to conduct site vis-
25 its, and interview employees.

1 “(D) FAILURE OF EMPLOYERS TO CO-
2 OPERATE.—Employers that fail to cooperate
3 with the Office for Civil Rights and Civil Lib-
4 erties shall be noted in the annual report set
5 forth below in this subsection.

6 “(E) REQUIREMENT FOR REPORTS.—Not
7 later than 18 months after the date of enact-
8 ment of the Act, and annually thereafter, the
9 Office for Civil Rights and Civil Liberties shall
10 submit to the President of the Senate, the
11 Speaker of the House of Representatives, and
12 the appropriate committees and subcommittees
13 of Congress a report containing the findings of
14 the audit carried out under this paragraph.

15 “(13) MANAGEMENT OF THE SYSTEM.—

16 “(A) IN GENERAL.—The Secretary is au-
17 thorized to establish, manage, and modify the
18 System, which shall—

19 “(i) respond to inquiries made by par-
20 ticipating employers at any time through
21 the internet, or such other means as the
22 Secretary may designate, concerning an in-
23 dividual’s identity and whether the indi-
24 vidual is authorized to be employed;

1 “(ii) maintain records of the inquiries
2 that were made, of confirmations provided
3 (or not provided), and of the codes pro-
4 vided to employers as evidence of their
5 compliance with their obligations under the
6 System; and

7 “(iii) provide information to, and re-
8 quire action by, employers and individuals
9 using the System.

10 “(B) DESIGN AND OPERATION OF SYS-
11 TEM.—The System shall be designed and oper-
12 ated—

13 “(i) to maximize its reliability and
14 ease of use by employers consistent with
15 protecting the privacy and security of the
16 underlying information, and ensuring full
17 notice of such use to employees;

18 “(ii) to maximize its ease of use by
19 employees, including notification of its use,
20 of results, and ability to challenge results;

21 “(iii) to respond accurately to all in-
22 quiries made by employers on whether in-
23 dividuals are authorized to be employed
24 and to register any times when the system
25 is unable to receive inquiries;

1 “(iv) to maintain appropriate adminis-
2 trative, technical, and physical safeguards
3 to prevent unauthorized disclosure of per-
4 sonal information, misuse by employers
5 and employees, and discrimination;

6 “(v) to allow for auditing of the use of
7 the System to detect misuse, discrimina-
8 tion, fraud, and identity theft, and to pre-
9 serve the integrity and security of the in-
10 formation in all of the System, including
11 but not limited to the following—

12 “(I) to develop and use tools and
13 processes to detect or prevent fraud
14 and identity theft, such as multiple
15 uses of the same identifying informa-
16 tion or documents to fraudulently gain
17 employment;

18 “(II) to develop and use tools
19 and processes to detect and prevent
20 misuse of the system by employers
21 and employees;

22 “(III) to develop tools and proc-
23 esses to detect anomalies in the use of
24 the system that may indicate potential
25 fraud or misuse of the system;

1 “(IV) to audit documents and in-
2 formation submitted by employees to
3 employers, including authority to con-
4 duct interviews with employers and
5 employees, and obtain information
6 concerning employment from the em-
7 ployer;

8 “(vi) to confirm identity and employ-
9 ment authorization through verification
10 and comparison of records maintained by
11 the Secretary, other Federal departments,
12 states, or outlying possessions of the
13 United States, or other available informa-
14 tion, as determined necessary by the Sec-
15 retary, including—

16 “(I) records maintained by the
17 Social Security Administration;

18 “(II) birth and death records
19 maintained by vital statistics agencies
20 of any state or other United States
21 jurisdiction;

22 “(III) passport and visa records
23 (including photographs) maintained
24 by the Department of State; and

1 “(IV) state driver’s license or
2 identity card information (including
3 photographs) maintained by State de-
4 partments of motor vehicles;

5 “(vii) to confirm electronically the
6 issuance of the employment authorization
7 or identity document and to display the
8 digital photograph that the issuer placed
9 on the document so that the employer can
10 compare the photograph displayed to the
11 photograph on the document presented by
12 the employee. If a photograph is not avail-
13 able from the issuer, the Secretary shall
14 specify alternative procedures for con-
15 firming the authenticity of the document;
16 and

17 “(viii) to include, notwithstanding sec-
18 tion 6103 of title 26, U.S. Code, proce-
19 dures for verification by the Secretary of
20 the Treasury of the validity of any em-
21 ployer identification number and related
22 information provided by an employer to the
23 Secretary for the purpose of participating
24 in the System.

25 “(C) ACCESS TO INFORMATION.—

1 “(i) Notwithstanding any other provi-
2 sion of law, the Secretary of Homeland Se-
3 curity shall have access to relevant records
4 described in subparagraphs (B)(vi) and
5 (viii), for the purposes of preventing iden-
6 tity theft, fraud and misuse in the use of
7 the System and administering and enforce-
8 ing the provisions of this section governing
9 employment verification. Any governmental
10 agency or entity possessing such relevant
11 records shall provide such assistance and
12 cooperation in resolving further action no-
13 tices and nonconfirmations relating to such
14 records, or otherwise to improve the accu-
15 racy of the System, as the Secretary may
16 request. A state or other non-Federal juris-
17 diction that does not provide such access,
18 assistance, and cooperation shall not be eli-
19 gible for any grant or other program of fi-
20 nancial assistance administered by the Sec-
21 retary or by the Commissioner.

22 “(ii) The Secretary, in consultation
23 with the Commissioner and other appro-
24 priate Federal and State agencies, shall
25 develop policies and procedures to ensure

1 protection of the privacy and security of
2 personally identifiable information and
3 identifiers contained in the records
4 accessed or maintained by the System. The
5 Secretary, in consultation with the Com-
6 missioner and other appropriate Federal
7 and State agencies, shall develop and de-
8 ploy appropriate privacy and security
9 training for the Federal and State employ-
10 ees accessing the records under the Sys-
11 tem.

12 “(iii) The Secretary, acting through
13 the Chief Privacy Officer of the Depart-
14 ment of Homeland Security, shall conduct
15 regular privacy audits of the policies and
16 procedures established under clause (ii),
17 including any collection, use, dissemina-
18 tion, and maintenance of personally identi-
19 fiable information and any associated in-
20 formation technology systems, as well as
21 scope of requests for this information. The
22 Chief Privacy Officer shall review the re-
23 sults of the audits and recommend to the
24 Secretary any changes necessary to im-

1 prove the privacy protections of the pro-
2 gram.

3 “(D) RESPONSIBILITIES OF THE SEC-
4 RETARY OF HOMELAND SECURITY.—

5 “(i) As part of the System, the Sec-
6 retary shall maintain a reliable, secure
7 method, which, operating through the Sys-
8 tem and within the time periods specified,
9 compares the name, alien identification or
10 authorization number, or other information
11 as determined relevant by the Secretary,
12 provided in an inquiry against such infor-
13 mation maintained or accessed by the Sec-
14 retary in order to confirm (or not confirm)
15 the validity of the information provided,
16 the correspondence of the name and num-
17 ber, whether the alien is authorized to be
18 employed in the United States (or, to the
19 extent that the Secretary determines to be
20 feasible and appropriate, whether the
21 records available to the Secretary verify
22 the identity or status of a national of the
23 United States), and such other information
24 as the Secretary may prescribe.

1 “(ii) As part of the System, the Sec-
2 retary shall establish a reliable, secure
3 method, which, operating through the Sys-
4 tem, displays the digital photograph de-
5 scribed in subparagraph (B)(vii).

6 “(iii) The Secretary shall have author-
7 ity to prescribe when a confirmation, non-
8 confirmation, or further action notice shall
9 be issued.

10 “(iv) The Secretary shall perform reg-
11 ular audits under the System, as described
12 in subparagraph (B)(v) and shall utilize
13 the information obtained from such audits,
14 as well as any information obtained from
15 the Commissioner pursuant to section 304
16 of the CIR ACT OF 2010, for the pur-
17 poses of this section, to administer and en-
18 force the immigration laws, and to ensure
19 employee rights are protected under the
20 System.

21 “(v) The Secretary may make appro-
22 priate arrangements to allow employers or
23 employees who are otherwise unable to ac-
24 cess the System to use Federal Govern-
25 ment facilities or public facilities or other

1 available locations in order to utilize the
2 program.

3 “(vi) The Secretary shall, in consulta-
4 tion with the Commissioner, establish a
5 program which shall provide a reliable, se-
6 cure method by which victims of identity
7 fraud and other individuals may suspend
8 or limit the use of their Social Security ac-
9 count number or other identifying informa-
10 tion for System purposes. The Secretary
11 may implement the program on a limited
12 pilot program basis before making it fully
13 available to all individuals.

14 “(vii) The Secretary, in consultation
15 with the Commissioner of Social Security,
16 shall establish procedures for an Enhanced
17 Verification System under paragraph (X).

18 “(viii) The Secretary and the Commis-
19 sioner shall establish a program in which
20 Social Security account numbers that have
21 been identified to be subject to unusual
22 multiple use in the System, or that are
23 otherwise suspected or determined to have
24 been compromised by identity fraud or
25 other misuse, shall be blocked from use for

1 System purposes unless the individual
2 using such number is able to establish,
3 through secure and fair additional security
4 procedures, that he or she is the legitimate
5 holder of the number.

6 “(ix) The Secretary shall establish a
7 monitoring and compliance unit to detect
8 and reduce identity fraud and other misuse
9 of the program.

10 “(x) The Secretary, acting through
11 the Officer for Civil Rights and Civil Lib-
12 erties of the Department of Homeland Se-
13 curity, shall conduct regular civil rights
14 and civil liberties assessments of the Sys-
15 tem, including participation by employers,
16 other private entities, other Federal agen-
17 cies, and state and local government. The
18 Officer shall review the results of the as-
19 sessment and recommend to the Secretary
20 any changes necessary to improve the civil
21 rights and civil liberties protections of the
22 program.

23 “(E) RESPONSIBILITIES OF THE SEC-
24 RETARY OF STATE.—As part of the System, the
25 Secretary of State shall provide to the Sec-

1 retary access to passport and visa information
2 as needed to confirm that a passport or pass-
3 port card presented under subsection (c)(1)(B)
4 confirms the identity of the subject of the Sys-
5 tem check, or that a passport, passport card or
6 visa photograph matches the Secretary of
7 State’s records, and shall provide such assist-
8 ance as the Secretary may request in order to
9 resolve further action notices or nonconfirma-
10 tions relating to such information.

11 “(F) UPDATING INFORMATION.—The
12 Commissioner and the Secretaries of Homeland
13 Security and State shall update their informa-
14 tion in a manner that promotes maximum accu-
15 racy and shall provide a process for the prompt
16 correction of erroneous information.

17 “(14) LIMITATION ON USE OF THE SYSTEM.—
18 Notwithstanding any other provision of law, nothing
19 in this subsection shall be construed to permit or
20 allow any department, bureau, or other agency of
21 the United States Government to utilize any infor-
22 mation, database, or other records assembled under
23 this subsection for any purpose other than for
24 verification as provided by this subsection the en-
25 forcement and administration of the immigration

1 laws, or the enforcement of Federal laws for viola-
2 tions relating to use of the System.

3 “(15) CONFORMING AMENDMENT.—Sections
4 401 to 405 of the Illegal Immigration Reform and
5 Immigrant Responsibility Act of 1996 (division C of
6 Public Law 104–208, as amended; 8 U.S.C. 1234a
7 note) are repealed, provided that nothing in this
8 subsection shall be construed to limit the authority
9 of the Secretary to allow or continue to allow the
10 participation in the System of employers who have
11 participated in the E–Verify program established by
12 such sections.

13 “(16) NONDISCRIMINATION.—The employer
14 shall use the procedures for the System specified in
15 this section for all employees without regard to race,
16 sex, national origin, or, unless specifically permitted
17 in this section, to citizenship status.

18 “(e) COMPLIANCE.—

19 “(1) COMPLAINTS AND INVESTIGATIONS.—The
20 Secretary of Homeland Security shall establish pro-
21 cedures—

22 “(A) for individuals and entities to file
23 complaints respecting potential violations of
24 subsections (a) or (f)(1);

1 “(B) for the investigation of those com-
2 plaints which the Secretary deems appropriate
3 to investigate; and

4 “(C) for such other investigations of viola-
5 tions of subsections (a) or (f)(1) as the Sec-
6 retary determines to be appropriate.

7 “(2) AUTHORITY IN INVESTIGATIONS.—In con-
8 ducting investigations and hearings under this sub-
9 section—

10 “(A) immigration officers shall have rea-
11 sonable access to examine evidence of any em-
12 ployer being investigated;

13 “(B) immigration officers designated by
14 the Secretary, and administrative law judges
15 and other persons authorized to conduct hear-
16 ings under this section, may compel by sub-
17 poena the attendance of witnesses and the pro-
18 duction of evidence at any designated place in
19 an investigation or case under this subsection.
20 In case of refusal to fully comply with a sub-
21 poena lawfully issued under this paragraph, the
22 Secretary may request that the Attorney Gen-
23 eral apply in an appropriate district court of
24 the United States for an order requiring com-
25 pliance with the subpoena, and any failure to

1 obey such order may be punished by the court
2 as contempt. Failure to cooperate with the sub-
3 poena shall be subject to further penalties, in-
4 cluding but not limited to further fines and the
5 voiding of any mitigation of penalties or termi-
6 nation of proceedings under paragraph (4)(D);
7 and

8 “(C) the Secretary, in cooperation with the
9 Commissioner and Attorney General, and in
10 consultation with other relevant agencies, shall
11 establish a Joint Employment Fraud Task
12 Force consisting of, at a minimum, the Sys-
13 tem’s compliance personnel, immigration law
14 enforcement officers, Special Counsel for Unfair
15 Immigration-Related Employment Practices
16 personnel, Department of Homeland Security
17 Office for Civil Rights and Civil Liberties per-
18 sonnel, and Social Security Administration
19 fraud division personnel.

20 “(3) COMPLIANCE PROCEDURES.—

21 “(A) PRE-PENALTY NOTICE.—If the Sec-
22 retary has reasonable cause to believe that
23 there has been a civil violation of this section,
24 the Secretary shall issue to the employer con-
25 cerned a written notice of the Department’s in-

1 tention to issue a claim for a monetary or other
2 penalty. Such pre-penalty notice shall:

3 “(i) describe the violation;

4 “(ii) specify the laws and regulations
5 allegedly violated;

6 “(iii) disclose the material facts which
7 establish the alleged violation;

8 “(iv) describe the penalty sought to be
9 imposed; and

10 “(v) inform such employer that he or
11 she shall have a reasonable opportunity to
12 make representations as to why a mone-
13 tary or other penalty should not be im-
14 posed.

15 “(B) EMPLOYER’S RESPONSE.—Whenever
16 any employer receives written pre-penalty notice
17 of a fine or other penalty in accordance with
18 subparagraph (A), the employer may, within 30
19 days from receipt of such notice, file with the
20 Secretary its written response to the notice.
21 The response may include any relevant evidence
22 or proffer of evidence that the employer wishes
23 to present with respect to whether the employer
24 violated this section and whether, if so, the pen-
25 alty should be mitigated, and shall be filed and

1 considered in accordance with procedures to be
2 established by the Secretary.

3 “(C) PENALTY CLAIM.—After considering
4 the employer’s response under subparagraph
5 (B), the Secretary shall determine whether
6 there was a violation and promptly issue a writ-
7 ten final determination setting forth the find-
8 ings of fact and conclusions of law on which the
9 determination is based. If the Secretary deter-
10 mines that there was a violation, the Secretary
11 shall issue the final determination with a writ-
12 ten penalty claim. The penalty claim shall speci-
13 fy all charges in the information provided under
14 clauses (i) through (iii) of subparagraph (A)
15 and any mitigation of the penalty that the Sec-
16 retary deems appropriate under paragraph
17 (4)(D).

18 “(4) CIVIL PENALTIES.—All penalties in this
19 section may be adjusted periodically to account for
20 inflation as provided by law.

21 “(A) HIRING OR CONTINUING TO EMPLOY
22 UNAUTHORIZED ALIENS.—Any employer that
23 violates any provision of subsection (a)(1)(A) or
24 (a)(2) shall:

1 “(i) pay a civil penalty of not less
2 than \$2,000 and not more than \$5,000 for
3 each unauthorized alien with respect to
4 which each violation of either subsection
5 (a)(1)(A) or (a)(2) occurred;

6 “(ii) if the employer has previously
7 been fined under this paragraph, pay a
8 civil penalty of not less than \$4,000 and
9 not more than \$10,000 for each unauthor-
10 ized alien with respect to which a violation
11 of either subsection (a)(1)(A) or (a)(2) oc-
12 curred; and

13 “(iii) if the employer has previously
14 been fined more than once under this para-
15 graph, pay a civil penalty of not less than
16 \$8,000 and not more than \$25,000 for
17 each unauthorized alien with respect to
18 which a violation of either subsection
19 (a)(1)(A) or (a)(2) occurred.

20 “(B) ENHANCED PENALTY.—If an em-
21 ployer is determined to have committed within
22 the 5 years immediately preceding the date of
23 any violation of subsection (a)(1)(A) or (a)(2) a
24 civil or criminal violation of a Federal or State
25 law relating to wage and hour or other employ-

1 ment standards, workplace safety, collective
2 bargaining, civil rights, or immigration, by a
3 court or an administrative agency with jurisdic-
4 tion over such violation, for which a monetary
5 penalty of at least \$500, a judicial injunction,
6 or other equitable relief, or any term of impris-
7 onment has been imposed, any civil money pen-
8 alty or criminal fine otherwise applicable under
9 this section shall be trebled. In any proceeding
10 under this section, the Secretary of Homeland
11 Security, administrative law judge, or court, as
12 appropriate, shall determine whether a court or
13 administrative agency has imposed such penalty
14 for such previous violation of other law, but the
15 validity and appropriateness of such prior ac-
16 tion shall not be subject to review.

17 “(C) RECORDKEEPING OR VERIFICATION
18 PRACTICES.—Any employer that violates or fails
19 to comply with any requirement of subsection
20 (a)(1)(B), shall pay a civil penalty as follows:

21 “(i) not less than \$500 and not more
22 than \$2,000 for each violation;

23 “(ii) if an employer has previously
24 been fined under this paragraph, not less

1 than \$1,000 and not more than \$4,000 for
2 each violation; and

3 “(iii) if an employer has previously
4 been fined more than once under this para-
5 graph, not less than \$2,000 and not more
6 than \$8,000 for each violation.

7 “(D) OTHER PENALTIES.—The Secretary
8 may impose additional penalties for violations,
9 including cease and desist orders, specially de-
10 signed compliance plans to prevent further vio-
11 lations, suspended fines to take effect in the
12 event of a further violation, and in appropriate
13 cases, the remedy provided by paragraph (f)(2).

14 “(E) MITIGATION.—The Secretary is au-
15 thorized, upon such terms and conditions as the
16 Secretary deems reasonable and just and in ac-
17 cordance with such procedures as the Secretary
18 may establish, to reduce or mitigate penalties
19 imposed upon employers, based upon factors in-
20 cluding, but not limited to, the employer’s hir-
21 ing volume, compliance history, good-faith im-
22 plementation of a compliance program, and vol-
23 untary disclosure of violations of this subsection
24 to the Secretary. The Secretary shall not miti-
25 gate a penalty below the minimum penalty pro-

1 vided by this section, except that the Secretary
2 may, in the case of an employer subject to pen-
3 alty for record-keeping or verification violations
4 only who has not previously been penalized
5 under this section, in the Secretary's discretion,
6 mitigate the penalty below the statutory min-
7 imum or remit it entirely.

8 “(5) ORDER OF INTERNAL REVIEW AND CER-
9 TIFICATION OF COMPLIANCE.—If the Secretary has
10 reasonable cause to believe that an employer has
11 failed to comply with this section, the Secretary is
12 authorized, at any time, to require that the employer
13 certify that it is in compliance with this section, or
14 has instituted a program to come into compliance.
15 Within 60 days of receiving a notice from the Sec-
16 retary requiring such a certification, the employer's
17 chief executive officer or similar official with respon-
18 sibility for, and authority to bind the company on,
19 all hiring and immigration compliance notices shall
20 certify under penalty of perjury that the employer is
21 in conformance with the requirements of subsections
22 (c)(1) through (c)(4), pertaining to document
23 verification requirements, and with subsection (d),
24 pertaining to the System (once that system is imple-
25 mented with respect to that employer according to

1 the requirements of subsection (d)(1)), and with any
2 additional requirements that the Secretary may pro-
3 mulgate by regulation pursuant to subsections (c) or
4 (d) or that the employer has instituted a program to
5 come into compliance with these requirements. At
6 the request of the employer, the Secretary may ex-
7 tend the 60-day deadline for good cause. The Sec-
8 retary is authorized to publish in the Federal Reg-
9 ister standards or methods for such certification, re-
10 quire specific recordkeeping practices with respect to
11 such certifications, and audit the records thereof at
12 any time. This authority shall not be construed to
13 diminish or qualify any other penalty provided by
14 this section.

15 “(6) JUDICIAL REVIEW.—

16 “(A) IN GENERAL.—Notwithstanding any
17 other provision of law (statutory or nonstatu-
18 tory) including sections 1361 and 1651 of title
19 28, no court shall have jurisdiction to consider
20 a final determination or penalty claim issued
21 under paragraph (3)(C), except as specifically
22 provided by this paragraph. Judicial review of
23 a final determination under paragraph (4) is
24 governed only by chapter 158 of title 28, except
25 as specifically provided below. The Secretary is

1 authorized to require that the petitioner pro-
2 vide, prior to filing for review, security for pay-
3 ment of fines and penalties through bond or
4 other guarantee of payment acceptable to the
5 Secretary.

6 “(B) REQUIREMENTS FOR REVIEW OF A
7 FINAL DETERMINATION.—With respect to judi-
8 cial review of a final determination or penalty
9 claim issued under paragraph (3)(C), the fol-
10 lowing requirements apply:

11 “(i) DEADLINE.—The petition for re-
12 view must be filed no later than 30 days
13 after the date of the final determination or
14 penalty claim issued under paragraph
15 (3)(C).

16 “(ii) VENUE AND FORMS.—The peti-
17 tion for review shall be filed with the court
18 of appeals for the judicial circuit where the
19 employer’s principal place of business was
20 located when the final determination or
21 penalty claim was issued. The record and
22 briefs do not have to be printed. The court
23 of appeals shall review the proceeding on a
24 typewritten or electronically filed record
25 and briefs.

1 “(iii) SERVICE.—The respondent is
2 the Secretary of Homeland Security. In ad-
3 dition to serving the respondent, the peti-
4 tioner must also serve the Attorney Gen-
5 eral.

6 “(iv) PETITIONER’S BRIEF.—The pe-
7 titioner shall serve and file a brief in con-
8 nection with a petition for judicial review
9 not later than 40 days after the date on
10 which the administrative record is avail-
11 able, and may serve and file a reply brief
12 not later than 14 days after service of the
13 brief of the respondent, and the court may
14 not extend these deadlines, except for good
15 cause shown. If a petitioner fails to file a
16 brief within the time provided in this para-
17 graph, the court shall dismiss the appeal
18 unless a manifest injustice would result.

19 “(v) SCOPE AND STANDARD FOR RE-
20 VIEW.—The court of appeals shall decide
21 the petition only on the administrative
22 record on which the final determination is
23 based. The burden shall be on the peti-
24 tioner to show that the final determination
25 was arbitrary, capricious, an abuse of dis-

1 cretion, not supported by substantial evi-
2 dence, or otherwise not in accordance with
3 law.

4 “(C) EXHAUSTION OF ADMINISTRATIVE
5 REMEDIES.—A court may review a final deter-
6 mination under paragraph (3)(C) only if—

7 “(i) the petitioner has exhausted all
8 administrative remedies available to the pe-
9 titioner as of right; and

10 “(ii) another court has not decided
11 the validity of the order, unless the review-
12 ing court finds that the petition presents
13 grounds that could not have been pre-
14 sented in the prior judicial proceeding or
15 that the remedy provided by the prior pro-
16 ceeding was inadequate or ineffective to
17 test the validity of the order.

18 “(D) LIMIT ON INJUNCTIVE RELIEF.—Re-
19 gardless of the nature of the action or claim or
20 of the identity of the party or parties bringing
21 the action, no court (other than the Supreme
22 Court) shall have jurisdiction or authority to
23 enjoin or restrain the operation of the provi-
24 sions in this section, other than with respect to

1 the application of such provisions to an indi-
2 vidual petitioner.

3 “(7) ENFORCEMENT OF ORDERS.—If the final
4 determination issued against the employer under
5 this subsection is not subject to review as provided
6 in paragraph (6), the Attorney General, upon re-
7 quest by the Secretary, may bring a civil action to
8 enforce compliance with the final determination in
9 any appropriate district court of the United States.
10 The court, on a proper showing, shall issue a tem-
11 porary restraining order or a preliminary or perma-
12 nent injunction requiring that the employer comply
13 with the final determination issued against that em-
14 ployer under this subsection. In any such civil ac-
15 tion, the validity and appropriateness of the final de-
16 termination shall not be subject to review.

17 “(8) LIENS.—

18 “(A) CREATION OF LIEN.—If any employer
19 liable for a fee or penalty under this section ne-
20 glects or refuses to pay such liability and fails
21 to file a petition for review (if applicable) as
22 provided in paragraph (6), such liability is a
23 lien in favor of the United States on all prop-
24 erty and rights to property of such person as if
25 the liability of such person were a liability for

1 a tax assessed under the Internal Revenue Code
2 of 1986. If a petition for review is filed as pro-
3 vided in paragraph (6), the lien (if any) shall
4 arise upon the entry of a final judgment by the
5 court. The lien continues for 20 years or until
6 the liability is satisfied, remitted, set aside, or
7 terminated.

8 “(B) EFFECT OF FILING NOTICE OF
9 LIEN.—Upon filing of a notice of lien in the
10 manner in which a notice of tax lien would be
11 filed under section 6323(f)(1) and (2) of the In-
12 ternal Revenue Code of 1986, the lien shall be
13 valid against any purchaser, holder of a security
14 interest, mechanic’s lien or judgment lien cred-
15 itor, except with respect to properties or trans-
16 actions specified in subsection (b), (c), or (d) of
17 section 6323 of the Internal Revenue Code of
18 1986 for which a notice of tax lien properly
19 filed on the same date would not be valid. The
20 notice of lien shall be considered a notice of lien
21 for taxes payable to the United States for the
22 purpose of any State or local law providing for
23 the filing of a notice of a tax lien. A notice of
24 lien that is registered, recorded, docketed, or in-
25 dexed in accordance with the rules and require-

1 ments relating to judgments of the courts of the
2 State where the notice of lien is registered, re-
3 corded, docketed, or indexed shall be considered
4 for all purposes as the filing prescribed by this
5 section. The provisions of section 3201(e) of
6 chapter 176 of title 28 shall apply to liens filed
7 as prescribed by this section.

8 “(C) ENFORCEMENT OF A LIEN.—A lien
9 obtained through this process shall be consid-
10 ered a debt as defined by 28 U.S.C. section
11 3002 and enforceable pursuant to the Federal
12 Debt Collection Procedures Act.

13 “(9) TRANSITION PROVISION.—The Attorney
14 General shall have jurisdiction to adjudicate admin-
15 istrative proceedings under this subsection, pursuant
16 to procedures for hearings before administrative law
17 judges as in effect under section 274A(e) of this Act
18 and its implementing regulations on the day imme-
19 diately before the date of the enactment of the CIR
20 Act of 2010, until the date that regulations promul-
21 gated by the Secretary, in consultation with the At-
22 torney General, for the adjudication of cases under
23 this subsection are in effect. Such regulations may
24 provide for the continuing jurisdiction of the Attor-
25 ney General over cases pending before the Attorney

1 General on such date that the regulations are pro-
2 mulgated. Sections 1512 and 1517 of the Homeland
3 Security Act (6 U.S.C. 552 and 557) shall apply to
4 any transfer of jurisdiction to adjudicate cases under
5 this subsection from the Attorney General to the
6 Secretary as if such transfer is a transfer under the
7 Homeland Security Act; provided that, nothing in
8 this sentence shall be construed to require any
9 transfer of personnel from the Department of Jus-
10 tice to the Department of Homeland Security.

11 “(f) PROHIBITION OF INDEMNITY BONDS.—

12 “(1) PROHIBITION.—It is unlawful for an em-
13 ployer, in the hiring of any individual, to require the
14 individual to post a bond or security, to pay or agree
15 to pay an amount, or otherwise to provide a finan-
16 cial guarantee or indemnity, against any potential li-
17 ability arising under this section relating to such hir-
18 ing of the individual.

19 “(2) CIVIL PENALTY.—Any employer who is de-
20 termined, after notice and opportunity for mitigation
21 of the monetary penalty under subsection (e), to
22 have violated paragraph (1) of this subsection shall
23 be subject to a civil penalty of \$10,000 for each vio-
24 lation and to an administrative order requiring the
25 return of any amounts received in violation of such

1 paragraph to the employee or, if the employee can-
2 not be located, to the general fund of the Treasury.

3 “(g) GOVERNMENT CONTRACTS.—

4 “(1) CONTRACTORS AND RECIPIENTS.—When-
5 ever an employer who holds Federal contracts,
6 grants, or cooperative agreements, or reasonably
7 may be expected to submit offers for or be awarded
8 a government contract, is determined by the Sec-
9 retary to be a repeat violator of this section or is
10 convicted of a crime under this section, the employer
11 shall be subject to debarment from the receipt of
12 Federal contracts, grants, or cooperative agreements
13 for a period of up to 5 years in accordance with the
14 procedures and standards prescribed by the Federal
15 Acquisition Regulation. Prior to debarring the em-
16 ployer, the Secretary, in cooperation with the Ad-
17 ministrator of General Services, shall advise all
18 agencies holding contracts, grants, or cooperative
19 agreements with the employer of the proceedings to
20 debar the employer from the receipt of new Federal
21 contracts, grants, or cooperative agreements for a
22 period of up to 5 years. After consideration of the
23 views of agencies holding contracts, grants or coop-
24 erative agreements with the employer, the Secretary
25 may, in lieu of proceedings to debar the employer

1 from the receipt of new Federal contracts, grants, or
2 cooperative agreements for a period of up to 5 years,
3 waive operation of this subsection, limit the duration
4 or scope of the proposed debarment, or may refer to
5 an appropriate lead agency the decision of whether
6 to seek debarment of the employer, for what dura-
7 tion, and under what scope in accordance with the
8 procedures and standards prescribed by the Federal
9 Acquisition Regulation. However, any administrative
10 determination of liability for civil penalty by the Sec-
11 retary or the Attorney General shall not be review-
12 able in any debarment proceeding.

13 “(2) EFFECT OF INDICTMENTS OR OTHER AC-
14 TIONS.—Indictments for violations of this section or
15 adequate evidence of actions that could form the
16 basis for debarment under this subsection shall be
17 considered a cause for suspension under the proce-
18 dures and standards for suspension prescribed by
19 the Federal Acquisition Regulation.

20 “(3) INADVERTENT VIOLATIONS.—Inadvertent
21 violations of recordkeeping or verification require-
22 ments, in the absence of any other violations of this
23 section, shall not be a basis for determining that an
24 employer is a repeat violator for purposes of this
25 subsection.

1 “(4) OTHER REMEDIES AVAILABLE.—Nothing
2 in this subsection shall be construed to modify or
3 limit any remedy available to any agency or official
4 of the Federal Government for violation of any con-
5 tractual requirement to participate in the System, as
6 provided in the final rule published at 73 Federal
7 Register 67,651 (Nov. 14, 2008), or any subsequent
8 amendments thereto.

9 “(h) PREEMPTION.—The provisions of this section
10 preempt any State or local law, contract license, or other
11 standard, requirement, action or instrument from—

12 “(1) imposing sanctions or liabilities for em-
13 ploying, or recruiting or referring for employment,
14 unauthorized aliens, or for working without employ-
15 ment authorization;

16 “(2) requiring those hiring, recruiting, or refer-
17 ring individuals for employment to ascertain or
18 verify the individuals’ employment authorization or
19 to participate in an employment authorization
20 verification system, or requiring individuals to dem-
21 onstrate employment authorization; and

22 “(3) requiring, authorizing or permitting the
23 use of an employment verification system, unless
24 otherwise mandated by Federal law, for any other
25 purpose including, but without limitation, such pur-

1 poses as verifying the status of renters, determining
2 eligibility for receipt of benefits, enrollment in
3 school, obtaining or retaining a business license or
4 other license, or conducting a background check.

5 “(i) BACKPAY REMEDIES.—Neither backpay nor any
6 other monetary remedy for unlawful employment prac-
7 tices, workplace injuries or other causes of action giving
8 rise to liability shall be denied to a present or former em-
9 ployee on account of—

10 “(1) the employer’s or the employee’s failure to
11 comply with the requirements of this section in es-
12 tablishing or maintaining the employment relation-
13 ship; the employee’s violation of the provisions of
14 federal law related to the employment verification
15 system set forth in subsection (a); or’

16 “(2) the employee’s continuing status as an un-
17 authorized alien both during and after termination
18 of employment.

19 “(j) DEPOSIT OF AMOUNTS RECEIVED.—Except as
20 otherwise specified, civil penalties collected under this sec-
21 tion shall be deposited by the Secretary into the Immigra-
22 tion Reform Penalty Account.

23 “(k) CHALLENGES TO VALIDITY OF THE SYSTEM.—

24 “(1) IN GENERAL.—Any right, benefit, or claim
25 not otherwise waived or limited pursuant to this sec-

1 tion is available in an action instituted in the United
2 States District Court for the District of Columbia,
3 but shall be limited to determinations of—

4 “(A) whether this section, or any regula-
5 tion issued to implement this section, violates
6 the Constitution of the United States; or

7 “(B) whether such a regulation issued by
8 or under the authority of the Secretary to im-
9 plement this section, is contrary to applicable
10 provisions of this section or was issued in viola-
11 tion of title 5, chapter 5, United States Code.

12 “(2) DEADLINES FOR BRINGING ACTIONS.—

13 Any action instituted under this subsection must be
14 filed no later than 180 days after the date the chal-
15 lenged section or regulation described in subpara-
16 graph (A) or (B) of paragraph (1) is first imple-
17 mented.

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

23 “(1) PRIVATE RIGHT OF ACTION.—Any person or en-
24 tity who is injured in his business or property by reason
25 of the employment of an unauthorized alien by any other

1 person or entity may sue such other person or entity in
2 any district court of the United States in the district in
3 which the defendant resides or is found or has an agent,
4 without respect to the amount in controversy, and shall
5 recover threefold the damages sustained, and the cost of
6 suit, including reasonable attorney's fees. The award of
7 interest, and the amount of damages payable to foreign
8 states and instrumentalities of foreign states, shall be de-
9 termined in the manner provided by section 15 of title 15,
10 United States Code. The provision shall become effective
11 3 years after the date of the enactment of the CIR Act
12 of 2010 and shall apply only to injury occurring after the
13 effective date.

14 “(m) CRIMINAL PENALTIES AND INJUNCTIONS FOR
15 PATTERN OR PRACTICE VIOLATIONS.—

16 “(1) PATTERN AND PRACTICE.—Any employer
17 who engages in a pattern or practice of knowing vio-
18 lations of subsection (a)(1)(A) or (a)(2) shall be
19 fined under title 18, United States Code, imprisoned
20 for not more than 3 years for the entire pattern or
21 practice, or both.

22 “(2) ENJOINING OF PATTERN OR PRACTICE
23 VIOLATIONS.—Whenever the Secretary or the Attor-
24 ney General has reasonable cause to believe that an
25 employer is engaged in a pattern or practice of em-

1 employment in violation of subsection (a)(1)(A) or
2 (a)(2), the Attorney General may bring a civil action
3 in the appropriate district court of the United States
4 requesting such relief, including a permanent or
5 temporary injunction, restraining order, or other
6 order against the employer, as the Secretary or At-
7 torney General deems necessary.

8 “(n) CRIMINAL PENALTIES FOR UNLAWFUL EM-
9 PLOYMENT.—

10 “(1) UNAUTHORIZED ALIENS.—Any person
11 who, during any 12-month period, knowingly em-
12 ploys or hires for employment 10 or more individuals
13 within the United States knowing that the individ-
14 uals are unauthorized aliens (as defined in sub-
15 section (b)(1) of this section) shall be fined under
16 title 18, United States Code, or imprisoned for not
17 more than 5 years, or both.

18 “(2) ABUSIVE EMPLOYMENT.—Any person who,
19 during any 12-month period, knowingly employs or
20 hires for employment 10 or more individuals within
21 the United States—

22 “(A) knowing that the individuals are un-
23 authorized aliens; and

1 “(B) under conditions that violate section
2 206 or 207 of Title 29 (relating to minimum
3 wages and maximum hours of employment),
4 shall be fined under title 18, United States Code, or
5 imprisoned for not more than 10 years, or both.

6 “(3) ATTEMPT AND CONSPIRACY.—Any person
7 who attempts or conspires to commit any offense
8 under this subsection shall be punished in the same
9 manner as a person who completes the offense.”.

10 (b) CONFORMING AMENDMENT.—Section 274(a)(3)
11 of the Immigration and Nationality Act (8 U.S.C.
12 1324(a)(3)) is repealed.

13 **SEC. 302. DISCLOSURE OF CERTAIN TAXPAYER INFORMA-**
14 **TION TO ASSIST IN IMMIGRATION ENFORCE-**
15 **MENT.**

16 Section 6103(l) of the Internal Revenue Code of 1986
17 is amended by adding at the end the following new para-
18 graph:

19 “(21) DISCLOSURE OF CERTAIN TAXPAYER
20 IDENTITY INFORMATION BY SOCIAL SECURITY AD-
21 MINISTRATION TO DEPARTMENT OF HOMELAND SE-
22 CURITY.—

23 “(A) IN GENERAL.—From taxpayer iden-
24 tity information or other information which has
25 been disclosed or otherwise made available to

1 the Social Security Administration and upon
2 written request by the Secretary of Homeland
3 Security, the Commissioner of Social Security
4 shall disclose directly to the Department of
5 Homeland Security—

6 “(i) the taxpayer identity information
7 of persons within the specifications of the
8 written request who have filed an informa-
9 tion return required by reason of section
10 6051 or section 6041(a) after calendar
11 year 2010 that contains—

12 “(I) 10 (or any greater number
13 the Secretary of Homeland Security
14 shall request) names and addresses of
15 employees (within the meaning of sec-
16 tion 6041(a)) with the same taxpayer
17 identifying number, and

18 “(II) the taxpayer identity and
19 date of birth of each such employee,
20 and

21 “(ii) the taxpayer identity of each per-
22 son who has filed an information return re-
23 quired by reason of section 6051 or
24 6041(a) after calendar year 2010 that con-
25 tains the taxpayer identifying number (as-

1 signed under section 6109) of an employee
2 (within the meaning of section 6051) or a
3 recipient (within the meaning of section
4 6041(a))—

5 “(I) who is under the age of 14
6 (or any lesser age the Secretary of
7 Homeland Security shall request), ac-
8 cording to the records maintained by
9 the Commissioner of Social Security,
10 or

11 “(II) whose date of death, ac-
12 cording to the records so maintained,
13 occurred in a calendar year preceding
14 the calendar year for which the infor-
15 mation return was filed, and

16 “(iii) the taxpayer identity and date of
17 birth of each such employee.

18 “(B) RESTRICTION ON DISCLOSURE.—The
19 taxpayer identities disclosed under subpara-
20 graph (A) may be used by officers, employees,
21 and contractors of the Department of Home-
22 land Security only for purposes of, and to the
23 extent necessary to—

24 “(i) prevent identity fraud, and

1 “(ii) prevent unauthorized aliens from
2 obtaining or continuing employment in the
3 United States.

4 “(C) REIMBURSEMENT.—The Secretary of
5 Homeland Security shall transfer to the Com-
6 missioner of Social Security the funds necessary
7 to cover the additional cost directly incurred by
8 the Commissioner in carrying out the searches
9 requested by the Secretary of Homeland Secu-
10 rity.

11 “(D) INFORMATION RETURNS UNDER SEC-
12 TION 6041.—For purposes of this paragraph,
13 any reference to information returns required
14 by reason of section 6041(a) shall only be a ref-
15 erence to such information returns relating to
16 payments for labor.”.

17 **SEC. 303. COMPLIANCE BY DEPARTMENT OF HOMELAND**
18 **SECURITY CONTRACTORS WITH CONFIDEN-**
19 **TIALITY SAFEGUARDS.**

20 (a) IN GENERAL.—Section 6103(p) of the Internal
21 Revenue Code is amended by adding at the end the fol-
22 lowing new paragraph:

23 “(9) DISCLOSURE TO DEPARTMENT OF HOME-
24 LAND SECURITY.—Notwithstanding any other provi-
25 sion of this section, no return or return information

1 shall be disclosed to any contractor of the Depart-
2 ment of Homeland Security unless such Department,
3 to the satisfaction of the Secretary of the Treas-
4 ury—

5 “(A) has requirements in effect that re-
6 quire each such contractor that would have ac-
7 cess to returns or return information to provide
8 safeguards (within the meaning of paragraph
9 (4)) to protect the confidentiality of such re-
10 turns or return information;

11 “(B) agrees to conduct an on-site review
12 every 3 years (mid-point review in the case of
13 contracts or agreements of less than 3 years in
14 duration) of each contractor to determine com-
15 pliance with such requirements;

16 “(C) submits the findings of the most re-
17 cent review conducted under subparagraph (B)
18 to the Secretary as part of the report required
19 by paragraph (4)(E);and

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

23 The certification required by subparagraph (D) shall
24 include the name and address of each contractor, a
25 description of the contract or agreement with such

1 contractor, and the duration of such contract or
2 agreement.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 6103(p)(8)(B) of such Code is
5 amended by inserting “or paragraph (9)” after
6 “subparagraph (A)”.

7 (2) Section 7213(a)(2) of such Code is amended
8 by striking “or (20)” and inserting “(20), or (21)”.

9 (c) REPEAL OF REPORTING REQUIREMENTS.—

10 (1) REPORT ON EARNINGS OF ALIENS NOT AU-
11 THORIZED TO WORK.—Subsection (c) of section 290
12 of the Immigration and Nationality Act (8 U.S.C.
13 1360) is repealed.

14 (2) REPORT ON FRAUDULENT USE OF SOCIAL
15 SECURITY ACCOUNT NUMBERS.—Subsection (b) of
16 section 414 of the Illegal Immigration Reform and
17 Immigrant Responsibility Act of 1996 (division C of
18 Public Law 104–208; 8 U.S.C. 1360 note) is re-
19 pealed.

20 **SEC. 304. INCREASING SECURITY AND INTEGRITY OF SO-**
21 **CIAL SECURITY CARDS.**

22 (a) FRAUD RESISTANT, TAMPER-RESISTANT, AND
23 WEAR-RESISTANT SOCIAL SECURITY CARDS.—

24 (1) ISSUANCE.—

1 (A) PRELIMINARY WORK.—Not later than
2 180 days after the date of the enactment of this
3 Act, the Commissioner of Social Security shall
4 begin work to administer and issue fraud-resist-
5 ant, tamper-resistant, and wear-resistant Social
6 Security cards.

7 (B) COMPLETION.—Not later than 2 years
8 after the date of the enactment of this Act, the
9 Commissioner of Social Security shall issue only
10 fraud-resistant, tamper-resistant and wear-re-
11 sistant Social Security cards.

12 (2) AMENDMENT.—Section 205(c)(2)(G) of the
13 Social Security Act (42 U.S.C. 405(c)(2)(G)) is
14 amended to read—

15 “(i) The Commissioner of Social Secu-
16 rity shall issue a social security card to
17 each individual at the time of the issuance
18 of a social security account number to such
19 individual. The social security card shall be
20 fraud-resistant, tamper-resistant and wear-
21 resistant.”.

22 (3) AUTHORIZATION OF APPROPRIATIONS.—
23 There are authorized to be appropriated such sums
24 as may be necessary to carry out this subsection and
25 the amendments made by this subsection.

1 (b) MULTIPLE CARDS.—Section 205(c)(2)(G) of the
2 Social Security Act (42 U.S.C. 405(c)(2)(G)) is further
3 amended by adding at the end the following:

4 “(ii) The Commissioner of Social Se-
5 curity shall not issue a replacement Social
6 Security card to any individual unless the
7 Commissioner determines that the purpose
8 for requiring the issuance of the replace-
9 ment document is legitimate.”.

10 (c) CRIMINAL PENALTIES.—Section 208(a) of the
11 Social Security Act (42 U.S.C. 408(a)) is amended—

12 (1) by amending existing paragraph (7) to read
13 as follows:

14 “(7) for any purpose—

15 “(A) knowingly uses a social security ac-
16 count number or social security card knowing
17 that the number or card was obtained from the
18 Commissioner of Social Security by means of
19 fraud or false statement with the intent to de-
20 fraud the actual holder of the number or card;

21 “(B) knowingly and falsely represents a
22 number to be the social security account num-
23 ber assigned by the Commissioner of Social Se-
24 curity to him or to another person, when in fact
25 such number is not the social security account

1 number assigned by the Commissioner of Social
2 Security to him or to such other person with
3 the intent to defraud the actual holder of the
4 number or card;

5 “(C) knowingly sells, or possesses with in-
6 tent sell a social security account number or a
7 social security card that is or purports to be a
8 number or card issued by the Commissioner of
9 Social Security; or

10 “(D) knowingly alters, counterfeits, forges,
11 or falsely makes a social security account num-
12 ber or a social security card;

13 “(E) knowingly distributes a social security
14 account number or a social security card know-
15 ing the number or card to be altered, counter-
16 feited, forged, falsely made, or stolen; or;”;

17 (2) in paragraph (8)—

18 (A) by inserting the word “knowingly” im-
19 mediately before the word “discloses”;

20 (B) by inserting the word “account” imme-
21 diately after the word “security”; and

22 (C) by adding “or” at the end of the para-
23 graph;

24 (3) by inserting immediately after paragraph
25 (8) the following:

1 “(9) without lawful authority, knowingly pro-
2 duces or acquires for any person a social security ac-
3 count number, a social security card, or a number
4 or card that purports to be a social security account
5 number or social security card;”;

6 (4) in the undesignated penalty language at the
7 end of subsection (a), by striking the word “five”
8 and inserting the word “ten”.

9 (d) CONSPIRACY AND DISCLOSURE.—Section 208 of
10 the Social Security Act (42 U.S.C. 408) is amended by
11 adding at the end the following:

12 “(f) Whoever attempts or conspires to violate any
13 criminal provision within this section shall be punished in
14 the same manner as a person who completes a violation
15 of that provision.

16 “(g)(1) Notwithstanding any other provision of law
17 and subject to paragraph (2), the Commissioner of Social
18 Security shall disclose the following records of the Social
19 Security Administration to any federal law enforcement
20 agency that requests such records for the purpose of inves-
21 tigating a violation of this section or section 274A, section
22 274B, or section 274C of the Immigration and Nationality
23 Act, provided that such request is in writing and from an
24 officer in a supervisory position or higher official:

1 “(A) records concerning the identity, address,
2 location, or financial institution accounts of the
3 holder of a social security account number or social
4 security card;

5 “(B) records concerning the application for and
6 issuance of a social security account number or so-
7 cial security card; and

8 “(C) records concerning the existence or non-
9 existence of a social security account number or so-
10 cial security card.

11 “(2) The Commissioner of Social Security shall not
12 disclose any tax return or tax return information pursuant
13 to this subsection.”.

14 **SEC. 305. INCREASING SECURITY AND INTEGRITY OF IMMI-**
15 **GRATION DOCUMENTS.**

16 Not later than 1 year after the date of the enactment
17 of this Act, the Secretary shall—

18 (1) issue only machine-readable, tamper-resist-
19 ant employment authorization documents that use
20 biometric identifiers; and

21 (2) submit a report to Congress that describes
22 the feasibility, advantages, and disadvantages of
23 issuing a document described in paragraph (1) to
24 any nonimmigrant alien authorized for employment
25 with a specific employer.

1 **SEC. 306. RESPONSIBILITIES OF THE SOCIAL SECURITY AD-**
2 **MINISTRATION.**

3 Section 205(c)(12) of the Social Security Act, 42
4 U.S.C. 405(c)(2), is amended by adding at the end the
5 following new subparagraph:

6 “(A) RESPONSIBILITIES OF THE COMMIS-
7 SIONER OF SOCIAL SECURITY.—

8 “(i) As part of the verification system,
9 the Commissioner of Social Security shall,
10 subject to the provisions of section
11 274A(d) of the Immigration and Nation-
12 ality Act, establish a reliable, secure meth-
13 od that, operating through the System and
14 within the time periods specified in section
15 274A(d) of the Immigration and Nation-
16 ality Act:

17 “(I) Compares the name, date of
18 birth, social security account number
19 and available citizenship information
20 provided in an inquiry against such
21 information maintained by the Com-
22 missioner in order to confirm (or not
23 confirm) the validity of the informa-
24 tion provided regarding an individual
25 whose identity and employment eligi-
26 bility must be confirmed.

1 “(II) Determines the correspond-
2 ence of the name, number, and any
3 other identifying information.

4 “(III) Determines whether the
5 name and number belong to an indi-
6 vidual who is deceased.

7 “(IV) Determines whether an in-
8 dividual is a national of the United
9 States (when available).

10 “(V) Determines whether the in-
11 dividual has presented a social secu-
12 rity account number that is not valid
13 for employment.

14 The System shall not disclose or release so-
15 cial security information to employers
16 through the confirmation system (other
17 than such confirmation or nonconfirma-
18 tion, information provided by the employer
19 to the System, or the reason for the
20 issuance of a further action notice).

21 “(ii) SOCIAL SECURITY ADMINISTRA-
22 TION DATABASE IMPROVEMENTS.—For
23 purposes of preventing identity theft, pro-
24 tecting employees, and reducing burden on
25 employers, and notwithstanding section

1 6103 of title 26, United States Code, the
2 Commissioner of Social Security, in con-
3 sultation with the Secretary of Homeland
4 Security, shall review the Social Security
5 Administration databases and information
6 technology to identify any deficiencies and
7 discrepancies related to name, birth date,
8 citizenship status, or death records of the
9 social security accounts and social security
10 account holders likely to contribute to
11 fraudulent use of documents, or identity
12 theft, or to affect the proper functioning of
13 the System, and shall correct any identi-
14 fied errors. The Commissioner shall ensure
15 that a system for identifying and cor-
16 recting such deficiencies and discrepancies
17 is adopted to ensure the accuracy of the
18 Social Security Administration’s databases.

19 “(iii) NOTIFICATION TO SUSPEND USE
20 OF SOCIAL SECURITY NUMBER.—The Com-
21 missioner of Social Security, in consulta-
22 tion with the Secretary of Homeland Secu-
23 rity, may establish a secure process where-
24 by an individual can request that the Com-
25 missioner preclude any confirmation under

1 the System based on that individual’s So-
2 cial Security number until it is reactivated
3 by that individual.”.

4 **SEC. 307. ANTIDISCRIMINATION PROTECTIONS.**

5 (a) AMENDMENTS.—Section 274B (8 U.S.C. 1324b)
6 is amended—

7 (1) by amending subsection (a) to read as fol-
8 lows—

9 “(a) PROHIBITION OF DISCRIMINATION BASED ON
10 NATIONAL ORIGIN OR CITIZENSHIP STATUS.—

11 “(1) IN GENERAL.—It is an unfair immigra-
12 tion-related employment practice for a person or
13 other entity to discriminate against any individual,
14 because of such individual’s national origin or citi-
15 zenship status, with respect to the hiring of the indi-
16 vidual for employment, the verification of the indi-
17 vidual’s eligibility for employment through the Sys-
18 tem described in section 274A(d), the compensation,
19 terms, conditions, or privileges of the employment of
20 the individual, or the discharging of the individual
21 from employment.

22 “(2) EXCEPTIONS.—Paragraph (1) shall not
23 apply to—

1 “(A) a person or other entity that employs
2 3 or fewer employees, except for an employment
3 agency, as defined in paragraph (9);

4 “(B) a person’s or entity’s discrimination
5 because of an individual’s national origin if the
6 discrimination with respect to that person or
7 entity and that individual is covered under sec-
8 tion 703 of the Civil Rights Act of 1964 (42
9 U.S.C. 2000e-2);

10 “(C) discrimination because of citizenship
11 status which is otherwise required in order to
12 comply with law, regulation, or executive order,
13 or required by Federal, State, or local govern-
14 ment contract, or which the Attorney General
15 determines to be essential for an employer to do
16 business with an agency or department of the
17 Federal, State, or local government.

18 “(3) ADDITIONAL EXCEPTION PROVIDING
19 RIGHT TO PREFER EQUALLY QUALIFIED CITIZENS.—
20 Notwithstanding any other provision of this section,
21 it is not an unfair immigration-related employment
22 practice for a person or other entity to prefer to
23 hire, recruit, or refer an individual who is a citizen
24 or national of the United States over another indi-

1 vidual who is an alien if the two individuals are
2 equally qualified.

3 “(4) UNFAIR IMMIGRATION-RELATED EMPLOY-
4 MENT PRACTICES AND THE SYSTEM.—It is also an
5 unfair immigration-related employment practice for
6 a person or other entity—

7 “(A) to terminate the employment of an
8 individual or take any adverse employment ac-
9 tion with respect to that individual (including,
10 but not limited to, any change in the terms and
11 conditions of employment of the individual) due
12 to a further action notice issued by the System,
13 or the individual’s decision to challenge or ap-
14 peal any System determination;

15 “(B) to use the System with regard to any
16 person who is not an employee;

17 “(C) to use the System to reverify the em-
18 ployment authorization of a current employee,
19 other than reverification upon expiration of em-
20 ployment authorization, or as otherwise author-
21 ized under section 274A(d) or by Executive
22 Order;

23 “(D) to use the System selectively to ex-
24 clude certain individuals from consideration for
25 employment as a result of a perceived likelihood

1 that additional verification will be required, be-
2 yond what is required for most newly hired in-
3 dividuals;

4 “(E) to fail to provide any required notice
5 to a current employee within the relevant time
6 period;

7 “(F) to use the System to deny workers’
8 employment benefits or otherwise interfere with
9 their labor rights;

10 “(G) to use the System for any discrimina-
11 tory or retaliatory purpose; and

12 “(H) to use an immigration status
13 verification system or service other than those
14 described in section 274A for purposes of
15 verifying employment eligibility under that sec-
16 tion.

17 “(5) PROHIBITION OF INTIMIDATION OR RETAL-
18 IATION.—It is also an unfair immigration-related
19 employment practice for a person or other entity to
20 intimidate, threaten, coerce, or retaliate against any
21 individual for the purpose of interfering with any
22 right or privilege secured under this section or be-
23 cause the individual intends to file or has filed a
24 charge or a complaint, testified, assisted, or partici-

1 pated in any manner in an investigation, proceeding,
2 or hearing under this section.

3 “(6) TREATMENT OF CERTAIN DOCUMENTARY
4 PRACTICES AS EMPLOYMENT PRACTICES.—A per-
5 son’s or other entity’s request, for purposes of satis-
6 fying the requirements of section 274A(b), for more
7 or different documents than are required under such
8 section or refusing to honor documents tendered
9 that reasonably appear to be genuine shall be treat-
10 ed as an unfair immigration-related employment
11 practice in violation of paragraph (1).

12 “(7) BURDEN OF PROOF IN DISPARATE IMPACT
13 CASES.—

14 “(A) An unlawful immigration-related em-
15 ployment practice or unfair employment prac-
16 tice case based on disparate impact is estab-
17 lished only if:

18 “(i) A complaining party dem-
19 onstrates that a respondent uses a par-
20 ticular employment practice that causes a
21 disparate impact on the basis of national
22 origin or citizenship status and the re-
23 spondent fails to demonstrate that the
24 challenged practice is job related for the

1 position in question and consistent with
2 business necessity.

3 “(ii) The complaining party dem-
4 onstrates that an alternative employment
5 practice is available and the respondent re-
6 fuses to adopt such an alternative employ-
7 ment practice. An alternative employment
8 practice is defined as a policy that would
9 satisfy the employer’s legitimate interests
10 without having a disparate impact on a
11 protected class.

12 “(B) With respect to demonstrating that a
13 particular employment practice causes a dis-
14 parate impact as described in subparagraph
15 (A), the complaining party shall demonstrate
16 that each particular challenged employment
17 practice causes a disparate impact, except that
18 if the complaining party can demonstrate to the
19 court that the elements of a respondent’s deci-
20 sion-making process are not capable of separa-
21 tion for analysis, the decision-making process
22 may be analyzed as one employment practice.

23 “(C) If the respondent demonstrates that a
24 specific employment practice does not cause the
25 disparate impact, the respondent shall not be

1 required to demonstrate that such practice is
2 required by business necessity.

3 “(D) A demonstration that an employment
4 practice is required by business necessity may
5 not be used as a defense against a claim of in-
6 tentional discrimination under this statute.

7 “(8) MOTIVATING FACTOR.—Except as other-
8 wise provided in this Act, an unlawful immigration-
9 related unfair employment practice is established
10 when the charging party demonstrates that citizen-
11 ship status or national origin was a motivating fac-
12 tor for any employment practice, even though other
13 factors also motivated the practice.

14 “(9) EMPLOYMENT AGENCY DEFINED.—As
15 used in this section, the term ‘employment agency’
16 means any person or entity regularly undertaking
17 with or without compensation to procure employees
18 for an employer or to procure for employees oppor-
19 tunities to work for an employer and includes an
20 agent of such person or entity.”;

21 (2) in subsection (d)—

22 (A) by amending paragraphs (1) and (2)
23 to read as follows—

24 “(1) The Special Counsel shall investigate each
25 charge received and determine whether or not there

1 is reasonable cause to believe that the charge is true
2 and whether or not to bring a complaint with respect
3 to the charge before an administrative law judge.
4 The Special Counsel may, on his or her own initia-
5 tive, conduct investigations respecting unfair immi-
6 gration-related employment practices or unfair em-
7 ployment practices and, based on such an investiga-
8 tion, file a complaint before such judge.

9 “(2) If the Special Counsel, after receiving such
10 a charge respecting an unfair immigration-related
11 employment practice or an unfair employment prac-
12 tice which alleges discriminatory activity or a pat-
13 tern or practice of discriminatory activity, has not
14 filed a complaint before an administrative law judge
15 with respect to such charge within 120 days, the
16 Special Counsel shall notify the person making the
17 charge of the determination not to file such a com-
18 plaint during such period and the person making the
19 charge may file a complaint directly before such
20 judge within 90 days after the date of receipt of the
21 notice.”;

22 (3) in subsection (g)(2)—

23 (A) in subparagraph (A), by inserting be-
24 fore the period “and which requires such af-
25 firmative action as may be appropriate, or any

1 other individual equitable relief as the adminis-
2 trative law judge determines appropriate.”;

3 (B) in subparagraph (B)—

4 (i) in clause (iii), by inserting before
5 the semicolon “, and to provide such other
6 relief as the administrative law judge de-
7 termines appropriate to make the indi-
8 vidual whole”; and

9 (ii) by amending clause (iv) to read as
10 follows—

11 “(iv) to pay any applicable civil pen-
12 alties proscribed below, the amounts of
13 which may be adjusted periodically to ac-
14 count for inflation as provided by law—

15 “(I) except as provided in sub-
16 clauses (II) through (IV), to pay a
17 civil penalty of not less than \$2,000
18 and not more than \$5,000 for each in-
19 dividual subjected to an unfair immi-
20 gration related employment practice;

21 “(II) except as provided in sub-
22 clauses (III) and (IV), in the case of
23 a person or entity previously subject
24 to a single order under this para-
25 graph, to pay a civil penalty of not

1 less than \$4,000 and not more than
2 \$10,000 for each individual subjected
3 to an unfair immigration related em-
4 ployment practice;

5 “(III) except as provided in sub-
6 clause (IV), in the case of a person or
7 entity previously subject to more than
8 one order under this paragraph, to
9 pay a civil penalty of not less than
10 \$8,000 and not more than \$25,000
11 for each individual subjected to an un-
12 fair immigration related employment
13 practice; and

14 “(IV) in the case of an unfair im-
15 migration-related employment practice
16 described in subsection (a)(6) of this
17 section, to pay a civil penalty of not
18 less than \$500 and not more than
19 \$5,000 for each individual subjected
20 to an unfair immigration related em-
21 ployment practice.”;

22 (C) in clause (vii) by striking “and”;

23 (D) in clause (viii) by striking the period
24 and inserting “; and”; and (E) by adding a new
25 clause (ix) to read as follows—

1 “(i)(I) An order of the administrative
2 law judge may not require the admission
3 or reinstatement of an individual as a
4 member of a union, or the hiring, rein-
5 statement, or promotion of an individual as
6 an employee, if such individual was refused
7 admission, suspended, or expelled, or was
8 refused employment or advancement or
9 was suspended or discharged more likely
10 that not, for any reason other than dis-
11 crimination on account of citizenship sta-
12 tus or national origin or in violation of this
13 section.

14 “(II) On a claim in which an indi-
15 vidual proves a violation under paragraph
16 (a)(9) and a respondent demonstrates that
17 the respondent would have taken the same
18 action in the absence of the impermissible
19 motivating factor, the administrative law
20 judge may grant declaratory relief, injunc-
21 tive relief (except as provided in clause
22 (b)(2)), and attorney’s fees and costs dem-
23 onstrated to be directly attributable only to
24 the pursuit of a claim under paragraph
25 (a)(9); and shall not award damages or

1 issue an order requiring any admission, re-
2 instatement, hiring, promotion, or pay-
3 ment, described in subparagraph (I).”;

4 (4) in subsection (l)(3) by inserting “and an ad-
5 ditional \$40,000,000 for each of fiscal years 2011
6 through 2013” before the period at the end; and

7 (5) by adding new subsections (m) and (n) to
8 read as follows—

9 “(m) REPORTS.—The Secretary of Homeland Secu-
10 rity shall make transactional data and citizenship status
11 data related to the System available upon request by the
12 Special Counsel.

13 “(n) RECORDS.—Every employer, employment agen-
14 cy, and labor organization subject to this section shall—

15 “(1) make and keep such records relevant to
16 the determinations of whether unlawful employment
17 practices have been or are being committed;

18 “(2) preserve such records for such periods; and

19 “(3) make such reports therefrom as the Spe-
20 cial Counsel shall prescribe by regulation or order,
21 after public hearing, as reasonable, necessary, or ap-
22 propriate for the enforcement of this section or the
23 regulations or orders thereunder.

24 The Special Counsel may cooperate with State and local
25 agencies charged with the administration of State fair em-

1 ployment practices laws and, with the consent of such
2 agencies, may, for the purpose of carrying out its func-
3 tions and duties under this section and within the limita-
4 tion of funds appropriated specifically for such purpose,
5 engage in and contribute to the cost of research and other
6 projects of mutual interest undertaken by such agencies,
7 and utilize the services of such agencies and their employ-
8 ees, and, notwithstanding any other provision of law, pay
9 by advance or reimbursement such agencies and their em-
10 ployees for services rendered to assist the Special Counsel
11 in carrying out this section. In furtherance of such cooper-
12 ative efforts, the Special Counsel may enter into written
13 agreements with such State or local agencies and such
14 agreements may include provisions under which the Spe-
15 cial Counsel shall refrain from processing a charge in any
16 cases or class of cases specified in such agreements or
17 under which the Special Counsel shall relieve any person
18 or class of persons in such State or locality from require-
19 ments imposed under this section. The Special Counsel
20 shall rescind any such agreement whenever it determines
21 that the agreement no longer serves the interest of effec-
22 tive enforcement of this section.”.

23 (b) EFFECTIVE DATE.—The amendments made by
24 this section shall take effect on the date of the enactment

1 of this Act and shall apply to violations occurring on or
2 after such date.

3 **SEC. 308. IMMIGRATION ENFORCEMENT SUPPORT BY THE**
4 **INTERNAL REVENUE SERVICE AND THE SO-**
5 **CIAL SECURITY ADMINISTRATION.**

6 (a) INCREASE IN PENALTY ON EMPLOYER FAILING
7 TO FILE CORRECT INFORMATION RETURNS.—Section
8 6721 of the Internal Revenue Code of 1986(relating to
9 failure to file correct information returns), as amended by
10 section 2101 of the Small Business Jobs Act of 2010, is
11 amended as follows—

12 (1) in subsection (a)(1)—

13 (A) by striking “\$100” and inserting
14 “\$200”; and

15 (B) by striking “\$1,500,000” and insert-
16 ing “\$2,000,000”;

17 (2) in subsection (b)(1)(A), by striking “\$15 in
18 lieu of \$50” and inserting “\$60 in lieu of \$200”;

19 (3) in subsection (b)(1)(B), by striking
20 “\$250,000” and inserting “\$300,000”;

21 (4) in subsection (b)(2)(A), by striking “\$30 in
22 lieu of \$50” and inserting “\$120 in lieu of \$200”;

23 (5) in subsection (b)(2)(B), by striking
24 “\$500,000” and inserting “\$600,000”;

25 (6) in subsection (d)—

1 (A) in paragraph (1)(B) by striking
2 “‘\$75,000’ for ‘\$250,000’” and inserting
3 “‘\$100,000’ for ‘\$300,000’”;

4 (B) in paragraph (1)(C) by striking
5 “‘\$200,000’ for ‘\$500,000’” and inserting
6 “‘\$200,000’ for ‘\$600,000’”;

7 (C) in paragraph (2)(A), by striking
8 “‘\$5,000,000’” and inserting “‘\$2,000,000’”; and

9 (D) in the heading, by striking
10 “‘\$5,000,000’” and inserting “‘\$2,000,000’”;

11 (7) in subsection (e)—

12 (A) in paragraph (2) in the matter pre-
13 ceding subparagraph (A) by striking “‘\$250’”
14 and inserting “‘\$400’”;

15 (B) in paragraph (2)(C)(i) by striking
16 “‘\$25,000’” and inserting “‘\$100,000’”;

17 (C) in paragraph (2)(C)(ii) by striking
18 “‘\$100,000’” and inserting “‘\$400,000’”; and

19 (D) in paragraph (3)(A), by striking
20 “‘\$1,500,000’” and inserting “‘\$2,000,000’”.

21 (b) EFFECTIVE DATE.—The amendments made by
22 subsection (c) shall apply to failures occurring after the
23 date of enactment of this section.

1 **SEC. 309. ENHANCED VERIFICATION SYSTEM.**

2 (a) RIGHT TO REVIEW AND CORRECT SYSTEM IN-
3 FORMATION.—The Secretary, in consultation with the
4 Commissioner of Social Security, shall establish—

5 (1) procedures to permit an individual—

6 (A) to verify the individual's eligibility for
7 employment in the United States before obtain-
8 ing or changing employment;

9 (B) to view the individual's own records in
10 the Enhanced Verification System in order to
11 ensure the accuracy of such records; and

12 (C) to correct or update the information
13 used by the System regarding the individual by
14 electronic means, to the greatest extent prac-
15 ticable; and

16 (2) procedures for establishing an Enhanced
17 Verification System under subsection (b) through
18 which an individual who has viewed the individual's
19 own record may electronically—

20 (A) block the use of the individual's Social
21 Security number under the System; and

22 (B) remove such block in order to—

23 (i) prevent the fraudulent or other
24 misuse of a Social Security account num-
25 ber;

- 1 (ii) prevent employer misuse of the
2 system;
3 (iii) protect privacy; and
4 (iv) limit erroneous nonconfirmations
5 during employment verification.

6 (b) ENHANCED VERIFICATION SYSTEM.—

7 (1) IN GENERAL.—The Secretary, in consulta-
8 tion with the Commissioner of Social Security, shall
9 establish a voluntary self-verification system to allow
10 an individual to submit biometric information, verify
11 the individual's own record, and to block and
12 unblock the use of the individual's Social Security
13 number in order to prevent the fraudulent or other
14 misuse of the individual's Social Security Number
15 during employment verification, to prevent employer
16 misuse of the system, to protect privacy, and to limit
17 erroneous non-confirmations during employment
18 verification.

19 (2) VOLUNTARY ENROLLMENT.—An individual
20 may enroll in the Enhanced Verification System on
21 a voluntary basis.

22 (3) ELECTRONIC ACCESS.—The Secretary shall
23 establish procedures allowing individuals to use a
24 Personal Identification Number (PIN) or other bio-
25 graphic information to authenticate the individual's

1 identity and to block and unblock the individual's
2 Social Security number electronically.

3 (4) USE OF ENHANCED VERIFICATION SYSTEM
4 RECEIPT FOR PURPOSE OF EMPLOYMENT
5 VERIFICATION.—The Secretary shall establish proce-
6 dures to allow an individual who has authenticated
7 the individual's identity and unblocked the individ-
8 ual's Social Security number to receive a single –use
9 code as a receipt indicating that the individual is
10 work authorized and has self-verified, and proce-
11 dures to allow the individual to use the single-use
12 code in place of the identity and eligibility docu-
13 ments described in this section.

14 (5) EXPEDITED REVIEW PROCESS.—The Sec-
15 retary shall establish an expedited review process to
16 allow an individual who has authenticated the indi-
17 vidual's identity and unblocked the individual's So-
18 cial Security number immediately to correct user or
19 system errors which result in an erroneous non-con-
20 firmation of work eligibility.

21 (6) REPORTS.—

22 (A) SYSTEM ASSESSMENT.—Not later than
23 3 months after the end of the third and fourth
24 years in which the programs are in effect, the
25 Secretary shall submit reports to the Committee

1 on the Judiciary of the Senate and the Com-
2 mittee on the Judiciary of the House of Rep-
3 resentatives on the Enhanced Verification Sys-
4 tem that—

5 (i) assesses the degree of fraudulent
6 attesting of United States citizenship;

7 (ii) assesses the benefits of the En-
8 hanced Verification System to employers
9 and the degree to which it assists in the
10 enforcement of section 274A of the Immi-
11 gration and Nationality Act;

12 (iii) assesses the benefits of the En-
13 hanced Verification System to individuals
14 and the degree to which they prevent mis-
15 use of the System and erroneous non-con-
16 firmations during employment verification;

17 (iv) determines whether the Enhanced
18 Verification System reduces discrimination
19 during the employment verification proc-
20 ess;

21 (v) assesses the degree to which the
22 Enhanced Verification System protects em-
23 ployee civil liberties and privacy; and

1 (vi) includes recommendations on
2 whether the Enhanced Verification System
3 should be continued or modified.

4 (B) REPORT ON EXPANSION.—Not later
5 than September 30, 2015, the Secretary shall
6 submit a report shall to the committees referred
7 to in subparagraph (A) that—

8 (i) evaluates whether the problems
9 identified by the reports submitted under
10 subparagraph (A) have been substantially
11 resolved; and

12 (ii) describes the actions to be taken
13 by the Secretary before requiring any indi-
14 vidual to participate in the Enhanced
15 Verification System.

16 (7) LIMITATION ON USE OF THE CONFIRMA-
17 TION SYSTEM AND ANY RELATED SYSTEMS.—Not-
18 withstanding any other provision of law, nothing in
19 this section may be construed to permit any depart-
20 ment, bureau, or other agency of the United States
21 Government to utilize any information, database, or
22 other records assembled under this section for any
23 other purpose other than as provided for under the
24 Enhanced Verification System.

1 **SEC. 310. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) DEPARTMENT OF HOMELAND SECURITY.—There
3 are authorized to be appropriated to the Department such
4 sums as may be necessary to carry out this title, and the
5 amendments made by this title, including the following:

6 (1) In each of the 5 years beginning on the date
7 of the enactment of this Act, the appropriations nec-
8 essary to increase to a level not less than 4500, by
9 the end of such five-year period, the total number of
10 personnel of the Department of Homeland Security
11 assigned exclusively or principally to an office or of-
12 fices in U.S. Citizenship and Immigration Services
13 and U.S. Immigration and Customs Enforcement
14 (and consistent with the missions of such agencies),
15 dedicated to administering the System, and moni-
16 toring and enforcing compliance with sections 274A,
17 274B, and 274C of the Immigration and Nationality
18 Act (8 U.S.C. 1324a, 1324b, and 1324c), including
19 compliance with the requirements of the System.
20 These personnel shall perform compliance and moni-
21 toring functions, including the following:

22 (A) Verify Employment Identification
23 Numbers of employers participating in the Sys-
24 tem.

25 (B) Verify compliance of employers partici-
26 pating in the System with the requirements for

1 participation that are prescribed by the Sec-
2 retary.

3 (C) Monitor the System for multiple uses
4 of Social Security Numbers and immigration
5 identification numbers that could indicate iden-
6 tity theft or fraud.

7 (D) Monitor the System to identify dis-
8 criminatory or unfair practices.

9 (E) Monitor the System to identify employ-
10 ers who are not using the system properly, in-
11 cluding employers who fail to make available
12 appropriate records with respect to their queries
13 and any notices of confirmation, nonconfirma-
14 tion, or further action.

15 (F) Identify instances where employees al-
16 lege that an employer violated their privacy,
17 civil or labor rights, or misused the System, and
18 create procedures for employees to report such
19 allegations.

20 (G) Analyze and audit the use of the Sys-
21 tem and the data obtained through the System
22 to identify fraud trends, including fraud trends
23 across industries, geographical areas, or em-
24 ployer size.

1 (H) Analyze and audit the use of the Sys-
2 tem and the data obtained through the System
3 to develop compliance tools as necessary to re-
4 spond to changing patterns of fraud.

5 (I) Provide employers with additional
6 training and other information on the proper
7 use of the System, including but not limited to
8 privacy training and employee rights.

9 (J) Perform threshold evaluation of cases
10 for referral to the Special Counsel for Unfair
11 Immigration-Related Employment Practices or
12 the Equal Employment Opportunity Commis-
13 sion, and other officials or agencies with re-
14 sponsibility for enforcing anti-discrimination,
15 civil rights, privacy or worker protection laws,
16 as may be appropriate.

17 (K) Any other compliance and monitoring
18 activities that, in the Secretary's judgment, are
19 necessary to ensure the functioning of the Sys-
20 tem.

21 (L) Investigate identity theft and fraud de-
22 tected through the System and undertake the
23 necessary enforcement or referral actions.

1 (M) Investigate use of or access to fraudu-
2 lent documents and undertake the necessary en-
3 forcement actions.

4 (N) Perform any other investigations that,
5 in the Secretary's judgment, are necessary to
6 ensure the lawful functioning of the System,
7 and undertake any enforcement actions nec-
8 essary as a result of these investigations.

9 (2) The appropriations necessary to acquire, in-
10 stall and maintain technological equipment necessary
11 to support the functioning of the System and the
12 connectivity between U.S. Citizenship and Immigra-
13 tion Services and U.S. Immigration and Customs
14 Enforcement, Department of Justice, and other
15 agencies or officials with respect to the sharing of
16 information to support the System and related immi-
17 gration enforcement actions.

18 (3) The appropriations necessary to establish a
19 robust redress process for employees who wish to ap-
20 peal contested nonconfirmations to ensure the accu-
21 racy and fairness of the System.

22 (4) The appropriations necessary to provide a
23 means by which individuals may access their own
24 employment authorization data to ensure its accu-
25 racy independent of their employer.

1 (5) The appropriations necessary to establish a
2 Joint Employment Fraud Task Force to promote
3 employer compliance with the system and ensure a
4 coordinated response to noncompliance.

5 (6) The appropriations necessary for the Office
6 for Civil Rights and Civil Liberties and the Office of
7 Privacy to perform their responsibilities as they re-
8 late to the System.

9 (7) The appropriations necessary to make
10 grants to states to support them in assisting the fed-
11 eral government in carrying out the provisions of
12 this title.

13 (b) SOCIAL SECURITY ADMINISTRATION.—There are
14 authorized to be appropriated to the Social Security Ad-
15 ministration such sums as may be necessary to carry out
16 its responsibilities under this title, including section 308.

17 (c) DEPARTMENT OF JUSTICE.—There are author-
18 ized to be appropriated to the Department of Justice such
19 sums as may be necessary to carry out its responsibilities
20 under this title, including enforcing compliance with sec-
21 tion 274B of the Act, as amended by section 307 of this
22 Act.

23 (d) DEPARTMENT OF STATE.—There are authorized
24 to be appropriated to the Department of State such sums

1 as may be necessary to carry out its responsibilities under
2 this title.

3 **TITLE IV—REFORMING AMER-**
4 **ICA’S LEGAL IMMIGRATION**
5 **SYSTEM**

6 **Subtitle A—New Worker Program**
7 **and the Creation of a Standing**
8 **Commission**

9 **SEC. 401. STANDING COMMISSION ON IMMIGRATION,**
10 **LABOR MARKETS, AND THE NATIONAL INTER-**
11 **EST.**

12 (a) ESTABLISHMENT OF COMMISSION.—

13 (1) IN GENERAL.—There is established an inde-
14 pendent Federal agency within the Executive Branch
15 to be known as the Standing Commission on Immi-
16 gration, Labor Markets, and the National Interest
17 (referred to in this section as the “Commission”).

18 (2) PURPOSES.—The purposes of the Commis-
19 sion are to—

20 (A) establish employment-based immigra-
21 tion policies that promote America’s economic
22 growth and competitiveness while minimizing
23 job displacement, wage depression and unau-
24 thorized employment in the United States;

1 (B) create and implement a policy-focused
2 research agenda on the economic impacts of im-
3 migration at the national, regional, State, in-
4 dustry and occupation levels;

5 (C) collect and analyze information about
6 employment-based immigration and the labor
7 market and share the data and analysis with
8 lawmakers, researchers and the American pub-
9 lic;

10 (D) recommend to the Congress and the
11 President on a regular basis an evidence-based
12 methodology for determining the level of em-
13 ployment-based immigration;

14 (E) recommend to Congress and the Presi-
15 dent the numeric levels and characteristics of
16 workers to be admitted in various employment-
17 based visa categories; and

18 (F) to collect and analyze information
19 about the economic, labor, security, and foreign
20 policy impacts of our Nation's immigration poli-
21 cies.

22 (3) MEMBERSHIP.—The Commission shall be
23 composed of—

24 (A) 7 voting members—

1 (i) who shall be appointed by the
2 President, with the advice and consent of
3 the Senate, not later than 6 months after
4 the establishment of this Act;

5 (ii) who shall serve for 5-year stag-
6 gered terms;

7 (iii) one of whom the President shall
8 appoint as Chair of the Commission to
9 serve a 6-year term, which can be extended
10 for 1 additional 3-year term;

11 (iv) who shall have expertise in eco-
12 nomics, demography, sociology, labor, busi-
13 ness, civil rights, immigration, or other
14 pertinent qualifications or experience;

15 (v) who may not be an employee of
16 the Federal Government or of any State or
17 local government; and

18 (vi) not more than 4 of whom may be
19 members of the same political party.

20 (B) 7 ex-officio members, including—

21 (i) the Secretary;

22 (ii) the Secretary of State;

23 (iii) the Attorney General;

24 (iv) the Secretary of Labor;

25 (v) the Secretary of Commerce;

1 (vi) the Secretary of Health and
2 Human Services;

3 (vii) the Secretary of Agriculture; and

4 (viii) the Commissioner of Social Se-
5 curity.

6 (4) VACANCIES.—Any vacancy in the Commis-
7 sion shall be filled in the same manner as the origi-
8 nal appointment.

9 (5) MEETINGS.—

10 (A) INITIAL MEETING.—The Commission
11 shall meet and begin carrying out the duties de-
12 scribed in subsection (b) as soon as practicable.

13 (B) SUBSEQUENT MEETINGS.—After its
14 initial meeting, the Commission shall meet upon
15 the call of the Chair or a majority of its mem-
16 bers.

17 (C) QUORUM.—Four voting members of
18 the Commission shall constitute a quorum.

19 (b) DUTIES OF THE COMMISSION.—The Commission
20 shall collect, analyze, and publish data regarding—

21 (1) the historic migration patterns to and from
22 the United States and demographic trends, including
23 the birth rate, education levels, and age profiles of
24 the immigrant and native population of the United
25 States;

1 (2) the national, regional, State, and local im-
2 pacts of employment-based immigration—

3 (A) within industries and business sectors;

4 (B) on wages, labor standards, occupa-
5 tions, and employment levels;

6 (C) on small business;

7 (D) on employment and unemployment lev-
8 els;

9 (E) on economic growth, productivity, and
10 competitiveness;

11 (F) on national and border security; and

12 (G) on local communities;

13 (3) the development and implementation of the
14 new worker program to admit H-2C nonimmigrants
15 (referred to in this section as the “Program”), in-
16 cluding—

17 (A) the criteria for the admission of work-
18 ers under the Program; and

19 (B) the formula and methodologies for de-
20 termining the annual numerical limitations of
21 the Program;

22 (4) the current and anticipated needs of em-
23 ployers for skilled and unskilled labor;

24 (5) the national interest;

1 (6) the current and anticipated supply of skilled
2 and unskilled labor;

3 (7) the impact of employment-based immigra-
4 tion on the economic growth, competitiveness, labor
5 standards, labor conditions, and wages;

6 (8) the extent and impact of unauthorized em-
7 ployment in the United States;

8 (9) the factors that determine the economic
9 success of immigrants to the United States;

10 (10) specific aspects of the Nation's immigra-
11 tion policies and programs that Congress has re-
12 quested the Commission to examine or analyze; and

13 (11) any other matters regarding the impact of
14 employment-based immigration that the Commission
15 considers appropriate.

16 (c) ANNUAL REPORTS.—

17 (1) PROGRAM EVALUATION.—Not later than
18 180 days after the date of the enactment of this Act,
19 and annually thereafter, the Commission shall sub-
20 mit a report to the President and Congress that—

21 (A) assesses the economic, labor, security,
22 and foreign policy impacts of the nation's immi-
23 gration policies;

24 (B) evaluates the Program and defines a
25 formula and methodologies for measuring the

1 need for H-2C nonimmigrants in States, indus-
2 tries, and occupations and determines the nu-
3 meric limitations of the H-2C Program;

4 (C) recommends adjustments, based on the
5 established methodologies, to the Program's nu-
6 meric allocations for the subsequent fiscal year;
7 and

8 (D) reviews the issuance and allocations of
9 employment-based immigrant and non-
10 immigrant visa categories.

11 (2) EFFECT ON EMPLOYMENT LEVELS.—Not
12 later than February 1 of each year, the Commission
13 shall submit a report to Congress that contains—

14 (A) the Commission's recommendations on
15 the increase or decrease in the number of em-
16 ployment-based immigrant visas to be made
17 available for temporary or permanent employ-
18 ment under the Immigration and Nationality
19 Act and a statement of the reasons for such
20 recommendations; and

21 (B) the Commission's recommendations on
22 how many immigrant visas from the discre-
23 tionary national interest pool described in sec-
24 tion 411(e) should be added to the subsequent
25 fiscal year's annual immigrant visa allocations

1 to comport with the increases recommended in
2 subparagraph (A) and to which employment
3 preference categories such visas should be
4 added.

5 (3) EFFECT OF CONGRESSIONAL INACTION.—If
6 Congress does not enact a law to approve or dis-
7 approve the Commission’s recommendations under
8 paragraph (2) not later than 90 days after receiving
9 a report under such paragraph, the number of em-
10 ployment-based immigrant visas shall remain at the
11 level authorized for the previous fiscal year.

12 (d) NATIONAL INTEREST DEFINED.—For purposes
13 of determining whether immigrant visas should be allo-
14 cated from the discretionary national interest pool in a
15 given fiscal year, the term “national interest” shall be
16 broadly defined and shall take into consideration—

17 (1) national and regional unemployment rates;

18 (2) unemployment rates by industry and sector;

19 (3) national and regional demographic and in-
20 dustry projections;

21 (4) wage and labor impact;

22 (5) immigrant visa backlogs and length of fa-
23 milial separation;

24 (6) national security and border security;

25 (7) community impact assessments; and

1 (8) competitiveness and economic growth.

2 (e) POWERS OF THE COMMISSION.—The Commis-
3 sion, by vote of a majority of the members present and
4 voting, shall have the power to—

5 (1) establish general policies and promulgate
6 such rules and regulations for the Commission as
7 are necessary to carry out the purposes of this sec-
8 tion;

9 (2) appoint and fix the salary and duties of the
10 Staff Director of the Commission, who shall serve at
11 the discretion of the Commission and who shall be
12 compensated at a rate not to exceed the highest rate
13 now or hereafter prescribed for Level 6 of the Senior
14 Executive Service Schedule (5 U.S.C. 5382), and
15 such other personnel as may be necessary to enable
16 the Commission to carry out its functions;

17 (3) deny, revise, or ratify any request for reg-
18 ular, supplemental, or deficiency appropriations
19 prior to any submission of such request to the Office
20 of Management and Budget by the Chair;

21 (4) utilize, with their consent, the services,
22 equipment, personnel, information, and facilities of
23 other Federal, State, local, and private agencies and
24 instrumentalities with or without reimbursement for
25 such utilization;

1 (5) without regard to section 3324 of title 31,
2 United States Code, enter into and perform such
3 contracts, leases, cooperative agreements, and other
4 transactions as may be necessary in the conduct of
5 the functions of the Commission, with any public
6 agency, or with any person, firm, association, cor-
7 poration, educational institution, or nonprofit orga-
8 nization;

9 (6) accept and employ, in carrying out the pro-
10 visions of this title, voluntary and uncompensated
11 services, notwithstanding the provisions of section
12 1342 of title 31, United States Code, however, indi-
13 viduals providing such services shall not be consid-
14 ered Federal employees except for purposes of chap-
15 ter 81 of title 5, United States Code, with respect
16 to job-incurred disability and title 28, United States
17 Code, with respect to tort claims;

18 (7) request such information, data, and reports
19 from any Federal agency as the Commission may
20 from time to time require and as may be produced
21 consistent with other law;

22 (8) arrange with the head of any other Federal
23 agency for the performance by such agency of any
24 function of the Commission, with or without reim-
25 bursement;

1 (9) establish a research and development pro-
2 gram within the Commission for the purpose of un-
3 derstanding and documenting the effects of immi-
4 gration and the admission of foreign workers on the
5 labor market and national competitiveness;

6 (10) collect systematically the data obtained
7 from studies, research, and the empirical experience
8 of public and private agencies concerning the need
9 for and effects of immigration;

10 (11) interview and confer with state and local
11 officials, representatives of labor and industry, and
12 experts in academia to obtain information about the
13 need for or benefit of additional immigrant or non-
14 immigrant workers;

15 (12) make recommendations to Congress con-
16 cerning the numeric limitations of the H-2C pro-
17 gram and all immigrant and nonimmigrant employ-
18 ment-based visa categories and recommend modifica-
19 tions or the enactment of statutes relating to mat-
20 ters that the Commission finds to be necessary and
21 advisable to carry out an effective immigration pol-
22 icy;

23 (13) hold hearings and call witnesses to assist
24 the Commission in the exercise of its powers or du-
25 ties;

1 (14) retain and, in its discretion pay reasonable
2 attorneys' fees out of its appropriated funds to, pri-
3 vate attorneys who—

4 (A) shall provide legal advice to the Com-
5 mission in the conduct of its work, or to appear
6 for or represent the Commission in any case in
7 which the Commission is authorized by law to
8 represent itself, or in which the Commission is
9 representing itself with the consent of the De-
10 partment of Justice; and

11 (B) when serving as officers or employees
12 of the United States, shall be considered special
13 government employees as defined in section
14 202(a) of title 18;

15 (15) grant incentive awards to its employees
16 pursuant to chapter 45 of title 5, United States
17 Code; and

18 (16) perform such other functions as may be
19 necessary to carry out the purposes of this section,
20 which may be delegated to any member or des-
21 ignated person, as appropriate.

22 (f) INFORMATION AND ASSISTANCE FROM FEDERAL
23 AGENCIES.—

24 (1) INFORMATION.—The head of any Federal
25 department or agency that receives a request from

1 the Commission for information, including sugges-
2 tions, estimates, and statistics, as the Commission
3 considers necessary to carry out the provisions of
4 this section, shall furnish such information to the
5 Commission, to the extent allowed by law.

6 (2) ASSISTANCE.—

7 (A) GENERAL SERVICES ADMINISTRA-
8 TION.—The Administrator of General Services
9 shall, on a reimbursable basis, provide the Com-
10 mission with administrative support and other
11 services for the performance of the Commis-
12 sion's functions.

13 (B) OTHER FEDERAL AGENCIES.—The de-
14 partments and agencies of the United States
15 may provide the Commission with such services,
16 funds, facilities, staff, and other support serv-
17 ices as the heads of such departments and
18 agencies determine advisable and authorized by
19 law.

20 (g) PERSONNEL MATTERS.—

21 (1) STAFF.—

22 (A) APPOINTMENT AND COMPENSATION.—
23 The Chair, in accordance with rules agreed
24 upon by the Commission, may appoint and fix
25 the compensation of a staff director and such

1 other personnel as may be necessary to enable
2 the Commission to carry out its functions.

3 (B) FEDERAL EMPLOYEES.—

4 (i) IN GENERAL.—Except as provided
5 under clause (ii), the executive director and
6 any personnel of the Commission who are
7 employees shall be considered to be em-
8 ployees under section 2105 of title 5,
9 United States Code, for purposes of chap-
10 ters 63, 81, 83, 84, 85, 87, 89, and 90 of
11 such title.

12 (ii) COMMISSION MEMBERS.—Clause

13 (i) shall not apply to members of the Com-
14 mission.

15 (2) DETAILEES.—Any employee of the Federal
16 Government may be detailed to the Commission
17 without reimbursement from the Commission. Such
18 detailee shall retain the rights, status, and privileges
19 of his or her regular employment without interrup-
20 tion.

21 (3) CONSULTANT SERVICES.—The Commission
22 may procure the services of experts and consultants
23 in accordance with section 3109 of title 5, United
24 States Code, at rates not to exceed the daily rate
25 paid a person occupying a position at level IV of the

1 Executive Schedule under section 5315 of such title
2 5.

3 (h) COMPENSATION AND TRAVEL EXPENSES.—

4 (1) COMPENSATION.—Each voting member of
5 the Commission may be compensated at a rate not
6 to exceed the daily equivalent of the annual rate of
7 basic pay in effect for a position at level IV of the
8 Executive Schedule under section 5315 of title 5,
9 United States Code, for each day during which that
10 member is engaged in the actual performance of the
11 duties of the Commission.

12 (2) TRAVEL EXPENSES.—Members of the Com-
13 mission shall be allowed travel expenses, including
14 per diem in lieu of subsistence, at rates authorized
15 for employees of agencies under section 5703(b) of
16 title 5, United States Code, while away from their
17 homes or regular places of business in the perform-
18 ance of services for the Commission.

19 (i) DETERMINATION OF NEW LEVELS OF PROGRAM
20 VISAS.—The numeric levels for visas under the Program
21 shall be set by the Commission unless Congress enacts su-
22 perseding legislation.

23 (j) FUNDING.—Fees and fines deposited into the New
24 Worker Program and Conditional Nonimmigrants Fee Ac-
25 count established under section 286(w) of the Immigration

1 and Nationality Act, as added by subsection (k), may be
2 used by the Commission to carry out its duties under this
3 section.

4 (k) ESTABLISHMENT OF ACCOUNT; USE OF FEES.—
5 Section 286 (8 U.S.C. 1356) is amended by adding at the
6 end the following:

7 “(w) NEW WORKER PROGRAM AND CONDITIONAL
8 NONIMMIGRANTS FEE ACCOUNT.—

9 “(1) IN GENERAL.—There is established in the
10 general fund of the Treasury a separate account,
11 which shall be known as the ‘New Worker Program
12 and Conditional Nonimmigrants Fee Account’.

13 “(2) DEPOSITS.—Notwithstanding any other
14 provision of law, there shall be deposited as offset-
15 ting receipts into the account all fees and fines col-
16 lected under this title.

17 “(3) USE OF FEES.—Fees collected under this
18 section may only be used by the Secretary of Home-
19 land Security to administer and operate the New
20 Worker Program and Conditional Nonimmigrants
21 Fee Account Program.”.

22 **SEC. 402. H-2C NONIMMIGRANT WORKER PROGRAM.**

23 (a) DEFINITION.—Section 101(a)(15)(H) (8 U.S.C.
24 1101(a)(15)(H)) is amended—

25 (1) in clause (i)—

1 (A) by redesignating subclause (c) as sub-
2 clause (d); and

3 (B) by inserting after subclause (b) the fol-
4 lowing:

5 “(c) who is coming temporarily to the
6 United States to initially perform temporary
7 labor or services other than the labor or serv-
8 ices described in clause (i)(b), (i)(b1), (i)(d),
9 (ii)(a), or (iii), subparagraph (D), (E), (I), (L),
10 (O), (P), or (R), or section 214(e) (if United
11 States workers who are able, willing, and quali-
12 fied to perform such labor or services cannot be
13 found in the United States); and”;

14 (2) by adding at the end the following:

15 “(iv) who—

16 “(I) is the spouse or minor child
17 of an alien described in this subpara-
18 graph; and

19 “(II) is accompanying or fol-
20 lowing to join such alien.”.

21 (b) ADMISSION OF H-2C NONIMMIGRANT WORK-
22 ERS.—Chapter 2 of title II (8 U.S.C. 1181 et seq.) is
23 amended by inserting after section 218 the following:

1 **“SEC. 218A. ADMISSION OF H-2C NONIMMIGRANTS.**

2 “(a) **AUTHORIZATION.**—The Secretary of State may
3 grant a visa to an H-2C nonimmigrant who demonstrates
4 an intent to perform labor or services in the United States
5 (other than the labor or services described in clause (i)(b),
6 (i)(b)(1), (i)(c), (ii)(a), or (iii) of section 101(a)(15)(H),
7 subparagraph (D), (E), (I), (L), (O), (P), or (R) of section
8 101(a)(15), or section 214(e) (if United States workers
9 who are able, willing, and qualified to perform such labor
10 or services cannot be found in the United States).

11 “(b) **REQUIREMENTS FOR ADMISSION.**—An alien
12 shall be eligible for H-2C nonimmigrant status if the alien
13 meets the following requirements:

14 “(1) **ELIGIBILITY TO WORK.**—The alien shall
15 establish that the alien is capable of performing the
16 labor or services required for an occupation de-
17 scribed in section 101(a)(15)(H)(ii)(c).

18 “(2) **EVIDENCE OF EMPLOYMENT OFFER.**—Evi-
19 dence of an alien’s employment offer shall be pro-
20 vided in accordance with the requirements issued by
21 the Secretary of State, in consultation with the Sec-
22 retary of Labor. In carrying out this paragraph, the
23 Secretary may consider evidence from employers,
24 employer associations, and labor representatives.

25 “(3) **FEE.**—The alien shall pay a \$100 visa
26 issuance fee in addition to the cost of processing and

1 adjudicating such application. Nothing in this para-
2 graph shall be construed to affect consular proce-
3 dures for charging reciprocal fees.

4 “(4) MEDICAL EXAMINATION.—The alien shall
5 undergo a medical examination (including a deter-
6 mination of immunization status), at the alien’s ex-
7 pense, that conforms to generally accepted standards
8 of medical practice.

9 “(5) APPLICATION CONTENT AND WAIVER.—

10 “(A) APPLICATION FORM.—The alien shall
11 submit to the Secretary of State a completed
12 application, which contains evidence that the re-
13 quirements under paragraphs (1) and (2) have
14 been met.

15 “(B) CONTENT.—In addition to any other
16 information that the Secretary requires to de-
17 termine an alien’s eligibility for H-2C non-
18 immigrant status, the Secretary of State shall
19 require an alien to provide information con-
20 cerning the alien’s—

21 “(i) physical and mental health;

22 “(ii) criminal history and gang mem-
23 bership;

24 “(iii) immigration history; and

1 “(iv) involvement with groups or indi-
2 viduals that have engaged in terrorism,
3 genocide, persecution, or who seek the
4 overthrow of the United States govern-
5 ment.

6 “(C) KNOWLEDGE.—The alien shall in-
7 clude with the application submitted under this
8 paragraph a signed certification in which the
9 alien certifies that—

10 “(i) the alien has read and under-
11 stands all of the questions and statements
12 on the application form;

13 “(ii) the alien certifies under penalty
14 of perjury under the laws of the United
15 States that the application, and any evi-
16 dence submitted with it, are all true and
17 correct; and

18 “(iii) the applicant authorizes the re-
19 lease of any information contained in the
20 application and any attached evidence for
21 law enforcement purposes.

22 “(c) GROUNDS OF INADMISSIBILITY.—

23 “(1) IN GENERAL.—In determining an alien’s
24 admissibility as an H-2C nonimmigrant—

1 “(A) paragraphs (5), (6) (except subpara-
2 graphs (E) and (G)), (7), (9), and (10)(B) of
3 section 212(a) may not apply with respect to
4 conduct that occurred before the effective date
5 of this Act;

6 “(B) the Secretary of Homeland Security
7 may not waive the application of—

8 “(i) subparagraph (A), (B), (C), (D),
9 (E), (G), (H), or (I) of section 212(a)(2);

10 “(ii) section 212(a)(3); or

11 “(iii) subparagraph (A), (C) or (D) of
12 section 212(a)(10);

13 “(C) the Secretary of State may waive the
14 application of any provision of section 212(a)
15 not listed in subparagraph (B) on behalf of an
16 individual alien—

17 “(i) for humanitarian purposes;

18 “(ii) to ensure family unity; or

19 “(iii) if such a waiver is otherwise in
20 the public interest; and

21 “(D) nothing in this paragraph shall be
22 construed as affecting the authority of the Sec-
23 retary other than under this paragraph to waive
24 the provisions of section 212(a).

1 “(2) RENEWAL OF AUTHORIZED ADMISSION
2 AND SUBSEQUENT ADMISSIONS.—An alien seeking
3 renewal of authorized admission or subsequent ad-
4 mission as an H-2C nonimmigrant shall establish
5 that the alien is not inadmissible under section
6 212(a).

7 “(3) BACKGROUND CHECKS.—The Secretary of
8 Homeland Security shall not admit, and the Sec-
9 retary of State shall not issue a visa to, an alien
10 seeking H-2C nonimmigrant status unless all appro-
11 priate background checks have been completed.

12 “(d) PERIOD OF AUTHORIZED ADMISSION.—

13 “(1) AUTHORIZED PERIOD.—The initial period
14 of authorized admission as an H-2C nonimmigrant
15 shall be 3 years.

16 “(2) RENEWAL.—Before the expiration of the
17 initial period under paragraph (1), an H-2C non-
18 immigrant may submit an application to the Sec-
19 retary of Homeland Security to extend H-2C non-
20 immigrant status for 1 additional 3-year period. The
21 Secretary may not require an applicant under this
22 paragraph to depart the United States as a condi-
23 tion for granting such extension.

24 “(3) LOSS OF EMPLOYMENT.—

25 “(A) IN GENERAL.—

1 “(i) PERIOD OF UNEMPLOYMENT.—
2 Subject to clause (ii) and subsection (c),
3 the period of authorized admission of an
4 H-2C nonimmigrant shall terminate if the
5 alien is unemployed for 60 or more con-
6 secutive days.

7 “(ii) EXCEPTION.—The period of au-
8 thorized admission of an H-2C non-
9 immigrant shall not terminate if the alien
10 is unemployed for 60 or more consecutive
11 days if the alien submits documentation to
12 the Secretary of Homeland Security that
13 establishes that such unemployment was
14 caused by—

15 “(I) a period of physical or men-
16 tal disability of the alien or the
17 spouse, son, daughter, or parent (as
18 defined in section 101 of the Family
19 and Medical Leave Act of 1993 (29
20 U.S.C. 2611)) of the alien;

21 “(II) a period of vacation, med-
22 ical leave, maternity leave, or similar
23 leave from employment authorized by
24 employer policy, State law, or Federal
25 law; or

1 “(III) any other period of tem-
2 porary unemployment that is the di-
3 rect result of a major disaster or
4 emergency.

5 “(iii) EXTENSION.—The Secretary of
6 Labor and the Secretary of Homeland Se-
7 curity shall promulgate regulations to es-
8 tablish procedures for granting an exten-
9 sion of the 60-day period described in
10 clause (i) in accordance with the conditions
11 described in section 218B(g).

12 “(B) RETURN TO FOREIGN RESIDENCE.—
13 Any alien whose period of authorized admission
14 terminates under subparagraph (A) shall be re-
15 quired to leave the United States.

16 “(C) PERIOD OF VISA VALIDITY.—Any
17 alien, whose period of authorized admission ter-
18 minates under subparagraph (A), who leaves
19 the United States under subparagraph (B),
20 may reenter the United States as an H-2C
21 nonimmigrant to work for an employer, if the
22 alien has complied with the requirements of
23 subsection (b).

24 “(4) VISITS OUTSIDE THE UNITED STATES.—

1 “(A) IN GENERAL.—Under regulations es-
2 tablished by the Secretary of Homeland Secu-
3 rity, an H–2C nonimmigrant—

4 “(i) may travel outside of the United
5 States; and

6 “(ii) may be readmitted without hav-
7 ing to obtain a new visa if the period of
8 authorized admission has not expired.

9 “(B) EFFECT ON PERIOD OF AUTHORIZED
10 ADMISSION.—Time spent outside the United
11 States under subparagraph (A) shall not extend
12 the period of authorized admission in the
13 United States.

14 “(5) BARS TO EXTENSION OR ADMISSION.—An
15 alien may not be granted H–2C nonimmigrant sta-
16 tus, or an extension of such status, if—

17 “(A) the alien has violated any material
18 term or condition of such status granted pre-
19 viously, including failure to comply with the
20 change of address reporting requirements under
21 section 265;

22 “(B) the alien is inadmissible as a non-
23 immigrant except that grounds of inadmis-
24 sibility that are waived under section 218(a) of

1 the Immigration and Nationality Act as amend-
2 ed by this Act shall not apply; or

3 “(C) the granting of such status or exten-
4 sion of such status would allow the alien to ex-
5 ceed 6 years as an H-2C nonimmigrant, unless
6 the alien has resided and been physically
7 present outside the United States for at least 1
8 year after the expiration of such H-2C non-
9 immigrant status.

10 “(e) EVIDENCE OF NONIMMIGRANT STATUS.—Each
11 H-2C nonimmigrant shall be issued documentary evidence
12 of nonimmigrant status, which—

13 “(1) shall be machine-readable, tamper-resist-
14 ant, and allow for biometric authentication;

15 “(2) shall, during the alien’s authorized period
16 of admission under subsection (f), serve as a valid
17 entry document for the purpose of applying for ad-
18 mission to the United States—

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

21 “(i) is a national of a foreign territory
22 contiguous to the United States; and

23 “(ii) is applying for admission at a
24 land border port of entry; and

1 “(B) in conjunction with a valid passport,
2 if the alien is applying for admission at an air
3 or sea port of entry;

4 “(3) may be accepted during the period of its
5 validity by an employer as evidence of employment
6 authorization and identity under section
7 274A(b)(1)(B); and

8 “(4) shall be issued to the H-2C nonimmigrant
9 by the Secretary of Homeland Security promptly
10 after final adjudication of such status or, at the dis-
11 cretion of the Secretary of Homeland Security, may
12 be issued by the Secretary of State at a consulate
13 instead of a visa.

14 “(f) PENALTIES FOR FAILURE TO DEPART.—If an
15 H-2C nonimmigrant fails to depart the United States by
16 the date that the alien’s authorized admission as an H-
17 2C nonimmigrant concludes, the visa of the alien shall be
18 void under section 222(g)(1) and the alien shall be ineli-
19 gible to be readmitted to the United States under section
20 222(g)(2). The alien may be removed if found to be within
21 1 or more of the classes of deportable aliens described in
22 section 237.

23 “(g) PORTABILITY.—A nonimmigrant alien described
24 in this section, who was previously issued a visa or other-

1 wise provided H-2C nonimmigrant status, may accept a
2 new offer of employment with a subsequent employer, if—

3 “(1) the employer complies with section 218B;

4 and

5 “(2) the alien, after lawful admission to the
6 United States, did not work without authorization.

7 “(h) CHANGE OF ADDRESS.—An H-2C non-
8 immigrant shall comply with the change of address report-
9 ing requirements under section 265 through electronic or
10 paper notification.

11 “(i) COLLECTION OF FEES.—All fees (other than the
12 application filing fee) collected under this section shall be
13 deposited in the Treasury in accordance with section
14 286(w).”.

15 (c) CLERICAL AMENDMENT.—The table of contents
16 (8 U.S.C. 1101 et seq.) is amended by inserting after the
17 item relating to section 218 the following:

“Sec. 218A. Admission of H-2C nonimmigrants.”.

18 (d) EMPLOYER OBLIGATIONS.—

19 (1) IN GENERAL.—Title II (8 U.S.C. 1201 et
20 seq.) is amended by inserting after section 218A, as
21 added by subsection (b), the following:

22 **“SEC. 218B. EMPLOYER OBLIGATIONS.**

23 “(a) GENERAL REQUIREMENTS.—Each employer
24 that seeks to employ an H-2C nonimmigrant shall—

1 “(1) file a petition with the Secretary of Labor
2 in accordance with subsections (b) and (c); and

3 “(2) be required to pay—

4 “(A) an application filing fee for each
5 alien, based on the cost of carrying out the
6 processing duties under this subsection;

7 “(B) for an initial application, a secondary
8 fee, to be deposited in the Treasury in accord-
9 ance with section 286(w), of—

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

12 “(ii) \$750, in the case of an employer
13 employing between 26 and 150 employees;

14 “(iii) \$1,250, in the case of an em-
15 ployer employing between 151 and 500 em-
16 ployees; or

17 “(iv) \$1,500, in the case of an em-
18 ployer employing more than 500 employ-
19 ees; and

20 “(C) a secondary fee shall only be required
21 once for each alien applying for the H-2C pro-
22 gram and shall not be required for subsequent
23 applications to new employers.

24 “(b) REQUIRED PROCEDURE.—Unless the Secretary
25 of Labor determines that there is a shortage of United

1 States workers in the occupation and area of intended em-
2 ployment to which the H-2C nonimmigrant is sought,
3 each employer that employs an H-2C nonimmigrant shall
4 comply with the following requirements:

5 “(1) EFFORTS TO RECRUIT UNITED STATES
6 WORKERS.—During the period beginning not later
7 than 90 days before the date on which a petition is
8 filed under subsection (a)(1), and ending on the date
9 that is 14 days before such filing date, the employer
10 involved shall recruit United States workers for the
11 position for which the H-2C nonimmigrant is sought
12 under the petition, by—

13 “(A) submitting a copy of the job oppor-
14 tunity, including a description of the wages and
15 other terms and conditions of employment and
16 the minimum education, training, experience,
17 and other requirements of the job, to the State
18 Employment Service Agency that serves the
19 area of employment in the State in which the
20 employer is located;

21 “(B) authorizing the employment service
22 agency of the State to post the job opportunity
23 on the Internet website established under Sec-
24 tion 405 of this Act with local job banks, and
25 with unemployment agencies and other labor re-

1 ferral and recruitment sources pertinent to the
2 job involved;

3 “(C) authorizing the employment service
4 agency of the State to notify—

5 “(i) labor organizations in the State
6 in which the job is located; and

7 “(ii) if applicable, the office of the
8 local union which represents the employees
9 in the same or substantially equivalent job
10 classification of the job opportunity;

11 “(D) posting the availability of the job op-
12 portunity for which the employer is seeking a
13 worker in conspicuous locations at the place of
14 employment for all employees to see;

15 “(E) advertising the availability of the job
16 opportunity for which the employer is seeking a
17 worker in a publication with the highest circula-
18 tion in the labor market that is likely to be pa-
19 tronized by a potential worker for not fewer
20 than 10 consecutive days; and

21 “(F) based on recommendations by the
22 local job service, advertising the availability of
23 the job opportunity in professional, trade, or
24 ethnic publications that are likely to be patron-
25 ized by a potential worker.

1 “(2) EFFORTS TO EMPLOY UNITED STATES
2 WORKERS.—An employer that seeks to employ an
3 H-2C nonimmigrant shall first offer the job to any
4 eligible United States worker who applies, is quali-
5 fied for the job and is available at the time of need,
6 notwithstanding any other valid employment criteria.

7 “(c) PETITION.—A petition to hire an H-2C non-
8 immigrant under this section shall include an attestation
9 by the employer that the employer has complied with the
10 following requirements:

11 “(1) PROTECTION OF UNITED STATES WORK-
12 ERS.—The employment of an H-2C non-
13 immigrant—

14 “(A) will not adversely affect the wages
15 and working conditions of workers in the
16 United States similarly employed; and

17 “(B) did not and will not cause the separa-
18 tion from employment of a United States work-
19 er employed by the employer within the 180-day
20 period beginning 90 days before the date on
21 which the petition is filed.

22 “(2) WAGES.—

23 “(A) IN GENERAL.—The employer has of-
24 fered to United States workers during the pe-
25 riod of recruitment described in subsection

1 (b)(1), and is offering and will pay H-2C non-
2 immigrants during the period of authorized em-
3 ployment not less than the greater of—

4 “(i) the actual wage level paid by the
5 employer to all other individuals with simi-
6 lar experience and qualifications for the
7 specific employment in question; or

8 “(ii) the prevailing wage level for the
9 occupational classification in the area of
10 employment, as determined in accordance
11 with subparagraph (C), taking into ac-
12 count experience and skill levels of employ-
13 ees.

14 “(B) CALCULATION.—The wage levels
15 under subparagraph (A) shall be calculated
16 based on the best information available at the
17 time of the filing of the application.

18 “(C) PREVAILING WAGE LEVEL.—For pur-
19 poses of subparagraph (A)(ii), the prevailing
20 wage level shall be determined as follows:

21 “(i) If the job opportunity is covered
22 by a collective bargaining agreement be-
23 tween a union and the employer, the pre-
24 vailing wage shall be the wage rate set

1 forth in the collective bargaining agree-
2 ment.

3 “(ii) If the job opportunity is not cov-
4 ered by such an agreement and it is in an
5 occupation that is covered by a wage deter-
6 mination under a provision of subchapter
7 IV of chapter 31 of title 40, United States
8 Code, or the Service Contract Act of 1965
9 (41 U.S.C. 351 et seq.), the prevailing
10 wage level shall be the appropriate statu-
11 tory wage.

12 “(iii)(I) If clauses (i) and (ii) do not
13 apply, the prevailing wage rate shall be not
14 less than the median rate of the highest 66
15 percent of the wage data for the occupation
16 provided by the Bureau of Labor Statis-
17 tics, including the Occupational Employ-
18 ment Statistics survey, Current Employ-
19 ment Statistics data, National Compensa-
20 tion Survey, and Occupational Employ-
21 ment Projections program. If the Bureau
22 of Labor Statistics does not have wage
23 data applicable to such occupation, the em-
24 ployer may base the prevailing wage level

1 on another wage survey approved by the
2 Secretary of Labor.

3 “(II) The Secretary shall promulgate
4 regulations applicable to approval of such
5 other wage surveys that require, among
6 other things, that the Bureau of Labor
7 Statistics determine such surveys are sta-
8 tistically viable.

9 “(3) WORKING CONDITIONS.—All workers in
10 the occupation at the place of employment at which
11 the H-2C nonimmigrant will be employed will be
12 provided the working conditions and benefits that
13 are normal to workers similarly employed in the area
14 of intended employment.

15 “(4) LABOR DISPUTE.—There is not a strike,
16 lockout, or work stoppage in the course of a labor
17 dispute in the occupation at the place of employment
18 at which the H-2C nonimmigrant will be employed.
19 If such strike, lockout, or work stoppage occurs fol-
20 lowing submission of the petition, the employer will
21 provide notification in accordance with regulations
22 promulgated by the Secretary of Labor.

23 “(5) PROVISION OF INSURANCE.—If the posi-
24 tion for which the H-2C nonimmigrant is sought is
25 not covered by the State workers’ compensation law,

1 the employer will provide, at no cost to the H-2C
2 nonimmigrant, insurance covering injury and disease
3 arising out of, and in the course of, the worker's em-
4 ployment, which will provide benefits at least equal
5 to those provided under the State workers' com-
6 pensation law for comparable employment.

7 “(6) NOTICE TO EMPLOYEES.—

8 “(A) IN GENERAL.—The employer has pro-
9 vided notice of the filing of the petition to the
10 bargaining representative of the employer's em-
11 ployees in the occupational classification and
12 area of employment for which the H-2C non-
13 immigrant is sought.

14 “(B) NO BARGAINING REPRESENTATIVE.—

15 If there is no such bargaining representative,
16 the employer has—

17 “(i) posted a notice of the filing of the
18 petition in a conspicuous location at the
19 place or places of employment for which
20 the H-2C nonimmigrant is sought; or

21 “(ii) electronically disseminated such
22 a notice to the employer's employees in the
23 occupational classification for which the
24 H-2C nonimmigrant is sought.

1 “(7) RECRUITMENT.—The following conditions
2 must be met:

3 “(A) There are not sufficient workers who
4 are able, willing, and qualified, and who will be
5 available at the time and place needed, to per-
6 form the labor or services involved in the peti-
7 tion.

8 “(B) Good faith efforts have been taken to
9 recruit United States workers, in accordance
10 with regulations promulgated by the Secretary
11 of Labor, which efforts included—

12 “(i) the completion of recruitment
13 during the period beginning on the date
14 that is 90 days before the date on which
15 the petition was filed with the Department
16 of Homeland Security and ending on the
17 date that is 14 days before such filing
18 date; and

19 “(ii) the actual wage paid by the em-
20 ployer for the occupation in the areas of
21 intended employment was used in con-
22 ducting recruitment.

23 “(8) INELIGIBILITY.—The employer is not cur-
24 rently ineligible from using the H-2C nonimmigrant
25 program described in this section.

1 “(9) CONSTRUCTION AND METAL WORKER OC-
2 CUPATIONS.—No petition by an employer may be
3 granted for an H-2C nonimmigrant worker if the
4 employer seeks to employ an H-2C nonimmigrant in
5 an any construction or metal worker occupation.

6 “(10) BONA FIDE OFFER OF EMPLOYMENT.—
7 The job for which the H-2C nonimmigrant is sought
8 is a bona fide job—

9 “(A) for which the employer needs labor or
10 services;

11 “(B) which has been and is clearly open to
12 any United States worker; and

13 “(C) for which the employer will be able to
14 place the H-2C nonimmigrant on the payroll.

15 “(11) PUBLIC AVAILABILITY AND RECORDS RE-
16 TENTION.—A copy of each petition filed under this
17 section and documentation supporting each attesta-
18 tion, in accordance with regulations promulgated by
19 the Secretary of Labor, will—

20 “(A) be provided to every H-2C non-
21 immigrant employed under the petition;

22 “(B) be made available for public examina-
23 tion at the employer’s place of business or work
24 site;

1 “(C) be made available to the Secretary of
2 Labor during any audit; and

3 “(D) remain available for examination for
4 5 years after the date on which the petition is
5 filed.

6 “(12) NOTIFICATION UPON SEPARATION FROM
7 OR TRANSFER OF EMPLOYMENT.—The employer will
8 notify the Secretary of Labor and the Secretary of
9 Homeland Security of an H–2C nonimmigrant’s sep-
10 aration from employment or transfer to another em-
11 ployer not more than 3 business days after the date
12 of such separation or transfer, in accordance with
13 regulations promulgated by the Secretary of Home-
14 land Security.

15 “(13) ACTUAL NEED FOR LABOR OR SERV-
16 ICES.—The petition was filed not more than 60 days
17 before the date on which the employer needed labor
18 or services for which the H–2C nonimmigrant is
19 sought.

20 “(14) WAIVER OF RIGHTS PROHIBITED.—An
21 H–2C nonimmigrant may not be required to waive
22 any rights or protections under this Act or the
23 amendments made by such Act. Nothing in this
24 paragraph may be construed to affect the interpreta-
25 tion of other laws.

1 “(15) NO THREATENING OF EMPLOYEES.—It
2 shall be a violation of this subsection for an em-
3 ployer that has filed a petition under this section to
4 threaten the H-2C nonimmigrant beneficiary with
5 withdrawal of the petition for exercising a right pro-
6 tected by this Act or any amendment made by such
7 Act.

8 “(d) AUDIT OF ATTESTATIONS.—

9 “(1) REFERRALS BY SECRETARY OF HOMELAND
10 SECURITY.—The Secretary of Homeland Security
11 shall refer all approved petitions for H-2C non-
12 immigrants to the Secretary of Labor for potential
13 audit.

14 “(2) AUDITS AUTHORIZED.—The Secretary of
15 Labor may audit any approved petition referred pur-
16 suant to paragraph (1), in accordance with regula-
17 tions promulgated by the Secretary of Labor.

18 “(e) INELIGIBLE EMPLOYERS.—

19 “(1) IN GENERAL.—The Secretary of Labor
20 shall not approve an employer’s petitions, applica-
21 tions, certifications, or attestations under any immi-
22 grant or nonimmigrant program if the Secretary of
23 Labor determines, after notice and an opportunity
24 for a hearing, that the employer submitting such
25 documents—

1 “(A) has, with respect to the attestations
2 required under subsection (b)—

3 “(i) misrepresented a material fact;

4 “(ii) made a fraudulent statement; or

5 “(iii) failed to comply with the terms
6 of such attestations; or

7 “(B) failed to cooperate in the audit pro-
8 cess in accordance with regulations promulgated
9 by the Secretary of Labor.

10 “(2) LENGTH OF INELIGIBILITY.—An employer
11 described in paragraph (1) shall be ineligible to par-
12 ticipate in the labor certification programs of the
13 Secretary of Labor for not less than the time period
14 determined by the Secretary, not to exceed 3 years.

15 “(3) EMPLOYERS IN HIGH UNEMPLOYMENT
16 AREAS.—The Secretary of Labor may not approve
17 any employer’s petition under subsection (b) if the
18 work to be performed by the H-2C nonimmigrant is
19 not agriculture based and is located in a metropoli-
20 tan or micropolitan statistical area (as defined by
21 the Office of Management and Budget) in which the
22 unemployment rate for workers who have not com-
23 pleted any education beyond a high school diploma
24 during the most recently completed 6-month period
25 averaged more than 10 percent.

1 “(f) REGULATION OF FOREIGN LABOR CONTRAC-
2 TORS.—

3 “(1) COVERAGE.—Notwithstanding any other
4 provision of law, an H–2C nonimmigrant may not be
5 treated as an independent contractor.

6 “(2) APPLICABILITY OF LAWS.—An H–2C non-
7 immigrant shall not be denied any right or any reme-
8 dy under Federal, State, or local labor or employ-
9 ment law that would be applicable to a United
10 States worker employed in a similar position with
11 the employer because of the alien’s status as a non-
12 immigrant worker.

13 “(3) TAX RESPONSIBILITIES.—With respect to
14 each employed H–2C nonimmigrant, an employer
15 shall comply with all applicable Federal, State, and
16 local tax and revenue laws.

17 “(g) WHISTLEBLOWER PROTECTION.—It shall be un-
18 lawful for an employer or a labor contractor of an H–2C
19 nonimmigrant to intimidate, threaten, restrain, coerce, re-
20 taliate, discharge, or in any other manner, discriminate
21 against an employee or former employee because the em-
22 ployee or former employee—

23 “(1) discloses information to the employer or
24 any other person that the employee or former em-

1 ployee reasonably believes demonstrates that a viola-
2 tion of this Act has occurred; or

3 “(2) cooperates or seeks to cooperate in an in-
4 vestigation or other proceeding concerning compli-
5 ance with the requirements of this Act.

6 “(h) LABOR RECRUITERS.—

7 “(1) IN GENERAL.—Each employer that en-
8 gages in foreign labor contracting activity and each
9 foreign labor contractor shall ascertain and disclose,
10 to each such worker who is recruited for employment
11 at the time of the worker’s recruitment—

12 “(A) the place of employment;

13 “(B) the compensation for the employ-
14 ment;

15 “(C) a description of employment activi-
16 ties;

17 “(D) the period of employment;

18 “(E) any other employee benefit to be pro-
19 vided and any costs to be charged for each ben-
20 efit;

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

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

1 “(H) the existence of any arrangement
2 with any owner, employer, foreign contractor,
3 or its agent where such person receives a com-
4 mission from the provision of items or services
5 to workers;

6 “(I) the extent to which workers will be
7 compensated through workers’ compensation,
8 private insurance, or otherwise for injuries or
9 death, including—

10 “(i) work-related injuries and death
11 during the period of employment;

12 “(ii) the name of the State workers’
13 compensation insurance carrier or the
14 name of the policyholder of the private in-
15 surance;

16 “(iii) the name and the telephone
17 number of each person who must be noti-
18 fied of an injury or death; and

19 “(iv) the time period within which
20 such notice must be given;

21 “(J) any education or training to be pro-
22 vided or required, including—

23 “(i) the nature and cost of such train-
24 ing;

1 “(ii) the entity that will pay such
2 costs; and

3 “(iii) whether the training is a condi-
4 tion of employment, continued employ-
5 ment, or future employment; and

6 “(K) a statement, in a form specified by
7 the Secretary of Labor, describing the protec-
8 tions of this Act for workers recruited abroad.

9 “(2) FALSE OR MISLEADING INFORMATION.—
10 No foreign labor contractor or employer who en-
11 gages in foreign labor contracting activity shall
12 knowingly provide materially false or misleading in-
13 formation to any worker concerning any matter re-
14 quired to be disclosed in paragraph (1).

15 “(3) LANGUAGES.—The information required to
16 be disclosed under paragraph (1) shall be provided
17 in writing in English or, as necessary and reason-
18 able, in the language of the worker being recruited.
19 The Secretary of Labor shall make forms available
20 in English, Spanish, and other languages, as nec-
21 essary, which may be used in providing workers with
22 information required under this section.

23 “(4) FEES.—A person conducting a foreign
24 labor contracting activity shall not assess any fee to
25 a worker for such foreign labor contracting activity.

1 “(5) TERMS.—No employer or foreign labor
2 contractor shall, without justification, violate the
3 terms of any agreement made by that contractor or
4 employer regarding employment under this program.

5 “(6) TRAVEL COSTS.—The employer shall cover
6 the costs of transporting the alien from the alien’s
7 home residence to the place of employment.

8 “(7) OTHER WORKER PROTECTIONS.—

9 “(A) NOTIFICATION.—Not less frequently
10 than once every 2 years, each employer shall
11 notify the Secretary of Labor of the identity of
12 any foreign labor contractor engaged by the em-
13 ployer in any foreign labor contractor activity
14 for, or on behalf of, the employer.

15 “(B) REGISTRATION OF FOREIGN LABOR
16 CONTRACTORS.—

17 “(i) IN GENERAL.—No person shall
18 engage in foreign labor recruiting activity
19 unless such person has a certificate of reg-
20 istration from the Secretary of Labor
21 specifying the activities that such person is
22 authorized to perform. An employer who
23 retains the services of a foreign labor con-
24 tractor shall only use those foreign labor

1 contractors who are registered under this
2 subparagraph.

3 “(ii) ISSUANCE.—The Secretary shall
4 promulgate regulations to establish an effi-
5 cient electronic process for the investiga-
6 tion and approval of an application for a
7 certificate of registration of foreign labor
8 contractors not later than 14 days after
9 such application is filed, including—

10 “(I) requirements under para-
11 graphs (1), (4), and (5) of section 102
12 of the Migrant and Seasonal Agricul-
13 tural Worker Protection Act (29
14 U.S.C. 1812);

15 “(II) an expeditious means to up-
16 date registrations and renew certifi-
17 cates; and

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

20 “(iii) TERM.—Unless suspended or re-
21 voked, a certificate under this subpara-
22 graph shall be valid for 2 years.

23 “(iv) REFUSAL TO ISSUE; REVOCA-
24 TION; SUSPENSION.—In accordance with
25 regulations promulgated by the Secretary

1 of Labor, the Secretary may refuse to issue
2 or renew, or may suspend or revoke, a cer-
3 tificate of registration under this subpara-
4 graph if—

5 “(I) the application or holder of
6 the certification has knowingly made a
7 material misrepresentation in the ap-
8 plication for such certificate;

9 “(II) the applicant for, or holder
10 of, the certification is not the real
11 party in interest in the application or
12 certificate of registration and the real
13 party in interest—

14 “(aa) is a person who has
15 been refused issuance or renewal
16 of a certificate;

17 “(bb) has had a certificate
18 suspended or revoked; or

19 “(cc) does not qualify for a
20 certificate under this paragraph;
21 or

22 “(III) the applicant for, or holder
23 of, the certification has failed to com-
24 ply with this Act.

1 “(C) REMEDY FOR VIOLATIONS.—An em-
2 ployer engaging in foreign labor contracting ac-
3 tivity and a foreign labor contractor that vio-
4 lates the provisions of this subsection shall be
5 subject to remedies for foreign labor contractor
6 violations under subsections (k) and (l). If a
7 foreign labor contractor acting as an agent of
8 an employer violates any provision of this sub-
9 section, the employer shall be subject to rem-
10 edies under subsections (k) and (l). An em-
11 ployer that violates a provision of this sub-
12 section relating to employer obligations shall be
13 subject to remedies under subsections (k) and
14 (l).

15 “(D) EMPLOYER NOTIFICATION.—An em-
16 ployer shall notify the Secretary of Labor if the
17 employer becomes aware of a violation of this
18 subsection by a foreign labor recruiter.

19 “(E) WRITTEN AGREEMENTS.—A foreign
20 labor contractor may not violate the terms of
21 any written agreements made with an employer
22 relating to any contracting activity or worker
23 protection under this subsection.

24 “(F) BONDING REQUIREMENT.—The Sec-
25 retary of Labor may require a foreign labor

1 contractor to post a bond in an amount suffi-
2 cient to ensure the protection of individuals re-
3 cruited by the foreign labor contractor. The
4 Secretary may consider the extent to which the
5 foreign labor contractor has sufficient ties to
6 the United States to adequately enforce this
7 subsection.

8 “(i) WAIVER OF RIGHTS PROHIBITED.—An H-2C
9 nonimmigrant may not be required to waive any rights or
10 protections under this Act. Nothing under this subsection
11 shall be construed to affect the interpretation of other
12 laws.

13 “(j) NO THREATENING OF EMPLOYEES.—It shall be
14 a violation of this section for an employer who has filed
15 a petition under this section to threaten the alien bene-
16 ficiary of such a petition with the withdrawal of such a
17 petition in retaliation for the beneficiary’s exercise of a
18 right protected by this Act.

19 “(k) ENFORCEMENT.—

20 “(1) IN GENERAL.—The Secretary of Labor
21 shall promulgate regulations for the receipt, inves-
22 tigation, and disposition of complaints by an ag-
23 grieved person respecting a violation of this section.

24 “(2) FILING DEADLINE.—No investigation or
25 hearing shall be conducted on a complaint con-

1 cerning a violation under this section unless the
2 complaint was filed not later than 12 months after
3 the date of such violation.

4 “(3) REASONABLE CAUSE.—The Secretary of
5 Labor shall conduct an investigation under this sub-
6 section if there is reasonable cause to believe that a
7 violation of this section has occurred. The process
8 established under this subsection shall provide that,
9 not later than 30 days after a complaint is filed, the
10 Secretary shall determine if there is reasonable
11 cause to find such a violation.

12 “(4) NOTICE AND HEARING.—

13 “(A) IN GENERAL.—Not later than 60
14 days after the Secretary of Labor makes a de-
15 termination of reasonable cause under para-
16 graph (4), the Secretary shall issue a notice to
17 the interested parties and offer an opportunity
18 for a hearing on the complaint, in accordance
19 with section 556 of title 5, United States Code.

20 “(B) COMPLAINT.—If the Secretary of
21 Labor, after receiving a complaint under this
22 subsection, does not offer the aggrieved person
23 or organization an opportunity for a hearing
24 under subparagraph (A), the Secretary shall no-
25 tify the aggrieved person or organization of

1 such determination and the aggrieved party or
2 organization may seek a hearing on the com-
3 plaint in accordance with such section 556.

4 “(C) HEARING DEADLINE.—Not later than
5 60 days after the date of a hearing under this
6 paragraph, the Secretary of Labor shall make a
7 finding on the matter in accordance with para-
8 graph (5).

9 “(5) ATTORNEY’S FEES.—A complainant who
10 prevails with respect to a claim under this sub-
11 section shall be entitled to an award of reasonable
12 attorney’s fees and costs.

13 “(6) POWER OF THE SECRETARY.—The Sec-
14 retary may bring an action in any court of com-
15 petent jurisdiction—

16 “(A) to seek remedial action, including in-
17 junctive relief;

18 “(B) to recover the damages described in
19 subsection (i); or

20 “(C) to ensure compliance with terms and
21 conditions described in subsection (g).

22 “(7) SOLICITOR OF LABOR.—Except as pro-
23 vided in section 518(a) of title 28, United States
24 Code, the Solicitor of Labor may appear for and rep-
25 resent the Secretary of Labor in any civil litigation

1 brought under this subsection. All such litigation
2 shall be subject to the direction and control of the
3 Attorney General.

4 “(8) PROCEDURES IN ADDITION TO OTHER
5 RIGHTS OF EMPLOYEES.—The rights and remedies
6 provided to workers under this section are in addi-
7 tion to any other contractual or statutory rights and
8 remedies of the workers, and are not intended to
9 alter or affect such rights and remedies.

10 “(1) PENALTIES.—

11 “(1) IN GENERAL.—If, after notice and an op-
12 portunity for a hearing, the Secretary of Labor finds
13 a violation of subsection (b), (e), (f), or (g), the Sec-
14 retary may impose administrative remedies and pen-
15 alties, including—

16 “(A) back wages;

17 “(B) benefits; and

18 “(C) civil monetary penalties.

19 “(2) CIVIL PENALTIES.—The Secretary of
20 Labor may impose, as a civil penalty—

21 “(A) for a violation of subsection (e) or
22 (f)—

23 “(i) a fine in an amount not to exceed
24 \$2,000 per violation per affected worker;

1 “(ii) if the violation was willful, a fine
2 in an amount not to exceed \$5,000 per vio-
3 lation per affected worker;

4 “(iii) if the violation was willful and if
5 in the course of such violation a United
6 States worker was harmed, a fine in an
7 amount not to exceed \$25,000 per viola-
8 tion per affected worker; and

9 “(B) for a violation of subsection (g)—

10 “(i) a fine in an amount not less than
11 \$500 and not more than \$4,000 per viola-
12 tion per affected worker;

13 “(ii) if the violation was willful, a fine
14 in an amount not less than \$2,000 and not
15 more than \$5,000 per violation per af-
16 fected worker; and

17 “(iii) if the violation was willful and if
18 in the course of such violation a United
19 States worker was harmed, a fine in an
20 amount not less than \$6,000 and not more
21 than \$35,000 per violation per affected
22 worker.

23 “(3) USE OF CIVIL PENALTIES.—All penalties
24 collected under this subsection shall be deposited in
25 the Treasury in accordance with section 286(w).

1 “(4) CRIMINAL PENALTIES.—If a willful and
2 knowing violation of subsection (g) causes extreme
3 physical or financial harm to an individual, the per-
4 son in violation of such subsection may be impris-
5 oned for not more than 6 months, fined in an
6 amount not more than \$35,000, or both.

7 “(m) DEFINITIONS.—In this section and in sections
8 218A, 218C, and 218D:

9 “(1) AGGRIEVED PERSON.—The term ‘ag-
10 grievied person’ means a person adversely affected by
11 an alleged violation of this section, including—

12 “(A) a worker whose job, wages, or work-
13 ing conditions are adversely affected by the vio-
14 lation; and

15 “(B) a representative for workers whose
16 jobs, wages, or working conditions are adversely
17 affected by the violation who brings a complaint
18 on behalf of such worker.

19 “(2) AREA OF EMPLOYMENT.—The terms ‘area
20 of employment’ and ‘area of intended employment’
21 mean the area within normal commuting distance of
22 the worksite or physical location at which the work
23 of the worker is or will be performed. If such work-
24 site or location is within a metropolitan statistical

1 area, any place within such area is deemed to be
2 within the area of employment.

3 “(3) ELIGIBLE INDIVIDUAL.—The term “‘eligi-
4 ble individual’” means, with respect to employment,
5 an individual who is not an unauthorized alien (as
6 defined in section 274A) with respect to that em-
7 ployment.

8 “(4) EMPLOY; EMPLOYEE; EMPLOYER.—The
9 terms ‘employ’, ‘employee’, and ‘employer’ have the
10 meanings given such terms in section 3 of the Fair
11 Labor Standards Act of 1938 (29 U.S.C. 203).

12 “(5) FOREIGN LABOR CONTRACTOR.—The term
13 ‘foreign labor contractor’ means any person who for
14 any compensation or other valuable consideration
15 paid or promised to be paid, performs any foreign
16 labor contracting activity.

17 “(6) FOREIGN LABOR CONTRACTING ACTIV-
18 ITY.—The term ‘foreign labor contracting activity’
19 means recruiting, soliciting, hiring, employing, or
20 furnishing, an individual who resides outside of the
21 United States for employment in the United States
22 as a nonimmigrant alien described in section
23 101(a)(15)(H)(ii)(c).

1 “(7) H-2C NONIMMIGRANT.—The term ‘H-2C
2 nonimmigrant’ means a nonimmigrant described in
3 section 101(a)(15)(H)(ii)(c).

4 “(8) SEPARATION FROM EMPLOYMENT.—The
5 term ‘separation from employment’ means the work-
6 er’s loss of employment, other than through a dis-
7 charge for inadequate performance, violation of
8 workplace rules, cause, voluntary departure, vol-
9 untary retirement, or the expiration of a grant or
10 contract. The term does not include any situation in
11 which the worker is offered, as an alternative to
12 such loss of employment, a similar employment op-
13 portunity with the same employer at equivalent or
14 higher compensation and benefits than the position
15 from which the employee was discharged, regardless
16 of whether the employee accepts the offer. Nothing
17 in this paragraph shall limit an employee’s rights
18 under a collective bargaining agreement or other em-
19 ployment contract.

20 “(9) UNITED STATES WORKER.—The term
21 ‘United States worker’ means an employee who is—

22 “(A) a citizen or national of the United
23 States; or

24 “(B) an alien who is—

1 “(i) lawfully admitted for permanent
2 residence;

3 “(ii) admitted as a refugee under sec-
4 tion 207;

5 “(iii) granted asylum under section
6 208; or

7 “(iv) otherwise authorized, under this
8 Act or by the Secretary of Homeland Secu-
9 rity, to be employed in the United States.”.

10 (2) CLERICAL AMENDMENT.—The table of con-
11 tents is amended by inserting after the item relating
12 to section 218A, as added by subsection (b)(2), the
13 following:

“Sec. 218B. Employer obligations.”.

14 (e) NUMERICAL LIMITATIONS.—Section 214(g)(1) (8
15 U.S.C. 1184(g)) is amended—

16 (1) by striking “(beginning with fiscal year
17 1992)”;

18 (2) in subparagraph (B), by striking the period
19 at the end and inserting “; and”; and

20 (3) by adding at the end the following:

21 “(C) under section 101(a)(15)(H)(ii)(c),
22 may not exceed—

23 “(i) the number of visas recommended
24 by the Commission on Immigration and
25 the National Interest created by this Act

1 in its annual report to Congress submitted
2 on the first of March every year; or

3 “(ii) if the Commission fails to make
4 a recommendation, the number designated
5 by the Commission in the prior fiscal
6 year.”.

7 (f) ADMISSION OF NONIMMIGRANTS.—

8 (1) PRESUMPTION OF NONIMMIGRANT STA-
9 TUS.—Section 214(b) (8 U.S.C. 1184(b)) is amend-
10 ed by striking “and other than” and inserting “a
11 nonimmigrant described in section
12 101(a)(15)(H)(ii)(c)), and”.

13 (2) EVIDENCE TO ABANDON FOREIGN RESI-
14 DENCE.—Section 214(h) (8 U.S.C. 1184(h)) is
15 amended by striking “H(i)(b) or (c),” and inserting
16 “(H)(i)(b), H(i)(c), (H)(ii)(c),”.

17 (g) RULEMAKING; EFFECTIVE DATE.—

18 (1) RULEMAKING.—Not later than 6 months
19 after the date of the enactment of this Act, the Sec-
20 retary of Labor shall promulgate regulations, in ac-
21 cordance with the notice and comment provisions of
22 section 553 of title 5, United States Code, to carry
23 out the provisions of sections 218A and 218B of the
24 Immigration and Nationality Act, as added by this
25 section.

1 (2) **EFFECTIVE DATE.**—The amendments made
2 by subsections (b), (c), and section 403 shall take ef-
3 fect on the date that is 1 year after the date of the
4 enactment of this Act with regard to aliens, who, on
5 such effective date, are in the foreign country where
6 they maintain residence.

7 **SEC. 403. RECRUITMENT OF UNITED STATES WORKERS.**

8 (a) **ELECTRONIC JOB REGISTRY.**—The Secretary of
9 Labor shall establish a publicly accessible web page on the
10 Internet website of the Department of Labor that provides
11 a single Internet link to each State workforce agency’s
12 statewide electronic registry of jobs available throughout
13 the United States to United States workers.

14 (b) **RECRUITMENT OF UNITED STATES WORKERS.**—

15 (1) **POSTING.**—An employer shall attest that
16 the employer has posted an employment opportunity
17 at a prevailing wage level (as described in section
18 218B(c)(2)(C) of the Immigration and Nationality
19 Act).

20 (2) **RECORDS.**—An employer shall maintain
21 records for not less than 1 year after the date on
22 which an H–2C nonimmigrant is hired that describe
23 the reasons for not hiring any of the United States
24 workers who may have applied for such position.

1 (c) OVERSIGHT AND MAINTENANCE OF RECORDS.—
2 The Secretary of Labor shall promulgate regulations re-
3 garding the maintenance of electronic job registry records
4 for the purpose of audit or investigation.

5 (d) ACCESS TO ELECTRONIC JOB REGISTRY.—The
6 Secretary of Labor shall ensure that job opportunities ad-
7 vertised on an electronic job registry established under
8 this section are accessible—

9 (1) by the State workforce agencies, which may
10 further disseminate job opportunity information to
11 other interested parties; and

12 (2) through the Internet, for access by workers,
13 employers, labor organizations, and other interested
14 parties.

15 **SEC. 404. ADJUSTMENT TO LAWFUL PERMANENT RESIDENT**
16 **STATUS.**

17 Section 245 of the Immigration and Nationality Act
18 (8 U.S.C. 1255) is amended by adding at the end the fol-
19 lowing:

20 “(n)(1) For purposes of adjustment of status under
21 subsection (a), employment-based immigrant visas shall be
22 made available to an alien having nonimmigrant status de-
23 scribed in section 101(a)(15)(H)(ii)(c) upon the filing of
24 a petition for such a visa—

25 “(A) by the alien’s employer; or

1 “(B) by the alien, if the alien has been em-
2 ployed as an H-2C nonimmigrant in the United
3 States for a cumulative total of 4 years.

4 “(2) An alien applying for adjustment of status
5 shall—

6 “(A) pay an application fee of \$100, in addition
7 to the fee established by the Secretary of Homeland
8 Security to process an application for adjustment of
9 status;

10 “(B) be physically present in the United States;

11 “(C) establish evidence of continuous lawful em-
12 ployment; and

13 “(D)(i) meet the requirements under section
14 312 of the Immigration and Nationality Act; or

15 “(ii) be satisfactorily pursuing a course of study
16 to achieve such an understanding of English and
17 knowledge and understanding of the history and
18 Government of the United States.

19 “(3) An alien shall demonstrate evidence of employ-
20 ment.

21 “(A) An alien may conclusively establish em-
22 ployment status in compliance with paragraph (2) by
23 submitting records to the Secretary that dem-
24 onstrate such employment, and have been main-
25 tained by the Social Security Administration, the In-

1 ternal Revenue Service, or any other Federal, State,
2 or local government agency.

3 “(B) OTHER DOCUMENTS.—An alien who is un-
4 able to submit a document described in subpara-
5 graph (A) may satisfy the requirement under para-
6 graph (1) by submitting to the Secretary at least 2
7 other types of reliable documents that provide evi-
8 dence of employment, including—

9 “(i) bank records;

10 “(ii) business records;

11 “(iii) employer records;

12 “(iv) records of a labor union, day labor
13 center, or organization that assists workers in
14 employment;

15 “(v) sworn affidavits from nonrelatives who
16 have direct knowledge of the alien’s work, that
17 contain—

18 “(I) the name, address, and telephone
19 number of the affiant;

20 “(II) the nature and duration of the
21 relationship between the affiant and the
22 alien; and

23 “(III) other verification or informa-
24 tion; and

25 “(vi) remittance records.

1 “(C) ADDITIONAL DOCUMENTS AND RESTRIC-
2 TIONS.—The Secretary may—

3 “(i) designate additional documents to evi-
4 dence employment in the United States; and

5 “(ii) set such terms and conditions on the
6 use of affidavits as is necessary to verify and
7 confirm the identity of any affiant or otherwise
8 prevent fraudulent submissions.

9 “(4) An alien who demonstrates that the alien meets
10 the requirements of section 312 may be considered to have
11 satisfied the requirements of that section for purposes of
12 becoming naturalized as a citizen of the United States
13 under title III.

14 “(5) Filing a petition under paragraph (1) on behalf
15 of an alien or otherwise seeking permanent residence in
16 the United States for such alien shall not constitute evi-
17 dence of the alien’s ineligibility for nonimmigrant status
18 under section 101(a)(15)(H)(ii)(c).

19 “(6) The limitation regarding the period of author-
20 ized stay under section 218A(d) shall not apply to an H-
21 2C nonimmigrant if—

22 “(A) a labor certification application filed under
23 section 203(b) on behalf of such alien is pending;

24 “(B) an immigrant visa petition filed under sec-
25 tion 204(b) on behalf of such alien is pending; or

1 “(C) an application for adjustment of status is
2 pending.

3 “(7) The Secretary of Homeland Security shall ex-
4 tend the stay of an alien who qualifies for an exemption
5 under paragraph (6) in 1-year increments until a final de-
6 cision is made on the alien’s lawful permanent residence.

7 “(8) Nothing in this subsection shall be construed to
8 prevent an alien having nonimmigrant status described in
9 section 101(a)(15)(H)(ii)(c) from filing an application for
10 adjustment of status under this section in accordance with
11 any other provision of law.”.

12 **SEC. 405. EMPLOYER COMPLIANCE.**

13 (a) COMPLIANCE INVESTIGATORS.—The Secretary of
14 Labor, subject to the availability of appropriations for
15 such purpose, shall annually increase, by not less than
16 2,000, the number of positions for compliance investiga-
17 tors dedicated to enforcing compliance with this title, and
18 the amendments made by this title.

19 (b) INCREASED PENALTIES FOR VIOLATING EM-
20 PLOYERS.—Any employer of a nonimmigrant alien de-
21 scribed in section 101(a)(15)(H) of the Immigration and
22 Nationality Act (8 U.S.C. 1101(a)(15)(H)), as amended
23 by section 402, that is subject to a fine under section 16
24 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216)
25 or section 17 of the Occupational Safety and Health Act

1 of 1970 (29 U.S.C. 666) for a violation with respect to
2 such alien or other affected workers, shall be required to
3 pay a fine equal to twice the fine that would otherwise
4 be assessed under such sections.

5 (c) ENSURING EMPLOYER COMPLIANCE WITH FED-
6 ERAL LABOR AND EMPLOYMENT LAWS.—

7 (1) COMPLIANCE.—Section 274A(d), as amend-
8 ed by section 301, is further amended—

9 (A) in paragraph (2), by adding at the end
10 the following:

11 “(D) MISREPRESENTATION.—United
12 States Immigration and Customs Enforcement
13 officials may not misrepresent to employees or
14 employers that they are a member of any agen-
15 cy or organization that provides domestic vio-
16 lence services, enforces health and safety law or
17 other labor laws, provides health care services,
18 or any other services intended to protect life
19 and safety.”; and

20 (B) by adding at the end the following:

21 “(8) COORDINATION.—An investigation under
22 paragraph (1) shall be coordinated with the appro-
23 priate regional office of the National Labor Rela-
24 tions Board, the Department of Labor, and all rel-
25 evant State and local agencies that are charged with

1 enforcing workplace standards. Such coordination
2 shall include gathering evidence from such agencies
3 about past and pending charges filed against the en-
4 tity under investigation not later than 3 years after
5 the commencement of the investigation. Evidence
6 gathered from such agencies shall be considered in
7 determining whether the entity under investigation
8 has violated subsection (a).”.

9 (2) REMEDIES.—Section 274A(i), as amended
10 by section 301, is further amended by adding at the
11 end the following:

12 “(3) REMEDIES.—A court may not deny back
13 pay or any other monetary damages to a current or
14 former employee based on the—

15 “(A) failure of the employer or employee to
16 comply with the requirements of this section;

17 “(B) violation by the employer or employee
18 of a provision of Federal law related to the
19 Electronic Employment Verification System de-
20 scribed in subsection (c) in establishing or
21 maintaining the employment relationship; or

22 “(C) status of the employee before or after
23 the termination of employment.”.

24 (3) PROTECTION AGAINST DISCRIMINATION.—
25 Section 274B (8 U.S.C. 1324b) is amended—

1 (A) in subsection (a)—

2 (i) by amending paragraph (1) to read
3 as follows:

4 “(1) IN GENERAL.—It is an unfair immigra-
5 tion-related employment practice for a person or
6 other entity to discriminate against any individual
7 (other than an unauthorized alien defined in section
8 274A(h)(3)) with respect to—

9 “(A) the hiring, or recruitment or referral
10 for a fee, of the individual for employment or
11 the discharging of the individual from employ-
12 ment—

13 “(i) because of such individual’s na-
14 tional origin; or

15 “(ii) in the case of a protected indi-
16 vidual, because of such individual’s citizen-
17 ship status; or

18 “(B) the compensation, terms, conditions,
19 or privileges of the employment of the indi-
20 vidual.”; and

21 (ii) in paragraph (6), by striking “if
22 made for the purpose or with the intent of
23 discriminating against an individual in vio-
24 lation of paragraph (1)” and inserting “in
25 violation of paragraph (1),”;

1 (B) in subsection (d)—

2 (i) in paragraph (1), by striking “and,
3 based on such an investigation and subject
4 to paragraph (3), file a complaint before
5 such a judge” and inserting “Any such in-
6 vestigation shall begin not later than 180
7 days after the alleged discriminatory act.
8 Any such complaint filed with an adminis-
9 trative law judge shall be filed not later
10 than 1 year after the commencement of the
11 independent investigation.”; and

12 (ii) by striking paragraph (3); and

13 (C) in subsection (g)(2)(B), by amending
14 clause (iii) to read as follows:

15 “(iii)(I) to hire individuals directly
16 and adversely affected, with back pay; and

17 “(II) to provide such other relief as
18 the administrative law judge determines
19 appropriate to make the individual whole;”.

20 (d) ENFORCING WORKPLACE SAFETY FOR IMMI-
21 GRANT WORKERS.—Section 6(b) of the Occupational
22 Safety and Health Act of 1970 (29 U.S.C. 655(b)) is
23 amended by adding at the end the following:

24 “(9)(A) In this paragraph, the term required
25 personal protective equipment has the meaning given

1 the term personal protective equipment under sec-
2 tion 1910.132(a) of title 29, Code of Federal Regu-
3 lations.

4 “(B)(i) Not later than 30 days after the date
5 of the enactment of this Act, the Secretary shall
6 amend section 1910.132(a) of title 29, Code of Fed-
7 eral Regulations, to require employers to provide em-
8 ployees with required personal protective equipment
9 at no cost to the employee.

10 “(ii) In promulgating any future standard
11 under this section, the Secretary shall specify that
12 the required personal protective equipment shall be
13 provided at no cost to the employee.”.

14 **SEC. 406. AUTHORIZATION OF APPROPRIATIONS.**

15 There are authorized to be appropriated such sums
16 as may be necessary to carry out this title, and the amend-
17 ments made by this title.

1 **Subtitle B—Family and**
 2 **Employment Visa Reforms**
 3 **CHAPTER 1—FAMILY AND EMPLOYMENT**
 4 **BASED IMMIGRANT VISAS**

5 **SEC. 411. RECAPTURE OF IMMIGRANT VISAS LOST TO BU-**
 6 **REAUCRATIC DELAY.**

7 (a) WORLDWIDE LEVEL OF FAMILY-SPONSORED IM-
 8 MIGRANTS.—Section 201(c) (8 U.S.C. 1151(c)) is amend-
 9 ed to read as follows:

10 “(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED IM-
 11 MIGRANTS.—

12 “(1) IN GENERAL.—Subject to subparagraph
 13 (B), the worldwide level of family-sponsored immi-
 14 grants under this subsection for a fiscal year is
 15 equal to the sum of—

16 “(A) 480,000; and

17 “(B) the sum of—

18 “(i) the number computed under
 19 paragraph (2); and

20 “(ii) the number computed under
 21 paragraph (3).

22 “(2) UNUSED VISA NUMBERS FROM PREVIOUS
 23 FISCAL YEAR.—The number computed under this
 24 paragraph for a fiscal year is the difference, if any,
 25 between—

1 “(A) the worldwide level of family-spon-
2 sored immigrant visas established for the pre-
3 vious fiscal year; and

4 “(B) the number of visas issued under sec-
5 tion 203(a), subject to this subsection, during
6 the previous fiscal year.

7 “(3) UNUSED VISA NUMBERS FROM FISCAL
8 YEARS 1992 THROUGH 2007.—The number computed
9 under this paragraph is the difference, if any, be-
10 tween—

11 “(A) the difference, if any, between—

12 “(i) the sum of the worldwide levels of
13 family-sponsored immigrant visas estab-
14 lished for fiscal years 1992 through 2007;
15 and

16 “(ii) the number of visas issued under
17 section 203(a), subject to this subsection,
18 during such fiscal years; and

19 “(B) the number of unused visas from fis-
20 cal years 1992 through 2007 that were issued
21 after fiscal year 2007 under section 203(a),
22 subject to this subsection.”.

23 (b) WORLDWIDE LEVEL OF EMPLOYMENT-BASED IM-
24 MIGRANTS.—Section 201(d) (8 U.S.C. 1151(d)) is amend-
25 ed to read as follows:

1 “(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED
2 IMMIGRANTS.—

3 “(1) IN GENERAL.—The worldwide level of em-
4 ployment-based immigrants under this subsection for
5 a fiscal year is equal to the sum of—

6 “(A) 140,000;

7 “(B) the number computed under para-
8 graph (2); and

9 “(C) the number computed under para-
10 graph (3).

11 “(2) UNUSED VISA NUMBERS FROM PREVIOUS
12 FISCAL YEAR.—The number computed under this
13 paragraph for a fiscal year is the difference, if any,
14 between—

15 “(A) the worldwide level of employment-
16 based immigrant visas established for the pre-
17 vious fiscal year; and

18 “(B) the number of visas issued under sec-
19 tion 203(b), subject to this subsection, during
20 the previous fiscal year.

21 “(3) UNUSED VISA NUMBERS FROM FISCAL
22 YEARS 1992 THROUGH 2007.—The number computed
23 under this paragraph is the difference, if any, be-
24 tween—

25 “(A) the difference, if any, between—

1 “(i) the sum of the worldwide levels of
2 employment-based immigrant visas estab-
3 lished for each of fiscal years 1992
4 through 2007; and

5 “(ii) the number of visas issued under
6 section 203(b), subject to this subsection,
7 during such fiscal years; and

8 “(B) the number of unused visas from fis-
9 cal years 1992 through 2007 that were issued
10 after fiscal year 2007 under section 203(b),
11 subject to this subsection.”.

12 (c) ALIENS NOT SUBJECT TO DIRECT NUMERICAL
13 LIMITATIONS.—Section 201(b)(1) (8 U.S.C. 1151(b)(1))
14 is amended by adding at the end the following:

15 “(F) A derivative beneficiary as described
16 in section 203(d) of an employment-based im-
17 migrant under section 203(b).

18 “(G) Aliens with extraordinary ability in
19 the sciences, arts, education, business, or ath-
20 letics which has been demonstrated by sus-
21 tained national or international acclaim, if:

22 “(i) the achievements of such alien
23 have been recognized in the field through
24 extensive documentation;

1 “(ii) such alien seeks to enter the
2 United States to continue work in the area
3 of extraordinary ability; and

4 “(iii) the entry of such alien into the
5 United States will substantially benefit
6 prospectively the United States.

7 “(H) Aliens who have earned an advanced
8 degree in the sciences (not including the social
9 sciences), technology, engineering, or mathe-
10 matics from a United States institution of high-
11 er education (as defined in section 1001(a) of
12 title 20) and have been working in a field re-
13 lated to their degree subject in the United
14 States under a nonimmigrant visa during the 2-
15 year period preceding their application for an
16 immigrant visa under section 203(b).

17 “(I) Alien physicians who have completed
18 service requirements of a waiver or exemption
19 requested by an interested State agency or by
20 an interested Federal agency under section
21 214(l), including those alien physicians who
22 completed such service before the date of the
23 enactment of this subparagraph.

1 “(J) Aliens who are eligible for adjustment
2 of status under section 245(n)(1) as an alien
3 who described in section 101(a)(15)(H)(ii)(c).”

4 (d) REQUIREMENT TO SATISFY ELIGIBILITY RE-
5 QUIREMENTS.—Section 203 (8 U.S.C. 1153) is amended
6 by adding at the end the following new subsection:

7 “(i) REQUIREMENT TO SATISFY ELIGIBILITY RE-
8 QUIREMENTS.—Notwithstanding the inapplicability of the
9 worldwide levels specified in sections 201(c) and (d) to
10 aliens described in section 201(b)(1), aliens described in
11 section 201(b)(1) (H) and (I) must satisfy the require-
12 ments for eligibility for an immigrant visa under one of
13 the preference categories under subsection (b).”.

14 (e) DISCRETIONARY NATIONAL INTEREST POOL.—
15 The discretionary national interest pool is the number that
16 is the average of the difference between—

17 (1) the number of legal immigrant visas issued
18 annually from fiscal year 1995 through fiscal year
19 2010; and

20 (2) the number of legal immigrant visas issued
21 annually plus unauthorized entries estimated annu-
22 ally by the Secretary of Homeland Security from fis-
23 cal year 1995 through fiscal year 2010.

1 (f) APPLICABILITY.—The amendments made by sub-
 2 section (c) shall apply to any immigrant petition or immi-
 3 grant visa application—

4 (1) pending on the date of the enactment of
 5 this Act; or

6 (2) filed on or after such date of enactment.

7 (g) ELIMINATION OF THE EB–1A PREFERENCE CAT-
 8 EGORY.—Section 203(b)(1) (8 U.S.C. 1153(b)(1)) is
 9 amended—

10 (1) by striking subparagraph (A); and

11 (2) by redesignating subparagraphs (B) and
 12 (C) as subparagraphs (A) and (B), respectively.

13 (h) EFFECTIVE DATE.—The amendments made by
 14 this section shall take effect on the first day of the first
 15 fiscal year that commences no earlier than 9 months after
 16 the date of the enactment of the Comprehensive Immigra-
 17 tion Reform Act of 2010.

18 **SEC. 412. RECLASSIFICATION OF SPOUSES AND MINOR**
 19 **CHILDREN OF LEGAL PERMANENT RESI-**
 20 **DENTS AS IMMEDIATE RELATIVES.**

21 (a) IN GENERAL.—Section 201(b)(2) (8 U.S.C.
 22 1151(b)(2)) is amended to read as follows:

23 “(2) IMMEDIATE RELATIVE.—

24 “(A) IN GENERAL.—

1 “(i) IMMEDIATE RELATIVE DE-
2 FINED.—In this subparagraph, the term
3 ‘immediate relative’ means a child, spouse,
4 or parent of a citizen of the United States
5 or a child or spouse of a lawful permanent
6 resident (and for each family member of a
7 citizen or lawful permanent resident under
8 this subparagraph, such individual’s spouse
9 or child who is accompanying or following
10 to join the individual), except that, in the
11 case of parents, such citizens shall be at
12 least 21 years of age. In the case of an
13 alien who was the spouse of a citizen of the
14 United States and was not legally sepa-
15 rated from the citizen at the time of the
16 citizen’s death, the alien (and each child of
17 the alien) shall be considered, for purposes
18 of this subsection, to remain an immediate
19 relative after the date of the citizen’s death
20 but only if the spouse files a petition under
21 section 204(a)(1)(A)(ii) within 2 years
22 after such date and only until the date the
23 spouse remarries. For purposes of this
24 clause, an alien who has filed a petition
25 under clause (iii) or (iv) of section

1 204(a)(1)(A) of this Act remains an imme-
2 diate relative in the event that the United
3 States citizen or lawful permanent resident
4 spouse or parent loses United States citi-
5 zenship on account of the abuse.”.

6 (b) ALLOCATION OF IMMIGRANT VISAS.—Section
7 203(a) (8 U.S.C. 1153(a)) is amended—

8 (1) in paragraph (1), by striking “23,400” and
9 inserting “127,200”;

10 (2) by striking paragraph (2) and inserting the
11 following:

12 “(2) UNMARRIED SONS AND UNMARRIED
13 DAUGHTERS OF PERMANENT RESIDENT ALIENS.—
14 Qualified immigrants who are the unmarried sons or
15 unmarried daughters (but are not the children) of
16 an alien lawfully admitted for permanent residence
17 shall be allocated visas in a number not to exceed
18 80,640, plus any visas not required for the class
19 specified in paragraph (1).”;

20 (3) in paragraph (3), by striking “23,400” and
21 inserting “80,640”; and

22 (4) in paragraph (4), by striking “65,000” and
23 inserting “191,520”.

24 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

1 (1) RULES FOR DETERMINING WHETHER CER-
2 TAIN ALIENS ARE IMMEDIATE RELATIVES.—Section
3 201(f) (8 U.S.C. 1151(f)) is amended—

4 (A) in paragraph (1), by striking “para-
5 graphs (2) and (3),” and inserting “paragraph
6 (2),”;

7 (B) by striking paragraph (2);

8 (C) by redesignating paragraphs (3) and
9 (4) as paragraphs (2) and (3), respectively; and

10 (D) in paragraph (3), as redesignated by
11 subparagraph (C), by striking “through (3)”
12 and inserting “and (2)”.

13 (2) NUMERICAL LIMITATION TO ANY SINGLE
14 FOREIGN STATE.—Section 202 (8 U.S.C. 1152) is
15 amended—

16 (A) in subsection (a)(4)—

17 (i) by striking subparagraphs (A) and
18 (B);

19 (ii) by redesignating subparagraphs
20 (C) and (D) as subparagraphs (A) and
21 (B), respectively; and

22 (iii) in subparagraph (A), as redesi-
23 gnated by clause (ii), by striking “section
24 203(a)(2)(B)” and inserting “section
25 203(a)(2)”;

1 (B) in subsection (e), in the flush matter
2 following paragraph (3), by striking “, or as
3 limiting the number of visas that may be issued
4 under section 203(a)(2)(A) pursuant to sub-
5 section (a)(4)(A)”.

6 (3) ALLOCATION OF IMMIGRATION VISAS.—Sec-
7 tion 203(h) (8 U.S.C. 1153(h)) is amended—

8 (A) in paragraph (1)—

9 (i) in the matter preceding subpara-
10 graph (A), by striking “subsections
11 (a)(2)(A) and (d)” and inserting “sub-
12 section (d)”;

13 (ii) in subparagraph (A), by striking
14 “becomes available for such alien (or, in
15 the case of subsection (d), the date on
16 which an immigrant visa number became
17 available for the alien’s parent),” and in-
18 serting “became available for the alien’s
19 parent,”; and

20 (iii) in subparagraph (B), by striking
21 “applicable”;

22 (B) by amending paragraph (2) to read as
23 follows:

24 “(2) PETITIONS DESCRIBED.—The petition de-
25 scribed in this paragraph is a petition filed under

1 section 204 for classification of the alien’s parent
2 under subsection (a), (b), or (c).”; and

3 (C) in paragraph (3), by striking “sub-
4 sections (a)(2)(A) and (d)” and inserting “sub-
5 section (d)”.

6 (4) PROCEDURE FOR GRANTING IMMIGRANT
7 STATUS.—Section 204 (8 U.S.C. 1154) is amend-
8 ed—

9 (A) in subsection (a)(1)—

10 (i) in subparagraph (A)—

11 (I) in clause (i), by inserting “or
12 lawful permanent resident” after “cit-
13 izen”;

14 (II) in clause (ii), by striking
15 “described in the second sentence of
16 section 201(b)(2)(A)(i) also” and in-
17 serting “, alien child, or alien parent
18 described in section 201(b)(2)(A)”;

19 (III) in clause (iii)—

20 (aa) in subclause (I)(aa), by
21 inserting “or legal permanent
22 resident” after “citizen”; and

23 (bb) in subclause (II)(aa)—

24 (AA) in subitems (AA)

25 and (BB), by inserting “or

1 legal permanent resident;”
2 after “citizen” each place
3 that term appears;

4 (BB) in subitem (CC),
5 by inserting “or legal per-
6 manent resident” after “cit-
7 izen” each place that term
8 appears; and

9 (CC) in subitem
10 (CC)(bbb), by inserting “or
11 legal permanent resident”
12 after “citizenship”;

13 (IV) in clause (iv), by inserting
14 “or legal permanent resident” after
15 “citizen” each place that term ap-
16 pears;

17 (V) in clause (v)(I), by inserting
18 “or legal permanent resident” after
19 “citizen”; and

20 (VI) in clause (vi)—

21 (aa) by inserting “or legal
22 permanent resident status” after
23 “renunciation of citizenship”;
24 and

1 (bb) by inserting “or legal
2 permanent resident” after “abus-
3 er’s citizenship”;

4 (ii) by striking subparagraph (B);

5 (iii) in subparagraph (C), by striking
6 “subparagraph (A)(iii), (A)(iv), (B)(ii), or
7 (B)(iii)” and inserting “clause (iii) or (iv)
8 of subparagraph (A)”; and

9 (iv) in subparagraph (J), by striking
10 “or clause (ii) or (iii) of subparagraph
11 (B)”;

12 (B) in subsection (a), by striking para-
13 graph (2);

14 (C) in subsection (c)(1), by striking “or
15 preference status”; and

16 (D) in subsection (h), by striking “or a pe-
17 tition filed under subsection (a)(1)(B)(ii)”.

18 (d) COUNTRY LIMIT.—Section 202(a)(2) (8 U.S.C.
19 1152(a)(2)) is amended to read as follows:

20 “(2) PER COUNTRY LEVELS FOR FAMILY-SPON-
21 SORED AND EMPLOYMENT-BASED IMMIGRANTS.—

22 Subject to paragraphs (3), (4), and (5) the total
23 number of immigrant visas made available to natives
24 of any single foreign state under subsection (a) of
25 section 203 in any fiscal year may not exceed 15

1 percent of the total number of such visas made
2 available under such subsection in that fiscal year.”.

3 **SEC. 413. PROMOTING FAMILY UNITY.**

4 (a) UNLAWFULLY PRESENT ALIENS.—Section
5 212(a)(9) (8 U.S.C. 1182(a)(9)) is amended—

6 (1) by striking subparagraph (B) and inserting
7 the following:

8 “(B) ALIENS UNLAWFULLY PRESENT.—

9 “(i) IN GENERAL.—Subject to the
10 provisions of clause (iii), any alien (other
11 than an alien lawfully admitted for perma-
12 nent residence) who has been unlawfully
13 present in the United States for one year
14 or more is inadmissible until such time as
15 the alien departs or is removed and re-
16 mains outside of the United States for a
17 period of 3 consecutive years.

18 “(ii) CONSTRUCTION OF UNLAWFUL
19 PRESENCE.—For purposes of this para-
20 graph, an alien is deemed to be unlawfully
21 present in the United States if the alien is
22 present in the United States after the expi-
23 ration of the period of stay authorized by
24 the Secretary or is present in the United
25 States without being admitted or paroled.

1 “(iii) EXCEPTIONS.—

2 “(I) MINORS.—No period of time
3 in which an alien is under 21 years of
4 age shall be taken into account in de-
5 termining the period of unlawful pres-
6 ence in the United States under
7 clause (i).

8 “(II) ASYLEES.—No period of
9 time in which an alien has a bona fide
10 application for asylum pending under
11 section shall be taken into account in
12 determining the period of unlawful
13 presence in the United States under
14 clause (i) unless the alien during such
15 period was employed without author-
16 ization in the United States.

17 “(III) FAMILY UNITY.—No pe-
18 riod of time in which the alien is a
19 beneficiary of family unity protection
20 pursuant to section of the Immigra-
21 tion Act of 1990 shall be taken into
22 account in determining the period of
23 unlawful presence in the United
24 States under clause (I).

1 “(IV) BATTERED WOMEN AND
2 CHILDREN.—Clause (i) shall not apply
3 to an alien who would be described in
4 paragraph (6)(A)(ii) if ‘violation of
5 the terms of the alien’s nonimmigrant
6 visa’ were substituted for ‘unlawful
7 entry into the United States’ in sub-
8 clause (III) of that paragraph.

9 “(V) TRAFFICKING VICTIMS.—
10 Clause (i) shall not apply to an alien
11 who demonstrates that the severe
12 form of trafficking (as that term is
13 defined in section 103 of the Traf-
14 ficking Victims Protection Act of
15 2000 (22 U.S.C. 7102)) was at least
16 one central reason for the alien’s un-
17 lawful presence in the United States.

18 “(VI) IMMIGRANT VISAS.—Clause
19 (i) shall not apply to an alien for
20 whom an immigrant visa is available
21 or was available on or before the date
22 of the enactment of the Comprehen-
23 sive Immigration Reform Act of 2011,
24 and is otherwise admissible to the

1 United States for permanent resi-
2 dence.

3 “(VII) UNLAWFUL PRESENCE
4 PRIOR TO THE CIR ACT OF 2010.—Any
5 unlawful presence accrued by an alien
6 as of the date of enactment of this
7 Comprehensive Immigration Reform
8 Act of 2011 shall not be considered
9 unlawful presence for the purpose of
10 this subparagraph if such alien was as
11 of the date of enactment of this Com-
12 prehensive Immigration Reform Act of
13 2011—

14 “(aa) the beneficiary of a
15 pending or approved petition for
16 classification as an immediate
17 relative (as described in section
18 201(b)(2));

19 “(bb) the beneficiary of a
20 pending or approved petition
21 under section 203(a) or (b); or

22 “(cc) a derivative beneficiary
23 of a pending or approved petition
24 for classification as an immediate

1 relative or under section 203(a)
2 or (b).

3 “(iv) TOLLING FOR GOOD CAUSE.—In
4 the case of an alien who—

5 “(I) has been lawfully admitted
6 or paroled into the United States;

7 “(II) has filed a nonfrivolous ap-
8 plication for a change or extension of
9 status before the date of expiration of
10 the period of stay authorized by the
11 Secretary; and

12 “(III) has not been employed
13 without authorization in the United
14 States before or during the pendency
15 of such application, the calculation of
16 the period of time specified in clause
17 (i)(I) shall be tolled during the pend-
18 ency of such application, but not to
19 exceed 120 days.

20 “(v) WAIVER.—The Secretary has
21 sole discretion to waive clause (i) in the
22 case of an immigrant who is the spouse,
23 son, daughter or parent of a United States
24 citizen or of an alien lawfully admitted for
25 permanent residence, if it is established to

1 the satisfaction of the Secretary that the
2 refusal of admission to such immigrant
3 alien would result in hardship to the alien
4 or to the citizen or lawfully resident
5 spouse, son, daughter, or parent of such
6 alien or if the Secretary determines in her
7 unreviewable discretion that a waiver is
8 necessary for humanitarian purposes or
9 the public interest or to ensure family
10 unity in the case of an alien who is eligible
11 for an immigrant visa under section 201 or
12 203. Clause (i) may also be waived by the
13 Secretary, in her sole and unreviewable
14 discretion, if she permits the alien to de-
15 part the United States voluntarily pursu-
16 ant to section 240B(a)(1). No court shall
17 have jurisdiction to review a decision or ac-
18 tion by the Attorney General regarding a
19 waiver under this clause.”; and

20 (2) by striking subparagraph (C).

21 (b) FALSE CLAIMS AND MISREPRESENTATIONS.—

22 Title II (8 U.S.C. 1151 et seq.) is amended—

23 (1) in section 212 (8 U.S.C. 1182)—

24 (A) in subsection (a)(6)(C)—

1 (i) in clause (ii), by inserting “and
2 willfully” after “falsely” each place such
3 term appears; and

4 (ii) in clause (iii), by striking “of
5 clause (i)”;

6 (B) in subsection (i), by amending para-
7 graph (1) to read as follows:

8 “(1) The Attorney General or the Secretary of
9 Homeland Security may, in the discretion of the At-
10 torney General or the Secretary, waive the applica-
11 tion of subsection (a)(6)(C) if it is established to the
12 satisfaction of the Attorney General or the Secretary
13 that the refusal of admission to the United States
14 would—

15 “(A) result in extreme hardship to the
16 alien or, in the case of an immigrant who is the
17 parent, spouse, son, or daughter of a United
18 States citizen or of an alien lawfully admitted
19 for permanent residence, to the citizen or law-
20 fully resident parent, spouse, son, or daughter;
21 or

22 “(B) in the case of a VARA self-petitioner,
23 result in significant hardship to the alien or the
24 alien’s United States citizen, lawful permanent

1 resident, or qualified alien parent or child.”;
2 and

3 (2) in section 237(a)(3)(D) (8 U.S.C.
4 1227(a)(3)(D)), by inserting “and willfully” after
5 “falsely” each place such term appears.

6 **SEC. 414. DISCRETIONARY AUTHORITY WITH RESPECT TO**
7 **REMOVAL OR DEPORTATION OF CITIZEN AND**
8 **RESIDENT IMMEDIATE FAMILY MEMBERS.**

9 Section 240(c)(4) (8 U.S.C. 1229a(c)(4)) is amended
10 by adding at the end the following:

11 “(D) JUDICIAL DISCRETION.—In the case
12 of an alien subject to removal, deportation, or
13 exclusion, the immigration judge may exercise
14 discretion to decline to order the alien removed,
15 deported or excluded from the United States if
16 the judge determines that such removal, depor-
17 tation, or exclusion is against the public interest
18 or would result in hardship to the alien’s
19 United States citizen or permanent resident
20 parent, spouse or child except that this sub-
21 paragraph shall not apply to an alien whom the
22 judge determines—

23 “(i) is described in subparagraphs
24 (B), (C), (D)(ii), (E), (H), (I), or (J) of
25 section 212(a)(2);

1 “(ii) is described in section 212(a)(3);

2 “(iii) subparagraphs (A), (C), or (D)

3 of section 212(a)(10);

4 “(iv) is described in section 237(a)(4);

5 or

6 “(v) has engaged in conduct described

7 in paragraph (8) or (9) of section 103 of

8 the Trafficking Victims Protection Act of

9 2000 (22 U.S.C. 7102).”.

10 **SEC. 415. MILITARY FAMILIES.**

11 (a) IN GENERAL.—The Secretary or the Attorney

12 General shall adjust the status of an alien described in

13 subsection (b) to that of an alien lawfully admitted for

14 permanent residence if the alien—

15 (1) applies for such adjustment;

16 (2) is admissible to the United States as an im-

17 migrant, except as provided in subsection (d);

18 (3) pays a fee in an amount determined by the

19 Secretary for the processing of such application (un-

20 less such fee is waived by the Secretary); and

21 (4) is physically present in the United States.

22 (b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STA-

23 TUS.—The benefits provided under subsection (a) shall

24 only apply to an alien who is—

1 (1) a parent, spouse, child, son, or daughter
2 (and their spouse, child, son, or daughter, if any)
3 of—

4 (A) a living Armed Forces member de-
5 scribed in subsection (c); or

6 (B) a deceased Armed Forces member de-
7 scribed in subsection (c) if—

8 (i) the Armed Forces member died as
9 a result of injury or disease incurred in or
10 aggravated by the Armed Forces member's
11 service; and

12 (ii) the alien applies for such adjust-
13 ment—

14 (I) if the death of the Armed
15 Forces member occurred prior to the
16 date of the enactment of this Act, not
17 later than 2 years after the date of
18 such enactment; or

19 (II) if the death of the Armed
20 Forces member occurred after the
21 date of the enactment of this Act, not
22 later than 2 years after the death of
23 the Armed Forces member; or

24 (2) a son or daughter described in paragraph
25 (1) or (3) of section 203(a) of the Immigration and

1 Nationality Act (8 U.S.C. 1153(a)) who has a Fili-
2 pino parent who was naturalized pursuant to section
3 405 of the Immigration Act of 1990 (8 U.S.C. 1440
4 note).

5 (c) ARMED FORCES MEMBER DEFINED.—In this sec-
6 tion, the term “Armed Forces member” means any person
7 who—

8 (1) is, or was at the time of the person’s death
9 described in subsection (b)(1)(B)(i), a United States
10 citizen or lawfully admitted for permanent residence;

11 (2) is serving, or has served honorably on or
12 after October 7, 2001, as a member of the National
13 Guard or the Selected Reserve of the Ready Reserve,
14 or in an active-duty status in the military, air, or
15 naval forces of the United States; and

16 (3) if separated from the service described in
17 paragraph (2), was separated under honorable condi-
18 tions.

19 (d) WAIVER OF CERTAIN GROUNDS OF INADMIS-
20 SIBILITY.—

21 (1) IN GENERAL.—The provisions of para-
22 graphs (4), (5), (6)(A), (7)(A), and (9)(B) of section
23 212(a) of the Immigration and Nationality Act (8
24 U.S.C. 1182(a)) shall not apply to adjustment of
25 status under this Act.

1 (2) ADDITIONAL WAIVERS.—The Secretary of
2 Homeland Security or the Attorney General may
3 waive any other provision of section 212(a) of such
4 Act (other than paragraph (2)(C) and subpara-
5 graphs (A), (B), (C), (E), and (F) of paragraph (3))
6 with respect to an adjustment of status under this
7 Act—

8 (A) for humanitarian purposes;

9 (B) to assure family unity; or

10 (C) if such waiver is otherwise in the pub-
11 lic interest.

12 (e) RECORD OF ADJUSTMENT.—Upon the approval
13 of an application for adjustment of status under this Act,
14 the Secretary of Homeland Security shall create a record
15 of the alien’s admission as an alien lawfully admitted for
16 permanent residence.

17 (f) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—

18 (1) IN GENERAL.—If an alien is lawfully admit-
19 ted for permanent residence under this Act, the Sec-
20 retary of State shall not reduce the number of immi-
21 grant visas authorized to be issued under the Immi-
22 gration and Nationality Act (8 U.S.C. 1101 et seq.).

23 (2) EXEMPTION FROM DIRECT NUMERICAL LIM-
24 ITATIONS.—Section 201(b)(1) of the Immigration

1 and Nationality Act (8 U.S.C. 1151(b)(1)) is
2 amended by adding at the end the following:

3 “(F) Aliens who are described in para-
4 graph (1) or (3) of section 203(a) and have a
5 Filipino parent who was naturalized pursuant
6 to section 405 of the Immigration Act of 1990
7 (8 U.S.C. 1440 note).”.

8 **SEC. 416. EQUAL TREATMENT FOR ALL STEPCHILDREN.**

9 Section 101(b)(1)(B) (8 U.S.C. 1101(b)(1)(B)) is
10 amended by striking “, provided the child had not reached
11 the age of eighteen years at the time the marriage creating
12 the status of stepchild occurred”.

13 **SEC. 417. WIDOWS, WIDOWERS, AND ORPHANS.**

14 (a) PROTECTION FOR CERTAIN SURVIVING REL-
15 ATIVES.—Section 204(l)(1) (8 U.S.C. 1154(l)(1) is
16 amended by adding at the end the following: “An alien
17 is not required to reside in the United States to qualify
18 to have his or her petition or application adjudicated
19 under this paragraph if the alien is described in subpara-
20 graph (A), (B), or (C) of paragraph (2) and his or her
21 priority date was current at the time of the qualifying rel-
22 ative’s death or is described in subparagraph (D), (E), or
23 (F) of paragraph (2).”

24 “(1) IN GENERAL.—An alien described in para-
25 graph (2) who resided in the United States at the

1 time of the death of the qualifying relative and who
2 continues to reside in the United States”.

3 (b) CONTINUED WAIVER ELIGIBILITY FOR WIDOWS,
4 WIDOWERS, AND ORPHANS.—Section 212(a)(1)(B) (8
5 U.S.C. 1182(a)(1)(B)) is amended to read as follows:

6 “(B) WAIVER FOR WIDOWS, WIDOWERS,
7 AND ORPHANS.—An alien who would have been
8 statutorily eligible for a waiver of inadmis-
9 sibility under this Act, if his or her qualifying
10 relative had not died, may be considered for any
11 waiver under this Act notwithstanding such
12 death, which shall constitute the functional
13 equivalent of extreme hardship to the qualifying
14 relative.”.

15 (c) NATURALIZATION OF SURVIVING RELATIVES.—
16 Section 319(a) (8 U.S.C. 1430(a)) is amended by insert-
17 ing “(or, if the spouse is deceased, the spouse was a citizen
18 of the United States)” after “citizen of the United
19 States”.

20 **SEC. 418. FIANCÉ CHILD STATUS PROTECTION.**

21 (a) DEFINITION.—Section 101(a)(15)(K)(iii) (8
22 U.S.C. 1101(a)(15)(K)(iii)) is amended by inserting “,
23 provided that a determination of the age of such minor
24 child is made using the age of the alien on the date on
25 which the petition is filed with the Secretary of Homeland

1 Security to classify the alien’s parent as the fiancé or
2 fiancé of a United States citizen (in the case of an alien
3 parent described in clause (i)) or as the spouse of a United
4 States citizen under section 201(b)(2)(A)(i) (in the case
5 of an alien parent described in clause (ii));” before the
6 semicolon at the end.

7 (b) ADJUSTMENT OF STATUS AUTHORIZED.—Section
8 214(d) (8 U.S.C. 1184(d)(1)) is amended—

9 (1) by redesignating paragraphs (2) and (3) as
10 paragraphs (3) and (4), respectively; and

11 (2) in paragraph (1), by striking “In the event”
12 and inserting the following:

13 “(2)(A) If an alien does not marry the peti-
14 tioner under paragraph (1) within 3 months after
15 the alien and the alien’s minor children are admitted
16 into the United States, such alien and children shall
17 be required to depart from the United States. If
18 such aliens fail to depart from the United States,
19 they shall be removed in accordance with sections
20 240 and 241.

21 “(B) Subject to subparagraphs (C) and (D), if
22 an alien marries the petitioner described in section
23 101(a)(15)(K)(i) within 3 months after the alien is
24 admitted into the United States, the Secretary of
25 Homeland Security or the Attorney General, subject

1 to the provisions of section 245(d), may adjust the
2 status of the alien, and any minor children accom-
3 panying or following to join the alien, to that of an
4 alien lawfully admitted for permanent residence on
5 a conditional basis under section 216 if the alien
6 and any such minor children apply for such adjust-
7 ment and are not determined to be inadmissible to
8 the United States.

9 “(C) Paragraphs (5) and (7)(A) of section
10 212(a)) shall not apply to an alien who is eligible to
11 apply for adjustment of his or her status to an alien
12 lawfully admitted for permanent residence under this
13 section.

14 “(D) An alien eligible for a waiver of inadmis-
15 sibility as otherwise authorized under this Act shall
16 be permitted to apply for adjustment of his or her
17 status to that of an alien lawfully admitted for per-
18 manent residence under this section.”.

19 (c) AGE DETERMINATION.—Section 245(d) (8 U.S.C.
20 1155(d)) is amended—

21 (1) by inserting “(1)” before “The Attorney
22 General”; and

23 (2) by adding at the end the following:

24 “(2) A determination of the age of an alien ad-
25 mitted to the United States under section

1 101(a)(15)(K)(iii) shall be made, for purposes of ad-
2 justment to the status of an alien lawfully admitted
3 for permanent residence on a conditional basis under
4 section 216, using the age of the alien on the date
5 on which the petition is filed with the Secretary of
6 Homeland Security to classify the alien's parent as
7 the fiancé or fiancée of a United States citizen (in the
8 case of an alien parent admitted to the United
9 States under section 101(a)(15)(K)(i)) or as the
10 spouse of a United States citizen under section
11 201(b)(2)(A)(i) (in the case of an alien parent ad-
12 mitted to the United States under section
13 101(a)(15)(K)(ii)).”.

14 (d) EFFECTIVE DATE.—

15 (1) IN GENERAL.—The amendments made by
16 this subsection shall be effective as if included in the
17 Immigration Marriage Fraud Amendments of 1986
18 (Public Law 99–639).

19 (2) APPLICABILITY.—The amendments made
20 by this subsection shall apply to all petitions or ap-
21 plications described in such amendments that—

22 (A) are pending as of the date of the en-
23 actment of this Act; or

24 (B) have been denied, but would have been
25 approved if such amendments had been in effect

1 at the time of adjudication of the petition or
2 application.

3 (3) MOTION TO REOPEN OR RECONSIDER.—A
4 motion to reopen or reconsider a petition or applica-
5 tion described in subparagraph (B)(ii) shall be
6 granted if such motion is filed with the Secretary or
7 the Attorney General not later than 2 years after
8 the date of the enactment of this Act.

9 **SEC. 419. SPECIAL HUMANITARIAN VISAS.**

10 Section 103 (8 U.S.C. 1103) is amended by adding
11 at the end the following:

12 “(i) AUTHORITY TO WAIVE ELIGIBILITY REQUIRE-
13 MENTS FOR SPECIAL HUMANITARIAN CONSIDER-
14 ATIONS.—Notwithstanding any other provision of law, the
15 Secretary of Homeland Security may waive any require-
16 ments under this Act on behalf of not more than 1,000
17 aliens whose circumstances involve special humanitarian
18 considerations.”.

19 **SEC. 420. EXEMPTION FROM IMMIGRANT VISA LIMIT FOR**
20 **CERTAIN VETERANS FROM THE PHILIPPINES.**

21 Section 201(b)(1) (8 U.S.C. 1151(b)(1)) is amended
22 by adding at the end the following:

23 “(F) Aliens who are eligible for an immigrant
24 visa under paragraph (1) or (3) of section 203(a)
25 and who have a parent who was naturalized pursu-

1 ant to section 405 of the Immigration Act of 1990
2 (8 U.S.C. 1440 note).”.

3 **SEC. 420A. DETERMINATIONS UNDER THE HAITIAN REF-**
4 **UGEE IMMIGRATION FAIRNESS ACT OF 1998.**

5 (a) IN GENERAL.—Section 902(d) of the Haitian
6 Refugee Immigration Fairness Act of 1998 (8 U.S.C.
7 1255 note) is amended by adding at the end the following:

8 “(3) DETERMINATIONS WITH RESPECT TO
9 CHILDREN.—

10 “(A) USE OF APPLICATION FILING
11 DATE.—Determinations made under this sub-
12 section as to whether an individual is a child of
13 a parent shall be made using the age and mar-
14 ital status of the individual on October 21,
15 1998.

16 “(B) APPLICATION SUBMISSION BY PAR-
17 ENT.—Notwithstanding paragraph (1)(C), an
18 application under this subsection filed based on
19 status as a child may be filed for the benefit of
20 such child by a parent or guardian of the child,
21 if the child is physically present in the United
22 States on such filing date.”.

23 (b) NEW APPLICATIONS AND MOTIONS TO RE-
24 OPEN.—

1 (1) NEW APPLICATIONS.—Notwithstanding sec-
2 tion 902(a)(1)(A) of the Haitian Refugee Immigra-
3 tion Fairness Act of 1998, an alien who is eligible
4 for adjustment of status under such Act may submit
5 an application for adjustment of status under such
6 Act not later than the later of—

7 (A) 2 years after the date of the enactment
8 of the Comprehensive Immigration Reform Act
9 of 2011; or

10 (B) 1 year after the date on which final
11 regulations are promulgated to implement this
12 section and the amendment made by subsection
13 (a).

14 (2) MOTIONS TO REOPEN.—The Secretary shall
15 establish procedures for the reopening and reconsid-
16 eration of applications for adjustment of status
17 under the Haitian Refugee Immigration Fairness
18 Act of 1998 that are affected by the amendment
19 made by subsection (a).

20 (3) RELATIONSHIP OF APPLICATION TO CER-
21 TAIN ORDERS.—Section 902(a)(3) of the Haitian
22 Refugee Immigration Fairness Act of 1998 shall
23 apply to an alien present in the United States who
24 has been ordered excluded, deported, removed, or or-
25 dered to depart voluntarily, and who files an applica-

1 tion under paragraph (1) or a motion under para-
2 graph (2), in the same manner as such section
3 902(a)(3) applied to aliens filing applications for ad-
4 justment of status under such Act prior to April 1,
5 2000.

6 (c) INADMISSIBILITY DETERMINATION.—Section 902
7 of the Haitian Refugee Immigration Fairness Act of 1998
8 (8 U.S.C. 1255 note) is amended—

9 (1) in subsection (a)(1)(B), by inserting
10 “(6)(C)(i),” after “(6)(A),”; and

11 (2) in subsection (d)(1)(D), by inserting
12 “(6)(C)(i),” after “(6)(A),”.

13 **SEC. 420B. AFFIDAVIT OF SUPPORT.**

14 Section 213A (8 U.S.C. 1183a) is amended—

15 (1) in subsection (a)(1)(A) by striking “125”
16 and inserting “100”;

17 (2) in subsection (f)(1)(E), by striking “125”
18 and inserting “100”;

19 (3) in subsection (f)(4)(B)(i), by striking “125”
20 and inserting “100”; and

21 (4) in subsection (f)(5)(A), by striking “125”
22 and inserting “100”.

23 **SEC. 420C. RETAINING WORKERS SUBJECT TO GREEN**
24 **CARD BACKLOG.**

25 (a) ADJUSTMENT OF STATUS.—

1 (1) IN GENERAL.—Section 245 (8 U.S.C.
2 1255), as amended by section 404, is further
3 amended by adding at the end the following:

4 “(o) ADJUSTMENT OF STATUS FOR EMPLOYMENT-
5 BASED IMMIGRANTS.—

6 “(1) ELIGIBILITY.—The Secretary of Homeland
7 Security shall promulgate regulations to provide for
8 the filing of an application for adjustment of status
9 by an alien (and any eligible dependents of such
10 alien), regardless of whether an immigrant visa is
11 immediately available at the time the application is
12 filed, if the alien—

13 “(A) has an approved petition under sub-
14 paragraph (E) or (F) of section 204(a)(1); or

15 “(B) at the discretion of the Secretary, has
16 a pending petition under subparagraph (E) or
17 (F) of section 204(a)(1).

18 “(2) VISA AVAILABILITY.—An application filed
19 pursuant to paragraph (1) may not be approved
20 until an immigrant visa becomes available.

21 “(3) FEES.—If an application is filed pursuant
22 to paragraph (1), the beneficiary of such application
23 shall pay a supplemental fee of \$500. Such fee may
24 not be charged to any dependent accompanying or
25 following to join such beneficiary.

1 “(4) EXTENSION OF EMPLOYMENT AUTHORIZA-
2 TION AND ADVANCED PAROLE DOCUMENT.—

3 “(A) IN GENERAL.—The Secretary of
4 Homeland Security shall provide employment
5 authorization and advanced parole documents,
6 in 3-year increments, to beneficiaries of an ap-
7 plication for adjustment of status based on a
8 petition that is filed or, at the discretion of the
9 Secretary, pending, under subparagraph (E) or
10 (F) of section 204(a)(1).

11 “(B) FEE ADJUSTMENTS.—Application
12 fees under this subsection may be adjusted in
13 accordance with the 3-year period of validity as-
14 signed to the employment authorization or ad-
15 vanced parole documents under subparagraph
16 (A).”.

17 (b) USE OF FEES.—Section 286 (8 U.S.C. 1356) is
18 amended—

19 (1) in subsection (m)—

20 (A) by striking “Notwithstanding any
21 other provisions of law,” and inserting the fol-
22 lowing:

23 “(c) IMMIGRATION EXAMINATIONS FEE ACCOUNT.—

1 “(1) IN GENERAL.—Notwithstanding any other
2 provision of law, all fees collected under section
3 245(o)(3) and”;

4 (B) by striking “: Provided, however, That
5 all” and inserting the following:

6 “(2) VIRGIN ISLANDS; GUAM.—All”; and

7 (C) by striking “: Provided further, That
8 fees” and inserting the following:

9 “(3) COST RECOVERY.—Fees”.

10 (2) in subsection (n)—

11 (A) by striking “(n) All deposits” and in-
12 serting the following:

13 “(4) USE OF FUNDS.—

14 “(A) IN GENERAL.—Except as provided
15 under subparagraph (B), all deposits”; and

16 (B) adding at the end the following:

17 “(C) SUPPLEMENTAL FEE FOR ADJUST-
18 MENT OF STATUS OF EMPLOYMENT-BASED IM-
19 MIGRANTS.—Any amounts deposited into the
20 Immigration Examinations Fee Account that
21 were collected under section 245(o)(3) shall re-
22 main available until expended by the Secretary
23 of Homeland Security for backlog reduction and
24 clearing security background check delays.”;

1 (3) in subsection (o), by striking “(o) The At-
2 torney General” and inserting the following:

3 “(5) ANNUAL FINANCIAL REPORT TO CON-
4 GRESS.—The Attorney General”; and

5 (4) in subsection (p), by striking “(p) The pro-
6 visions set forth in subsections (m), (n), and (o) of
7 this section” and inserting the following:

8 “(6) APPLICABILITY.—The provisions set forth
9 in this subsection shall”.

10 **SEC. 420D. RETURN OF TALENT PROGRAM.**

11 (a) SHORT TITLE.—This section may be cited as the
12 “Return of Talent Act”.

13 (b) ESTABLISHMENT.—

14 (1) IN GENERAL.—Title III (8 U.S.C. 1401 et
15 seq.) is amended by inserting after section 317 the
16 following:

17 **“SEC. 317A. TEMPORARY ABSENCE OF PERSONS PARTICI-
18 PATING IN THE RETURN OF TALENT PRO-
19 GRAM.**

20 “(a) IN GENERAL.—The Secretary of Homeland Se-
21 curity, in consultation with the Secretary of State, shall
22 establish the Return of Talent Program to permit eligible
23 aliens to temporarily return to the alien’s country of citi-
24 zenship in order to make a material contribution to that
25 country if the country is engaged in post-conflict or nat-

1 ural disaster reconstruction activities, for a period not
2 longer than 2 years, unless an exception is granted under
3 subsection (d).

4 “(b) ELIGIBLE ALIEN.—An alien is eligible to partici-
5 pate in the Return of Talent Program established under
6 subsection (a) if the alien meets the special immigrant de-
7 scription under section 101(a)(27)(N).

8 “(c) FAMILY MEMBERS.—The spouse, parents, sib-
9 lings, and any minor children of an alien who participates
10 in the Return of Talent Program established under sub-
11 section (a) may return to such alien’s country of citizen-
12 ship with the alien and reenter the United States with the
13 alien.

14 “(d) EXTENSION OF TIME.—The Secretary of Home-
15 land Security may extend the 2-year period referred to in
16 subsection (a) upon a showing that circumstances warrant
17 that an extension is necessary for post-conflict or natural
18 disaster reconstruction efforts.

19 “(e) RESIDENCY REQUIREMENTS.—An immigrant
20 described in section 101(a)(27)(N) who participates in the
21 Return of Talent Program established under subsection
22 (a), and the spouse, parents, siblings, and any minor chil-
23 dren who accompany such immigrant to that immigrant’s
24 country of citizenship, shall be considered, during such pe-
25 riod of participation in the program—

1 “(1) for purposes of section 316(a), physically
2 present and residing in the United States for pur-
3 poses of naturalization within the meaning of that
4 section; and

5 “(2) for purposes of section 316(b), to meet the
6 continuous residency requirements in that section.

7 “(f) OVERSIGHT AND ENFORCEMENT.—The Sec-
8 retary of Homeland Security, in consultation with the Sec-
9 retary of State, shall oversee and enforce the requirements
10 of this section.”.

11 (2) TABLE OF CONTENTS.—The table of con-
12 tents (8 U.S.C. 1101 et seq.) is amended by insert-
13 ing after the item relating to section 317 the fol-
14 lowing:

“Sec. 317A. Temporary absence of persons participating in the Return of Tal-
ent Program.”.

15 (c) ELIGIBLE IMMIGRANTS.—Section 101(a)(27) (8
16 U.S.C. 1101(a)(27)), as amended by section 517, is fur-
17 ther amended by adding at the end the following:

18 “(O) an immigrant who—

19 “(i) has been lawfully admitted to the
20 United States for permanent residence;

21 “(ii) demonstrates an ability and will-
22 ingness to make a material contribution to
23 the post-conflict or natural disaster recon-

1 struction in the alien’s country of citizen-
2 ship; and

3 “(iii) as determined by the Secretary
4 of State in consultation with the Secretary
5 of Homeland Security—

6 “(I) is a citizen of a country in
7 which Armed Forces of the United
8 States are engaged, or have engaged
9 in the 10 years preceding such deter-
10 mination, in combat or peacekeeping
11 operations;

12 “(II) is a citizen of a country
13 where authorization for United Na-
14 tions peacekeeping operations was ini-
15 tiated by the United Nations Security
16 Council during the 10 years preceding
17 such determination; or

18 “(III) is a citizen of a country
19 which received, during the preceding 2
20 years, funding from the Office of For-
21 eign Disaster Assistance of the United
22 States Agency for International Devel-
23 opment in response to a declared dis-
24 aster in such country by the United
25 States Ambassador, the Chief of the

1 U.S. Mission, or the appropriate As-
2 sistant Secretary of State, that is be-
3 yond the ability of such country's re-
4 sponse capacity and warrants a re-
5 sponse by the United States Govern-
6 ment.”.

7 (d) REPORT TO CONGRESS.—Not later than 2 years
8 after the date of the enactment of this Act, the Secretary,
9 in consultation with the Secretary of State, shall submit
10 a report to Congress that describes—

11 (1) the countries of citizenship of the partici-
12 pants in the Return of Talent Program established
13 under section 317A of the Immigration and Nation-
14 ality Act, as added by subsection (b);

15 (2) the post-conflict or natural disaster recon-
16 struction efforts that benefitted, or were made pos-
17 sible, through participation in the program; and

18 (3) any other information that the Secretary
19 determines to be appropriate.

20 (e) REGULATIONS.—Not later than 6 months after
21 the date of the enactment of this Act, the Secretary shall
22 promulgate regulations to carry out this section and the
23 amendments made by this section.

24 (f) AUTHORIZATION OF APPROPRIATIONS.—There
25 are authorized to be appropriated to United States Citi-

1 zenship and Immigration Services such sums as may be
2 necessary to carry out this section and the amendments
3 made by this section.

4 **CHAPTER 2—UNITING AMERICAN**
5 **FAMILIES ACT**

6 **SEC. 421. SHORT TITLE.**

7 This chapter may be cited as the “Uniting American
8 Families Act of 2010”.

9 **SEC. 422. DEFINITIONS.**

10 (a) **PERMANENT PARTNER AND PERMANENT PART-**
11 **nership.**—Section 101(a) (8 U.S.C. 1101(a)) is amended
12 by adding at the end the following:

13 “(52) The term ‘permanent partner’ means an
14 individual 18 years of age or older who—

15 “(A) is in a committed, intimate relation-
16 ship with another individual 18 years of age or
17 older in which both parties intend a lifelong
18 commitment;

19 “(B) is financially interdependent with
20 that other individual;

21 “(C) is not married to or in a permanent
22 partnership with anyone other than that other
23 individual;

1 “(D) is unable to contract with that other
2 individual a marriage cognizable under this Act;
3 and

4 “(E) is not a first, second, or third degree
5 blood relation of that other individual.

6 “(53) The term ‘permanent partnership’ means
7 the relationship that exists between 2 permanent
8 partners.

9 “(54) The term ‘alien permanent partner’
10 means the individual in a permanent partnership
11 who is being sponsored for a visa.”.

12 (b) DERIVATIVE STATUS FOR PERMANENT PART-
13 NERS OF NONIMMIGRANT VISA HOLDERS.—Section
14 101(a)(15) (8 U.S.C. 1101(a)(15)) is amended—

15 (1) in subparagraph (E), by inserting “or per-
16 manent partner” after “spouse”;

17 (2) in subparagraph (F)(ii), by inserting “or
18 permanent partner” after “spouse”;

19 (3) in subparagraph (G)(i), by inserting “,
20 which shall include his or her permanent partner”
21 after “members of his or their immediate family”;

22 (4) in subparagraph (G)(ii), by inserting “,
23 which shall include permanent partners,” after “the
24 members of their immediate families”;

1 (5) in subparagraph (G)(iii), by inserting “,
2 which shall include his permanent partner,” after
3 “the members of his immediate family”;

4 (6) in subparagraph (G)(iv), by inserting “,
5 which shall include permanent partners” after “the
6 members of their immediate families”;

7 (7) in subparagraph (G)(v), by inserting “,
8 which shall include permanent partners” after “the
9 members of the immediate families”;

10 (8) in subparagraph (H)(iii), by inserting “or
11 permanent partner” after “spouse”;

12 (9) in subparagraph (I), by inserting “or per-
13 manent partner” after “spouse”;

14 (10) in subparagraph (J), by inserting “or per-
15 manent partner” after “spouse”;

16 (11) in subparagraph (K)(ii), by inserting “or
17 permanent partnership” after “marriage”;

18 (12) in subparagraph (L), by inserting “or per-
19 manent partner” after “spouse”;

20 (13) in subparagraph (M)(ii), by inserting “or
21 permanent partner” after “spouse”;

22 (14) in subparagraph (O)(iii), by inserting “or
23 permanent partner” after “spouse”;

24 (15) in subparagraph (P)(iv), by inserting “or
25 permanent partner” after “spouse”;

1 (16) in subparagraph (Q)(ii)(II), by inserting
2 “or permanent partner” after “spouse”;

3 (17) in subparagraph (R), by inserting “or per-
4 manent partner” after “spouse”;

5 (18) in subparagraph (S), by inserting “or per-
6 manent partner” after “spouse”;

7 (19) in subparagraph (T)(ii)(I), by inserting
8 “or permanent partner” after “spouse”;

9 (20) in subparagraph (T)(ii)(II), by inserting
10 “or permanent partner” after “spouse”;

11 (21) in subparagraph (U)(ii)(I), by inserting
12 “or permanent partner” after “spouse”;

13 (22) in subparagraph (U)(ii)(II), by inserting
14 “or permanent partner” after “spouse”; and

15 (23) in subparagraph (V), by inserting “perma-
16 nent partner or” after “beneficiary (including a”.

17 (c) CHILD.—Section 101(b)(1) (8 U.S.C. 1101(b)(1))
18 is amended by adding at the end the following:

19 “(H)(i) a biological child of an alien per-
20 manent partner if the child was under the age
21 of 18 at the time the permanent partnership
22 was formed; or

23 “(ii) a child adopted by an alien permanent
24 partner while under the age of 16 years if the
25 child has been in the legal custody of, and has

1 resided with, such adoptive parent for at least
 2 2 years and if the child was under the age of
 3 18 at the time the permanent partnership was
 4 formed.”.

5 **SEC. 423. AVAILABILITY OF IMMIGRANT VISAS FOR PERMA-**
 6 **NENT PARTNERS.**

7 (a) **WORLDWIDE LEVEL OF IMMIGRATION.**—Section
 8 201(b)(2)(A)(i) (8 U.S.C. 1151(b)(2)(A)(i)) is amended—

9 (1) by inserting “permanent partners,” after
 10 “spouses,”;

11 (2) by inserting “or permanent partner” after
 12 “spouse” each place it appears;

13 (3) by inserting “(or, in the case of a perma-
 14 nent partnership, whose permanent partnership was
 15 not terminated)” after “was not legally separated
 16 from the citizen”; and

17 (4) by striking “remarries.” and inserting “re-
 18 marries or enters a permanent partnership with an-
 19 other person.”.

20 (b) **NUMERICAL LIMITATIONS ON INDIVIDUAL FOR-**
 21 **EIGN STATES.**—

22 (1) **PER COUNTRY LEVELS.**—Section 202(a)(4)
 23 (8 U.S.C. 1152(a)(4)) is amended—

24 (A) in the heading, by inserting “, PERMA-
 25 NENT PARTNERS,” after “SPOUSES”;

1 (B) in the heading of subparagraph (A), by
 2 inserting “, PERMANENT PARTNERS,” after
 3 “SPOUSES”; and

4 (C) in the heading of subparagraph (C), by
 5 striking “AND DAUGHTERS” inserting “WITH-
 6 OUT PERMANENT PARTNERS AND UNMARRIED
 7 DAUGHTERS WITHOUT PERMANENT PART-
 8 NERS”.

9 (2) RULES FOR CHARGEABILITY.—Section
 10 202(b)(2) (8 U.S.C. 1152(b)(2)) is amended—

11 (A) by inserting “or permanent partner”
 12 after “spouse” each place it appears; and

13 (B) by inserting “or permanent partners”
 14 after “husband and wife”.

15 (c) ALLOCATION OF IMMIGRANT VISAS.—

16 (1) PREFERENCE ALLOCATION FOR FAMILY
 17 MEMBERS OF PERMANENT RESIDENT ALIENS.—Sec-
 18 tion 203(a)(2) (8 U.S.C. 1153(a)(2)) is amended—

19 (A) in the heading—

20 (i) by striking “AND” after
 21 “SPOUSES” and inserting “, PERMANENT
 22 PARTNERS,”; and

23 (ii) by inserting “WITHOUT PERMA-
 24 NENT PARTNERS” after “SONS” and after
 25 “DAUGHTERS”;

1 (B) in subparagraph (A), by inserting “,
2 permanent partners,” after “spouses”; and

3 (C) in subparagraph (B), by inserting
4 “without permanent partners” after “sons” and
5 after “daughters”.

6 (2) PREFERENCE ALLOCATION FOR SONS AND
7 DAUGHTERS OF CITIZENS.—Section 203(a)(3) (8
8 U.S.C. 1153(a)(3)) is amended—

9 (A) in the heading, by inserting “AND
10 DAUGHTERS AND SONS WITH PERMANENT
11 PARTNERS” after “DAUGHTERS”; and

12 (B) by inserting “, or daughters or sons
13 with permanent partners,” after “daughters”.

14 (3) EMPLOYMENT CREATION.—Section
15 203(b)(5)(A)(ii) (8 U.S.C. 1153(b)(5)(A)(ii)) is
16 amended by inserting “permanent partner,” after
17 “spouse,”.

18 (4) TREATMENT OF FAMILY MEMBERS.—Sec-
19 tion 203(d) (8 U.S.C. 1153(d)) is amended by in-
20 serting “, permanent partner,” after “spouse” each
21 place it appears.

22 **SEC. 423A. PROCEDURE FOR GRANTING IMMIGRANT STA-**
23 **TUS.**

24 (a) CLASSIFICATION PETITIONS.—Section 204(a)(1)
25 (8 U.S.C. 1154(a)(1)) is amended—

- 1 (1) in subparagraph (A)(ii), by inserting “or
2 permanent partner” after “spouse”;
- 3 (2) in subparagraph (A)(iii)—
- 4 (A) by inserting “or permanent partner”
5 after “spouse” each place it appears; and
- 6 (B) in subclause (I), by inserting “or per-
7 manent partnership” after “marriage” each
8 place it appears;
- 9 (3) in subparagraph (A)(v)(I), by inserting
10 “permanent partner,” after “is the spouse,”;
- 11 (4) in subparagraph (A)(vi)—
- 12 (A) by inserting “or termination of the
13 permanent partnership” after “divorce”; and
- 14 (B) by inserting “, permanent partner,”
15 after “spouse”; and
- 16 (5) in subparagraph (B)—
- 17 (A) by inserting “or permanent partner”
18 after “spouse” each place it appears;
- 19 (B) by inserting “or permanent partner-
20 ship” after “marriage” in clause (ii)(I)(aa) and
21 the first place it appears in clause (ii)(I)(bb);
22 and
- 23 (C) in clause (ii)(II)(aa)(CC)(bbb), by in-
24 serting “(or the termination of the permanent

1 partnership)” after “termination of the mar-
2 riage”.

3 (b) IMMIGRATION FRAUD PREVENTION.—Section
4 204(c) (8 U.S.C. 1154(c)) is amended—

5 (1) by inserting “or permanent partner” after
6 “spouse” each place it appears; and

7 (2) by inserting “or permanent partnership”
8 after “marriage” each place it appears.

9 **SEC. 424. ADMISSION OF REFUGEES AND ASYLEES.**

10 (a) ANNUAL ADMISSION OF REFUGEES AND ADMIS-
11 SION OF EMERGENCY SITUATION REFUGEES.—Section
12 207(c) (8 U.S.C. 1157(c)) is amended—

13 (1) in paragraph (2)—

14 (A) by inserting “or permanent partner”
15 after “spouse” each place it appears; and

16 (B) by inserting “or permanent partner’s”
17 after “spouse’s”; and

18 (2) in paragraph (4), by inserting “or perma-
19 nent partner” after “spouse”.

20 (b) ASYLUM.—Section 208(b)(3) (8 U.S.C.
21 1158(b)(3)) is amended—

22 (1) in the heading, by inserting “OR PERMA-
23 NENT PARTNER” after “SPOUSE”; and

24 (2) in the text, by inserting “or permanent
25 partner” after “spouse”.

1 (c) ADJUSTMENT OF STATUS OF REFUGEES.—Sec-
2 tion 209(b)(3) (8 U.S.C. 1159(b)(3)) is amended by in-
3 serting “or permanent partner” after “spouse”.

4 **SEC. 425. INADMISSIBLE AND DEPORTABLE ALIENS.**

5 (a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR
6 ADMISSION.—Section 212(a) (8 U.S.C. 1182(a)) is
7 amended—

8 (1) in paragraph (3)(D)(iv), by inserting “per-
9 manent partner,” after “spouse,”;

10 (2) in paragraph (4)(C)(i)(I), by inserting “,
11 permanent partner,” after “spouse,”;

12 (3) in paragraph (6)(E)(ii), by inserting “per-
13 manent partner,” after “spouse,”; and

14 (4) in paragraph (9)(B)(v), by inserting “, per-
15 manent partner,” after “spouse,”.

16 (b) WAIVERS.—Section 212(d) (8 U.S.C. 1182(d)) is
17 amended—

18 (1) in paragraph (11), by inserting “permanent
19 partner,” after “spouse,”; and

20 (2) in paragraph (12), by inserting “, perma-
21 nent partner,” after “spouse”.

22 (c) WAIVERS OF INADMISSIBILITY ON HEALTH-RE-
23 LATED GROUNDS.—Section 212(g)(1)(A) (8 U.S.C.
24 1182(g)(1)(A)) is amended by inserting “or permanent
25 partner” after “spouse”.

1 (d) WAIVERS OF INADMISSIBILITY ON CRIMINAL AND
2 RELATED GROUNDS.—Section 212(h)(1)(B) (8 U.S.C.
3 1182(h)(1)(B)) is amended by inserting “permanent part-
4 ner,” after “spouse,”.

5 (e) WAIVER OF INADMISSIBILITY FOR MISREPRESENTATION.—Section 212(i)(1) (8 U.S.C. 1182(i)(1)) is
6 amended by inserting “permanent partner,” after
7 “spouse,”.

9 (f) DEPORTABLE ALIENS.—Section 237(a) of the Im-
10 migration and Nationality Act (8 U.S.C. 1227(a)) is
11 amended—

12 (1) in paragraph (1)(D)(i), by inserting “or
13 permanent partners” after “spouses” each place it
14 appears;

15 (2) in paragraphs (1)(E)(ii), (1)(E)(iii), and
16 (1)(H)(i)(I), by inserting “or permanent partner”
17 after “spouse”;

18 (3) by adding at the end of paragraph (1) the
19 following new subparagraph:

20 “(I) PERMANENT PARTNERSHIP FRAUD.—

21 An alien shall be considered to be deportable as
22 having procured a visa or other documentation
23 by fraud (within the meaning of section
24 212(a)(6)(C)(i)) and to be in the United States

1 in violation of this Act (within the meaning of
2 subparagraph (B)) if—

3 “(i) the alien obtains any admission to
4 the United States with an immigrant visa
5 or other documentation procured on the
6 basis of a permanent partnership entered
7 into less than 2 years prior to such admis-
8 sion and which, within 2 years subsequent
9 to such admission, is terminated because
10 the criteria for permanent partnership are
11 no longer fulfilled, unless the alien estab-
12 lishes to the satisfaction of the Secretary
13 of Homeland Security that such permanent
14 partnership was not contracted for the
15 purpose of evading any provisions of the
16 immigration laws; or

17 “(ii) it appears to the satisfaction of
18 the Secretary of Homeland Security that
19 the alien has failed or refused to fulfill the
20 alien’s permanent partnership which in the
21 opinion of the Secretary of Homeland Se-
22 curity was made for the purpose of pro-
23 curing the alien’s admission as an immi-
24 grant.” and

1 (4) in paragraphs (2)(E)(i) and (3)(C)(ii), by
 2 inserting “or permanent partner” after “spouse”
 3 each place it appears.

4 **SEC. 426. NONIMMIGRANT AND CONDITIONAL PERMANENT**
 5 **RESIDENT STATUS.**

6 (a) NONIMMIGRANT STATUS FOR PERMANENT PART-
 7 NERS AWAITING THE AVAILABILITY OF AN IMMIGRANT
 8 VISA.—Section 214(r) (8 U.S.C. 1184(r)) is amended—
 9 (1) in paragraph (1), by inserting “or perma-
 10 nent partner” after “spouse”; and
 11 (2) by inserting “or permanent partnership”
 12 after “marriage” each place it appears.

13 (b) CONDITIONAL PERMANENT RESIDENT STATUS
 14 FOR CERTAIN ALIEN SPOUSES, PERMANENT PARTNERS,
 15 AND SONS AND DAUGHTERS.—

16 (1) SECTION HEADING.—

17 (A) IN GENERAL.—The heading for section
 18 216 (8 U.S.C. 1186a) is amended by inserting
 19 “**AND PERMANENT PARTNERS**” after
 20 “**SPOUSES**”.

21 (B) CLERICAL AMENDMENT.—The table of
 22 contents is amended by amending the item re-
 23 lating to section 216 to read as follows:

“Sec. 216. Conditional permanent resident status for certain alien spouses and permanent partners and sons and daughters.”.

1 (2) IN GENERAL.—Section 216(a) (8 U.S.C.
2 1186a(a)) is amended—

3 (A) in paragraph (1), by inserting “or per-
4 manent partner” after “spouse”;

5 (B) in paragraph (2)(A), by inserting “or
6 permanent partner” after “spouse”;

7 (C) in paragraph (2)(B), by inserting “per-
8 manent partner,” after “spouse,”; and

9 (D) in paragraph (2)(C), by inserting
10 “permanent partner,” after “spouse,”.

11 (3) TERMINATION OF STATUS IF FINDING THAT
12 QUALIFYING MARRIAGE IMPROPER.—Section 216(b)
13 of such Act (8 U.S.C. 1186a(b)) is amended—

14 (A) in the heading, by inserting “OR PER-
15 MANENT PARTNERSHIP” after “MARRIAGE”;

16 (B) in paragraph (1)(A), by inserting “or
17 permanent partnership” after “marriage”; and

18 (C) in paragraph (1)(A)(ii)—

19 (i) by inserting “or has ceased to sat-
20 isfy the criteria for being considered a per-
21 manent partnership under this Act,” after
22 “terminated,”; and

23 (ii) by inserting “or permanent part-
24 ner” after “spouse”.

1 (4) REQUIREMENTS OF TIMELY PETITION AND
2 INTERVIEW FOR REMOVAL OF CONDITION.—Section
3 216(c) (8 U.S.C. 1186a(c)) is amended—

4 (A) in paragraphs (1), (2)(A)(ii),
5 (3)(A)(ii), (3)(C), (4)(B), and (4)(C), by insert-
6 ing “or permanent partner” after “spouse”
7 each place it appears; and

8 (B) in paragraph (3)(A), in the matter fol-
9 lowing clause (ii), and in paragraph (3)(D),
10 (4)(B), and (4)(C), by inserting “or permanent
11 partnership” after “marriage” each place it ap-
12 pears.

13 (5) CONTENTS OF PETITION.—Section
14 216(d)(1) of such Act (8 U.S.C. 1186a(d)(1)) is
15 amended—

16 (A) in the heading of subparagraph (A), by
17 inserting “OR PERMANENT PARTNERSHIP” after
18 “MARRIAGE”;

19 (B) in subparagraph (A)(i), by inserting
20 “or permanent partnership” after “marriage”;

21 (C) in subparagraph (A)(i)(I), by inserting
22 before the comma at the end “, or is a perma-
23 nent partnership recognized under this Act”;

24 (D) in subparagraph (A)(i)(II)—

1 (i) by inserting “or has not ceased to
2 satisfy the criteria for being considered a
3 permanent partnership under this Act,”
4 after “terminated,”; and

5 (ii) by inserting “or permanent part-
6 ner” after “spouse”;

7 (E) in subparagraph (A)(ii), by inserting
8 “or permanent partner” after “spouse”; and

9 (F) in subparagraph (B)(i)—

10 (i) by inserting “or permanent part-
11 nership” after “marriage”; and

12 (ii) by inserting “or permanent part-
13 ner” after “spouse”.

14 (6) DEFINITIONS.—Section 216(g) (8 U.S.C.
15 1186a(g)) is amended—

16 (A) in paragraph (1)—

17 (i) by inserting “or permanent part-
18 ner” after “spouse” each place it appears;

19 and

20 (ii) by inserting “or permanent part-
21 nership” after “marriage” each place it ap-
22 pears;

23 (B) in paragraph (2), by inserting “or per-
24 manent partnership” after “marriage”;

1 (C) in paragraph (3), by inserting “or per-
 2 manent partnership” after “marriage”; and

3 (D) in paragraph (4)—

4 (i) by inserting “or permanent part-
 5 ner” after “spouse” each place it appears;
 6 and

7 (ii) by inserting “or permanent part-
 8 nership” after “marriage”.

9 (c) **CONDITIONAL PERMANENT RESIDENT STATUS**
 10 **FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, PER-**
 11 **MANENT PARTNERS, AND CHILDREN.—**

12 (1) **SECTION HEADING.—**

13 (A) **IN GENERAL.—**The heading for section
 14 216A (8 U.S.C. 1186b) is amended by inserting
 15 “**OR PERMANENT PARTNERS**” after
 16 “**SPOUSES**”.

17 (B) **CLERICAL AMENDMENT.—**The table of
 18 contents is amended by amending the item re-
 19 lating to section 216A to read as follows:

“Sec. 216A. Conditional permanent resident status for certain alien entre-
 preneurs, spouses or permanent partners, and children.”.

20 (2) **IN GENERAL.—**Section 216A(a) (8 U.S.C.
 21 1186b(a)) is amended, in paragraphs (1), (2)(A),
 22 (2)(B), and (2)(C), by inserting “or permanent part-
 23 ner” after “spouse” each place it appears.

1 (3) **TERMINATION OF STATUS IF FINDING THAT**
2 **QUALIFYING ENTREPRENEURSHIP IMPROPER.**—Section
3 216A(b)(1) (8 U.S.C. 1186b(b)(1)) is amended
4 by inserting “or permanent partner” after “spouse”
5 in the matter following subparagraph (C).

6 (4) **REQUIREMENTS OF TIMELY PETITION AND**
7 **INTERVIEW FOR REMOVAL OF CONDITION.**—Section
8 216A(c) (8 U.S.C. 1186b(c)) is amended, in para-
9 graphs (1), (2)(A)(ii), and (3)(C), by inserting “or
10 permanent partner” after “spouse”.

11 (5) **DEFINITIONS.**—Section 216A(f)(2) (8
12 U.S.C. 1186b(f)(2)) is amended by inserting “or
13 permanent partner” after “spouse” each place it ap-
14 pears.

15 **SEC. 427. REMOVAL, CANCELLATION OF REMOVAL, AND AD-**
16 **JUSTMENT OF STATUS.**

17 (a) **REMOVAL PROCEEDINGS.**—Section 240 (8 U.S.C.
18 1229a) is amended—

19 (1) in the heading of subsection (e)(7)(C)(iv),
20 by inserting “PERMANENT PARTNERS,” after
21 “SPOUSES,”; and

22 (2) in subsection (e)(1), by inserting “or per-
23 manent partner” after “spouse”.

1 (b) CANCELLATION OF REMOVAL; ADJUSTMENT OF
2 STATUS.—Section 240A(b) (8 U.S.C. 1229b(b)) is amend-
3 ed—

4 (1) in paragraph (1)(D), by inserting “or per-
5 manent partner” after “spouse”;

6 (2) in the heading for paragraph (2), by insert-
7 ing “, PERMANENT PARTNER,” after “SPOUSE”; and

8 (3) in paragraph (2)(A), by inserting “, perma-
9 nent partner,” after “spouse” each place it appears.

10 (c) ADJUSTMENT OF STATUS OF NONIMMIGRANT TO
11 THAT OF PERSON ADMITTED FOR PERMANENT RESI-
12 DENCE.—

13 (1) PROHIBITION ON ADJUSTMENT OF STA-
14 TUS.—Section 245(d) (8 U.S.C. 1255(d)) is amend-
15 ed by inserting “or permanent partnership” after
16 “marriage”.

17 (2) AVOIDING IMMIGRATION FRAUD.—Section
18 245(e) (8 U.S.C. 1255(e)) is amended—

19 (A) in paragraph (1), by inserting “or per-
20 manent partnership” after “marriage”; and

21 (B) by adding at the end the following new
22 paragraph:

23 “(4) Paragraph (1) and section 204(g) shall not
24 apply with respect to a permanent partnership if the
25 alien establishes by clear and convincing evidence to

1 the satisfaction of the Secretary of Homeland Secu-
2 rity that the permanent partnership was entered into
3 in good faith and in accordance with section
4 101(a)(52) and the permanent partnership was not
5 entered into for the purpose of procuring the alien's
6 admission as an immigrant and no fee or other con-
7 sideration was given (other than a fee or other con-
8 sideration to an attorney for assistance in prepara-
9 tion of a lawful petition) for the filing of a petition
10 under section 204(a) or 214(d) with respect to the
11 alien permanent partner. In accordance with regula-
12 tions, there shall be only one level of administrative
13 appellate review for each alien under the previous
14 sentence.”.

15 (3) ADJUSTMENT OF STATUS FOR CERTAIN
16 ALIENS PAYING FEE.—Section 245(i)(1) (8 U.S.C.
17 1255(i)(1)) is amended by inserting “or permanent
18 partner” after “spouse” each place it appears.

19 **SEC. 428. APPLICATION OF CRIMINAL PENALTIES FOR MIS-**
20 **REPRESENTATION AND CONCEALMENT OF**
21 **FACTS REGARDING PERMANENT PARTNER-**
22 **SHIPS.**

23 Section 275(c) (8 U.S.C. 1325(c)) is amended to read
24 as follows:

1 “(c) Any individual who knowingly enters into a mar-
 2 riage or permanent partnership for the purpose of evading
 3 any provision of the immigration laws shall be imprisoned
 4 for not more than 5 years, or fined not more than
 5 \$250,000, or both.”.

6 **SEC. 429. NATURALIZATION REQUIREMENTS.**

7 (a) REQUIREMENTS AS TO RESIDENCE, GOOD
 8 MORAL CHARACTER, ATTACHMENT TO THE PRINCIPLES
 9 OF THE CONSTITUTION.—Section 316(b) (8 U.S.C.
 10 1427(b)) is amended by inserting “or permanent partner”
 11 after “spouse”.

12 (b) NATURALIZATION FOR PERMANENT PARTNERS
 13 OF CITIZENS.—Section 319 (8 U.S.C. 1430) is amend-
 14 ed—

15 (1) in subsection (a), by inserting “or perma-
 16 nent partner” after “spouse” each place it appears;

17 (2) in subsection (a), by inserting “or perma-
 18 nent partnership” after “marital union”;

19 (3) in subsection (b)(1), by inserting “or per-
 20 manent partner” after “spouse”;

21 (4) in subsection (b)(3), by inserting “or per-
 22 manent partner” after “spouse”;

23 (5) in subsection (d)—

24 (A) by inserting “or permanent partner”
 25 after “spouse” each place it appears; and

1 (B) by inserting “or permanent partner-
2 ship” after “marital union”;

3 (6) in subsection (e)(1)—

4 (A) by inserting “or permanent partner”
5 after “spouse”; and

6 (B) by inserting “or permanent partner-
7 ship” after “marital union”; and

8 (7) in subsection (e)(2), by inserting “or per-
9 manent partner” after “spouse”.

10 **SEC. 430. APPLICATION OF FAMILY UNITY PROVISIONS TO**
11 **OTHER LAWS.**

12 (a) APPLICATION OF FAMILY UNITY PROVISIONS TO
13 PERMANENT PARTNERS OF CERTAIN LIFE ACT BENE-
14 FICIARIES.—Section 1504 of the LIFE Act (division B of
15 the Miscellaneous Appropriations Act, 2001, as enacted
16 into law by section 1(a)(4) of Public Law 106–554) is
17 amended—

18 (1) in the heading, by inserting “, permanent
19 partners,” after “spouses”;

20 (2) in subsection (a), by inserting “, permanent
21 partner,” after “spouse”; and

22 (3) in each of subsections (b) and (c)—

23 (A) in the subsection headings, by insert-
24 ing “, PERMANENT PARTNERS,” after
25 “SPOUSES”; and

1 (B) by inserting “, permanent partner,”
2 after “spouse” each place it appears.

3 (b) APPLICATION TO CUBAN ADJUSTMENT ACT.—

4 (1) IN GENERAL.—The first section of Public
5 Law 89–732 (November 2, 1966; 8 U.S.C. 1255
6 note) is amended—

7 (A) in the next to last sentence, by insert-
8 ing “, permanent partner,” after “spouse” the
9 first 2 places it appears; and

10 (B) in the last sentence, by inserting “,
11 permanent partners,” after “spouses”.

12 (2) CONFORMING AMENDMENTS.—

13 (A) IMMIGRATION AND NATIONALITY
14 ACT.—Section 101(a)(51)(D) (8 U.S.C.
15 1101(a)(51)(D)) is amended by striking “or
16 spouse” and inserting “, spouse, or permanent
17 partner”.

18 (B) VIOLENCE AGAINST WOMEN ACT.—
19 Section 1506(c)(2)(A)(i)(IV) of the Violence
20 Against Women Act of 2000 (8 U.S.C. 1229a
21 note; division B of Public Law 106–386) is
22 amended by striking “or spouse” and inserting
23 “, spouse, or permanent partner”.

1 **CHAPTER 3—REFORMS TO SPECIFIC**
2 **EMPLOYMENT-BASED VISA CATEGORIES**
3 **Subchapter A—Reforms to the EB-5 Program**

4 **SEC. 431. EB-5 REGIONAL CENTER PROGRAM FEES.**

5 (a) IN GENERAL.—Section 610 of the Departments
6 of Commerce, Justice, and State, the Judiciary, and Re-
7 lated Agencies Appropriations Act, 1993 (8 U.S.C. 1153
8 note) is amended—

9 (1) by striking “pilot” each place it appears;

10 (2) in subsection (b), by striking “for 15
11 years”; and

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

13 “(e) In addition to any other fees authorized by law,
14 the Secretary of Homeland Security shall impose a fee of
15 \$2,500 to apply for designation as a regional center under
16 this section. Fees collected under this subsection shall be
17 deposited in the Treasury in accordance with section
18 286(x) of the Immigration and Nationality Act.”.

19 (b) ESTABLISHMENT OF ACCOUNT; USE OF FEES.—
20 Section 286 (8 U.S.C. 1356) is amended by adding at the
21 end the following:

22 “(x) IMMIGRANT ENTREPRENEUR REGIONAL CEN-
23 TER ACCOUNT.—

24 “(1) IN GENERAL.—There is established in the
25 general fund of the Treasury a separate account,

1 which shall be known as the ‘Immigrant Entre-
2 preneur Regional Center Account’. Notwithstanding
3 any other provision of law, there shall be deposited
4 as offsetting receipts into the account all fees col-
5 lected under section 610(b) of the Departments of
6 Commerce, Justice, and State, the Judiciary, and
7 Related Agencies Appropriations Act, 1993 (8
8 U.S.C. 1153 note) and any fees collected in connec-
9 tion with forms I-526 or I-829.

10 “(2) USE OF FEES.—Fees collected under this
11 section may only be used by the Secretary of Home-
12 land Security to administer and operate the employ-
13 ment creation program described in section
14 203(b)(5).”.

15 (c) PREMIUM PROCESSING FEE FOR EB-5 IMMI-
16 GRANT INVESTORS.—Section 286(u) (8 U.S.C. 1356(u))
17 is amended by adding at the end the following: “In the
18 case of a petition filed under section 204(a)(1)(H) for
19 classification under section 203(b)(5), if the petitioner de-
20 sires a guarantee of a decision on the petition in 60 days
21 or less, the premium fee under this subsection shall be
22 set at \$2,500 and shall be deposited as offsetting receipts
23 in the Immigrant Entrepreneur Regional Center Account
24 established under subsection (x).”.

1 (d) RULEMAKING.—Not later than 120 days after the
2 date of the enactment of this Act, the Secretary of Home-
3 land Security shall prescribe regulations to implement the
4 amendments made by this section.

5 (e) EFFECTIVE DATE.—The amendments made by
6 subsections (a)(3) and (b) shall take effect on the effective
7 date of the regulations prescribed pursuant to subsection
8 (c). The remaining amendments made by this section shall
9 take effect on the date of the enactment of this Act.

10 **SEC. 432. ADJUSTMENT OF STATUS.**

11 (a) ELIGIBILITY FOR ADJUSTMENT OF STATUS.—
12 Section 245(k) (8 U.S.C. 1255(k)) is amended, in the
13 matter preceding paragraph (1), by striking “(1), (2), or
14 (3)” and inserting “(1), (2), (3), or (5)”.

15 (b) CONCURRENT FILING OF EB-5 PETITIONS AND
16 APPLICATIONS FOR ADJUSTMENT OF STATUS.—Section
17 245 (8 U.S.C. 1255) is amended by adding at the end
18 the following:

19 “(n) If, at the time a petition is filed for classification
20 through a regional center under section 203(b)(5), ap-
21 proval of the petition would make a visa immediately avail-
22 able to the alien beneficiary, the alien beneficiary’s adjust-
23 ment application under this section shall be considered to
24 be properly filed whether the application is submitted con-
25 currently with, or subsequent to, the visa petition.”.

1 **SEC. 433. SET-ASIDE PROGRAMS.**

2 (a) IMPROVED SET-ASIDE FOR TARGETED EMPLOY-
3 MENT AREAS.—Section 203(b)(5)(B) of the Immigration
4 and Nationality Act (8 U.S.C. 1153(b)(5)(B)) is amended
5 as follows:

6 (1) TARGETED EMPLOYMENT AREA DEFINED.—

7 Clause (ii) is amended to read as follows:

8 “(ii) TARGETED EMPLOYMENT AREA
9 DEFINED.—In this paragraph, the term
10 ‘targeted employment area’ means, at the
11 time a petition for classification under this
12 paragraph is filed, any of the following:

13 “(iii) A rural area.

14 “(iv) An area that has experienced
15 high unemployment (of at least 150 per-
16 cent of the national average rate).

17 “(v) A county that has had a 20 per-
18 cent or more decrease in population since
19 1970.

20 “(vi) An area that is within the
21 boundaries established for purposes of a
22 State or Federal economic development in-
23 centive program, including areas defined as
24 Enterprise Zones, Renewal Communities
25 and Empowerment Zones.

1 “(vii) An area designated by a State
2 agency to which the Governor has dele-
3 gated the authority to designate targeted
4 employment areas within the State.”.

5 (2) RURAL AREA DEFINED.—Clause (iii) is
6 amended by striking “other than an area within a
7 metropolitan statistical area or”.

8 (3) EFFECT OF PRIOR DETERMINATION.—Such
9 section is amended by adding at the end the fol-
10 lowing:

11 “(iv) EFFECT OF PRIOR DETERMINA-
12 TION.—In a case in which a geographic
13 area is determined under clause (ii) to be
14 a targeted employment area, such deter-
15 mination shall remain in effect during the
16 2-year period beginning on the date of the
17 determination for purposes of any alien
18 seeking a visa reserved under this subpara-
19 graph.”.

20 (b) SET-ASIDE OF VISAS FOR REGIONAL CENTER
21 PROGRAM.—Section 610(b) of the Departments of Com-
22 merce, Justice, and State, the Judiciary, and Related
23 Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note)
24 is amended by striking “3,000” and inserting “10,000”.

1 **SEC. 434. EXPANSION OF EB-5 PROGRAM.**

2 (a) EB-5 EXTENSION.—Subparagraph (A) of section
3 216A(d)(2) of the Immigration and Nationality Act (8
4 U.S.C. 1186b(d)(2)(A)) is amended by adding at the end
5 the following: “A date specified by the applicant (but not
6 later than the fourth anniversary) shall be substituted for
7 the second anniversary in applying the preceding sentence
8 if the applicant demonstrates that the applicant has at-
9 tempted to follow his business model in good faith, pro-
10 vides an explanation for the delay in filing the petition
11 that is based on circumstances outside of the applicant’s
12 control, and demonstrates that such circumstances will be
13 able to be resolved within the specified period.”.

14 (b) EB-5 PROGRAM STUDY.—

15 (1) IN GENERAL.—The Secretary, in appro-
16 priate consultation with the Secretary of Commerce
17 and other interested parties, shall conduct a study
18 concerning—

19 (A) current job creation counting method-
20 ology and initial projections under section
21 203(b)(5) of the Immigration and Nationality
22 Act (8 U.S.C. 1153(b)(5)); and

23 (B) how best to promote the employment
24 creation program described in such section
25 overseas to potential immigrant investors.

1 (2) REPORT.—Not later than 1 year after the
2 date of the enactment of this Act, the Secretary
3 shall submit a report to the Congress containing the
4 results of the study conducted under paragraph (1).

5 (c) EB-5 FULL-TIME EQUIVALENTS.—

6 (1) IN GENERAL.—Section 203(b)(5)(A)(ii) (8
7 U.S.C. 1153(b)(5)(A)(ii)) is amended by inserting
8 “(or full-time equivalent)” after “full-time”.

9 (2) DEFINITION.—Section 203(b)(5)(D) (8
10 U.S.C. 1153(b)(5)(D)) is amended to read as fol-
11 lows:

12 “(D) EMPLOYMENT-RELATED DEFINI-
13 TIONS.—

14 “(i) FULL-TIME EMPLOYMENT DE-
15 FINED.—In this paragraph, the term ‘full-
16 time employment’ means employment in a
17 position that requires at least 35 hours of
18 service per week at any time, regardless of
19 who fills the position.

20 “(ii) FULL-TIME EQUIVALENT EM-
21 PLOYMENT DEFINED.—In this paragraph,
22 the term ‘full-time equivalent employment’
23 means employment representing the num-
24 ber of full-time employees that could have
25 been employed if the reported number of

1 hours worked by part-time employees had
 2 been worked by full-time employees. This
 3 shall be calculated by dividing the part-
 4 time hours paid by the standard number of
 5 hours for full-time employees.”.

6 **Subchapter B—Adjustments to Other Select**
 7 **Visa Programs**

8 **SEC. 435. ELIMINATION OF SUNSET PROVISIONS.**

9 (a) SPECIAL IMMIGRANT NONMINISTER RELIGIOUS
 10 WORKER PROGRAM.—Section 101(a)(27)(C)(ii) (8 U.S.C.
 11 1101 (a)(27)(C)(ii)) is amended by striking “September
 12 30, 2012” each place such term appears.

13 (b) CONRAD STATE 30 PROGRAM.—Section 220(c) of
 14 the Immigration and Nationality Technical Corrections
 15 Act of 1994 (8 U.S.C. 1182 note) is amended by striking
 16 “and before September 30, 2012.”.

17 **SEC. 436. PERMANENT AUTHORIZATION OF THE NON-**
 18 **IMMIGRANT NURSES IN HEALTH PROFES-**
 19 **SIONAL SHORTAGE AREAS PROGRAM.**

20 (a) IN GENERAL.—Section 2(e)(2) of the Nursing
 21 Relief for Disadvantaged Areas Act of 1999 (8 U.S.C.
 22 1182 note) is amended to read as follows:

23 “(e) APPLICATION OF NONIMMIGRANT CHANGES.—
 24 The amendments made by this section shall apply to clas-
 25 sification petitions filed for nonimmigrant status only—

1 “(1) during the period—

2 “(A) beginning on the date that interim or
3 final regulations are first promulgated under
4 subsection (d); and

5 “(B) ending on the date that is 3 years
6 after the date of the enactment of the Nursing
7 Relief for Disadvantaged Areas Reauthorization
8 Act of 2005; and

9 “(2) beginning on the date of enactment of the
10 CIR Act of 2010.”.

11 (b) INAPPLICABILITY OF CERTAIN REGULATORY RE-
12 QUIREMENTS.—The requirements of chapter 5 of title 5,
13 United States Code (commonly referred to as the “Admin-
14 istrative Procedure Act”) or any other law relating to rule-
15 making, information collection or publication in the Fed-
16 eral Register, shall not apply to any action to implement
17 the amendments made by section 2 to the extent the Sec-
18 retary Homeland of Security, the Secretary of Labor, or
19 the Secretary of Health and Human Services determines
20 that compliance with any such requirement would impede
21 the expeditious implementation of such amendments.

22 **SEC. 437. INCENTIVES FOR PHYSICIANS TO PRACTICE IN**
23 **MEDICALLY UNDERSERVED COMMUNITIES.**

24 Section 214 of the Immigration and Nationality Act
25 (8 U.S.C. 1184) is amended—

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

3 “(12) An alien physician described in section
4 212(j)(2)(B) who entered the United States as a
5 nonimmigrant described in section
6 101(a)(15)(H)(i)(b) to pursue graduate medical edu-
7 cation or training shall not be subject to the limita-
8 tions described in paragraphs (1) and (4), provided
9 that the period of authorized admission of such alien
10 as an H-1B nonimmigrant may not extend beyond
11 the 6-year period beginning on the date on which the
12 alien receives the exemption described in subpara-
13 graph (A), if—

14 “(A) an interested State agency submits a
15 request for an exemption under section
16 214(l)(1)(B), but not 1 of the 10 waivers or ex-
17 emptions described in subsection (l)(1)(D)(ii);
18 and

19 “(B) the Secretary of State recommends
20 that the alien be exempted from such limita-
21 tions.”; and

22 (2) in subsection (l)—

23 (A) in paragraph (1)—

24 (i) by striking “the Attorney General
25 shall not grant such waiver unless” and in-

1 serting “or for an exemption from the limi-
2 tations described in paragraphs (1) and (4)
3 of subsection (g) on behalf of an alien de-
4 scribed in subsection (g)(12), the Secretary
5 shall not grant such waiver or exemption
6 unless”;

7 (ii) in subsection (A), by inserting “or
8 exemption” before the semicolon at the
9 end;

10 (iii) in subsection (B), by striking
11 “would not cause the number of waivers
12 allotted for that State for that fiscal year
13 to exceed 30” and inserting “or exemption
14 would not cause the total number of waiv-
15 ers plus the total number of exemptions al-
16 lotted for that State for that fiscal year to
17 exceed 30, unless such allotment is in-
18 creased pursuant to paragraph (4)”;

19 (iv) in subsection (C)(ii), by inserting
20 “or exemption” after “waiver”; and

21 (v) in subsection (D)—

22 (I) in clause (ii), by striking
23 “would not cause the number of the
24 waivers” and inserting “or exemption

1 would not cause the total number of
2 waivers and exemptions”; and

3 (II) in clause (iii), by inserting
4 “or exemption” after “waiver”;

5 (B) in paragraph (2)(A), by striking “sta-
6 tus of an alien and inserting status of an alien
7 described in 212(e)(iii)”;

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

9 “(4) If at least 90 percent of the total number
10 of waivers and exemptions allotted under paragraph
11 (1)(B) to States that were granted not fewer than
12 5 such waivers or exemptions, in the aggregate, dur-
13 ing any 1 of the 3 previous fiscal years are granted,
14 on a nationwide basis, in the current fiscal year, the
15 allotment of such waivers and exemptions in the cur-
16 rent fiscal year shall be increased from 30 to 35 for
17 each State. Such allotments shall be further in-
18 creased in increments of 5 each time such 90 per-
19 cent threshold of the adjusted allotment level is
20 reached, on a nationwide basis. The allotment for
21 each State shall reset to 30 at the beginning of each
22 fiscal year.”.

23 **SEC. 438. STUDENT VISA REFORM.**

24 (a) IN GENERAL.—

1 (1) NONIMMIGRANT CLASSIFICATION.—Section
2 101(a)(15)(F) (8 U.S.C. 1101(a)(15)(F)) is amend-
3 ed to read as follows:

4 “(F) an alien—

5 “(i) who—

6 “(I) is a bona fide student quali-
7 fied to pursue a full course of study in
8 mathematics, engineering, technology,
9 or the sciences leading to a bachelors
10 or graduate degree and who seeks to
11 enter the United States for the pur-
12 pose of pursuing such a course of
13 study consistent with section 214(m)
14 at an institution of higher education
15 (as defined by section 101(a) of the
16 Higher Education Act of 1965 (20
17 U.S.C. 1001(a))) in the United
18 States, particularly designated by the
19 alien and approved by the Secretary
20 of Homeland Security, after consulta-
21 tion with the Secretary of Education,
22 which institution or place of study
23 shall have agreed to report to the Sec-
24 retary the termination of attendance
25 of each nonimmigrant student, and if

1 any such institution of learning or
2 place of study fails to make reports
3 promptly the approval shall be with-
4 drawn; or

5 “(II) is engaged in temporary
6 employment for optional practical
7 training related to such alien’s area of
8 study following completion of the
9 course of study described in subclause
10 (I) for a period or periods of not more
11 than 24 months;

12 “(ii) who—

13 “(I) has a residence in a foreign
14 country which the alien has no inten-
15 tion of abandoning, who is a bona fide
16 student qualified to pursue a full
17 course of study, and who seeks to
18 enter the United States temporarily
19 and solely for the purpose of pursuing
20 such a course of study consistent with
21 section 214(m) at an established col-
22 lege, university, seminary, conserv-
23 atory, academic high school, elemen-
24 tary school, or other academic institu-
25 tion or in a language training pro-

1 gram in the United States, particu-
2 larly designated by the alien and ap-
3 proved by the Secretary of Homeland
4 Security, after consultation with the
5 Secretary of Education, which institu-
6 tion or place of study shall have
7 agreed to report to the Secretary the
8 termination of attendance of each
9 nonimmigrant student, and if any
10 such institution of learning or place of
11 study fails to make reports promptly
12 the approval shall be withdrawn; or

13 “(II) is engaged in temporary
14 employment for optional practical
15 training related to such alien’s area of
16 study following completion of the
17 course of study described in subclause
18 (I) for a period or periods of not more
19 than 24 months;

20 “(iii) who is the spouse or minor child
21 of an alien described in clause (i) or (ii) if
22 accompanying or following to join such an
23 alien;

24 “(iv) who—

1 “(I) is a national of Canada or
2 Mexico, who maintains actual resi-
3 dence and place of abode in the coun-
4 try of nationality, who is described in
5 clause (i) or (ii) except that the alien’s
6 qualifications for and actual course of
7 study may be full- or part-time, and
8 who commutes to the United States
9 institution or place of study from
10 Canada or Mexico; or

11 “(II) is engaged in temporary
12 employment for optional practical
13 training related to such student’s area
14 of study following completion of the
15 course of study described in subclause
16 (I) for a period or periods of not more
17 than 24 months; or

18 “(v) who—

19 “(I) maintains actual residence
20 and place of abode in the alien’s coun-
21 try of nationality; and

22 “(II) is described in clause (i),
23 except that the alien’s actual course of
24 study may involve a distance learning
25 program, for which the alien is tempo-

1 rarely visiting the United States for a
2 period of up to 30 days.”.

3 (2) ADMISSION.—Section 214(b) (8 U.S.C.
4 1184(b)) is amended by inserting “(F)(i),” before
5 “(L) or (V)”.

6 (3) CONFORMING AMENDMENT.—Section
7 214(m)(1) (8 U.S.C. 1184(m)(1)) is amended, in the
8 matter preceding subparagraph (A), by striking “(i)
9 or (iii)” and inserting “(i), (ii), (iv), or (v)”.

10 (b) OFF-CAMPUS WORK AUTHORIZATION FOR FOR-
11 EIGN STUDENTS.—

12 (1) IN GENERAL.—Aliens admitted as non-
13 immigrant students described in section
14 101(a)(15)(F), as amended by subsection (a), (8
15 U.S.C. 1101(a)(15)(F)) may be employed in an off-
16 campus position unrelated to the alien’s field of
17 study if—

18 (A) the alien has enrolled full-time at the
19 educational institution and is maintaining good
20 academic standing;

21 (B) the employer provides the educational
22 institution and the Secretary of Labor with an
23 attestation that the employer—

1 (i) has spent at least 21 days recruit-
2 ing United States citizens to fill the posi-
3 tion; and

4 (ii) will pay the alien and other simi-
5 larly situated workers at a rate not less
6 than the greater of—

7 (I) the actual wage level for the
8 occupation at the place of employ-
9 ment; or

10 (II) the prevailing wage level for
11 the occupation in the area of employ-
12 ment; and

13 (C) the alien will not be employed more
14 than—

15 (i) 20 hours per week during the aca-
16 demic term; or

17 (ii) 40 hours per week during vacation
18 periods and between academic terms.

19 (2) DISQUALIFICATION.—If the Secretary of
20 Labor determines that an employer has provided an
21 attestation under paragraph (1)(B) that is materi-
22 ally false or has failed to pay wages in accordance
23 with the attestation, the employer, after notice and
24 opportunity for a hearing, shall be disqualified from
25 employing an alien student under paragraph (1).

1 **SEC. 439. TEMPORARY VISAS FOR INDIVIDUALS FROM IRE-**
2 **LAND.**

3 (a) DEFINITION.—Section 101(a)(15)(E)(iii) (8
4 U.S.C. 1101(a)(15)(E)) is amended by inserting “or solely
5 to perform services as an employee who meets the require-
6 ments of section 203(d)(2) if the alien is a national of
7 the republic of Ireland” after “Australia”.

8 (b) TEMPORARY ADMISSION OF INADMISSIBLE
9 ALIENS.—Clause (i) of section 212(a)(d)(3)(A) (8 U.S.C.
10 1182(d)(3)(A)) is amended by inserting before the semi-
11 colon the following: “provided that such recommendation
12 and approval shall not be required for the issuance of a
13 visa pursuant to section 101(a)(15)(E) for ineligibility
14 under paragraphs (6), (7) or (9) of section 212(a) that
15 is based on conduct occurring prior to the date of enact-
16 ment of this Act”.

17 (c) NUMERICAL LIMITATIONS.—Section
18 214(g)(11)(B) (8 U.S.C. 1184(g)(11)(B)) is amended by
19 inserting “for each of the nationalities included in section
20 101(a)(15)(E)(iii)” before the period.

21 **SEC. 440. S VISAS.**

22 (a) EXPANSION OF S VISA CLASSIFICATION.—Sec-
23 tion 101(a)(15)(S) (8 U.S.C. 1101(a)(15)(S)) is amend-
24 ed—

25 (1) in clause (i)—

1 (A) by striking “Attorney General” each
2 place that term appears and inserting “Sec-
3 retary of Homeland Security”;

4 (B) in subclause (I), by inserting before
5 the semicolon, “, including a criminal enterprise
6 undertaken by a foreign government, its agents,
7 representatives, or officials”;

8 (C) in subclause (III), by inserting “if the
9 information concerns a criminal enterprise un-
10 dertaken by an individual or organization that
11 is not a foreign government, its agents, rep-
12 resentatives, or officials,” before “whose”; and

13 (D) by striking “or” at the end; and

14 (2) in clause (ii)—

15 (A) by striking “Attorney General” and in-
16 serting “Secretary of Homeland Security”; and

17 (B) by striking “1956,” and all that fol-
18 lows through “the alien;” and inserting the fol-
19 lowing: “1956; or

20 “(iii) who the Secretary of Homeland
21 Security and the Secretary of State, in
22 consultation with the Director of Central
23 Intelligence, jointly determine—

24 “(I) is in possession of critical re-
25 liable information concerning the ac-

1 activities of governments or organiza-
2 tions, or their agents, representatives,
3 or officials, with respect to weapons of
4 mass destruction and related delivery
5 systems, if such governments or orga-
6 nizations are at risk of developing,
7 selling, or transferring such weapons
8 or related delivery systems; and

9 “(II) is willing to supply or has
10 supplied, fully and in good faith, in-
11 formation described in subclause (I)
12 to appropriate persons within the
13 United States Government; and

14 if the Secretary of Homeland Security (or
15 with respect to clauses (ii) and (iii), the
16 Secretary of State and the Secretary of
17 Homeland Security jointly) considers it to
18 be appropriate, the spouse, children, mar-
19 ried and unmarried sons and daughters,
20 and parents of an alien described in clause
21 (i), (ii), or (iii) if accompanying, or fol-
22 lowing to join, the alien;”.

23 (b) NUMERICAL LIMITATION.—Section 214(k)(1) (8
24 U.S.C. 1184(k)(1)) is amended to read as follows:

1 “(1) The number of aliens who may be provided
2 a visa as nonimmigrants under section
3 101(a)(15)(S) in any fiscal year may not exceed
4 1,000.”.

5 (c) REPORTS.—

6 (1) CONTENT.—Section 214(k)(4) (8 U.S.C.
7 1184(k)(4)) is amended—

8 (A) in the matter preceding subparagraph

9 (A)—

10 (i) by striking “Attorney General”
11 and inserting “Secretary of Homeland Se-
12 curity”; and

13 (ii) by striking “concerning” and in-
14 serting “that includes”;

15 (B) in subparagraph (D), by striking
16 “and” at the end;

17 (C) in subparagraph (E), by striking the
18 period at the end and inserting “; and”; and

19 (D) by adding at the end the following:

20 “(F) if the total number of such non-
21 immigrants admitted is fewer than 25 percent
22 of the total number provided for under para-
23 graph (1)—

24 “(i) the reasons for the reduced num-
25 ber of such nonimmigrants;

1 “(ii) the efforts made by the Secretary
2 of Homeland Security to admit such non-
3 immigrants; and

4 “(iii) any extenuating circumstances
5 that contributed to the reduced number of
6 such nonimmigrants.”.

7 (2) FORM OF REPORT.—Section 214(k) (8
8 U.S.C. 1184(k)) is amended by adding at the end
9 the following:

10 “(5) To the extent required by law and if it is
11 in the interests of national security or the security
12 of such nonimmigrants that are admitted, as deter-
13 mined by the Secretary of Homeland Security—

14 “(A) the information contained in a report
15 described in paragraph (4) may be classified;
16 and

17 “(B) the Secretary of Homeland Security
18 shall, to the extent feasible, submit a non-classi-
19 fied version of the report to the Committee on
20 the Judiciary of the House of Representatives
21 and the Committee on the Judiciary of the Sen-
22 ate.”.

1 **CHAPTER 4—PROTECTION OF H-2B NON-**
2 **IMMIGRANTS AND WORKERS RE-**
3 **CRUITED ABROAD**

4 **SEC. 441. DEFINITIONS.**

5 (a) IN GENERAL.—Except as otherwise provided by
6 this title, the terms used in this title shall have the same
7 meanings, respectively, as are given those terms in section
8 3 of the Fair Labor Standards Act of 1938.

9 (b) OTHER DEFINITIONS.—As used in this chapter:

10 (1) AREA OF EMPLOYMENT.—The term “area
11 of employment” means the area within normal com-
12 muting distance of the worksite or physical location
13 where the work of the H-2B nonimmigrant is or will
14 be performed. If such worksite or location is within
15 a Metropolitan Statistical Area, any place within
16 such area shall be deemed to be within the area of
17 employment.

18 (2) BUILDING AND GROUNDS CLEANING AND
19 MAINTENANCE OCCUPATION.—The term “Building
20 and Grounds Cleaning and Maintenance occupation”
21 means any occupation listed as a Building and
22 Grounds Cleaning and Maintenance occupation in
23 the Department of Labor’s Standard Occupational
24 Classification (as published by such Department).

1 (3) CONSTRUCTION OCCUPATION.—The term
2 “construction occupation” means any occupation
3 listed as a construction or extraction occupation in
4 the Department of Labor’s Standard Occupational
5 Classification (as published by such Department),
6 except that it does not include any occupation listed
7 in such classification as an extraction worker occu-
8 pation.

9 (4) DISPLACE.—In the case of an application
10 with respect to one or more H-2B non immigrants
11 by an employer, the employer is considered to “dis-
12 place” a United States worker from a job if the em-
13 ployer lays off the worker from a job that is essen-
14 tially the equivalent of the job for which the non-
15 immigrant or non immigrants is or are sought. A job
16 shall not be considered to be essentially equivalent of
17 an other job unless it involves essentially the same
18 responsibilities, was held by a United States worker
19 with substantially equivalent qualifications and expe-
20 rience, and is located in the same area of employ-
21 ment as the other job.

22 (5) FOREIGN LABOR CONTRACTING ACTIVITY.—
23 The term “foreign labor contracting activity” means
24 recruiting, soliciting for hire, or furnishing an indi-
25 vidual who resides outside of the United States to be

1 employed in the United States. The term shall not
2 include such activity performed by labor organiza-
3 tions, including labor organizations representing ag-
4 ricultural laborers.

5 (6) FOREIGN LABOR CONTRACTOR.—The term
6 “foreign labor contractor” means any person who
7 performs any foreign labor contracting activity. The
8 term shall not include labor organizations, including
9 labor organizations representing agricultural labor-
10 ers.

11 (7) FOREIGN WORKER PROGRAM.—The term
12 “foreign worker program” means any program au-
13 thORIZED by the Immigration and Nationality Act to
14 employ nonimmigrants described in subparagraphs
15 (B), (E), (H), (J), (L), (O), (P), or (R) of section
16 101(a)(15) of such Act (8 U.S.C. 1101(a)(15)).

17 (8) H-2B NONIMMIGRANT.—The term “H-2B
18 nonimmigrant” means an alien admitted or provided
19 status as a nonimmigrant described in section
20 101(a)(15)(H)(ii)(B).

21 (9) LAYS OFF.—

22 (A) IN GENERAL.—The term “lays off”,
23 with respect to a worker—

24 (i) means to cause the worker’s loss of
25 employment, other than through a dis-

1 charge for inadequate performance, viola-
2 tion of workplace rules, cause, voluntary
3 departure, voluntary retirement, or the ex-
4 piration of a grant or contract (other than
5 a temporary employment contract entered
6 into in order to evade a condition described
7 in paragraph (1)(E)); and

8 (ii) does not include any situation in
9 which the worker is offered, as an alter-
10 native to such loss of employment, a simi-
11 lar employment opportunity with the same
12 employer at equivalent or higher com-
13 pensation and benefits than the position
14 from which the employee was discharged,
15 regard less of whether or not the employee
16 accepts the offer.

17 (B) CONSTRUCTION.—Nothing in this sub-
18 paragraph is intended to limit an employee’s
19 rights under a collective bargaining agreement
20 or other employment contract.

21 (10) METAL WORKERS OCCUPATION.—The
22 term “Metal Workers occupation” means any occu-
23 pation listed as a metal worker or plastic worker oc-
24 cupation in the Department of Labor’s Standard Oc-

1 cupational Classification (as published by such De-
2 partment).

3 (11) REGISTERED H-2B EMPLOYER.—The term
4 “registered H-2B employer” means an employer
5 that has been registered by the Secretary of Labor
6 under paragraph (2) to employ an H-2B non-
7 immigrant.

8 (12) SECRETARY.—The term “Secretary”
9 means the Secretary of Labor.

10 (13) STATE.—The term “State” means any
11 State of the United States and includes the District
12 of Columbia, Puerto Rico, Guam, American Samoa,
13 the Commonwealth of the Northern Mariana Is-
14 lands, and the Virgin Islands of the United States.

15 (14) SUBSTANTIAL FAILURE.—The term “sub-
16 stantial failure” means the willful failure to comply
17 with the requirements of this section that constitutes
18 a significant deviation from the terms and conditions
19 of an application.

20 (15) UNITED STATES WORKER.—The term
21 “United States worker” means an employee who—

22 (A) is a citizen or national of the United
23 States; or

24 (B) is an alien who is lawfully admitted for
25 permanent residence, is admitted as a refugee

1 under section 207, is granted asylum under sec-
2 tion 208, or is an immigrant otherwise author-
3 ized, by this Act or by the Secretary of Home-
4 land Security, to be employed.

5 (16) WORKER.—The term “worker” means an
6 individual who is the subject of foreign labor con-
7 tracting activity.

8 **SEC. 442. PROTECTIONS FOR WORKERS RECRUITED**
9 **ABROAD.**

10 (a) DISCLOSURE OF WORKING CONDITIONS.—Any
11 person who engages in foreign labor contracting activity
12 shall ascertain and disclose, to each worker who is re-
13 cruited for employment at the time of the worker’s recruit-
14 ment—

15 (1) the place of employment;

16 (2) the compensation for the employment;

17 (3) a description of employment activities;

18 (4) the period of employment;

19 (5) any travel or transportation expenses to be
20 assessed;

21 (6) any other employee benefit to be provided
22 and any costs to be charged for each benefit;

23 (7) the existence of any strike or lockout in the
24 course of a labor dispute at the place of employment;

1 (8) the existence of any arrangement with any
2 person involving the receipt of a commission or any
3 other benefit for the provision of items or services to
4 workers;

5 (9) the extent to which workers will be com-
6 pensated through workers' compensation, private in-
7 surance, or otherwise for injuries or death, includ-
8 ing—

9 (A) work related injuries and death during
10 the period of employment;

11 (B) the name of the State workers' com-
12 pensation insurance carrier or the name of the
13 policyholder of the private insurance;

14 (C) the name and telephone number of
15 each person who must be notified of an injury
16 or death; and

17 (D) the time period within which such no-
18 tice must be given;

19 (10) any education or training to be provided or
20 required, including—

21 (A) the nature and cost of such training;

22 (B) the person that will pay such costs;

23 and

1 (C) whether the training is a condition of
2 employment, continued employment, or future
3 employment; and

4 (11) a statement, in a form specified by the
5 Secretary of Labor, describing the protections of this
6 section and of the Trafficking Victims Protection
7 Act of 2000 (division A of Public Law 106–486), in-
8 cluding relevant complaint line information, for
9 workers recruited abroad.

10 (b) FALSE OR MISLEADING INFORMATION.—No per-
11 son who engages in foreign labor contracting activity shall
12 knowingly provide materially false or misleading informa-
13 tion to any worker concerning any matter required to be
14 disclosed in paragraph (1).

15 (c) FORM OF DISCLOSURE.—The information re-
16 quired to be disclosed under paragraph (1) shall be pro-
17 vided in writing in English or, as necessary and reason-
18 able, in the language of the worker being recruited. The
19 Secretary of Labor shall make forms available in English,
20 Spanish, and other languages, as necessary and reason-
21 able, which may be used in providing workers with infor-
22 mation required under this section.

23 (d) RECRUITMENT FEES.—No person conducting
24 foreign labor contracting activity shall assess any fee to
25 a worker for such foreign labor contracting activity.

1 (e) TRANSPORTATION COSTS.—The employer shall
2 bear the transportation costs, including subsistence costs
3 during the period of travel, for the worker from the work-
4 er’s home residence at the time of recruitment to the place
5 of employment either through direct payment or reim-
6 bursement in the first workweek and from the place of
7 employment to such worker’s place of permanent resi-
8 dence.

9 (f) UNLAWFUL DISCRIMINATION.—

10 (1) DISCRIMINATION PROHIBITED.—It shall be
11 unlawful for an employer or a foreign labor con-
12 tractor to discharge any individual, or otherwise dis-
13 criminate against an individual with respect to com-
14 pensation, terms, conditions, or privileges of employ-
15 ment because such individual’s race, color, creed,
16 sex, national origin, religion, age, or disability.

17 (2) DETERMINATION.—For the purposes of de-
18 termining the existence of unlawful discrimination
19 under paragraph (1)—

20 (A) in the case of a claim of discrimination
21 based on race, color, creed, sex, national origin,
22 or religion, the same legal standards shall apply
23 as are applicable under title VII of the Civil
24 Rights Act of 1964 (42 U.S.C. 2000e et seq.);

1 (B) in the case of a claim of discrimination
2 based on unlawful discrimination based on age,
3 the same legal standards shall apply as are ap-
4 plicable under the Age Discrimination in Em-
5 ployment Act of 1967 (29 U.S.C. 621 et seq.);
6 and

7 (C) in the case of a claim of discrimination
8 based on disability, the same legal standards
9 shall apply as are applicable under title I of the
10 Americans With Disabilities Act (42 U.S.C.
11 12101 et seq.).

12 (g) DISCRIMINATION PROHIBITED AGAINST WORK-
13 ERS SEEKING RELIEF UNDER THIS CHAPTER.—No per-
14 son shall intimidate, threaten, restrain, coerce, blacklist,
15 discharge, or in any manner discriminate against any
16 worker because such worker has, with just cause, filed any
17 complaint or instituted, or caused to be instituted, any
18 proceeding under or related to this chapter, or has testi-
19 fied or is about to testify in any such proceedings, or be-
20 cause of the exercise, with just cause, by such worker on
21 behalf of himself or others of any right or protection af-
22 forded by this chapter.

23 (h) PROCEDURES IN ADDITION TO OTHER RIGHTS
24 OF EMPLOYEES.—The rights and remedies provided to
25 workers under this chapter are in addition to any other

1 contractual or statutory rights and remedies of the work-
2 ers, and are not intended to alter or affect such rights
3 and remedies.

4 (i) **AUTHORITY TO PRESCRIBE REGULATIONS.**—The
5 Secretary of Labor shall prescribe such regulations as may
6 be necessary to carry out this chapter.

7 **SEC. 443. ENFORCEMENT PROVISIONS.**

8 (a) **COMPLAINTS AND INVESTIGATIONS.**—

9 (1) **IN GENERAL.**—The Secretary of Labor shall
10 establish a process for the receipt, investigation, and
11 disposition of complaints respecting the application
12 of a predominant wage level proposed by an em-
13 ployer seeking certification under this subsection, an
14 employer’s failure to meet a condition specified in an
15 application submitted under paragraph (2) or (3) or
16 an applicant’s misrepresentation of material facts in
17 such an application but not the methodology used to
18 calculate the predominant wage level itself. Com-
19 plaints may be filed by any aggrieved person or or-
20 ganization (including bargaining representatives).
21 No investigation or hearing shall be conducted on a
22 complaint concerning such a failure or misrepresen-
23 tation unless the complaint was filed not later than
24 12 months after the date of the failure or misrepresen-
25 tation, respectively. The Secretary shall conduct

1 an investigation under this paragraph if there is rea-
2 sonable cause to believe that such a failure or mis-
3 representation has occurred.

4 (2) INVESTIGATIONS.—The Secretary of Labor
5 may initiate an investigation of any employer that
6 employs nonimmigrants described in section
7 101(a)(15)(H)(ii)(b) or (c) if the Secretary of Labor
8 has reasonable cause to believe that the employer is
9 not in compliance with this subsection. The Sec-
10 retary of Labor may consider information submitted
11 by an employer to the Secretary of Homeland Secu-
12 rity or the Secretary of Labor for purposes of secur-
13 ing the employment of a nonimmigrant described in
14 section 101(a)(15)(H)(ii)(b) or (c) when determining
15 whether the Secretary of Labor has reasonable cause
16 to believe that an employer is not in compliance with
17 this section. An investigation initiated and conducted
18 under this subparagraph may be considered a com-
19 plaint under the process established pursuant to
20 subparagraph (A).

21 (3) REASONABLE BASIS.—Under the process
22 established pursuant to subparagraph (A), the Sec-
23 retary of Labor shall determine, not later than 30
24 days after the date such a complaint is filed, wheth-
25 er a reasonable basis exist to make a finding de-

1 scribed in subparagraph (B). If the Secretary deter-
2 mines that such a reasonable basis exists, the Sec-
3 retary shall provide for notice of such determination
4 to the interested parties and an opportunity for a
5 hearing on the complaint, in accordance with section
6 556 of title 5, United States Code, not later than 60
7 days after the date of the determination. If such a
8 hearing is requested, the Secretary shall make a
9 finding concerning the matter by not later than 60
10 days after the date of the hearing. In the case of
11 similar complaints respecting the same applicant,
12 the Secretary may consolidate the hearings under
13 this subparagraph on such complaints.

14 (4) PENALTIES.—If the Secretary of Labor
15 finds, after notice and an opportunity for a hearing,
16 a substantial failure to meet any of the conditions
17 of the application described under paragraph (2) or
18 (3), a willful misrepresentation of a material fact in
19 such application, or a violation of subparagraph
20 (F)—

21 (A) the Secretary of Labor shall notify the
22 Secretary of Homeland Security of such finding
23 and may, in addition to any other remedy au-
24 thorized by law, impose such administrative
25 remedies (including civil monetary penalties in

1 an amount not to exceed \$10,000 per violation)
2 as the Secretary of Labor determines to be ap-
3 propriate;

4 (B) the Secretary of Labor may not ap-
5 prove applications filed with respect to that em-
6 ployer under paragraph (2) or (3) during a pe-
7 riod of at least 1 year but not more than 5
8 years for aliens to be employed by the employer;
9 and

10 (C) the Secretary of Homeland Security
11 may not approve petitions filed with respect to
12 that employer under section 204 or 214(c) dur-
13 ing a period of at least 1 year for aliens to be
14 employed by the employer.

15 (5) CRIMINAL SANCTIONS.—Whoever knowingly
16 violates this chapter shall be fined up to \$3,000 per
17 violation or imprisoned not more than one year, or
18 both. Upon conviction, after a first conviction under
19 this section, for a second or subsequent violation of
20 this chapter, the defendant shall be fined up to
21 \$10,000 or imprisoned not more than three years, or
22 both.

23 (6) HIGHEST PENALTIES.—In determining the
24 level of penalties to be assessed under subparagraph
25 (D), the highest penalties shall be reserved for will-

1 ful failures to meet any of the conditions of the ap-
2 plication that involve harm to United States work-
3 ers.

4 (7) DISCRIMINATION OR RETALIATION PROHIB-
5 ITED.—It is a violation of this subparagraph for an
6 employer who has filed an application under this
7 subsection to intimidate, threaten, restrain, coerce,
8 discharge, or in any other manner discriminate or
9 retaliate against an employee (including a former
10 employee or an applicant for employment) because
11 the employee—

12 (A) has disclosed information to the em-
13 ployer, or to any other person, that the em-
14 ployee reasonably believes evidences a violation
15 of this subsection, or any rule or regulation per-
16 taining to this subsection; or

17 (B) cooperates, or seeks to cooperate, in an
18 investigation or other proceeding concerning the
19 employer's compliance with the requirements of
20 this subsection, or any rule or regulation per-
21 taining to this subsection.

22 (b) AUTHORITY TO ENSURE COMPLIANCE.—The
23 Secretary of Labor may bring an action in any court of
24 competent jurisdiction as may be necessary to assure em-
25 ployer compliance with terms and conditions of employ-

1 ment under this subsection, including imposing appro-
2 priate penalties and seeking appropriate injunctive relief
3 and specific performance of contractual obligations. The
4 rights and remedies provided to H-2B workers by this
5 subsection are in addition to, and not in lieu of, any other
6 contractual or statutory rights and remedies of such work-
7 ers, and are not intended to alter or affect such rights
8 and remedies.

9 **SEC. 444. TRANSFER OF FOREST, CONSERVATION, NURS-**
10 **ERY, AND LOGGING WORKERS TO THE H-2A**
11 **AGRICULTURAL WORKER PROGRAM.**

12 (a) CLASSIFICATION AS AGRICULTURAL LABOR.—
13 Any farming, fishing, or forestry occupation (as included
14 in this major group the Standard Occupational Classifica-
15 tion published by the Department of Labor's Bureau of
16 Labor Statistics) shall be considered agricultural labor for
17 the purposes of employing nonimmigrants described in
18 section 101(a)(15)(H)(ii)(a) of the Immigration and Na-
19 tionality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

20 (b) SIMULTANEOUS CLASSIFICATION.—Any workers
21 currently considered seasonal agricultural workers under
22 the Migrant Seasonal Worker Protection Act (29 U.S.C.
23 1801 et seq.) shall retain their simultaneous classification
24 under such Act.

1 **SEC. 445. H-2B NONIMMIGRANT LABOR CERTIFICATION AP-**
2 **PLICATION FEES.**

3 (a) ESTABLISHMENT OF FEES.—Section
4 212(a)(5)(A) (8 U.S.C. 1182(a)(5)(A)) is amended by
5 adding the following:

6 “(v) ESTABLISHMENT OF H-2B EM-
7 PLOYMENT CERTIFICATION APPLICATION
8 FEE.—

9 “(I) IN GENERAL.—The Sec-
10 retary of Labor shall impose a fee on
11 an employer that submits an applica-
12 tion for an employment certification
13 for aliens granted nonimmigrant sta-
14 tus under section 101(a)(15)(H)(ii)(b)
15 to the Secretary of Labor under this
16 subparagraph.

17 “(II) FEE DURING INITIAL
18 YEAR.—During the 12-month period
19 beginning on the date of the enact-
20 ment of this clause, the fee imposed
21 under subclause (I) shall be \$800 for
22 each application.

23 “(III) ADDITIONAL FEE PER
24 WORKER.—In addition to the applica-
25 tion fee required under clause (i), the
26 Secretary shall require each employer

1 to pay a fee of \$300, to be deposited
2 in the Treasury in accordance with
3 section 286(x), for each H-2B worker
4 position requested in an application
5 described in subparagraph (A).

6 “(IV) FEE AFTER INITIAL
7 YEAR.—After the expiration of the pe-
8 riod described in subclause (II), the
9 fee imposed under subclause (I) shall
10 be set at a level the Secretary of
11 Labor determines will—

12 “(aa) ensure recovery of the
13 full costs of carrying out labor
14 certification activities under this
15 subparagraph; and

16 “(bb) recover any additional
17 costs associated with the admin-
18 istration of the fees collected.

19 “(V) PROHIBITION ON EM-
20 PLOYER ACCEPTING REIMBURSEMENT
21 OF FEE.—

22 “(aa) IN GENERAL.—An em-
23 ployer subject to a fee under this
24 clause may not require or accept
25 reimbursement, directly or indi-

1 rectly, of or other compensation
 2 for all or part of the cost of such
 3 fee.

4 “(bb) CIVIL PENALTY.—If
 5 the Secretary of Labor deter-
 6 mines, after notice and oppor-
 7 tunity for a hearing, that an em-
 8 ployer has violated item (aa), the
 9 Secretary of Labor may impose a
 10 civil penalty in an amount not to
 11 exceed \$5,000 per violation.

12 “(VI) DEPOSIT OF FEES AND
 13 PENALTIES.—Fees and civil penalties
 14 collected under this clause shall be de-
 15 posited in the ‘H-2B Employment
 16 Certification Application Fee Account’
 17 established under section 286(x).”.

18 (b) ESTABLISHMENT OF ACCOUNT AND USE OF
 19 FUND.—Section 286 (8 U.S.C. 1356) is amended by add-
 20 ing at the end the following:

21 “(x) H-2B EMPLOYMENT CERTIFICATION APPLICA-
 22 TION FEE ACCOUNT.—

23 “(1) ESTABLISHMENT OF ACCOUNT.—There is
 24 established in the general fund of the Treasury a
 25 separate account, which shall be known as the ‘H-

1 2B Employment Certification Application Fee Ac-
2 count'. Notwithstanding any other provision of this
3 title, there shall be deposited as offsetting receipts
4 into the account all amounts from the fees and civil
5 penalties collected under section 212(a)(5)(A)(v).

6 “(2) USE OF FEES.—Of the amounts deposited
7 into the H–2B Employment Certification Applica-
8 tion Fee Account under this subsection in each fiscal
9 year, the Secretary of Labor shall use such amounts
10 as the Secretary of Labor determines are necessary
11 for the costs of Federal administration, including
12 personnel, in carrying out labor certification activi-
13 ties under section 212(a)(5)(A), and to assist the
14 States, as appropriate, in the determination of pre-
15 vailing wages for purposes of carrying out such sec-
16 tion.

17 “(3) AVAILABILITY OF FUNDS.—The fees de-
18 posited into the H–2B Employment Certification
19 Application Fee Account under this subsection shall
20 remain available until expended for the activities de-
21 scribed in paragraph (2).”.

22 (c) PROGRAM INTEGRITY.—Section 212(a)(5)(A) (8
23 U.S.C. 1182(a)(5)(A)), as amended by subsection (a), is
24 further amended by adding at the end the following:

1 “(vi) PROGRAM INTEGRITY REGULA-
2 TIONS.—The Secretary of Labor may pre-
3 scribe such regulations as may be nec-
4 essary to ensure the integrity of the labor
5 certification process carried out under this
6 subparagraph, including standards and
7 procedures under which employers and
8 their representatives are excluded from
9 participation in the labor certification proc-
10 ess under this subparagraph.”.

11 **SEC. 446. LABOR AGREEMENT PROVISIONS.**

12 (a) RECRUITMENT OF UNITED STATES WORKERS.—

13 Section 212 (8 U.S.C. 1182) is amended—

14 (1) in subsection (p)(3), by striking “(a)(5)(A),
15 (n)(1)(A)(i)(II),” and inserting “(n)(1)(A)(i)(II)”;

16 (2) by redesignating subsection (t) (as added by
17 section 1(b)(2)(B) of Public Law 108–449) as sub-
18 section (u); and

19 (3) by adding at the end the following:

20 “(v)(1) Except as provided under paragraph (5), an
21 employer that seeks to employ an alien described in section
22 101(a)(15)(H)(ii)(b) (referred to in this subsection as an
23 ‘H–2B nonimmigrant’) shall take the following steps to
24 recruit United States workers for the position for which

1 the alien is sought not later than 14 days before filing
2 an application under paragraph (3):

3 “(A) The employer shall submit a copy of the
4 job offer, including a description of wages and other
5 terms and conditions of employment, to the State
6 workforce agency that serves the area of employment
7 in the State in which the employer is located (re-
8 ferred to in this subsection as the ‘SWA’). The SWA
9 shall provide the employer with an acknowledgment
10 of receipt of such documentation in accordance with
11 this paragraph.

12 “(B) The employer shall authorize the SWA to
13 post the job opportunity on the Internet, with local
14 job banks, with other State workforce agencies, and
15 with unemployment agencies and other labor referral
16 and recruitment sources pertinent to such job oppor-
17 tunity.

18 “(C) The employer shall authorize the SWA to
19 provide notification of the job opportunity to—

20 “(i) the central office of the State Federa-
21 tion of Labor in the State in which the job is
22 located; and

23 “(ii) the office of the local union which
24 represents the employees in the same or sub-

1 stantially equivalent job classification, if appli-
2 cable.

3 “(D) The employer shall—

4 “(i) provide notice of the job opportunity
5 to the bargaining representative (if any) of the
6 employer’s employees in the occupational classi-
7 fication and area for which the employer is
8 seeking a worker, or

9 “(ii) if there is no such bargaining rep-
10 resentative, post the availability of the job op-
11 portunity for which the employer is seeking a
12 worker in conspicuous locations at the place or
13 places of employment or in some other manner
14 that provides reason able notification to all em-
15 ployees in the occupational classification and in
16 the same area of intended employment for
17 which H-2B nonimmigrants are sought.

18 “(E) The employer shall advertise the avail-
19 ability of the job opportunity for which the employer
20 is seeking a worker in one or more publications in
21 the labor market that is likely to be patronized by
22 potential applicants (as determined by the SWA).
23 Such advertisement, at a minimum, shall—

24 “(i) describe the job opportunity and term
25 of employment;

1 “(ii) state the wage rate to be offered;

2 “(iii) summarize the employer’s minimum
3 job requirements; “(iv) offer training if the job
4 opportunity is the type for which employers
5 normally provide training; and“(v) be posted for
6 3 consecutive issues during the first half of the
7 21-day recruitment period.

8 “(F) If the job involved in the application re-
9 quires a particular skill or an advanced degree, and
10 a professional or trade journal normally would be
11 used to advertise the job opportunity, the local job
12 service may require the employer to place an adver-
13 tisement in the journal most likely to bring re-
14 sponses from able, willing, qualified, and available
15 United States workers.

16 “(G) In no event shall the employer advertise
17 such job opportunity to United States workers using
18 wages or other terms and conditions of employment
19 which are less favorable for United States workers
20 than those to be offered to an H-2B nonimmigrant
21 of similar qualifications.

22 “(2) EXCEPTION FOR NON-REGISTERED H-2B EM-
23 PLOYERS.—

24 “(A) IN GENERAL.—An employer that is not
25 registered under paragraph (2) but that seeks to

1 employ an H-2B nonimmigrant in an occupational
2 classification may file an application under para-
3 graph (3) to employ one or more H-2B non-
4 immigrants if the employer demonstrates to the Sec-
5 retary of Labor that:

6 “(i) the failure to hire such workers to ad-
7 dress a temporary need for labor or services
8 would directly result in the loss of jobs for
9 United States workers and would deprive the
10 impacted community of a substantial economic
11 benefit (as certified by a State or regional eco-
12 nomic development authority, including con-
13 sultation with any relevant union);

14 “(ii) labor, geographical, or other condi-
15 tions substantially prevent the employer from
16 meeting such need for labor or services with
17 workers in the United States;

18 “(iii) the employer has not been found to
19 have violated, within the last 5 years, applicable
20 Federal, State and local employment-related
21 laws and regulations, including employment-re-
22 lated health and safety laws; and

23 “(iv) the employer has not been found to
24 have violated, within the last 5 years, a mate-

1 rial term or condition of any foreign worker
2 program.

3 “(B) LIMITATION.—The number of H–2B non-
4 immigrants admitted under this paragraph may not
5 exceed 1,000.

6 “(3) LIMITATIONS ON EMPLOYMENT.—

7 “(A) DURATION OF EMPLOYMENT.—Certifi-
8 cation of an H–2B nonimmigrant for employment
9 with an employer in the United States shall be lim-
10 ited to a maximum of 10 months per employer. An
11 H–2B nonimmigrant shall not be certified for more
12 than 5 years without returning to his country of ori-
13 gin. The Secretary of State and Secretary of Home-
14 land Security may allow admission of the H–2B
15 nonimmigrant into the United States for additional
16 periods, of no more than 60 days in the aggregate,
17 to allow for travel to and from the worksite and
18 transfer between H–2B employers.

19 “(B) TRANSFER OF H–2B NONIMMIGRANTS BE-
20 TWEEN EMPLOYERS.—

21 “(i) IN GENERAL.—An H–2B non-
22 immigrant may not accept employment from
23 any employer in the United States other than
24 an employer with an approved H–2B applica-
25 tion filed on behalf of such nonimmigrant under

1 paragraph (3). An employer may not trade,
2 transfer, or otherwise provide an H-2B non-
3 immigrant to any other employer for employ-
4 ment in the United States.

5 “(ii) CONSTRUCTION.—Nothing in this
6 paragraph prohibits an H-2B nonimmigrant in
7 the United States from accepting new employ-
8 ment with a new employer upon approval of a
9 petition filed by such employer on the H-2B
10 nonimmigrant’s behalf.

11 “(C) AVAILABILITY OF UNITED STATES WORK-
12 ER.—The employer shall be required to provide em-
13 ployment to any able and qualified United States
14 worker who applies to the employer prior to 30 days
15 before the commencement of the H-2B non-
16 immigrant’s employment.

17 “(4) COMPLIANCE AND STATISTICS.—

18 “(A) PUBLIC EXAMINATION.—The Secretary of
19 Labor shall make available for public examination,
20 including by posting over the Internet, the following:

21 “(i) within 60 days of the close of the reg-
22 istration period under paragraph (2), a list of
23 all employers registered under such paragraph;

24 “(ii) upon the filing of an application by
25 an employer under paragraph (3), a copy of

1 such application, except that the Secretary shall
2 redact any proprietary information from such
3 application; and

4 “(iii) a list (by employer, location and oc-
5 cupational classification), compiled on a current
6 basis, of the applications filed under this sub-
7 section. Such list shall include the wage rate,
8 number of aliens sought, period of intended em-
9 ployment, and dates of need.

10 “(B) MAINTENANCE OF DOCUMENTATION.—

11 The employer shall maintain for at least 3 years
12 after the filing of the application or the employment
13 relationship is terminated, whichever is later, docu-
14 mentation evidencing compliance with the conditions
15 in paragraph (3) and recruitment efforts in para-
16 graph (4).

17 “(C) AUDIT AUTHORITY.—On a yearly basis,
18 the Secretary of Labor shall audit at least 5 percent
19 of employers employing H-2B nonimmigrants to de-
20 termine compliance with the terms and conditions of
21 this subsection.

22 “(5) COMPLAINTS AND INVESTIGATIONS.—

23 “(A) IN GENERAL.—The Secretary of Labor
24 shall establish a process for the receipt, investiga-
25 tion, and disposition of complaints respecting the ap-

1 plication of a predominant wage level proposed by an
2 employer seeking certification under this subsection,
3 but not the methodology used to calculate the pre-
4 dominant wage level itself, an employer’s failure to
5 meet a condition specified in an application sub-
6 mitted under paragraph (2) or (3) or an applicant’s
7 misrepresentation of material facts in such an appli-
8 cation. Complaints may be filed by any aggrieved
9 person or organization (including bargaining rep-
10 representatives). No investigation or hearing shall be
11 conducted on a complaint concerning such a failure
12 or misrepresentation unless the complaint was filed
13 not later than one year after the date of the failure
14 or misrepresentation, respectively. The Secretary
15 shall conduct an investigation under this paragraph
16 if there is reasonable cause to believe that such a
17 failure or misrepresentation has occurred.”.

18 (b) PETITIONS BY EMPLOYERS THAT HAVE SIGNED
19 LABOR AGREEMENTS WITH UNIONS THAT OPERATE
20 HIRING HALLS.—Section 212(v), as added by subsection
21 (a), is amended by adding at the end the following:

22 “(6) An employer that seeks to hire an H–2B
23 nonimmigrant may file an application with the Sec-
24 retary of Labor in accordance with this paragraph,

1 instead of complying with paragraphs (1) through
2 (4), if—

3 “(A) the employer has signed a labor
4 agreement with a labor organization (as defined
5 in section 2(5) of the Labor-Management Rela-
6 tions Act (29 U.S.C. 152(5)) under which the
7 labor organization is responsible for referring
8 applicants for employment to the employer
9 under a procedure commonly known as a ‘hiring
10 hall’ or ‘referral hall’; and

11 “(B) the application is accompanied by a
12 written statement prepared by the labor organi-
13 zation attesting that—

14 “(i) the labor organization operates a
15 hiring hall that, pursuant to contractual
16 agreement and actual practice, is a source
17 of employees in the same or substantially
18 equivalent occupational classification in
19 which the employer seeks to employ an H-
20 2B nonimmigrant;

21 “(ii) the labor organization does not
22 have a sufficient number of qualified appli-
23 cants available for referral in the same or
24 substantially equivalent occupational classi-

1 fication in which the employer seeks to em-
2 ploy an H-2B nonimmigrant;

3 “(iii) the labor organization has ad-
4 vertised, for at least 5 consecutive days,
5 the availability of the job opportunity for
6 which the employer is seeking to employ an
7 H-2B nonimmigrant in the publication
8 with the highest circulation in the labor
9 market that is likely to be patronized by
10 potential applicants;

11 “(iv) the employer is contractually ob-
12 ligated to pay all employees, in the same or
13 substantially equivalent occupational classi-
14 fication in which the employer seeks to em-
15 ploy an H-2B nonimmigrant, wages and
16 benefits set forth in a labor agreement
17 with the labor organization, which equals
18 or exceeds the prevailing wage rate the em-
19 ployer would be obligated to pay; and

20 “(v) the H-2B nonimmigrants who
21 the employer seeks to employ will be paid
22 not less than the same wages and benefits
23 and be subject to the same terms and con-
24 ditions of employment set forth in the em-

1 employer’s labor agreement with the labor or-
2 ganization.”.

3 (c) PREVAILING WAGES FOR UNITED STATES WORK-
4 ERS AND H-2B WORKERS.—Section 212 (8 U.S.C.
5 1182), as amended by this section, is further amended by
6 adding at the end the following:

7 “(w)(1) No alien may be admitted or provided status
8 as a nonimmigrant under section 101(a)(15)(H)(ii)(b) in
9 an occupational classification unless the Secretary of
10 Labor certifies that the employer—

11 “(A) is offering and will offer during the period
12 of authorized employment to aliens admitted or pro-
13 vided such status the wage rate set forth in the col-
14 lective bargaining agreement, if the job opportunity
15 is covered by a collective bargaining agreement;

16 “(B) if the job opportunity is not covered by a
17 collective bargaining agreement, the wage the em-
18 ployer is offering and will offer, to any alien or
19 United States worker employed by or offered em-
20 ployment by the employer, during the period of au-
21 thorized employment for aliens admitted or provided
22 such status, wages that are not less than the higher
23 of—

24 “(i) the wage determination, if any, issued
25 pursuant to subchapter IV of chapter 31 of title

1 40, United States Code (commonly known as
2 the ‘Davis-Bacon Act’);

3 “(ii) the wage determination, if any, issued
4 pursuant to the Service Contract Act of 1965
5 (41 U.S.C. 351 et seq.);

6 “(iii) the median rate of the highest 66
7 percent of the wage data applicable to such oc-
8 cupational classification under the most recently
9 published Occupational Employment Statistics
10 Survey, compiled by the Bureau of Labor Sta-
11 tistics; or

12 “(iv) a wage that is not less than 150 per-
13 cent of the Federal minimum wage in effect
14 under the Fair Labor Standards Act (29 U.S.C.
15 201 et seq.); and

16 “(C) will provide working conditions for such
17 alien that will not adversely affect the working con-
18 ditions of workers similarly employed.

19 “(2) An employer may not appeal a decision of the
20 Secretary of Labor concerning the wages required to be
21 paid under paragraph (1)(A) unless United States workers
22 and their labor representatives are given the opportunity
23 to submit contrary evidence or appeal that such required
24 wages are too low.

1 “(3) An employer may not hire a nonimmigrant de-
2 scribed in section 101(a)(15)(H)(ii)(b) unless—

3 “(A) real prevailing wages in the occupational
4 classification in which such nonimmigrant is to be
5 hired are at least 3 percent higher than such wages
6 during the preceding year under the Occupational
7 Employment Statistics Survey compiled by the Bu-
8 reau of Labor Statistics; or

9 “(B) the employer offers to pay the H-2B
10 worker or a United States worker a wage in the oc-
11 cupational classification in which such worker is to
12 be hired that is at least 3 percent higher during the
13 preceding year, after adjusting for inflation under
14 the Occupational Employment Survey.”.

15 **SEC. 447. ENFORCEMENT OF FEDERAL LABOR LAWS.**

16 (a) H-2B NONAGRICULTURAL GUEST WORKERS.—
17 Section 214(e)(14) (8 U.S.C. 1184(e)(14)) is amended—

18 (1) in subparagraph (A), by striking “of Home-
19 land Security” each place it appears and inserting
20 “of Labor”;

21 (2) by striking subparagraph (B);

22 (3) by redesignating subparagraphs (C) and
23 (D) as subparagraphs (B) and (C), respectively; and

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

1 “(D) The Secretary of Labor is authorized to take
2 such actions, including imposing appropriate penalties and
3 seeking appropriate injunctive relief and specific perform-
4 ance of contractual obligations, as may be necessary to
5 assure employer compliance with the terms and conditions
6 required under this Act for employing nonimmigrant
7 workers described in section 101(a)(15)(H)(ii)(b) or (c).
8 The authority of the Secretary of Labor under this sub-
9 paragraph shall not preempt any other rights which af-
10 fected persons may have under Federal or State law.

11 “(E) Any aggrieved person whose wages or working
12 conditions have been directly and adversely affected by an
13 employer in violation of applicable laws and regulations
14 governing the employment of nonimmigrant workers de-
15 scribed in section 101(a)(15)(H)(ii)(b) or (c), or by a vio-
16 lation of the terms and conditions of employment, may
17 bring a civil action against such employer in the appro-
18 priate district court of the United States. Such cause of
19 action shall not be subject to exhaustion of administrative
20 remedies and shall be in addition to any other causes of
21 action and remedies that may exist.

22 “(F) Notwithstanding any other provision of law, the
23 Legal Services Corporation may provide legal services on
24 behalf of nonimmigrant workers described in section
25 101(a)(15)(H)(ii)(b) or (c) regarding the terms and condi-

1 tions of employment, transportation, and housing and
2 other provisions of law applicable to the employment of
3 such nonimmigrants.”.

4 (b) CERTIFICATION REQUIREMENT; PROTECTION
5 FOR WORKERS.—Section 214(c)(14), as amended by sub-
6 section (a), is further amended by adding at the end the
7 following:

8 “(G) A petition by an employer seeking to hire an
9 alien described in section 101(a)(15)(H)(ii)(b) shall not
10 be approved until the employer has provided written cer-
11 tification, under penalty of perjury, to the Secretary of
12 Labor that—

13 “(i) the employer has not been required under
14 law to provide a notice of a mass layoff pursuant to
15 the Worker Adjustment and Retraining Notification
16 Act (29 U.S.C. 2101 et seq.) during the 12-month
17 period immediately preceding the date on which the
18 alien is to be hired; and

19 “(ii) the employer does not intend to provide a
20 notice of a mass layoff pursuant to such Act.

21 “(H) If an employer is required under law to provide
22 a notice of a mass layoff pursuant to such Act after hiring
23 nonimmigrants granted status under section
24 101(a)(15)(H)(ii)(b), the status of such nonimmigrants

1 shall expire on the date that is 60 days after the date
2 on which such notice is provided.

3 “(I) An employer shall be exempt from the require-
4 ments under subparagraphs (G) and (H) if the employer
5 provides written certification, under penalty of perjury,
6 that the total number of the employer’s employees in the
7 United States will not be reduced as a result of a mass
8 layoff.

9 “(J) Employers who hire nonimmigrants described in
10 section 101(a)(15)(H)(ii)(b) shall pay up front or reim-
11 burse in the first workweek the nonimmigrants reasonable
12 cost of transportation incurred by such nonimmigrants
13 and United States workers to initially reach the job site
14 and, once the period of employment for the job oppor-
15 tunity is completed, to return to their countries of origin
16 or to the next place of employment, if the worker has con-
17 tracted with a subsequent employer who has not agreed
18 to provide or pay for the worker’s transportation to such
19 subsequent employer’s place of employment. The amount
20 of reimbursement for reasonable cost of transportation ex-
21 penses shall not exceed the lesser of—

22 “(i) the actual cost to the worker or alien of the
23 transportation and subsistence involved; or

1 “(ii) the most economical and reasonable com-
2 mon carrier transportation charges and subsistence
3 costs for the distance involved.

4 “(K) In the case of an H-2B nonimmigrant who is
5 dismissed from employment by the employer before the
6 end of the period of authorized admission, the employer
7 shall be liable for the reasonable costs of return transpor-
8 tation of the alien abroad.

9 “(L)(i) Employers who hire nonimmigrants described
10 in section 101(a)(15)(H)(ii)(b) shall guarantee to offer the
11 worker employment for 100 percent of the workdays of
12 the total periods during which the work contract and all
13 extensions of such contract are in effect, beginning with
14 the first workday after the arrival of the worker at the
15 place of employment and ending on the expiration date
16 specified in the work contract or in its extensions, if any.

17 “(ii) If the employer affords a worker during the total
18 work contract period less employment than that required
19 under this subparagraph, the employer shall pay the work-
20 er the amount which the worker would have earned had
21 the worker worked for the guaranteed number of days.

22 “(iii) In this subparagraph, the term ‘workday’—

23 “(I) means a day in which the worker is offered
24 the number of hours stated in the job order; and

1 “(II) excludes the worker’s Sabbath and Fed-
2 eral holidays.

3 “(iv) A work guarantee does not meet the require-
4 ments under this subparagraph unless the number of
5 hours of work offered by the employer is equal to not less
6 than the product of—

7 “(I) 75 percent of the workdays; multiplied by

8 “(II) the average number of hours per day stat-
9 ed in the job order.

10 “(v) A worker may be offered more than the specified
11 hours of work on a single workday.

12 “(vi) The employer may not require, for purposes of
13 meeting the work guarantee, that the worker work longer
14 than the number of hours specified in the job order on
15 a workday, the worker’s Sabbath, or a Federal holiday.

16 “(M) If the job opportunity is not covered by the
17 State workers’ compensation law, the employer will pro-
18 vide, at no cost to the worker, insurance covering injury
19 and disease arising out of, and in the course of, the work-
20 er’s employment which will provide benefits at least equal
21 to those provided under the State’s workers compensation
22 law for comparable employment.

23 “(N) Agreements by employees purporting to waive
24 or to modify their rights under this Act shall be void as
25 contrary to public policy.

1 “(O) Consistent with section 292 and notwith-
2 standing any other provision of law, the Legal Services
3 Corporation may provide legal services on behalf of an H-
4 2B nonimmigrant.”.

5 (c) REPORT.—Section 214(g)(10) (8 U.S.C.
6 1184(g)(10)) is amended—

7 (1) by inserting “(A)” after “(10)”; and

8 (2) by adding at the end the following:

9 “(B) Each employer that hires a nonimmigrant
10 worker described in section 101(a)(15)(H)(ii)(b)
11 shall—

12 “(i) notify the Secretary of Labor not later
13 than 30 days after the conclusion of each such
14 nonimmigrant’s term of employment; and

15 “(ii) submit to the Secretary of Labor em-
16 ployment payroll records and similar docu-
17 mentation showing that the employer complied
18 with the recruitment provisions herein and paid
19 the required prevailing wage and transpor-
20 tation, and other expenses required under this
21 section and section 212.”.

22 (d) H-2B PORTABILITY.—Section 214(n) (8 U.S.C.
23 1184(n)) is amended—

24 (1) in paragraph (1)—

1 (A) by striking “section
2 101(a)(15)(H)(i)(b)” and inserting “clause
3 (i)(b) or (ii)(b) of section 101(a)(15)(H)”;

4 (B) by inserting “A nonimmigrant de-
5 scribed in 101(a)(15)(H)(ii)(b) is authorized to
6 accept new employment immediately, if a peti-
7 tion for unnamed workers is already in place,
8 upon the filing by the prospective employer of
9 a new petition, or upon the filing of a tem-
10 porary labor certification covering the petition
11 with the Department of Labor, which may be
12 filed not earlier than 45 days before the need
13 for new employees” after “provided under sub-
14 section (a)”;

15 (2) in paragraph (2)(B), by inserting “(or labor
16 certification if the alien is described in
17 101(a)(15)(H)(ii)(b))” after “nonfrivolous petition”.

18 **CHAPTER 5—H-2B AND L-1 VISA REFORMS**

19 **Subchapter A—H-1B Employer Application**

20 **Requirements**

21 **SEC. 451. APPLICATION REQUIREMENTS.**

22 (a) MODIFICATION OF APPLICATION REQUIRE-
23 MENTS.—

1 (1) INTERNET POSTING REQUIREMENT.—Sec-
2 tion 212(n)(1)(C) (8 U.S.C. 1182(n)(1)(C)) is
3 amended—

4 (A) by redesignating clause (ii) as sub-
5 clause (II);

6 (B) by striking “(i) has provided” and in-
7 serting the following: “(ii)(I) has provided”;
8 and

9 (C) by inserting before clause (ii), as re-
10 designated by paragraph (2) of this subsection,
11 the following:

12 “(i) has posted on the Internet
13 website described in paragraph (3), for at
14 least 30 calendar days, a detailed descrip-
15 tion of each position for which a non-
16 immigrant is sought that includes a de-
17 scription of—

18 “(I) the wages and other terms
19 and conditions of employment;

20 “(II) the minimum education,
21 training, experience, and other re-
22 quirements for the position; and

23 “(III) the process for applying
24 for the position; and”.

1 (2) OUTPLACEMENT RESTRICTION.—Section
2 212(n)(1)(F) (8 U.S.C. 1182(n)(1)(F)) is amend-
3 ed—

4 (A) by inserting “(ii)” before “In the case
5 of an application”;

6 (B) by renumbering clauses (i) and (ii) as
7 subclauses (I) and (II); and

8 (C) by inserting the following at the begin-
9 ning as clause (i):

10 “(i) The employer will not place,
11 outsource, lease, or otherwise contract to
12 provide the services of the H–1B non-
13 immigrant at the worksite of an employer
14 other than the petitioning employer or its
15 affiliate, subsidiary, or parent unless:

16 “(I) the H–1B nonimmigrant will
17 be controlled and supervised prin-
18 cipally by the petitioning employer;
19 and

20 “(II) the placement of the H–1B
21 nonimmigrant at the worksite of the
22 unaffiliated employer is not essentially
23 an arrangement to provide labor for
24 hire for the unaffiliated employer.”.

1 (b) NEW APPLICATION REQUIREMENTS.—Section
2 212(n)(1) (8 U.S.C. 1182(n)(1)) is amended by adding
3 at the end the following:

4 “(H)(i) The employer has not advertised any
5 available position specified in the application in an
6 advertisement that states or indicates that—

7 “(I) such position is only available to an
8 individual who is or will be an H–1B non-
9 immigrant; or

10 “(II) an individual who is or will be an H–
11 1B nonimmigrant shall receive priority or a
12 preference in the hiring process for such posi-
13 tion.

14 “(ii) The employer has not solely recruited indi-
15 viduals who are or who will be H–1B nonimmigrants
16 to fill such position.

17 “(I) If the employer employs 50 or more em-
18 ployees in the United States, the sum of the number
19 of such employees who are H–1B nonimmigrants
20 who are not intending immigrants as defined in sec-
21 tion 463 of the CIR Act of 2010 plus the number
22 of such employees who are nonimmigrants described
23 in section 101(a)(15)(L) who are not intending im-
24 migrants as defined in section 463 of the CIR Act

1 of 2010 may not exceed 50 percent of the total num-
2 ber of employees.

3 “(J) If the employer, in such previous period as
4 the Secretary shall specify, employed 1 or more H-
5 1B nonimmigrants, the employer shall submit to the
6 Secretary the Internal Revenue Service Form W-2
7 Wage and Tax Statement filed by the employer with
8 respect to the H-1B nonimmigrants for such pe-
9 riod.”.

10 (c) APPLICATION REVIEW REQUIREMENTS.—

11 (1) TECHNICAL AMENDMENT.—Section
12 212(n)(1) (8 U.S.C. 1182(n)(1)), as amended by
13 this Act, is further amended in the undesignated
14 paragraph at the end, by striking “The employer”
15 and inserting the following: “(K) The employer.”.

16 (2) APPLICATION REVIEW REQUIREMENTS.—
17 Section 212(n)(1)(K), as designated by paragraph
18 (1), is amended—

19 (A) by inserting “and through the Depart-
20 ment of Labor’s website, without charge.” after
21 “D.C.”;

22 (B) by striking “only for completeness”
23 and inserting “for completeness and clear indi-
24 cators of fraud or misrepresentation of material
25 fact,”;

1 (C) by striking “or obviously inaccurate”
2 and inserting “, presents clear indicators of
3 fraud or misrepresentation of material fact, or
4 is obviously inaccurate”;

5 (D) by striking “within 7 days of” and in-
6 serting “not later than 14 days after”; and

7 (E) by adding at the end the following: “If
8 the Secretary’s review of an application identi-
9 fies clear indicators of fraud or misrepresenta-
10 tion of material fact, the Secretary may conduct
11 an investigation and hearing in accordance with
12 paragraph (2).”.

13 **Subchapter B—Investigation and Disposition**
14 **of Complaints Against H-1B Employers**

15 **SEC. 452. INVESTIGATION PROCEDURES.**

16 (a) GENERAL MODIFICATION OF PROCEDURES FOR
17 INVESTIGATION AND DISPOSITION.—Section
18 212(n)(2)(A) (8 U.S.C. 1182(n)(2)) is amended—

19 (1) by striking “(A) Subject” and inserting
20 “(A)(i) Subject”;

21 (2) by striking “12 months” and inserting “24
22 months”;

23 (3) by striking the last sentence; and

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

1 “(i)(I) Upon the receipt of such a
2 complaint, the Secretary may initiate an
3 investigation to determine if such a failure
4 or misrepresentation has occurred.

5 “(II) The Secretary may conduct sur-
6 veys of the degree to which employers com-
7 ply with the requirements of this sub-
8 section and may conduct annual compli-
9 ance audits of employers that employ H-
10 1B, H-2B, or H-2C nonimmigrants.

11 “(III) The Secretary shall—

12 “(aa) conduct annual compliance
13 audits of not less than 1 percent of
14 the employers that employ H-1B non-
15 immigrants during the applicable cal-
16 endar year;

17 “(bb) conduct annual compliance
18 audits of each employer with more
19 than 100 employees who work in the
20 United States if more than 15 percent
21 of such employees are H-1B non-
22 immigrants; and

23 “(cc) make available to the public
24 an executive summary or report de-
25 scribing the general findings of the

1 audits carried out pursuant to this
2 subclause.”.

3 (b) INVESTIGATION, WORKING CONDITIONS, AND
4 PENALTIES.—Section 212(n)(2)(C) (8 U.S.C. 1182(n)(2))
5 is amended—

6 (1) in clause (i)—

7 (A) in the matter preceding subclause

8 (I)—

9 (i) by striking “a condition of para-
10 graph (1)(B), (1)(E), or (1)(F)” and in-
11 sserting “a condition under subparagraph
12 (A), (B), (C)(i), (E), (F), (G)(i)(I), (H),
13 (I), or (J) of paragraph (1)”; and

14 (ii) by striking “(1)(C)” and inserting
15 “(1)(C)(ii)”; and

16 (B) in subclause (I)—

17 (i) by striking “\$1,000” and inserting
18 “\$2,000”; and

19 (ii) by striking “and” at the end;

20 (C) in subclause (II), by striking the pe-
21 riod at the end and inserting a semicolon and
22 “and”;

23 (D) by adding at the end the following:

24 “(III) an employer that violates
25 such subparagraph (A) shall be liable

1 to the employees harmed by such vio-
2 lations for lost wages and benefits.”;
3 and

4 (2) in clause (ii)—

5 (A) in subclause (I)—

6 (i) by striking “may” and inserting
7 “shall”; and

8 (ii) by striking “\$5,000” and insert-
9 ing “\$10,000”; and

10 (B) in subclause (II), by striking the pe-
11 riod at the end and inserting a semicolon and
12 “and”;

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

14 “(III) an employer that violates
15 such subparagraph (A) shall be liable
16 to the employees harmed by such vio-
17 lations for lost wages and benefits.”;
18 and

19 (3) in clause (iii)—

20 (A) in the matter preceding subclause (I),
21 by striking “90 days” both places it appears
22 and inserting “180 days”;

23 (B) in subclause (I)—

24 (i) by striking “may” and inserting
25 “shall”; and

1 (ii) by striking “and” at the end;

2 (C) in subclause (II), by striking the pe-
3 riod at the end and inserting a semicolon and
4 “and”; and

5 (D) by adding at the end the following:

6 “(III) an employer that violates
7 subparagraph (A) of such paragraph
8 shall be liable to the employees
9 harmed by such violations for lost
10 wages and benefits.”;

11 (4) in clause (iv)—

12 (A) by inserting “to take, fail to take, or
13 threaten to take or fail to take, a personnel ac-
14 tion,” or before “to intimidate”;

15 (B) by inserting “(I)” after “(iv)”; and

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

17 “(II) An employer that violates
18 this clause shall be liable to the em-
19 ployees harmed by such violation for
20 lost wages and benefits.”; and

21 (5) in clause (vi)—

22 (A) by amending subclause (I) to read as
23 follows:

1 “(I) It is a violation of this
2 clause for an employer who has filed
3 an application under this subsection—

4 “(aa) to require an H–1B
5 nonimmigrant to pay a penalty
6 for ceasing employment with the
7 employer prior to a date agreed
8 to by the nonimmigrant and the
9 employer (the Secretary shall de-
10 termine whether a required pay-
11 ment is a penalty, and not liq-
12 uidated damages, pursuant to
13 relevant State law); and

14 “(bb) to fail to offer to an
15 H–1B nonimmigrant, during the
16 nonimmigrant’s period of author-
17 ized employment, on the same
18 basis, and in accordance with the
19 same criteria, as the employer of-
20 fers to United States workers,
21 benefits and eligibility for bene-
22 fits, including—

23 “(AA) the opportunity
24 to participate in health, life,

1 disability, and other insur-
2 ance plans;

3 “(BB) the opportunity
4 to participate in retirement
5 and savings plans; and

6 “(CC) cash bonuses
7 and noncash compensation,
8 such as stock options
9 (whether or not based on
10 performance).”; and

11 (B) in subclause (III), by striking
12 “\$1,000” and inserting “\$2,000”.

13 (c) INITIATION OF INVESTIGATIONS.—Section
14 212(n)(2)(G) (8 U.S.C. 1182(n)(2)) is amended—

15 (1) in clause (i), by striking “if the Secretary
16 and all that follows” and inserting “with regard to
17 the employer’s compliance with the requirements of
18 this subsection.”;

19 (2) in clause (ii), by striking “and whose iden-
20 tity” and all that follows through “failure or fail-
21 ures.” and inserting “the Secretary of Labor may
22 conduct an investigation into the employer’s compli-
23 ance with the requirements of this subsection.”;

24 (3) in clause (iii), by striking the last sentence;

25 (4) by striking clauses (iv) and (v);

1 (5) by redesignating clauses (vi), (vii), and (viii)
2 as clauses (iv), (v), and (vi), respectively;

3 (6) in clause (iv), as so redesignated, by strik-
4 ing “meet a condition described in clause (ii), unless
5 the Secretary of Labor receives the information not
6 later than 12 months” and inserting “comply with
7 the requirements under this subsection, unless the
8 Secretary of Labor receives the information not later
9 than 24 months”;

10 (7) by amending clause (v), as so redesignated,
11 to read as follows:

12 “(v) The Secretary of Labor shall pro-
13 vide notice to an employer of the intent to
14 conduct an investigation. The notice shall
15 be provided in such a manner, and shall
16 contain sufficient detail, to permit the em-
17 ployer to respond to the allegations before
18 an investigation is commenced. The Sec-
19 retary is not required to comply with this
20 clause if the Secretary determines that
21 such compliance would interfere with an
22 effort by the Secretary to investigate or se-
23 cure compliance by the employer with the
24 requirements of this subsection. A deter-
25 mination by the Secretary under this

1 clause shall not be subject to judicial re-
2 view.”;

3 (8) in clause (vi), as so redesignated, by strik-
4 ing “An investigation” and all that follows through
5 “the determination.” and inserting “If the Secretary
6 of Labor, after an investigation under clause (i) or
7 (ii), determines that a reasonable basis exists to
8 make a finding that the employer has failed to com-
9 ply with the requirements under this subsection, the
10 Secretary shall provide interested parties with notice
11 of such determination and an opportunity for a
12 hearing in accordance with section 556 of title 5,
13 United States Code, not later than 120 days after
14 the date of such determination.”; and

15 (9) by adding at the end the following:

16 “(vii) If the Secretary of Labor, after
17 a hearing, finds a reasonable basis to be-
18 lieve that the employer has violated the re-
19 quirements under this subsection, the Sec-
20 retary shall impose a penalty under sub-
21 paragraph (C).”.

22 (d) CONFORMING AMENDMENT.—Section
23 212(n)(2)(F) (8 U.S.C. 1182(n)(2)(F)) is amended by
24 striking “The preceding sentence shall apply to an em-

1 ployer regardless of whether or not the employer is an H-
2 1B-dependent employer.”.

3 (e) INFORMATION SHARING.—Section 212(n)(2)(H)
4 (8 U.S.C. 1182(n)(2)(H)) is amended to read as follows:

5 “(H) The Director of United States Citizenship
6 and Immigration Services shall provide the Secretary
7 of Labor with any information contained in the ma-
8 terials submitted by employers of H-1B non-
9 immigrants as part of the adjudication process that
10 indicates that the employer is not complying with
11 visa program requirements for H-1B non-
12 immigrants. The Secretary may initiate and conduct
13 an investigation and hearing under this paragraph
14 after receiving information of noncompliance under
15 this subparagraph.”.

16 **Subchapter C—Other Protections**

17 **SEC. 453. H-1B GOVERNMENT AUTHORITY AND REQUIRE-** 18 **MENTS.**

19 (a) IMMIGRATION DOCUMENTS.—Section 204 of the
20 Immigration and Nationality Act (8 U.S.C. 1154) is
21 amended by adding at the end the following:

22 “(m) EMPLOYER TO PROVIDE IMMIGRATION PAPER-
23 WORK EXCHANGED WITH FEDERAL AGENCIES.—Not
24 later than 21 business days after receiving a written re-
25 quest from a former, current, or future employee or bene-

1 ficiary, an employer shall provide such employee or bene-
2 ficiary with the original (or a certified copy of the original)
3 of all petitions, notices, and other written communication
4 exchanged between the employer and the Department of
5 Labor, the Department of Homeland Security, or any
6 other Federal agency or department that is related to an
7 immigrant or nonimmigrant petition filed by the employer
8 for such employee or beneficiary.”.

9 (b) REPORT ON JOB CLASSIFICATION AND WAGE
10 DETERMINATIONS.—Not later than 1 year after the date
11 of the enactment of this Act, the Comptroller General of
12 the United States shall prepare a report analyzing the ac-
13 curacy and effectiveness of the Secretary of Labor’s cur-
14 rent job classification and wage determination system. The
15 report shall—

16 (1) specifically address whether the systems in
17 place accurately reflect the complexity of current job
18 types as well as geographic wage differences; and

19 (2) make recommendations concerning nec-
20 essary updates and modifications.

21 (c) MINOR VIOLATIONS.—Section 212(n)(2)(C)(i)(II)
22 (8 U.S.C. 1182(n)(2)(C)(i)(II)) is amended by striking
23 “shall” and inserting “may”.

24 (d) POSTING AVAILABLE POSITIONS THROUGH DE-
25 PARTMENT OF LABOR.—

1 (1) DEPARTMENT OF LABOR WEBSITE.—Sec-
2 tion 212(n)(3) (8 U.S.C. 1182(n)) is amended to
3 read as follows:

4 “(3)(A) Not later than 90 days after the date
5 of the enactment of the Comprehensive Immigration
6 Reform Act of 2010, the Secretary of Labor shall
7 establish a searchable Internet website for posting
8 positions as required by paragraph (1)(C), which
9 shall be available to the public without charge.

10 “(B) The Secretary may work with private com-
11 panies or nonprofit organizations to develop and op-
12 erate the Internet website described in subparagraph
13 (A).

14 “(C) The Secretary may promulgate rules, after
15 notice and a period for comment, to carry out the
16 requirements of this paragraph.”.

17 (2) REQUIREMENT FOR PUBLICATION.—The
18 Secretary of Labor shall submit to Congress and
19 publish in the Federal Register and other appro-
20 priate media a notice of the date that the Internet
21 website required under section 212(n)(3) of the Im-
22 migration and Nationality Act will be operational.

23 (3) APPLICATION.—The amendments made by
24 paragraph (1) shall apply to an application filed on

1 or after the date that is 30 days after the date de-
2 scribed in paragraph (2).

3 **SEC. 454. H-1B AND L-1 VISA REQUIREMENTS.**

4 (a) **ADDITIONAL H-1B VISA REFORMS.—**

5 (1) **IN GENERAL.—**Section 214(g)(5) (8 U.S.C.
6 1184(g)(5)) is amended—

7 (A) in subparagraph (B)—

8 (i) by striking “nonprofit research”
9 and inserting “nonprofit”;

10 (ii) by inserting “Federal, State, or
11 local” before “governmental”; and

12 (iii) by striking “or” at the end;

13 (B) in subparagraph (C) by adding at the
14 end “or has been awarded a medical specialty
15 certification based on post-doctoral training and
16 experience in the United States.”; and

17 (2) **APPLICABILITY.—**The amendments made
18 by subsection (a) shall apply to any petition or visa
19 application pending on the date of enactment of this
20 Act and any petition or visa application filed on or
21 after such date.

22 (b) **REQUIREMENTS FOR INFORMATION FOR H-1B
23 AND L-1 NONIMMIGRANTS.—**Section 214 (8 U.S.C. 1184)
24 is amended by adding at the end the following:

1 “(s) REQUIREMENTS FOR INFORMATION FOR H-1B
2 AND L-1 NONIMMIGRANTS.—

3 “(1) IN GENERAL.—Upon issuing a visa to an
4 applicant for nonimmigrant status pursuant to sub-
5 paragraph (H)(i)(b) or (L) of section 101(a)(15)
6 who is outside the United States, the issuing office
7 shall provide the applicant with—

8 “(A) a brochure outlining the obligations
9 of the applicant’s employer and the rights of
10 the applicant with regard to employment under
11 Federal law, including labor and wage protec-
12 tions;

13 “(B) the contact information for appro-
14 priate Federal agencies or departments that
15 offer additional information or assistance in
16 clarifying such obligations and rights; and

17 “(C) a copy of the application submitted
18 for the nonimmigrant under section 212(n) or
19 the petition submitted for the nonimmigrant
20 under subsection (c)(2)(A), as appropriate.

21 “(2) Upon the issuance of a visa to an appli-
22 cant referred to in paragraph (1) who is inside the
23 United States, the issuing officer of the Department
24 of Homeland Security shall provide the applicant

1 with the material described in clauses (i), (ii), and
2 (iii) of subparagraph (A).”.

3 **SEC. 455. ADDITIONAL DEPARTMENT OF LABOR EMPLOY-**
4 **EES.**

5 (a) IN GENERAL.—The Secretary of Labor is author-
6 ized to hire 200 additional employees to administer, over-
7 see, investigate, and enforce programs involving non-
8 immigrant employees described in section
9 101(a)(15)(H)(i)(B).

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

13 **Subchapter D—L-1 Visa Fraud and Abuse**
14 **Protections**

15 **SEC. 456. L-1 EMPLOYER PETITION REQUIREMENTS.**

16 (a) EMPLOYMENT AT NEW OFFICES.—Section
17 214(c)(2) (8 U.S.C. 1184(c)(2)) is amended by adding at
18 the end the following:

19 “(G)(i) If the beneficiary of a petition under this
20 paragraph is coming to the United States to open, or be
21 employed in, a new office, the petition may be approved
22 for up to 12 months only if—

23 “(I) the alien has not been the beneficiary of 2
24 or more petitions under this subparagraph during
25 the immediately preceding 2 years; and

1 “(II) the employer operating the new office
2 has—

3 “(aa) an adequate business plan;

4 “(bb) sufficient physical premises to carry
5 out the proposed business activities; and

6 “(cc) the financial ability to commence
7 doing business immediately upon the approval
8 of the petition.

9 “(ii) An extension of the approval period under clause
10 (i) may not be granted until the importing employer sub-
11 mits an application to the Secretary of Homeland Security
12 that contains—

13 “(I) evidence that the importing employer
14 meets the requirements of this subsection;

15 “(II) evidence that the beneficiary of the peti-
16 tion is eligible for nonimmigrant status under sec-
17 tion 101(a)(15)(L);

18 “(III) a statement summarizing the original pe-
19 tition;

20 “(IV) evidence that the importing employer has
21 fully complied with the business plan submitted
22 under clause (i)(I);

23 “(V) evidence of the truthfulness of any rep-
24 resentations made in connection with the filing of
25 the original petition;

1 “(VI) evidence that the importing employer, for
2 the entire period beginning on the date on which the
3 petition was approved under clause (i), has been
4 doing business at the new office through regular,
5 systematic, and continuous provision of goods and
6 services;

7 “(VII) a statement of the duties the beneficiary
8 has performed at the new office during the approval
9 period under clause (i) and the duties the beneficiary
10 will perform at the new office during the extension
11 period granted under this clause;

12 “(VIII) a statement describing the staffing at
13 the new office, including the number of employees
14 and the types of positions held by such employees;

15 “(IX) evidence of wages paid to employees;

16 “(X) evidence of the financial status of the new
17 office; and

18 “(XI) any other evidence or data prescribed by
19 the Secretary.

20 “(iii) A new office employing the beneficiary of an
21 L-1 petition approved under this paragraph shall do busi-
22 ness only through regular, systematic, and continuous pro-
23 vision of goods and services for the entire period for which
24 the petition is sought.

1 “(iv) Notwithstanding clause (ii), and subject to the
2 maximum period of authorized admission set forth in sub-
3 paragraph (D), the Secretary of Homeland Security, in
4 the Secretary’s discretion, may approve a subsequently
5 filed petition on behalf of the beneficiary to continue em-
6 ployment at the office described in this subparagraph for
7 a period beyond the initially granted 12-month period if
8 the importing employer has been doing business at the
9 new office through regular, systematic, and continuous
10 provision of goods and services for the 6 months imme-
11 diately preceding the date of extension petition filing and
12 demonstrates that the failure to satisfy any of the require-
13 ments described in those subclauses was directly caused
14 by extraordinary circumstances, as determined by the Sec-
15 retary in the Secretary’s discretion.”.

16 (b) COOPERATION WITH SECRETARY OF STATE.—
17 Section 214(c)(2) (8 U.S.C. 1184(c)(2)), as amended by
18 subsection (a), is further amended by adding at the end
19 the following:

20 “(H) For purposes of approving petitions under this
21 paragraph, the Secretary of Homeland Security shall work
22 cooperatively with the Secretary of State to verify the ex-
23 istence or continued existence of a company or office in
24 the United States or in a foreign country.”.

1 (c) INVESTIGATION AND DISPOSITION OF COM-
2 PLAINTS AGAINST L-1 EMPLOYERS.—Section 214(c)(2)
3 (8 U.S.C. 1184(c)(2)), as amended by this section, is fur-
4 ther amended by adding at the end the following:

5 “(I)(i) The Secretary of Homeland Security may ini-
6 tiate an investigation of any employer that employs non-
7 immigrants described in section 101(a)(15)(L) with re-
8 gard to the employer’s compliance with the requirements
9 of this subsection.

10 “(ii) If the Secretary receives specific credible infor-
11 mation from a source who is likely to have knowledge of
12 an employer’s practices, employment conditions, or com-
13 pliance with the requirements under this subsection, the
14 Secretary may conduct an investigation into the employ-
15 er’s compliance with the requirements of this subsection.
16 The Secretary may withhold the identity of the source
17 from the employer, and the source’s identity shall not be
18 subject to disclosure under section 552 of title 5, United
19 States Code.

20 “(iii) The Secretary shall establish a procedure for
21 any person desiring to provide to the Secretary informa-
22 tion described in clause (ii) that may be used, in whole
23 or in part, as the basis for the commencement of an inves-
24 tigation described in such clause, to provide the informa-

1 tion in writing on a form developed and provided by the
2 Secretary and completed by or on behalf of the person.

3 “(iv) No investigation described in clause (ii) (or
4 hearing described in clause (vi) based on such investiga-
5 tion) may be conducted with respect to information about
6 a failure to comply with the requirements under this sub-
7 section, unless the Secretary receives the information not
8 later than 24 months after the date of the alleged failure.

9 “(v) Before commencing an investigation of an em-
10 ployer under clause (i) or (ii), the Secretary shall provide
11 notice to the employer of the intent to conduct such inves-
12 tigation. The notice shall be provided in such a manner,
13 and shall contain sufficient detail, to permit the employer
14 to respond to the allegations before an investigation is
15 commenced. The Secretary is not required to comply with
16 this clause if the Secretary determines that to do so would
17 interfere with an effort by the Secretary to investigate or
18 secure compliance by the employer with the requirements
19 of this subsection. There shall be no judicial review of a
20 determination by the Secretary under this clause.

21 “(vi) If the Secretary, after an investigation under
22 clause (i) or (ii), determines that a reasonable basis exists
23 to make a finding that the employer has failed to comply
24 with the requirements under this subsection, the Secretary
25 shall provide the interested parties with notice of such de-

1 termination and an opportunity for a hearing in accord-
2 ance with section 556 of title 5, United States Code, not
3 later than 120 days after the date of such determination.
4 If such a hearing is requested, the Secretary shall make
5 a finding concerning the matter by not later than 120 days
6 after the date of the hearing.

7 “(vii) If the Secretary, after a hearing, finds a rea-
8 sonable basis to believe that the employer has violated the
9 requirements under this subsection, the Secretary shall
10 impose a penalty under subparagraph (L).

11 “(viii)(I) The Secretary may conduct surveys of the
12 degree to which employers comply with the requirements
13 under this section.

14 “(II) The Secretary shall—

15 “(aa) conduct annual compliance audits of not
16 less than 1 percent of the employers that employ
17 nonimmigrants described in section 101(a)(15)(L)
18 during the applicable fiscal year;

19 “(bb) conduct annual compliance audits of each
20 employer with more than 100 employees who work
21 in the United States if more than 15 percent of such
22 employees are nonimmigrants described in
23 101(a)(15)(L); and

1 “(cc) make available to the public an executive
2 summary or report describing the general findings of
3 the audits carried out pursuant to this subclause.”.

4 (d) WAGE RATE AND WORKING CONDITIONS FOR L-
5 1 NONIMMIGRANT.—

6 (1) IN GENERAL.—Section 214(c)(2) (8 U.S.C.
7 1184(c)(2)), as amended by this section, is further
8 amended by adding at the end the following:

9 “(J)(i) If an employer, in such previous period speci-
10 fied by the Secretary of Homeland Security, employed 1
11 or more such nonimmigrants, the employer shall provide
12 to the Secretary of Homeland Security the Internal Rev-
13 enue Service Form W-2 Wage and Tax Statement filed
14 by the employer with respect to such nonimmigrants for
15 such period.

16 “(ii) It is a failure to meet a condition under this
17 subparagraph for an employer who has filed a petition to
18 import 1 or more aliens as nonimmigrants described in
19 section 101(a)(15)(L)—

20 “(I) to require such a nonimmigrant to pay a
21 penalty for ceasing employment with the employer
22 before a date mutually agreed to by the non-
23 immigrant and the employer; or

24 “(II) to fail to offer to such a nonimmigrant,
25 during the nonimmigrant’s period of authorized em-

1 ployment, on the same basis, and in accordance with
2 the same criteria, as the employer offers to United
3 States workers, benefits and eligibility for benefits,
4 including—

5 “(aa) the opportunity to participate in
6 health, life, disability, and other insurance
7 plans;

8 “(bb) the opportunity to participate in re-
9 tirement and savings plans; and

10 “(cc) cash bonuses and noncash compensa-
11 tion, such as stock options (whether or not
12 based on performance).

13 “(iii) The Secretary of Homeland Security shall de-
14 termine whether a required payment under clause (iii)(I)
15 is a penalty (and not liquidated damages) pursuant to rel-
16 evant State law.”.

17 (2) RULEMAKING.—The Secretary of Homeland
18 Security shall promulgate rules, after notice and a
19 period of comment, to implement the requirements
20 of section 214(c)(2)(J) of the Immigration and Na-
21 tionality Act (8 U.S.C. 1184(c)(2)), as added by
22 paragraph (1). In promulgating rules under this
23 paragraph, the Secretary shall take into consider-
24 ation any special circumstances relating to
25 intracompany transfers.

1 (e) PENALTIES.—Section 214(c)(2) (8 U.S.C.
2 1184(c)(2)), as amended by this section, is further amend-
3 ed by adding at the end the following:

4 “(K)(i) If the Secretary of Homeland Security finds,
5 after notice and an opportunity for a hearing, a failure
6 by an employer to meet a condition under subparagraph
7 (F), (G), (J), or (L) or a misrepresentation of material
8 fact in a petition to employ 1 or more aliens as non-
9 immigrants described in section 101(a)(15)(L)—

10 “(I) the Secretary shall impose such adminis-
11 trative remedies (including civil monetary penalties
12 in an amount not to exceed \$2,000 per violation) as
13 the Secretary determines to be appropriate;

14 “(II) the Secretary may not, during a period of
15 at least 1 year, approve a petition for that employer
16 to employ 1 or more aliens as such nonimmigrants;
17 and

18 “(III) in the case of a violation of subparagraph
19 (J) or (L), the employer shall be liable to the em-
20 ployees harmed by such violation for lost wages and
21 benefits.

22 “(ii) If the Secretary finds, after notice and an oppor-
23 tunity for a hearing, a willful failure by an employer to
24 meet a condition under subparagraph (F), (G), (J), or (L)
25 or a willful misrepresentation of material fact in a petition

1 to employ 1 or more aliens as nonimmigrants described
2 in section 101(a)(15)(L)—

3 “(I) the Secretary shall impose such adminis-
4 trative remedies (including civil monetary penalties
5 in an amount not to exceed \$10,000 per violation)
6 as the Secretary determines to be appropriate;

7 “(II) the Secretary may not, during a period of
8 at least 2 years, approve a petition filed for that em-
9 ployer to employ 1 or more aliens as such non-
10 immigrants; and

11 “(III) in the case of a violation of subparagraph
12 (J) or (L), the employer shall be liable to the em-
13 ployees harmed by such violation for lost wages and
14 benefits.”.

15 (f) PROHIBITION ON RETALIATION AGAINST L-1
16 NONIMMIGRANTS.—Section 214(c)(2) (8 U.S.C.
17 1184(c)(2)), as amended by this section, is further amend-
18 ed by adding at the end the following:

19 “(L)(i) It is a violation of this subparagraph for an
20 employer who has filed a petition to import 1 or more
21 aliens as nonimmigrants described in section
22 101(a)(15)(L) to take, fail to take, or threaten to take
23 or fail to take, a personnel action, or to intimidate, threat-
24 en, restrain, coerce, blacklist, discharge, or discriminate

1 in any other manner against an employee because the em-
2 ployee—

3 “(I) has disclosed information that the em-
4 ployee reasonably believes evidences a violation of
5 this subsection, or any rule or regulation pertaining
6 to this subsection; or

7 “(II) cooperates or seeks to cooperate with the
8 requirements of this subsection, or any rule or regu-
9 lation pertaining to this subsection.

10 “(ii) In this subparagraph, the term ‘employee’ in-
11 cludes—

12 “(I) a current employee;

13 “(II) a former employee; and

14 “(III) an applicant for employment.”.

15 (g) TECHNICAL AMENDMENTS.—Section 214(c)(2)
16 (8 U.S.C. 1184(c)(2)), as amended by this section, is fur-
17 ther amended by striking “Attorney General” each place
18 it appears and inserting “Secretary of Homeland Secu-
19 rity”.

20 (h) REPORTS ON L-1 NONIMMIGRANTS.—Section
21 214(c)(8) (8 U.S.C. 1184(c)(8)) is amended by inserting
22 “(L),” after “(H),”.

23 **SEC. 457. APPLICATION.**

24 Except as specifically otherwise provided, the amend-
25 ments made by this section and subchapter C shall apply

1 to applications filed on or after the date of the enactment
2 of this Act.

3 **SEC. 458. REPORT ON L-1 BLANKET PETITION PROCESS.**

4 (a) REQUIREMENT FOR REPORT.—Not later than 6
5 months after the date of the enactment of this Act, the
6 Inspector General of the Department of Homeland Secu-
7 rity shall submit a report to the appropriate committees
8 of Congress regarding the use of blanket petitions under
9 section 214(c)(2)(A) of the Immigration and Nationality
10 Act (8 U.S.C. 1184(c)(2)(A)).

11 (b) CONTENTS.—The report submitted under sub-
12 section (a) shall assess the efficiency and reliability of the
13 process for reviewing the blanket petitions described in
14 subsection (a), including whether the process includes ade-
15 quate safeguards against fraud and abuse.

16 (c) APPROPRIATE COMMITTEES OF CONGRESS.—In
17 this section the term “appropriate committees of Con-
18 gress” means—

19 (1) the Committee on Homeland Security and
20 Governmental Affairs of the Senate;

21 (2) the Committee on the Judiciary of the Sen-
22 ate;

23 (3) the Committee on Homeland Security of the
24 House of Representatives; and

1 (4) the Committee on the Judiciary of the
2 House of Representatives.

3 **CHAPTER 6—MISCELLANEOUS**

4 **EMPLOYMENT VISA REFORMS**

5 **SEC. 461. PROVIDING PREMIUM PROCESSING OF EMPLOY-**
6 **MENT-BASED VISA PETITIONS.**

7 Pursuant to section 286(u) of the Immigration and
8 Nationality Act (8 U.S.C. 1356(u)), the Secretary shall
9 establish and collect—

10 (a) a fee for premium processing of employment-
11 based immigrant petitions; and

12 (b) a fee for premium processing of an administrative
13 appeal of any decision on a permanent employment-based
14 immigrant petition.

15 **SEC. 462. VISA REVALIDATION.**

16 Section 222 (8 U.S.C. 1202) is amended—

17 (1) in subsection (h), in the matter preceding
18 subparagraph (1), by inserting “and except as pro-
19 vided under subsection (i),” after “Act”; and

20 (2) by adding at the end the following:

21 “(i) The Secretary of State shall permit an alien
22 granted a nonimmigrant visa under subparagraph (E),
23 (H), (I), (L), (O), or (P) of section 101(a)(15) to apply
24 for a renewal of such visa within the United States if—

1 “(1) such visa is valid or did not expire more
2 than 12 months before the date of such application;

3 “(2) the alien is seeking a nonimmigrant visa
4 under the same subparagraph under which the alien
5 had previously received a visa; and

6 “(3) the alien has complied with the immigra-
7 tion laws and regulations of the United States.”.

8 **SEC. 463. APPLICATION FEES FOR INTENDING IMMI-**
9 **GRANTS.**

10 Section 402 of Public Law 111–230 is amended—

11 (1) in subsection (a), by inserting “and are not
12 intending immigrants” before the period at the end;

13 (2) in subsection (b), by inserting “and are not
14 intending immigrants” before the period at the end;

15 and

16 (3) by adding at the end the following:

17 “(d) Subsections (a) and (b) shall not apply to sea-
18 sonal or intermittent nonimmigrants, and family members
19 of nonimmigrants described in section 101(a)(15)(L).

20 “(e) For purposes of subsections (a) and (b), the
21 term ‘intending immigrant’ means any alien who intends
22 to work and reside permanently in the United States, as
23 evidenced by—

1 “(1) a pending or approved application for alien
2 employment certification under section 212(a)(5)(A);
3 or

4 “(2) a pending or approved petition under para-
5 graph (1), (2) or (3) of section 203(b).”.

6 **SEC. 464. E-1, E-2, AND L-1 VISAS.**

7 (a) E-1 AND E-2 VISAS.—Section 101(a)(15)(E) (8
8 U.S.C. 1101(a)(15)(E)) is amended—

9 (1) by striking “of commerce and navigation”;

10 (2) by redesignating clause (iii) as clause (iv);

11 and

12 (3) by inserting “(iii) to be employed by an en-
13 tity described in clause (i) or (ii) as a manager, su-
14 pervisor, or employee with essential skills to the en-
15 terprise, which is at least 50 percent owned by na-
16 tionals of the treaty country and, if the entity is de-
17 scribed in clause (ii), 1 or more nationals of the
18 treaty country have invested, or are actively in proc-
19 ess of investing, a substantial amount of capital to
20 the enterprise;”.

21 (b) L-1 VISAS FOR SMALL COMPANIES.—Section
22 (a)(44)(C) of 8 U.S.C. 1101 is amended by inserting at
23 the end of the paragraph the following: “Neither the small
24 size of the organization, nor the small number of employ-

ees shall be a negative factor in determining managerial or executive status”.

SEC. 465. TIME LIMITS FOR NONIMMIGRANTS TO DEPART THE UNITED STATES.

Section 214 (8 U.S.C. 1184) is amended by adding at the end the following:

“(s) SEPARATED EMPLOYEES AND DEPENDENTS.—

“(1) IN GENERAL.—Any alien who ceases to be employed by the alien’s petitioning employer, regardless of the reason for such separation, shall be automatically granted a period of authorized stay equal to 60 days from the date of separation in which to—

“(A) depart the United States; or

“(B) apply for change or extension of status.

“(2) SPOUSE AND CHILDREN.—

“(A) IN GENERAL.—The spouse and children of an alien described in paragraph (1) shall be automatically granted a period of authorized stay equal to the principal alien employee.

“(B) DEATH OF PRINCIPAL ALIEN EMPLOYEE.—The spouse and children of a nonimmigrant alien who dies shall be entitled to retain the dependent nonimmigrant status to

1 which they were eligible at the time of such
2 death until the later of—

3 “(i) 1 year after such death; or

4 “(ii) the date on which an adjudica-
5 tion of benefits under section 204(l) is
6 completed.”.

7 **CHAPTER 7—POWER ACT**

8 **SEC. 471. SHORT TITLE.**

9 This chapter may be cited as the“ Protect Our Work-
10 ers from Exploitation and Retaliation Act” or the
11 “POWER Act”.

12 **SEC. 472. VICTIMS OF SERIOUS LABOR AND EMPLOYMENT**
13 **VIOLATIONS OR CRIME.**

14 (a) PROTECTION FOR VICTIMS OF LABOR AND EM-
15 PLOYMENT VIOLATIONS.—Section 101(a)(15)(U) (8
16 U.S.C. 1101(a)(15)(U)) is amended—

17 (1) in clause (i)—

18 (A) by amending subclause (I) to read as
19 follows:

20 “(I) the alien—

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

1 “(bb) has suffered substan-
2 tial abuse or harm related to a
3 violation described in clause (iv);

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

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

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

16 (C) in subclause (III)—

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

24 (ii) by inserting “, or investigating,
25 prosecuting, or seeking civil remedies for a

- 1 labor or employment violation related to a
2 workplace claim described in clause (iv)”
3 before the semicolon at the end; and
4 (D) in subclause (IV)—
5 (i) by inserting “(aa)” after “(IV)”;
6 and
7 (ii) by adding at the end the fol-
8 lowing: “or
9 “(bb) a workplace claim de-
10 scribed in clause (iv) resulted
11 from a labor or employment vio-
12 lation;”;
13 (2) in clause (ii)(II), by striking “and” at the
14 end;
15 (3) in clause (iii), by striking “or” at the end
16 and inserting “and”; and
17 (4) by adding at the end the following:
18 “(iv) in the labor or employment vio-
19 lation related to a workplace claim, the
20 alien—
21 “(I) has filed, is a material wit-
22 ness in, or is likely to be helpful in the
23 investigation of, a workplace claim (as
24 defined in section
25 274A(e)(10)(C)(iii)(II)); and

1 “(II) reasonably fears, has been
2 threatened with, or has been the vic-
3 tim of, an action involving force, phys-
4 ical restraint, retaliation, or abuse of
5 the immigration or other legal process
6 against the alien or another person by
7 the employer in relation to acts under-
8 lying the workplace claim or related to
9 the filing of the workplace claim; or”;

10 (b) TEMPORARY PROTECTION FOR VICTIMS OF
11 CRIME, LABOR, AND EMPLOYMENT VIOLATIONS.—Not-
12 withstanding any other provision of law, the Secretary
13 may permit an alien to temporarily remain in the United
14 States and grant the alien employment authorization if the
15 Secretary determines that the alien—

16 (1) has filed for relief under section
17 101(a)(15)(U) of the Immigration and Nationality
18 Act (8 U.S.C. 1101(a)(15)(U)); or

19 (2)(A) has filed, or is a material witness to, a
20 bona fide workplace claim (as defined in section
21 274A(e)(10)(B)(iii)(II) of such Act, as added by sec-
22 tion 3(b)); and

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

- 1 (i) a Federal, State, or local law enforce-
2 ment official;
- 3 (ii) a Federal, State, or local prosecutor;
- 4 (iii) a Federal, State, or local judge;
- 5 (iv) the Department of Homeland Security;
- 6 (v) the Equal Employment Opportunity
7 Commission;
- 8 (vi) the Department of Labor;
- 9 (vii) the National Labor Relations Board;
- 10 or
- 11 (viii) other Federal, State, or local authori-
12 ties investigating, prosecuting, or seeking civil
13 remedies related to the workplace claim.

14 (c) CONFORMING AMENDMENTS.—Section 214(p) (8
15 U.S.C. 1184(p)) is amended—

- 16 (1) in paragraph (1), by inserting “or inves-
17 tigating, prosecuting, or seeking civil remedies for
18 workplace claims described in section
19 101(a)(15)(U)(iv)” after “section
20 101(a)(15)(U)(iii)” each place such term appears;
- 21 (2) in paragraph (2)(A), by striking “10,000”
22 and inserting “20,000”; and
- 23 (3) in paragraph (6)—

1 (A) by inserting “or workplace claims de-
2 scribed in section 101(a)(15)(U)(iv)” after “de-
3 scribed in section 101(a)(15)(U)(iii)”;

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

6 (d) ADJUSTMENT OF STATUS FOR VICTIMS OF
7 CRIMES.—Section 245(m)(1) (8 U.S.C. 1255(m)(1)) is
8 amended by inserting “or an investigation or prosecution
9 regarding a workplace claim” after “prosecution”.

10 (e) CHANGE OF NONIMMIGRANT CLASSIFICATION.—
11 Section 384(a)(1) of the Illegal Immigration Reform and
12 Immigrant Responsibility Act of 1996 (8 U.S.C.
13 1367(a)(1)) is amended—

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

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

20 (3) by inserting after subparagraph (F) the fol-
21 lowing:

22 “(G) the alien’s employer.”

23 **SEC. 473. LABOR ENFORCEMENT ACTIONS.**

24 (a) REMOVAL PROCEEDINGS.—Section 239(e) (8
25 U.S.C. 1229(e)) is amended—

1 (1) in paragraph (1)—

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

4 (B) by inserting “or as a result of informa-
5 tion provided to the Department of Homeland
6 Security in retaliation against individuals for
7 exercising or attempting to exercise their em-
8 ployment rights or other legal rights” after
9 “paragraph (2)”; and

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

12 “(C) At a facility about which a workplace
13 claim has been filed or is contemporaneously
14 filed.”.

15 (b) UNLAWFUL EMPLOYMENT OF ALIENS.—Section
16 274A(e) (8 U.S.C. 1324a(e)) is amended by adding at the
17 end the following:

18 “(10) CONDUCT IN ENFORCEMENT ACTIONS.—

19 “(A) ENFORCEMENT ACTION.—If the De-
20 partment of Homeland Security undertakes an
21 enforcement action at a facility about which a
22 workplace claim has been filed or is contem-
23 poraneously filed, or as a result of information
24 provided to the Department in retaliation
25 against employees for exercising their rights re-

1 lated to a workplace claim, the Department
2 shall ensure that—

3 “(i) any aliens arrested or detained
4 who are necessary for the investigation or
5 prosecution of workplace claim violations
6 or criminal activity (as described in sub-
7 paragraph (T) or (U) of section
8 101(a)(15)) are not removed from the
9 United States until after the Depart-
10 ment—

11 “(I) notifies the appropriate law
12 enforcement agency with jurisdiction
13 over such violations or criminal activ-
14 ity; and

15 “(II) provides such agency with
16 the opportunity to interview such
17 aliens; and

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

21 “(B) PROTECTIONS FOR VICTIMS OF
22 CRIME, LABOR, AND EMPLOYMENT VIOLA-
23 TIONS.—

24 “(i) STAY OF REMOVAL OR ABEYANCE
25 OF REMOVAL PROCEEDINGS.—An alien

1 against whom removal proceedings have
2 been initiated under chapter 4 of title II,
3 who has filed a workplace claim, who is a
4 material witness in any pending or antici-
5 pated proceeding involving a workplace
6 claim, or who has filed for relief under sec-
7 tion 101(a)(15)(U), shall be entitled to a
8 stay of removal or an abeyance of removal
9 proceedings and to employment authoriza-
10 tion until the resolution of the workplace
11 claim or the denial of relief under section
12 101(a)(15)(U) after exhaustion of adminis-
13 trative appeals, whichever is later, unless
14 the Department establishes, by a prepon-
15 derance of the evidence in proceedings be-
16 fore the immigration judge presiding over
17 that alien’s removal hearing, that—

18 “(I) the Department initiated the
19 alien’s removal proceeding for wholly
20 independent reasons and not based
21 on, or as a result of, any information
22 provided to, or obtained by, the De-
23 partment—

24 “(aa) from the alien’s em-
25 ployer;

1 “(bb) from any outside
2 source, including any anonymous
3 source or any individual de-
4 scribed in subparagraphs (A)
5 through (G) of section
6 1384(a)(1) of the Illegal Immi-
7 gration Reform and Immigrant
8 Responsibility Act of 1996 (8
9 U.S.C. 1367(a)(1)); or

10 “(cc) during the prosecution
11 or investigation of the workplace
12 claim; and

13 “(II) the workplace claim was
14 filed in a bad faith with the intent to
15 delay or avoid the alien’s removal.

16 “(ii) DURATION.—Any stay of re-
17 moval or abeyance of removal proceedings
18 and employment authorization issued pur-
19 suant to clause (i) shall remain valid until
20 the resolution of the workplace claim or
21 the denial of relief under section
22 101(a)(15)(U) after the exhaustion of ad-
23 ministrative appeals, and shall be extended
24 by the Secretary of Homeland Security for

1 a period of not longer than 3 additional
2 years upon determining that—

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

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

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

11 “(iii) DEFINITIONS.—In this section:

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

1 “(II) WORKPLACE CLAIM.—The
2 term ‘workplace claim’ means any
3 written or oral claim, charge, com-
4 plaint, or grievance filed with, commu-
5 nicated to, or submitted to the em-
6 ployer, a Federal, State, or local agen-
7 cy or court, or an employee represent-
8 ative related to the violation of appli-
9 cable Federal, State, and local labor
10 laws, including laws concerning wages
11 and hours, labor relations, family and
12 medical leave, occupational health and
13 safety, or nondiscrimination.”.

14 **SEC. 474. AUTHORIZATION OF APPROPRIATIONS.**

15 There are authorized to be appropriated such sums
16 as may be necessary to carry out this chapter and the
17 amendments made by this chapter.

18 **CHAPTER 8—AGRICULTURAL JOB OPPOR-**
19 **TUNITIES, BENEFITS, AND SECURITY**

20 **SEC. 475. SHORT TITLE.**

21 This chapter may be cited as the “Agricultural Job
22 Opportunities, Benefits, and Security Act of 2010” or the
23 “AgJOBS Act of 2010”.

1 **Subchapter A—Blue Card Status**

2 **SEC. 476. REQUIREMENTS FOR BLUE CARD STATUS.**

3 (a) **REQUIREMENT TO GRANT BLUE CARD STA-**
4 **TUS.**—Notwithstanding any other provision of law, the
5 Secretary shall, pursuant to the requirements of this sec-
6 tion, grant blue card status to an alien who qualifies under
7 this section if the Secretary determines that the alien—

8 (1) has performed agricultural employment in
9 the United States for at least 863 hours or 150
10 work days during the 24-month period ending on
11 December 31, 2008;

12 (2) applied for such status during the 18-month
13 application period beginning on the first day of the
14 seventh month that begins after the date of the en-
15 actment of this Act;

16 (3) is otherwise admissible to the United States
17 under section 212 of the Immigration and Nation-
18 ality Act (8 U.S.C. 1182), except as otherwise pro-
19 vided under section 478(a)(2); and

20 (4) has not been convicted of any felony or a
21 misdemeanor, an element of which involves bodily in-
22 jury, threat of serious bodily injury, or harm to
23 property in excess of \$500.

24 (b) **AUTHORIZED TRAVEL.**—An alien who is granted
25 blue card status is authorized to travel outside the United

1 States (including commuting to the United States from
2 a residence in a foreign country) in the same manner as
3 an alien lawfully admitted for permanent residence.

4 (c) AUTHORIZED EMPLOYMENT.—The Secretary
5 shall provide an alien who is granted blue card status an
6 employment authorized endorsement or other appropriate
7 work permit, in the same manner as an alien lawfully ad-
8 mitted for permanent residence.

9 (d) TERMINATION OF BLUE CARD STATUS.—

10 (1) DEPORTABLE ALIENS.—The Secretary shall
11 terminate blue card status granted to an alien if the
12 Secretary determines that the alien is deportable.

13 (2) OTHER GROUNDS FOR TERMINATION.—The
14 Secretary shall terminate blue card status granted to
15 an alien if—

16 (A) the Secretary finds, by a preponder-
17 ance of the evidence, that the adjustment to
18 blue card status was the result of fraud or will-
19 ful misrepresentation, as described in section
20 212(a)(6)(C)(i) of the Immigration and Nation-
21 ality Act (8 U.S.C. 1182(a)(6)(C)(i)); or

22 (B) the alien—

23 (i) commits an act that makes the
24 alien inadmissible to the United States
25 under section 212 of the Immigration and

1 Nationality Act (8 U.S.C. 1182), except as
2 provided under section 478(a)(2);

3 (ii) is convicted of a felony or 3 or
4 more misdemeanors committed in the
5 United States;

6 (iii) is convicted of an offense, an ele-
7 ment of which involves bodily injury, threat
8 of serious bodily injury, or harm to prop-
9 erty in excess of \$500; or

10 (iv) fails to perform the agricultural
11 employment required under paragraph
12 (1)(A) of section 478(a) unless the alien
13 was unable to work in agricultural employ-
14 ment due to the extraordinary cir-
15 cumstances described in paragraph (3) of
16 such section.

17 (e) RECORD OF EMPLOYMENT.—

18 (1) IN GENERAL.—Each employer of an alien
19 granted blue card status shall annually—

20 (A) provide a written record of employ-
21 ment to the alien; and

22 (B) provide a copy of such record to the
23 Secretary.

24 (2) CIVIL PENALTIES.—

1 (A) IN GENERAL.—If the Secretary deter-
2 mines, after notice and opportunity for a hear-
3 ing, that an employer of an alien granted blue
4 card status has failed to provide the record of
5 employment required under paragraph (1) or
6 has provided a false statement of material fact
7 in such a record, the employer shall be subject
8 to a civil penalty in an amount not to exceed
9 \$1,000 per violation.

10 (B) LIMITATION.—The penalty applicable
11 under subparagraph (A) for failure to provide
12 records shall not apply unless the alien has pro-
13 vided the employer with evidence of employment
14 authorization granted under this section.

15 (3) SUNSET.—The obligation under paragraph
16 (1) shall terminate on the date that is 6 years after
17 the date of the enactment of this Act.

18 (f) REQUIRED FEATURES OF IDENTITY CARD.—The
19 Secretary shall provide each alien granted blue card sta-
20 tus, and the spouse and any child of each such alien resid-
21 ing in the United States, with a card that contains—

22 (1) an encrypted, machine-readable, electronic
23 identification strip that is unique to the alien to
24 whom the card is issued;

1 (2) biometric identifiers, including fingerprints
2 and a digital photograph; and

3 (3) physical security features designed to pre-
4 vent tampering, counterfeiting, or duplication of the
5 card for fraudulent purposes.

6 (g) FINE.—An alien granted blue card status shall
7 pay a \$100 fine to the Secretary.

8 (h) MAXIMUM NUMBER.—The Secretary may not
9 issue more than 1,350,000 blue cards during the 5-year
10 period beginning on the date of the enactment of this Act.

11 (i) TREATMENT OF ALIENS GRANTED BLUE CARD
12 STATUS.—

13 (1) IN GENERAL.—Except as otherwise pro-
14 vided under this section, an alien granted blue card
15 status (including a spouse or child of the alien
16 granted derivative status) shall be considered to be
17 an alien lawfully admitted for permanent residence
18 for purposes of any law other than any provision of
19 the Immigration and Nationality Act (8 U.S.C. 1101
20 et seq.).

21 (2) DELAYED ELIGIBILITY FOR CERTAIN FED-
22 ERAL PUBLIC BENEFITS.—Except as otherwise pro-
23 vided in law, an alien granted blue card status (in-
24 cluding a spouse or child of the alien granted deriva-
25 tive status) shall not be eligible, by reason of such

1 status, for any form of assistance or benefit de-
2 scribed in section 403(a) of the Personal Responsi-
3 bility and Work Opportunity Reconciliation Act of
4 1996 (8 U.S.C. 1613(a)) until 5 years after the date
5 on which the alien is granted an adjustment of sta-
6 tus under section 478.

7 **SEC. 477. APPLICATION FOR BLUE CARD STATUS.**

8 (a) SUBMISSION.—The Secretary shall provide that—

9 (1) applications for blue card status may be
10 submitted—

11 (A) to the Secretary if the applicant is rep-
12 resented by an attorney or a nonprofit religious,
13 charitable, social service, or similar organization
14 recognized by the Board of Immigration Ap-
15 peals under section 292.2 of title 8, Code of
16 Federal Regulations; or

17 (B) to a qualified designated entity if the
18 applicant consents to the forwarding of the ap-
19 plication to the Secretary; and

20 (2) applications for adjustment of status under
21 section 478 shall be filed directly with the Secretary.

22 (b) QUALIFIED DESIGNATED ENTITY DEFINED.—In
23 this section, the term “qualified designated entity”
24 means—

1 (1) a qualified farm labor organization or an
2 association of employers designated by the Sec-
3 retary; or

4 (2) any such other person designated by the
5 Secretary if that Secretary determines such person
6 is qualified and has substantial experience, dem-
7 onstrated competence, and has a history of long-
8 term involvement in the preparation and submission
9 of applications for adjustment of status under sec-
10 tion 209, 210, or 245 of the Immigration and Na-
11 tionality Act (8 U.S.C. 1159, 1160, and 1255), the
12 Act entitled “An Act to adjust the status of Cuban
13 refugees to that of lawful permanent residents of the
14 United States, and for other purposes”, approved
15 November 2, 1966 (Public Law 89–732; 8 U.S.C.
16 1255 note), Public Law 95–145 (8 U.S.C. 1255
17 note), or the Immigration Reform and Control Act
18 of 1986 (Public Law 99–603; 100 Stat. 3359) or
19 any amendment made by that Act.

20 (c) PROOF OF ELIGIBILITY.—

21 (1) IN GENERAL.—An alien may establish that
22 the alien meets the requirement of section 476(a)(1)
23 or 478(a)(1) through government employment
24 records or records supplied by employers or collec-
25 tive bargaining organizations, and other reliable doc-

1 umentation as the alien may provide. The Secretary
2 shall establish special procedures to properly credit
3 work in cases in which an alien was employed under
4 an assumed name.

5 (2) DOCUMENTATION OF WORK HISTORY.—

6 (A) BURDEN OF PROOF.—An alien apply-
7 ing for status under section 476(a) or 478(a)
8 has the burden of proving by a preponderance
9 of the evidence that the alien has worked the
10 requisite number of hours or days required
11 under section 476(a)(1) or 478(a)(1), as appli-
12 cable.

13 (B) TIMELY PRODUCTION OF RECORDS.—

14 If an employer or farm labor contractor employ-
15 ing such an alien has kept proper and adequate
16 records respecting such employment, the alien's
17 burden of proof under subparagraph (A) may
18 be met by securing timely production of those
19 records under regulations to be promulgated by
20 the Secretary.

21 (C) SUFFICIENT EVIDENCE.—An alien

22 may meet the burden of proof under subpara-
23 graph (A) to establish that the alien has per-
24 formed the days or hours of work required by
25 section 476(a)(1) or 478(a)(1) by producing

1 sufficient evidence to show the extent of that
2 employment as a matter of just and reasonable
3 inference.

4 (d) APPLICATIONS SUBMITTED TO QUALIFIED DES-
5 IGNATED ENTITIES.—

6 (1) REQUIREMENTS.—Each qualified des-
7 ignated entity shall agree—

8 (A) to forward to the Secretary an applica-
9 tion submitted to that entity pursuant to sub-
10 section (a)(1)(B) if the applicant has consented
11 to such forwarding;

12 (B) not to forward to the Secretary any
13 such application if the applicant has not con-
14 sented to such forwarding; and

15 (C) to assist an alien in obtaining docu-
16 mentation of the alien's work history, if the
17 alien requests such assistance.

18 (2) NO AUTHORITY TO MAKE DETERMINA-
19 TIONS.—No qualified designated entity may make a
20 determination required by this subtitle to be made
21 by the Secretary.

22 (e) LIMITATION ON ACCESS TO INFORMATION.—Files
23 and records collected or compiled by a qualified designated
24 entity for the purposes of this section are confidential and
25 the Secretary shall not have access to such a file or record

1 relating to an alien without the consent of the alien, except
2 as allowed by a court order issued pursuant to subsection
3 (f).

4 (f) CONFIDENTIALITY OF INFORMATION.—

5 (1) IN GENERAL.—Except as otherwise pro-
6 vided in this section, the Secretary or any other offi-
7 cial or employee of the Department or a bureau or
8 agency of the Department is prohibited from—

9 (A) using information furnished by the ap-
10 plicant pursuant to an application filed under
11 this title, the information provided by an appli-
12 cant to a qualified designated entity, or any in-
13 formation provided by an employer or former
14 employer for any purpose other than to make a
15 determination on the application or for impos-
16 ing the penalties described in subsection (g);

17 (B) making any publication in which the
18 information furnished by any particular indi-
19 vidual can be identified; or

20 (C) permitting a person other than a
21 sworn officer or employee of the Department or
22 a bureau or agency of the Department or, with
23 respect to applications filed with a qualified
24 designated entity, that qualified designated en-
25 tity, to examine individual applications.

1 (2) REQUIRED DISCLOSURES.—The Secretary
2 shall provide the information furnished under this
3 title or any other information derived from such fur-
4 nished information to—

5 (A) a duly recognized law enforcement en-
6 tity in connection with a criminal investigation
7 or prosecution, if such information is requested
8 in writing by such entity; or

9 (B) an official coroner, for purposes of af-
10 firmatively identifying a deceased individual,
11 whether or not the death of such individual re-
12 sulted from a crime.

13 (3) CONSTRUCTION.—

14 (A) IN GENERAL.—Nothing in this sub-
15 section may be construed to limit the use, or re-
16 lease, for immigration enforcement purposes or
17 law enforcement purposes, of information con-
18 tained in files or records of the Department
19 pertaining to an application filed under this sec-
20 tion, other than information furnished by an
21 applicant pursuant to the application, or any
22 other information derived from the application,
23 that is not available from any other source.

24 (B) CRIMINAL CONVICTIONS.—Notwith-
25 standing any other provision of this subsection,

1 information concerning whether the alien apply-
2 ing for blue card status or an adjustment of
3 status under section 478 has been convicted of
4 a crime at any time may be used or released for
5 immigration enforcement or law enforcement
6 purposes.

7 (4) CRIME.—Any person who knowingly uses,
8 publishes, or permits information to be examined in
9 violation of this subsection shall be subject to a fine
10 in an amount not to exceed \$10,000.

11 (g) PENALTIES FOR FALSE STATEMENTS IN APPLI-
12 CATIONS.—

13 (1) CRIMINAL PENALTY.—Any person who—

14 (A) files an application for blue card status
15 or an adjustment of status under section 478
16 and knowingly and willfully falsifies, conceals,
17 or covers up a material fact or makes any false,
18 fictitious, or fraudulent statements or represen-
19 tations, or makes or uses any false writing or
20 document knowing the same to contain any
21 false, fictitious, or fraudulent statement or
22 entry; or

23 (B) creates or supplies a false writing or
24 document for use in making such an applica-
25 tion,

1 shall be fined in accordance with title 18, United
2 States Code, imprisoned not more than 5 years, or
3 both.

4 (2) INADMISSIBILITY.—An alien who is con-
5 victed of a crime under paragraph (1) shall be con-
6 sidered to be inadmissible to the United States on
7 the ground described in section 212(a)(6)(C)(i) of
8 the Immigration and Nationality Act (8 U.S.C.
9 1182(a)(6)(C)(i)).

10 (h) ELIGIBILITY FOR LEGAL SERVICES.—Section
11 504(a)(11) of Public Law 104–134 (110 Stat. 1321–53
12 et seq.) shall not be construed to prevent a recipient of
13 funds under the Legal Services Corporation Act (42
14 U.S.C. 2996 et seq.) from providing legal assistance di-
15 rectly related to an application for blue card status or an
16 adjustment of status under section 478.

17 (i) APPLICATION FEES.—

18 (1) FEE SCHEDULE.—The Secretary shall pro-
19 vide for a schedule of fees that—

20 (A) shall be charged for the filing of an
21 application for blue card status or for an ad-
22 justment of status under section 478; and

23 (B) may be charged by qualified des-
24 ignated entities to help defray the costs of serv-
25 ices provided to such applicants.

1 (2) PROHIBITION ON EXCESS FEES BY QUALI-
2 FIED DESIGNATED ENTITIES.—A qualified des-
3 ignated entity may not charge any fee in excess of,
4 or in addition to, the fees authorized under para-
5 graph (1)(B) for services provided to applicants.

6 (3) DISPOSITION OF FEES.—

7 (A) IN GENERAL.—There is established in
8 the general fund of the Treasury a separate ac-
9 count, which shall be known as the “Agricul-
10 tural Worker Immigration Status Adjustment
11 Account”. Notwithstanding any other provision
12 of law, there shall be deposited as offsetting re-
13 ceipts into the account all fees collected under
14 paragraph (1)(A).

15 (B) USE OF FEES FOR APPLICATION PROC-
16 ESSING.—Amounts deposited in the “Agricul-
17 tural Worker Immigration Status Adjustment
18 Account” shall remain available to the Sec-
19 retary until expended for processing applica-
20 tions for blue card status or an adjustment of
21 status under section 478.

22 **SEC. 478. ADJUSTMENT TO PERMANENT RESIDENCE.**

23 (a) IN GENERAL.—Except as provided in subsection
24 (b), the Secretary shall adjust the status of an alien grant-
25 ed blue card status to that of an alien lawfully admitted

1 for permanent residence if the Secretary determines that
2 the following requirements are satisfied:

3 (1) QUALIFYING EMPLOYMENT.—

4 (A) IN GENERAL.—Subject to subpara-
5 graph (B), the alien has performed at least—

6 (i) 5 years of agricultural employment
7 in the United States for at least 100 work
8 days per year, during the 5-year period be-
9 ginning on the date of the enactment of
10 this Act; or

11 (ii) 3 years of agricultural employ-
12 ment in the United States for at least 150
13 work days per year, during the 3-year pe-
14 riod beginning on the date of the enact-
15 ment of this Act.

16 (B) 4-YEAR PERIOD OF EMPLOYMENT.—

17 An alien shall be considered to meet the re-
18 quirements of subparagraph (A) if the alien has
19 performed 4 years of agricultural employment
20 in the United States for at least 150 work days
21 during 3 years of those 4 years and at least
22 100 work days during the remaining year, dur-
23 ing the 4-year period beginning on the date of
24 the enactment of this Act.

1 (2) PROOF.—An alien may demonstrate compli-
2 ance with the requirement under paragraph (1) by
3 submitting—

4 (A) the record of employment described in
5 section 476(e); or

6 (B) documentation that may be submitted
7 under section 477(c).

8 (3) EXTRAORDINARY CIRCUMSTANCES.—

9 (A) IN GENERAL.—In determining whether
10 an alien has met the requirement of paragraph
11 (1)(A), the Secretary may credit the alien with
12 not more than 12 additional months of agricul-
13 tural employment in the United States to meet
14 such requirement if the alien was unable to
15 work in agricultural employment due to—

16 (i) pregnancy, injury, or disease, if the
17 alien can establish such pregnancy, dis-
18 abling injury, or disease through medical
19 records;

20 (ii) illness, disease, or other special
21 needs of a minor child, if the alien can es-
22 tablish such illness, disease, or special
23 needs through medical records;

24 (iii) severe weather conditions that
25 prevented the alien from engaging in agri-

1 cultural employment for a significant pe-
2 riod of time; or

3 (iv) termination from agricultural em-
4 ployment, if the Secretary finds that the
5 termination was without just cause and
6 that the alien was unable to find alter-
7 native agricultural employment after a rea-
8 sonable job search.

9 (B) EFFECT OF FINDING.—A finding
10 made under subparagraph (A)(iv), with respect
11 to an alien, shall not—

12 (i) be conclusive, binding, or admis-
13 sible in a separate or subsequent judicial
14 or administrative action or proceeding be-
15 tween the alien and a current or prior em-
16 ployer of the alien or any other party; or

17 (ii) subject the alien's employer to the
18 payment of attorney fees incurred by the
19 alien in seeking to obtain a finding under
20 subparagraph (A)(iv).

21 (4) APPLICATION PERIOD.—The alien applies
22 for adjustment of status not later than 7 years after
23 the date of the enactment of this Act.

24 (5) FINE.—The alien pays a fine of \$400 to the
25 Secretary.

1 (b) GROUNDS FOR DENIAL OF ADJUSTMENT OF STA-
2 TUS.—The Secretary shall deny an alien granted blue card
3 status an adjustment of status under this section if—

4 (1) the Secretary finds, by a preponderance of
5 the evidence, that the adjustment to blue card status
6 was the result of fraud or willful misrepresentation,
7 as described in section 212(a)(6)(C)(i) of the Immi-
8 gration and Nationality Act (8 U.S.C.
9 1182(a)(6)(C)(i)); or

10 (2) the alien—

11 (A) commits an act that makes the alien
12 inadmissible to the United States under section
13 212 of the Immigration and Nationality Act (8
14 U.S.C. 1182), except as provided under section
15 105(b);

16 (B) is convicted of a felony or 3 or more
17 misdemeanors committed in the United States;

18 (C) is convicted of an offense, an element
19 of which involves bodily injury, threat of serious
20 bodily injury, or harm to property in excess of
21 \$500; or

22 (D) failed to perform the agricultural em-
23 ployment required under paragraph (1)(A) of
24 subsection (a) unless the alien was unable to
25 work in agricultural employment due to the ex-

1 traordinary circumstances described in para-
2 graph (3) of such subsection.

3 (c) GROUND FOR REMOVAL.—Any alien granted
4 blue card status who does not apply for adjustment of sta-
5 tus under this section before the expiration of the applica-
6 tion period described in subsection (a)(4) or who fails to
7 meet the other requirements of subsection (a) by the end
8 of the application period, is deportable and may be re-
9 moved under section 240 of the Immigration and Nation-
10 ality Act (8 U.S.C. 1229a).

11 (d) PAYMENT OF TAXES.—

12 (1) IN GENERAL.—Not later than the date on
13 which an alien’s status is adjusted under this sec-
14 tion, the alien shall establish that the alien does not
15 owe any applicable Federal tax liability by estab-
16 lishing that—

17 (A) no such tax liability exists;

18 (B) all such outstanding tax liabilities have
19 been paid; or

20 (C) the alien has entered into an agree-
21 ment for payment of all outstanding liabilities
22 with the Internal Revenue Service.

23 (2) APPLICABLE FEDERAL TAX LIABILITY.—In
24 paragraph (1) the term “applicable Federal tax li-
25 ability” means liability for Federal taxes, including

1 penalties and interest, owed for any year during the
2 period of employment required under subsection
3 (a)(1) for which the statutory period for assessment
4 of any deficiency for such taxes has not expired.

5 (3) IRS COOPERATION.—The Secretary of the
6 Treasury shall establish rules and procedures under
7 which the Commissioner of Internal Revenue shall
8 provide documentation to an alien upon request to
9 establish the payment of all taxes required by this
10 subsection.

11 (e) SPOUSES AND MINOR CHILDREN.—

12 (1) IN GENERAL.—Notwithstanding any other
13 provision of law, the Secretary shall confer the sta-
14 tus of lawful permanent resident on the spouse and
15 minor child of an alien granted any adjustment of
16 status under subsection (a), including any individual
17 who was a minor child on the date such alien was
18 granted blue card status, if the spouse or minor
19 child applies for such status, or if the principal alien
20 includes the spouse or minor child in an application
21 for adjustment of status to that of a lawful perma-
22 nent resident.

23 (2) TREATMENT OF SPOUSES AND MINOR CHIL-
24 DREN.—

1 (A) GRANTING OF STATUS AND RE-
2 MOVAL.—The Secretary shall grant derivative
3 status to the alien spouse and any minor child
4 residing in the United States of an alien grant-
5 ed blue card status and shall not remove such
6 derivative spouse or child during the period that
7 the alien granted blue card status maintains
8 such status, except as provided in paragraph
9 (3). A grant of derivative status to such a
10 spouse or child under this subparagraph shall
11 not decrease the number of aliens who may re-
12 ceive blue card status under subsection (h) of
13 section 101.

14 (B) TRAVEL.—The derivative spouse and
15 any minor child of an alien granted blue card
16 status may travel outside the United States in
17 the same manner as an alien lawfully admitted
18 for permanent residence.

19 (C) EMPLOYMENT.—The derivative spouse
20 of an alien granted blue card status may apply
21 to the Secretary for a work permit to authorize
22 such spouse to engage in any lawful employ-
23 ment in the United States while such alien
24 maintains blue card status.

1 (3) GROUNDS FOR DENIAL OF ADJUSTMENT OF
2 STATUS AND REMOVAL.—The Secretary shall deny
3 an alien spouse or child adjustment of status under
4 paragraph (1) and may remove such spouse or child
5 under section 240 of the Immigration and Nation-
6 ality Act (8 U.S.C. 1229a) if the spouse or child—

7 (A) commits an act that makes the alien
8 spouse or child inadmissible to the United
9 States under section 212 of such Act (8 U.S.C.
10 1182), except as provided under section
11 479(a)(2);

12 (B) is convicted of a felony or 3 or more
13 misdemeanors committed in the United States;
14 or

15 (C) is convicted of an offense, an element
16 of which involves bodily injury, threat of serious
17 bodily injury, or harm to property in excess of
18 \$500.

19 **SEC. 479. OTHER PROVISIONS.**

20 (a) WAIVER OF NUMERICAL LIMITATIONS AND CER-
21 TAIN GROUNDS FOR INADMISSIBILITY.—

22 (1) NUMERICAL LIMITATIONS DO NOT APPLY.—

23 The numerical limitations of sections 201 and 202
24 of the Immigration and Nationality Act (8 U.S.C.
25 1151 and 1152) shall not apply to the adjustment

1 of aliens to lawful permanent resident status under
2 section 478.

3 (2) WAIVER OF CERTAIN GROUNDS OF INAD-
4 MISSIBILITY.—In the determination of an alien’s eli-
5 gibility for status under section 101(a) or an alien’s
6 eligibility for adjustment of status under section
7 478(b)(2)(A) the following rules shall apply:

8 (A) GROUNDS OF EXCLUSION NOT APPLI-
9 CABLE.—The provisions of paragraphs (5),
10 (6)(A), (7), and (9) of section 212(a) of the Im-
11 migration and Nationality Act (8 U.S.C.
12 1182(a)) shall not apply.

13 (B) WAIVER OF OTHER GROUNDS.—

14 (i) IN GENERAL.—Except as provided
15 in subparagraph (B), the Secretary may
16 waive any other provision of such section
17 212(a) in the case of individual aliens for
18 humanitarian purposes, to ensure family
19 unity, or if otherwise in the public interest.

20 (ii) GROUNDS THAT MAY NOT BE
21 WAIVED.—Subparagraphs (A), (B), (C),
22 (D), (G), (H), and (I) of paragraph (2)
23 and paragraphs (3) and (4) of such section
24 212(a) may not be waived by the Secretary
25 under subparagraph (A).

1 (iii) CONSTRUCTION.—Nothing in this
2 paragraph shall be construed as affecting
3 the authority of the Secretary other than
4 under this subparagraph to waive provi-
5 sions of such section 212(a).

6 (C) SPECIAL RULE FOR DETERMINATION
7 OF PUBLIC CHARGE.—An alien is not ineligible
8 for blue card status or an adjustment of status
9 under section 478 by reason of a ground of in-
10 admissibility under section 212(a)(4) of the Im-
11 migration and Nationality Act (8 U.S.C.
12 1182(a)(4)) if the alien demonstrates a history
13 of employment in the United States evidencing
14 self-support without reliance on public cash as-
15 sistance.

16 (3) TEMPORARY STAY OF REMOVAL AND WORK
17 AUTHORIZATION FOR CERTAIN APPLICANTS.—

18 (A) BEFORE APPLICATION PERIOD.—Ef-
19 fective on the date of enactment of this Act, the
20 Secretary shall provide that, in the case of an
21 alien who is apprehended before the beginning
22 of the application period described in section
23 476(a)(2) and who can establish a nonfrivolous
24 case of eligibility for blue card status (but for
25 the fact that the alien may not apply for such

1 status until the beginning of such period), until
2 the alien has had the opportunity during the
3 first 30 days of the application period to com-
4 plete the filing of an application for blue card
5 status, the alien—

6 (i) may not be removed; and

7 (ii) shall be granted authorization to
8 engage in employment in the United States
9 and be provided an employment authorized
10 endorsement or other appropriate work
11 permit for such purpose.

12 (B) DURING APPLICATION PERIOD.—The
13 Secretary shall provide that, in the case of an
14 alien who presents a nonfrivolous application
15 for blue card status during the application pe-
16 riod described in section 476(a)(2), including
17 an alien who files such an application within 30
18 days of the alien’s apprehension, and until a
19 final determination on the application has been
20 made in accordance with this section, the
21 alien—

22 (i) may not be removed; and

23 (ii) shall be granted authorization to
24 engage in employment in the United States
25 and be provided an employment authorized

1 endorsement or other appropriate work
2 permit for such purpose.

3 (b) ADMINISTRATIVE AND JUDICIAL REVIEW.—

4 (1) IN GENERAL.—There shall be no adminis-
5 trative or judicial review of a determination respect-
6 ing an application for blue card status or adjustment
7 of status under section 478 except in accordance
8 with this section.

9 (2) ADMINISTRATIVE REVIEW.—

10 (A) SINGLE LEVEL OF ADMINISTRATIVE
11 APPELLATE REVIEW.—The Secretary shall es-
12 tablish an appellate authority to provide for a
13 single level of administrative appellate review of
14 such a determination.

15 (B) STANDARD FOR REVIEW.—Such ad-
16 ministrative appellate review shall be based
17 solely upon the administrative record estab-
18 lished at the time of the determination on the
19 application and upon such additional or newly
20 discovered evidence as may not have been avail-
21 able at the time of the determination.

22 (3) JUDICIAL REVIEW.—

23 (A) LIMITATION TO REVIEW OF RE-
24 MOVAL.—There shall be judicial review of such
25 a determination only in the judicial review of an

1 order of removal under section 242 of the Im-
2 migration and Nationality Act (8 U.S.C. 1252).

3 (B) STANDARD FOR JUDICIAL REVIEW.—

4 Such judicial review shall be based solely upon
5 the administrative record established at the
6 time of the review by the appellate authority
7 and the findings of fact and determinations
8 contained in such record shall be conclusive un-
9 less the applicant can establish abuse of discre-
10 tion or that the findings are directly contrary to
11 clear and convincing facts contained in the
12 record considered as a whole.

13 (c) USE OF INFORMATION.—Beginning not later than
14 the first day of the application period described in section
15 476(a)(2), the Secretary, in cooperation with qualified
16 designated entities (as that term is defined in section
17 477(b)), shall broadly disseminate information respecting
18 the benefits that aliens may receive under this subtitle and
19 the requirements that an alien is required to meet to re-
20 ceive such benefits.

21 (d) REGULATIONS, EFFECTIVE DATE, AUTHORIZA-
22 TION OF APPROPRIATIONS.—

23 (1) REGULATIONS.—The Secretary shall issue
24 regulations to implement this chapter not later than

1 the first day of the seventh month that begins after
2 the date of enactment of this Act.

3 (2) EFFECTIVE DATE.—This chapter shall take
4 effect on the date that regulations required under
5 subsection (a) are issued, regardless of whether such
6 regulations are issued on an interim basis or on any
7 other basis.

8 (3) AUTHORIZATION OF APPROPRIATIONS.—
9 There are authorized to be appropriated to the Sec-
10 retary such sums as may be necessary to implement
11 this subtitle, including any sums needed for costs as-
12 sociated with the initiation of such implementation,
13 for fiscal years 2011 and 2012.

14 **SEC. 480. CORRECTION OF SOCIAL SECURITY RECORDS.**

15 (a) IN GENERAL.—Section 208(e)(1) of the Social
16 Security Act (42 U.S.C. 408(e)(1)) is amended—

17 (1) in subparagraph (B)(ii), by striking “or” at
18 the end;

19 (2) in subparagraph (C), by inserting “or” at
20 the end;

21 (3) by inserting after subparagraph (C) the fol-
22 lowing:

23 “(D) who is granted blue card status
24 under the AgJOBS Act of 2010.”; and

1 (4) by striking “1990.” and inserting “1990, or
 2 in the case of an alien described in subparagraph
 3 (D), if such conduct is alleged to have occurred be-
 4 fore the date on which the alien was granted blue
 5 card status.”.

6 (b) EFFECTIVE DATE.—The amendments made by
 7 subsection (a) shall take effect on the first day of the sev-
 8 enth month that begins after the date of the enactment
 9 of this Act.

10 **Subchapter B—Reform of H-2A Worker**
 11 **Program**

12 **SEC. 481. AMENDMENTS TO THE IMMIGRATION AND NA-**
 13 **TIONALITY ACT.**

14 (a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.)
 15 is amended by striking section 218 and inserting the fol-
 16 lowing:

17 **“SEC. 218. H-2A EMPLOYER APPLICATIONS.**

18 “(a) APPLICATIONS TO THE SECRETARY OF
 19 LABOR.—

20 “(1) IN GENERAL.—No alien may be admitted
 21 to the United States as an H-2A worker, or other-
 22 wise provided status as an H-2A worker, unless the
 23 employer has filed with the Secretary of Labor an
 24 application containing—

1 “(A) the assurances described in sub-
2 section (b);

3 “(B) a description of the nature and loca-
4 tion of the work to be performed;

5 “(C) the anticipated period (expected be-
6 ginning and ending dates) for which the work-
7 ers will be needed; and

8 “(D) the number of job opportunities in
9 which the employer seeks to employ the work-
10 ers.

11 “(2) ACCOMPANIED BY JOB OFFER.—Each ap-
12 plication filed under paragraph (1) shall be accom-
13 panied by a copy of the job offer describing the
14 wages and other terms and conditions of employ-
15 ment and the bona fide occupational qualifications
16 that shall be possessed by a worker to be employed
17 in the job opportunity in question.

18 “(b) ASSURANCES FOR INCLUSION IN APPLICA-
19 TIONS.—The assurances referred to in subsection (a)(1)
20 are the following:

21 “(1) JOB OPPORTUNITIES COVERED BY COL-
22 LECTIVE BARGAINING AGREEMENTS.—With respect
23 to a job opportunity that is covered under a collec-
24 tive bargaining agreement:

1 “(A) UNION CONTRACT DESCRIBED.—The
2 job opportunity is covered by a union contract
3 which was negotiated at arm’s length between a
4 bona fide union and the employer.

5 “(B) STRIKE OR LOCKOUT.—The specific
6 job opportunity for which the employer is re-
7 questing an H-2A worker is not vacant because
8 the former occupant is on strike or being locked
9 out in the course of a labor dispute.

10 “(C) NOTIFICATION OF BARGAINING REP-
11 RESENTATIVES.—The employer, at the time of
12 filing the application, has provided notice of the
13 filing under this paragraph to the bargaining
14 representative of the employer’s employees in
15 the occupational classification at the place or
16 places of employment for which aliens are
17 sought.

18 “(D) TEMPORARY OR SEASONAL JOB OP-
19 PORTUNITIES.—The job opportunity is tem-
20 porary or seasonal.

21 “(E) OFFERS TO UNITED STATES WORK-
22 ERS.—The employer has offered or will offer
23 the job to any eligible United States worker
24 who applies and is equally or better qualified
25 for the job for which the nonimmigrant is, or

1 the nonimmigrants are, sought and who will be
2 available at the time and place of need.

3 “(F) PROVISION OF INSURANCE.—If the
4 job opportunity is not covered by the State
5 workers’ compensation law, the employer will
6 provide, at no cost to the worker, insurance cov-
7 ering injury and disease arising out of, and in
8 the course of, the worker’s employment which
9 will provide benefits at least equal to those pro-
10 vided under the State’s workers’ compensation
11 law for comparable employment.

12 “(2) JOB OPPORTUNITIES NOT COVERED BY
13 COLLECTIVE BARGAINING AGREEMENTS.—With re-
14 spect to a job opportunity that is not covered under
15 a collective bargaining agreement:

16 “(A) STRIKE OR LOCKOUT.—The specific
17 job opportunity for which the employer has ap-
18 plied for an H-2A worker is not vacant because
19 the former occupant is on strike or being locked
20 out in the course of a labor dispute.

21 “(B) TEMPORARY OR SEASONAL JOB OP-
22 PORTUNITIES.—The job opportunity is tem-
23 porary or seasonal.

24 “(C) BENEFIT, WAGE, AND WORKING CON-
25 DITIONS.—The employer will provide, at a min-

1 imum, the benefits, wages, and working condi-
2 tions required by section 218A to all workers
3 employed in the job opportunities for which the
4 employer has applied for an H-2A worker
5 under subsection (a) and to all other workers in
6 the same occupation at the place of employ-
7 ment.

8 “(D) NONDISPLACEMENT OF UNITED
9 STATES WORKERS.—The employer did not dis-
10 place and will not displace a United States
11 worker employed by the employer during the
12 period of employment and for a period of 30
13 days preceding the period of employment in the
14 occupation at the place of employment for
15 which the employer has applied for an H-2A
16 worker.

17 “(E) REQUIREMENTS FOR PLACEMENT OF
18 THE NONIMMIGRANT WITH OTHER EMPLOY-
19 ERS.—The employer will not place the non-
20 immigrant with another employer unless—

21 “(i) the nonimmigrant performs du-
22 ties in whole or in part at 1 or more work-
23 sites owned, operated, or controlled by
24 such other employer;

1 “(ii) there are indicia of an employ-
2 ment relationship between the non-
3 immigrant and such other employer; and

4 “(iii) the employer has inquired of the
5 other employer as to whether, and has no
6 actual knowledge or notice that, during the
7 period of employment and for a period of
8 30 days preceding the period of employ-
9 ment, the other employer has displaced or
10 intends to displace a United States worker
11 employed by the other employer in the oc-
12 cupation at the place of employment for
13 which the employer seeks approval to em-
14 ploy H-2A workers.

15 “(F) STATEMENT OF LIABILITY.—The ap-
16 plication form shall include a clear statement
17 explaining the liability under subparagraph (E)
18 of an employer if the other employer described
19 in such subparagraph displaces a United States
20 worker as described in such subparagraph.

21 “(G) PROVISION OF INSURANCE.—If the
22 job opportunity is not covered by the State
23 workers’ compensation law, the employer will
24 provide, at no cost to the worker, insurance cov-
25 ering injury and disease arising out of and in

1 the course of the worker's employment which
2 will provide benefits at least equal to those pro-
3 vided under the State's workers' compensation
4 law for comparable employment.

5 “(H) EMPLOYMENT OF UNITED STATES
6 WORKERS.—

7 “(i) RECRUITMENT.—The employer
8 has taken or will take the following steps
9 to recruit United States workers for the
10 job opportunities for which the H-2A non-
11 immigrant is, or H-2A nonimmigrants are,
12 sought:

13 “(I) CONTACTING FORMER
14 WORKERS.—The employer shall make
15 reasonable efforts through the sending
16 of a letter by United States Postal
17 Service mail, or otherwise, to contact
18 any United States worker the em-
19 ployer employed during the previous
20 season in the occupation at the place
21 of intended employment for which the
22 employer is applying for workers and
23 has made the availability of the em-
24 ployer's job opportunities in the occu-
25 pation at the place of intended em-

1 employment known to such previous
2 workers, unless the worker was termi-
3 nated from employment by the em-
4 ployer for a lawful job-related reason
5 or abandoned the job before the work-
6 er completed the period of employ-
7 ment of the job opportunity for which
8 the worker was hired.

9 “(II) FILING A JOB OFFER WITH
10 THE LOCAL OFFICE OF THE STATE
11 EMPLOYMENT SECURITY AGENCY.—
12 Not later than 28 days before the
13 date on which the employer desires to
14 employ an H-2A worker in a tem-
15 porary or seasonal agricultural job op-
16 portunity, the employer shall submit a
17 copy of the job offer described in sub-
18 section (a)(2) to the local office of the
19 State employment security agency
20 which serves the area of intended em-
21 ployment and authorize the posting of
22 the job opportunity on ‘America’s Job
23 Bank’ or other electronic job registry,
24 except that nothing in this subclause
25 shall require the employer to file an

1 interstate job order under section 653
2 of title 20, Code of Federal Regula-
3 tions.

4 “(III) ADVERTISING OF JOB OP-
5 PORTUNITIES.—Not later than 14
6 days before the date on which the em-
7 ployer desires to employ an H–2A
8 worker in a temporary or seasonal ag-
9 ricultural job opportunity, the em-
10 ployer shall advertise the availability
11 of the job opportunities for which the
12 employer is seeking workers in a pub-
13 lication in the local labor market that
14 is likely to be patronized by potential
15 farm workers.

16 “(IV) EMERGENCY PROCE-
17 DURES.—The Secretary of Labor
18 shall, by regulation, provide a proce-
19 dure for acceptance and approval of
20 applications in which the employer
21 has not complied with the provisions
22 of this subparagraph because the em-
23 ployer’s need for H–2A workers could
24 not reasonably have been foreseen.

1 “(ii) JOB OFFERS.—The employer has
2 offered or will offer the job to any eligible
3 United States worker who applies and is
4 equally or better qualified for the job for
5 which the nonimmigrant is, or non-
6 immigrants are, sought and who will be
7 available at the time and place of need.

8 “(iii) PERIOD OF EMPLOYMENT.—The
9 employer will provide employment to any
10 qualified United States worker who applies
11 to the employer during the period begin-
12 ning on the date on which the H-2A work-
13 er departs for the employer’s place of em-
14 ployment and ending on the date on which
15 50 percent of the period of employment for
16 which the H-2A worker who is in the job
17 was hired has elapsed, subject to the fol-
18 lowing requirements:

19 “(I) PROHIBITION.—No person
20 or entity shall willfully and knowingly
21 withhold United States workers before
22 the arrival of H-2A workers in order
23 to force the hiring of United States
24 workers under this clause.

1 “(II) COMPLAINTS.—Upon re-
2 ceipt of a complaint by an employer
3 that a violation of subclause (I) has
4 occurred, the Secretary of Labor shall
5 immediately investigate. The Sec-
6 retary of Labor shall, within 36 hours
7 of the receipt of the complaint, issue
8 findings concerning the alleged viola-
9 tion. If the Secretary of Labor finds
10 that a violation has occurred, the Sec-
11 retary of Labor shall immediately sus-
12 pend the application of this clause
13 with respect to that certification for
14 that date of need.

15 “(III) PLACEMENT OF UNITED
16 STATES WORKERS.—Before referring
17 a United States worker to an em-
18 ployer during the period described in
19 the matter preceding subclause (I),
20 the Secretary of Labor shall make all
21 reasonable efforts to place the United
22 States worker in an open job accept-
23 able to the worker, if there are other
24 job offers pending with the job service

1 that offer similar job opportunities in
2 the area of intended employment.

3 “(iv) STATUTORY CONSTRUCTION.—

4 Nothing in this subparagraph shall be con-
5 strued to prohibit an employer from using
6 such legitimate selection criteria relevant
7 to the type of job that are normal or cus-
8 tomary to the type of job involved so long
9 as such criteria are not applied in a dis-
10 criminatorary manner.

11 “(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF
12 OF EMPLOYER MEMBERS.—

13 “(1) IN GENERAL.—An agricultural association
14 may file an application under subsection (a) on be-
15 half of 1 or more of its employer members that the
16 association certifies in its application has or have
17 agreed in writing to comply with the requirements of
18 this section and sections 218A, 218B, and 218C.

19 “(2) TREATMENT OF ASSOCIATIONS ACTING AS
20 EMPLOYERS.—If an association filing an application
21 under paragraph (1) is a joint or sole employer of
22 the temporary or seasonal agricultural workers re-
23 quested on the application, the certifications granted
24 under subsection (e)(2)(B) to the association may be
25 used for the certified job opportunities of any of its

1 producer members named on the application, and
2 such workers may be transferred among such pro-
3 ducer members to perform the agricultural services
4 of a temporary or seasonal nature for which the cer-
5 tifications were granted.

6 “(d) WITHDRAWAL OF APPLICATIONS.—

7 “(1) IN GENERAL.—An employer may withdraw
8 an application filed pursuant to subsection (a), ex-
9 cept that if the employer is an agricultural associa-
10 tion, the association may withdraw an application
11 filed pursuant to subsection (a) with respect to 1 or
12 more of its members. To withdraw an application,
13 the employer or association shall notify the Sec-
14 retary of Labor in writing, and the Secretary of
15 Labor shall acknowledge in writing the receipt of
16 such withdrawal notice. An employer who withdraws
17 an application under subsection (a), or on whose be-
18 half an application is withdrawn, is relieved of the
19 obligations undertaken in the application.

20 “(2) LIMITATION.—An application may not be
21 withdrawn while any alien provided status under sec-
22 tion 101(a)(15)(H)(ii)(a) pursuant to such applica-
23 tion is employed by the employer.

24 “(3) OBLIGATIONS UNDER OTHER STATUTES.—

25 Any obligation incurred by an employer under any

1 other law or regulation as a result of the recruit-
2 ment of United States workers or H-2A workers
3 under an offer of terms and conditions of employ-
4 ment required as a result of making an application
5 under subsection (a) is unaffected by withdrawal of
6 such application.

7 “(e) REVIEW AND APPROVAL OF APPLICATIONS.—

8 “(1) RESPONSIBILITY OF EMPLOYERS.—The
9 employer shall make available for public examina-
10 tion, within 1 working day after the date on which
11 an application under subsection (a) is filed, at the
12 employer’s principal place of business or worksite, a
13 copy of each such application (and such accom-
14 panying documents as are necessary).

15 “(2) RESPONSIBILITY OF THE SECRETARY OF
16 LABOR.—

17 “(A) COMPILATION OF LIST.—The Sec-
18 retary of Labor shall compile, on a current
19 basis, a list (by employer and by occupational
20 classification) of the applications filed under
21 subsection (a). Such list shall include the wage
22 rate, number of workers sought, period of in-
23 tended employment, and date of need. The Sec-
24 retary of Labor shall make such list available
25 for examination in the District of Columbia.

1 “(B) REVIEW OF APPLICATIONS.—The
2 Secretary of Labor shall review such an applica-
3 tion only for completeness and obvious inac-
4 curacies. Unless the Secretary of Labor finds
5 that the application is incomplete or obviously
6 inaccurate, the Secretary of Labor shall certify
7 that the intending employer has filed with the
8 Secretary of Labor an application as described
9 in subsection (a). Such certification shall be
10 provided within 7 days of the filing of the appli-
11 cation.

12 **“SEC. 218A. H-2A EMPLOYMENT REQUIREMENTS.**

13 “(a) PREFERENTIAL TREATMENT OF ALIENS PRO-
14 HIBITED.—Employers seeking to hire United States work-
15 ers shall offer the United States workers no less than the
16 same benefits, wages, and working conditions that the em-
17 ployer is offering, intends to offer, or will provide to H-
18 2A workers. Conversely, no job offer may impose on
19 United States workers any restrictions or obligations
20 which will not be imposed on the employer’s H-2A work-
21 ers.

22 “(b) MINIMUM BENEFITS, WAGES, AND WORKING
23 CONDITIONS.—Except in cases where higher benefits,
24 wages, or working conditions are required by the provi-
25 sions of subsection (a), in order to protect similarly em-

1 ployed United States workers from adverse effects with
2 respect to benefits, wages, and working conditions, every
3 job offer which shall accompany an application under sec-
4 tion 218(b)(2) shall include each of the following benefit,
5 wage, and working condition provisions:

6 “(1) REQUIREMENT TO PROVIDE HOUSING OR A
7 HOUSING ALLOWANCE.—

8 “(A) IN GENERAL.—An employer applying
9 under section 218(a) for H-2A workers shall
10 offer to provide housing at no cost to all work-
11 ers in job opportunities for which the employer
12 has applied under that section and to all other
13 workers in the same occupation at the place of
14 employment, whose place of residence is beyond
15 normal commuting distance.

16 “(B) TYPE OF HOUSING.—In complying
17 with subparagraph (A), an employer may, at
18 the employer’s election, provide housing that
19 meets applicable Federal standards for tem-
20 porary labor camps or secure housing that
21 meets applicable local standards for rental or
22 public accommodation housing or other sub-
23 stantially similar class of habitation, or in the
24 absence of applicable local standards, State
25 standards for rental or public accommodation

1 housing or other substantially similar class of
2 habitation. In the absence of applicable local or
3 State standards, Federal temporary labor camp
4 standards shall apply.

5 “(C) FAMILY HOUSING.—If it is the pre-
6 vailing practice in the occupation and area of
7 intended employment to provide family housing,
8 family housing shall be provided to workers
9 with families who request it.

10 “(D) WORKERS ENGAGED IN THE RANGE
11 PRODUCTION OF LIVESTOCK.—The Secretary of
12 Labor shall issue regulations that address the
13 specific requirements for the provision of hous-
14 ing to workers engaged in the range production
15 of livestock.

16 “(E) LIMITATION.—Nothing in this para-
17 graph shall be construed to require an employer
18 to provide or secure housing for persons who
19 were not entitled to such housing under the
20 temporary labor certification regulations in ef-
21 fect on June 1, 1986.

22 “(F) CHARGES FOR HOUSING.—

23 “(i) CHARGES FOR PUBLIC HOUS-
24 ING.—If public housing provided for mi-
25 grant 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

1 under subparagraph (A). Upon the request
2 of a worker seeking assistance in locating
3 housing, the employer shall make a good
4 faith effort to assist the worker in identi-
5 fying and locating housing in the area of
6 intended employment. An employer who of-
7 fers a housing allowance to a worker, or
8 assists a worker in locating housing which
9 the worker occupies, pursuant to this
10 clause shall not be deemed a housing pro-
11 vider under section 203 of the Migrant and
12 Seasonal Agricultural Worker Protection
13 Act (29 U.S.C. 1823) solely by virtue of
14 providing such housing allowance. No
15 housing allowance may be used for housing
16 which is owned or controlled by the em-
17 ployer.

18 “(ii) CERTIFICATION.—The require-
19 ment of this clause is satisfied if the Gov-
20 ernor of the State certifies to the Secretary
21 of Labor that there is adequate housing
22 available in the area of intended employ-
23 ment for migrant farm workers and H-2A
24 workers who are seeking temporary hous-
25 ing while employed in agricultural work.

1 Such certification shall expire after 3 years
2 unless renewed by the Governor of the
3 State.

4 “(iii) AMOUNT OF ALLOWANCE.—

5 “(I) NONMETROPOLITAN COUN-
6 TRIES.—If the place of employment of
7 the workers provided an allowance
8 under this subparagraph is a non-
9 metropolitan county, the amount of
10 the housing allowance under this sub-
11 paragraph shall be equal to the state-
12 wide average fair market rental for
13 existing housing for nonmetropolitan
14 counties for the State, as established
15 by the Secretary of Housing and
16 Urban Development pursuant to sec-
17 tion 8(c) of the United States Hous-
18 ing Act of 1937 (42 U.S.C. 1437f(c)),
19 based on a 2-bedroom dwelling unit
20 and an assumption of 2 persons per
21 bedroom.

22 “(II) METROPOLITAN COUN-
23 TRIES.—If the place of employment of
24 the workers provided an allowance
25 under this paragraph is in a metro-

1 politan county, the amount of the
2 housing allowance under this subpara-
3 graph shall be equal to the statewide
4 average fair market rental for existing
5 housing for metropolitan counties for
6 the State, as established by the Sec-
7 retary of Housing and Urban Devel-
8 opment pursuant to section 8(c) of
9 the United States Housing Act of
10 1937 (42 U.S.C. 1437f(c)), based on
11 a 2-bedroom dwelling unit and an as-
12 sumption of 2 persons per bedroom.

13 “(2) REIMBURSEMENT OF TRANSPORTATION.—

14 “(A) TO PLACE OF EMPLOYMENT.—A
15 worker who completes 50 percent of the period
16 of employment of the job opportunity for which
17 the worker was hired shall be reimbursed by the
18 employer for the cost of the worker’s transpor-
19 tation and subsistence from the place from
20 which the worker came to work for the em-
21 ployer (or place of last employment, if the
22 worker traveled from such place) to the place of
23 employment.

24 “(B) FROM PLACE OF EMPLOYMENT.—A
25 worker who completes the period of employment

1 for the job opportunity involved shall be reim-
2 bursed by the employer for the cost of the
3 worker's transportation and subsistence from
4 the place of employment to the place from
5 which the worker, disregarding intervening em-
6 ployment, came to work for the employer, or to
7 the place of next employment, if the worker has
8 contracted with a subsequent employer who has
9 not agreed to provide or pay for the worker's
10 transportation and subsistence to such subse-
11 quent employer's place of employment.

12 “(C) LIMITATION.—

13 “(i) AMOUNT OF REIMBURSEMENT.—

14 Except as provided in clause (ii), the
15 amount of reimbursement provided under
16 subparagraph (A) or (B) to a worker or
17 alien shall not exceed the lesser of—

18 “(I) the actual cost to the worker
19 or alien of the transportation and sub-
20 sistence involved; or

21 “(II) the most economical and
22 reasonable common carrier transpor-
23 tation charges and subsistence costs
24 for the distance involved.

1 “(ii) DISTANCE TRAVELED.—No reim-
2 bursement under subparagraph (A) or (B)
3 shall be required if the distance traveled is
4 100 miles or less, or the worker is not re-
5 siding in employer-provided housing or
6 housing secured through an allowance as
7 provided in paragraph (1)(G).

8 “(D) EARLY TERMINATION.—If the worker
9 is laid off or employment is terminated for con-
10 tract impossibility (as described in paragraph
11 (4)(D)) before the anticipated ending date of
12 employment, the employer shall provide the
13 transportation and subsistence required by sub-
14 paragraph (B) and, notwithstanding whether
15 the worker has completed 50 percent of the pe-
16 riod of employment, shall provide the transpor-
17 tation reimbursement required by subparagraph
18 (A).

19 “(E) TRANSPORTATION BETWEEN LIVING
20 QUARTERS AND WORKSITE.—The employer
21 shall provide transportation between the
22 worker’s living quarters and the employer’s
23 worksite without cost to the worker, and such
24 transportation will be in accordance with appli-
25 cable laws and regulations.

1 “(3) REQUIRED WAGES.—

2 “(A) IN GENERAL.—An employer applying
3 for workers under section 218(a) shall offer to
4 pay, and shall pay, all workers in the occupa-
5 tion for which the employer has applied for
6 workers, not less (and is not required to pay
7 more) than the greater of the prevailing wage
8 in the occupation in the area of intended em-
9 ployment or the adverse effect wage rate. No
10 worker shall be paid less than the greater of the
11 hourly wage prescribed under section 6(a)(1) of
12 the Fair Labor Standards Act of 1938 (29
13 U.S.C. 206(a)(1)) or the applicable State min-
14 imum wage.

15 “(B) LIMITATION.—Effective on the date
16 of the enactment of the Agricultural Job Op-
17 portunities, Benefits, and Security Act of 2009
18 and continuing for 3 years thereafter, no ad-
19 verse effect wage rate for a State may be more
20 than the adverse effect wage rate for that State
21 in effect on January 1, 2009, as established by
22 section 655.107 of title 20, Code of Federal
23 Regulations.

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

1 “(i) FIRST ADJUSTMENT.—If Con-
2 gress does not set a new wage standard
3 applicable to this section before the first
4 March 1 that is not less than 3 years after
5 the date of enactment of this section, the
6 adverse effect wage rate for each State be-
7 ginning on such March 1 shall be the wage
8 rate that would have resulted if the ad-
9 verse effect wage rate in effect on January
10 1, 2009, had been annually adjusted, be-
11 ginning on March 1, 2012, by the lesser
12 of—

13 “(I) the 12-month percentage
14 change in the Consumer Price Index
15 for All Urban Consumers between De-
16 cember of the second preceding year
17 and December of the preceding year;
18 and

19 “(II) 4 percent.

20 “(ii) SUBSEQUENT ANNUAL ADJUST-
21 MENTS.—Beginning on the first March 1
22 that is not less than 4 years after the date
23 of enactment of this section, and each
24 March 1 thereafter, the adverse effect

1 wage rate then in effect for each State
2 shall be adjusted by the lesser of—

3 “(I) the 12-month percentage
4 change in the Consumer Price Index
5 for All Urban Consumers between De-
6 cember of the second preceding year
7 and December of the preceding year;
8 and

9 “(II) 4 percent.

10 “(D) DEDUCTIONS.—The employer shall
11 make only those deductions from the worker’s
12 wages that are authorized by law or are reason-
13 able and customary in the occupation and area
14 of employment. The job offer shall specify all
15 deductions not required by law which the em-
16 ployer will make from the worker’s wages.

17 “(E) FREQUENCY OF PAY.—The employer
18 shall pay the worker not less frequently than
19 twice monthly, or in accordance with the pre-
20 vailing practice in the area of employment,
21 whichever is more frequent.

22 “(F) HOURS AND EARNINGS STATE-
23 MENTS.—The employer shall furnish to the
24 worker, on or before each payday, in 1 or more
25 written statements—

1 “(i) the worker’s total earnings for
2 the pay period;

3 “(ii) the worker’s hourly rate of pay,
4 piece rate of pay, or both;

5 “(iii) the hours of employment which
6 have been offered to the worker (broken
7 out by hours offered in accordance with
8 and over and above the 3/4 guarantee de-
9 scribed in paragraph (4);

10 “(iv) the hours actually worked by the
11 worker;

12 “(v) an itemization of the deductions
13 made from the worker’s wages; and

14 “(vi) if piece rates of pay are used,
15 the units produced daily.

16 “(G) REPORT ON WAGE PROTECTIONS.—
17 Not later than December 31, 2011, the Comp-
18 troller General of the United States shall pre-
19 pare and transmit to the Secretary of Labor,
20 the Committee on the Judiciary of the Senate,
21 and Committee on the Judiciary of the House
22 of Representatives, a report that addresses—

23 “(i) whether the employment of H-2A
24 or unauthorized aliens in the United States
25 agricultural workforce has depressed

1 United States farm worker wages below
2 the levels that would otherwise have pre-
3 vailed if alien farm workers had not been
4 employed in the United States;

5 “(ii) whether an adverse effect wage
6 rate is necessary to prevent wages of
7 United States farm workers in occupations
8 in which H-2A workers are employed from
9 falling below the wage levels that would
10 have prevailed in the absence of the em-
11 ployment of H-2A workers in those occu-
12 pations;

13 “(iii) whether alternative wage stand-
14 ards, such as a prevailing wage standard,
15 would be sufficient to prevent wages in oc-
16 cupations in which H-2A workers are em-
17 ployed from falling below the wage level
18 that would have prevailed in the absence of
19 H-2A employment;

20 “(iv) whether any changes are war-
21 ranted in the current methodologies for
22 calculating the adverse effect wage rate
23 and the prevailing wage; and

24 “(v) recommendations for future wage
25 protection under this section.

1 “(H) COMMISSION ON WAGE STAND-
2 ARDS.—

3 “(i) ESTABLISHMENT.—There is es-
4 tablished the Commission on Agricultural
5 Wage Standards under the H-2A program
6 (in this subparagraph referred to as the
7 ‘Commission’).

8 “(ii) COMPOSITION.—The Commission
9 shall consist of 10 members as follows:

10 “(I) Four representatives of agri-
11 cultural employers and 1 representa-
12 tive of the Department of Agriculture,
13 each appointed by the Secretary of
14 Agriculture.

15 “(II) Four representatives of agri-
16 cultural workers and 1 representa-
17 tive of the Department of Labor, each
18 appointed by the Secretary of Labor.

19 “(iii) FUNCTIONS.—The Commission
20 shall conduct a study that shall address—

21 “(I) whether the employment of
22 H-2A or unauthorized aliens in the
23 United States agricultural workforce
24 has depressed United States farm
25 worker wages below the levels that

1 would otherwise have prevailed if alien
2 farm workers had not been employed
3 in the United States;

4 “(II) whether an adverse effect
5 wage rate is necessary to prevent
6 wages of United States farm workers
7 in occupations in which H-2A work-
8 ers are employed from falling below
9 the wage levels that would have pre-
10 vailed in the absence of the employ-
11 ment of H-2A workers in those occu-
12 pations;

13 “(III) whether alternative wage
14 standards, such as a prevailing wage
15 standard, would be sufficient to pre-
16 vent wages in occupations in which
17 H-2A workers are employed from fall-
18 ing below the wage level that would
19 have prevailed in the absence of H-2A
20 employment;

21 “(IV) whether any changes are
22 warranted in the current methodolo-
23 gies for calculating the adverse effect
24 wage rate and the prevailing wage
25 rate; and

1 “(V) recommendations for future
2 wage protection under this section.

3 “(iv) FINAL REPORT.—Not later than
4 December 31, 2011, the Commission shall
5 submit a report to the Congress setting
6 forth the findings of the study conducted
7 under clause (iii).

8 “(v) TERMINATION DATE.—The Com-
9 mission shall terminate upon submitting
10 its final report.

11 “(4) GUARANTEE OF EMPLOYMENT.—

12 “(A) OFFER TO WORKER.—The employer
13 shall guarantee to offer the worker employment
14 for the hourly equivalent of at least 3/4 of the
15 work days of the total period of employment,
16 beginning with the first work day after the ar-
17 rival of the worker at the place of employment
18 and ending on the expiration date specified in
19 the job offer. For purposes of this subpara-
20 graph, the hourly equivalent means the number
21 of hours in the work days as stated in the job
22 offer and shall exclude the worker’s Sabbath
23 and Federal holidays. If the employer affords
24 the United States or H-2A worker less employ-
25 ment than that required under this paragraph,

1 the employer shall pay such worker the amount
2 which the worker would have earned had the
3 worker, in fact, worked for the guaranteed
4 number of hours.

5 “(B) FAILURE TO WORK.—Any hours
6 which the worker fails to work, up to a max-
7 imum of the number of hours specified in the
8 job offer for a work day, when the worker has
9 been offered an opportunity to do so, and all
10 hours of work actually performed (including vol-
11 untary work in excess of the number of hours
12 specified in the job offer in a work day, on the
13 worker’s Sabbath, or on Federal holidays) may
14 be counted by the employer in calculating
15 whether the period of guaranteed employment
16 has been met.

17 “(C) ABANDONMENT OF EMPLOYMENT,
18 TERMINATION FOR CAUSE.—If the worker vol-
19 untarily abandons employment before the end
20 of the contract period, or is terminated for
21 cause, the worker is not entitled to the 3/4
22 guarantee described in subparagraph (A).

23 “(D) CONTRACT IMPOSSIBILITY.—If, be-
24 fore the expiration of the period of employment
25 specified in the job offer, the services of the

1 worker are no longer required for reasons be-
2 yond the control of the employer due to any
3 form of natural disaster, including a flood, hur-
4 ricane, freeze, earthquake, fire, drought, plant
5 or animal disease or pest infestation, or regu-
6 latory drought, before the guarantee in sub-
7 paragraph (A) is fulfilled, the employer may
8 terminate the worker's employment. In the
9 event of such termination, the employer shall
10 fulfill the employment guarantee in subpara-
11 graph (A) for the work days that have elapsed
12 from the first work day after the arrival of the
13 worker to the termination of employment. In
14 such cases, the employer will make efforts to
15 transfer the United States worker to other com-
16 parable employment acceptable to the worker. If
17 such transfer is not effected, the employer shall
18 provide the return transportation required in
19 paragraph (2)(D).

20 “(5) MOTOR VEHICLE SAFETY.—

21 “(A) MODE OF TRANSPORTATION SUBJECT
22 TO COVERAGE.—

23 “(i) IN GENERAL.— Except as pro-
24 vided in clauses (iii) and (iv), this sub-
25 section applies to any H-2A employer that

1 uses or causes to be used any vehicle to
2 transport an H-2A worker within the
3 United States.

4 “(ii) DEFINED TERM.—In this para-
5 graph, the term ‘uses or causes to be
6 used’—

7 “(I) applies only to transpor-
8 tation provided by an H-2A employer
9 to an H-2A worker, or by a farm
10 labor contractor to an H-2A worker
11 at the request or direction of an H-
12 2A employer; and

13 “(II) does not apply to—

14 “(aa) transportation pro-
15 vided, or transportation arrange-
16 ments made, by an H-2A work-
17 er, unless the employer specifi-
18 cally requested or arranged such
19 transportation; or

20 “(bb) car pooling arrange-
21 ments made by H-2A workers
22 themselves, using 1 of the work-
23 ers’ own vehicles, unless specifi-
24 cally requested by the employer

1 directly or through a farm labor
2 contractor.

3 “(iii) CLARIFICATION.—Providing a
4 job offer to an H-2A worker that causes
5 the worker to travel to or from the place
6 of employment, or the payment or reim-
7 bursment of the transportation costs of
8 an H-2A worker by an H-2A employer,
9 shall not constitute an arrangement of, or
10 participation in, such transportation.

11 “(iv) AGRICULTURAL MACHINERY AND
12 EQUIPMENT EXCLUDED.—This subsection
13 does not apply to the transportation of an
14 H-2A worker on a tractor, combine, har-
15 vester, picker, or other similar machinery
16 or equipment while such worker is actually
17 engaged in the planting, cultivating, or
18 harvesting of agricultural commodities or
19 the care of livestock or poultry or engaged
20 in transportation incidental thereto.

21 “(v) COMMON CARRIERS EX-
22 CLUDED.—This subsection does not apply
23 to common carrier motor vehicle transpor-
24 tation in which the provider holds itself out
25 to the general public as engaging in the

1 transportation of passengers for hire and
2 holds a valid certification of authorization
3 for such purposes from an appropriate
4 Federal, State, or local agency.

5 “(B) APPLICABILITY OF STANDARDS, LI-
6 CENSING, AND INSURANCE REQUIREMENTS.—

7 “(i) IN GENERAL.—When using, or
8 causing to be used, any vehicle for the pur-
9 pose of providing transportation to which
10 this subparagraph applies, each employer
11 shall—

12 “(I) ensure that each such vehi-
13 cle conforms to the standards pre-
14 scribed by the Secretary of Labor
15 under section 401(b) of the Migrant
16 and Seasonal Agricultural Worker
17 Protection Act (29 U.S.C. 1841(b))
18 and other applicable Federal and
19 State safety standards;

20 “(II) ensure that each driver has
21 a valid and appropriate license, as
22 provided by State law, to operate the
23 vehicle; and

24 “(III) have an insurance policy
25 or a liability bond that is in effect

1 which insures the employer against li-
2 ability for damage to persons or prop-
3 erty arising from the ownership, oper-
4 ation, or causing to be operated, of
5 any vehicle used to transport any H-
6 2A worker.

7 “(ii) AMOUNT OF INSURANCE RE-
8 QUIRED.—The level of insurance required
9 shall be determined by the Secretary of
10 Labor pursuant to regulations to be issued
11 under this subsection.

12 “(iii) EFFECT OF WORKERS’ COM-
13 PENSATION COVERAGE.—If the employer
14 of any H-2A worker provides workers’
15 compensation coverage for such worker in
16 the case of bodily injury or death as pro-
17 vided by State law, the following adjust-
18 ments in the requirements of subparagraph
19 (B)(i)(III) relating to having an insurance
20 policy or liability bond apply:

21 “(I) No insurance policy or liabil-
22 ity bond shall be required of the em-
23 ployer, if such workers are trans-
24 ported only under circumstances for

1 which there is coverage under such
2 State law.

3 “(II) An insurance policy or li-
4 ability bond shall be required of the
5 employer for circumstances under
6 which coverage for the transportation
7 of such workers is not provided under
8 such State law.

9 “(c) COMPLIANCE WITH LABOR LAWS.—An em-
10 ployer shall assure that, except as otherwise provided in
11 this section, the employer will comply with all applicable
12 Federal, State, and local labor laws, including laws affect-
13 ing migrant and seasonal agricultural workers, with re-
14 spect to all United States workers and alien workers em-
15 ployed by the employer, except that a violation of this as-
16 surance shall not constitute a violation of the Migrant and
17 Seasonal Agricultural Worker Protection Act (29 U.S.C.
18 1801 et seq.).

19 “(d) COPY OF JOB OFFER.—The employer shall pro-
20 vide to the worker, not later than the day the work com-
21 mences, a copy of the employer’s application and job offer
22 described in section 218(a), or, if the employer will require
23 the worker to enter into a separate employment contract
24 covering the employment in question, such separate em-
25 ployment contract.

1 “(e) RANGE PRODUCTION OF LIVESTOCK.—Nothing
2 in this section, section 218, or section 218B shall preclude
3 the Secretary of Labor and the Secretary from continuing
4 to apply special procedures and requirements to the ad-
5 mission and employment of aliens in occupations involving
6 the range production of livestock.

7 **“SEC. 218B. PROCEDURE FOR ADMISSION AND EXTENSION**
8 **OF STAY OF H-2A WORKERS.**

9 “(a) PETITIONING FOR ADMISSION.—An employer,
10 or an association acting as an agent or joint employer for
11 its members, that seeks the admission into the United
12 States of an H-2A worker may file a petition with the
13 Secretary. The petition shall be accompanied by an accept-
14 ed and currently valid certification provided by the Sec-
15 retary of Labor under section 218(e)(2)(B) covering the
16 petitioner.

17 “(b) EXPEDITED ADJUDICATION BY THE SEC-
18 RETARY.—The Secretary shall establish a procedure for
19 expedited adjudication of petitions filed under subsection
20 (a) and within 7 working days shall, by fax, cable, or other
21 means assuring expedited delivery, transmit a copy of no-
22 tice of action on the petition to the petitioner and, in the
23 case of approved petitions, to the appropriate immigration
24 officer at the port of entry or United States consulate (as
25 the case may be) where the petitioner has indicated that

1 the alien beneficiary (or beneficiaries) will apply for a visa
2 or admission to the United States.

3 “(c) CRITERIA FOR ADMISSIBILITY.—

4 “(1) IN GENERAL.—An H-2A worker shall be
5 considered admissible to the United States if the
6 alien is otherwise admissible under this section, sec-
7 tion 218, and section 218A, and the alien is not in-
8 eligible under paragraph (2).

9 “(2) DISQUALIFICATION.—An alien shall be
10 considered inadmissible to the United States and in-
11 eligible for nonimmigrant status under section
12 101(a)(15)(H)(ii)(a) if the alien has, at any time
13 during the past 5 years—

14 “(A) violated a material provision of this
15 section, including the requirement to promptly
16 depart the United States when the alien’s au-
17 thorized period of admission under this section
18 has expired; or

19 “(B) otherwise violated a term or condition
20 of admission into the United States as a non-
21 immigrant, including overstaying the period of
22 authorized admission as such a nonimmigrant.

23 “(3) WAIVER OF INELIGIBILITY FOR UNLAW-
24 FUL PRESENCE.—

1 “(A) IN GENERAL.—An alien who has not
2 previously been admitted into the United States
3 pursuant to this section, and who is otherwise
4 eligible for admission in accordance with para-
5 graphs (1) and (2), shall not be deemed inad-
6 missible by virtue of section 212(a)(9)(B). If an
7 alien described in the preceding sentence is
8 present in the United States, the alien may
9 apply from abroad for H-2A status, but may
10 not be granted that status in the United States.

11 “(B) MAINTENANCE OF WAIVER.—An
12 alien provided an initial waiver of ineligibility
13 pursuant to subparagraph (A) shall remain eli-
14 gible for such waiver unless the alien violates
15 the terms of this section or again becomes ineli-
16 gible under section 212(a)(9)(B) by virtue of
17 unlawful presence in the United States after
18 the date of the initial waiver of ineligibility pur-
19 suant to subparagraph (A).

20 “(d) PERIOD OF ADMISSION.—

21 “(1) IN GENERAL.—The alien shall be admitted
22 for the period of employment in the application cer-
23 tified by the Secretary of Labor pursuant to section
24 218(e)(2)(B), not to exceed 10 months, supple-
25 mented by a period of not more than 1 week before

1 the beginning of the period of employment for the
2 purpose of travel to the worksite and a period of 14
3 days following the period of employment for the pur-
4 pose of departure or extension based on a subse-
5 quent offer of employment, except that—

6 “(A) the alien is not authorized to be em-
7 ployed during such 14-day period except in the
8 employment for which the alien was previously
9 authorized; and

10 “(B) the total period of employment, in-
11 cluding such 14-day period, may not exceed 10
12 months.

13 “(2) CONSTRUCTION.—Nothing in this sub-
14 section shall limit the authority of the Secretary to
15 extend the stay of the alien under any other provi-
16 sion of this Act.

17 “(e) ABANDONMENT OF EMPLOYMENT.—

18 “(1) IN GENERAL.—An alien admitted or pro-
19 vided status under section 101(a)(15)(H)(ii)(a) who
20 abandons the employment which was the basis for
21 such admission or status shall be considered to have
22 failed to maintain nonimmigrant status as an H-2A
23 worker and shall depart the United States or be sub-
24 ject to removal under section 237(a)(1)(C)(i).

1 “(2) REPORT BY EMPLOYER.—The employer, or
2 association acting as agent for the employer, shall
3 notify the Secretary not later than 7 days after an
4 H–2A worker prematurely abandons employment.

5 “(3) REMOVAL BY THE SECRETARY.—The Sec-
6 retary shall promptly remove from the United States
7 any H–2A worker who violates any term or condi-
8 tion of the worker’s nonimmigrant status.

9 “(4) VOLUNTARY TERMINATION.—Notwith-
10 standing paragraph (1), an alien may voluntarily
11 terminate his or her employment if the alien prompt-
12 ly departs the United States upon termination of
13 such employment.

14 “(f) REPLACEMENT OF ALIEN.—

15 “(1) IN GENERAL.—Upon presentation of the
16 notice to the Secretary required by subsection (e)(2),
17 the Secretary of State shall promptly issue a visa to,
18 and the Secretary shall admit into the United
19 States, an eligible alien designated by the employer
20 to replace an H–2A worker—

21 “(A) who abandons or prematurely termi-
22 nates employment; or

23 “(B) whose employment is terminated
24 after a United States worker is employed pur-
25 suant to section 218(b)(2)(H)(iii), if the United

1 States worker voluntarily departs before the
2 end of the period of intended employment or if
3 the employment termination is for a lawful job-
4 related reason.

5 “(2) CONSTRUCTION.—Nothing in this sub-
6 section is intended to limit any preference required
7 to be accorded United States workers under any
8 other provision of this Act.

9 “(g) IDENTIFICATION DOCUMENT.—

10 “(1) IN GENERAL.—Each alien authorized to be
11 admitted under section 101(a)(15)(H)(ii)(a) shall be
12 provided an identification and employment eligibility
13 document to verify eligibility for employment in the
14 United States and verify the alien’s identity.

15 “(2) REQUIREMENTS.—No identification and
16 employment eligibility document may be issued
17 which does not meet the following requirements:

18 “(A) The document shall be capable of re-
19 liably determining whether—

20 “(i) the individual with the identifica-
21 tion and employment eligibility document
22 whose eligibility is being verified is in fact
23 eligible for employment;

1 “(ii) the individual whose eligibility is
2 being verified is claiming the identity of
3 another person; and

4 “(iii) the individual whose eligibility is
5 being verified is authorized to be admitted
6 into, and employed in, the United States
7 as an H-2A worker.

8 “(B) The document shall be in a form that
9 is resistant to counterfeiting and to tampering.

10 “(C) The document shall—

11 “(i) be compatible with other data-
12 bases of the Secretary for the purpose of
13 excluding aliens from benefits for which
14 they are not eligible and determining
15 whether the alien is unlawfully present in
16 the United States; and

17 “(ii) be compatible with law enforce-
18 ment databases to determine if the alien
19 has been convicted of criminal offenses.

20 “(h) EXTENSION OF STAY OF H-2A ALIENS IN THE
21 UNITED STATES.—

22 “(1) EXTENSION OF STAY.—If an employer
23 seeks approval to employ an H-2A alien who is law-
24 fully present in the United States, the petition filed
25 by the employer or an association pursuant to sub-

1 section (a), shall request an extension of the alien's
2 stay and a change in the alien's employment.

3 “(2) LIMITATION ON FILING A PETITION FOR
4 EXTENSION OF STAY.—A petition may not be filed
5 for an extension of an alien's stay—

6 “(A) for a period of more than 10 months;

7 or

8 “(B) to a date that is more than 3 years
9 after the date of the alien's last admission to
10 the United States under this section.

11 “(3) WORK AUTHORIZATION UPON FILING A
12 PETITION FOR EXTENSION OF STAY.—

13 “(A) IN GENERAL.—An alien who is law-
14 fully present in the United States may com-
15 mence the employment described in a petition
16 under paragraph (1) on the date on which the
17 petition is filed.

18 “(B) DEFINITION.—For purposes of sub-
19 paragraph (A), the term ‘file’ means sending
20 the petition by certified mail via the United
21 States Postal Service, return receipt requested,
22 or delivered by guaranteed commercial delivery
23 which will provide the employer with a docu-
24 mented acknowledgment of the date of receipt
25 of the petition.

1 “(C) HANDLING OF PETITION.—The em-
2 ployer shall provide a copy of the employer’s pe-
3 tition to the alien, who shall keep the petition
4 with the alien’s identification and employment
5 eligibility document as evidence that the peti-
6 tion has been filed and that the alien is author-
7 ized to work in the United States.

8 “(D) APPROVAL OF PETITION.—Upon ap-
9 proval of a petition for an extension of stay or
10 change in the alien’s authorized employment,
11 the Secretary shall provide a new or updated
12 employment eligibility document to the alien in-
13 dicating the new validity date, after which the
14 alien is not required to retain a copy of the pe-
15 tition.

16 “(4) LIMITATION ON EMPLOYMENT AUTHORIZA-
17 TION OF ALIENS WITHOUT VALID IDENTIFICATION
18 AND EMPLOYMENT ELIGIBILITY DOCUMENT.—An ex-
19 pired identification and employment eligibility docu-
20 ment, together with a copy of a petition for exten-
21 sion of stay or change in the alien’s authorized em-
22 ployment that complies with the requirements of
23 paragraph (1), shall constitute a valid work author-
24 ization document for a period of not more than 60
25 days beginning on the date on which such petition

1 is filed, after which time only a currently valid iden-
2 tification and employment eligibility document shall
3 be acceptable.

4 “(5) LIMITATION ON AN INDIVIDUAL’S STAY IN
5 STATUS.—

6 “(A) MAXIMUM PERIOD.—The maximum
7 continuous period of authorized status as an
8 H-2A worker (including any extensions) is 3
9 years.

10 “(B) REQUIREMENT TO REMAIN OUTSIDE
11 THE UNITED STATES.—

12 “(i) IN GENERAL.—Subject to clause
13 (ii), in the case of an alien outside the
14 United States whose period of authorized
15 status as an H-2A worker (including any
16 extensions) has expired, the alien may not
17 again apply for admission to the United
18 States as an H-2A worker unless the alien
19 has remained outside the United States for
20 a continuous period equal to at least 1/5
21 the duration of the alien’s previous period
22 of authorized status as an H-2A worker
23 (including any extensions).

24 “(ii) EXCEPTION.—Clause (i) shall
25 not apply in the case of an alien if the

1 alien's period of authorized status as an
2 H-2A worker (including any extensions)
3 was for a period of not more than 10
4 months and such alien has been outside
5 the United States for at least 2 months
6 during the 12 months preceding the date
7 the alien again is applying for admission to
8 the United States as an H-2A worker.

9 “(i) SPECIAL RULES FOR ALIENS EMPLOYED AS
10 SHEEPHERDERS, GOAT HERDERS, OR DAIRY WORK-
11 ERS.—Notwithstanding any provision of the Agricultural
12 Job Opportunities, Benefits, and Security Act of 2009, an
13 alien admitted under section 101(a)(15)(H)(ii)(a) for em-
14 ployment as a shepherd, goat herder, or dairy worker—

15 “(1) may be admitted for an initial period of 12
16 months;

17 “(2) subject to subsection (j)(5), may have such
18 initial period of admission extended for a period of
19 up to 3 years; and

20 “(3) shall not be subject to the requirements of
21 subsection (h)(5) (relating to periods of absence
22 from the United States).

23 “(j) ADJUSTMENT TO LAWFUL PERMANENT RESI-
24 DENT STATUS FOR ALIENS EMPLOYED AS SHEEP-
25 HERDERS, GOAT HERDERS, OR DAIRY WORKERS.—

1 “(1) ELIGIBLE ALIEN.—For purposes of this
2 subsection, the term ‘eligible alien’ means an alien—

3 “(A) having nonimmigrant status under
4 section 101(a)(15)(H)(ii)(a) based on employ-
5 ment as a shepherd, goat herder, or dairy
6 worker;

7 “(B) who has maintained such non-
8 immigrant status in the United States for a cu-
9 mulative total of 36 months (excluding any pe-
10 riod of absence from the United States); and

11 “(C) who is seeking to receive an immi-
12 grant visa under section 203(b)(3)(A)(iii).

13 “(2) CLASSIFICATION PETITION.—In the case
14 of an eligible alien, the petition under section 204
15 for classification under section 203(b)(3)(A)(iii) may
16 be filed by—

17 “(A) the alien’s employer on behalf of the
18 eligible alien; or

19 “(B) the eligible alien.

20 “(3) NO LABOR CERTIFICATION REQUIRED.—
21 Notwithstanding section 203(b)(3)(C), no deter-
22 mination under section 212(a)(5)(A) is required with
23 respect to an immigrant visa described in paragraph
24 (1)(C) for an eligible alien.

1 “(4) EFFECT OF PETITION.—The filing of a pe-
2 tition described in paragraph (2) or an application
3 for adjustment of status based on the approval of
4 such a petition shall not constitute evidence of an
5 alien’s ineligibility for nonimmigrant status under
6 section 101(a)(15)(H)(ii)(a).

7 “(5) EXTENSION OF STAY.—The Secretary
8 shall extend the stay of an eligible alien having a
9 pending or approved classification petition described
10 in paragraph (2) in 1-year increments until a final
11 determination is made on the alien’s eligibility for
12 adjustment of status to that of an alien lawfully ad-
13 mitted for permanent residence.

14 “(6) CONSTRUCTION.—Nothing in this sub-
15 section shall be construed to prevent an eligible alien
16 from seeking adjustment of status in accordance
17 with any other provision of law.

18 **“SEC. 218C. WORKER PROTECTIONS AND LABOR STAND-**
19 **ARDS ENFORCEMENT.**

20 “(a) ENFORCEMENT AUTHORITY.—

21 “(1) INVESTIGATION OF COMPLAINTS.—

22 “(A) AGGRIEVED PERSON OR THIRD-PARTY
23 COMPLAINTS.—The Secretary of Labor shall es-
24 tablish a process for the receipt, investigation,
25 and disposition of complaints respecting a

1 petitioner's failure to meet a condition specified
2 in section 218(b), or an employer's misrepre-
3 sentation of material facts in an application
4 under section 218(a). Complaints may be filed
5 by any aggrieved person or organization (in-
6 cluding bargaining representatives). No inves-
7 tigation or hearing shall be conducted on a
8 complaint concerning such a failure or mis-
9 representation unless the complaint was filed
10 not later than 12 months after the date of the
11 failure, or misrepresentation, respectively. The
12 Secretary of Labor shall conduct an investiga-
13 tion under this subparagraph if there is reason-
14 able cause to believe that such a failure or mis-
15 representation has occurred.

16 “(B) DETERMINATION ON COMPLAINT.—

17 Under such process, the Secretary of Labor
18 shall provide, within 30 days after the date
19 such a complaint is filed, for a determination as
20 to whether or not a reasonable basis exists to
21 make a finding described in subparagraph (C),
22 (D), (E), or (G). If the Secretary of Labor de-
23 termines that such a reasonable basis exists,
24 the Secretary of Labor shall provide for notice
25 of such determination to the interested parties

1 and an opportunity for a hearing on the com-
2 plaint, in accordance with section 556 of title 5,
3 United States Code, within 60 days after the
4 date of the determination. If such a hearing is
5 requested, the Secretary of Labor shall make a
6 finding concerning the matter not later than 60
7 days after the date of the hearing. In the case
8 of similar complaints respecting the same appli-
9 cant, the Secretary of Labor may consolidate
10 the hearings under this subparagraph on such
11 complaints.

12 “(C) FAILURES TO MEET CONDITIONS.—If
13 the Secretary of Labor finds, after notice and
14 opportunity for a hearing, a failure to meet a
15 condition of paragraph (1)(A), (1)(B), (1)(D),
16 (1)(F), (2)(A), (2)(B), or (2)(G) of section
17 218(b), a substantial failure to meet a condition
18 of paragraph (1)(C), (1)(E), (2)(C), (2)(D),
19 (2)(E), or (2)(H) of section 218(b), or a mate-
20 rial misrepresentation of fact in an application
21 under section 218(a)—

22 “(i) the Secretary of Labor shall no-
23 tify the Secretary of such finding and may,
24 in addition, impose such other administra-
25 tive remedies (including civil money pen-

1 alties in an amount not to exceed \$1,000
2 per violation) as the Secretary of Labor
3 determines to be appropriate; and

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

8 “(D) WILLFUL FAILURES AND WILLFUL
9 MISREPRESENTATIONS.—If the Secretary of
10 Labor finds, after notice and opportunity for
11 hearing, a willful failure to meet a condition of
12 section 218(b), a willful misrepresentation of a
13 material fact in an application under section
14 218(a), or a violation of subsection (d)(1)—

15 “(i) the Secretary of Labor shall no-
16 tify the Secretary of such finding and may,
17 in addition, impose such other administra-
18 tive remedies (including civil money pen-
19 alties in an amount not to exceed \$5,000
20 per violation) as the Secretary of Labor
21 determines to be appropriate;

22 “(ii) the Secretary of Labor may seek
23 appropriate legal or equitable relief to ef-
24 fectuate the purposes of subsection (d)(1);
25 and

1 “(iii) the Secretary may disqualify the
2 employer from the employment of H-2A
3 workers for a period of 2 years.

4 “(E) DISPLACEMENT OF UNITED STATES
5 WORKERS.—If the Secretary of Labor finds,
6 after notice and opportunity for hearing, a will-
7 ful failure to meet a condition of section 218(b)
8 or a willful misrepresentation of a material fact
9 in an application under section 218(a), in the
10 course of which failure or misrepresentation the
11 employer displaced a United States worker em-
12 ployed by the employer during the period of em-
13 ployment on the employer’s application under
14 section 218(a) or during the period of 30 days
15 preceding such period of employment—

16 “(i) the Secretary of Labor shall no-
17 tify the Secretary of such finding and may,
18 in addition, impose such other administra-
19 tive remedies (including civil money pen-
20 alties in an amount not to exceed \$15,000
21 per violation) as the Secretary of Labor
22 determines to be appropriate; and

23 “(ii) the Secretary may disqualify the
24 employer from the employment of H-2A
25 workers for a period of 3 years.

1 “(F) LIMITATIONS ON CIVIL MONEY PEN-
2 ALTIES.—The Secretary of Labor shall not im-
3 pose total civil money penalties with respect to
4 an application under section 218(a) in excess of
5 \$90,000.

6 “(G) FAILURES TO PAY WAGES OR RE-
7 QUIRED BENEFITS.—If the Secretary of Labor
8 finds, after notice and opportunity for a hear-
9 ing, that the employer has failed to pay the
10 wages, or provide the housing allowance, trans-
11 portation, subsistence reimbursement, or guar-
12 antee of employment, required under section
13 218A(b), the Secretary of Labor shall assess
14 payment of back wages, or other required bene-
15 fits, due any United States worker or H-2A
16 worker employed by the employer in the specific
17 employment in question. The back wages or
18 other required benefits under section 218A(b)
19 shall be equal to the difference between the
20 amount that should have been paid and the
21 amount that actually was paid to such worker.

22 “(2) STATUTORY CONSTRUCTION.—Nothing in
23 this section shall be construed as limiting the au-
24 thority of the Secretary of Labor to conduct any
25 compliance investigation under any other labor law,

1 including any law affecting migrant and seasonal ag-
2 ricultural workers, or, in the absence of a complaint
3 under this section, under section 218 or 218A.

4 “(b) RIGHTS ENFORCEABLE BY PRIVATE RIGHT OF
5 ACTION.—H-2A workers may enforce the following rights
6 through the private right of action provided in subsection
7 (c), and no other right of action shall exist under Federal
8 or State law to enforce such rights:

9 “(1) The providing of housing or a housing al-
10 lowance as required under section 218A(b)(1).

11 “(2) The reimbursement of transportation as
12 required under section 218A(b)(2).

13 “(3) The payment of wages required under sec-
14 tion 218A(b)(3) when due.

15 “(4) The benefits and material terms and con-
16 ditions of employment expressly provided in the job
17 offer described in section 218(a)(2), not including
18 the assurance to comply with other Federal, State,
19 and local labor laws described in section 218A(c),
20 compliance with which shall be governed by the pro-
21 visions of such laws.

22 “(5) The guarantee of employment required
23 under section 218A(b)(4).

24 “(6) The motor vehicle safety requirements
25 under section 218A(b)(5).

1 “(7) The prohibition of discrimination under
2 subsection (d)(2).

3 “(c) PRIVATE RIGHT OF ACTION.—

4 “(1) MEDIATION.—Upon the filing of a com-
5 plaint by an H-2A worker aggrieved by a violation
6 of rights enforceable under subsection (b), and with-
7 in 60 days of the filing of proof of service of the
8 complaint, a party to the action may file a request
9 with the Federal Mediation and Conciliation Service
10 to assist the parties in reaching a satisfactory reso-
11 lution of all issues involving all parties to the dis-
12 pute. Upon a filing of such request and giving of no-
13 tice to the parties, the parties shall attempt medi-
14 ation within the period specified in subparagraph
15 (B).

16 “(A) MEDIATION SERVICES.—The Federal
17 Mediation and Conciliation Service shall be
18 available to assist in resolving disputes arising
19 under subsection (b) between H-2A workers
20 and agricultural employers without charge to
21 the parties.

22 “(B) 90-DAY LIMIT.—The Federal Medi-
23 ation and Conciliation Service may conduct me-
24 diation or other nonbinding dispute resolution
25 activities for a period not to exceed 90 days be-

1 ginning on the date on which the Federal Medi-
2 ation and Conciliation Service receives the re-
3 quest for assistance unless the parties agree to
4 an extension of this period of time.

5 “(C) AUTHORIZATION.—

6 “(i) IN GENERAL.—Subject to clause
7 (ii), there are authorized to be appro-
8 priated to the Federal Mediation and Con-
9 ciliation Service \$500,000 for each fiscal
10 year to carry out this section.

11 “(ii) MEDIATION.—Notwithstanding
12 any other provision of law, the Director of
13 the Federal Mediation and Conciliation
14 Service is authorized to conduct the medi-
15 ation or other dispute resolution activities
16 from any other appropriated funds avail-
17 able to the Director and to reimburse such
18 appropriated funds when the funds are ap-
19 propriated pursuant to this authorization,
20 such reimbursement to be credited to ap-
21 propriations currently available at the time
22 of receipt.

23 “(2) MAINTENANCE OF CIVIL ACTION IN DIS-
24 TRICT COURT BY AGGRIEVED PERSON.—An H-2A
25 worker aggrieved by a violation of rights enforceable

1 under subsection (b) by an agricultural employer or
2 other person may file suit in any district court of the
3 United States having jurisdiction over the parties,
4 without regard to the amount in controversy, with-
5 out regard to the citizenship of the parties, and
6 without regard to the exhaustion of any alternative
7 administrative remedies under this Act, not later
8 than 3 years after the date the violation occurs.

9 “(3) ELECTION.—An H-2A worker who has
10 filed an administrative complaint with the Secretary
11 of Labor may not maintain a civil action under
12 paragraph (2) unless a complaint based on the same
13 violation filed with the Secretary of Labor under
14 subsection (a)(1) is withdrawn before the filing of
15 such action, in which case the rights and remedies
16 available under this subsection shall be exclusive.

17 “(4) PREEMPTION OF STATE CONTRACT
18 RIGHTS.—Nothing in this Act shall be construed to
19 diminish the rights and remedies of an H-2A worker
20 under any other Federal or State law or regulation
21 or under any collective bargaining agreement, except
22 that no court or administrative action shall be avail-
23 able under any State contract law to enforce the
24 rights created by this Act.

1 “(5) WAIVER OF RIGHTS PROHIBITED.—Agree-
2 ments by employees purporting to waive or modify
3 their rights under this Act shall be void as contrary
4 to public policy, except that a waiver or modification
5 of the rights or obligations in favor of the Secretary
6 of Labor shall be valid for purposes of the enforce-
7 ment of this Act. The preceding sentence may not
8 be construed to prohibit agreements to settle private
9 disputes or litigation.

10 “(6) AWARD OF DAMAGES OR OTHER EQUI-
11 TABLE RELIEF.—

12 “(A) If the court finds that the respondent
13 has intentionally violated any of the rights en-
14 forceable under subsection (b), it shall award
15 actual damages, if any, or equitable relief.

16 “(B) Any civil action brought under this
17 section shall be subject to appeal as provided in
18 chapter 83 of title 28, United States Code.

19 “(7) WORKERS’ COMPENSATION BENEFITS; EX-
20 CLUSIVE REMEDY.—

21 “(A) Notwithstanding any other provision
22 of this section, where a State’s workers’ com-
23 pensation law is applicable and coverage is pro-
24 vided for an H-2A worker, the workers’ com-
25 pensation benefits shall be the exclusive remedy

1 for the loss of such worker under this section
2 in the case of bodily injury or death in accord-
3 ance with such State’s workers’ compensation
4 law.

5 “(B) The exclusive remedy prescribed in
6 subparagraph (A) precludes the recovery under
7 paragraph (6) of actual damages for loss from
8 an injury or death but does not preclude other
9 equitable relief, except that such relief shall not
10 include back or front pay or in any manner, di-
11 rectly or indirectly, expand or otherwise alter or
12 affect—

13 “(i) a recovery under a State workers’
14 compensation law; or

15 “(ii) rights conferred under a State
16 workers’ compensation law.

17 “(8) TOLLING OF STATUTE OF LIMITATIONS.—

18 If it is determined under a State workers’ compensa-
19 tion law that the workers’ compensation law is not
20 applicable to a claim for bodily injury or death of an
21 H-2A worker, the statute of limitations for bringing
22 an action for actual damages for such injury or
23 death under subsection (c) shall be tolled for the pe-
24 riod during which the claim for such injury or death
25 under such State workers’ compensation law was

1 pending. The statute of limitations for an action for
2 actual damages or other equitable relief arising out
3 of the same transaction or occurrence as the injury
4 or death of the H-2A worker shall be tolled for the
5 period during which the claim for such injury or
6 death was pending under the State workers' com-
7 pensation law.

8 “(9) PRECLUSIVE EFFECT.—Any settlement by
9 an H-2A worker and an H-2A employer or any per-
10 son reached through the mediation process required
11 under subsection (c)(1) shall preclude any right of
12 action arising out of the same facts between the par-
13 ties in any Federal or State court or administrative
14 proceeding, unless specifically provided otherwise in
15 the settlement agreement.

16 “(10) SETTLEMENTS.—Any settlement by the
17 Secretary of Labor with an H-2A employer on be-
18 half of an H-2A worker of a complaint filed with the
19 Secretary of Labor under this section or any finding
20 by the Secretary of Labor under subsection
21 (a)(1)(B) shall preclude any right of action arising
22 out of the same facts between the parties under any
23 Federal or State court or administrative proceeding,
24 unless specifically provided otherwise in the settle-
25 ment agreement.

1 “(d) DISCRIMINATION PROHIBITED.—

2 “(1) IN GENERAL.—It is a violation of this sub-
3 section for any person who has filed an application
4 under section 218(a), to intimidate, threaten, re-
5 strain, coerce, blacklist, discharge, or in any other
6 manner discriminate against an employee (which
7 term, for purposes of this subsection, includes a
8 former employee and an applicant for employment)
9 because the employee has disclosed information to
10 the employer, or to any other person, that the em-
11 ployee reasonably believes evidences a violation of
12 section 218 or 218A or any rule or regulation per-
13 taining to section 218 or 218A, or because the em-
14 ployee cooperates or seeks to cooperate in an inves-
15 tigation or other proceeding concerning the employ-
16 er’s compliance with the requirements of section 218
17 or 218A or any rule or regulation pertaining to ei-
18 ther of such sections.

19 “(2) DISCRIMINATION AGAINST H-2A WORK-
20 ERS.—It is a violation of this subsection for any per-
21 son who has filed an application under section
22 218(a), to intimidate, threaten, restrain, coerce,
23 blacklist, discharge, or in any manner discriminate
24 against an H-2A employee because such worker has,
25 with just cause, filed a complaint with the Secretary

1 of Labor regarding a denial of the rights enumer-
2 ated and enforceable under subsection (b) or insti-
3 tuted, or caused to be instituted, a private right of
4 action under subsection (c) regarding the denial of
5 the rights enumerated under subsection (b), or has
6 testified or is about to testify in any court pro-
7 ceeding brought under subsection (c).

8 “(e) AUTHORIZATION TO SEEK OTHER APPRO-
9 PRIATE EMPLOYMENT.—The Secretary of Labor and the
10 Secretary shall establish a process under which an H-2A
11 worker who files a complaint regarding a violation of sub-
12 section (d) and is otherwise eligible to remain and work
13 in the United States may be allowed to seek other appro-
14 priate employment in the United States for a period not
15 to exceed the maximum period of stay authorized for such
16 nonimmigrant classification.

17 “(f) ROLE OF ASSOCIATIONS.—

18 “(1) VIOLATION BY A MEMBER OF AN ASSOCIA-
19 TION.—An employer on whose behalf an application
20 is filed by an association acting as its agent is fully
21 responsible for such application, and for complying
22 with the terms and conditions of sections 218 and
23 218A, as though the employer had filed the applica-
24 tion itself. If such an employer is determined, under
25 this section, to have committed a violation, the pen-

1 alty for such violation shall apply only to that mem-
2 ber of the association unless the Secretary of Labor
3 determines that the association or other member
4 participated in, had knowledge, or reason to know,
5 of the violation, in which case the penalty shall be
6 invoked against the association or other association
7 member as well.

8 “(2) VIOLATIONS BY AN ASSOCIATION ACTING
9 AS AN EMPLOYER.—If an association filing an appli-
10 cation as a sole or joint employer is determined to
11 have committed a violation under this section, the
12 penalty for such violation shall apply only to the as-
13 sociation unless the Secretary of Labor determines
14 that an association member or members participated
15 in or had knowledge, or reason to know of the viola-
16 tion, in which case the penalty shall be invoked
17 against the association member or members as well.

18 **“SEC. 218D. DEFINITIONS.**

19 “For purposes of this section and sections 218, 218A,
20 218B, and 218C:

21 “(1) AGRICULTURAL EMPLOYMENT.—The term
22 ‘agricultural employment’ means any service or ac-
23 tivity that is considered to be agricultural under sec-
24 tion 3(f) of the Fair Labor Standards Act of 1938
25 (29 U.S.C. 203(f)) or agricultural labor under sec-

1 tion 3121(g) of the Internal Revenue Code of 1986
2 or the performance of agricultural labor or services
3 described in section 101(a)(15)(H)(ii)(a).

4 “(2) BONA FIDE UNION.—The term ‘bona fide
5 union’ means any organization in which employees
6 participate and which exists for the purpose of deal-
7 ing with employers concerning grievances, labor dis-
8 putes, wages, rates of pay, hours of employment, or
9 other terms and conditions of work for agricultural
10 employees. Such term does not include an organiza-
11 tion formed, created, administered, supported, domi-
12 nated, financed, or controlled by an employer or em-
13 ployer association or its agents or representatives.

14 “(3) DISPLACE.—The term ‘displace’, in the
15 case of an application with respect to 1 or more H-
16 2A workers by an employer, means laying off a
17 United States worker from a job for which the H-
18 2A worker or workers is or are sought.

19 “(4) ELIGIBLE.—The term ‘eligible’, when used
20 with respect to an individual, means an individual
21 who is not an unauthorized alien (as defined in sec-
22 tion 274A).

23 “(5) EMPLOYER.—The term ‘employer’ means
24 any person or entity, including any farm labor con-

1 tractor and any agricultural association, that em-
2 ploys workers in agricultural employment.

3 “(6) H-2A EMPLOYER.—The term ‘H-2A em-
4 ployer’ means an employer who seeks to hire 1 or
5 more nonimmigrant aliens described in section
6 101(a)(15)(H)(ii)(a).

7 “(7) H-2A WORKER.—The term ‘H-2A worker’
8 means a nonimmigrant described in section
9 101(a)(15)(H)(ii)(a).

10 “(8) JOB OPPORTUNITY.—The term ‘job oppor-
11 tunity’ means a job opening for temporary or sea-
12 sonal full-time employment at a place in the United
13 States to which United States workers can be re-
14 ferred.

15 “(9) LAYING OFF.—

16 “(A) IN GENERAL.—The term ‘laying off’,
17 with respect to a worker—

18 “(i) means to cause the worker’s loss
19 of employment, other than through a dis-
20 charge for inadequate performance, viola-
21 tion of workplace rules, cause, voluntary
22 departure, voluntary retirement, contract
23 impossibility (as described in section
24 218A(b)(4)(D)), or temporary suspension

1 of employment due to weather, markets, or
2 other temporary conditions; and

3 “(ii) does not include any situation in
4 which the worker is offered, as an alter-
5 native to such loss of employment, a simi-
6 lar employment opportunity with the same
7 employer (or, in the case of a placement of
8 a worker with another employer under sec-
9 tion 218(b)(2)(E), with either employer de-
10 scribed in such section) at equivalent or
11 higher compensation and benefits than the
12 position from which the employee was dis-
13 charged, regardless of whether or not the
14 employee accepts the offer.

15 “(B) STATUTORY CONSTRUCTION.—Noth-
16 ing in this paragraph is intended to limit an
17 employee’s rights under a collective bargaining
18 agreement or other employment contract.

19 “(10) REGULATORY DROUGHT.—The term ‘reg-
20 ulatory drought’ means a decision subsequent to the
21 filing of the application under section 218 by an en-
22 tity not under the control of the employer making
23 such filing which restricts the employer’s access to
24 water for irrigation purposes and reduces or limits

1 the employer's ability to produce an agricultural
2 commodity, thereby reducing the need for labor.

3 “(11) SEASONAL.—Labor is performed on a
4 ‘seasonal’ basis if—

5 “(A) ordinarily, it pertains to or is of the
6 kind exclusively performed at certain seasons or
7 periods of the year; and

8 “(B) from its nature, it may not be contin-
9 uous or carried on throughout the year.

10 “(12) SECRETARY.—Except as otherwise pro-
11 vided, the term ‘Secretary’ means the Secretary of
12 Homeland Security.

13 “(13) TEMPORARY.—A worker is employed on a
14 ‘temporary’ basis where the employment is intended
15 not to exceed 10 months.

16 “(14) UNITED STATES WORKER.—The term
17 ‘United States worker’ means any worker, whether
18 a national of the United States, an alien lawfully ad-
19 mitted for permanent residence, or any other alien,
20 who is authorized to work in the job opportunity
21 within the United States, except an alien admitted
22 or otherwise provided status under section
23 101(a)(15)(H)(ii)(a).”.

24 (b) TABLE OF CONTENTS.—The table of contents of
25 the Immigration and Nationality Act (8 U.S.C. 1101 et

1 seq.) is amended by striking the item relating to section
 2 218 and inserting the following:

“Sec. 218. H-2A employer applications.

“Sec. 218A. H-2A employment requirements.

“Sec. 218B. Procedure for admission and extension of stay of H-2A workers.

“Sec. 218C. Worker protections and labor standards enforcement.

“Sec. 218D. Definitions.”.

3 **Subchapter C—Miscellaneous Provisions**

4 **SEC. 482. DETERMINATION AND USE OF USER FEES.**

5 (a) SCHEDULE OF FEES.—The Secretary shall estab-
 6 lish and periodically adjust a schedule of fees for the em-
 7 ployment of aliens pursuant to the amendment made by
 8 section 480 and a collection process for such fees from
 9 employers. Such fees shall be the only fees chargeable to
 10 employers for services provided under such amendment.

11 (b) DETERMINATION OF SCHEDULE.—

12 (1) IN GENERAL.—The schedule under sub-
 13 section (a) shall reflect a fee rate based on the num-
 14 ber of job opportunities indicated in the employer’s
 15 application under section 218 of the Immigration
 16 and Nationality Act, as amended by section 480,
 17 and sufficient to provide for the direct costs of pro-
 18 viding services related to an employer’s authorization
 19 to employ aliens pursuant to the amendment made
 20 by section 480, to include the certification of eligible
 21 employers, the issuance of documentation, and the
 22 admission of eligible aliens.

23 (2) PROCEDURE.—

1 (A) IN GENERAL.—In establishing and ad-
2 justing such a schedule, the Secretary shall
3 comply with Federal cost accounting and fee
4 setting standards.

5 (B) PUBLICATION AND COMMENT.—The
6 Secretary shall publish in the Federal Register
7 an initial fee schedule and associated collection
8 process and the cost data or estimates upon
9 which such fee schedule is based, and any sub-
10 sequent amendments thereto, pursuant to which
11 public comment shall be sought and a final rule
12 issued.

13 (c) USE OF PROCEEDS.—Notwithstanding any other
14 provision of law, all proceeds resulting from the payment
15 of the fees pursuant to the amendment made by section
16 480 shall be available without further appropriation and
17 shall remain available without fiscal year limitation to re-
18 imburse the Secretary, the Secretary of State, and the
19 Secretary of Labor for the costs of carrying out—

20 (1) sections 218 and 218B of the Immigration
21 and Nationality Act; and

22 (2) the provisions of this Act.

23 **SEC. 483. RULEMAKING.**

24 (a) REQUIREMENT FOR THE SECRETARY TO CON-
25 SULT.—The Secretary shall consult with the Secretary of

1 Labor and the Secretary of Agriculture during the promul-
2 gation of all regulations to implement the duties of the
3 Secretary under this Act and the amendments made by
4 this Act.

5 (b) REQUIREMENT FOR THE SECRETARY OF STATE
6 TO CONSULT.—The Secretary of State shall consult with
7 the Secretary, the Secretary of Labor, and the Secretary
8 of Agriculture on all regulations to implement the duties
9 of the Secretary of State under this Act and the amend-
10 ments made by this Act.

11 (c) REQUIREMENT FOR THE SECRETARY OF LABOR
12 TO CONSULT.—The Secretary of Labor shall consult with
13 the Secretary of Agriculture and the Secretary on all regu-
14 lations to implement the duties of the Secretary of Labor
15 under this Act and the amendments made by this Act.

16 (d) DEADLINE FOR ISSUANCE OF REGULATIONS.—
17 All regulations to implement the duties of the Secretary,
18 the Secretary of State, and the Secretary of Labor created
19 under sections 218, 218A, 218B, 218C, and 218D of the
20 Immigration and Nationality Act, as amended or added
21 by section 480 of this Act, shall take effect on the effective
22 date of section 480 and shall be issued not later than 1
23 year after the date of enactment of this Act.

1 **SEC. 484. REPORTS TO CONGRESS.**

2 (a) ANNUAL REPORT.—Not later than September 30
3 of each year, the Secretary shall submit a report to Con-
4 gress that identifies, for the previous year—

5 (1) the number of job opportunities approved
6 for employment of aliens admitted under section
7 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
8 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), and the
9 number of workers actually admitted, disaggregated
10 by State and by occupation;

11 (2) the number of such aliens reported to have
12 abandoned employment pursuant to section
13 218B(e)(2) of such Act;

14 (3) the number of such aliens who departed the
15 United States within the period specified in section
16 218B(d) of such Act;

17 (4) the number of aliens who applied for blue
18 card status pursuant to section 476(a);

19 (5) the number of aliens who were granted such
20 status pursuant section 476(a);

21 (6) the number of aliens who applied for an ad-
22 justment of status pursuant to section 478(a); and

23 (7) the number of aliens who received an ad-
24 justment of status pursuant section 478(a).

25 (b) IMPLEMENTATION REPORT.—Not later than 180
26 days after the date of the enactment of this Act, the Sec-

1 retary shall prepare and submit a report to Congress that
2 describes the measures being taken and the progress made
3 in implementing this Act.

4 **SEC. 485. EFFECTIVE DATE.**

5 Section 481 and the amendments made by section
6 480 shall take effect 1 year after the date of the enact-
7 ment of this Act.

8 **TITLE V—REGISTRATION OF**
9 **UNDOCUMENTED INDIVIDUALS**
10 **Subtitle A—Lawful Prospective**
11 **Immigrant Status**

12 **SEC. 501. LAWFUL PROSPECTIVE IMMIGRANT STATUS.**

13 (a) IN GENERAL.—

14 (1) AUTHORITY TO GRANT LAWFUL PROSPEC-
15 TIVE IMMIGRANT STATUS.—Notwithstanding any
16 other provision of law, the Secretary may grant an
17 alien status as a Lawful Prospective Immigrant if
18 the alien—

19 (A) submits an application for such status;

20 and

21 (B) meets the requirements of this section.

22 (2) TREATMENT OF APPLICANTS.—For pur-
23 poses of this section, an applicant for Lawful Pro-
24 spective Immigrant status shall be treated as an ap-
25 plicant for admission to the United States.

1 (b) ELIGIBILITY REQUIREMENTS.—

2 (1) IN GENERAL.—To be eligible for status as
3 a Lawful Prospective Immigrant an alien shall the
4 requirements of this section including the following:

5 (A) INELIGIBILITY.—The alien shall not
6 ineligible for such status under paragraph (2).

7 (B) INADMISSIBILITY.—Except as provided
8 in paragraph (3), the alien shall not be inad-
9 missible under section 212(a) of the Immigra-
10 tion and Nationality Act (hereinafter in this
11 subtitle referred to as “the Act”) (8 U.S.C.
12 1182(a)).

13 (C) PHYSICAL PRESENCE.—The alien
14 shall—

15 (i) be physically present in the United
16 States on the date of application for status
17 as a Lawful Prospective Immigrant;

18 (ii) have been present in the United
19 States before September 30, 2010; and

20 (iii) have maintained continuous phys-
21 ical presence in the United States from
22 September 30, 2010 to the date on which
23 the alien is granted status as a Lawful
24 Prospective Immigrant under this title;

25 (2) GROUNDS OF INELIGIBILITY.—

1 (A) IN GENERAL.—An alien is ineligible
2 for Lawful Prospective Immigrant status if the
3 Secretary determines that the alien—

4 (i) has been convicted of any offense
5 under Federal or State law punishable
6 with a maximum term of imprisonment of
7 more than 1 year;

8 (ii) is a person described in sections
9 237(a)(2)(A)(iii), (a)(2)(E)(i), or
10 (a)(2)(E)(ii) of the Act;

11 (iii) has ordered, incited, assisted, or
12 otherwise participated in the persecution of
13 any person on account of race, religion, na-
14 tionality, membership in a particular social
15 group, or political opinion;

16 (iv) is entering, has entered or has at-
17 tempted to enter the United States illegally
18 on or after September 30, 2010; or

19 (v) is on September 30, 2010—

20 (I) an alien lawfully admitted for
21 permanent residence;

22 (II) an alien granted asylum
23 under section 208 of the Act or ad-
24 mitted as a refugee under section 207
25 of the Act;

1 (III) an alien who, according to
2 the records of the Secretary, is in a
3 period of authorized stay in any non-
4 immigrant status (other than an alien
5 considered to be in a nonimmigrant
6 status solely by reason of section
7 244(f)(4) of the Act), notwithstanding
8 any unauthorized employment or
9 other violation of nonimmigrant sta-
10 tus;

11 (IV) an alien paroled into the
12 United States under section 212(d)(5)
13 of the Act for purposes of prosecution
14 or of serving as a witness in pro-
15 ceedings being, or to be, conducted by
16 judicial, administrative, or legislative
17 bodies in the United States; or

18 (V) an alien paroled into the
19 Commonwealth of the Northern Mar-
20 iana Islands.

21 (B) CONSTRUCTION.—For purposes of de-
22 termining ineligibility under this paragraph,
23 section 101(a)(48) of the Act shall apply to de-
24 terminations of conviction or sentencing for an
25 offense.

1 (3) GROUNDS OF INADMISSIBILITY.—

2 (A) IN GENERAL.—In determining an
3 alien’s admissibility under paragraph (1)(B)—

4 (i) Section 212(a)(5) of the Act shall
5 not apply, and paragraphs (6)(A), (6)(B),
6 (6)(C), (6)(D), (6)(F), (6)(G), (7), (9),
7 and (10)(B) of section 212(a) of the Act
8 shall not apply with regard to conduct or
9 unlawful presence occurring before the
10 date of application;

11 (ii) the Secretary may not waive—

12 (I) subparagraphs (B), (C),
13 (D)(ii), (E), (H), (I), or (J) (as
14 amended by this Act) of section
15 212(a)(2) of the Act (relating to
16 criminals);

17 (II) section 212(a)(3) of the Act
18 (relating to security and related
19 grounds);

20 (III) subparagraphs (A), (C), or
21 (D) of section 212(a)(10) of the Act
22 (relating to polygamists and child ab-
23 ductors); or

24 (IV) paragraph (6)(A)(i) of sec-
25 tion 212(a) of the Act (with respect to

1 any entries occurring on or after Sep-
2 tember 30, 2010); and

3 (iii) the Secretary may in her discre-
4 tion waive the application of any provision
5 of section 212(a) of the Act not listed in
6 clause (ii) on behalf of an individual alien
7 for humanitarian purposes, to ensure fam-
8 ily unity, or if such waiver is otherwise in
9 the public interest.

10 (B) CONSTRUCTION.—Nothing in this
11 paragraph shall be construed as requiring the
12 Secretary to commence removal proceedings
13 against an alien. Nothing in this paragraph
14 shall be construed as affecting the authority of
15 the Secretary other than under this paragraph
16 to waive the provisions of section 212(a) of
17 such Act.

18 (4) CONTINUOUS PHYSICAL PRESENCE.—For
19 purposes of this subsection, any absence from the
20 United States without authorization pursuant to
21 subsection (d)(1)(A)(ii) of this section shall con-
22 stitute a break in continuous physical presence.

23 (5) APPLICABILITY OF OTHER PROVISIONS.—
24 Section 240B(d) of the Act and section 208(d)(6) of

1 the Act shall not apply to an alien with respect to
2 an application for status under this section.

3 (c) APPLICATION PROCEDURES.—

4 (1) FILING OF APPLICATION.—

5 (A) IN GENERAL.—In accordance with the
6 rulemaking procedures described in section 608
7 of this title—

8 (i) the Secretary shall prescribe by in-
9 terim final rule published in the Federal
10 Register—

11 (I) the procedures for an alien in
12 the United States to apply for status
13 as a Lawful Prospective Immigrant;

14 (II) the procedures for an alien
15 granted Lawful Prospective Immi-
16 grant status to petition for a spouse
17 or child outside the United States to
18 be classified as a Lawful Prospective
19 Immigrant; and

20 (III) the evidence required to
21 demonstrate eligibility for such status,
22 or otherwise required as part of the
23 application, including, but not limited
24 to, information about the alien's
25 spouse or children; and

1 (ii) the Secretary of State shall pre-
2 scribe by regulation published in the Fed-
3 eral Register—

4 (I) the procedures for an alien
5 overseas who is the beneficiary of an
6 approved petition for status as a Law-
7 ful Prospective Immigrant to apply at
8 a consulate for a visa or other appro-
9 priate documentation authorizing
10 travel to a United States port of
11 entry; and

12 (II) the evidence required to
13 demonstrate eligibility for such docu-
14 mentation.

15 (B) RECEIPT OF APPLICATIONS.—The Sec-
16 retary shall accept applications from aliens in
17 the United States for Lawful Prospective Immi-
18 grant status for a period of 1 year starting the
19 first day of the tenth month that begins after
20 the date of enactment of this Act. If, during the
21 1 year initial period for the receipt of applica-
22 tions for Lawful Prospective Immigrant status,
23 the Secretary determines that additional time is
24 required to process applications for such status
25 or for other good cause, the Secretary may in

1 her discretion extend the period for accepting
2 applications by up to 6 months.

3 (C) APPLICATION BY ALIENS APPRE-
4 HENDED BEFORE START OF APPLICATION PE-
5 RIOD.—If an alien is apprehended between the
6 date of enactment of this Act and the date on
7 which the period for application under subpara-
8 graph (B) of this paragraph closes, and the
9 alien can establish prima facie eligibility for sta-
10 tus as a Lawful Prospective Immigrant under
11 this section, the Secretary shall provide the
12 alien with a reasonable opportunity to file an
13 application under this section after regulations
14 implementing this section are promulgated.

15 (D) APPLICATION BY ALIENS IN REMOVAL
16 PROCEEDINGS.—Notwithstanding any provision
17 of the Act—

18 (i) if the Secretary determines that an
19 alien, between the date of enactment of
20 this Act and the date on which the period
21 for application under subparagraph (B) of
22 this paragraph closes, is in removal, depor-
23 tation, or exclusion proceedings before the
24 Executive Office for Immigration Review
25 and is prima facie eligible for Lawful Pro-

1 spective Immigrant status under this sec-
2 tion, the Secretary shall affirmatively com-
3 municate such determination to the Execu-
4 tive Office for Immigration Review. Upon
5 consent of the alien, the Executive Office
6 for Immigration Review shall terminate
7 such proceedings without prejudice to fu-
8 ture proceedings on any basis and permit
9 the alien a reasonable opportunity to apply
10 for such status;

11 (ii) if the Executive Office for Immi-
12 gration Review determines that an alien,
13 between the date of enactment of this Act
14 and the date on which the period for appli-
15 cation under subparagraph (B) of this
16 paragraph closes, is in removal, deporta-
17 tion, or exclusion proceedings before the
18 Executive Office for Immigration Review
19 and is prima facie eligible for Lawful Pro-
20 spective Immigrant status the Executive
21 Office of Immigration Review shall notify
22 the Secretary. If the Secretary does not
23 dispute the determination of prima facie
24 eligibility within 14 days, upon consent of
25 the alien, the Executive Office for Immi-

1 gration Review shall terminate such pro-
2 ceedings without prejudice to future pro-
3 ceedings on any basis and permit the alien
4 a reasonable opportunity to apply for such
5 status.

6 (E) APPLICATION BY ALIENS WITH CER-
7 TAIN ORDERS.—

8 (i) IN GENERAL.—An alien who is
9 present in the United States and has been
10 ordered excluded, deported, or removed, or
11 ordered to depart voluntarily from the
12 United States under any provision of the
13 Act—

14 (I) notwithstanding such order or
15 section 241(a)(5) of the Act, may
16 apply for Lawful Prospective Immig-
17 grant status under this title, provided
18 all other conditions set forth in this
19 section are met; and

20 (II) shall not be required to file
21 a separate motion to reopen, recon-
22 sider, or vacate the exclusion, deporta-
23 tion, removal, or voluntary departure
24 order.

1 (ii) APPLICATION GRANTED.—If the
2 Secretary grants the application described
3 in subparagraph (A) of this paragraph, the
4 order described in clause (i) shall be ren-
5 dered null and void by operation of law.

6 (iii) APPLICATION DENIED.—If the
7 Secretary renders a final administrative
8 decision to deny the application described
9 in subparagraph (A) of this paragraph, the
10 order described in clause (i) of this sub-
11 paragraph shall be effective and enforce-
12 able to the same extent as if the applica-
13 tion had not been made.

14 (2) APPLICATION FORM.—

15 (A) IN GENERAL.—The Secretary shall
16 create an application form that an alien shall be
17 required to complete as a condition of Lawful
18 Prospective Immigrant status.

19 (B) LANGUAGE AND ASSISTANCE.—The
20 Secretary shall make available forms and ac-
21 companying instructions in the most common
22 languages spoken by persons in the United
23 States, as determined by the Secretary in the
24 Secretary's discretion. The Secretary shall cre-
25 ate a plan for providing reasonable accommoda-

1 tion to individuals with disabilities consistent
2 with applicable law.

3 (C) APPLICATION INFORMATION.—The ap-
4 plication form shall request such information as
5 the Secretary deems necessary and appropriate.
6 The application, and all information submitted
7 as part of the application process, shall be sub-
8 mitted in English.

9 (3) SECURITY AND LAW ENFORCEMENT BACK-
10 GROUND CHECKS.—

11 (A) SUBMISSION OF BIOMETRIC AND BIO-
12 GRAPHIC DATA.—The Secretary may not accord
13 status as a Lawful Prospective Immigrant un-
14 less the alien submits biometric and biographic
15 data in accordance with procedures established
16 by the Secretary, or, with respect to overseas
17 applications for visas or other documentation of
18 status submitted pursuant to regulations pro-
19 mulgated under section 601(c)(1)(A)(ii), by the
20 Secretary of State. The Secretary shall provide
21 an alternative procedure for applicants who
22 cannot provide the standard biometric data be-
23 cause of a physical impairment.

24 (B) BACKGROUND CHECKS.—The Sec-
25 retary shall utilize biometric, biographic, and

1 other data that the Secretary deems appro-
2 priate to conduct security and law enforcement
3 background checks and to determine whether
4 there exist any criminal, national security, or
5 other factors that would render the alien ineli-
6 gible for status under this section. Such secu-
7 rity and law enforcement background checks
8 must be completed to the satisfaction of the
9 Secretary before status as a Lawful Prospective
10 Immigrant may be granted.

11 (4) FEES AND PENALTIES.—

12 (A) PROCESSING FEES.—

13 (i) IN GENERAL.—Aliens over the age
14 of 14 making an application for status as
15 a Lawful Prospective Immigrant, an appli-
16 cation for extension of such status, or a
17 petition for classification of a spouse or
18 child outside the United States as a Law-
19 ful Prospective Immigrant, shall be re-
20 quired to pay a processing fee to the De-
21 partment of Homeland Security. Spouses
22 or children of Lawful Prospective immi-
23 grants applying at U.S. embassies or con-
24 sulates for a visa or other documentation
25 of status pursuant to regulations promul-

1 gated under paragraph (1)(A)(ii) of this
2 subsection shall, regardless of age, be re-
3 quired to pay a processing fee to the De-
4 partment of State. There shall be no waiv-
5 er of these fees.

6 (ii) AMOUNT.—The amount of the re-
7 spective fees shall be set by regulation at
8 a level sufficient to recover the full cost of
9 processing the application.

10 (B) PENALTIES.—An alien 21 years of age
11 or older filing an initial application for the first
12 extension of the initial period of Lawful Pro-
13 spective Immigrant status shall be required to
14 pay a penalty of \$500 in addition to the proc-
15 essing fee in subparagraph (A) of this para-
16 graph.

17 (C) DEPOSIT AND SPENDING OF FEES.—
18 The processing fees described in subparagraph
19 (A) of this paragraph shall be deposited as an
20 offsetting collection in the appropriate account
21 of the relevant agency identified in subpara-
22 graph (A)(i) of this paragraph and shall remain
23 available until expended.

24 (D) DEPOSIT, ALLOCATION, AND SPEND-
25 ING OF PENALTIES.—The penalty described in

1 subparagraph (B) of this paragraph shall be de-
2 posited and remain available as provided by sec-
3 tion 550 of this Act.

4 (5) INTERVIEW.—The Secretary may interview
5 an applicant for Lawful Prospective Immigrant sta-
6 tus to determine eligibility for such status.

7 (6) ADJUDICATION OF APPLICATION FILED BY
8 ALIEN.—

9 (A) IN GENERAL.—The Secretary may ap-
10 prove the issuance of documentation of Lawful
11 Prospective Immigrant status, or documenta-
12 tion extending such status, as described in
13 paragraph (7) of this subsection, to an appli-
14 cant who establishes to the satisfaction of the
15 Secretary that the applicant is eligible for such
16 status, including provision of such documentary
17 or other evidence of eligibility as the Secretary
18 may require and only upon the completion of all
19 background and security checks to the satisfac-
20 tion of the Secretary.

21 (B) BURDEN OF PROOF.—An alien who is
22 applying for Lawful Prospective Immigrant sta-
23 tus under this section must prove, by a prepon-
24 derance of the evidence, that the alien has sat-

1 isfied the requirements of this section and is eli-
2 gible to receive such status.

3 (C) DENIAL OF APPLICATION.—

4 (i) An alien who fails to satisfy the
5 eligibility requirements for status as a
6 Lawful Prospective Immigrant, or exten-
7 sion of such status, shall have his applica-
8 tion for such status or extension denied
9 and any subsequent applications filed by
10 the alien for Lawful Prospective Immi-
11 grant status shall be denied.

12 (ii) The Secretary shall deny the ap-
13 plication of an alien who fails to submit re-
14 quested initial evidence, including re-
15 quested biometric data, or any requested
16 additional evidence by the date required by
17 the Secretary.

18 (iii) An alien whose application for
19 status under this section was denied under
20 clause (ii) of this subparagraph is not pre-
21 cluded from filing a new application, in-
22 cluding the payment of all required fees
23 and penalties, provided that the new appli-
24 cation is filed within the period allowed
25 under paragraph (1)(B) of this subsection.

1 (7) EVIDENCE OF LAWFUL PROSPECTIVE IMMI-
2 GRANT STATUS.—

3 (A) IN GENERAL.—Documentary evidence
4 of status as a Lawful Prospective Immigrant
5 shall be issued to each alien whose application
6 for such status has been approved.

7 (B) FEATURES OF DOCUMENTATION.—
8 Documentary evidence of status as a Lawful
9 Prospective Immigrant—

10 (i) shall be machine-readable and tam-
11 per-resistant, and shall contain a digitized
12 photograph and at least one other biomet-
13 ric identifier that can be authenticated;

14 (ii) shall, during the alien's authorized
15 period of admission under subsection (e)(3)
16 of this section and any extension of such
17 authorized period of admission under sub-
18 section (e)(4) of this section, serve as a
19 valid travel and entry document for the
20 purpose of applying for admission to the
21 United States;

22 (iii) may be accepted during the pe-
23 riod of its validity by an employer as evi-
24 dence of employment authorization and

1 identity under section 274A(b)(1)(B) of
2 the Act;

3 (iv) shall be issued to a Lawful Pro-
4 spective Immigrant by the Secretary after
5 final adjudication of such alien's applica-
6 tion for such status or, in the case of an
7 alien outside the United States, after ad-
8 mission to the United States as a Lawful
9 Prospective Immigrant; and

10 (v) shall include such other features
11 and information as the Secretary deter-
12 mines.

13 (d) **LAWFUL PROSPECTIVE IMMIGRANT DEPEND-**
14 **ENTS.—**

15 (1) **IN GENERAL.—**The Secretary may classify
16 an alien not present in the United States as a Law-
17 ful Prospective Immigrant if—

18 (A) the alien is the spouse or child, as de-
19 fined in section 101(a)(35) of the Act (relating
20 to spouse) and 101(b)(1) of the Act (relating to
21 child), of a Lawful Prospective Immigrant;

22 (B) the spouse or child meets the eligibility
23 requirements under subsection (b) (other than
24 the physical presence requirements under sec-

1 tion (b)(1)(C)), except that section 212(a)(7) of
2 the Act shall apply; and

3 (C) the Lawful Prospective Immigrant files
4 a petition in the United States for status as a
5 Lawful Prospective Immigrant on behalf of the
6 spouse or child.

7 (2) REVOCATION OR DENIAL OF STATUS.—A
8 petition for classification as a Lawful Prospective
9 Immigrant filed on behalf of a spouse or child de-
10 scribed in paragraph (1) of this subsection shall be
11 denied, an approved petition for classification as a
12 Lawful Prospective Immigrant for such spouse or
13 child shall be revoked, and any Lawful Prospective
14 Immigrant status granted to such spouse or child
15 shall be revoked, if the alien who filed the petition
16 on behalf of the spouse or child was not eligible for
17 Lawful Prospective Immigrant status at the time the
18 alien filed an application under section 501(a) of
19 this title.

20 (e) TERMS AND CONDITIONS OF LAWFUL PROSPEC-
21 TIVE IMMIGRANT STATUS.—

22 (1) BENEFITS PENDING ADJUDICATION OF AP-
23 PLICATION.—

24 (A) IN GENERAL.—Until a final decision
25 on the application for Lawful Prospective Immi-

1 grant status, an alien in the United States who
2 files an application under this section for Law-
3 ful Prospective Immigrant status—

4 (i) may in the Secretary's discretion
5 receive advance parole to re-enter the
6 United States, but only when urgent hu-
7 manitarian circumstances compel such
8 travel; and

9 (ii) may not be detained by the Sec-
10 retary or removed from the United States,
11 unless the Secretary determines in her dis-
12 cretion that such alien is or has become—

13 (I) ineligible for Lawful Prospec-
14 tive Immigrant status under section
15 (b)(2) of this section;

16 (II) inadmissible under section
17 (b)(1)(B) of this section, without re-
18 gard to the possibility of a waiver
19 under section (b)(3)(A)(iii); or

20 (III) removable under subsection
21 (a)(2)(A)(iii), (a)(2)(E)(i), or
22 (a)(2)(E)(ii) of section 237 of the Act;
23 provided that nothing in this section shall
24 prevent the Secretary from detaining an
25 alien for up to 48 hours on the basis of

1 probable cause that the alien is a person
2 described in clause (ii) of this subpara-
3 graph. Thereafter, detention is authorized
4 in accordance with the provisions of the
5 Immigration and Nationality Act governing
6 the removal process.

7 (B) EVIDENCE OF APPLICATION FILING.—

8 A document shall be issued by the Secretary
9 showing receipt of an application for Lawful
10 Prospective Immigrant status.

11 (C) CONTINUING EMPLOYMENT.—An em-

12 ployer who knows that an alien employee is an
13 applicant for Lawful Prospective Immigrant
14 status is not in violation of section 274A(a)(2)
15 of the Act if the employer continues to employ
16 the alien pending adjudication of the applica-
17 tion.

18 (D) APPLICABILITY OF OTHER PROVI-

19 SIONS.—Section 101(g) of the Act shall not
20 apply to an alien granted advance permission
21 under subparagraph (A)(ii) of this paragraph to
22 re-enter the United States.

23 (2) BENEFITS OF LAWFUL PROSPECTIVE IMMI-
24 GRANT STATUS.—

1 (A) EMPLOYMENT.—Notwithstanding any
2 other provision of law, including section
3 241(a)(7) of the Act, Lawful Prospective Immigrants shall be granted employment authoriza-
4 tion incident to their Lawful Prospective Immigrant status.
5
6

7 (B) TRAVEL OUTSIDE THE UNITED
8 STATES.—

9 (i) IN GENERAL.—A Lawful Prospective
10 Immigrant may travel outside of the
11 United States and may be admitted (if
12 otherwise admissible) upon return to the
13 United States without having to obtain a
14 visa if—

15 (I) the alien is the bearer of
16 valid, unexpired documentary evidence
17 of Lawful Prospective Immigrant status that satisfies the conditions set
18 forth in subsection (c)(7) of this section;
19
20

21 (II) the alien's absence from the
22 United States was not for a period exceeding 6 months; and
23

1 (III) the alien is not subject to
2 the bars on extension described in
3 paragraph (4)(C) of this subsection.

4 (ii) ADMISSIBILITY.—On seeking re-
5 admission to the United States after travel
6 outside the United States a Lawful Pro-
7 spective Immigrant shall establish that he
8 or she is not inadmissible in accordance
9 with section 235 of the Act, except as pro-
10 vided by subsection (b)(3) of this section.

11 (iii) EFFECT ON PERIOD OF AUTHOR-
12 IZED ADMISSION.—Time spent outside the
13 United States under clause (i) of this sub-
14 paragraph shall not extend the most recent
15 period of authorized admission in the
16 United States under paragraph (3) of this
17 subsection.

18 (C) PROTECTION FROM DETENTION OR
19 REMOVAL.—A Lawful Prospective Immigrant
20 may not be detained by the Secretary or re-
21 moved from the United States, unless—

22 (i) the Secretary determines in her
23 discretion that such alien is or has be-
24 come—

1 (I) ineligible for Lawful Prospective
2 tive Immigrant status under sub-
3 section (b)(2) of this section;

4 (II) inadmissible under sub-
5 section (b)(1)(B) of this section; or

6 (III) removable under subsection
7 (a)(2)(A)(iii), (a)(2)(E)(i), or
8 (a)(2)(E)(ii) of section 237 of the Act;
9 or

10 (ii) the alien's Lawful Prospective Im-
11 migrant status has expired or has been re-
12 voked under paragraph (6) of this sub-
13 section,

14 provided that nothing in this section shall pre-
15 vent the Secretary from detaining a Lawful
16 Prospective Immigrant for up to 48 hours on
17 the basis of probable cause that the alien is a
18 person described in clause (i) of this subpara-
19 graph. Thereafter, detention is authorized in
20 accordance with the provisions of the Act gov-
21 erning the removal process.

22 (D) ADMISSION.—An alien granted status
23 as a Lawful Prospective Immigrant shall be
24 considered to have been admitted in Lawful
25 Prospective Immigrant status as of the date of

1 approval of the alien's application or (in the
2 case of an alien outside the United States) on
3 the date such alien is admitted to the United
4 States, whichever is later. An alien in Lawful
5 Prospective Immigrant status is lawfully admit-
6 ted, but is not a nonimmigrant or an alien who
7 has been lawfully admitted for permanent resi-
8 dence.

9 (3) INITIAL PERIOD OF AUTHORIZED ADMIS-
10 SION.—Except as provided under paragraph (4) of
11 this subsection, the initial period of authorized ad-
12 mission for a Lawful Prospective Immigrant may
13 not exceed 4 years from the date on which such sta-
14 tus is conferred. The Secretary may in her discretion
15 provide for shorter expiration dates among subsets
16 of Lawful Prospective Immigrants, based upon date
17 of filing or other appropriate factors, in order to en-
18 courage early filing, vary expiration dates, or other-
19 wise improve the administration of the program.

20 (4) EXTENSION.—

21 (A) IN GENERAL.—The Secretary may ex-
22 tend a Lawful Prospective Immigrant's period
23 of lawful admission beyond the initial period de-
24 scribed in paragraph (3) of this subsection only
25 where the Lawful Prospective Immigrant has

1 filed, in the United States, a timely application
2 for extension. In no case, however, may the pe-
3 riod of authorized admission provided in any
4 such extension extend past the date that is 11
5 years after the date of enactment of this Act.

6 (B) ELIGIBILITY.—In order to be eligible
7 for an extension of the period of authorized ad-
8 mission under this paragraph, an alien must
9 demonstrate continuing eligibility for status as
10 a Lawful Prospective Immigrant and not be
11 subject to any of the bars to extension in sub-
12 paragraph (C) of this paragraph.

13 (C) BARS TO EXTENSION.—A Lawful Pro-
14 spective Immigrant shall not be eligible to ex-
15 tend such status if—

16 (i) the alien has violated any term or
17 condition of his or her Lawful Prospective
18 Immigrant status; or

19 (ii) the period of authorized admission
20 of the Lawful Prospective Immigrant has
21 expired or been revoked for any reason.

22 (D) FILING OF APPLICATION FOR EXTEN-
23 SION.—

24 (i) IN GENERAL.—Except as provided
25 in clause (ii) of this subparagraph, an ex-

1 tension of status under this subparagraph
2 shall not be approved where status as a
3 Lawful Prospective Immigrant expired or
4 was revoked before the date on which the
5 application was filed.

6 (ii) EXCEPTION.—Failure to file be-
7 fore the period of previously authorized ad-
8 mission expired or was revoked may be ex-
9 cused in the discretion of the Secretary,
10 with any extension granted from the date
11 the previously authorized period of admis-
12 sion expired, where it is demonstrated at
13 the time of filing that—

14 (I) the delay was due to extraor-
15 dinary circumstances beyond the con-
16 trol of the applicant, and the Sec-
17 retary finds the delay commensurate
18 with the circumstances; and

19 (II) the alien has not otherwise
20 violated the terms or conditions of his
21 or her status as a Lawful Prospective
22 Immigrant.

23 (E) SECURITY AND LAW ENFORCEMENT
24 BACKGROUND CHECKS.—An alien applying for
25 extension of status as a Lawful Prospective Im-

1 migrant shall be required to submit to renewed
2 security and law enforcement background
3 checks that shall be completed to the satisfac-
4 tion of the Secretary before such extension may
5 be granted.

6 (F) DENIAL OF APPLICATION FOR EXTEN-
7 SION.—A denial of an application for extension
8 of status as a Lawful Prospective Immigrant
9 shall be considered a revocation of such status
10 for purposes of this title.

11 (5) REGISTRATION REQUIREMENT.—Part VII
12 of the Act (relating to registration of aliens) shall
13 apply to Lawful Prospective Immigrants, except that
14 the Secretary may in her discretion excuse a delay
15 of up to 90 days in complying with the requirement
16 under section 265 of the Act to file notice of change
17 of address. An alien whose failure to timely file such
18 notice of an address change has been excused by the
19 Secretary shall not be subject to the penalty under
20 section 266(b) of the Act for that failure.

21 (6) REVOCATION.—

22 (A) IN GENERAL.—At any time after an
23 alien has been granted Lawful Prospective Im-
24 migrant status but has not yet adjusted from
25 such status to that of an alien lawfully admitted

1 for permanent residence under section 502 of
2 this title, the Secretary may revoke the alien's
3 status following appropriate notice to the alien
4 and exhaustion or waiver of all applicable ad-
5 ministrative review procedures under section
6 503 of this title, if—

7 (i) the alien is or has become inadmis-
8 sible under subsection (b)(1)(B) of this
9 section or ineligible for such status under
10 subsection (b)(2) of this section;

11 (ii) the alien knowingly used docu-
12 mentation issued under this section for un-
13 lawful or fraudulent purposes; or

14 (iii) the alien is or was absent from
15 the United States for any single period of
16 more than six months since the grant of
17 Lawful Prospective Immigrant status.

18 (B) ADDITIONAL EVIDENCE.—In consid-
19 ering revocation, the Secretary may require the
20 alien to submit additional evidence or to appear
21 for an interview. A failure to comply with such
22 requirements will result in revocation except
23 where the alien demonstrates to the Secretary's
24 satisfaction that such failure was reasonably ex-
25 cusable and not willful.

1 (C) INVALIDATION OF DOCUMENTATION.—
2 Any documentation that is issued by the Sec-
3 retary under subsection (c)(7) of this section to
4 any alien shall automatically be rendered invalid
5 for any purpose except departure, if the alien's
6 status as a Lawful Prospective Immigrant is re-
7 voked under subparagraph (A) of this para-
8 graph.

9 (7) MEDICAL EXAMINATION.—A Lawful Pro-
10 spective Immigrant is required to undergo medical
11 observation and examination. The Secretary, with
12 the concurrence of the Secretary of Health and
13 Human Services, shall prescribe policies and proce-
14 dures for the nature, frequency, and timing of such
15 observation and examination.

16 (8) CONSTRUCTION.—Nothing in this Act shall
17 be construed to—

18 (A) require the Secretary to revoke status
19 as a Lawful Prospective Immigrant before com-
20 mencing removal proceedings with respect to an
21 alien described in subsection (a) of this section
22 who has been granted such status, or in any
23 way prohibit the initiation of such proceedings
24 against a Lawful Prospective Immigrant where

1 such proceedings are authorized under this Act;
2 or

3 (B) authorize the Attorney General to ad-
4 judicate or grant any application for status as
5 a Lawful Prospective Immigrant, to receive or
6 consider an appeal from a denial or revocation
7 of Lawful Prospective Immigrant status, or to
8 adjust the status of any Lawful Prospective Im-
9 migrant to an alien lawfully admitted for per-
10 manent residence, unless the Secretary has del-
11 egated such authority to the Attorney General
12 in appropriate cases pursuant to section
13 103(a)(6) of the Act.

14 (f) DISSEMINATION OF INFORMATION ON LAWFUL
15 PROSPECTIVE IMMIGRANT PROGRAM.—After the enact-
16 ment of this Act, the Secretary, in cooperation with enti-
17 ties approved by the Secretary, and in accordance with
18 a plan adopted by the Secretary in the Secretary’s discre-
19 tion, shall broadly disseminate information regarding
20 Lawful Prospective Immigrant status, the rights and ben-
21 efits that flow from such status, and the requirements to
22 be satisfied to obtain this status. Such information shall
23 be disseminated in the top five principal languages, as de-
24 termined by the Secretary in the Secretary’s discretion,
25 spoken by aliens who would qualify for status under this

1 section, including to television, radio, and print media to
2 which such aliens would have access.

3 **SEC. 502. ADJUSTMENT OF STATUS FOR LAWFUL PROSPEC-**
4 **TIVE IMMIGRANTS.**

5 (a) IN GENERAL.—Notwithstanding any other provi-
6 sion of law, including section 244(h) of the Act, the Sec-
7 retary may adjust the status of a Lawful Prospective Im-
8 migrant to that of an alien lawfully admitted for perma-
9 nent residence if the Lawful Prospective Immigrant satis-
10 fies, in addition to all other requirements imposed by law,
11 the eligibility requirements under this section.

12 (b) ELIGIBILITY REQUIREMENTS.—

13 (1) LAWFUL PROSPECTIVE IMMIGRANT STA-
14 TUS.—

15 (A) IN GENERAL.—The alien must be in a
16 period of authorized admission as a Lawful
17 Prospective Immigrant and must continue to
18 satisfy—

19 (i) the eligibility requirements for
20 such status under section 601(b) of this
21 title; and

22 (ii) the terms and conditions of such
23 status under section 601(d) of this title.

24 (B) MAINTENANCE OF WAIVERS OF ADMIS-
25 SIBILITY.—

1 (i) IN GENERAL.—The grounds of in-
2 admissibility under section 212(a) of the
3 Act that are made inapplicable or pre-
4 viously waived for the alien under section
5 501(b)(3) of this title shall also be consid-
6 ered inapplicable for purposes of the alien’s
7 adjustment pursuant to this section.

8 (ii) EXCEPTION FOR POST-FILING
9 CONDUCT.—No waiver previously granted
10 shall apply to any inadmissibility under
11 section 501(b)(1)(B) of this title arising
12 out of conduct occurring after the date on
13 which the application for Lawful Prospec-
14 tive Immigrant status was filed.

15 (C) PENDING REVOCATION PRO-
16 CEEDINGS.—If the Secretary has sent the appli-
17 cant a notice of intent to revoke the applicant’s
18 Lawful Prospective Immigrant status under
19 section 501(e)(6)(A)(i) of this Act, an applica-
20 tion for adjustment under this section may not
21 be approved until the Secretary has made a
22 final determination on whether to revoke the
23 applicant’s status.

24 (2) BASIC CITIZENSHIP SKILLS.—

1 (A) IN GENERAL.—Except as provided
2 under subparagraph (C) of this paragraph, a
3 Lawful Prospective Immigrant who is 14 years
4 of age or older shall establish that he or she—

5 (i) meets the requirements under sec-
6 tion 312 of the Act; or

7 (ii) is satisfactorily pursuing a course
8 of study, pursuant to standards established
9 by the Secretary of Education, in consulta-
10 tion with the Secretary, to achieve such an
11 understanding of English and knowledge
12 and understanding of the history and Gov-
13 ernment of the United States.

14 (B) RELATION TO NATURALIZATION EXAM-
15 INATION.—A Lawful Prospective Immigrant
16 who demonstrates that he or she meets the re-
17 quirements under section 312 of the Act may
18 be considered to have satisfied the requirements
19 of that section for purposes of becoming natu-
20 ralized as a citizen of the United States under
21 title III of the Act.

22 (C) EXCEPTIONS.—

23 (i) MANDATORY.—Subparagraph (A)
24 of this paragraph shall not apply to any
25 person who is unable to comply with those

1 requirements because of a physical or de-
2 velopmental disability or mental impair-
3 ment as described in section 312(b)(1) of
4 the Act.

5 (ii) DISCRETIONARY.—The Secretary
6 may waive all or part of subparagraph (A)
7 of this paragraph for a Lawful Prospective
8 Immigrant who is at least 65 years of age
9 on the date on which an application is filed
10 for adjustment of status under this section.

11 (3) PAYMENT OF TAXES.—

12 (A) IN GENERAL.—Not later than the date
13 on which the application for adjustment of sta-
14 tus under this section is filed, the applicant
15 shall satisfy any applicable Federal tax liability.

16 (B) APPLICABLE FEDERAL TAX LIABIL-
17 ITY.—For purposes of subparagraph (A) of this
18 paragraph, the term “applicable Federal tax li-
19 ability” means liability for unpaid assessed
20 Federal taxes, including penalties and interest,
21 owed.

22 (4) CONTINUOUS PHYSICAL PRESENCE.—The
23 alien shall establish that the alien did not have a
24 single absence from the United States of more than

1 6 months during the period of admission as a Law-
2 ful Prospective Immigrant.

3 (5) MILITARY SELECTIVE SERVICE.—The alien
4 shall establish that the alien has registered under
5 the Military Selective Service Act (50 U.S.C. App.
6 451 et seq.), if the alien is subject to such registra-
7 tion under that Act.

8 (c) APPLICATION PROCEDURES.—

9 (1) IN GENERAL.—In accordance with the pro-
10 cedures described in section 508 of this title, the
11 Secretary shall prescribe by regulation the proce-
12 dures for an alien in the United States to apply for
13 adjustment of status under this section and the evi-
14 dence required to demonstrate eligibility for such ad-
15 justment.

16 (2) FILING OF APPLICATION.—

17 (A) BACK OF THE LINE.—An alien may
18 not adjust status to that of an alien lawfully
19 admitted for permanent residence under this
20 section until the earlier of—

21 (i) 30 days after an immigrant visa
22 has become available for all approved peti-
23 tions filed under sections 201 and 203 of
24 the Act that were filed before the date of
25 enactment of this Act; or

1 (ii) 8 years after the date of enact-
2 ment of this Act.

3 (B) ACCEPTANCE OF APPLICATIONS.—No
4 application to adjust status under this section
5 may be filed before the date that is 6 years
6 after the initial grant of Lawful Prospective Im-
7 migrant status, regardless of whether such date
8 is after the date on which, pursuant to subpara-
9 graph (A) of this paragraph, an alien may ad-
10 just status under this section.

11 (3) FEES AND PENALTIES.—

12 (A) PROCESSING FEES.—The Secretary
13 shall impose a processing fee on applications for
14 adjustment filed under this section which shall
15 be sufficient to recover the full cost of adjudi-
16 cating the application, including the cost of tak-
17 ing and processing biometrics, and the cost of
18 expenses relating to prevention and investiga-
19 tion of fraud.

20 (B) PENALTIES.—An alien 21 years of age
21 or over who is filing an application for adjust-
22 ment of status under this section shall pay a
23 \$1000 penalty to the Secretary, in addition to
24 the processing fee required under subparagraph
25 (A) of this paragraph.

1 (C) DEPOSIT, ALLOCATION, AND SPENDING
2 OF FEES AND PENALTIES.—Fees and penalties
3 collected under subparagraph (B) of this para-
4 graph shall be deposited and remain available
5 as provided under section 501 of this Act.

6 (4) INTERVIEW.—The Secretary may interview
7 an applicant for adjustment under this section to de-
8 termine eligibility for such adjustment.

9 (5) SECURITY AND LAW ENFORCEMENT BACK-
10 GROUND CHECKS.—An alien applying for adjustment
11 under this section shall be required to submit to a
12 renewed security and law enforcement background
13 check that must be completed to the satisfaction of
14 the Secretary before such adjustment may be grant-
15 ed.

16 (6) ADJUDICATION OF ADJUSTMENT APPLICA-
17 TION.—

18 (A) EVIDENCE OF CONTINUOUS PHYSICAL
19 PRESENCE.—The Secretary shall determine
20 continuous physical presence based upon the
21 Secretary's records of admission to the United
22 States or such other relevant information as the
23 Secretary may require.

24 (B) EVIDENCE OF PAYMENT OF TAXES.—

1 (i) IN GENERAL.—The alien may dem-
2 onstrate compliance with the requirement
3 under paragraph (b)(3) of this section by
4 submitting documentation, in accordance
5 with regulations promulgated by the Sec-
6 retary, that establishes that—

7 (I) no such unpaid assessed Fed-
8 eral tax liability exists;

9 (II) all such outstanding liabil-
10 ities have been met; or

11 (III) the alien has entered into,
12 and is in compliance with, an agree-
13 ment for payment of all outstanding
14 liabilities with the Internal Revenue
15 Service.

16 (ii) IRS COOPERATION.—The Sec-
17 retary of the Treasury, in consultation
18 with the Secretary, shall establish proce-
19 dures pursuant to applicable provisions of
20 section 6103 of title 26, U.S. Code, under
21 which the Commissioner of Internal Rev-
22 enue shall provide documentation whereby
23 the Secretary or the applicant may estab-
24 lish the payment of all taxes required
25 under this subsection, to verify that the in-

1 dividual meets the requirements of clause
2 (i) of this subparagraph.

3 (C) BURDEN OF PROOF.—An alien who is
4 applying for adjustment of status under this
5 section must prove, by a preponderance of the
6 evidence, that the alien has satisfied the re-
7 quirements of this section.

8 **SEC. 503. ADMINISTRATIVE REVIEW, REMOVAL PRO-**
9 **CEEDINGS, AND JUDICIAL REVIEW FOR**
10 **ALIENS WHO HAVE APPLIED FOR LAWFUL**
11 **PROSPECTIVE IMMIGRANT STATUS.**

12 (a) ADMINISTRATIVE REVIEW.—

13 (1) EXCLUSIVE ADMINISTRATIVE REVIEW.—Ad-
14 ministrative review of a determination respecting an
15 application for status as a Lawful Prospective Immi-
16 grant under section 501(b) of this title or respecting
17 an application for adjustment of status under sec-
18 tion 502 of this title shall be conducted solely as
19 provided in this subsection.

20 (2) ADMINISTRATIVE APPELLATE REVIEW.—

21 (A) ESTABLISHMENT OF ADMINISTRATIVE
22 APPELLATE AUTHORITY.—The Secretary shall
23 establish or designate an appellate authority to
24 provide for a single level of administrative ap-
25 pellate review of a determination respecting an

1 application for status or revocation of status as
2 a Lawful Prospective Immigrant under section
3 501(b) of this title or respecting an application
4 for adjustment of status under section 502 of
5 this title. Any such application is not renewable
6 in any proceeding before the Attorney General.

7 (B) SINGLE APPEAL.—

8 (i) LAWFUL PROSPECTIVE IMMI-
9 GRANT.—An alien in the United States
10 whose application for status as a Lawful
11 Prospective Immigrant under section
12 501(b) of this title has been denied or
13 whose status as a Lawful Prospective Im-
14 migrant has been revoked, may file with
15 the Secretary not more than 1 appeal of
16 the denial or revocation.

17 (ii) ADJUSTMENT OF STATUS.—An
18 alien in Lawful Prospective Immigrant sta-
19 tus whose application under section 502 of
20 this title for adjustment of status to that
21 of an alien lawfully admitted for perma-
22 nent residence has been denied may file
23 with the Secretary not more than 1 appeal
24 of the denial.

1 (iii) NOTICE OF APPEAL.—A notice of
2 appeal filed under this subsection must be
3 filed not later than 60 calendar days after
4 the date of service of the decision of denial
5 or revocation.

6 (C) SECRETARIAL REVIEW.—Nothing in
7 this subsection shall be construed to limit the
8 authority of the Secretary, in the Secretary's
9 sole and unreviewable discretion, from certi-
10 fying appeals to himself or herself for review
11 and final administrative decision.

12 (D) DENIAL OF PETITIONS FOR DEPEND-
13 ENTS.—Appeals of a decision to deny a petition
14 filed by a Lawful Prospective Immigrant pursu-
15 ant to regulations promulgated under section
16 501(c)(1)(A)(i) of this title to classify a spouse
17 or child of such alien as a Lawful Prospective
18 Immigrant shall be to the administrative appel-
19 late authority described in subsection (A) of
20 this paragraph.

21 (E) STAY OF REMOVAL.—Aliens seeking
22 administrative review under this section shall
23 not be removed from the United States until a
24 final decision is rendered establishing ineligi-

1 bility under this title, unless such removal is
2 based on criminal or national security grounds.

3 (3) RECORD FOR REVIEW.—Administrative ap-
4 pellate review referred to in paragraph (2) of this
5 subsection shall be based solely upon the administra-
6 tive record established at the time of the determina-
7 tion on the application and upon such additional
8 newly discovered or previously unavailable evidence
9 as the administrative appellate review authority may
10 in its discretion decide to consider.

11 (4) LIMITATION ON MOTIONS TO REOPEN AND
12 RECONSIDER.—

13 (A) NO MOTION TO REOPEN OR RECON-
14 SIDER INITIAL DECISION.—An alien may not
15 file a motion to reopen or reconsider the denial
16 of an application for status as a Lawful Pro-
17 spective Immigrant or for adjustment of status
18 under this title, or the revocation of an alien's
19 status as a Lawful Prospective Immigrant
20 under this title.

21 (B) ONE MOTION TO REOPEN OR RECON-
22 SIDER APPELLATE DECISION.—An alien may
23 not file more than one motion to reopen or to
24 reconsider the decision of the administrative ap-
25 pellate authority under this section. Such mo-

1 tions must be filed not later than 60 days after
2 the date of service of the administrative appel-
3 late decision. The Secretary's decision whether
4 to consider any such motion is committed to the
5 Secretary's sole and unreviewable discretion and
6 shall not be subject to any judicial review.

7 (b) SELF INITIATED REMOVAL AND NOTICE PRE-
8 SERVING JUDICIAL REVIEW.—

9 (1) IN GENERAL.—Except as provided in sub-
10 paragraphs (2) and (3) of this subsection, any alien
11 who receives a denial of an administrative appeal
12 filed under subsection (a) may request, not later
13 than 60 calendar days after the date of service of
14 the administrative appellate decision, that the Sec-
15 retary place the alien in removal proceedings. That
16 request shall serve as a notice preserving judicial re-
17 view of the denial. The Secretary shall place such
18 alien in removal proceedings to which the alien
19 would otherwise be subject, provided that no court
20 shall have jurisdiction to review the timing of the
21 Secretary's initiation of such proceedings. If removal
22 proceedings are not commenced within one year of
23 the timely filing of the request specified in this sec-
24 tion, the alien may petition for review as if an order
25 of removal was filed within one year of the request.

1 (2) ALIENS IN REMOVAL PROCEEDINGS.—Any
2 alien who is in removal, deportation, or exclusion
3 proceedings that are not administratively final and
4 who receives a denial of an administrative appeal
5 filed under subsection (a) of this section, may file
6 with the Secretary, not later than 60 calendar days
7 after the date of service of the administrative appel-
8 late decision, a notice to preserve judicial review of
9 that appeal.

10 (3) ALIENS WITH A FINAL REMOVAL ORDER.—
11 Any alien who is subject to an administratively final,
12 unexecuted order of removal, deportation, or exclu-
13 sion and who receives a denial of an administrative
14 appeal filed under subsection (a) of this section, may
15 file with the Secretary, not later than 60 calendar
16 days after the date of service of the administrative
17 appellate decision, a notice to preserve judicial re-
18 view of that appeal. Nothing in this subsection shall
19 be construed to authorize motions to reopen or re-
20 consider the removal order not otherwise permitted
21 under statute or regulation.

22 (4) EFFECT OF MOTIONS TO REOPEN OR RE-
23 CONSIDER.—The 60-day period described in para-
24 graphs (1), (2), and (3) of this subsection shall not

1 be affected or extended by the filing of a motion to
2 reopen or reconsider.

3 (5) EFFECT OF SERVICE BY MAIL.—If the ad-
4 ministrative appellate decision described in para-
5 graphs (1), (2), and (3) of this subsection is served
6 by mail, the date of mailing shall be considered the
7 date of service, and 3 days shall be added to the pre-
8 scribed period that the alien has to file the request
9 or notices under such paragraphs.

10 (c) JUDICIAL REVIEW.—Section 242 of the Act is
11 amended—

12 (1) in subsection (b)(2), by striking “completed
13 the proceedings” and inserting “or the Secretary of
14 Homeland Security completed the removal pro-
15 ceedings”;

16 (2) by amending subsection (d)(1) to read:

17 “(1) the alien has exhausted all administrative
18 remedies available to the alien as of right, except
19 that the alien need not file an administrative appeal
20 of an order of an immigration judge if the alien
21 seeks review solely of a denial or revocation of Law-
22 ful Prospective Immigrant status pursuant to sub-
23 section (i)(3), and”;

24 (3) by adding at the end the following:

1 “(i) JUDICIAL REVIEW OF DETERMINATIONS RELAT-
2 ING TO LAWFUL PROSPECTIVE IMMIGRANT STATUS.—

3 “(1) DIRECT REVIEW.—A person whose appli-
4 cation for classification or adjustment of status
5 under this section is denied after administrative ap-
6 pellate review under Title V of the CIR Act of 2010
7 may seek review of such denial, in accordance with
8 chapter 7 of title 5, United States Code, before the
9 United States district court for the district in which
10 the person resides.

11 “(2) REVIEW AFTER REMOVAL PRO-
12 CEEDINGS.—There shall be judicial review in the
13 Federal courts of appeal of the denial of an applica-
14 tion for adjustment of status under Title V of the
15 CIR Act of 2010 in conjunction with judicial review
16 of an order of removal, deportation, or exclusion, but
17 only if the validity of the denial has not been upheld
18 in a prior judicial proceeding under paragraph (1).

19 “(3) STANDARD FOR JUDICIAL REVIEW.—Judi-
20 cial review of a denial of an application under Title
21 V of the CIR Act of 2010 shall be based upon the
22 administrative record established at the time of the
23 review, but the court may remand the case to the
24 Secretary for consideration of additional evidence
25 where the court finds that the evidence is material

1 and there were reasonable grounds for failure to ad-
2 duce the evidence before the Secretary. Notwith-
3 standing any other provision of law, judicial review
4 of all questions arising from a denial of an applica-
5 tion under Title V of the CIR Act of 2010 shall be
6 governed by the standard of review set forth in
7 chapter 7 of title 5, United States Code.

8 “(4) REMEDIAL POWERS.—Notwithstanding
9 any other provision of law, the district courts of the
10 United States shall have jurisdiction over any cause
11 or claim arising from a pattern or practice of the
12 Secretary of Homeland Security in the operation or
13 implementation of Title V of the CIR Act of 2010
14 that is arbitrary, capricious, or otherwise contrary to
15 law, and may order any appropriate relief. The dis-
16 trict courts may order any appropriate relief in ac-
17 cordance with the preceding sentence without regard
18 to exhaustion, ripeness, or other standing require-
19 ments (other than constitutionally-mandated require-
20 ments), if the court determines that resolution of
21 such cause or claim will serve judicial and adminis-
22 trative efficiency or that a remedy would otherwise
23 not be reasonably available or practicable.

24 “(5) STAY OF REMOVAL.—Aliens seeking judi-
25 cial review under section 503 of the CIR Act of

1 2010 shall not be removed from the United States
2 until a final decision is rendered establishing ineligi-
3 bility under this title.

4 “(6) NO REVIEW FOR LATE FILINGS.—An alien
5 may not file an application for Lawful Prospective
6 Immigrant status, under title V of the CIR Act of
7 2010 beyond the period for receipt of such applica-
8 tions established by section 501(e)(1) of such Act.
9 The denial of any application filed beyond the expi-
10 ration of the period established by that subsection
11 shall not be subject to judicial review or remedy, in-
12 cluding under paragraph (5).

13 “(7) CHALLENGES ON VALIDITY OF THE SYS-
14 TEM ESTABLISHED BY TITLE V OF THE CIR ACT OF
15 2010.—

16 “(A) IN GENERAL.—Any claim that title V
17 of the CIR Act of 2010, or any regulation,
18 guideline, directive, or procedure issued to im-
19 plement that title, violates the Constitution of
20 the United States or is otherwise in violation of
21 law is available exclusively in an action insti-
22 tuted in the United States District Court for
23 the District of Columbia in accordance with the
24 procedures prescribed in this paragraph. No
25 claims challenging the validity of the system es-

1 tablished by title V of the CIR Act of 2010 may
2 be initiated after the period for receipt of such
3 applications established by subsection 501(c)(1)
4 of title VI of the CIR Act of 2010 by or on be-
5 half of an alien who did not timely file for Law-
6 ful Prospective Immigrant status.

7 “(B) DEADLINES FOR BRINGING AC-
8 TIONS.—Any action instituted under this para-
9 graph shall, if it asserts a claim that this title
10 or any regulation, guideline, directive, or proce-
11 dure issued by or under the authority of the
12 Secretary to implement that title violates the
13 Constitution or is otherwise unlawful, be filed
14 no later than one year after the date of the
15 publication or promulgation of the challenged
16 regulation, policy or directive or, in cases chal-
17 lenging the validity of the Act, within one year
18 of enactment.

19 “(C) Subject to subparagraph (D), nothing
20 in subparagraph (A) or (B) shall preclude an
21 applicant for Lawful Prospective Immigrant
22 status under title VI of the CIR Act of 2010
23 from asserting that an action taken or decision
24 made by the Secretary with respect to his sta-
25 tus under that title was contrary to law in a

1 proceeding under section 503 of title V of the
2 CIR Act of 2010.

3 “(D) CLASS ACTIONS.—Any claim de-
4 scribed in subparagraph (A) that is brought as
5 a class action shall be brought in conformity
6 with the Class Action Fairness Act of 2005,
7 Public Law 109-2, and the Federal Rules of
8 Civil Procedure. After the expiration of the pe-
9 riod for receipt of such applications established
10 by section 501(c)(1) of title V of the CIR Act
11 of 2010, an alien who did not timely file for
12 Lawful Prospective Immigrant status may not
13 be a class member of or otherwise benefit from
14 a class action described in subparagraph (A).

15 “(E) EXHAUSTION AND STAY OF PRO-
16 CEEDINGS.—No claim brought under this para-
17 graph shall require the plaintiff to exhaust ad-
18 ministrative remedies under section 503 of title
19 V of the CIR Act of 2010, but nothing shall
20 prevent the court from staying proceedings
21 under this paragraph to permit the Secretary to
22 evaluate an allegation challenging a policy or
23 practice or to take corrective action. In issuing
24 such a stay, the court shall take into account
25 any harm the stay may cause to the claimant

1 and to the government. This subsection conveys
2 no authority to stay proceedings initiated under
3 any other section of the Act.

4 “(F) EXPEDITIOUS CONSIDERATION OF
5 CASES.—It shall be the duty of the District
6 Court, the Court of Appeals, and the United
7 States Supreme Court to advance on the docket
8 and to expedite to the greatest possible extent
9 the disposition of any case considered under
10 this section.”.

11 **SEC. 504. CONFIDENTIALITY OF INFORMATION.**

12 (a) IN GENERAL.—Except as otherwise provided in
13 this section and in section 507 of this title, no Federal
14 agency or bureau, or any officer or employee of such agen-
15 cy or bureau, may, without the written consent of the ap-
16 plicant—

17 (1) use the information furnished by the appli-
18 cant pursuant to an application filed under section
19 501 or 502 of this title, for any purpose, other than
20 to make a determination on the application, includ-
21 ing revocation of an application previously approved;

22 (2) make any publication through which the in-
23 formation furnished by any particular applicant can
24 be identified; or

1 (3) permit anyone other than the sworn offi-
2 cers, employees or contractors of such agency or bu-
3 reau, to examine individual applications that have
4 been filed.

5 (b) REQUIRED DISCLOSURES.—

6 (1) The Secretary shall provide the information
7 furnished pursuant to an application filed under sec-
8 tion 501 or 502 of this title, and any other informa-
9 tion derived from such furnished information, to—

10 (A) a Federal, state, tribal, or local law en-
11 forcement agency, intelligence agency, national
12 security agency, component of the Department
13 of Homeland Security, court, or grand jury in
14 connection with a criminal investigation or
15 prosecution, a background check conducted pur-
16 suant to the Brady Handgun Violence Protec-
17 tion Act, or for homeland security or national
18 security purposes, in each instance about an in-
19 dividual, when such information is requested by
20 such entity or consistent with an information
21 sharing agreement or mechanism; or

22 (B) an official coroner for purposes of af-
23 firmatively identifying a deceased individual,
24 whether or not the death of such individual re-
25 sulted from a crime.

1 (2) Nothing in this section shall be construed as
2 prohibiting any entity described in paragraph (1)(A)
3 of this subsection from disseminating information
4 provided to such entity under this subsection by the
5 Secretary for any authorized purpose.

6 (c) INAPPLICABILITY AFTER DENIAL, REVOCATION,
7 OR ABANDONMENT.—The limitations under subsection (a)
8 of this section—

9 (1) shall apply only until an application filed
10 under section 501 or 502 of this title is denied and
11 all opportunities for administrative appeal of the de-
12 nial have been exhausted;

13 (2) shall not apply to the use of the information
14 furnished pursuant to such application in any re-
15 moval proceeding or other criminal or civil case or
16 action, including administrative action, relating to
17 an alien whose application has been granted that is
18 based upon any violation of law committed or discov-
19 ered after such grant; and

20 (3) shall not apply in a case in which—

21 (A) the Secretary has revoked the alien's
22 status as a Lawful Prospective Immigrant, or

23 (B) the alien's Lawful Prospective Immi-
24 grant status has expired.

1 (d) FRAUD IN APPLICATION PROCESS OR CRIMINAL
2 CONDUCT.—Notwithstanding any other provision of this
3 section, information concerning whether the applicant has
4 engaged in fraud in the application for Lawful Prospective
5 Immigrant status or for adjustment of status from Lawful
6 Prospective Immigrant status or at any time committed
7 a crime may be used or released for immigration enforce-
8 ment, law enforcement, or national security purposes.

9 (e) AUDITING AND EVALUATION OF INFORMATION.—

10 (1) The Secretary may audit and evaluate infor-
11 mation furnished as part of any application filed
12 under section 501 or 502 of this title for purposes
13 of identifying fraud or fraud schemes, and may use
14 any evidence of fraud detected by means of audits,
15 evaluations, or other means for purposes of inves-
16 tigating, prosecuting or referring for prosecution, de-
17 nying, or terminating immigration benefits.

18 (2) Nothing in this section shall be construed as
19 limiting the authority of the relevant Offices of In-
20 spector General from conducting reviews, audits,
21 oversight, and administrative, civil or criminal inves-
22 tigations.

23 (f) USE OF INFORMATION IN IMMIGRATION MATTERS
24 SUBSEQUENT TO ADJUSTMENT OF STATUS.—If the Sec-
25 retary has adjusted an alien's status to that of an alien

1 lawfully admitted for permanent residence pursuant to
2 section 502 of this title, then at any time thereafter the
3 Secretary may use the information furnished by the alien
4 in the application for adjustment of status or in the appli-
5 cations for status pursuant to sections 501 of this title
6 in any subsequent immigration matter.

7 (g) OTHER AUTHORIZED DISCLOSURES.—The Fed-
8 eral Bureau of Investigation may disclose information de-
9 rived from biometric and biographic checks of the appli-
10 cant to assist in the apprehension of a person who is the
11 subject of a warrant of arrest, or to notify intelligence
12 agencies of the location of a known or suspected terrorist.

13 (h) CIVIL PENALTY.—Whoever willfully uses, pub-
14 lishes, or permits information to be disclosed in violation
15 of this section shall be subject to appropriate disciplinary
16 action and subject to a civil monetary penalty of not more
17 than \$5,000.

18 (i) CONSTRUCTION.—Nothing in this section shall be
19 construed to limit the use or release for immigration en-
20 forcement purposes of information contained in files or
21 records of the Secretary or Attorney General pertaining
22 to an application filed under section 501 or 502 of this
23 title, other than information furnished by an applicant
24 pursuant to the application, or any other information de-

1 rived from the application, that is not available from any
2 other source.

3 (j) INTERAGENCY FRAUD PREVENTION COORDINA-
4 TION.—The Secretary or the Secretary’s designee shall
5 convene an interagency committee to address issues relat-
6 ing to the identification, prevention, investigation, and
7 prosecution of fraud and related conduct in connection
8 with this program.

9 **SEC. 505. ALIENS NOT SUBJECT TO DIRECT NUMERICAL**
10 **LIMITATIONS.**

11 Section 201(b)(1) of the Act (8 U.S.C. 1151(b)(1)),
12 is amended by adding at the end the following:

13 “(N) Aliens whose status is adjusted from
14 that of a Lawful Prospective Immigrant under
15 section 502 of CIR Act of 2010.”.

16 **SEC. 506. EMPLOYER PROTECTIONS.**

17 (a) USE OF EMPLOYMENT RECORDS.—Copies of em-
18 ployment records or other evidence of employment pro-
19 vided by an alien or by an alien’s employer in support
20 of an alien’s application for Lawful Prospective Immi-
21 grant status under section 601 of this title shall not be
22 used in a prosecution or investigation (civil or criminal)
23 of that employer under section 274A of the Act or the
24 tax laws of the United States for the prior unlawful em-
25 ployment of that alien, regardless of the adjudication of

1 such application or reconsideration by the Secretary of
2 such alien's prima facie eligibility determination. This sec-
3 tion does not apply to employment records submitted by
4 aliens or employers that are deemed to be fraudulent.

5 (b) **APPLICABILITY OF OTHER LAW.**—Nothing in
6 this section may be used to shield an employer from liabil-
7 ity under section 274B of the Act or any other labor or
8 employment law.

9 **SEC. 507. ASSIGNMENT OF SOCIAL SECURITY NUMBER.**

10 The Commissioner of the Social Security Administra-
11 tion, in coordination with the Secretary, shall implement
12 a system to allow for the assignment of a Social Security
13 number and issuance of a Social Security card after the
14 Secretary has granted an alien status as a Lawful Pro-
15 spective Immigrant. The Secretary shall provide to the
16 Commissioner of Social Security information from the ap-
17 plication filed under section 501(a) of this title and such
18 other information as the Commissioner of Social Security
19 deems necessary to assign a Social Security account num-
20 ber. The Commissioner of Social Security may use such
21 information to assign such Social Security account num-
22 bers and to administer the programs for which the Com-
23 missioner of Social Security has responsibility. The Com-
24 missioner of Social Security may maintain, use, and dis-

1 close such information only as permitted by the Privacy
2 Act and other federal law.

3 **Subtitle B—Implementation**

4 **SEC. 511. RULEMAKING.**

5 (a) IN GENERAL.—The Secretary and Attorney Gen-
6 eral separately shall issue interim final regulations within
7 nine months of the date of enactment of this title to imple-
8 ment this title and the amendments made by this title.
9 Such interim final regulations shall become effective im-
10 mediately upon publication in the Federal Register.

11 (b) EXEMPTION FROM NATIONAL ENVIRONMENTAL
12 POLICY ACT.—Any decision by the Secretary concerning
13 any rulemaking action, plan or program described in this
14 section shall not be considered to be a major Federal ac-
15 tion subject to review under the National Environmental
16 Policy Act of 1969 (42 U.S.C. 4321 et seq.).

17 **SEC. 512. EXEMPTION FROM GOVERNMENT CONTRACTING 18 AND HIRING RULES.**

19 (a) EXEMPTION FROM GOVERNMENT CONTRACTING
20 RULES.—

21 (1) PROCUREMENT COMPETITION EXEMP-
22 TION.—Any Federal agency's determination to use a
23 procurement competition exemption under section
24 253(c) of title 41, United States Code, or to use the
25 authority granted in paragraph (2) of this sub-

1 section, for the purpose of implementing this title is
2 not subject to challenge by protest to either the Gov-
3 ernment Accountability Office, under sections 3551
4 through 3556 of title 31, United States Code, or to
5 the Court of Federal Claims, under section 1491 of
6 title 28, United States Code. An agency shall imme-
7 diately advise Congress of the exercise of the author-
8 ity granted in this subsection.

9 (2) WAIVER OF COMPETITION REQUIRE-
10 MENTS.—The competition requirement of section
11 253(a) of title 41, United States Code may be
12 waived or modified by a Federal agency for any pro-
13 curement conducted to implement this title pursuant
14 to a determination and finding, approved by the sen-
15 ior procurement executive for the agency conducting
16 the procurement, that explains why the waiver or
17 modification is necessary; provided that such a de-
18 termination and finding is furnished to the Com-
19 mittee on Homeland Security and Governmental Af-
20 fairs of the Senate and the Committee on Oversight
21 and Government Reform of the House of Represent-
22 atives.

23 (b) EXEMPTION FROM GOVERNMENT HIRING
24 RULES.—Notwithstanding any other provision of law, the
25 Secretary shall have authority to make term, temporary,

1 limited, and part-time appointments for purposes of imple-
2 menting this title without regard to the number of such
3 employees, their ratio to permanent full-time employees,
4 and the duration of their employment. Nothing in chapter
5 71 of title 5, United States Code, shall affect the authority
6 of any Department management official to hire term, tem-
7 porary, limited, or part-time employees under this sub-
8 section.

9 **SEC. 513. AUTHORITY TO ACQUIRE LEASEHOLDS.**

10 Notwithstanding any other provision of law, the Sec-
11 retary may acquire a leasehold interest in real property,
12 and may provide in a lease entered into under this sub-
13 section for the construction or modification of any facility
14 on the leased property, if she determines that the acquisi-
15 tion of such interest, and such construction or modifica-
16 tion, are necessary in order to facilitate the implementa-
17 tion of this title.

18 **SEC. 514. PRIVACY AND CIVIL LIBERTIES.**

19 (a) PROTECTION OF PRIVACY.—Consistent with sec-
20 tion 504 of this title, the Secretary shall require appro-
21 priate administrative and physical safeguards to protect
22 the security, confidentiality, and integrity of personally
23 identifiable information collected, maintained, and dis-
24 seminated pursuant to sections 501 and 502 of this title.

1 (b) REQUIREMENT FOR IMPACT ASSESSMENTS.—
2 Notwithstanding privacy requirements under section 222
3 of the Homeland Security Act and the E-Government Act
4 of 2002, the Secretary shall conduct a privacy impact as-
5 sessment and a civil liberties impact assessment of the le-
6 galization program established in sections 501 and 502
7 of this title during the pendency of the interim final rule.

8 **SEC. 515. STATUTORY CONSTRUCTION.**

9 Except as specifically provided otherwise, nothing in
10 this title, or any amendment made by this title, shall be
11 construed to create any substantive or procedural right or
12 benefit that is legally enforceable by any party against the
13 United States or its agencies or officers or any other per-
14 son.

15 **Subtitle C—Miscellaneous**

16 **SEC. 521. CORRECTION OF SOCIAL SECURITY RECORDS.**

17 (a) IN GENERAL.—Section 208(e)(1) of the Social
18 Security Act (42 U.S.C. 408(e)(1)) is amended—

19 (1) in subparagraph (B)(ii), by striking “or” at
20 the end;

21 (2) by inserting after subparagraph (C) the fol-
22 lowing:

23 “(D) who is granted status as a Lawful
24 Prospective Immigrant pursuant to section 501
25 of the CIR Act of 2010; or

1 “(E) whose status is adjusted to that of
2 lawful permanent resident under section 502 of
3 the CIR Act of 2010,”; and

4 (3) by striking “1990.” and inserting “1990, or
5 in the case of an alien described in subparagraph
6 (D) or (E), if such conduct is alleged to have oc-
7 curred before the date on which the alien submitted
8 an application under section 501 of the CIR Act of
9 2010 for classification as a Lawful Prospective Im-
10 migrant.”.

11 (b) **EFFECTIVE DATE.**—The amendments made by
12 subsection (a) shall take effect on the first day of the tenth
13 month that begins after the date of the enactment of this
14 Act.

15 **SEC. 522. FRAUD PREVENTION PROGRAM.**

16 (a) **IN GENERAL.**—The head of each Department re-
17 sponsible for the administration of a program related to
18 this title or with authority to confer an immigration ben-
19 efit, relief, or status under the immigration laws shall de-
20 velop an administrative program to prevent fraud within
21 or upon such program or authority. Subject to such modi-
22 fications as the head of the Department may direct, the
23 program shall provide for—

24 (1) fraud prevention training for the relevant
25 administrative adjudicators within the Department;

1 (2) the regular audit of pending and approved
2 applications for examples and patterns of fraud or
3 abuse;

4 (3) the receipt and evaluation of reports of
5 fraud or abuse;

6 (4) the identification of deficiencies in adminis-
7 trative practice or procedure that encourage fraud or
8 abuse;

9 (5) the remedy of any identified deficiencies;
10 and

11 (6) the referral of cases of identified or sus-
12 pected fraud or other misconduct for investigation.

13 (b) IMPLEMENTATION.—Except as the head of the
14 Department shall otherwise provide, the implementation
15 of the administrative program referred to in subsection (a)
16 shall be assigned to and made part of the component or
17 agency within the Department that is responsible for con-
18 ferring the relevant immigration benefit, relief, or status
19 under the immigration laws.

20 (c) COORDINATION.—The heads of relevant Depart-
21 ments shall coordinate their respective efforts under this
22 subsection.

23 (d) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated such sums as may be
25 necessary for this section.

1 **SEC. 523. DATA COLLECTION REQUIREMENTS.**

2 (a) IN GENERAL.—The head of each department or
3 agency of the United States shall ensure that general de-
4 mographic data provided by applicants under this title
5 shall be made available in the aggregate in a searchable
6 public database.

7 (b) DEMOGRAPHIC DATA.—General demographic
8 data including gender, country of origin, age, education,
9 annual earnings, employment, State of residence, marital
10 status, date of arrival in the United States, method of
11 entry into the United States, number and ages of children,
12 and birthplace of children shall be made available to the
13 public.

14 (c) PROTECTION OF CONFIDENTIALITY.—Data col-
15 lected and gathered in the aggregate for purposes of re-
16 search shall not be recorded in such a way that it violates
17 confidentiality provisions under this title.

18 **Subtitle D—Dream Act**

19 **SEC. 531. SHORT TITLE.**

20 This subtitle may be cited as the “Development, Re-
21 lief, and Education for Alien Minors Act of 2010” or the
22 “DREAM Act of 2010”.

23 **SEC. 532. DEFINITIONS.**

24 In this subtitle:

25 (1) INSTITUTION OF HIGHER EDUCATION.—The
26 term “institution of higher education” has the

1 meaning given that term in section 101 of the High-
 2 er Education Act of 1965 (20 U.S.C. 1001).

3 (2) UNIFORMED SERVICES.—The term “uni-
 4 formed services” has the meaning given that term in
 5 section 101(a) of title 10, United States Code.

6 **SEC. 533. RESTORATION OF STATE OPTION TO DETERMINE**
 7 **RESIDENCY FOR PURPOSES OF HIGHER EDU-**
 8 **CATION BENEFITS.**

9 (a) IN GENERAL.—Section 505 of the Illegal Immi-
 10 gration Reform and Immigrant Responsibility Act of 1996
 11 (8 U.S.C. 1623) is repealed.

12 (b) EFFECTIVE DATE.—The repeal under subsection
 13 (a) shall take effect as if included in the enactment of the
 14 Illegal Immigration Reform and Immigrant Responsibility
 15 Act of 1996 (division C of Public Law 104-208; 110 Stat.
 16 3009-546).

17 **SEC. 534. CANCELLATION OF REMOVAL AND ADJUSTMENT**
 18 **OF STATUS OF CERTAIN LONG-TERM RESI-**
 19 **DENTS WHO ENTERED THE UNITED STATES**
 20 **AS CHILDREN.**

21 (a) SPECIAL RULE FOR CERTAIN LONG-TERM RESI-
 22 DENTS WHO ENTERED THE UNITED STATES AS CHIL-
 23 DREN.—

24 (1) IN GENERAL.—Notwithstanding any other
 25 provision of law and except as otherwise provided in

1 this subtitle, the Secretary may cancel removal of,
2 and adjust to the status of an alien lawfully admit-
3 ted for permanent residence, subject to the condi-
4 tional basis described in section 5, an alien who is
5 inadmissible or deportable from the United States, if
6 the alien demonstrates that—

7 (A) the alien has been physically present in
8 the United States for a continuous period of
9 not less than 5 years immediately preceding the
10 date of enactment of this subtitle, and had not
11 yet reached the age of 16 years at the time of
12 initial entry;

13 (B) the alien has been a person of good
14 moral character since the time of application;

15 (C) the alien—

16 (i) is not inadmissible under para-
17 graph (2), (3), (6)(E), or (10)(C) of sec-
18 tion 212(a) of the Immigration and Na-
19 tionality Act (8 U.S.C. 1182(a)); and

20 (ii) is not deportable under paragraph
21 (1)(E), (2), or (4) of section 237(a) of the
22 Immigration and Nationality Act (8 U.S.C.
23 1227(a));

24 (D) the alien, at the time of application,
25 has been admitted to an institution of higher

1 education in the United States, or has earned
2 a high school diploma or obtained a general
3 education development certificate in the United
4 States;

5 (E) the alien has never been under a final
6 administrative or judicial order of exclusion, de-
7 portation, or removal, unless the alien—

8 (i) has remained in the United States
9 under color of law after such order was
10 issued; or

11 (ii) received the order before attaining
12 the age of 16 years; and

13 (F) the alien had not yet reached the age
14 of 35 years on the date of the enactment of this
15 subtitle.

16 (2) WAIVER.—Notwithstanding paragraph (1),
17 the Secretary may waive the ground of ineligibility
18 under section 212(a)(6)(E) of the Immigration and
19 Nationality Act and the ground of deportability
20 under paragraph (1)(E) of section 237(a) of that
21 Act for humanitarian purposes or family unity or
22 when it is otherwise in the public interest.

23 (3) PROCEDURES.—The Secretary shall provide
24 a procedure by regulation allowing eligible individ-
25 uals to apply affirmatively for the relief available

1 under this subsection without being placed in re-
2 moval proceedings.

3 (b) TERMINATION OF CONTINUOUS PERIOD.—For
4 purposes of this section, any period of continuous resi-
5 dence or continuous physical presence in the United States
6 of an alien who applies for cancellation of removal under
7 this section shall not terminate when the alien is served
8 a notice to appear under section 239(a) of the Immigra-
9 tion and Nationality Act (8 U.S.C. 1229(a)).

10 (c) TREATMENT OF CERTAIN BREAKS IN PRES-
11 ENCE.—

12 (1) IN GENERAL.—An alien shall be considered
13 to have failed to maintain continuous physical pres-
14 ence in the United States under subsection (a) if the
15 alien has departed from the United States for any
16 period in excess of 90 days or for any periods in the
17 aggregate exceeding 180 days.

18 (2) EXTENSIONS FOR EXCEPTIONAL CIR-
19 CUMSTANCES.—The Secretary may extend the time
20 periods described in paragraph (1) if the alien dem-
21 onstrates that the failure to timely return to the
22 United States was due to exceptional circumstances.
23 The exceptional circumstances determined sufficient
24 to justify an extension should be no less compelling

1 than serious illness of the alien, or death or serious
2 illness of a parent, grandparent, sibling, or child.

3 (d) EXEMPTION FROM NUMERICAL LIMITATIONS.—

4 Nothing in this section may be construed to apply a nu-
5 merical limitation on the number of aliens who may be
6 eligible for cancellation of removal or adjustment of status
7 under this section.

8 (e) REGULATIONS.—

9 (1) PROPOSED REGULATIONS.—Not later than
10 180 days after the date of enactment of this subtitle,
11 the Secretary shall publish proposed regulations im-
12 plementing this section. Such regulations shall be ef-
13 fective immediately on an interim basis, but are sub-
14 ject to change and revision after public notice and
15 opportunity for a period for public comment.

16 (2) INTERIM, FINAL REGULATIONS.—Within a
17 reasonable time after publication of the interim reg-
18 ulations in accordance with paragraph (1), the Sec-
19 retary shall publish final regulations implementing
20 this section.

21 (f) REMOVAL OF ALIEN.—The Secretary may not re-
22 move any alien who has a pending application for condi-
23 tional status under this subtitle.

24 **SEC. 535. CONDITIONAL PERMANENT RESIDENT STATUS.**

25 (a) IN GENERAL.—

1 (1) **CONDITIONAL BASIS FOR STATUS.**—Not-
2 withstanding any other provision of law, and except
3 as provided in section 6, an alien whose status has
4 been adjusted under section 534 to that of an alien
5 lawfully admitted for permanent residence shall be
6 considered to have obtained such status on a condi-
7 tional basis subject to the provisions of this section.
8 Such conditional permanent resident status shall be
9 valid for a period of 6 years, subject to termination
10 under subsection (b).

11 (2) **NOTICE OF REQUIREMENTS.**—

12 (A) **AT TIME OF OBTAINING PERMANENT**
13 **RESIDENCE.**—At the time an alien obtains per-
14 manent resident status on a conditional basis
15 under paragraph (1), the Secretary shall pro-
16 vide for notice to the alien regarding the provi-
17 sions of this section and the requirements of
18 subsection (c) to have the conditional basis of
19 such status removed.

20 (B) **EFFECT OF FAILURE TO PROVIDE NO-**
21 **TICE.**—The failure of the Secretary to provide
22 a notice under this paragraph—

23 (i) shall not affect the enforcement of
24 the provisions of this subtitle with respect
25 to the alien; and

1 (ii) shall not give rise to any private
2 right of action by the alien.

3 (b) TERMINATION OF STATUS.—

4 (1) IN GENERAL.—The Secretary shall termi-
5 nate the conditional permanent resident status of
6 any alien who obtained such status under this sub-
7 title, if the Secretary determines that the alien—

8 (A) ceases to meet the requirements of
9 subparagraph (B) or (C) of section 4(a)(1);

10 (B) has become a public charge; or

11 (C) has received a dishonorable or other
12 than honorable discharge from the uniformed
13 services.

14 (2) RETURN TO PREVIOUS IMMIGRATION STA-
15 TUS.—Any alien whose conditional permanent resi-
16 dent status is terminated under paragraph (1) shall
17 return to the immigration status the alien had im-
18 mediately prior to receiving conditional permanent
19 resident status under this subtitle.

20 (c) REQUIREMENTS OF TIMELY PETITION FOR RE-
21 MOVAL OF CONDITION.—

22 (1) IN GENERAL.—In order for the conditional
23 basis of permanent resident status obtained by an
24 alien under subsection (a) to be removed, the alien
25 must file with the Secretary, in accordance with

1 paragraph (3), a petition which requests the removal
2 of such conditional basis and which provides, under
3 penalty of perjury, the facts and information so that
4 the Secretary may make the determination described
5 in paragraph (2)(A).

6 (2) ADJUDICATION OF PETITION TO REMOVE
7 CONDITION.—

8 (A) IN GENERAL.—If a petition is filed in
9 accordance with paragraph (1) for an alien, the
10 Secretary shall make a determination as to
11 whether the alien meets the requirements set
12 out in subparagraphs (A) through (E) of sub-
13 section (d)(1).

14 (B) REMOVAL OF CONDITIONAL BASIS IF
15 FAVORABLE DETERMINATION.—If the Secretary
16 determines that the alien meets such require-
17 ments, the Secretary shall notify the alien of
18 such determination and immediately remove the
19 conditional basis of the status of the alien.

20 (C) TERMINATION IF ADVERSE DETER-
21 MINATION.—If the Secretary determines that
22 the alien does not meet such requirements, the
23 Secretary shall notify the alien of such deter-
24 mination and terminate the conditional perma-

1 nent resident status of the alien as of the date
2 of the determination.

3 (3) TIME TO FILE PETITION.—An alien may pe-
4 tition to remove the conditional basis to lawful resi-
5 dent status during the period beginning 180 days
6 before and ending 2 years after either the date that
7 is 6 years after the date of the granting of condi-
8 tional permanent resident status or any other expi-
9 ration date of the conditional permanent resident
10 status as extended by the Secretary in accordance
11 with this subtitle. The alien shall be deemed in con-
12 ditional permanent resident status in the United
13 States during the period in which the petition is
14 pending.

15 (d) DETAILS OF PETITION.—

16 (1) CONTENTS OF PETITION.—Each petition
17 for an alien under subsection (c)(1) shall contain in-
18 formation to permit the Secretary to determine
19 whether each of the following requirements is met:

20 (A) The alien has demonstrated good
21 moral character during the entire period the
22 alien has been a conditional permanent resi-
23 dent.

24 (B) The alien is in compliance with section
25 534(a)(1)(C).

1 (C) The alien has not abandoned the
2 alien's residence in the United States. The Sec-
3 retary shall presume that the alien has aban-
4 doned such residence if the alien is absent from
5 the United States for more than 365 days, in
6 the aggregate, during the period of conditional
7 residence, unless the alien demonstrates that
8 alien has not abandoned the alien's residence.
9 An alien who is absent from the United States
10 due to active service in the uniformed services
11 has not abandoned the alien's residence in the
12 United States during the period of such service.

13 (D) The alien has completed at least 1 of
14 the following:

15 (i) The alien has acquired a degree
16 from an institution of higher education in
17 the United States or has completed at
18 least 2 years, in good standing, in a pro-
19 gram for a bachelor's degree or higher de-
20 gree in the United States.

21 (ii) The alien has served in the uni-
22 formed services for at least 2 years and, if
23 discharged, has received an honorable dis-
24 charge.

1 (E) The alien has provided a list of each
2 secondary school (as that term is defined in sec-
3 tion 9101 of the Elementary and Secondary
4 Education Act of 1965 (20 U.S.C. 7801)) that
5 the alien attended in the United States.

6 (2) HARDSHIP EXCEPTION.—

7 (A) IN GENERAL.—The Secretary may, in
8 the Secretary's discretion, remove the condi-
9 tional status of an alien if the alien—

10 (i) satisfies the requirements of sub-
11 paragraphs (A), (B), and (C) of paragraph
12 (1);

13 (ii) demonstrates compelling cir-
14 cumstances for the inability to complete
15 the requirements described in paragraph
16 (1)(D); and

17 (iii) demonstrates that the alien's re-
18 moval from the United States would result
19 in exceptional and extremely unusual hard-
20 ship to the alien or the alien's spouse, par-
21 ent, or child who is a citizen or a lawful
22 permanent resident of the United States.

23 (B) EXTENSION.—Upon a showing of good
24 cause, the Secretary may extend the period of
25 conditional resident status for the purpose of

1 completing the requirements described in para-
2 graph (1)(D).

3 (e) TREATMENT OF PERIOD FOR PURPOSES OF NAT-
4 URALIZATION.—For purposes of title III of the Immigra-
5 tion and Nationality Act (8 U.S.C. 1401 et seq.), in the
6 case of an alien who is in the United States as a lawful
7 permanent resident on a conditional basis under this sec-
8 tion, the alien shall be considered to have been admitted
9 as an alien lawfully admitted for permanent residence and
10 to be in the United States as an alien lawfully admitted
11 to the United States for permanent residence. However,
12 the conditional basis must be removed before the alien
13 may apply for naturalization.

14 **SEC. 536. RETROACTIVE BENEFITS UNDER THIS SUBTITLE.**

15 If, on the date of enactment of this subtitle, an alien
16 has satisfied all the requirements of subparagraphs (A)
17 through (E) of section 534(a)(1) and section
18 535(d)(1)(D), the Secretary may adjust the status of the
19 alien to that of a conditional resident in accordance with
20 section 534. The alien may petition for removal of such
21 condition at the end of the conditional residence period
22 in accordance with section 535(c) if the alien has met the
23 requirements of subparagraphs (A), (B), and (C) of sec-
24 tion 535(d)(1) during the entire period of conditional resi-
25 dence.

1 **SEC. 537. EXCLUSIVE JURISDICTION.**

2 (a) IN GENERAL.—The Secretary shall have exclusive
3 jurisdiction to determine eligibility for relief under this
4 subtitle, except where the alien has been placed into depor-
5 tation, exclusion, or removal proceedings either prior to
6 or after filing an application for relief under this subtitle,
7 in which case the Attorney General shall have exclusive
8 jurisdiction and shall assume all the powers and duties
9 of the Secretary until proceedings are terminated, or if
10 a final order of deportation, exclusion, or removal is en-
11 tered the Secretary shall resume all powers and duties del-
12 egated to the Secretary under this subtitle.

13 (b) STAY OF REMOVAL OF CERTAIN ALIENS EN-
14 ROLLED IN PRIMARY OR SECONDARY SCHOOL.—The At-
15 torney General shall stay the removal proceedings of any
16 alien who—

17 (1) meets all the requirements of subpara-
18 graphs (A), (B), (C), and (E) of section 534(a)(1);

19 (2) is at least 12 years of age; and

20 (3) is enrolled full time in a primary or sec-
21 ondary school.

22 (c) EMPLOYMENT.—An alien whose removal is stayed
23 pursuant to subsection (b) may be engaged in employment
24 in the United States consistent with the Fair Labor
25 Standards Act (29 U.S.C. 201 et seq.) and State and local
26 laws governing minimum age for employment.

1 (d) LIFT OF STAY.—The Attorney General shall lift
2 the stay granted pursuant to subsection (b) if the alien—

3 (1) is no longer enrolled in a primary or sec-
4 ondary school; or

5 (2) ceases to meet the requirements of sub-
6 section (b)(1).

7 **SEC. 538. PENALTIES FOR FALSE STATEMENTS IN APPLICA-**
8 **TION.**

9 Whoever files an application for relief under this sub-
10 title and willfully and knowingly falsifies, misrepresents,
11 or conceals a material fact or makes any false or fraudu-
12 lent statement or representation, or makes or uses any
13 false writing or document knowing the same to contain
14 any false or fraudulent statement or entry, shall be fined
15 in accordance with title 18, United States Code, or impris-
16 oned not more than 5 years, or both.

17 **SEC. 539. CONFIDENTIALITY OF INFORMATION.**

18 (a) PROHIBITION.—Except as provided in subsection
19 (b), no officer or employee of the United States may—

20 (1) use the information furnished by the appli-
21 cant pursuant to an application filed under this sub-
22 title to initiate removal proceedings against any per-
23 sons identified in the application;

24 (2) make any publication whereby the informa-
25 tion furnished by any particular individual pursuant

1 to an application under this subtitle can be identi-
2 fied; or

3 (3) permit anyone other than an officer or em-
4 ployee of the United States Government or, in the
5 case of applications filed under this subtitle with a
6 designated entity, that designated entity, to examine
7 applications filed under this subtitle.

8 (b) REQUIRED DISCLOSURE.—The Attorney General
9 or the Secretary shall provide the information furnished
10 under this section, and any other information derived from
11 such furnished information, to—

12 (1) a duly recognized law enforcement entity in
13 connection with an investigation or prosecution of an
14 offense described in paragraph (2) or (3) of section
15 212(a) of the Immigration and Nationality Act (8
16 U.S.C. 1182(a)), when such information is requested
17 in writing by such entity; or

18 (2) an official coroner for purposes of affirma-
19 tively identifying a deceased individual (whether or
20 not such individual is deceased as a result of a
21 crime).

22 (c) PENALTY.—Whoever knowingly uses, publishes,
23 or permits information to be examined in violation of this
24 section shall be fined not more than \$10,000.

1 **SEC. 540. EXPEDITED PROCESSING OF APPLICATIONS; PRO-**
2 **HIBITION ON FEES.**

3 Regulations promulgated under this subtitle shall
4 provide that applications under this subtitle will be consid-
5 ered on an expedited basis and without a requirement for
6 the payment by the applicant of any additional fee for
7 such expedited processing.

8 **SEC. 541. HIGHER EDUCATION ASSISTANCE.**

9 Notwithstanding any provision of the Higher Edu-
10 cation Act of 1965 (20 U.S.C. 1001 et seq.), with respect
11 to assistance provided under title IV of the Higher Edu-
12 cation Act of 1965 (20 U.S.C. 1070 et seq.), an alien who
13 adjusts status to that of a lawful permanent resident
14 under this subtitle shall be eligible only for the following
15 assistance under such title:

16 (1) Student loans under parts B, D, and E of
17 such title IV (20 U.S.C. 1071 et seq., 1087a et seq.,
18 1087aa et seq.), subject to the requirements of such
19 parts.

20 (2) Federal work-study programs under part C
21 of such title IV (42 U.S.C. 2751 et seq.), subject to
22 the requirements of such part.

23 (3) Services under such title IV (20 U.S.C.
24 1070 et seq.), subject to the requirements for such
25 services.

1 **SEC. 542. GAO REPORT.**

2 Not later than seven years after the date of enact-
 3 ment of this subtitle, the Comptroller General of the
 4 United States shall submit a report to the Committee on
 5 the Judiciary of the Senate and the Committee on the Ju-
 6 diciary of the House of Representatives setting forth—

7 (1) the number of aliens who were eligible for
 8 cancellation of removal and adjustment of status
 9 under section 534(a);

10 (2) the number of aliens who applied for adjust-
 11 ment of status under section 534(a);

12 (3) the number of aliens who were granted ad-
 13 justment of status under section 534(a); and

14 (4) the number of aliens whose conditional per-
 15 manent resident status was removed under section
 16 535.

17 **Subtitle E—Funding for the**
 18 **Department of Homeland Security**

19 **SEC. 550. EFFECTIVE FUNDING.**

20 (a) DEPARTMENT OF HOMELAND SECURITY LEGAL-
 21 IZATION PROGRAM ACCOUNT.—

22 (1) IN GENERAL.—There is established in the
 23 general fund of the Treasury a separate account,
 24 which shall be known as the “Department of Home-
 25 land Security Legalization Program Account”.

1 (2) SOURCE OF FUNDS.—Immediately upon the
2 enactment of this Act, such sums as the Secretary
3 determines shall be necessary shall be transferred
4 from the general fund of the Treasury to the De-
5 partment of Homeland Security Legalization Pro-
6 gram Account.

7 (3) APPROPRIATIONS.—

8 (A) There are hereby appropriated such
9 sums as are provided under paragraph (2) to
10 remain available for obligation for ten years
11 after enactment.

12 (B) These sums shall be authorized for the
13 Secretary to implement and operate the legal-
14 ization programs described in title V of this
15 Act, including but not limited to—

16 (i) infrastructure, staffing, and adju-
17 dication;

18 (ii) outreach;

19 (iii) grants to community and faith-
20 based organizations; and

21 (iv) anti-fraud programs and actions
22 relating to such legalization programs.

23 (4) REPORTING.—The Secretary shall provide
24 to the Committees on the Judiciary and Appropria-
25 tions of the Senate and the House of Representa-

1 tives a plan for expenditure of the funds under para-
2 graph (2) within 90 days of enactment of this Act,
3 and update the plan annually, that—

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

5 (B) identifies the level of funding for each
6 program, project, and activity, and if that fund-
7 ing will supplement an appropriated program,
8 project, or activity; and

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

12 (b) DEPARTMENT OF STATE LEGALIZATION PRO-
13 GRAM ACCOUNT.—

14 (1) IN GENERAL.—There is established in the
15 general fund of the Treasury a separate account,
16 which shall be known as the “Department of State
17 Legalization Program Account”.

18 (2) SOURCE OF FUNDS.—Immediately upon the
19 enactment of this Act, such sums as the Secretary
20 of State determines shall be necessary shall be
21 transferred from the general fund of the Treasury to
22 the Department of State Legalization Program Ac-
23 count.

24 (3) APPROPRIATIONS.—

1 (A) There are hereby appropriated such
2 sums as are provided under paragraph (2) to
3 remain available until ten years after enact-
4 ment.

5 (B) These sums shall be available for the
6 Secretary of State to implement and operate
7 the legalization programs described in title V of
8 this Act, including but not limited to—

9 (i) infrastructure, staffing, and adju-
10 dication;

11 (ii) outreach; and

12 (iii) anti-fraud programs and actions
13 relating to such legalization programs.

14 (4) REPORTING.—The Secretary of State shall
15 provide to the Committees on the Judiciary and Ap-
16 propriations of the Senate and the House of Rep-
17 resentatives a plan for expenditure of the funds
18 under paragraph (2) within 90 days of enactment of
19 this Act, and update the plan annually, that—

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

21 (B) identifies the level of funding for each
22 program, project, and activity, and if that fund-
23 ing will supplement an appropriated program,
24 project, or activity; and

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

4 (c) IMMIGRATION REFORM PENALTY ACCOUNT.—

5 (1) IN GENERAL.—There is established in the
6 general fund of the Treasury a separate account,
7 which shall be known as the “Immigration Reform
8 Penalty Account”. Notwithstanding any other sec-
9 tion of this Act, there shall be deposited into the ac-
10 count all civil penalties collected under section 274A
11 of the Immigration and Nationality Act (8 U.S.C.
12 1324a) and title V of this Act, except as specifically
13 provided otherwise in such title of this Act.

14 (2) USE OF FUNDS.—Funds deposited into the
15 Immigration Reform Penalty Account shall remain
16 available to the Secretary until expended solely for
17 the following purposes—

18 (A) for any costs of implementing and op-
19 erating the immigration services programs de-
20 scribed in title V of this Act that are not cov-
21 ered by funds in the Department of Homeland
22 Security Legalization Program Account or proc-
23 essing fees described in section 601(e)(4)(A) of
24 this Act;

1 (B) after the amounts needed to cover the
2 costs described in subparagraph (A) of this
3 paragraph have been expended, funds remain-
4 ing from this account shall be deposited into
5 the general fund of the Treasury as repayment
6 of funds transferred into the Department of
7 Homeland Security Legalization Program Ac-
8 count under subsection (a)(2) of this section;

9 (C) after the amounts needed to reimburse
10 the Treasury under subparagraph (B) of this
11 paragraph have been deposited into the general
12 fund of the Treasury, as follows—

13 (i) $\frac{1}{3}$ to the Secretary to carry out in-
14 vestigation and prevention of fraud in—

15 (I) the legalization programs es-
16 tablished under title V of this Act;
17 and

18 (II) the employment verification
19 programs established under title III of
20 this Act;

21 (ii) $\frac{1}{3}$ to the Secretary for immigrant
22 integration programs, including English-
23 language and U.S. civics instruction; and

24 (iii) $\frac{1}{3}$ to the Secretary, to be spent
25 as follows—

1 (I) 1/2 to carry out immigration
2 services; and

3 (II) 1/2 to carry out immigration
4 enforcement.

5 (d) CONSTRUCTION.—Nothing in this section shall be
6 construed to modify or limit any authority to collect and
7 use immigration fees as provided by this Act, section 286
8 of the Immigration and Nationality Act (8 U.S.C. 1356)
9 or any other law.

10 **TITLE VI—IMMIGRANT INTEGRA-**
11 **TION AND OTHER REFORMS**

12 **Subtitle A—Strengthen and Unite**
13 **Communities With Civics Edu-**
14 **cation and English Skills**

15 **CHAPTER 1—EXPANDING ENGLISH LIT-**
16 **ERACY, UNITED STATES HISTORY, AND**
17 **CIVICS EDUCATION**

18 **SEC. 601. INCREASED INVESTMENT IN ENGLISH LITERACY,**
19 **UNITED STATES HISTORY, AND CIVICS EDU-**
20 **CATION UNDER THE ADULT EDUCATION AND**
21 **FAMILY LITERACY ACT.**

22 (a) INTEGRATED ENGLISH LITERACY AND CIVICS
23 EDUCATION PROGRAM.—Section 203 of the Adult Edu-
24 cation and Family Literacy Act (20 U.S.C. 9202) is
25 amended—

1 (1) by redesignating paragraphs (12) through
2 (18) as paragraphs (13) through (19), respectively;
3 and

4 (2) by inserting after paragraph (11), the fol-
5 lowing:

6 “(12) INTEGRATED ENGLISH LITERACY,
7 UNITED STATES HISTORY, AND CIVICS EDUCATION
8 PROGRAM.—The term ‘integrated English literacy,
9 United States history, and civics education program’
10 means a program of instruction designed to help an
11 English language learner achieve competence in
12 English through contextualized instruction on the
13 rights and responsibilities of citizenship, naturaliza-
14 tion procedures, civic participation, and United
15 States history and Government to help such learner
16 acquire the skills and knowledge to become an active
17 and informed parent, worker, and community mem-
18 ber.”.

19 (b) STATE LEADERSHIP ACTIVITIES.—Section
20 223(a) of the Adult Education and Family Literacy Act
21 (20 U.S.C. 9223(a)) is amended by inserting after para-
22 graph (11) the following:

23 “(12) Technical assistance for grant applica-
24 tions of faith- and community-based organizations.”.

1 (c) NATIONAL INSTITUTE FOR LITERACY.—Section
2 242(c)(1) of the Adult Education and Family Literacy Act
3 (20 U.S.C. 9252(c)(1)) is amended—

4 (1) by redesignating subparagraphs (G), (H),
5 and (I), as subparagraphs (I), (J), and (K), respec-
6 tively; and

7 (2) by inserting after subparagraph (F) the fol-
8 lowing:

9 “(G) to coordinate and share information
10 with national organizations and associations
11 that are interested in integrated English lit-
12 eracy, United States history, and civics edu-
13 cation programs;

14 “(H) to study the effectiveness of distance
15 learning or self-study programs in assisting the
16 English language learner population achieve
17 competence in English;”.

18 (d) REPORT.—Section 242(k) of the Adult Education
19 and Family Literacy Act (20 U.S.C. 9252(k)) is amend-
20 ed—

21 (1) in paragraph (2), by striking “and” at the
22 end;

23 (2) by redesignating paragraph (3) as para-
24 graph (4); and

1 (3) by inserting after paragraph (2) the fol-
2 lowing:

3 “(3) a separate analysis of—

4 “(A) national and State adult English in-
5 struction needs;

6 “(B) data on the composition of recent im-
7 migration flows and immigration settlement
8 patterns throughout the United States; and

9 “(C) estimated instructional needs based
10 on the English ability and educational attain-
11 ment of English language learners under recent
12 migration patterns; and”.

13 (e) NATIONAL LEADERSHIP ACTIVITIES.—Section
14 243 of the Adult Education and Family Literacy Act (20
15 U.S.C. 9253) is amended—

16 (1) in paragraph (1)—

17 (A) in subparagraph (A), by inserting
18 “and integrated English literacy, United States
19 history, and civics education programs” before
20 the semicolon at the end; and

21 (B) in subparagraph (B), by inserting
22 “and integrated English literacy, United States
23 history, and civics education programs” before
24 “, based on scientific evidence”; and

25 (2) in paragraph (2)—

1 (A) in subparagraph (B), by inserting
2 “and integrated English literacy, United States
3 history, and civics education programs” before
4 the semicolon at the end;

5 (B) in subparagraph (D)(ii), by inserting
6 “integrated English literacy, United States his-
7 tory, and civics education programs,” before
8 “and workplace literacy programs”; and

9 (C) in subparagraph (E)—

10 (i) in clause (i), by inserting “and in-
11 tegrated English literacy, United States
12 history, and civics education programs” be-
13 fore the semicolon at the end;

14 (ii) in clause (iii), by striking “and”
15 at the end;

16 (iii) in clause (iv)—

17 (I) by striking “section 231” and
18 inserting “sections 231 and 244”; and

19 (II) by adding “and” at the end;
20 and

21 (iv) by adding at the end the fol-
22 lowing:

23 “(v) the extent to which integrated
24 English literacy, United States history,
25 and civics education programs carried out

1 under section 244 lead participants in such
2 programs to increase their civic participa-
3 tion and, if applicable, lead such partici-
4 pants to become United States citizens;”.

5 (f) INTEGRATED ENGLISH LITERACY, UNITED
6 STATES HISTORY, AND CIVICS EDUCATION.—Chapter 4
7 of subtitle A of the Adult Education and Family Literacy
8 Act (20 U.S.C. 9251 et seq.) is amended by adding at
9 the end the following:

10 **“SEC. 244. INTEGRATED ENGLISH LITERACY, UNITED**
11 **STATES HISTORY, AND CIVICS EDUCATION**
12 **PROGRAMS.**

13 “(a) PROGRAM AUTHORIZED.—The Secretary shall
14 award grants to States, from allocations under subsection
15 (b), for integrated English literacy, United States history,
16 and civics education programs.

17 “(b) ALLOCATIONS.—

18 “(1) IN GENERAL.—Subject to paragraph (2),
19 the Secretary shall allocate for each fiscal year, from
20 the amount appropriated pursuant to subsection (c)
21 for such fiscal year—

22 “(A) 65 percent of such amount to States
23 on the basis of a State’s need for integrated
24 English, United States history, and civics edu-
25 cation programs, as determined by calculating

1 each State's share of a 10-year average of the
2 data compiled by the Office of Immigration Sta-
3 tistics of the Department of Homeland Secu-
4 rity, for immigrants admitted for lawful perma-
5 nent residence during the 10 most recent fiscal
6 years; and

7 “(B) 35 percent of such amount to the
8 States on the basis of whether the State experi-
9 enced growth, as measured by the average of
10 the 3 most recent years for which data compiled
11 by the Office of Immigration Statistics of the
12 Department of Homeland Security are avail-
13 able, for immigrants admitted for lawful perma-
14 nent residence.

15 “(2) MINIMUM.—Each State shall receive an al-
16 location under paragraph (1) in an amount that is
17 not less than \$60,000.

18 “(c) AUTHORIZATION OF APPROPRIATION.—There
19 are authorized to be appropriated to carry out this sec-
20 tion—

21 “(1) \$200,000,000 for fiscal year 2011;

22 “(2) \$250,000,000 for fiscal year 2012; and

23 “(3) \$300,000,000 for fiscal year 2013.”.

1 **SEC. 602. DEFINITIONS OF ENGLISH LANGUAGE LEARNER.**

2 (a) ADULT EDUCATION AND FAMILY LITERACY
3 ACT.—The Adult Education and Family Literacy Act (20
4 U.S.C. 9201 et seq.) is amended—

5 (1) in section 203 (20 U.S.C. 9202)—

6 (A) by redesignating paragraphs (6), (7),
7 (8), (9), and (10), as paragraphs (7), (8), (9),
8 (10), and (6), respectively;

9 (B) in paragraph (6), as redesignated—

10 (i) in the paragraph heading, by strik-
11 ing “INDIVIDUAL OF LIMITED ENGLISH
12 PROFICIENCY” and inserting “ENGLISH
13 LANGUAGE LEARNER”; and

14 (ii) in the matter preceding subpara-
15 graph (A), by striking “individual of lim-
16 ited English proficiency” and inserting
17 “English language learner”; and

18 (C) in paragraph (7), as redesignated, by
19 striking “individuals of limited English pro-
20 ficiency” and inserting “English language
21 learners”;

22 (2) in section 224(b)(10)(D) (20 U.S.C.
23 9224(b)(10)(D)), by striking “individuals with lim-
24 ited English proficiency” and inserting “English lan-
25 guage learners”; and

1 (3) in section 243(2)(D)(ii) (20 U.S.C.
2 9253(2)(D)(ii)), by striking “individuals with limited
3 English proficiency who are adults” and inserting
4 “adult English language learners”.

5 (b) ELEMENTARY AND SECONDARY EDUCATION ACT
6 OF 1965.—

7 (1) AMENDMENT.—Section 9101(25) of the El-
8 ementary and Secondary Education Act of 1965 (20
9 U.S.C. 7801(25)) is amended by striking the matter
10 preceding subparagraph (A) and inserting the fol-
11 lowing:

12 “(25) ENGLISH LANGUAGE LEARNER.—The
13 term ‘English language learner’ means an indi-
14 vidual—”.

15 (2) REFERENCES.—Any reference in the Ele-
16 mentary and Secondary Education Act of 1965 (20
17 U.S.C. 6301 et seq.) to an individual who is limited
18 English proficient shall be construed to refer to an
19 English language learner.

20 **SEC. 603. CREDITS FOR TEACHERS OF ENGLISH LANGUAGE**
21 **LEARNERS.**

22 (a) IN GENERAL.—Subpart A of part IV of sub-
23 chapter A of chapter 1 of the Internal Revenue Code of
24 1986 (relating to nonrefundable personal credits) is

1 amended by inserting after section 25D the following new
2 section:

3 **“SEC. 25E. TEACHERS OF ENGLISH LANGUAGE LEARNERS.**

4 “(a) IN GENERAL.—In the case of an eligible teacher,
5 there shall be allowed a credit against the tax imposed
6 by this chapter for the taxable year an amount equal to—

7 “(1) \$750, for each of the first 5 taxable years
8 for which the taxpayer is allowed a credit under this
9 section; and

10 “(2) \$500, for any other taxable year.

11 “(b) CREDIT ALLOWED ONLY FOR 10 TAXABLE
12 YEARS.—No credit shall be allowed under this section
13 with respect to a taxpayer for any taxable year after the
14 10th taxable year for which such taxpayer is allowed a
15 credit under this section.

16 “(c) ELIGIBLE TEACHER.—For purposes of this sec-
17 tion—

18 “(1) IN GENERAL.—Except as provided in para-
19 graph (2), the term ‘eligible teacher’ means, with re-
20 spect to a taxable year, any individual who is—

21 “(A) a full-time teacher of English as a
22 second language or bilingual instruction for the
23 academic year ending in such taxable year, or

24 “(B) an eligible part-time teacher of
25 English as a second language or bilingual in-

1 struction for the academic year ending in such
2 taxable year.

3 “(2) ELIGIBLE PART-TIME TEACHER.—The
4 term ‘eligible part-time teacher’ means, with respect
5 to a taxable year, an individual who teaches at least
6 20 hours per week during the academic year ending
7 in such taxable year. Such term does not include any
8 individual who is a full-time teacher of English as a
9 second language during such academic year.

10 “(3) SPECIAL RULE.—In the case of an eligible
11 part-time teacher, subsection (a) shall be applied by
12 substituting ‘\$375’ for ‘\$750’ and by substituting
13 ‘\$250’ for ‘\$500’.”.

14 (b) CLERICAL AMENDMENT.—The table of sections
15 for such subpart is amended by inserting after the item
16 relating to section 25D the following new item:

“Sec. 25E. Teachers of English language learners.”.

17 (c) TEACHER CERTIFICATION EXPENSES.—Part VII
18 of subchapter B of chapter 1 of the Internal Revenue Code
19 of 1986 (relating to additional itemized deductions for in-
20 dividuals) is amended by redesignating section 224 as sec-
21 tion 225 and by inserting after section 223 the following
22 new section:

1 **“SEC. 224. CERTIFICATION EXPENSES FOR TEACHERS OF**
2 **ENGLISH LANGUAGE LEARNERS.**

3 “(a) IN GENERAL.—In the case of an individual,
4 there shall be allowed a deduction for eligible teacher cer-
5 tification expenses paid or incurred by the taxpayer for
6 the taxable year.

7 “(b) ELIGIBLE TEACHER CERTIFICATION EX-
8 PENSES.—The term ‘eligible teacher certification ex-
9 penses’—

10 “(1) means the tuition and fees required for the
11 enrollment or attendance of the taxpayer at an eligi-
12 ble educational institution (as defined in section
13 25A) for a course which is required for certification
14 or licensure of such individual as qualified to provide
15 English as a second language or bilingual instruction
16 to elementary or secondary school students who are
17 limited English proficient (as defined in section
18 9901 of the Elementary and Secondary Education
19 Act of 1965); and

20 “(2) shall not include any amounts that are—

21 “(A) used for a course that is part of the
22 individual’s degree program; or

23 “(B) funded by another person or any gov-
24 ernmental entity.

25 “(c) DENIAL OF DOUBLE BENEFIT.—No deduction
26 shall be allowed under this section for any expense for

1 which a deduction or credit is allowed under any other
2 provision of this chapter.

3 “(d) TERMINATION.—This section shall not apply to
4 expenses paid or incurred after December 31, 2014.”.

5 (d) CERTIFICATION DEDUCTION ALLOWED WHETHER
6 OR NOT TAXPAYER ITEMIZES OTHER DEDUCTIONS.—
7 Subsection (a) of section 62 of such Code is amended by
8 inserting after paragraph (21) the following new para-
9 graph:

10 “(22) TEACHER CERTIFICATION EXPENSES.—
11 The deduction allowed by section 224.”.

12 (e) CLERICAL AMENDMENT.—The table of sections
13 for part VII of subchapter B of chapter 1 of such Code
14 is amended by striking the last item and inserting the fol-
15 lowing new items:

“Sec. 224. Certification expenses for teachers of English language learners.
“Sec. 225. Cross reference.”.

16 (f) REGULATIONS.—Not later than 180 days after
17 the date of the enactment of this Act, the Secretary of
18 the Treasury shall promulgate regulations implementing
19 the provisions of this section.

20 (g) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to taxable years beginning after
22 the date of the enactment of this Act.

1 **SEC. 604. RESEARCH IN ADULT EDUCATION.**

2 (a) IN GENERAL.—Section 133(c)(2)(A) of the Edu-
3 cation Sciences Reform Act of 2002 (20 U.S.C.
4 9533(c)(2)(A)) is amended by inserting “education and”
5 before “literacy”.

6 (b) NATIONAL RESEARCH AND DEVELOPMENT CEN-
7 TER.—

8 (1) IN GENERAL.—The Secretary of Education
9 shall direct the Commissioner for Education Re-
10 search of the National Center for Education Re-
11 search established pursuant to section 131 of the
12 Education Sciences Reform Act of 2002 (20 U.S.C.
13 9531) to establish a national research and develop-
14 ment center for adult education and literacy (as de-
15 scribed in section 133(c)(2)(A) of such Act).

16 (2) PROVISION FOR EXPANSION OF RE-
17 SEARCH.—If, as of the date of the enactment of this
18 Act, the Commissioner has established a center for
19 adult literacy in accordance with section
20 133(c)(2)(A) of the Education Sciences Reform Act
21 of 2002 (20 U.S.C. 9533(c)(2)(A)), the Commis-
22 sioner shall expand the topic of research of such cen-
23 ter to include adult education, in accordance with
24 the amendment made by subsection (a).

1 **CHAPTER 2—SUPPORTING ENGLISH LAN-**
2 **GUAGE ACQUISITION AND ADULT EDU-**
3 **CATION IN THE WORKFORCE**

4 **SEC. 611. CREDIT FOR EMPLOYER-PROVIDED ADULT**
5 **ENGLISH LITERACY AND BASIC EDUCATION**
6 **PROGRAMS.**

7 (a) IN GENERAL.—Subpart D of part IV of sub-
8 chapter A of chapter 1 of the Internal Revenue Code of
9 1986 (relating to business related credits) is amended by
10 adding at the end the following:

11 **“SEC. 45R. EMPLOYER-PROVIDED ADULT ENGLISH LIT-**
12 **ERACY AND BASIC EDUCATION PROGRAMS.**

13 “(a) IN GENERAL.—For the purposes of section 38,
14 the credit determined under this section with respect to
15 any employer for the taxable year is an amount equal to
16 20 percent of qualified education program expenses, but
17 in no case shall the employer receive a credit in an amount
18 of more than \$1,000 per full-time employee participating
19 in the qualified education program.

20 “(b) QUALIFIED EDUCATION PROGRAM EX-
21 PENSES.—For purposes of this section:

22 “(1) IN GENERAL.—The term ‘qualified edu-
23 cation program expenses’ means expenses paid or in-
24 curred by an employer to make available qualified
25 education to employees of the employer, who—

1 “(A) are English language learners; and

2 “(B)(i) have not received a secondary
3 school diploma, or its recognized equivalent; or

4 “(ii) lack sufficient mastery of basic edu-
5 cational skills, including financial literacy, to
6 enable the individuals to function effectively in
7 society.

8 “(2) QUALIFIED EDUCATION.—The term ‘quali-
9 fied education’ means adult education and literacy
10 activities provided—

11 “(A) by an eligible provider which for the
12 fiscal year ending during the employer’s taxable
13 year receives or is eligible to receive Federal
14 funds under section 231 of the Adult Education
15 and Family Literacy Act (20 U.S.C. 9241) for
16 adult education and literacy activities; or

17 “(B) in curriculum approved by the De-
18 partment of Education, the Employment and
19 Training Administration of the Department of
20 Labor, or in current use by a Federal agency.

21 “(3) ELIGIBLE PROVIDER; ADULT EDUCATION
22 AND LITERACY ACTIVITIES.—The terms ‘eligible pro-
23 vider’ and ‘adult education and literacy activities’
24 have the respective meanings given to such terms in

1 section 203 of the Adult Education and Family Lit-
2 eracy Act (20 U.S.C. 9202).

3 “(4) ENGLISH LANGUAGE LEARNER.—The term
4 ‘English language learner’ has the same meaning
5 given such term in section 9101(25) of the Elemen-
6 tary and Secondary Education Act of 1965.

7 “(c) SPECIAL RULES.—For purposes of this section:

8 “(1) FULL-TIME EMPLOYMENT.—An employee
9 shall be considered full-time if such employee is em-
10 ployed at least 30 hours per week for 25 or more
11 calendar weeks in the taxable year.

12 “(2) AGGREGATION RULE.—All persons treated
13 as a single employer under subsection (a) or (b) or
14 section 52, or subsection (m) or (o) of section 414,
15 shall be treated as 1 person.

16 “(d) DENIAL OF DOUBLE BENEFIT.—No deduction
17 or credit shall be allowed under any other provision of this
18 chapter for any amount taken into account in determining
19 the credit under this section.

20 “(e) ELECTION TO HAVE CREDIT NOT APPLY.—A
21 taxpayer may elect (at such time and in such manner as
22 the Secretary may by regulations prescribe) to have this
23 section not apply for any taxable year.

24 “(f) TERMINATION.—This section shall not apply to
25 expenses paid or incurred after December 31, 2014.”.

1 (b) CREDIT TO BE PART OF GENERAL BUSINESS
2 CREDIT.—Subsection (b) of section 38 of such Code (re-
3 lating to the current year business credit) is amended—

4 (1) by striking “plus” at the end of paragraph
5 (34);

6 (2) by striking the period at the end of para-
7 graph (35) and inserting “, plus”; and

8 (3) by adding at the end the following new
9 paragraph:

10 “(36) the adult English literacy and basic edu-
11 cation programs credit determined under section
12 45R.”.

13 (c) CLERICAL AMENDMENT.—The table of sections
14 for subpart D of part IV of subchapter A of chapter 1
15 of the such Code is amended by adding at the end the
16 following new item:

“Sec. 45R. Employer-provided adult English literacy and basic education pro-
grams.”.

17 (d) REGULATIONS.—Not later than 180 days after
18 the date of the enactment of this Act, the Secretary of
19 the Treasury shall promulgate regulations implementing
20 the provisions of this section.

21 (e) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to taxable years beginning after
23 December 31 of the year after enactment.

1 **SEC. 612. PRESIDENTIAL AWARD FOR BUSINESS LEADER-**
 2 **SHIP IN PROMOTING UNITED STATES CITI-**
 3 **ZENSHIP.**

4 (a) ESTABLISHMENT.—The Presidential Award for
 5 Business Leadership in Promoting United States Citizen-
 6 ship (referred to in this section as the “Presidential Citi-
 7 zenship Award”) shall be awarded by the President to
 8 companies and other organizations that make extraor-
 9 dinary efforts in assisting their employees and members
 10 to learn English and increase their understanding of
 11 United States history and civics.

12 (b) SELECTION AND PRESENTATION OF AWARD.—

13 (1) SELECTION.—The President shall periodi-
 14 cally select, from a list of large and small companies
 15 and other organizations that the Secretary deter-
 16 mines to have met the requirements under sub-
 17 section (a), the recipients of the Presidential Citizen-
 18 ship Award.

19 (2) PRESENTATION.—The presentation of the
 20 Presidential Citizenship Award shall be made by the
 21 President, or a designee of the President, in con-
 22 junction with an appropriate ceremony.

23 **CHAPTER 3—BUILDING STRONGER**
 24 **COMMUNITIES**

25 **SEC. 621. OFFICE OF CITIZENSHIP AND NEW AMERICANS.**

26 (a) RENAMING THE OFFICE OF CITIZENSHIP.—

1 (1) IN GENERAL.—Beginning on the date of the
2 enactment of this Act, the Office of Citizenship of
3 United States Citizenship and Immigration Services
4 shall be referred to as the “Office of Citizenship and
5 New Americans”.

6 (2) CONFORMING AMENDMENTS.—Section
7 451(f) of the Homeland Security Act of 2002 (6
8 U.S.C. 271(f)) is amended—

9 (A) in the subsection heading, by striking
10 “Citizenship.” and inserting “Citizenship and
11 New Americans.”;

12 (B) in paragraph (1), by inserting “and
13 New Americans” after “Office of Citizenship”;
14 and

15 (C) in paragraph (2), by inserting “and
16 New Americans” after “Office of Citizenship”.

17 (3) REFERENCES.—Any reference in a law, reg-
18 ulation, document, paper, or other record of the
19 United States to the Office of Citizenship within
20 United States Citizenship and Immigration Services
21 shall be deemed to be a reference to the “Office of
22 Citizenship and New Americans”.

23 (b) FUNCTIONS.—Section 451(f)(2) of the Homeland
24 Security Act of 2002 (6 U.S.C. 271(f)(2)), as amended
25 by subsection (a)(2)(C), is further amended by striking

1 “for promoting” and all that follows through the period
2 at the end and inserting the following: “for—

3 “(A) establishing national goals for intro-
4 ducing new immigrants into the United States
5 and measuring the degree to which such goals
6 are met;

7 “(B) assessing and coordinating Federal
8 policies, regulations, task forces, and commis-
9 sions related to introducing immigrants into the
10 United States;

11 “(C) continuing with the efforts of the
12 Task Force on New Americans established
13 under Executive Order 13404—

14 “(i) to facilitate a dialogue among
15 Federal agencies;

16 “(ii) make recommendations to the
17 President; and

18 “(iii) follow through with initiatives
19 administered by the Task Force under the
20 authority of such Executive Order;

21 “(D) serving as a liaison and intermediary
22 with State and local governments and other en-
23 tities to assist in establishing local goals, task
24 forces, and councils to assist in introducing im-
25 migrants into the United States;

1 “(E) coordinating with other Federal agen-
2 cies to provide information to State and local
3 governments on the demand for English acqui-
4 sition programs and best practices in place on
5 the Federal and State level for immigrants who
6 have recently arrived in the United States;

7 “(F) assisting States in coordinating ac-
8 tivities with the grant program carried out
9 under this subtitle; and

10 “(G) promoting instruction and training on
11 citizenship responsibilities for aliens interested
12 in becoming naturalized citizens of the United
13 States, including the development of edu-
14 cational materials for such aliens.”.

15 (c) DONATIONS.—Section 451(f) of the Homeland
16 Security Act of 2002 (6 U.S.C. 271(f)), as amended by
17 this section, is further amended by adding at the end the
18 following:

19 “(3) DONATIONS.—

20 “(A) ACCEPTANCE OF DONATIONS.—The
21 Chief of the Office of Citizenship and New
22 Americans may accept monetary and in-kind
23 donations to support the activities described in
24 paragraph (2).

1 “(B) DEDICATION OF FUNDS.—Notwith-
2 standing any other provision of law—

3 “(i) any amounts donated to the Of-
4 fice of Citizenship and New Americans to
5 support the activities described in para-
6 graph (2) shall be deposited into an ac-
7 count dedicated for such purpose;

8 “(ii) the amounts contained in the ac-
9 count described in clause (i) shall be used
10 solely to support such activities; and

11 “(iii) amounts that were not donated
12 for the exclusive purpose of supporting
13 such activities may not be deposited into
14 such account.”.

15 (d) REPORT TO CONGRESS.—The Chief of the Office
16 of Citizenship and New Americans shall submit a biennial
17 report to the appropriate committees in Congress that de-
18 scribes the activities of the Office of Citizenship and New
19 Americans.

20 **SEC. 622. GRANTS TO STATES.**

21 (a) AUTHORITY TO PROVIDE GRANTS.—Subject to
22 subsections (c) and (d), the Chief of the Office of Citizen-
23 ship and New Americans (referred to in this section as
24 the “Chief”) is authorized to provide competitive grants

1 to States to form State New American Councils to carry
2 out the activities described in section 623.

3 (b) STATE NEW AMERICAN COUNCILS.—A State
4 New American Council shall—

5 (1) consist of not fewer than 15 individuals and
6 not more than 19 individuals from the State; and

7 (2) shall include, to the extent practicable, rep-
8 resentatives from—

9 (A) business;

10 (B) faith-based organizations;

11 (C) civic organizations;

12 (D) philanthropic organizations;

13 (E) nonprofit organizations, including
14 those with experience working with immigrant
15 communities;

16 (F) key education stakeholders, such as
17 State educational agencies, local educational
18 agencies, community colleges, or teachers;

19 (G) State adult education offices;

20 (H) State or local public libraries; and

21 (I) State or local government officials.

22 (c) WAIVER OF REQUIREMENT.—

23 (1) AUTHORITY TO GRANT.—The Chief may
24 award a grant under subsection (a) to a State with-
25 out requiring the State to form a State New Amer-

1 ican Council if the Chief determines that the State
2 is carrying out similar statewide initiatives to intro-
3 duce immigrants into the State and into the United
4 States.

5 (2) GUIDELINES.—The Chief shall establish
6 guidelines for awarding grants to States described in
7 paragraph (1).

8 (d) GRANTS TO LOCAL GOVERNMENTS.—The Chief
9 may provide a grant under subsection (a) to a local gov-
10 ernment.

11 (e) APPLICATION.—An applicant for a grant under
12 this section shall submit an application to the Chief at
13 such time, in such manner, and containing such informa-
14 tion as the Chief may reasonably require, including—

15 (1) if the applicant is a State seeking to form
16 a State New American Council, an assurance that
17 such State New American Council will meet the re-
18 quirements under subsection (b);

19 (2) the number of immigrants in the State in
20 which the applicant is located; and

21 (3) a description of the challenges in intro-
22 ducing new immigrants into the State and local com-
23 munity.

24 (f) DURATION.—A grant awarded under subsection
25 (a) shall be for a period of 5 years.

1 (g) PRIORITY.—Priority shall be given to grant appli-
2 cations that—

3 (1) use matching funds from non-Federal
4 sources, which may include in-kind contributions;
5 and

6 (2) demonstrate collaboration with private enti-
7 ties to achieve the goals of their comprehensive plan.

8 (h) ADDITIONAL CONSIDERATION.—Additional con-
9 sideration shall be given to grant applications submitted
10 by States that have experienced a large increase in the
11 population of immigrants during the most recent 10-year
12 period relative to past migration patterns, based on data
13 compiled by the Office of Immigration Statistics.

14 (i) GRANT AMOUNT.—The amount of a grant award-
15 ed under subsection (a) shall be not less than \$500,000
16 and not more than \$5,000,000 for each fiscal year.

17 (j) RESERVATIONS.—

18 (1) NATIONAL.—The Chief shall reserve not
19 more than 1 percent of the amount appropriated to
20 carry out this section for the administration of the
21 Office of Citizenship and New Americans, including
22 for the evaluation of funds distributed.

23 (2) STATES.—A State awarded a grant under
24 subsection (a) may reserve not more than 10 percent

1 of such grant amount for the creation and operation
2 of a State New American Council.

3 **SEC. 623. AUTHORIZED ACTIVITIES.**

4 (a) **MANDATORY ACTIVITIES.**—A grant awarded
5 under section 621(a) shall be used—

6 (1) to develop, implement, expand, or enhance
7 a comprehensive plan to introduce new immigrants
8 into the State, including improving English literacy,
9 knowledge of United States history, and civics edu-
10 cation;

11 (2) to provide subgrants to local communities in
12 accordance with subsection (c);

13 (3) if the grant is awarded to a State, to form
14 a State New American Council, which shall meet not
15 less frequently than once each quarter;

16 (4) to disseminate best practices and other in-
17 formation compiled by the Office of Citizenship and
18 New Americans that pertains to effective programs
19 for English acquisition and civics education; and

20 (5) to convene public hearings not less fre-
21 quently than once each year to report on the activi-
22 ties carried out by such grant.

23 (b) **PERMISSIBLE ACTIVITIES.**—A grant awarded
24 under section 621(a) may be used—

1 (1) to solicit and disseminate solutions and
2 remedies to the challenges of introducing new immi-
3 grants in the State or municipality in which the
4 grant is awarded;

5 (2) to provide technical assistance, training, or
6 coordination for State or local agencies to improve
7 programs to introduce new immigrants into the
8 United States, such as English literacy, United
9 States history, and civics education;

10 (3) to review and develop strategies to expand
11 distance learning as a method of instruction for
12 English literacy, United States history, and civics
13 education and available technological programs that
14 may supplement or supplant quality classroom in-
15 struction;

16 (4) to coordinate with entities of other States
17 engaged in activities under this subtitle or other ac-
18 tivities to introduce new immigrants into the State
19 or community;

20 (5) to develop materials focused on preparation
21 for the naturalization test;

22 (6) to engage in outreach and educational ac-
23 tivities on the naturalization process; and

24 (7) to provide assistance to immigrants with the
25 naturalization application, as appropriate.

1 (c) SUBGRANTS TO LOCAL COMMUNITIES.—

2 (1) REQUIREMENT TO AWARD.—A grant under
3 section 108(a) shall be used to award subgrants to
4 entities of local governments to assist communities
5 with local efforts to introduce new Americans into
6 the community.

7 (2) AUTHORIZED ACTIVITIES.—Subgrants shall
8 be awarded under paragraph (1) to entities of local
9 governments for use to carry out activities in accord-
10 ance with—

11 (A) a comprehensive plan described in sub-
12 section (a)(1); and

13 (B) any guidance provided by the Chief of
14 the Office of Citizenship and New Americans.

15 (3) SUBGRANT AMOUNT.—The amount of a
16 subgrant awarded under this subsection shall be not
17 less than \$100,000 and not more than \$600,000 for
18 a fiscal year.

19 **SEC. 624. REPORTING AND EVALUATION.**

20 (a) REPORTING REQUIREMENT.—

21 (1) IN GENERAL.—Each entity awarded a grant
22 under section 108(a) shall submit a report annually
23 to the Office of Citizenship and New Americans
24 that—

1 (A) describes the activities of the State
2 New American Council and subgrant recipients
3 and how these activities meet the goals of—

4 (i) the Chief of the Office of Citizen-
5 ship and New Americans; and

6 (ii) the comprehensive plan described
7 in section 109(a)(1); and

8 (B) describes the geographic areas being
9 served, the number of immigrants in such
10 areas, and the primary languages spoken there.

11 (2) OTHER REQUIREMENTS.—The Chief of the
12 Office of Citizenship may set out other requirements
13 as the Chief sees fit in order to—

14 (A) impose accountability; and

15 (B) measure the outcomes of the activities
16 carried out with grants awarded under section
17 1083(a).

18 (b) ANNUAL EVALUATION.—The Chief of the Office
19 of Citizenship and New Americans shall conduct an an-
20 nual evaluation of the grant program established under
21 this title and use such evaluation—

22 (1) to improve the effectiveness of programs
23 carried out by the Chief;

24 (2) to assess future needs of immigrants and of
25 State and local governments related to immigrants;

1 (3) to determine the effectiveness of such grant
2 program; and

3 (4) to ensure that the grantees and subgrantees
4 are acting within the scope and purpose of this title.

5 **SEC. 625. NEW CITIZENS AWARD PROGRAM.**

6 (a) ESTABLISHMENT.—There is established a new
7 citizens award program to recognize citizens who—

8 (1) have made an outstanding contribution to
9 the United States; and

10 (2) are naturalized during the 10-year period
11 ending on the date of such recognition.

12 (b) PRESENTATION AUTHORIZED.—

13 (1) IN GENERAL.—The President is authorized
14 to present a medal, in recognition of outstanding
15 contributions to the United States, to citizens de-
16 scribed in subsection (a).

17 (2) MAXIMUM NUMBER OF AWARDS.—Not more
18 than 10 citizens may receive a medal under this sec-
19 tion in any calendar year.

20 **SEC. 626. RULE OF CONSTRUCTION.**

21 Nothing in this title shall be construed to limit the
22 authority of the Secretary, acting through the Director of
23 United States Citizenship and Immigration Services or
24 such other officials of the Department of Homeland Secu-
25 rity as the Secretary may direct, to manage, direct, and

1 control the activities of the Chief of the Office of Citizen-
2 ship and New Americans.

3 **SEC. 627. AUTHORIZATION OF APPROPRIATIONS.**

4 There are authorized to be appropriated to carry out
5 this title \$100,000,000 for each of the fiscal years 2011
6 through 2015.

7 **CHAPTER 4—GRANTS**

8 **SEC. 631. GRANTS TO SUPPORT PUBLIC EDUCATION AND**
9 **COMMUNITY TRAINING.**

10 (a) GRANTS AUTHORIZED.—The Assistant Attorney
11 General, Office of Justice Programs, may award grants
12 to qualified nonprofit community organizations to educate,
13 train, and support non-profit agencies, immigrant commu-
14 nities, and other interested entities regarding the provi-
15 sions of this Act and the amendments made by this Act.

16 (b) USE OF FUNDS.—

17 (1) IN GENERAL.—Grants awarded under this
18 section shall be used—

19 (A) for public education, training, technical
20 assistance, government liaison, and all related
21 costs (including personnel and equipment) in-
22 curred by the grantee in providing services re-
23 lated to this Act; and

24 (B) to educate, train, and support non-
25 profit organizations, immigrant communities,

1 and other interested parties regarding this Act
2 and the amendments made by this Act and on
3 matters related to its implementation.

4 (2) EDUCATION.—In addition to the purposes
5 described in paragraph (1), grants awarded under
6 this section shall be used to—

7 (A) educate immigrant communities and
8 other interested entities regarding—

9 (i) the individuals and organizations
10 that can provide authorized legal represen-
11 tation in immigration matters under regu-
12 lations prescribed by the Secretary; and

13 (ii) the dangers of securing legal ad-
14 vice and assistance from those who are not
15 authorized to provide legal representation
16 in immigration matters;

17 (B) educate interested entities regarding
18 the requirements for obtaining nonprofit rec-
19 ognition and accreditation to represent immi-
20 grants under regulations prescribed by the Sec-
21 retary;

22 (C) provide nonprofit agencies with train-
23 ing and technical assistance on the recognition
24 and accreditation process; and

1 (D) educate nonprofit community organi-
2 zations, immigrant communities, and other in-
3 terested entities regarding—

4 (i) the process for obtaining benefits
5 under this Act or under an amendment
6 made by this Act; and

7 (ii) the availability of authorized legal
8 representation for low-income persons who
9 may qualify for benefits under this Act or
10 under an amendment made by this Act.

11 (c) DIVERSITY.—The Assistant Attorney General
12 shall ensure, to the extent possible, that the nonprofit
13 community organizations receiving grants under this sec-
14 tion serve geographically diverse locations and ethnically
15 diverse populations who may qualify for benefits under the
16 Act.

17 (d) FUNDING.—Fees and fines deposited in the Secu-
18 rity and Prosperity Account under section 286(w)(3)(B)
19 of the Immigration and Nationality Act may be used to
20 carry out this section.

21 **SEC. 632. GRANT PROGRAM TO ASSIST APPLICANTS FOR**
22 **NATURALIZATION.**

23 (a) PURPOSE.—The purpose of this section is to es-
24 tablish a grant program within United States Citizenship
25 and Immigration Services that provides funding to com-

1 munity-based organizations, including community-based
2 legal service organizations, as appropriate, to develop and
3 implement programs to assist eligible applicants for natu-
4 ralization.

5 (b) DEFINITIONS.—In this section:

6 (1) COMMUNITY-BASED ORGANIZATION.—The
7 term “community-based organization” means a non-
8 profit, tax-exempt organization, including a faith-
9 based organization, whose staff has experience and
10 expertise in meeting the legal, social, educational,
11 cultural educational, or cultural needs of immi-
12 grants, refugees, persons granted asylum, or persons
13 applying for such statuses.

14 (2) IEACA GRANT.—The term “IEACA grant”
15 means an Initial Entry, Adjustment, and Citizenship
16 Assistance Grant authorized under subsection (c).

17 (c) ESTABLISHMENT OF INITIAL ENTRY, ADJUST-
18 MENT, AND CITIZENSHIP ASSISTANCE GRANT PRO-
19 GRAM.—

20 (1) GRANTS AUTHORIZED.—The Secretary,
21 working through the Director of United States Citi-
22 zenship and Immigration Services, may award
23 IEACA grants to community-based organizations.

24 (2) USE OF FUNDS.—Grants awarded under
25 this section may be used for the design and imple-

1 mentation of programs to provide the following serv-
2 ices:

3 (A) INITIAL APPLICATION.—Assistance
4 and instruction, including legal assistance, to
5 aliens making initial application for conditional
6 nonimmigrant or conditional nonimmigrant de-
7 pendent classification under Title 5 of this Act.
8 Such assistance may include assisting appli-
9 cants in—

10 (i) screening to assess prospective ap-
11 plicants' potential eligibility for partici-
12 pating in such program;

13 (ii) filling out applications for such
14 program;

15 (iii) gathering proof of identification,
16 employment, residence, and tax payment;

17 (iv) gathering proof of relationships of
18 eligible family members;

19 (v) applying for any waivers for which
20 applicants and qualifying family members
21 may be eligible; and

22 (vi) any other assistance that the Sec-
23 retary or grantee considers useful to aliens
24 who are interested in filing applications for
25 treatment under title 5 of this Act.

1 (B) ADJUSTMENT OF STATUS.—Assistance
2 and instruction, including legal assistance, to
3 aliens seeking to adjust their status in accord-
4 ance with title 5 of this Act or section 245 of
5 the Immigration and Nationality Act (8 U.S.C.
6 1255).

7 (C) CITIZENSHIP.—Assistance and instruc-
8 tion to applicants on—

- 9 (i) the rights and responsibilities of
10 United States citizenship;
11 (ii) English as a second language;
12 (iii) civics; or
13 (iv) applying for United States citi-
14 zenship.

15 (3) DURATION AND RENEWAL.—

16 (A) DURATION.—Subject to subparagraph
17 (B), each grant awarded under this section
18 shall be awarded for a period of not more than
19 3 years.

20 (B) RENEWAL.—The Secretary may renew
21 any grant awarded under this section in 1-year
22 increments.

23 (4) APPLICATION FOR GRANTS.—Each entity
24 desiring an IEACA grant under this section shall
25 submit an application to the Secretary at such time,

1 in such manner, and accompanied by such informa-
2 tion as the Secretary may require.

3 (5) ELIGIBLE ORGANIZATIONS.—A community-
4 based organization applying for a grant under this
5 section to provide services described in subparagraph
6 (A), (B), or (C)(iv) of paragraph (2) may not receive
7 such a grant unless the organization is—

8 (A) recognized by the Board of Immigra-
9 tion Appeals under section 292.2 of title 8,
10 Code of Federal Regulations; or

11 (B) otherwise directed by a licensed attor-
12 ney.

13 (6) SELECTION OF GRANTEES.—Grants award-
14 ed under this section shall be awarded on a competi-
15 tive basis.

16 (7) GEOGRAPHIC DISTRIBUTION OF GRANTS.—
17 The Secretary shall approve applications under this
18 section in a manner that ensures, to the greatest ex-
19 tent practicable, that—

20 (A) not less than 50 percent of the funding
21 for grants under this section are awarded to
22 programs located in the 10 States with the
23 highest percentage of residents who were born
24 in foreign countries; and

1 (B) not less than 20 percent of the funding
2 for grants under this section are awarded to
3 programs located in States that are not de-
4 scribed in subparagraph (A).

5 (8) ETHNIC DIVERSITY.—The Secretary shall
6 ensure that community-based organizations receiving
7 grants under this section provide services to an eth-
8 nically diverse population, to the greatest extent pos-
9 sible.

10 (d) LIAISON BETWEEN USCIS AND GRANTEES.—
11 The Secretary shall establish a liaison between United
12 States Citizenship and Immigration Services and the com-
13 munity of providers of services under this section to assure
14 quality control, efficiency, and greater client willingness
15 to come forward.

16 (e) REPORTS TO CONGRESS.—Not later than 180
17 days after the date of enactment of this Act, and July
18 1 of each subsequent year, the Secretary shall submit a
19 report to Congress that includes information regarding—

20 (1) the status of the implementation of this sec-
21 tion;

22 (2) the grants issued pursuant to this section;
23 and

24 (3) the activities carried out with such grants.

25 (f) SOURCE OF GRANT FUNDS.—

1 (1) APPLICATION FEES.—The Secretary may
2 use funds made available under section 401(g)(2)(A)
3 of this Act and section 218A(b)(3) of the Immigra-
4 tion and Nationality Act, as added by this Act, to
5 carry out this section.

6 (2) FUNDING.—Fees and fines deposited in the
7 Security and Prosperity Account under section
8 286(w)(3)(B) of the Immigration and Nationality
9 Act may be used to carry out this section.

10 (g) DISTRIBUTION OF CONDITIONAL NONIMMIGRANT
11 VISA FEES AND FINES.—Notwithstanding section
12 401(g)(2)(B), 2 percent of the fees and fines collected
13 under section 401 shall be made available for grants under
14 the Initial Entry, Adjustment, and Citizenship Assistance
15 Grant Program established under this section.

16 **Subtitle B—Emergency Relief for**
17 **Certain Populations**

18 **SEC. 641. ADJUSTMENT OF STATUS FOR CERTAIN HAITIAN**
19 **ORPHANS.**

20 (a) IN GENERAL.—The Secretary may adjust the sta-
21 tus of an alien described in subsection (b) to that of an
22 alien lawfully admitted for permanent residence if the
23 alien—

24 (1) subject to subsection (c), applies for such
25 adjustment;

1 (2) is physically present in the United States on
2 the date the application for such adjustment is filed;
3 and

4 (3) is admissible to the United States as an im-
5 migrant, except as provided in subsection (d).

6 (b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STA-
7 TUS.—An alien is described in this subsection if the alien
8 was inspected and granted parole into the United States
9 pursuant to the humanitarian parole policy for certain
10 Haitian orphans announced on January 18, 2010, and
11 suspended as to new applications on April 15, 2010.

12 (c) APPLICATION.—In the case of a minor, an appli-
13 cation under this section may be submitted on behalf of
14 the alien by—

15 (1) a parent; or

16 (2) a legal guardian.

17 (d) GROUNDS OF INADMISSIBILITY.—Paragraphs (4)
18 and (7)(A) of section 212(a) of the Immigration and Na-
19 tionality Act (8 U.S.C. 1182(a)) shall not apply to adjust-
20 ment of status under this section.

21 (e) VISA AVAILABILITY.—When an alien is granted
22 the status of having been lawfully admitted for permanent
23 residence under this section, the Secretary of State shall
24 not be required to reduce the number of immigrant visas

1 authorized to be issued under the Immigration and Na-
2 tionality Act (8 U.S.C. 1101 et seq.).

3 (f) ALIEN DEEMED TO MEET DEFINITION OF
4 CHILD.—An alien described in subsection (b) shall be
5 deemed to satisfy the requirements applicable to adopted
6 children under section 101(b)(1) of the Immigration and
7 Nationality Act (8 U.S.C. 1101(b)(1)) if, before the date
8 on which the alien attains 18 years of age—

9 (1) the alien obtains adjustment of status under
10 this section; and

11 (2) a United States citizen adopts the alien, re-
12 gardless of whether the adoption occurs before, on,
13 or after the date of the decision-granting adjustment
14 of status under this section.

15 (g) NO IMMIGRATION BENEFITS FOR BIRTH PAR-
16 ENTS.—No birth parent of an alien who obtains adjust-
17 ment of status under this section shall thereafter, by vir-
18 tue of such parentage, be accorded any right, privilege,
19 or status under this section or the Immigration and Na-
20 tionality Act (8 U.S.C. 1101 et seq.).

21 **SEC. 642. ADJUSTMENT OF STATUS FOR CERTAIN LIBERIAN**
22 **NATIONALS.**

23 (a) ADJUSTMENT OF STATUS.—

24 (1) IN GENERAL.—

1 (A) ELIGIBILITY.—Except as provided
2 under subparagraph (B), the Secretary shall
3 adjust the status of an alien described in sub-
4 section (b) to that of an alien lawfully admitted
5 for permanent residence, if the alien—

6 (i) applies for adjustment before April
7 1, 2011; and

8 (ii) is otherwise eligible to receive an
9 immigrant visa and admissible to the
10 United States for permanent residence, ex-
11 cept that, in determining such admissi-
12 bility, the grounds for inadmissibility speci-
13 fied in paragraphs (4), (5), (6)(A), and
14 (7)(A) of section 212(a) of the Immigra-
15 tion and Nationality Act (8 U.S.C.
16 1182(a)) shall not apply.

17 (B) INELIGIBLE ALIENS.—An alien shall
18 not be eligible for adjustment of status under
19 this section if the Secretary determines that the
20 alien has been convicted of—

21 (i) any aggravated felony (as defined
22 in section 101(a)(43) of the Immigration
23 and Nationality Act (8 U.S.C.
24 1101(a)(43)); or

1 (ii) (ii) 2 or more crimes involving
2 moral turpitude.

3 (2) RELATIONSHIP OF APPLICATION TO CER-
4 TAIN ORDERS.—

5 (A) IN GENERAL.—An alien present in the
6 United States who has been subject to an order
7 of exclusion, deportation, or removal, or has
8 been ordered to depart voluntarily from the
9 United States under any provision of the Immi-
10 gration and Nationality Act may, notwith-
11 standing such order, apply for adjustment of
12 status under paragraph (1) if otherwise quali-
13 fied under such paragraph.

14 (B) SEPARATE MOTION NOT REQUIRED.—
15 An alien described in subparagraph (A) may
16 not be required, as a condition of submitting or
17 granting such application, to file a separate mo-
18 tion to reopen, reconsider, or vacate the order
19 described in subparagraph (A).

20 (C) EFFECT OF DECISION BY SEC-
21 RETARY.—If the Secretary grants an applica-
22 tion under paragraph (1), the Secretary shall
23 cancel the order described in subparagraph (A).
24 If the Secretary makes a final decision to deny
25 the application, the order shall be effective and

1 enforceable to the same extent as if the applica-
2 tion had not been made.

3 (b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STA-
4 TUS.—

5 (1) IN GENERAL.—The benefits provided under
6 subsection (a) shall apply to any alien—

7 (A) who is—

8 (i) a national of Liberia; and

9 (ii) has been continuously present in
10 the United States from January 1, 2009,
11 through the date of application under sub-
12 section (a); or

13 (B) who is the spouse, child, or unmarried
14 son or daughter of an alien described in sub-
15 paragraph (A).

16 (2) DETERMINATION OF CONTINUOUS PHYS-
17 ICAL PRESENCE.—For purposes of establishing the
18 period of continuous physical presence referred to in
19 paragraph (1), an alien shall not be considered to
20 have failed to maintain continuous physical presence
21 by reasons of an absence, or absences, from the
22 United States for any period or periods amounting
23 in the aggregate to not more than 180 days.

24 (c) STAY OF REMOVAL.—

1 (1) IN GENERAL.—The Secretary shall provide
2 by regulation for an alien who is subject to a final
3 order of deportation or removal or exclusion to seek
4 a stay of such order based on the filing of an appli-
5 cation under subsection (a).

6 (2) DURING CERTAIN PROCEEDINGS.—Notwith-
7 standing any provision in the Immigration and Na-
8 tionality Act, the Secretary shall not order an alien
9 to be removed from the United States if the alien is
10 in exclusion, deportation, or removal proceedings
11 under any provision of such Act and has applied for
12 adjustment of status under subsection (a), except
13 where the Secretary has made a final determination
14 to deny the application.

15 (3) WORK AUTHORIZATION.—

16 (A) IN GENERAL.—The Secretary may—

17 (i) authorize an alien who has applied
18 for adjustment of status under subsection
19 (a) to engage in employment in the United
20 States during the pendency of such appli-
21 cation; and

22 (ii) provide the alien with an ‘employ-
23 ment authorized’ endorsement or other ap-
24 propriate document signifying authoriza-
25 tion of employment.

1 (B) PENDING APPLICATIONS.—If an appli-
2 cation for adjustment of status under sub-
3 section (a) is pending for a period exceeding
4 180 days and has not been denied, the Sec-
5 retary shall authorize such employment.

6 (d) RECORD OF PERMANENT RESIDENCE.—Upon the
7 approval of an alien’s application for adjustment of status
8 under subsection (a), the Secretary shall establish a record
9 of the alien’s admission for permanent record as of the
10 date of the alien’s arrival in the United States.

11 (e) AVAILABILITY OF ADMINISTRATIVE REVIEW.—
12 The Secretary shall provide to applicants for adjustment
13 of status under subsection (a) the same right to, and pro-
14 cedures for, administrative review as are provided to—

15 (1) applicants for adjustment of status under
16 section 245 of the Immigration and Nationality Act
17 (8 U.S.C. 1255); and

18 (2) aliens subject to removal proceedings under
19 section 240 of such Act (8 U.S.C. 1229a).

20 (f) LIMITATION ON JUDICIAL REVIEW.—A deter-
21 mination by the Secretary regarding the adjustment of
22 status of any alien under this section is final and shall
23 not be subject to review by any court.

24 (g) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—
25 If an alien is granted the status of having been lawfully

1 admitted for permanent residence pursuant to this section,
2 the Secretary of State shall not be required to reduce the
3 number of immigrant visas authorized to be issued under
4 any provision of the Immigration and Nationality Act (8
5 U.S.C. 1101 et seq.).

6 (h) APPLICATION OF IMMIGRATION AND NATION-
7 ALITY ACT PROVISIONS.—

8 (1) DEFINITIONS.—Except as otherwise specifi-
9 cally provided in this Chapter, the definitions con-
10 tained in the Immigration and Nationality Act (8
11 U.S.C. 1101 et seq.) shall apply in this section.

12 (2) SAVINGS PROVISION.—Nothing in this
13 Chapter may be construed to repeal, amend, alter,
14 modify, effect, or restrict the powers, duties, func-
15 tion, or authority of the Secretary in the administra-
16 tion and enforcement of the Immigration and Na-
17 tionality Act or any other law relating to immigra-
18 tion, nationality, or naturalization.

19 (i) EFFECT OF ELIGIBILITY FOR ADJUSTMENT OF
20 STATUS.—Eligibility to be granted the status of having
21 been lawfully admitted for permanent residence under this
22 section shall not preclude an alien from seeking any status
23 under any other provision of law for which the alien may
24 otherwise be eligible.

1 **Subtitle C—Wartime Treatment**
2 **Studies**

3 **PART I—COMMISSION ON WARTIME TREATMENT**
4 **OF EUROPEAN AMERICANS**

5 **SEC. 651. FINDINGS.**

6 Congress makes the following findings:

7 (1) During World War II, the United States
8 Government deemed as “enemy aliens” more than
9 600,000 Italian-born and 300,000 German-born
10 United States resident aliens and their families, re-
11 quiring them to carry Certificates of Identification
12 and limiting their travel and personal property
13 rights. At that time, these groups were the two larg-
14 est foreign-born groups in the United States.

15 (2) During World War II, the United States
16 Government arrested, interned, or otherwise de-
17 tained thousands of European Americans, some re-
18 maining in custody for years after cessation of
19 World War II hostilities, and repatriated, exchanged,
20 or deported European Americans, including Amer-
21 ican-born children, to European Axis nations, many
22 to be exchanged for Americans held in those nations.

23 (3) Pursuant to a policy coordinated by the
24 United States with Latin American nations, thou-
25 sands of European Latin Americans, including Ger-

1 man and Austrian Jews, were arrested, relocated to
2 the United States, and interned. Many were later re-
3 patriated or deported to European Axis nations dur-
4 ing World War II and exchanged for Americans and
5 Latin Americans held in those nations.

6 (4) Millions of European Americans served in
7 the Armed Forces and thousands sacrificed their
8 lives in defense of the United States.

9 (5) The wartime policies of the United States
10 Government were devastating to the German Amer-
11 ican and Italian American communities, individuals,
12 and their families. The detrimental effects are still
13 being experienced.

14 (6) Prior to and during World War II, the
15 United States restricted the entry of Jewish refugees
16 who were fleeing persecution or genocide and sought
17 safety in the United States. During the 1930s and
18 1940s, the quota system, immigration regulations,
19 visa requirements, and the time required to process
20 visa applications affected the number of Jewish refu-
21 gees, particularly those from Germany and Austria,
22 who could gain admittance to the United States.

23 (7) The United States Government should con-
24 duct an independent review to fully assess and ac-
25 knowledge these actions. Congress has previously re-

1 viewed the United States Government's wartime
2 treatment of Japanese Americans through the Com-
3 mission on Wartime Relocation and Internment of
4 Civilians. An independent review of the treatment of
5 German Americans and Italian Americans and of
6 Jewish refugees fleeing persecution and genocide has
7 not yet been undertaken.

8 (8) Time is of the essence for the establishment
9 of commissions, because of the increasing danger of
10 destruction and loss of relevant documents, the ad-
11 vanced age of potential witnesses and, most impor-
12 tantly, the advanced age of those affected by the
13 United States Government's policies. Many who suf-
14 fered have already passed away and will never know
15 of this effort.

16 **SEC. 652. DEFINITIONS.**

17 In this part:

18 (1) DURING WORLD WAR II.—The term “during
19 World War II” refers to the period between Sep-
20 tember 1, 1939, through December 31, 1948.

21 (2) EUROPEAN AMERICANS.—

22 (A) IN GENERAL.—The term “European
23 Americans” refers to United States citizens and
24 resident aliens of European ancestry, including
25 Italian Americans, German Americans, Hun-

1 garian Americans, Romanian Americans, and
2 Bulgarian Americans.

3 (B) GERMAN AMERICANS.—The term
4 “German Americans” refers to United States
5 citizens and resident aliens of German ancestry.

6 (C) ITALIAN AMERICANS.—The term
7 “Italian Americans” refers to United States
8 citizens and resident aliens of Italian ancestry.

9 (3) EUROPEAN LATIN AMERICANS.—The term
10 “European Latin Americans” refers to persons of
11 European ancestry, including German or Italian an-
12 cestry, residing in a Latin American nation during
13 World War II.

14 (4) LATIN AMERICAN NATION.—The term
15 “Latin American nation” refers to any nation in
16 Central America, South America, or the Caribbean.

17 **SEC. 653. ESTABLISHMENT OF COMMISSION ON WARTIME**
18 **TREATMENT OF EUROPEAN AMERICANS.**

19 (a) IN GENERAL.—There is established the Commis-
20 sion on Wartime Treatment of European Americans (re-
21 ferred to in this part as the “European American Commis-
22 sion”).

23 (b) MEMBERSHIP.—The European American Com-
24 mission shall be composed of 7 members, who shall be ap-

1 pointed not later than 90 days after the date of enactment
2 of this Act as follows:

3 (1) Three members shall be appointed by the
4 President.

5 (2) Two members shall be appointed by the
6 Speaker of the House of Representatives, in con-
7 sultation with the minority leader.

8 (3) Two members shall be appointed by the ma-
9 jority leader of the Senate, in consultation with the
10 minority leader.

11 (c) TERMS.—The term of office for members shall be
12 for the life of the European American Commission. A va-
13 cancy in the European American Commission shall not af-
14 fect its powers, and shall be filled in the same manner
15 in which the original appointment was made.

16 (d) REPRESENTATION.—The European American
17 Commission shall include 2 members representing the in-
18 terests of Italian Americans and two members rep-
19 resenting the interests of German Americans.

20 (e) MEETINGS.—The President shall call the first
21 meeting of the European American Commission not later
22 than 120 days after the date of enactment of this Act.

23 (f) QUORUM.—Four members of the European Amer-
24 ican Commission shall constitute a quorum, but a lesser
25 number may hold hearings.

1 (g) CHAIRMAN.—The European American Commis-
 2 sion shall elect a Chairman and Vice Chairman from
 3 among its members. The term of office of each shall be
 4 for the life of the European American Commission.

5 (h) COMPENSATION.—

6 (1) IN GENERAL.—Members of the European
 7 American Commission shall serve without pay.

8 (2) REIMBURSEMENT OF EXPENSES.—All mem-
 9 bers of the European American Commission shall be
 10 reimbursed for reasonable travel and subsistence,
 11 and other reasonable and necessary expenses in-
 12 curred by them in the performance of their duties.

13 **SEC. 654. DUTIES OF THE EUROPEAN AMERICAN COMMIS-**
 14 **SION.**

15 (a) IN GENERAL.—It shall be the duty of the Euro-
 16 pean American Commission to review the United States
 17 Government's wartime treatment of European Americans
 18 and European Latin Americans as provided in subsection
 19 (b).

20 (b) SCOPE OF REVIEW.—The European American
 21 Commission's review shall include the following:

22 (1) A comprehensive review of the facts and cir-
 23 cumstances surrounding United States Government
 24 action during World War II with respect to Euro-
 25 pean Americans and European Latin Americans

1 pursuant to United States laws and directives, in-
2 cluding the Alien Enemies Acts (50 U.S.C. 21 et
3 seq.), Presidential Proclamations 2526, 2527, 2655,
4 2662, and 2685, Executive Orders 9066 and 9095,
5 and any directive of the United States Government
6 pursuant to these and other pertinent laws, procla-
7 mations, or executive orders, including registration
8 requirements, travel and property restrictions, estab-
9 lishment of restricted areas, raids, arrests, intern-
10 ment, exclusion, policies relating to the families and
11 property that excludees and internees were forced to
12 abandon, internee employment by American compa-
13 nies (including a list of such companies and the
14 terms and type of employment), exchange, repatri-
15 ation, and deportation, and the immediate and long-
16 term effect of such actions, particularly internment,
17 on the lives of those affected. This review shall also
18 include a list of—

19 (A) all temporary detention and long-term
20 internment facilities in the United States and
21 Latin American nations that were used to de-
22 tain or intern European Americans and Euro-
23 pean Latin Americans during World War II (in
24 this paragraph referred to as “World War II
25 detention facilities”);

1 (B) the names of European Americans and
2 European Latin Americans who died while in
3 World War II detention facilities and where
4 they were buried;

5 (C) the names of children of European
6 Americans and European Latin Americans who
7 were born in World War II detention facilities
8 and where they were born; and

9 (D) the nations from which European
10 Latin Americans were brought to the United
11 States, the ships that transported them to the
12 United States and their departure and disem-
13 barkation ports, the locations where European
14 Americans and European Latin Americans were
15 exchanged for persons held in European Axis
16 nations, and the ships that transported them to
17 Europe and their departure and disembarkation
18 ports.

19 (2) An assessment of the underlying rationale
20 of the decision of the United States Government to
21 develop the programs and policies described in para-
22 graph (1), the information the United States Gov-
23 ernment received or acquired suggesting these pro-
24 grams and policies were necessary, the perceived
25 benefit of enacting such programs and policies, and

1 the immediate and long-term impact of such pro-
2 grams and policies on European Americans and Eu-
3 ropean Latin Americans and their communities.

4 (3) A brief review of the participation by Euro-
5 pean Americans in the United States Armed Forces,
6 including the participation of European Americans
7 whose families were excluded, interned, repatriated,
8 or exchanged.

9 (4) A recommendation of appropriate remedies,
10 including public education programs and the cre-
11 ation of a comprehensive online database by the Na-
12 tional Archives and Records Administration of docu-
13 ments related to the United States Government's
14 wartime treatment of European Americans and Eu-
15 ropean Latin Americans during World War II.

16 (c) FIELD HEARINGS.—The European American
17 Commission shall hold public hearings in such cities of the
18 United States as it deems appropriate.

19 (d) REPORT.—The European American Commission
20 shall submit a written report of its findings and rec-
21 ommendations to Congress not later than 18 months after
22 the date of the first meeting called pursuant to section
23 103(e).

1 **SEC. 655. POWERS OF THE EUROPEAN AMERICAN COMMIS-**
2 **SION.**

3 (a) IN GENERAL.—The European American Commis-
4 sion or, on the authorization of the Commission, any sub-
5 committee or member thereof, may, for the purpose of car-
6 rying out the provisions of this title, hold such hearings
7 and sit and act at such times and places, and request the
8 attendance and testimony of such witnesses and the pro-
9 duction of such books, records, correspondence, memo-
10 randum, papers, and documents as the Commission or
11 such subcommittee or member may deem advisable. The
12 European American Commission may request the Attor-
13 ney General to invoke the aid of an appropriate United
14 States district court to require, by subpoena or otherwise,
15 such attendance, testimony, or production.

16 (b) GOVERNMENT INFORMATION AND COOPERA-
17 TION.—The European American Commission may acquire
18 directly from the head of any department, agency, inde-
19 pendent instrumentality, or other authority of the execu-
20 tive branch of the Government, available information that
21 the European American Commission considers useful in
22 the discharge of its duties. All departments, agencies, and
23 independent instrumentalities, or other authorities of the
24 executive branch of the Government shall cooperate with
25 the European American Commission and furnish all infor-
26 mation requested by the European American Commission

1 to the extent permitted by law, including information col-
2 lected under the Commission on Wartime and Internment
3 of Civilians Act (Public Law 96-317; 50 U.S.C. App. 1981
4 note) and the Wartime Violation of Italian Americans Civil
5 Liberties Act (Public Law 106-451; 50 U.S.C. App. 1981
6 note). For purposes of section 552a(b)(9) of title 5,
7 United States Code (commonly known as the “Privacy Act
8 of 1974”), the European American Commission shall be
9 deemed to be a committee of jurisdiction.

10 **SEC. 656. ADMINISTRATIVE PROVISIONS.**

11 The European American Commission is authorized
12 to—

13 (1) appoint and fix the compensation of such
14 personnel as may be necessary, without regard to
15 the provisions of title 5, United States Code, gov-
16 erning appointments in the competitive service, and
17 without regard to the provisions of chapter 51 and
18 subchapter III of chapter 53 of such title relating to
19 classification and General Schedule pay rates, except
20 that the compensation of any employee of the Com-
21 mission may not exceed a rate equivalent to the rate
22 payable under GS-15 of the General Schedule under
23 section 5332 of such title;

1 (2) obtain the services of experts and consult-
2 ants in accordance with the provisions of section
3 3109 of such title;

4 (3) obtain the detail of any Federal Govern-
5 ment employee, and such detail shall be without re-
6 imbursement or interruption or loss of civil service
7 status or privilege;

8 (4) enter into agreements with the Adminis-
9 trator of General Services for procurement of nec-
10 essary financial and administrative services, for
11 which payment shall be made by reimbursement
12 from funds of the Commission in such amounts as
13 may be agreed upon by the Chairman of the Com-
14 mission and the Administrator;

15 (5) procure supplies, services, and property by
16 contract in accordance with applicable laws and reg-
17 ulations and to the extent or in such amounts as are
18 provided in appropriation Acts; and

19 (6) enter into contracts with Federal or State
20 agencies, private firms, institutions, and agencies for
21 the conduct of research or surveys, the preparation
22 of reports, and other activities necessary to the dis-
23 charge of the duties of the Commission, to the ex-
24 tent or in such amounts as are provided in appro-
25 priation Acts.

1 **SEC. 657. AUTHORIZATION OF APPROPRIATIONS.**

2 There is authorized to be appropriated \$600,000 to
3 carry out this part.

4 **SEC. 658. SUNSET.**

5 The European American Commission shall terminate
6 60 days after it submits its report to Congress.

7 **PART II—COMMISSION ON WARTIME TREATMENT**
8 **OF JEWISH REFUGEES**

9 **SEC. 661. ESTABLISHMENT OF COMMISSION ON WARTIME**
10 **TREATMENT OF JEWISH REFUGEES.**

11 (a) **IN GENERAL.**—There is established the Commis-
12 sion on Wartime Treatment of Jewish Refugees (referred
13 to in this subchapter as the “Jewish Refugee Commis-
14 sion”).

15 (b) **MEMBERSHIP.**—The Jewish Refugee Commission
16 shall be composed of 7 members, who shall be appointed
17 not later than 90 days after the date of enactment of this
18 Act as follows:

19 (1) Three members shall be appointed by the
20 President.

21 (2) Two members shall be appointed by the
22 Speaker of the House of Representatives, in con-
23 sultation with the minority leader.

24 (3) Two members shall be appointed by the ma-
25 jority leader of the Senate, in consultation with the
26 minority leader.

1 (c) TERMS.—The term of office for members shall be
2 for the life of the Jewish Refugee Commission. A vacancy
3 in the Jewish Refugee Commission shall not affect its pow-
4 ers, and shall be filled in the same manner in which the
5 original appointment was made.

6 (d) REPRESENTATION.—The Jewish Refugee Com-
7 mission shall include two members representing the inter-
8 ests of Jewish refugees.

9 (e) MEETINGS.—The President shall call the first
10 meeting of the Jewish Refugee Commission not later than
11 120 days after the date of enactment of this Act.

12 (f) QUORUM.—Four members of the Jewish Refugee
13 Commission shall constitute a quorum, but a lesser num-
14 ber may hold hearings.

15 (g) CHAIRMAN.—The Jewish Refugee Commission
16 shall elect a Chairman and Vice Chairman from among
17 its members. The term of office of each shall be for the
18 life of the Jewish Refugee Commission.

19 (h) COMPENSATION.—

20 (1) IN GENERAL.—Members of the Jewish Ref-
21 ugee Commission shall serve without pay.

22 (2) REIMBURSEMENT OF EXPENSES.—All mem-
23 bers of the Jewish Refugee Commission shall be re-
24 imbursed for reasonable travel and subsistence, and

1 other reasonable and necessary expenses incurred by
2 them in the performance of their duties.

3 **SEC. 662. DUTIES OF THE JEWISH REFUGEE COMMISSION.**

4 (a) IN GENERAL.—It shall be the duty of the Jewish
5 Refugee Commission to review the United States Govern-
6 ment’s refusal to allow Jewish and other refugees fleeing
7 persecution or genocide in Europe entry to the United
8 States as provided in subsection (b).

9 (b) SCOPE OF REVIEW.—The Jewish Refugee Com-
10 mission’s review shall cover the period between January
11 1, 1933, through December 31, 1945, and shall include,
12 to the greatest extent practicable, the following:

13 (1) A review of the United States
14 Government’s decision to deny Jewish and other
15 refugees fleeing persecution or genocide entry to the
16 United States, including a review of the underlying
17 rationale of the United States Government’s deci-
18 sion to refuse the Jewish and other refugees entry,
19 the information the United States Government re-
20 ceived or acquired suggesting such refusal was nec-
21 essary, the perceived benefit of such refusal, and the
22 impact of such refusal on the refugees.

23 (2) A review of Federal refugee law and policy
24 relating to those fleeing persecution or genocide, in-
25 cluding recommendations for making it easier in the

1 future for victims of persecution or genocide to ob-
2 tain refuge in the United States.

3 (c) FIELD HEARINGS.—The Jewish Refugee Com-
4 mission shall hold public hearings in such cities of the
5 United States as it deems appropriate.

6 (d) REPORT.—The Jewish Refugee Commission shall
7 submit a written report of its findings and recommenda-
8 tions to Congress not later than 18 months after the date
9 of the first meeting called pursuant to section 109(e).

10 **SEC. 663. POWERS OF THE JEWISH REFUGEE COMMISSION.**

11 (a) IN GENERAL.—The Jewish Refugee Commission
12 or, on the authorization of the Commission, any sub-
13 committee or member thereof, may, for the purpose of car-
14 rying out the provisions of this title, hold such hearings
15 and sit and act at such times and places, and request the
16 attendance and testimony of such witnesses and the pro-
17 duction of such books, records, correspondence, memo-
18 randum, papers, and documents as the Commission or
19 such subcommittee or member may deem advisable. The
20 Jewish Refugee Commission may request the Attorney
21 General to invoke the aid of an appropriate United States
22 district court to require, by subpoena or otherwise, such
23 attendance, testimony, or production.

24 (b) GOVERNMENT INFORMATION AND COOPERA-
25 TION.—The Jewish Refugee Commission may acquire di-

1 rectly from the head of any department, agency, inde-
2 pendent instrumentality, or other authority of the execu-
3 tive branch of the Government, available information that
4 the Jewish Refugee Commission considers useful in the
5 discharge of its duties. All departments, agencies, and
6 independent instrumentalities, or other authorities of the
7 executive branch of the Government shall cooperate with
8 the Jewish Refugee Commission and furnish all informa-
9 tion requested by the Jewish Refugee Commission to the
10 extent permitted by law. For purposes of section
11 552a(b)(9) of title 5, United States Code (commonly
12 known as the “Privacy Act of 1974”), the Jewish Refugee
13 Commission shall be deemed to be a committee of jurisdic-
14 tion.

15 **SEC. 664. ADMINISTRATIVE PROVISIONS.**

16 The Jewish Refugee Commission is authorized to—

17 (1) appoint and fix the compensation of such
18 personnel as may be necessary, without regard to
19 the provisions of title 5, United States Code, gov-
20 erning appointments in the competitive service, and
21 without regard to the provisions of chapter 51 and
22 subchapter III of chapter 53 of such title relating to
23 classification and General Schedule pay rates, except
24 that the compensation of any employee of the Com-
25 mission may not exceed a rate equivalent to the rate

1 payable under GS-15 of the General Schedule under
2 section 5332 of such title;

3 (2) obtain the services of experts and consult-
4 ants in accordance with the provisions of section
5 3109 of such title;

6 (3) obtain the detail of any Federal Govern-
7 ment employee, and such detail shall be without re-
8 imbursement or interruption or loss of civil service
9 status or privilege;

10 (4) enter into agreements with the Adminis-
11 trator of General Services for procurement of nec-
12 essary financial and administrative services, for
13 which payment shall be made by reimbursement
14 from funds of the Commission in such amounts as
15 may be agreed upon by the Chairman of the Com-
16 mission and the Administrator;

17 (5) procure supplies, services, and property by
18 contract in accordance with applicable laws and reg-
19 ulations and to the extent or in such amounts as are
20 provided in appropriation Acts; and

21 (6) enter into contracts with Federal or State
22 agencies, private firms, institutions, and agencies for
23 the conduct of research or surveys, the preparation
24 of reports, and other activities necessary to the dis-
25 charge of the duties of the Commission, to the ex-

1 (2) 19 percent of the population of the United
2 States over 5 years of age speaks a language other
3 than English at home;

4 (3) only qualified court interpreters can ensure
5 that persons with limited English proficiency com-
6 prehend judicial proceedings in which they are a
7 party;

8 (4) the knowledge and skills required of a quali-
9 fied court interpreter differ substantially from those
10 required in other interpretation settings, such as so-
11 cial service, medical, diplomatic, and conference in-
12 terpreting;

13 (5) the Federal Government has demonstrated
14 its commitment to equal administration of justice re-
15 gardless of English proficiency;

16 (6) regulations implementing title VI of the
17 Civil Rights Act of 1964, as well as the guidance
18 issued by the Department of Justice pursuant to Ex-
19 ecutive Order 13166, issued August 11, 2000, clar-
20 ify that all recipients of Federal financial assistance,
21 including State courts, are required to take reason-
22 able steps to provide meaningful access to their pro-
23 ceedings for persons with limited English pro-
24 ficiency;

1 (7) 40 States have developed, or are developing,
2 qualified court interpreting programs;

3 (8) robust, effective court interpreter pro-
4 grams—

5 (A) actively recruit skilled individuals to be
6 court interpreters;

7 (B) train those individuals in the interpre-
8 tation of court proceedings;

9 (C) develop and use a thorough, systematic
10 certification process for court interpreters; and

11 (D) have sufficient funding to ensure that
12 a qualified interpreter will be available to the
13 court whenever necessary; and

14 (9) Federal funding is necessary to—

15 (A) encourage State courts that do not
16 have court interpreter programs to develop
17 them;

18 (B) assist State courts with nascent court
19 interpreter programs to implement them;

20 (C) assist State courts with limited court
21 interpreter programs to enhance them; and

22 (D) assist State courts with robust court
23 interpreter programs to make further improve-
24 ments and share successful programs with other
25 States.

1 **SEC. 682. STATE COURT INTERPRETER PROGRAM.**

2 (a) GRANTS AUTHORIZED.—

3 (1) IN GENERAL.—The Administrator of the
4 Office of Justice Programs of the Department of
5 Justice (referred to in this section as the “Adminis-
6 trator”) shall make grants, in accordance with such
7 regulations as the Attorney General may prescribe,
8 to State courts to develop and implement programs
9 to assist individuals with limited English proficiency
10 to access and understand State court proceedings in
11 which they are a party.

12 (2) TECHNICAL ASSISTANCE.—The Adminis-
13 trator shall allocate, for each fiscal year, \$500,000
14 of the amount appropriated pursuant to section 4 to
15 be used to establish a court interpreter technical as-
16 sistance program to assist State courts receiving
17 grants under this subchapter.

18 (b) USE OF GRANTS.—Grants awarded under sub-
19 section (a) may be used by State courts to—

20 (1) assess regional language demands;

21 (2) develop a court interpreter program for the
22 State courts;

23 (3) develop, institute, and administer language
24 certification examinations;

25 (4) recruit, train, and certify qualified court in-
26 terpreters;

1 (5) pay for salaries, transportation, and tech-
2 nology necessary to implement the court interpreter
3 program developed under paragraph (2); and

4 (6) engage in other related activities, as pre-
5 scribed by the Attorney General.

6 (c) APPLICATION.—

7 (1) IN GENERAL.—The highest State court of
8 each State desiring a grant under this section shall
9 submit an application to the Administrator at such
10 time, in such manner, and accompanied by such in-
11 formation as the Administrator may reasonably re-
12 quire.

13 (2) STATE COURTS.—The highest State court
14 of each State submitting an application under para-
15 graph (1) shall include in the application—

16 (A) a demonstration of need for the devel-
17 opment, implementation, or expansion of a
18 State court interpreter program;

19 (B) an identification of each State court in
20 that State which would receive funds from the
21 grant;

22 (C) the amount of funds each State court
23 identified under subparagraph (B) would re-
24 ceive from the grant; and

1 (D) the procedures the highest State court
2 would use to directly distribute grant funds to
3 State courts identified under subparagraph (B).

4 (d) STATE COURT ALLOTMENTS.—

5 (1) BASE ALLOTMENT.—From amounts appro-
6 priated for each fiscal year pursuant to section 4,
7 the Administrator shall allocate \$100,000 to each of
8 the highest State court of each State, which has an
9 application approved under subsection (c).

10 (2) DISCRETIONARY ALLOTMENT.—From
11 amounts appropriated for each fiscal year pursuant
12 to section 4, the Administrator shall allocate
13 \$5,000,000 to be distributed among the highest
14 State courts of States which have an application ap-
15 proved under subsection (c), and that have extraor-
16 dinary needs that are required to be addressed in
17 order to develop, implement, or expand a State court
18 interpreter program.

19 (3) ADDITIONAL ALLOTMENT.—In addition to
20 the allocations made under paragraphs (1) and (2),
21 the Administrator shall allocate to each of the high-
22 est State court of each State, which has an applica-
23 tion approved under subsection (c), an amount equal
24 to the product reached by multiplying—

1 (A) the unallocated balance of the amount
2 appropriated for each fiscal year pursuant to
3 section 4; and

4 (B) the ratio between the number of people
5 over 5 years of age who speak a language other
6 than English at home in the State and the
7 number of people over 5 years of age who speak
8 a language other than English at home in all
9 the States that receive an allocation under
10 paragraph (1), as those numbers are deter-
11 mined by the Bureau of the Census.

12 (4) TREATMENT OF DISTRICT OF COLUMBIA.—

13 For purposes of this section—

14 (A) the District of Columbia shall be treat-
15 ed as a State; and

16 (B) the District of Columbia Court of Ap-
17 peals shall act as the highest State court for
18 the District of Columbia.

19 **SEC. 683. AUTHORIZATION OF APPROPRIATIONS.**

20 There are authorized to be appropriated \$15,000,000
21 for each of the fiscal years 2010 through 2014 to carry
22 out this subtitle.

1 **Subtitle E—Other Matters**

2 **SEC. 691. ADJUSTMENT OF STATUS FOR CERTAIN VICTIMS** 3 **OF TERRORISM.**

4 (a) ADJUSTMENT OF STATUS.—The status of any
5 alien described in subsection (b) may be adjusted by the
6 Secretary to that of an alien lawfully admitted for perma-
7 nent residence, if the alien—

8 (1) applies for such adjustment not later than
9 1 year after the date of the enactment of this Act;

10 (2) is not inadmissible to the United States
11 under paragraph (2) or (3) of section 212(a) of the
12 Immigration and Nationality Act (8 U.S.C.
13 1182(a)), or deportable under paragraph (2) or (4)
14 of section 237(a) of such Act (8 U.S.C. 1227(a));
15 and

16 (3) not later than the date on which the appli-
17 cation under paragraph (1) is submitted, satisfies
18 any applicable Federal tax liability by establishing
19 that—

20 (A) no such tax liability exists; or

21 (B) all outstanding liabilities have been
22 paid.

23 (b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STA-
24 TUS.—

1 (1) IN GENERAL.—The benefit provided under
2 subsection (a) shall apply to any alien who—

3 (A) was, on September 10, 2001, the
4 spouse, child, unmarried son, or unmarried
5 daughter of an alien who died as a direct result
6 of the terrorist activity conducted against the
7 United States on September 11, 2001;

8 (B) was deemed to be a beneficiary of, and
9 by, the September 11th Victim Compensation
10 Fund of 2001 (49 U.S.C. 40101); and

11 (C) made a proffer of information to the
12 Secretary between April 24, 2008, and August
13 15, 2008, in connection with a request for im-
14 migration relief.

15 (2) EXCEPTION.—An alien shall not be pro-
16 vided any benefit under this section if the Secretary
17 determines that the alien has willfully made a mate-
18 rial misrepresentation or material omission in the
19 proffer of information described in paragraph
20 (1)(C).

21 (c) WORK AUTHORIZATION.—The Secretary may au-
22 thorize an alien who has applied for adjustment of status
23 under subsection (a) to engage in employment in the
24 United States during the pendency of such application.

1 (d) CONSTRUCTION.—Nothing in this section shall be
2 construed to limit the existing authority of the Secretary
3 on the date of the enactment of this Act to require any
4 form or other submission of information or to perform any
5 background or security check for the purpose of deter-
6 mining the admissibility, or eligibility under this section,
7 of any alien.

8 (e) WAIVER OF REGULATIONS.—Not later than 6
9 months after the date of the enactment of this Act, the
10 Secretary shall issue guidance to carry out this section.
11 The Secretary shall not be required to promulgate regula-
12 tions before implementing this section.

13 (f) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—
14 At the time an alien is granted the status of having been
15 lawfully admitted for permanent residence under this sec-
16 tion, the Secretary of State shall not be required to reduce
17 the number of immigrant visas authorized to be issued
18 under title II of the Immigration and Nationality Act (8
19 U.S.C. 1151 et seq.).

20 (g) DEFINITIONS.—

21 (1) APPLICABLE FEDERAL TAX LIABILITY DE-
22 FINED.—In this section, the term “applicable Fed-
23 eral tax liability” means liability for Federal taxes,
24 including penalties and interest, owed for any year

1 for which the statutory period for assessment of any
2 deficiency for such taxes has not expired.

3 (2) INCORPORATION BY REFERENCE.—Except
4 as otherwise specifically provided in this section, the
5 definitions used in the Immigration and Nationality
6 Act (8 U.S.C. 1101 et seq.) (excluding the defini-
7 tions applicable exclusively to title III of such Act)
8 shall apply in the administration of this section.

9 **SEC. 692. DEVELOPMENT OF ASSESSMENT AND STRATEGY**

10 **ADDRESSING FACTORS DRIVING MIGRATION.**

11 (a) DEVELOPMENT OF ASSESSMENT.—The General
12 Accounting Office shall develop a baseline assessment of
13 the primary factors driving migration in a prioritized
14 group of ten countries with the highest rates of irregular
15 migration to the United States within six months of the
16 date of enactment of this Act. The report should, at a
17 minimum, include factors driving migration in the
18 prioritized countries, and any current impact of United
19 States assistance, trade or foreign policy on migration
20 trends in the prioritized countries.

21 (b) STRATEGY ADDRESS FACTORS DRIVING IMMI-
22 GRATION.—The Secretary of State, working with the Ad-
23 ministrator of the United States Agency for International
24 Development, shall subsequently submit to the Committee
25 on Foreign Relations of the Senate and the Committee

1 on Foreign Affairs of the House of Representatives, a
2 strategy which responds to the identified economic, social
3 and security factors driving high rates of irregular migra-
4 tion from the prioritized countries identified. The strategy
5 should incorporate consultation with the Bureau of Popu-
6 lation, Refugees, and Migration of the Department of
7 State, the Department of Labor, and the Office of the
8 United States Trade Representative.

9 (c) ELEMENTS OF STRATEGY.—The strategy re-
10 quired by subsection (b) shall include the following:

11 (1) A summary and evaluation of current as-
12 sistance provided by the Government of the United
13 States to countries with the highest rates of irreg-
14 ular migration to the United States. Each country
15 report should, at a minimum, identify regions and
16 municipalities experiencing the highest emigration
17 rates and the current level of United States aid or
18 investment in these areas.

19 (2) Recommendations for future United States
20 Government assistance and technical support to ad-
21 dress key economic, social and development factors
22 identified in the prioritized migration source coun-
23 tries. Such assistance should be designed to ensure
24 appropriate engagement of national and local gov-
25 ernments and civil society organizations.

1 **SEC. 693. SENSE OF CONGRESS ON INCREASED UNITED**
2 **STATES FOREIGN POLICY COHERENCY IN**
3 **THE WESTERN HEMISPHERE.**

4 It is the sense of Congress that the Secretary of State
5 should review the United States foreign policy toward
6 Latin America in order to strengthen hemispheric security
7 through the reduction of poverty and inequality, expansion
8 of equitable trade, support for democratic institutions, cit-
9 izen security and the rule of law, as essential elements
10 in consolidation of a well-managed regional migration pol-
11 icy.

○